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Durham's Mill Road Plaza: 1967 to 2018

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Durham's Mill Road Plaza

1967 to 2018

Compiled by Joshua Meyrowitz / Professor Emeritus / University of New Hampshire



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I thank Durham’s Administrative Assistants, Karen Edwards (Planning Department) and Jennie Berry, for their help in locating Town documents. Sadly, a number of the early files are thin, incomplete, or missing. For example, as Karen Edwards informed me in March 2018: “Unfortunately, I do not have Planning Board minutes from 1971-1972. They’ve been missing since before I started working here.” In many cases, newspaper articles in *Foster’s Daily Democrat*, *The Portsmouth Herald*, and *Publick Occurrences* (1973-1975) have more detail than can be found in Town files. Thankfully, Town records are much improved for recent years (with searchable minutes and random-access video recordings available online). However, not all the Town’s PDF postings are searchable, and a number of links to Town files that worked in December 2017, when I started this research, no longer worked a few months later. I think that I have now found almost all of those. I also thank the neighbors who offered encouragement, feedback, and suggestions on early drafts of this history. – j m

DURHAM'S MILL PLAZA, 1967-2018

The Mill Plaza is owned by NYC-Based Colonial Durham Associates (CDA)

Controversy surrounding plans to redevelop Durham's Mill Plaza is best understood in historical context. The majority of this account of the Mill Plaza entails direct quotations from documents (Town studies, surveys, and Master Plans; Town Meeting minutes; transcripts of officials' remarks at meetings; residents' letters and comments for Public Hearings; newspaper reports, etc.). Thousands of pages of Town documents from the 1960s to the present and scores of hours of recent meeting recordings were reviewed for Plaza-related material. Ellipses points (...) indicate gaps in quotations. Online links to the full documents are provided when available. Emphases are original, unless noted as "added." For Plaza redevelopment proposals from 2014 to the present, "all sides" (developer, residents, Town Board members) are given full and equal voice. A few pages near the end attempt to convey the general consensus of Town residents on the redevelopment process, followed by a four-page outline of Plaza "history highlights" from the 1960s to the present.

Google Image of the Mill Plaza site, February 3, 2016 (North on Top)

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/google_map_aerial.pdf

"Existing Conditions" of Mill Plaza site, May 8, 2008

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/existing_conditions_plan.pdf

Plaza Site with Correct North-on-Top Layout (from 2009 CDA Parking Expansion Proposal)

<https://www.dropbox.com/s/dphl3pypcpq1r7r/2009%20North%20on%20Top%20Plaza%20Plan.jpg?dl=0>

Town of Durham Tax Map #5 (showing Plaza property in relation to surrounding properties)

https://www.ci.durham.nh.us/sites/default/files/fileattachments/assessing/page/22321/map_5.pdf

Mill Plaza Planning Documents, 2014 to June 2017

https://www.ci.durham.nh.us/boc_planning/design-review-redevelopment-mill-plaza

Town of Durham Boards: Agendas and Minutes

<https://www.ci.durham.nh.us/meetings>

Durham Cable Access Television (DCAT)

https://www.ci.durham.nh.us/boc_dcatgovernance; Video on Demand: <https://dcat22.viebit.com/>

Durham Zoning Ordinance

<https://www.ci.durham.nh.us/planning/zoning-ordinance>

Site Plan Regulations that Pertain to the Mill Plaza Development

https://www.ci.durham.nh.us/boc_planning/site-plan-regulations-pertain-mill-plaza-development

Evolution of Design Plans for Mill Plaza Redevelopment Project

https://www.ci.durham.nh.us/boc_planning/evolution-design-plans-mill-plaza-redevelopment-project

Comments from Citizens and Others on Mill Plaza Redevelopment (Oct 2014-June 2017)

https://www.ci.durham.nh.us/boc_planning/comments-citizens-and-others-mill-plaza-redevelopment

Citizen Comments on Mill Plaza Conceptual Consultation Application (November 2017)

https://www.ci.durham.nh.us/boc_planning/citizen-comments-mill-plaza-conceptual-consultation-application

Durham's Conditional Use Criteria

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/21491/article_vii.pdf

Zoning Board of Adjustment Applications (with links to Citizens Comments)

https://www.ci.durham.nh.us/boc_zoning/current-applications-board

June 1, 2018 [2c]

Mid-1960s

The almost 10-acre field that would become the Mill Plaza went on the market in the mid-1960s. The land at the heart of Durham had been owned by the Osgood family and was previously farmed by the Chesley family. Some members of the Durham business community argued that the Town should acquire the property and create a Town Center there. But the Town Selectmen did not see a need at that time for more space for Town business. (The Selectmen and other boards met in the Courthouse, and the Town library was in UNH's Dimond Library on campus.) [MPSC & CBR]

Spring/Summer 1967—Developers Propose Two-Bay Car Repair & Gas Station at Main St. & Mill Rd.

Nashua-based developers Tamposi, Nash, and Lehoullier (who held an option to buy the Osgood Farm at the heart of Durham) hoped to build a two-bay automotive repair shop and gas station on the corner of Main Street and Mill Road. After they were turned down for a building permit by the Selectmen in May 1967, they appealed to the Zoning Board of Adjustment (ZBA). The site plan proposed a “Colonial style” building approximately where the Osgood Farm barn stood, “directly behind the home of Miss Isabel Smart.” The service station would have about 175 feet of frontage on Mill Road, with an entry road near College Brook reaching a depth of 135 feet “into open land.” Two gas pumps “with their 10,000 gallon underground tanks,” would be placed near the entry road along College Brook. There would be a rotating Texaco advertisement sign near the sidewalk. Lehoullier’s June 12, 1967, letter to the ZBA stated: **“It is our feeling that such use under such proposed conditions and in such a beautifully designed building will neither be detrimental nor injurious to the neighborhood.”** (*Portsmouth Herald*, July 10, 1967, p. 9) The “beautifully designed” Texaco “Colonial” service station can be seen here: www.dropbox.com/s/swpmd4e6t6qkq5/Texaco%20COLONIAL%201967.jpg?dl=0

A public hearing on the ZBA appeal on Friday, July 14, 1967, drew almost 150 people and it had to be moved from the court room to the high school gym. Per the *Portsmouth Herald*, “The crowd seemed appreciative of the painstaking procedure followed by the Z.B.A. chairman, Richard Ringrose. He spent 37 minutes reading all of the correspondence in an effort ‘to give you the history of the case,’ according to Ringrose. The correspondence included a number of letters from citizens, one from the Durham Business and Professional Men’s Association, and a petition with 115 names, all in opposition to the proposal. Lehoullier was the only one to speak in favor of the service station.”

Although a service station was not permitted in the Class A Business zone, the developers argued that a car service station was reasonable as part of a larger commercial development plan for the Osgood farm. Indeed, schematic plans for developing the full property, which Lehoullier brought for inspection, showed proposals for two seven-story apartment buildings with 54 units, in addition to “two professional buildings; a bank; grocery; dry cleaning, hardware; snacks, mercantile; a restaurant; three independent houses; three parking lots.”

Maryanna Hatch, secretary for the Planning Board, then read a statement from the Board strongly opposing the proposed service station “for the reasons stated in most of the letters received by the Board.” Also, “the traffic hazard would be increased and the aesthetics of the town center injured.” After Mrs. Hatch’s statement was acknowledged with applause, “Lehoullier consulted with Ringrose, then announced the withdrawal of the request,” saying “Due to the extremely strong and well-organized opposition to this request of ours, we withdraw our request for this exception.”

The *Portsmouth Herald*, which reported on the ZBA hearing on Monday, July 17, 1967, p. 7 (the above quotes are drawn from that article), added: “This was the second time recently that out-of-town developers have withdrawn their requests. Last November a Concord concern, which sought to build a hot dog restaurant on Church Hill, withdrew on the day of the public hearing. The hearing was held nevertheless, to satisfy the law; but no one appeared to defend having such an establishment.”

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October 1967—Wilfred & Olivia Osgood Sell the 10-Acre “Osgood Farm” in the Downtown Core

On October 13, 1967, the Osgoods transferred what would become the Mill Plaza to the HANBRO (Hannaford Brothers Company), which on the same day transferred it to Samuel A. Tamposi, Gerald Q. Nash, and Edward N. Lehoullier of Nashua, NH, “for the purpose of permitting the construction thereon of a proposed supermarket building, and the leasing of the same to Hannaford Bros. Co., all at the price, and upon such terms and conditions as shall, to such officer or officers hereby so authorized, appear most appropriate and in the best interests of this corporation.” The deeds can be seen here:

<https://www.dropbox.com/s/p9kh0qdrjqpk32/1967%20Deeds.pdf?dl=0>

New Hampshire developers Sam Tamposi and Ed Lehoullier (based in Nashua) started the process of developing the 9.7-acre site into what would become Mill Plaza. According to many members of the public who attended Planning Board meetings at the time, Durham residents were encouraged to support the development not only for the expanded shopping opportunities in town but also with the promise that the site would provide additional parking for Main Street business customers. (That Main Street parking promise was never fulfilled.)

Mr. Lehoullier expressed interest “in discussing a joint project with the Town of Durham in acquiring the Grange Hall property as a possible access.” [PB minutes, October 19, 1967]

1968

Feb. 26, 1968—Selectmen Assure Conservation Commission that College Brook Will Be Protected

James C. Chamberlin, Chairman of the Durham Selectman wrote to Philip J. Sawyer, Chairman of the Conservation Commission (copied to the Planning Board) in response to Sawyer’s February 19th letter expressing concern about silting-in of College Brook. Chamberlin replied Sawyer “We will certainly watch developments and, should a problem arise, we will make every effort to ensure that the contractors involved take corrective steps in order to avoid any permanent damage to the normal flow of College Brook.”

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May 16, 1968—Planning Board: Re-Purchase of Osgood Property for Town Center Is Suggested

“Osgood Property [owned by Tamposi & Lehoullier] – Owen Durgin led the discussion and suggested repurchase by the town for development into a site for a 3-story building to accommodate a town hall, businesses and apartment. One person saw this as a creative idea and many expressed concern over the current appearance of the property, inquiring whether there is any time limit on how long it may be allowed to remain undeveloped. Those in attendance were informed that the Planning Board has before it absolutely no plan from the developers.” [Initial development plans were delayed because the New England Telephone Company decided to locate on the UNH campus rather than on the proposed plaza site.]

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June 4, 1968—Planning Board Meet on “Points of Agreement” Concerning Plaza Site Review

The “points of agreement concerning site review of Lehoullier development” included:

“That green areas be provided along the brook and along Mill Road, the latter at least 10 feet wide.”

“That appropriate provisions be made for trees and shrubbery in the parking lot and along the exposed sides of the building.”

“That a final plan must be submitted and that approval of the portion of the property on the north side of the proposed roadway in no way constitutes approval of property development on the south side of it.”

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June 10, 1968—Planning Board Letter to Lehoullier Emphasizes Landscaping Expectations

“We are especially interested in your landscaping plan for this area, which promises to dominate downtown Durham, and we are eager to see what the arrangement of trees and/or shrubs will be within the parking lot area. We assume that grassed areas will be provided along the brook and along Mill Road, and that foundation plantings will be made around the building.” (Advance copy of letter quoted in June 4, 1968, Planning Board meeting minutes)

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October 11, 1968—Plaza Developer Agrees to Stop Non-Permitted Construction to Avoid Legal Action

A joint meeting of the Board of Selectmen, the Planning Board, and the Building Inspector was held to confront the Plaza developers over their having started construction without having submitted a final site plan or received Town approval. “When Edward Lehoullier of Nashua left he had promised to send complete construction drawings, a site plan and cost estimates for the construction, which has been going on in the center of town. In return he asked to be sent copies of the sign ordinance, zoning ordinance, a list of the requirements which need to be fulfilled by his firm, before construction can be continued. Lehoullier indicated that construction would be stopped, negating need for the town to take legal action, which had been contemplated last week.” (*Portsmouth Herald*, October 14, 1968, p. 6.)

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October 28, 1968—Mill Plaza Developers Submits a Final Plot Plan with Promised Landscaping

The final plot plan promises plantings that “will assure that the parking lot will be well screened from both Main Street and Mill Road,” with additional “foundation plantings” in front of the new grocery store. See pp. 80-81:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/17551/appendix_i.pdf

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November 2, 1968—Special Planning Board Meeting: Landscaping and Other Details Requested

The Planning Board voted to approve the Mill Plaza’s Site Review Plan (dated October 1968) with the exception of 17 parking spaces falling within the Class II and Class I Residential Districts on the site.

On November 3, 1968, the Planning Board sent a letter to Edward Lehoullier regarding the special meeting and the parking space restrictions, adding: “It was also the wish of the Board to inform you that prior to any development of the property to the south of the developed area, a Site Review Plan showing the location of all buildings streets, sidewalks, parking spaces and landscaping will be required. The Board is most appreciative of your cooperation in supplying the information requested for the current Site Review. It promises, with the proposed landscaping, to blend well with the character of the Town.” See p. 80 here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/17551/appendix_i.pdf

1969

In 1969, the Mill Road Plaza opened with a single building (smaller than the current Building #1) containing five businesses, including a grocery store, a pharmacy, and a hardware store, and a parking lot about half of the size of the current 2018 lot.

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January 1969—“Comprehensive Plan” Emphasizes Conservation & Resident-Focused Businesses

The Planning Services Group, Inc., Consultants from Cambridge, Massachusetts prepared “The Comprehensive Plan” for Durham for the Durham Planning Board and New Hampshire Department of Resources and Economic Development. “This report has been reviewed by the Planning Board and approved for publication. The final step will be its official adoption by the Planning Board. Thus, the Comprehensive Plan becomes **Durham’s plan for action**” [p. 1; emphasis added].

The first “salient point” noted in the plan was “**Durham’s natural and historic beauties are unusual and worthy of preservation**” (p. 5). The report also noted that “**The town has an unusual opportunity to develop a series of greenways along the streams penetrating the village. In addition to their aesthetic and conservation value, these greenways could offer walkways connecting various community facilities**” (p. 8; emphases added).

The plan for the Town center was “predicated on the assumption, supported by responses to the survey,” that it was **important to increase shopping opportunities for full-time residents (who, at the time, did most of their shopping in Dover), not just for UNH students** (p. 11; emphasis added). “It is clear, however, that a

center worthy of Durham's image and income will not come into being unless definite action is taken by the town, the businessmen, and the University to overcome the handicaps of scramble circulation, cramped lot arrangement, and inchoate appearance" (p. 13).

The Comprehensive Plan laid out a "basic scheme for circulation improvement" (pp. 13-14; 27-38), but was careful to note the need to protect the buffer between the commercial core and the primary downtown residential area (the Faculty Neighborhood). Regarding one of the suggested connecting roads, for example, the report notes: "**This road, incidentally, should not be allowed to connect to purely residential roads such as Chesley Drive**" (p. 14; emphasis added).

The Comprehensive Plan recommended that "**first priority be given to conservation, because once the prized environment is lost, it can never be replaced.... Greenways are shown along the full length of the Oyster River and its tributaries...**" (p. 41; emphasis added) [Note: "College Brook is a freshwater tributary to the Oyster River, which is tidal below the Mill Pond dam," per the College Brook Restoration Group. See page 3 here and excerpts from the restoration report in the entries below for 2007:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/17551/appendix_e.pdf]

The Comprehensive Plan projected that the 1967 Durham resident population of 4,000 would grow to 6,400 by 1980, and it analyzes the increased need for building lots (p. 16).

The full 74-page 1969 Plan can be read here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/17851/comprehensiv_e_plan_january_1969.pdf

1972

March 1972—Town Meeting: Selectmen Propose Fixing Dangerous Double S-Curves on Mill Pond Rd

Because of a double S-curve along Mill Pond Road from Newmarket Road to Chesley Drive, and the resulting poor visibility and challenging navigation, Durham Selectmen proposed an article (Article 22) to negotiate with property owners on both sides of Mill Pond Road for sufficient land to reduce the curves. The article was amended to reduce the speed limit on Mill Pond Road to 20 mph. The amended Article did not pass.

[MILL POND ROAD S-CURVE UPDATE: The empty lot at the corner of Mill Pond Road and Chesley Drive was developed with the addition of a large home and extensive landscaping in 2014, seemingly precluding any future major adjustment in the sharp curves of the roadway.]

1973

In 1973, plans were in progress to double the size of the Shop 'n Save grocery store in the Plaza and to add a second building.

January 26, 1973: Hannaford Bros. Submits Site Review Application for Expansion of Supermarket

Hannaford Brothers, as Developer/Builder, and Tamposi and Lehoullier, as owners of record, propose a:

14,754 square foot addition to the existing Stop-N-Save [sic] Supermarket, of which 3,024 square feet would be for leasing or other commercial use.... **It is the intent of the developers and owners to put as much emphasis upon landscaping as the aesthetic of the building.** In an attempt to correct a badly eroded area near the intersection of Main Street and Mill Road, we understand that the owner has deeded this area to the Town as well as a 10' strip parallel to Mill Road of which the Town of Durham has already commenced landscaping which will correct the appearance as well as the erosion. As the site plan indicates, it is planned to continue this theme with the new construction. There would be three new traffic control planters near the entrance to enhance the appearance as well as to control the traffic flow. [Emphasis added.]

See: www.dropbox.com/s/61h65g8zxdairp7/1973%2001-26%20Site%20Plan%20Application.pdf?dl=0

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Feb. 21, 1973—Conservation Commission Urges Reversal of Brook Damage Prior to More Construction

In February 1973, the **Durham Conservation Commission** wrote a letter calling on the Town to require the Plaza to reverse its damage to the College Brook and Mill Pond before being allowed to build the second building. See full text of letter below. (This Conservation Commission request was apparently not acted upon or enforced.)

February 21, 1973

TO: Durham Board of Selectmen and Durham Planning Board
FROM: Durham Conservation Commission

The Durham Mill Pond has been filling in with soil rapidly in recent years. The bulldozing and paving in the initial phase of construction on the Tamposi shopping plaza property caused numerous landslides into College Brook with consequent increased silting downstream into Mill Pond. Construction of the new market building and parking lot now proposed, directly above the banks of the brook, will cause more erosion of soil and more silting into these adjacent waterways unless preventive measures are guaranteed as a condition for the granting of the new building permit.

A study of the College-Brook-Mill-Pond watershed area made in the spring of 1972 under the supervision of Oliver Wallace strongly urged that the town of Durham move to protect its prime natural and recreational asset, the Mill Pond, from being further filled in by upstream erosion. The study recommended that the town require developers in this area not to alter the grade of natural drainage slopes into adjacent waterways and also to require such developers to plant a cover of winter wheat or winter rye on any land whose natural water-retaining vegetative cover is destroyed by grading.

The Conservation Commission has communicated its request in the past, without results, that the town require Tamposi to take remedial action on his initial damage to the College Brook banks.

In the interests of preserving some open water in the Mill Pond, the Conservation Commission would like to urge now that definite erosion-preventive measures be required of Tamposi by the Planning Board and by the Board of Selectmen as a condition for granting any new building permit. We urge that a performance bond regarding such measures be posted by Tamposi to guarantee compliance. And we urge that in this new stage of construction the Board of Selectmen use the powers of enforcement vested in them by the town to require Tamposi to meet such-conditions as the Planning Board recommends.

Durham Conservation Commission,
(*six signers*)
cc. Board of Selectmen
cc. Planning Board

The original letter can be seen at:

www.dropbox.com/s/nc49jgdon4ia2t0/Conservation%20Commission%20on%20Plaza%20Feb%201973.pdf?dl=0

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March 6, 1973—Letter from Planning Board to Edward Lehoullier Regarding Planned Meeting

Rebecca Frost, Chair of the Durham Planning Board, outlined topics to be discussed at a planned face-to-face meeting at the new Town offices at 13 Newmarket Road. These topics included “erosion preventive measures to prevent any further damage to the Mill Pond.” [There was no mention of *reversing* the damage to the College Brook or Mill Pond. And even this limited issue of preventing further damage does not seem to have made it into any formal conditions of approval, as indicated in subsequent documents.] See full letter on p. 77 here: www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/17551/appendix_i.pdf

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March 12, 1973—Selectmen letter to Tamposi & Lehoullier about Lack of Plaza Entrance Maintenance

The members of the Board of Selectmen have received numerous complaints as a result of the lack of maintenance at the entrance to your shopping center on Mill Road, and we have witnessed the deterioration at the entrance.

We are concerned to the point of exploring the legal responsibility for allowing traffic over the area because of the hazards caused, and look forward to prompt attention to maintenance.

Over a period of years we have noted a lack of responsibility with regards to these matters; the missing light pole being another incident, and I can recall at one time a fuel truck being seriously damaged. We would therefore like to know what your intentions are for resolving this type of problem.

See: www.dropbox.com/s/8u9llvis6zealij/1973%200312%20Winn%20to%20Tamposi%20Lehoullier.pdf?dl=0

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April 2, 1973: Planning Board “Findings of Fact” Regarding Mill Plaza Deficiencies

In reviewing the application of Allied Engineering for the building of a new supermarket in Mill Plaza, the Board included these Findings of Fact:

5. *Since 1968 there has been observed an increased incidence of silting in the College Brook between Mill Road and Mill Pond Road.*
6. *The land lying east of the College Brook and south of the present paved area has been without vegetative cover since mid-1971.*
7. *The landscaping plan approved along Mill Road in 1968 was developed but has been indifferently maintained.*
8. *The landscaping plan approved in 1968 for shrubs and trees along the east bank of the College Brook was never completed.*
9. *Walkways running southerly from Mill Road to the Plaza buildings, also in the 1968 approved plan, have not been constructed.*

See full minutes from April 2, 1973, Planning Board meeting on pp. 74-76 here:
www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/17551/appendix_i.pdf

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April 20, 1973—Tamposi & Lehoullier Grant Town of Durham Easement for Bicentennial Park

“THAT we, Samuel A. Tamposi and Edward N. Lehoullier of Nashua, Hillsborough County, State of New Hampshire, for consideration paid, grant to the Town of Durham, a municipal corporation duly organized by law in the State of New Hampshire of Durham, Strafford County, State of New Hampshire, with QUITCLAIM covenants.... Meaning and intending hereby to grant the perpetual right and easement, in and to said Grantee for purposes of entering upon said land and grading and landscaping the same, and further to use the same for such public and park purposes as the Grantee may desire.” [Register of Deeds, BK-924 PGE-204]

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December 10, 1973—Conditions of Approval for Addition to Mill Road Shopping Center

A letter from Planning Board Chair, Glen Gerhard, set only a few criteria as “conditions of approval,” including

a right of way for the Town through the Plaza as a public road. No mention was made of restoring the damage to the College Brook as called for in the February 1973 Conservation Commission letter (see above) or to addressing the other deficiencies in landscaping outlined in the Findings of Fact from the April 2, 1973, Planning Board meeting (see above). See the full (but short) “Conditions of Approval” letter on pp. 65-66 here: www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/17551/appendix_i.pdf

1974

The process intensifies for expanding Mill Plaza parking lot and addition of a second building on the site.

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March 1974—Town Meeting

Voters Reject Onassis Oil Refinery on Great Bay and Voters Reject Vehicular Extension of Chesley Drive (foot & bicycle path approved)

At the annual Durham Town Meeting in March 1974, a large majority of Durham voters rejected a rezoning proposal to allow for “industry” in a rural zone, specifically as it related to a 400,000 barrels per day Aristotle Onassis oil refinery on Great Bay that would have covered 3,000 acres of Durham. Voters met for 30 hours over four days on this and other Town issues. See:

<https://www.ci.durham.nh.us/community/where-were-you-1974-40th-anniversary-oil-refinery-defeat>

During the same March 1974 Durham Town Meeting, Durham voters also overwhelmingly rejected a proposal to extend Chesley Drive as a vehicular road through the Mill Plaza to Mill Road. Instead, Town residents voted to approve an amended proposal to extend Chesley Drive only as a foot and bicycle path. [*Public Occurrences*, March 15, 1974.]

Nevertheless, the condition of approval about a Town right-of-way through the Plaza led to a June 1974 quitclaim deed summarized and quoted from further below.

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May 1974—Planning Board Approves Addition to Shop ‘n Save Supermarket in Plaza

From *Public Occurrences*, May 10, 1974, p. 20:

The Durham Planning Board voted Wednesday to approve the site plans submitted by Hannaford Brothers for an addition to the Shop ‘n Save supermarket.

The Board also authorized Henry LeClair, administrative assistance to the selectmen, to negotiate with Hannaford Brothers for conveyance to the town of a deed to a right of way along the southern edge of the property. The right of way could be used to extend Chesley Drive to Mill Road, thus providing an alternate route through Durham for many University of New Hampshire commuters....

The Board suggested further that the deed for the right of way include a five-year right of reversion clause which would return the strip to Hannaford Brothers should the town fail to extend Chesley Drive through the property.

Public Occurrences, June 1974:

In June 1974, a building permit to double the size of the Durham Shop ‘n Save with an 11,850 sf addition was approved by the Board of Selectmen. A permit for a second building in the Plaza was not immediately approved because of citizens’ complaints.

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June 15, 1974—Quitclaim Deed for Town to Build Through Street along College Brook

As called for in the December 1973 “Conditions of Approval” for an expansion of the supermarket in the Plaza, property owners Samuel A. Tamposi and Edward N. Lehoullier granted the Town of Durham the right to build a “public street” through the Plaza, running southeasterly from the front of the Plaza on Mill Road to the rear of the Plaza and connecting to the Southern tip of the Plaza at Chesley Drive – on the condition that the Town voted to build the road by June 1976 and actually constructed it by 1979. (The grant became void when no action was taken by Durham to construct the road by the deadline. Indeed, proposals to extend Chesley Drive as a vehicular route were repeatedly voted down.)

Meaning and intending hereby to convey a strip of land 50 feet in width extending from Mill Road, and encompassing in part the present private right of way serving the Durham Shopping Plaza, said strip running in a generally southerly or southeasterly direction from Mill Road to the southerly side of said premises and adjoining the property of the “Red Tower Development”, so-called, for the purpose of Grantee constructing a public street over the above-conveyed premises to connect with Chesley Drive, so-called, and to allow for motor vehicle traffic between Mill Road and Route 108 in said Durham.

This deed is granted upon the express condition that the Town of Durham shall, within two years from the date hereof, vote at a Town meeting under appropriate article contained in the warrant for this purpose, to construct a public street over the above-described premises connecting with Chesley Drive for the purpose of allowing vehicular traffic to use said public street for access between Mill Road and Route 108; and provided that, having so voted to construct a public street within two years from the date of this deed, that said public street is actually constructed and completed within five years from the date of this deed. And in the event the Town of Durham either fails to vote to construct a public street over the above-described premises within two years from the date hereof, or having so voted fails to complete the construction of said public street within five years from the date hereof, then the condition of this deed having been broken, the same shall be null and void and of no effect, and title to the premises herein described shall revert to Grantors herein, their heirs, administrators, successors and assigns.

For the full deed, see p. 53 of the 117-page Chesley Drive Appendix to the Mill Plaza Study:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/17551/appendix_i.pdf

[Note that this deed is based on **precise survey data** indicating correctly that, from Mill Road, the College Brook runs southerly/southeasterly toward the current pedestrian/bike link to the Faculty Neighborhood at the rear of the Plaza. **The pedestrian path and the Brook at that spot are at the Southern tip of the Plaza.**]

1975

March 4, 1975—Durham Tree Warden: Plaza Landscaping “woefully and shockingly inadequate”

In response to the Town’s building inspector’s (Sheldon Prescott’s) request, D.G. Routley, Durham’s Tree Warden (and Professor of Plant Science at UNH), “examined the plantings at the Shop ‘N Save site and compared them with the site plan.” Although he found, from what he could tell, that the site plan requirements technically “have been met,” he was dismayed by what he saw and wrote his observations to the Durham Board of Selectmen, which included the following:

[T]he whole landscaping of this site is woefully and shockingly inadequate. It grieves me that I was not consulted earlier in the planning stage and that I, and the town, should be forced to accept such a miserable landscaping job. Considering the amount of money spent on the building, that devoted to landscaping is laughable. Is it essentially nothing.

Let me be specific. The row of Scotch pines southerly to the parking lot is inadequate for anything. They are too far apart to provide screening and will only draw attention the weed patch that will grow up around them. As far as I can tell, they seem to have been puddled into the solid clay from which all topsoil was removed....

The tree planter islands west of the parking lot are essentially pointless, serving only as a place to dump snow.

I am distressed that a fine opportunity to get some good landscaping for Durham seems to have passed by. All we have is just one more shopping center.

The full Routley letter can be viewed here (Prof. Routley resigned as Tree Warden a few days later): www.dropbox.com/s/5aovpfcam73fp1y/Tree%20Warden%20to%20Selectmen%20on%20Plaza%20Landscaping%203-4-75%20.pdf?dl=0.

In April 1975, the Planning Board chair wrote to the Public Works Director with details about a “number of areas of the landscaping that do not meet the specifications of the proposed plans” (e.g., improper grass-planting, poorly planted and too-short Scotch Pines, lack of erosion control, and uncleared building material trash). He recommended not allowing for the grocery expansion until “the above requirements are met.” See: www.dropbox.com/s/o78is7hr5z0xiha/1975%2004-23%20Crombie%20to%20Melvin%20landscaping.pdf?dl=0

Yet, in May 1975, the Hannaford project engineer wrote **refused to make the requested site improvements:** “We do not, however, feel we have any obligation to perform any of the suggestions mentioned in earlier Planning Board correspondence, since each item was reviewed by the Planning Board, discarded and omitted from the December 10, 1973, letter granting us permission to proceed to obtain a building permit.” See: <https://www.dropbox.com/s/x252sf8cvqmaq0/1975%2005-02%20Herrick%20to%20Crombie.pdf?dl=0>

[NOTE: Plaza redevelopment should offer a new “opportunity” for truly “good landscaping.” See, for example, USDA Urban Forester John Parry’s letter from Feb. 8, 2016, excerpted further below and posted here: www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/e-mail_from_j._parry.txt]

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Town Report, 1975: Warrant Article 18 for 1976 Town Meeting on Possible Extension of Chesley Drive

ARTICLE 18. To see if the Town will vote to authorize, under the Urban Road Program, the reconstruction and extension of Chesley Drive, utilizing the present Town right-of-way to connect with Mill Road to provide for traffic circulation between Mill Pond Road, the Downtown business area, and the University campus as an alternate route to Faculty Road. It is understood that if such an extension is constructed it will include bikeways and sidewalks.

(Explanation: In preparation for reconstruction under the Urban Road Program, the State is conducting preliminary engineering studies in two phases; the first phase involves a study of traffic in the Mill Pond Road, Chesley Drive, Faculty Road, and Mill Road area to determine the best plan for construction and improvements to most efficiently and safely handle the traffic presently moving through the area.)

The second phase of the study includes Main Street, Madbury Road, and Pettee Brook Lane. The Selectmen stipulated, in approving the study, that the first phase be completed and recommendations made so as to advise the Town at the March 2, 1976 meeting as to the best program for reconstruction under the Federally aided program. Further, the State was directed to consider as a first priority the construction of bikeways and sidewalks to be included in the extension of Chesley Drive. Upon approval of the plan presented by the State, construction will proceed within the limits of available funds. The second phase, involving the reconstruction of the Downtown area, will be implemented as soon as studies are complete and funds become available.)

[See significant **URBAN ROADS UPDATE** immediately below, for March 3, 1976.]

1976

March 3, 1976—Town Meeting: Selectmen Amend Article in Face of Opposition to Extend Chelsey Dr.

“An article that was expected to generate heated debate never came to the floor. Selectman Malcolm Chase

amended the article that called for the construction and extension of Chesley Drive. Instead, what passed, was a revised version directing selectmen to proceed with priorities one and two under the Urban Roads Program.... At an earlier public hearing, considerable opposition was voiced against extending Chesley Drive” (*Foster’s Daily Democrat*, March 4, 1976, p. 1).

“Selectmen avoided the wrath aimed at them two weeks ago during a hearing on extending Chesley Drive to Mill Road by making a motion to delete that portion of the article completely.” (*Portsmouth Herald*, March 4, 1976, p. 7)

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June 15, 1976—June 1974 Deed for Public Road Is Voided Since Durham Did Not Vote by the Deadline

As quoted above in the June 1974 deed from Plaza owners: “in the event the Town of Durham either fails to vote to construct a public street over the above-described premises within two years from the date hereof, or having so voted fails to complete the construction of said public street within five years from the date hereof, then the condition of this deed having been broken, the same shall be null and void and of no effect, and title to the premises herein described shall revert to Grantors herein, their heirs, administrators, successors and assigns.”

October 22, 1976—Town Meets with Plaza Engineer re: Traffic, Building Orientation, Elderly Housing

Present: Rae Borrer, George Crombie, Becky Frost, Anne Knight, Dwight Ladd, David Littlefield, Robert McAuliffe, Stephen Roberts

Frost: The entrance to the parking lot is still not well planned for rush hour. Is there the possibility of having double lines of traffic to alleviate the long lines waiting to get out of the lot?

Roberts: There is a cross-traffic situation on Mill Road.

Frost: The worst time is between 4 p.m. and 5 p.m.

Ladd: From the point of view of the Town, it would have been better to have put the buildings facing Main Street instead of having to look at the back of the building....

McAuliffe: Do you have any thoughts as to the proper uses for that large area?

Roberts: According to a survey that was taken this past summer, housing for the elderly is desirable....

Roberts: The drainage should be intercepted before it gets to the brook. We also need floor plans for future buildings and topography. We would also want alternative plans on the layout. If this area is not done well, it will put more pressure on the center of Town.

1977

January 28, 1977—Planning Board Meeting on Proposed Expansion of Shopping Plaza

“The Planning Board met with Mr. McAuliffe [project engineer] to discuss plans for developing the balance of the Shop ‘N Save Plaza..... He said interest has been shown to the owners in the development by tenants for 1) coffee shop 2) clothing store 3) 5,000 square foot cinema theatre. The store operation would be 16,000 square feet, with the total proposed development of 21,000 square feet.... In addition to the proposed 21,000 square feet of stores, the plan showed a conservation area across the brook and the possibility of residential area of 34 conventional units, or 87 units for the elderly.” The engineer for the development “said the owners, Tamposi and Lehoulhier had no interest in developing the housing section, that they would like to sell it off. Mr. Roberts asked if they would, in their site review, be asking for housing. The answer was no.”

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May 18, 1977—Planning Board Sets Conditions of Approval for Expansion at Mill Plaza Site

The Durham Planning Board set conditions of approval for the 10-acre Mill Plaza property at the May 18, 1977, meeting, requiring only 75% of the 370 spaces (277) to be paved during initial construction, but requiring that “suitably landscaped” space be provided for the full 370 spaces. “Additional spaces will be required to be paved as needed when businesses apply for occupancy.” Referring to the fact that part of the Plaza site was in the Residential A (RA) zone, the Board noted that parking in the RA Zone was “preferable for the Town and abutters to parking on the hill behind the new building,” but that a variance was required for parking in the RA Zone. The Board added, “If the hill is utilized for parking those spaces shall be designated as employee parking only.”

The Planning Board also stipulated that **“A raised barrier paved to a width of six (6) feet for pedestrian and bicycle traffic will be constructed from Mill Road to the Chesley Drive property line.** Any change in the slope between the walkway and the brook will be consistent with roadway design practices of the Town.” [Emphasis added.]

The Board added: “On the shopping center side of this barrier all the water from the paved areas will be collected into catch basins with culverts leading to the brook. Sufficient rip-rapping will be required to prevent erosion of the banking where the culverts enter the brook.”

The Board also addressed roof runoff: “Roof drainage must be collected as it comes off the roof into catch basins connected into the underground drainage systems. A site plan or separate drainage plan will show culvert and manhole sizes as well as paving specifications.”

Regarding landscaping, **“The landscaping plan must show a mix of high trees and low shrubs along Mill Road and down the middle of every other row of parking throughout the project. The width of each planting strip shall permit enough greenery to be consistent with the Town’s overall landscaping plans....”** [Emphasis added.]

Regarding lighting: “Lighting must be shown for all areas, and it is recommended that the level of lighting not exceed that on Main Street. **Lamps must be hooded to direct light onto the parking area and to prevent the light from disturbing adjacent residential areas. If possible the lights should be dimmed after all stores are closed.**” [Emphasis added.]

The full May 1977 Planning Board document can be seen at:

<https://www.dropbox.com/s/evfvvd5lin31wof/May%2018%201977%20Conditions%20of%20Approval%20for%200Parking.pdf?dl=0>

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Aug 31 & Sept 14, 1977—ZBA Considers Variance to Add 56 Parking Spots in Plaza Section in RA Zone

“The flak factor ran high at a hearing Wednesday [August 31, 1977] for a zoning variance to allow parking in a residential zone along the edge of the Mill Road shopping plaza.” Yet residents said that “they would prefer the variance to the alternative mentioned by developers who propose to nearly double the Shop and Save plaza.... To meet parking requirements, the developers asked for a variance to allow parking along a sliver of land which is already paved next to College Brook in the RA zone.” The alternative was “to pave a section of the hill behind the proposed building site.... One abutter, Karen Mower, said it was like choosing ‘between the devil and the deep blue sea’ but she preferred the variance to the alternative. Another abutter, Dwight Ladd, called the plan with the variance ‘an aesthetic and natural disaster’ but said while the hill isn’t Mt. Chocorua, it’s better the way it is than it would be if it were ‘planted with Subaru’s.’ Abutters generally objected to the size of the plaza, its appearance, its ‘encroachment on the residential zone,’ and expressed concern that a precedent could be set by granting the variance... The sliver of land in question, they said, acts as a buffer for Faculty Road homeowners.... The Tamposi and Lehoullier property is the only parcel left with most of it in the BA zone and the sliver in the RA zone.” (*Portsmouth Herald*, September 1, 1977, p. 23.)

Per the ZBA meeting minutes, **the Plaza’s engineer, Mr. Robert McAuliffe, said that the alternative parking location (on the hill behind Building II, which was on the property and in the BA zone), “would require additional drains and would increase runoff.” Thus, the “petitioner proposes to leave the hill in its natural state.”**

Mr. McAuliffe “stated a hardship existed from the loss of use of a layer of land along the brook in the RA District. This area is now paved, and includes an entrance lane.” Mr. Raymond Ouellette, the attorney for the Plaza, argued that “a variance is justified because it is not for a use that is totally within a zone which does not allow it. The property is mostly commercial, and the request only asks for a little more of the property be allowed for commercial use.”

The ZBA’s Public Hearing on the variance request was reconvened on September 14, 1977. At that meeting the variance request was unanimously denied. “In considering the petition, the Board recognizes that to grant the variance would introduce a commercial use into an RA district. No hardship exists from any peculiar characteristics of the land.... Granting the requested variance would be contrary to the spirit of the existing ordinance since the proposed use is not substantially identical in purpose and operational characteristics to a conformed use permitted in the district. Granting the variance will not adversely affect other properties in the district. Also, denial of the variance in no way results in an injustice to the petitioner.”

ZBA Minutes for the August 31 and September 14, 1977, meetings can be read here:
www.dropbox.com/s/sm1g34lrfnqy0xd/ZBA%20Aug%201977%20Parking%20in%20RA%20Zone.pdf?dl=0

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1978

April 1978—Planning Board Site Approval for Mill Plaza (one-page diagram is all that’s in Town files)

<https://www.dropbox.com/s/oqxkw18r5rrv5qt/April%201978%20Site%20Plan.pdf?dl=0>

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Durham’s “Comprehensive Plan Update”—1978

Safeguard natural resources, avoid overdependence on student housing, encourage elderly housing, find central community/cultural space, build bike paths for all ages, encourage expansion of products/services aimed at full-time residents, promote citizen participation.

“Guidelines for Managing Durham’s Development,” **Topic 1. NATURAL RESOURCES:**

The more the population grows and the more land is consumed by development, the more natural resources will be needed or valued. They should therefore be safe-guarded from the start. The values of natural resources are manifold... (A-1)

Where development stresses can be handled by natural processes, expensive technological solutions can be avoided or at least postponed.... If wetlands and floodplains, which handle the seasonal and the dramatic overflows, are preserved and if erosion is prevented, storm sewers, flood control works, seawalls, etc. will not be needed.... (A-2)

The scenic, recreational and educational values of certain natural areas cannot be reconstituted if lost and will be all the more cherished as the population grows. (A-2)

Maintain natural drainage systems: a) Protect wetlands from encroachment.... Control erosion: a) Monitor setback and construction operations near streams, wetlands and shorelands. b) Maintain natural cover on watersheds and shorelines.... (A-2)

Reserve areas for informal outdoor recreation: a) Develop town-wide system of trails and greenways, using both public and private methods.... (A-3)

Then the 1978 report deals with **Topic 2: RESIDENTIAL GROWTH MANAGEMENT:**

*UNH is and will be the dominant factor in Durham, but there is life after, before and outside the University as well.... One issue peculiar to Durham is how far to go in attempting to accommodate UNH students.... **Since student housing needs could change, Durham should probably avoid becoming overly committed to forms of housing not also adaptable to other occupants.** (A-4; emphasis added).*

[**UNH ENROLLMENT UPDATE:** See the 2017 and 2018 entries on the expected “enrollment cliff” for New England colleges.]

Enable residents to remain in Durham: a) reduce cost and care of home ownership for elderly. b) Provide housing alternatives... (A-4).

[**AGE-DEMOGRAPHIC UPDATE:** See Sept. 17, 2014, Master Plan Advisory Committee report to Planning Board & p. 5 of 2014 Master Plan survey on “silver tsunami”—mass of elderly eager for in-town living. www.ci.durham.nh.us/sites/default/files/fileattachments/planningandzoning/09172014_hdpresentation_0.pdf]

Retain central location of facilities used by public as a whole (as distinct from neighborhood facilities): ... b) **Find centrally located space for community and cultural activities.** (A-5; emphasis added).

Improve mobility of non-drivers: a) Build bicycle paths for children (focusing on schools and recreational) for UNH commuters, and for access to CBD for all. (A-5)

Next the report addressed **Topic 3: ECONOMIC BASE:**

Commercial Services. The hope is that the CBD [Central Business District] will serve Durham residents better by offering an appropriate range of frequently used items and services. There should also be room for business research and consulting offices, especially as outlets for local skills and UNH-related projects. Local market forces do not yet appear to be strong enough to accomplish this unaided; there would have to be a concerted effort to design and promote the desired commercial development. (A-6)

The report's **Topic 4: MAN-MADE RESOURCES,** includes this “aim”:

PROMOTE CITIZEN PARTICIPATION.

Continue tradition of wide participation: a) Enlist local talents and interest groups in appropriate studies, projects, committees.... c) Elicit feed-back through hearings, surveys, etc. (A-10)

The 122-page 1978 plan update (which is mostly in outline form) can be read here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/17851/comprehensive_plan_update_1978.pdf

1979

February 5, 1979—Planning Board Chair Informs Lehoullier of Problems Needing Immediate Attention

Rebecca Frost wrote to Edward Lehoullier about two Plaza problems “which need your immediate attention.”

The fluorescent lights that now run the length of the new building certainly do not comply with condition #8 of the Site Review Approval.... However, before the parking lot lights are installed something will have to be done to keep these lights from shining into Faculty Road homes.... The other problem concerns the internal

lay-out of stores. Again, referring to the Conditions of Approval numbers 9 and 10, the Planning Board made it very clear that all loading and trash removal should be done from the rear of the building. The suggested floor plan originally submitted showed all stores with rear doors. So far the present lay-out leaves two areas without access to back doors. On or before February 14, 1979 the Planning Board must take action on the site review for Rock Bottom Records. The application will have to be denied unless you can rearrange the interior of the building so all stores go the full width of the building.

See: www.dropbox.com/s/yu5vabv0a5c2zor/1979%2002-05%20Frost%20to%20Lehouillier%20Light%20%26%20Rear.pdf?dl=0

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June 13, 1979—Selectmen Letter to Planning Board on “Surface Treatment” of Plaza

The Board of Selectmen recommended that the Planning Board approve “modifications of the surface treatment of the Shopping Plaza parking lot as proposed by Tamposi Lehouillier and approved by George Crombie. Since the changes appear to offer advantages in the quality of curbstone, ease of winter maintenance, and accessibility for pedestrians and bikers through to Chesley Drive, the Board recommends that the Planning Board accept these alterations to the plan as soon as possible to assure completion of the project by the end of the summer.” [There does not seem to have ever been any formal approval by the Planning Board of these changes in the site plan, per the John Harwood memos of 2002, described further below. Also, the grassy pedestrian path in the modified plan is not yet, or no longer, in functional existence.] www.dropbox.com/s/ywy7f8kaozi14fn/1979%2006-13%20Selectmen%20to%20PB%20Foot%26Bike%20.pdf?dl=0

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October 16, 1979—Planning Board Work Session Discusses Plaza Noncompliance with Site Approval

“DURHAM PLAZA: Dick Tappan wrote a letter to the Selectmen expressing the Planning Board’s concern with noncompliance of the site review conditions of approval. The Board approved a landscaping plan for the plaza but not the type of trees that are being planted.... Rebecca Frost moved the chairman approach the Selectmen expressing the Planning Board’s feeling that the as built construction of the landscaping plan, the parking, and the traffic circulation do not conform to the plans which were approved at the site review.”

1980

February 12, 1980—Lehouillier letter to Public Works Director (promised to solve light disturbance)

“It has been brought to my attention that the lights on the side of the new building are disturbing to abutters. We will order shields if available and install same.” [**LIGHT-POLLUTION UPDATE:** As of May 2018, light still shines into the neighborhood. See also October 2009 promises regarding lighting pollution.]

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March 11, 1980—Resident Urged Durham to Acquire Lot Across Brook from Plaza as Public Park

“Land Acquisition Is Urged”

Excerpt from Letter to the Editor, *The Transcript*, March 11, 1980
Karen Mower, Faculty Road, Durham

Article 26 on the town warrant would authorize the town to begin exploring possibilities of acquiring a public green belt along the College Brook, from Mill Road to Chesley Drive. The article is recommended by the Planning Board, a committee of representatives from official town boards and the League of Women Voters.

The 1969 Comprehensive Plan for Durham, commissioned by town meeting, urged the Town to preserve the College Brook corridor as a downtown open space, as a walkway from Mill Road to the Mill Pond and as a buffer strip between commercial and residential zones. Durham voters have supported this concept at the polls three times in recent years by repeatedly defeating developer proposals to re-zone the corridor from residential to commercial.

Because of its proximity to the shopping plaza parking lot and to Mill Road traffic, the corridor has become unfavorable for RA development, yet it is ideally located for enjoyment by present and future generations as a downtown park. The owner would like to develop the land with low-income housing, his only alternative without a change of zone. He has consented, however, to a request to defer development until voters have an opportunity to discuss implementing the comprehensive Plan's recommended green belt.

The acreage includes, besides the brook, a shallow pond popular with many area children in former years for ice-skating; a clean-up could restore it for skating again. The pond is still visited, spring and fall, by various kinds of wild ducks and herons. On the property are evergreen trees as well as oak and maple trees, stone walls, and a once handsome large lawn. Clearing of underbrush could provide informal picnic spots and trails. A brookside path could provide a traffic-free pedestrian route from Mill Road to the Mill Pond.

The two-story house at one end of the corridor, dating from Durham's colonial period, fronts on Mill Road. Various ideas could be offered for its possible use by the town. A number of people have suggested it could fill the need for a centrally-located, town-owned community center. It could provide a gathering place, with kitchen and easy physical access, for our senior citizens as well as a meeting place for such activities as children's arts and crafts classes, youth programs, and community organizations....

The College Brook area is truly centrally located, with easy access for old as well as young. It is also the last piece of open land in the town center and once gone will be irretrievable.

[LAND-ACQUISITION UPDATE: The Town did not vote to acquire the property across College Brook from the Plaza. In 1985-1986, it became a 55+ condominium association, Brookside Commons, with 12 homes.]

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March 11, 1980—Town Meeting: Complaints about Plaza Debris Blowing into Faculty Neighborhood

Article 20. It was moved by Maryanna Hatch, seconded, that the Town provide a recycling bin or bins for the collection of glass at the Shop 'N Save parking lot, and that the Town expend up to Two thousand five hundred dollars (\$2,500) for the maintenance of the area to keep it clear of debris.... Many people said the trash was blowing down through the woods to Chesley Drive. Dr. Lawrence Slanetz, Health Officer, said the garbage had not been called to his attention, and he would order that the parking lot be kept clean. [Town Report 1980, p. 96]

[PLAZA TRASH UPDATE: As of May 2018, Plaza trash continues to blow into the Chesley Marsh and surrounds, even though recycling bins were removed years ago.]

1981

April 6, 1981—Letter from Public Works Director to Lehoullier about Deficient Plaza Maintenance

Public Works Director, George Crombie, wrote to Edward Lehoullier: "Your development in the Downtown area has a direct relationship to the rest of the downtown area and to the Town as a whole. It appears to us at this time that litter pickup, street sweeping, and the care of trees and islands are needed in that area in order to maintain the shopping center. The Town would like to propose an arrangement as follows: The Town would be willing to use its own personnel, at a reasonable rate, for litter removal, sweeping, and maintenance of the islands." (Details follow, with "Total Weekly Cost" of \$110 & Total Seasonal Cost of \$3,570.)

www.dropbox.com/s/mqbsw947x4rac4m/1981%204-6-81%20Crombie%20to%20Lehoullier%20re%20TRASH%2B.pdf?dl=0

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1983

Plaza Buildings & Other Improvements (Not Land) Sold to John Pinto of Colonial Durham Associates

Developers Sam Tamposi and Ed Lehoullier sold the two buildings and other improvements (but not the land) to John Pinto, an investment banker and owner of Colonia Durham Associates, based in Manhattan, NY. (*Registry of Deeds indicates sales price of about \$2,000,000, or over \$5 million in 2018 dollars.*)

1987

After 255 years of Selectmen and Town Meetings, Durham voted YES for a Charter change to a Council and Town Administrator form of government.

1989

Durham's Master Plan Update, May 1989: Separate Student Housing from Town-Resident Housing

Excerpts from the Report:

Although the 1989 Plan is an update of the previous two efforts, it was developed following an entirely new process and is organized in a new format. The process of preparation included a thorough data collection effort, analysis of the date, development of alternatives and formulation of goals and recommendations.

The development of the Plan involved a significant amount of local input with professional assistance provided by Rist-Frost Associates. (p. 1).

Respondents in the survey were mixed about the need for more student housing.... The key to success of this type of student housing development would be its location.... The development of new student housing would be best directed to the west of the main campus in complexes specifically designed to house students. This would permit student housing to be separated from town resident housing so that lifestyles don't directly conflict.... When asked where new student housing should be placed, this location received the strongest support in the community survey.... (3-9; emphasis added)

Encourage the transition of the downtown residential uses to commercial retail and professional uses. (3-13)

Encourage the separation of future University-related housing from local resident housing. (6-44; emphasis added)

Protect environmentally sensitive areas in the town, including water sheds, aquifers, coastal shorelines, floodplains and stream banks. (6-44; emphasis added)

The full 230-page 1989 Master Plan Update can be viewed here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/17851/master_plan_update_may_1989_adopted_nov_3_1993.pdf

1993

The Plaza Land is Sold to John Pinto of Colonial Durham Associates

Tamposi and Lehoullier sold the Mill Plaza **land** to John Pinto of Colonial Durham Associates, NYC. (The buildings had been sold to Pinto ten years prior.)

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Fall 1993—Durham again explored extending Chesley Drive as a thru-street to Mill Road

**VARIOUS VOTER PETITIONS OPPOSING EXTENSION OF CHESLEY DRIVE
SUBMITTED TO DURHAM TOWN COUNCIL IN THE MONTHS LEADING UP TO THE COUNCIL'S
UNANIMOUS VOTE TO REJECT THE EXTENSION ON JANUARY 10, 1994**

Petition dated September 20, 1993	-- signed by 60 voters
Petition dated October 8, 1993	-- signed by 12 voters
Petition dated October 15, 1993	-- signed by 24 voters
Petition dated October 26, 1993	-- signed by 24 voters
Petition dated November 2, 1993	-- signed by 100 voters
TOTAL: 220 voters	

The themes addressed in the many letters and petitions (representing the views of hundreds of residents from different parts of Durham) included: Safety risks for the pedestrians and bicyclists (elderly, children, others) who regularly used the wooded path from the Chesley Marsh to Faculty Road and the pedestrian links to and from the Mill Pond, the poor visibility along the curved Mill Pond Road and at the Chesley intersection, damage to the College Brook greenway, destruction of the fragile buffer between the commercial core and the largest downtown residential neighborhood, with resulting decrease in property values and quality of life.

As the petition signed by 100 "Durham voters and Property Owners, residing in many different neighborhoods in the Township" noted **"Quality of Life' is readily available to countryside residents, in terms of green space, but in-town residents must depend on the Town Planning Board, and the Town Council to respect in-town voters' legitimate needs for small, safe in-town green spaces."** [Bold added.]

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October 15, 1993—Poll of Church Hill Senior Housing Tenants regarding Chesley Drive Extension

A letter from the Durham Housing Association reported on a poll of Church Hill Apartment regarding the proposed extension of Chesley Drive. The poll found that of 36 units, 28 were opposed to the proposal to extend Chesley Drive, 4 were in favor, and four had no opinion either way."

See pp. 97-103 of the Chesley Drive appendix in the Mill Plaza Study Committee Report for petition/letters: www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/17551/appendix_i.pdf

1994

January 10, 1994—Town Council Voted Unanimously to REJECT Proposed Chesley Drive Extension

Durham Town Council voted unanimously to reject proposed (yet again!) extension of Chesley Drive as vehicular route into rear of Mill Plaza.

Foster's (1-11-94) reported Council Vote at January 10, 1994, Council Meeting) see p. 95 here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/17551/appendix_i.pdf }}

[NOTE: There are some errors of fact in the article, including an undercounting of letters/petition signatures in opposition to the proposal.]

1995

Town Report 1995: Public Works Dept., Dir. of Public Works [Joseph I. Grady, Public Works Director

1995 Accomplishments:... Replaced deteriorated foot bridge over College Brook off Chesley Drive [for the cherished and heavily traveled wooded path from the Chesley Marsh to Faculty Road at Thompson Lane].

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DURHAM'S FIRST COMMUNITY DEVELOPMENT PLAN, 1995

Successful redevelopment plans must be ones that grow organically from the people in the Town

The Town of Durham worked on its first **Community Development Plan**. More than 1,200 people were involved in some way with the plan, with close to 100 ongoing volunteers.

The introduction states: "Successful community development is **organic and locally based** (emphasis original). Effective community development must **stem from a base of strong and active citizen participation. While the experiences and knowledge of other communities are valuable tools for developing solutions to problems, projects and strategies selected must be those that are chosen by community members. The solutions and strategies for effective community development must make sense for the community. Further, they need to be ones...which community members have chosen and have ownership in**" (pp. 7-8, emphasis added).

The goals and strategies presented included (from pp. 18, 34, 54; emphases added): "**Public places which encourage more social interaction.**" "A Mill Plaza with architecture that more closely resembles that of the existing townscape, along with better landscaped parking areas and open space." "To maintain downtown Durham as the vital commercial center of the community. All economic development initiatives must balance their efforts with the commitment of keeping downtown the functional commercial center of the community." "**Create a plan for an identifiable physical center for the community (e.g., a Town common).**" "**Extend the three unrelated persons limit per dwelling unit to the Central Business District.**"

The Mill Plaza was of central concern in the report, as an anomaly in need of improvement and better integration with the rest of the downtown. "**The Mill Plaza is a typical roadside strip mall that sits rather uncharacteristically in the middle of the Central Business District**" (pp. 40-41; emphasis added). "All ideas put forth in this report and any new **ideas that surface to link the Plaza with Main Street should be pursued vigorously.** The Mill Plaza makes up a large portion of the Central Business District and is currently not used to its potential" (p. 43). "**The Mill Plaza is physically unattractive and is poorly oriented to Main Street.... Also the buildings are oriented so that they literally 'turn their back' to Main Street**" (p. 59; emphasis added). "**An alternative to existing conditions was proposed: a second floor on the plaza including an entrance from Main Street** (see diagram on p. 60 and discussion on pp. 61-62; emphasis added). The focus was on commercial development, linkages to Main Street, enhancing pedestrian and bicycle movement, and park-like areas. For example, on page 61, the report advises: "Work with the Plaza owners and the Town to design and implement improvements along the north side of the property (Burger King) [now the Works Bakery Café] that will carry a new sitting park theme." [Note the correct identification of what is Northern tip of the Plaza.] **There was NO suggestion for any housing to be added to the Plaza.**

See the full 134-page report here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/9881/community_development_plan_july_1995.pdf

1999

Durham begins work on the 2000 Master Plan.

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**FACULTY ROAD RESIDENT PETITION TO MASTER PLAN STEERING COMMITTEE,
THE TOWN COUNCIL, AND PLANNING BOARD REGARDING PROTECTION OF CHESLEY
PEDESTRIAN & BICYCLE PATHS AT SOUTHERN REAR OF PLAZA**

(Signed by 34 people, virtually all those living on – or at the corner of – Faculty Road)

June 1999

P E T I T I O N

To the Durham Master Plan Steering Committee, Durham Town Council, and Durham Planning Board:

We, the undersigned property owners on and alongside FACULTY ROAD in Durham, are distressed to hear that our claimed interests are being invoked by the Downtown and Commercial Core Subcommittee of the Master Plan in a renewed discussion of making Chesley Drive a through street into the Mill Road Plaza. We have not been consulted by this subcommittee, and our views are being misrepresented.

Although the traffic on Faculty Road might be slightly reduced as a result of an extension of Chesley Drive, we are strongly opposed to making Chesley Drive a through street for cars.

We, along with the other residents of the larger Faculty Neighborhood use and cherish the quiet foot paths that run between Faculty Road, the Chesley foot path, and the rear of the plaza. Chesley Drive is a key pedestrian link to the Mill Pond. It is also a key part of the Faculty Development walking/biking passive recreation loop that connects the Faculty/Chesley woods paths, the Mill Pond, Smith Chapel Reservation, the Oyster River Park (and then back again through Garden Lane, Faculty Road, the foot paths, and on and on). Indeed, the Chesley cul de sac is one of the key features that defines this whole area as a "neighborhood" and that makes it a pleasant place to walk, rollerblade, and bicycle.

The Chesley cul de sac provides a safe and beautiful path for walking to shopping, the post office, and the middle and high schools. The woods and wetland around College Brook and the foot paths are places that offer interaction with neighbors and quiet contemplation and appreciation of birds and other wildlife. These would be destroyed by making Chesley a through street, resulting in a decrease in property values and in quality of life for the entire Faculty Neighborhood. Further, the entire town would lose a safe pedestrian pathway from Mill Road, the plaza, and Main Street (via the Grange) to the Mill Pond park.

We urge you to drop consideration of this destructive plan and to recognize the history of strong community opposition to this idea whenever it has come up in the past. Indeed, we hope the Master Plan will explicitly recommend protecting the entire College Brook Greenway, including the Chesley cul de sac.

See pp. 35-36 of the Chesley Drive Appendix to the 2008 Mill Plaza Study Committee Report **with petition text, names, and addresses:**

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/17551/appendix_i.pdf

2000

Durham Master Plan 2000

Expand urban greenways, protect buffers, emphasize footpaths, protect Chesley Drive, connect Main Street and Mill Plaza, restore College Brook.

Key suggestions from Durham's 2000 Master Plan include:

Create an environment in downtown Durham that is less vehicle oriented and is more pedestrian oriented and balances the needs of all modes of transportation. (3.7)

Create a downtown Durham that has available a wide range of retail and other commercial uses, including the creation of a Professional Office District adjacent to the Central Business District. (3.13)

Create an urban service area greenway system that is based upon the major streams and rivers within

the core – College Brook, Beards Creek, Oyster River, Littlehale Creek, Pettee Brook, and Reservoir Brook. Although the Durham Master Plan 2000 greenway system will serve primarily as a resource protection measure, pedestrian connections should be aggressively pursued by working with willing landowners. The greenway system should also be linked by offroad bike and pedestrian trails/Class VI Highways, such as the Wagon Track Trail. (4.23-4.24; emphasis added)

Buffers adjacent to shoreland and wetlands reduce the adverse effects of human activities on these resources by protecting water quality, protecting and providing wildlife habitat, reducing direct human disturbance, and maintaining aesthetic qualities and potential recreational value. **The loss of buffers through variances/waivers and through illegal activities should be minimized.** (4.4-4.5; emphasis added)

Pedestrian access to the Mill Pond may be encouraged with downtown displays of footpaths such as the pedestrian path to the pond from Main Street and Mill Road through the Mill Plaza to the footpath through the woods that connects with Chesley Drive. This route should be enhanced as a pedestrian gateway to the Mill Pond. (4.24; emphasis added)

Chesley Drive should specifically be **excluded** from evaluation as an option for improved access to Mill Plaza for the following reasons:

- Strong historic and continuing opposition from the entire neighborhood, not just the residents from Chesley Drive. Neighborhood residents have stated that they prefer to put up with the current traffic on their streets rather than to alter the nature of the current footpath through the woods to the Mill Plaza.
- The problems with the orientation, parking, and landscaping of the Plaza.
- The degradation of residential property values that would result from a Chesley Drive connection.
- The broad impact on and the lack of access to the Mill Pond Greenway, natural resources, and pedestrian access.
- The poor sight distance at Mill Pond Road [and Chesley Drive intersection].
- The desire to maintain Chesley Drive as a “pocket neighborhood.” (3.14)

Expand office/retail space by allowing apartments to be included as a mixed use on the second and third floors of three-story buildings and on the third and fourth floors of four-story buildings with two floors of commercial space. This plan will provide economic stability due to the income from apartment rentals and will also increase available commercial space. (3.15)

The image and the reality that an active, dense downtown presents is considered desirable, particularly when the downtown has a strong pedestrian presence, as is the case with Durham’s downtown. It is important to promote development that will further improve the character, vitality, and pedestrian use of the downtown. (3.16)

Create a physical and psychological linkage of the Mill Plaza with Main Street and the rest of downtown Durham. (3.16; emphasis added)

College Brook should be restored in those areas where it has experienced degradation. The Mill Pond and adjacent wetlands should be enhanced as a demonstration of the importance of greenway extensions into the downtown core. Enhancement of foot paths and passive recreational use of this area should be encouraged for the benefit of those living in the immediate neighborhood and to enhance the vision of Durham’s special relationship with its fresh and saltwater bodies. Sightings of rare and endangered species have been recorded in the College Brook greenway and Mill Pond area. The fact that unusual and important

wildlife sightings can take place immediately adjacent to the Town's commercial core is of great importance to the sense of the Town of Durham as a place where modern presence can exist in concert with nature. (4.24; emphasis added)

Chapter Three on the Downtown and Commercial Core can be read here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/20641/chapter3.pdf

Chapter Four on Environmental and Cultural Resources" can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/20641/chapter4.pdf

The full 2000 Master Plan can be viewed here:

<https://www.ci.durham.nh.us/planningandzoning/master-plan-approved-2000>

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PETITION TO THE DURHAM PLANNING BOARD

January 2000 [200 signers]

We, the undersigned residents of Durham who live **outside** the Faculty Neighborhood, express our strong support for the Master Plan Steering Committee's vote to exclude Chesley Drive from further study of a possible additional vehicular entrance and/or exit from the Mill Plaza.

As those who value the pedestrian nature of Durham's downtown know, the Chesley/Faculty footpaths are a treasure enjoyed by residents of all parts of town. The woods and wetland surrounding the paths provide a crucial buffer between the commercial core and Durham's largest downtown neighborhood, with its parks and scenic walking areas. As we walk from the Mill Plaza into the Chesley marsh, we leave behind the asphalt of a large parking lot, and we escape the noises, glare, and fumes of cars and stores. We enter a world of woods and wetland, of a winding brook and a wooden footbridge, of intersecting paths where neighbors meet and talk. This area is one of the gems that has earned Durham the distinction of being "Tree City, USA."

The College Brook greenway and the Chesley footpaths provide the best pedestrian access from the center of town to the Mill Pond Park, the Smith Chapel Reservation, and the Oyster River Park. These routes are popular with families, children, elderly, workers on lunch break, bird watchers, and nature lovers. Walkers, joggers, bike riders, and rollerbladers frequent these paths and quiet streets. This area helps to make Durham a special place to live and work.

The idea of destroying the pedestrian character of this small nature preserve is not a new one. Making Chesley Drive a through street has been "studied" numerous times over the last 25 years. Each time it has been overwhelmingly rejected for numerous good reasons. But every time the destruction of the Chesley marsh and footpaths has been "studied," the neighborhood and the other Durham residents who value this area have been thrown into months of anxiety and distress. Each previous "study" of Chesley Drive has swallowed up the time and energy of hundreds of Durham residents. We are pleased to see that the Master Plan Steering Committee has had the wisdom to finally put this question to rest and to advocate the protection of the Chesley footpaths and the College Brook greenway (in Chapters 3 and 4, with consistent recommendation throughout the plan). We urge you to accept and endorse this position regarding the preservation of one of the few remaining patches of scenic wetland and forest in the heart of our downtown.

This petition was signed by 200 Durham residents who lived beyond the downtown Faculty Neighborhood. **See the petition with signatures** on pp. 9-29 of the Chesley Drive Appendix to the 2008 Mill Plaza Study Committee Report.

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/17551/appendix_i.pdf

2001

Todd Selig assumes the position of Administrator of the Town of Durham. See his bio at: <https://www.ci.durham.nh.us/administration>. The duties of the Administrator as outlined in the Town Charter are detailed here: <https://www.ci.durham.nh.us/municipal-code/town-charter>.

2002

MILL PLAZA BULLDOZED SOUTHEASTERN REAR HILLSIDE WITHOUT PERMIT

September—Mill Plaza manager Dave Garvey received a permit to take out a chain link fence and propane tank slab at the rear of the Plaza (gas lines had been installed to the Plaza). But Garvey arranged for excavation of the entire rear hillside – almost 9,000 sf – and for paving of new parking spaces (to create 40-spot parking area beyond the second Plaza building). Citizens who questioned the action and took pictures of it were threatened with arrest by Garvey, who claimed that his actions were in keeping with a 1978 Planning Board site approval and that no pictures were allowed to be taken on private property. The work was done without a required DES permit (a State-level violation, which initially led the Town to say that it had no authority over what was going on.) But the Town eventually halted the excavation/paving as an illegal action, noting that, even if the 1970s conditions still applied, the paving plan went 2,400 sf beyond them. And the Plaza was forced to apply to the Planning Board for an amended parking plan. (The spaces were apparently going to be rented as part of the Plaza’s unlicensed business of parking spaces.) [FN 09-25-02]

September 25, 2002—Planning Board: Amended Plaza Parking Plan

IV. Acceptance Consideration and Public Hearing on an Application for Site Plan Review submitted by David M. Garvey, Garvey & Co. Ltd., Durham, New Hampshire on behalf of Colonial Durham Associates, New York, New York, to amend a previously approved parking plan. The property involved is shown on Tax Map 5, Lot 1-1, is located at Mill Road Plaza and is in the Central Business Zoning District.

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/29591/pb092502.pdf

At the September 25, 2002, Planning Board meeting, board members pressed Mr. Garvey on already existing **concerns about stormwater management, snow storage/removal impact on College Brook, and whether the Plaza rented parking spaces (without a license for that side business) and would rent those being proposed** (yes, Dave Garvey admitted, on the two space-rental questions).

During the Public Hearing on the Plaza’s proposed parking expansion, concerns about the plaza plans were raised by abutters, by Durham residents from several areas of town, and by UNH faculty (not all of them Town residents) whose research relates to preserving wetlands and greenways. The issues raised by residents included: **additional flooding of private properties and public paths, pollution and sediment runoff into the brook, further deterioration of the College Brook Greenway, the loss of a pleasant hillside previously used for picnics and meditation, and the thinning of the already delicate vegetative buffer between the commercial zone and residential and passive recreation areas.**

Residents also noted how the Plaza’s plan ran counter to the 2000 Durham Master Plan, which (as quoted from above) called for restoring the College Brook greenway, enhancing vegetative buffers that protect residential areas, reducing runoff from impervious surfaces into the Town’s waterways, and adding planting areas to the Plaza parking lot. Additionally, the **Town’s engineer raised concerns about the Plaza’s overall negative impact on the College Brook greenway (and how that amount of runoff and pollution into a wetland would not be allowed by 2002 standards).** Moreover, some questions from Planning Board members seemed to echo resident concerns that the plan to turn the whole bulldozed area into 31 rental parking spaces (then at \$400/semester) was a “change of use” from the 1978 plan [FN 100902].

In addition to the resident concerns expressed, two letters were read that thanked the Plaza for providing parking/space for various civic activities.

The Public Hearing was closed. Yet, given the amount of opposition from citizens to the Mill Plaza’s “revised parking plan,” including concerns about added runoff and damage to the degraded College Brook, the Board voted NOT to deliberate on and not to vote on an approval or rejection of the plan at the September 25, 2002, meeting. Instead, the deliberation of the application was continued into the next Planning Board meeting on Wed., Oct. 9, 2002, Town Hall, 7 pm.

The full minutes for the September 25, 2002, Planning Board meeting can be read here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/29591/pb092502.pdf

October 9, 2002—Planning Board: Extended Discussion of Plaza Parking Application

IV. Continued deliberation on an application for Site Plan Review submitted by David M. Garvey & Co. Ltd., Durham, New Hampshire on behalf of Colonial Durham Associates, New York, New York, to amend a previously approved parking plan. The property involved is shown on Tax Map 5, Lot 1-1, is located at Mill Road Plaza and is in the Central Business Zoning District.

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/29551/pb100902.pdf

After extensive deliberations, the Durham Planning Board voted unanimously to REJECT the Mill Road Plaza’s application for an “amended” parking plan. The application entailed a request for retroactive permission to pave 2,400 s.f. more than what was approved in a 1978 site plan. (The remaining 6,452 s.f. of bulldozed area is on the 1978 plan, but not as parking space.) The plaza was told to restore the “mistakenly” bulldozed area next to the pedestrian path at the rear of the plaza before a “stop-work order” would be rescinded. And no cars were to be parked there. [**DAMAGE RESTORATION UPDATE:** The 2,400 s.f. was seeded, but over a compacted base – as prep for paving – that does not absorb stormwater. As of May 2018, the bulldozed hillside has not been restored, and cars and trucks are again parked where the hillside was.]

The board members also brought up many questions about the other 6,452 s.f. of potential parking, including the Plaza’s general non-compliance with the original 1978 plan (lack of raised bike path along brook protected by asphalt curbing, lack of large planting areas with trees and shrubs, etc.) and runoff and snow plowing into College Brook. The issue of whether renting spaces to students is a “change of use” also arose and was to be referred to the Town attorney. Thus, although there was no explicit Planning Board ruling on the remaining 6,452 s.f., it sounded as if the town wanted the plaza to address these issues before proceeding with the remainder of their current project – or with any revised plan.

Additionally, research through old documents completed by John Harwood of the Regional Planning Commission (at Town Administrator Todd Selig’s request) revealed some intriguing facts, such as that 1) any future parking lot on the hill between building two and Main Street was to be restricted to plaza business employees only (negating the plaza’s plan to rent spaces there to students), that 2) a variance to pave parking spaces at the rear of the plaza (a section of which was in a residential zone) was previously denied, and that 3) documents indicate the requirement for a 70- or 75-foot buffer between parking spaces and the edge of the property (the plaza’s 2002 plan had been to put spaces within 20 feet of the boundary). The buffer issue was to be researched further. (John Harwood submitted a second report in December 2002.) [FN101002]

2002—Consultant John Harwood Oct. & Dec. 2002 Reports on Mill Plaza Parking can be read here:

www.dropbox.com/s/lhnbqx9l4cze8y8/John%20Harwood%27s%201st%20report%20Oct%202%202002.doc?dl=0

www.dropbox.com/s/udlnxlrslgtkkn/John%20Harwood%27s%202nd%20report%20Dec%2030%202002.doc?dl=0

“In response to a question from Arthur Grant, [Town Planner] Jim Campbell stated **the applicant would have to put back land that had been removed from the property in order to have the Code Enforcement Officer rescind the stop work order.** The motion [to deny the Plaza’s application] was unanimously APPROVED.” [Emphasis added.]

[**REAR HILLSIDE UPDATE:** As of May 2018, the hillside has not been restored, all the added paving remains,

and cars and trucks are often parked in the gouged out area.]

2003+

Residents have experienced increased stormwater/flooding since the rear Plaza hillside was bulldozed

Following the unauthorized bulldozing and paving at the Southern rear of the Plaza, residents downstream from the Plaza noticed a significant increase in water flow in College Brook and flooding during heavy rainstorms and snowmelts.

Residents have lost topsoil and plantings near the brook, including trees whose roots have been exposed causing the trees to fall over and die.

As one can see in this brief video shot on January 10, 2016, from the second-floor window of a Chesley Drive home and looking toward the Mill Plaza, the area around College Brook downstream from the Plaza (which is usually a narrow and tame brook) often becomes a lake, the brook channel rages like a major river, and a new brook channel (also with some “white water”) opens and then merges into the regular brook stream:

<https://www.dropbox.com/s/zedz7hdlwh6davn/College%20Brook%20flooding.MP4?dl=0>

2006

Aug. 21, 2006—Mixed-Use with Residential Changed to Conditional Use in Professional Office District

Although not directly related to the Mill Plaza, 2006 saw a move toward changing Mixed-Use with Residential from “Permitted” to by “Conditional Use” in one district. This previewed a similar change in the Central Business District in 2013 (following the massive increase in student “beds” – almost 2,400 added – downtown from 2008 to 2013). On June 15, 2006, the Town received a petition from 59 registered voters requesting “that the use of “Mixed Use with Residential” be changed from a Permitted Use (P) to a Conditional Use (CU) within the Professional Office Zoning District.” After a Public Hearing was held by the Planning Board on July 12, 2006, the Town Council held a Public Hearing on August 21, 2006, and then passed Ordinance #2006-06 making that change. The Ordinance #2006-06 can be read here:

<https://www.dropbox.com/s/pebgaaa88cb94ti/Ordinance%20%232006-06.doc?dl=0>

The minutes for the July 12, 2006, Planning Board Public Hearing can be read here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/54347/071206.pdf

The minutes for the August 21, 2006, Town Council meeting are posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/town_council/meeting/33101/council082106.pdf

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STEPS TAKEN TOWARD A MILL PLAZA STUDY COMMITTEE IN 2006 WITH ENCOURAGEMENT OF PLAZA OWNER JOHN PINTO

The Town conducted a space-needs assessment for both the Town Hall and the Durham Library, leading to interest in possibly locating a new Town center at or adjacent to a redeveloped Plaza. Council Chair Neil Niman, Town Administrator Todd Selig, and others met with Plaza owner John Pinto to discuss that possibility.

In September 2006, **John Pinto** of Colonial Durham Associates (405 Park Avenue, NYC) wrote a letter to Durham Town Administrator Todd Selig (following up on the earlier meeting and conversations):

[T]he best course of action would be for the Town to continue to develop its vision for the future. In that regard, it is important for your office and others in the Town to develop the plans specifications for the proposed Town Center. I look forward to working with the Town as it advances upon the vision for both an improved tax base and better symmetry between the Town, the University and our property. In this regard, I would look to the Town to develop the design specifications so that we may then determine how best to participate to achieve the implementation of the vision of the Town leadership.

This letter was a key stimulus to the development of a local process to plan for Plaza redevelopment. The letter can be read in full here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/2006_letter_to_todd_from_owner.pdf

October & November 2006—The Town Council discussed and then voted to establish the **Mill Plaza Study Committee** to work on “the development of a future vision for the Mill Plaza site.” The collaboration with New Hampshire Chapter of the American Institute of Architects (AIANH) and AIA150 (marking the 150th anniversary of the AIA) gave the study a significant boost.

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2007

February 21, 2007—Mill Plaza Study Committee (MPSC) Holds Its First Meeting

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April 4, 2007—MPSC Draft Vision Statement at Workshop (75 attendees), UNH’s MUB Theater One

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April 11, 2007—Planning Board—Acceptance of Application for Ice Cream Stand at Marketplace

VIII. Acceptance Consideration on an Application for Site Plan Review submitted by Charles Cressy, Durham Marketplace, Durham, New Hampshire, on behalf of Colonial Durham Associates, New York, New York to build an addition onto a commercial property. The property involved is shown on Tax Map 5, Lot 1-1, is located at the Mill Pond Plaza and is in the Central Business Zoning District.

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April 18, 2007—Planning Board Public Hearing: Adding Ice Cream Concession at Durham Marketplace

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/28531/pb041807.pdf

The Planning Board considered the plan for what would become the much-loved Kaleidoscoop ice cream stand, a rare place in the downtown core where community members gathered for conversation and refreshments. Per the meeting minutes:

- *There will be a patio, with bollards along the edge connected by chains to protect customers and pedestrians. The intention is to have a safe area for customers to line up outside, and to possibly include some tables. The shape of the design should also calm traffic, in that it will interrupt the bowling alley effect.*
- *There will be 3 windows for takeout for ice cream;*
- *The new area outside will be connected to the inside of the store, but public access will be only to the outside area....*

*Chair Kelley asked if any members of the public wished to speak concerning the application. **Robin Mower, Faculty Road**, said she was pleased about the traffic calming elements of the design. She also said the ice cream stand was a great idea, in the spirit of the Mill Plaza Study Committee, to encourage some mingling outdoors in this area. She said she looked forward to being able to get takeout ice cream at a location closer than the Railroad Station.*

***Julian Smith, Packers Falls Road**, said he was speaking as the Council representative to the Mill Plaza Study Committee. He said he was pleased there would be easy access to ice cream here, which fit with his vices. He said this was a very good proposal, and he supported it, and asked that the Board support it as well.*

Councilor Carroll asked if this expanded area of the store would be used for something else in the winter, when they probably wouldn't be serving ice cream. **Mr. Cressy** said the idea was to create a façade there, and to provide an exchange area, with an extended kiosk type of arrangement where information from Durham Its Where U Live, the Mill Plaza Study Committee, etc. could be provided. He said there could also be a community bulletin board there. He said there would also be an expansion of the inside deli area, which would allow more room for catering prep, etc.

Ms. Harris asked where the kiosk would be, and whether it would be freestanding. **Mr. Cressy** said they could cover up the takeout windows with a background that blended with the building, and said the information posting area along that wall could be enclosed by glass. He said **Mr. Pinto**, the owner of the Mall, liked this idea as well.

Ms. Mower said that at the Mill Plaza Study Committee meeting that day, **Mr. Cressy** had noted that the tenants of the Plaza had gotten together, in response to comments at the public hearing, and had come up with some ways to combat the litter problems at the Plaza. She asked if this application was an appropriate time to encourage the idea of having more trash bins to catch litter.

Mr. Cressy said there would be 2-3 trash cans put out there, or as many as were needed. He said employees would also be trained to keep the area as clean as possible. **Ms. Harris** noted that trash tended to funnel down to the end of the parking lot at Chesley Drive, and said it would be good to have a trash can there as well.

Mr. Cressy said it was realized that more people needed to be hired to deal with trash as the Plaza. He said that as many trash bins as were needed would be provided....

The Public Hearing was closed, Findings of Fact were discussed, and the approval motion PASSED unanimously 7-0.

The full Planning Board meeting minutes for April 18, 2007, can be reviewed here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/28531/pb041807.pdf

[ICE-CREAM STAND UPDATE: To great sadness and disappointment within the community, Hannaford closed down the very popular ice-cream stand when it took over the grocery store in 2015.]

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July 18, 2007—Mill Plaza Study Reps Meet with Plaza Owner John Pinto to Provide Update

MPSC and AIA150 hold a meeting to report on initial efforts to study the Mill Plaza site, discuss the design process ahead, and answer questions. **About 90 people attend in MUB Theater Two.** [

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/17551/section_ii.pdf]

“[T]he Council Chair, the Town Administrator and representatives from AIA150 and the MPSC met with John Pinto to provide an update on their efforts. **Mr. Pinto reinforced his support from the process underway and we look forward to working with him closely as the design and facilitation process progresses.**” [MPSC Draft One 08-1-07; emphasis added]

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THE COLLEGE BROOK REPORT—2007

Nov 28, 2007—The College Brook Restoration Group (local experts in natural resources and stream ecology) submitted its “College Brook Report” to the Mill Plaza Study Committee (as excerpted below).

The College Brook Restoration Work Group volunteered to prepare a brief report for the Mill Plaza Study Committee to identify the opportunities to restore the ecological health of College Brook (the Brook) associated with the proposed redevelopment of the Mill Plaza....

(2) SUMMARY

The extent of pavement and current drainage and snow storage practices on the Plaza property date from the previous development phase during the 1960's, and would not be permitted today. Current regulations require stormwater management in upland areas. The AIA150 design process, in partnership with the expertise at the UNH Stormwater Center, provides an exciting opportunity to leverage that work with ecological restoration in lowland flood plain, wetlands, and stream corridor of College Brook, as well as providing linkages for the existing footpath network in the vicinity.

In summary, the redevelopment of the Mill Plaza property provides a major opportunity to:

- (a) Minimize and then manage stormwater on site;**
- (b) Maximize the vegetated buffer between Plaza activities and College Brook;**
- (c) Integrate inviting access to a natural oasis adjacent to the Mill Plaza.**

(3) OBJECTIVES FOR COLLEGE BROOK RESTORATION. The objectives of stream restoration would be to:

- (a) Improve water quality and reduce the current negative water quality impacts of the Brook on the Oyster River and Great Bay.**
- (b) Improve the flood control capacity and other hydrological functions of the Brook.**
- (c) Make progress toward restoring native species currently displaced by invasives in the corridor.**
- (d) Enhance the current vegetated buffer to improve its function as a corridor for wildlife, as an aesthetic and noise barrier between the commercial and residential zones, and as a recreational resource for pedestrians....**

Water quality along the length of the Brook is poor, and has been measured at least since 1991.... Nitrogen levels are high. **Chloride levels are very high, and the Brook was recently listed as impaired due to chloride levels by the NH Department of Environmental Services.** Although some water quality parameters have improved since 1991 (BOD, DO, and phosphate in particular), chloride and nitrate levels appear to have increased. The impact of the current Mill Plaza runoff is not well documented, as most historic data are available for the UNH campus only. **Recent sampling by the UNH Water Resources Research Center, however, shows a large increase in nitrate concentrations between the edge of campus and the mouth of the Brook at Oyster River. A likely source for this increased nitrate is runoff from the mall parking lot, although other sources may contribute as well....**

(5) OPPORTUNITIES TO IMPROVE COLLEGE BROOK. **The proposed redevelopment of Mill Plaza offers opportunities to contribute to the restoration of the ecological health of the stream reach adjacent to the Plaza, as well as to improve the Brook's capacity to absorb flood waters, and support community values.** Given its history, upstream watershed condition, and current condition in the Mill Plaza area, "restoration" of College Brook will likely mean:

- (a) Initial work to change the Brook's character such that it becomes closer to natural conditions;**
- (b) Ongoing work to protect its improved condition;**
- (c) Collaboration with UNH and NH DOT to develop an integrated watershed management plan that will ensure the Mill Plaza redevelopment has the maximum positive effects on the Brook.**

The College Brook stream corridor at Mill Plaza is already an aesthetic benefit to the site, and an important buffer between the commercial and residential areas. So, in addition to improving the ecological health of the corridor, the AIA150 design/redevelopment process provides the opportunity to incorporate scenic, recreational, and aesthetic qualities. **Improvements might include restoration and expansion of the vegetated buffer, along with providing walking paths, seating, and interpretive historical signs....**

(6) WHY IS IMPROVEMENT IMPORTANT? Any ecological restoration of College Brook improves the functions, services, and values identified in section 3, to the benefit of the Town and its residents. Such improvement is important in order to: **(a) Improve and protect the water quality of the Oyster River and Great**

Bay. (b) Increase the capacity of the Brook to provide flood control and other hydrological functions detailed in section 3. (c) Cool and clean the air to offset the heat island effect from pavement, vehicles, and roofs. (d) Provide green space that improves the public place of Mill Plaza. The Brook offers a unique opportunity to blend "new" green space with existing to make a much larger greenway. (e) Improve the College Brook buffer as a barrier between commercial and residential areas and as a pedestrian thoroughway to enhance the quality of life of adjacent neighborhoods and improve Durham's status as a livable and walkable community.

In a startling reminder of how attitudes toward waterways and wetlands have change over the last century, the report notes that "Early maps of UNH (circa 1920's) refer to College Brook as 'College Drain'" (pp. 1-2).

The full 10-page College Brook Report can be read here (*emphases on excerpted quotes above were added*): www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/17551/appendix_e.pdf

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2007 Town Report—Status Update on Mill Plaza Study Report

https://www.ci.durham.nh.us/sites/default/files/fileattachments/town_administration/page/9691/durham_town_report_2007.pdf (see pp. 72-73).

The Mill Plaza Study Committee has hosted dozens of public meeting and workshops to generate ideas and conceptual plans for redeveloping the nine-acre Mill Plaza property in the heart of downtown. We have done so with the encouragement of Plaza property owner John Pinto – who in late 2006 suggested the Town develop its vision for the future – and with a generous award of support and technical assistance from the American Institute of Architects' New Hampshire chapter. This includes the pro-bono work of three teams of architects from Portsmouth (JSA), Manchester (Lavallee Brensinger), and Durham (the "Midnight Oil" crew). Now, with the benefit of input from scores of residents on our evolving concepts, we are moving forward with the goal of presenting a final design to the Town Council in early 2008.

*Overall Concept: **The Committee believes that the Plaza should, in broad terms, be considered a "Village Center" and not just an improved shopping center.** Thus, mixed uses from retail to office to housing, linkages to Main Street, multiple forms of access (car, pedestrian, bike), public and open space are all important.... [Emphasis added.]*

*Open Space: The Committee supports open public spaces that link the redevelopment to the university and to Main Street – **active, multi-functional spaces that encourage lingering and gathering for such events as concerts, discussions, drama, and other activities. The committee supports maintaining the existing pedestrian and bicycle gateway to the Faculty Neighborhood via Chesley Drive.***¹ [Emphasis added.]

[DEAD-TREE NOTE: At one meeting of the Mill Plaza Study Committee, a Town Councilor asked the management of the Mill Plaza to remove from the narrow islands in the parking lot the trees that had died years before, which stood as a symbol of the lack of sustainable management of the minimal landscaping.]

¹ As correctly noted here (but not always correctly stated in other Town documents and meeting comments), the pedestrian-bicycle path through the Chesley Marsh at the southern rear of the Plaza is the pedestrian gateway to the larger **Faculty Neighborhood**, which includes (in alphabetical order): **Burnham Avenue, Chesley Drive, Croghan Lane, Faculty Road, Garden Lane, Hoitt Drive, Magrath Road, Mill Road** (the section from Brookside Commons to Oyster River Road), **Mill Pond Road, Oyster River Road, Thompson Lane, and Valentine Hill Road.** Chesley Drive is connected to the rest of the Faculty Neighborhood via a cherished forest path from the Chesley Marsh to Faculty Road at Thompson Lane. The popular path features stone walls along one side of it and a wooden bridge that crosses College Brook at the Chesley Marsh. Schoolchildren throughout the Faculty Neighborhood walk through the wooded path into the Plaza and up through the Grange path on their way to school. (See the reference to this path in many resident letters about Plaza redevelopment, including letters from children.) The path is also popular with adults from the Faculty Neighborhood and other parts of Durham. Additionally, as slide #8 of the Harriman Group's 2017 PowerPoint presentation from June 2017 shows, the entire Faculty Neighborhood (and beyond) is within a half-mile radius of the Mill Plaza, and mostly within the easy quarter-mile walk to the Plaza through the Chesley Marsh path: www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/2017.06.14_planning_board_final_ppt.pdf

2008

2008 was a pivotal year regarding Durham development and re-development. The 18-month Mill Plaza Study Committee effort (encouraged by Plaza owner John Pinto) yielded a detailed formal report and suggested redevelopment plans (see below). Also, the Planning Board and Town Council changed the Zoning Ordinance to stimulate mixed-use development (that is, housing and commercial combined in one structure). That zoning shift altered the face of Durham, particularly between 2011 and 2013, with the addition of almost 2,400 new student beds (596 beds between 2008 and 2011; and 1,835 more beds between 2011 and 2013, totaling 2,371 additional student beds). The intent of the Zoning Ordinance change was to stimulate a significant increase in commercial space in the downtown.² (That intent was what led to controversy regarding the Mill Plaza's request for variances in 2015 and 2017 to build more housing relative to commercial space than the Town's zoning permitted.)

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April 2008—Houghton Hardware on Jenkins Court Closes, Leaving Durham with No Hardware Store

Dick Houghton had purchased the business in 1978 from David DeMoulied. [<https://www.unh.edu/media-gallery/detail/1936/5686>] http://www.fosters.com/article/20080414/gjnews_01/463502867

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MILL PLAZA STUDY REPORT

A New Village Center: Durham's Vision for a Redeveloped Mill Plaza

Report of the Mill Plaza Study Committee and AIA150 Team to the Durham Town Council

May 5, 2008

See Full Report Here: <https://www.ci.durham.nh.us/planning/mill-plaza-study-2008>

"The Mill Plaza Study Committee [MPSC] is proud to transmit our report and recommendations for redeveloping the Mill Plaza property. This report reflects dozens of public meetings, workshops, and focus groups with the Durham community held during the past year with generous assistance from our partners in the New Hampshire Chapter of the American Institute of Architects [AIANH]. With the encouragement of Plaza owner John Pinto, we have accomplished what he asked of Durham in Fall 2006: to 'develop its vision for the future' of a redeveloped Plaza property. The goal of this report is to offer a vision for a redeveloped 'village center' that revitalizes our downtown, brings economic return to the property owner, and is reflective of community needs and concerns. **It is most likely to be embraced by the community, because it stems from extensive consensus building.**" (Unnumbered first page; emphasis added, in echo of 1995 Town plan.)

² The intent of the 2008 changes was described retrospectively by the Council in 2013, both to demonstrate the power of strategic zoning and to highlight the need to make new changes to address the overwhelming public sense that Durham needed to slow or stop the tide of new student housing: *In August 2008, the Durham Town Council unanimously passed Council-initiated Ordinance #2008-14 to amend Chapter 175 "Zoning", Section 175-54 "Table of Dimensional Standards" to lower the minimum lot area per Dwelling Unit from 1,200 to 900 square feet in the CBD. As detailed in the Town Council Minutes of August 18, 2008, the intent of the change was to "encourage redevelopment" and "create a better downtown." As summarized by Councilor Julian Smith "one of the benefits of this Zoning change was that it made it more economically attractive for property owners to redevelop their property, and do developments where there was housing above shops or offices or parking" Councilor Smith's assessment was accurate, and the zoning change had the predicted effect with five redevelopment projects undertaken in the downtown (Central Business District) after the change- 2-10 Jenkins Court, 9 Madbury Road, 37 Main Street (The Grange), 10 Pettee Brook Lane (not yet completed), and 22 Rosemary Lane. Eight businesses lease commercial space in three of the completed projects. Five of these businesses are new to Durham, and six provide retail or other services used by Durham residents.* [See p. 2 of Council Communication, 9/9/13, which appears on p. 56 of this pdf:

www.ci.durham.nh.us/sites/default/files/fileattachments/town_council/meeting/38741/september_9_2013_council_packet.pdf
Ordinance #2008-14 can be read here: www.dropbox.com/s/ib1ekcd27heq4tp/2008-14%20Central%20Business%20District.doc?dl=0]

The report makes the following case for redeveloping the Plaza: “The Mill Plaza is an underutilized 9.68 acre site at the nexus of Downtown Durham, a true residential neighborhood and UNH. It holds tremendous potential for improvement – economically, socially and environmentally. At present, the Plaza hosts amenities vital to Durham such as the grocery store, library, ice cream shop and other services that can be reached by car bike or on foot. **Unfortunately, these amenities present themselves as a strip mall, situated on acres of asphalt that turns its back to related activities on Main Street due to the substantial change in grade. The Plaza cannot be seen from the higher elevations of Main Street and Main Street is not visible from the Plaza. Furthermore, the asphalt acreage becomes a heat sink in the summer, and in the winter, snow is plowed into College Brook. The parking provided in the Plaza is more than adequate for Plaza users, yet it is not available as overflow parking for the rest of downtown.**” [Emphasis added.]

The 2008 Mill Plaza Study Committee report made seven recommendations, including the following (these are on the 3rd, unnumbered page of the PDF):

“Work Together for Success.... that town staff and their AIANH150 design partners work with the owner and the developer to align their interests with the community’s *before* the formal town planning approval process begins.”

“Create a Village Center with Quality Design: A redeveloped Plaza property should serve as a ‘Village Center’ that stands as an example for future downtown development and provides residents a ‘sense of place.’ By this we mean **year-round community space – indoor and outdoor areas where people linger to meet and talk to their friends, shop, and enjoy all of the seasons. The redevelopment should link visually and physically to Main Street, Mill Road and the UNH campus.** The architecture should embrace principles of sustainability and green building. This approach holds the greatest potential for community support and the future success of the Plaza.” [Emphasis added.]

These ideas were elaborated on p. 4: “We recommend **public spaces that provide a pleasant and interesting experience while walking through the site, and also recommend gathering places for such events as concerts, discussions, performances, and other activities. We believe the redevelopment should link visually and spatially with Main Street, as well as Mill Road and the UNH campus to encourage pedestrian flow between town, campus, and the adjoining neighborhoods.** For that reason, we recommend that the development ‘wrap’ business uses/buildings around from Main Street to Mill Road to increase retail along these two major roads, better connect Main Street and Mill Road, increase pedestrian traffic, and provide a visual buffer between Mill Road [and] the site.” Regarding parking, the report noted: “We strongly recommend that any parking structure serve Main Street also, and be masked or covered through various design techniques (such as wrapping buildings around) so that it does not visually dominate the overall development” (p. 6).

“Promote a Balanced Mix of Uses. The redevelopment should broaden Durham’s tax base through both the commercial and aesthetic value it adds to our community. Ideally, this should be achieved through a balanced mix of uses featuring an **expanded grocery store [from 19,000 sf to 25,000; see chart on p. 26]**, retail shops, offices, and new housing to make for a more vibrant downtown and commercially successful center for the property owner.” Later (pp. 4-5): “We believe that housing needs to be a part of the redevelopment. Though some on the Committee would generally prefer non-student housing, we recognize that it can be difficult to prescribe types of housing, especially over longer periods of time. Thus, **we encourage that any housing – student, workforce, or senior housing – be built sufficiently distant from current residential neighborhoods, perhaps on or near Main Street.**” [Emphasis added.]

“Respect the Neighborhood: Impacts on the nearby residential neighborhood from additional light, noise, and traffic will need to be mitigated.” (Later in the report: “The Committee considered a number of designs and obtained the input of Faculty Road residents to determine what kinds of design features or mitigations would meet their interests, including: **1) enhancing the College Brook as a buffer to the residential**

neighborhood; 2) designing lighting that does not shine into the residential neighborhood; 3) buffering the residential neighborhood visually and acoustically from new loading docks; 4) siting any new student housing closer to Main Street” (p. 7). [Emphasis added.]

“Protect College Brook and Its Buffer: College Brook, a tributary of the Oyster River, and its wooded wetland surroundings provide stormwater filtration, aesthetic beauty, wildlife habitat, and a valuable buffer for light and noise between the downtown commercial core and the Faculty Neighborhood. As supported by a report of the College Brook Restoration Group to the MPSC, the redevelopment should work to protect and restore the brook and its buffer’s natural functions on the site. This would add value to the Plaza, reassure residential neighbors, and set an example for good environmental stewardship. **Impacts on the nearby residential neighborhood from additional light, noise, and traffic will need to be mitigated.**” [Emphasis added.]

Later in the report: **“We recommend that public space be provided along College Brook for: 1) a brookside park for walking, biking, and other activities; 2) access between neighborhoods, the Plaza, and the University; and, 3) key functions such as flood storage, water filtration, and wildlife habitat.** This brookside park should incorporate curves and other features to appear more natural. The Committee further encourages ‘low impact’ designs incorporating features such as rain gardens, natural swales, permeable asphalt, retention ponds, underground filtration systems, and roof gardens to effectively and more naturally manage storm water. More detailed ideas can be found in the College Brook Report prepared for the Committee” (p. 7). [Emphasis added; the College Brook Restoration Report to the MPSC can be seen in full here: www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/17551/appendix_e.pdf

A number of preliminary and then refined redevelopment designs were developed. Some included a hotel, a parking garage, and some housing (ranging from zero units to 50, 65, 81, to 100 units in different designs).

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June 16, 2008 – Mill Plaza Study Committee Wins “Plan of the Year Award” from NH Planners Assoc.

The Durham/AIA150 Community Partnership was honored by the **NH Planners Association** with its **“Plan of the Year”** Award www.nhplanners.org/ (look under Events-Programs/Awards/2008). See press release. <https://www.aianh.org/sites/default/files/pdf/NHPA%20award%20release%20FINAL.pdf>.

As described by the AIA150 group (see <https://www.aianh.org/content/aia150>): *For eighteen months in 2007-2008 the New Hampshire AIA150 team and Durham officials, residents, and stakeholders worked together to articulate a vision for a redeveloped Mill Plaza property in Durham. **Video of the AIA150 Initiative:** A video of the NH Community Planning Model process, adaptable for other New Hampshire communities, is available. This tool enables us to share the lessons learned with other communities throughout the State and the Region.* [The video is posted on online at: <https://youtu.be/l6usug32IUY>]

Final Project Report: *The Durham Mill Plaza Study Committee presented a final report and practical recommendations to help guide the redevelopment of the Mill Plaza property before the Town Council in May 2008. The report includes studies, reports, and drawings developed over the past year by AIA150 volunteer architects and landscape architects in a collaborative effort with the MPSC and residents of Durham. It contains clear recommendations and summarizes public feedback on a variety of important issues including commercial mix, housing, site access, the College Brook/Faculty Neighborhood buffer, and the library. The report was accepted by the Town Council with an indication that the Town would endeavor to ensure that the recommendations are carried out....*

The design concepts were made in three rounds over the past year by three teams of architects (see below). All along the designers have considered the Durham community vision; relationships with stakeholders, such

as the University and local business owners; communication with the property owner; economic analysis studies; a study of the College Brook and environmental issues; examination of traffic issues; LEED Neighborhood criteria [Leadership in Energy and Environmental Design]; the AIA's 10 Principles on Livable Communities; and feedback from the public at four earlier meetings. The final report and recommendations to the Town Council will draw upon design elements in all of the drawings, rather than presenting one as a final product alone.

Unfortunately for us all, the recession of 2008 prevented any further progress on this great foundation for a redeveloped Mill Plaza.

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The Consensus Building Institute (CBI) described its role in the Mill Plaza Study Committee as follows:

Unlike many college towns, Durham, NH lacks a recognizable and thriving town center. Prompted by local officials' hopes to revitalize Durham with a new "village center," Mill Plaza owner John Pinto invited the town to "develop its vision for the future" of his central downtown property. The Town Council formed the multi-stakeholder Mill Plaza Study Committee (MPSC) to develop a conceptual plan that would enhance the local tax base and link the surrounding business district, college campus, residential neighborhoods, and brook-side green space. The Committee received a grant from the New Hampshire Chapter of the American Institute of Architects (AIA-NH) as part of the AIA's 150th anniversary "Blueprint for America" initiative. The AIA 150 team was interested in Durham as a model for a different — and better — way to engage communities in design and permitting processes. [Emphasis added.]

The AIA selected CBI to facilitate the MPSC and AIA 150 teams in creating a conceptual design plan that the owner could shape into a successful, publicly supported permit application....

CBI helped the AIA and MPSC team create guidelines for their consensus-based partnership, including standards of transparency related to members' personal interests in the redevelopment. CBI also helped them structure their work with a formal Work Plan. With these ground rules in place, CBI led bi-monthly meetings for 12 months, while a coordinating committee held additional meetings to set agendas, prepare drafts of documents, and work with the AIA design teams. CBI built significant public engagement into the process, in the form of open committee meetings; an online comment space; focus groups; a site walk-through; televised public meetings; and multiple public forums and design workshops. CBI gathered additional input through outreach to private stakeholders.

After compiling community and expert input into a Vision Statement, a Data Report, a set of design parameters, and stakeholder interest analysis that were tied to AIA and LEED standards, the design teams presented preliminary designs to the community at three rounds of public workshops. After each round, the MPSC/AIA150 team met to review the public feedback and set revised design parameters for the next round. The last intensive design consultation (known as a charrette) combined the three teams' previous work into a single "hybrid" design....

In May 2008, the New Hampshire Planners Association deemed MPSC's plan the "2008 Plan of the Year" for its design-based approach to integrating the existing strip mall into a revitalized downtown Durham. Though the town's original goal was to break ground in 2009, economic conditions have delayed the project until greater funding is available.

More information on the Consensus Building Institute can be found here <https://www.cbi.org/>. (Link to the full CBI report on Durham was deactivated in Spring 2018 <http://www.cbuilding.org/publication/case/facilitating-visioning-process-new-village-center-durham-nh>).

[UPDATE ON CDA RESPONSIVENESS TO MILL PLAZA STUDY RECOMMENDATIONS: Although Plaza owner John Pinto, endorsed and encouraged the Mill Plaza Study effort, all subsequent CDA site-redevelopment plans (from September 2014 to mid-2018) have fallen far short of most of the Mill Plaza Study

Committee's recommendations – except for using the term “Durham Village Center” to refer to some of the redevelopment plans. The first four redevelopment plans submitted for review, for example, entailed destroying the one green space in the Plaza with 5 mature trees and 5 picnic tables and replacing that tiny park-like spot with a building, either commercial, housing over commercial, or a 4-story 36-40 room boutique hotel with valet parking. Moreover, just a year after the MPSC report was submitted, the Plaza tried to further erode the wetland buffer at the Southern rear of the Plaza, as described below under 2009 events.]

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August 4, 2008—Proposal to Expand Central Business District up Church Hill FAILS

In April 2008, the Economic Development Committee (at encouragement of the Town Council Chair, Neil Niman, and after its own discussion of the idea in March 2008) “passed a motion to forward the Zoning Map amendment to the Town Council that would expand the Central Business district up the Church Hill district to Smith Park Lane.” (The Church Hill Districts abuts the Mill Plaza at the southeastern rear of the Plaza.) The Planning Board held a Public Hearing on the proposed Amendment on June 18, 2008, at which no one spoke in favor of it, and a number of people spoke against it. The minutes for that June 18, 2008, Planning Board meeting can be read here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/29701/pb061808.pdf

The Planning Board then recommended to the Town Council that the Zoning Map *NOT* be amended as proposed. The Town Council held a Public Hearing on the same proposal on August 4, 2008. No one spoke in favor of the change (and a number of people critiqued the process through which such a major change had been proposed, as it contrasted with the more transparent and collaborative Mill Plaza Study Committee work). The motion to enact the zoning change failed by a vote of 2 in favor of the change and 7 against the zoning change. (Even Council Chair Niman, who had stimulated the process for this proposed amendment with the EDC, said, per the meeting minutes, that “he couldn’t get past the idea of passing something that no one wanted.”

The Town Council minutes for August 4, 2008 can be read here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/town_council/meeting/33721/council080408.pdf

The “Failed” #2008-10 Ordinance can be viewed here:

<https://www.dropbox.com/s/9if89731pywvt8q/2008-10-FAILED%20on%20First%20Reading.doc?dl=0>

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August 18, 2008—Town Council: Zoning Definition of “Habitable Space” Is Amended

ORDINANCE #2008-13 OF DURHAM, NEW HAMPSHIRE

A COUNCIL-INITIATED ORDINANCE AMENDING CHAPTER 175 “ZONING”, SECTION 175-7 “DEFINITIONS” OF THE DURHAM ZONING ORDINANCE RELATIVE TO THE DEFINITION OF “HABITABLE FLOOR AREA”

[Excerpts]

WHEREAS, the on May 22, 2006, the Durham Town Council conducted a work session on the downtown area and housing issues which included the topics of work force housing, rental housing, university housing, and elderly housing were discussed; and....

WHEREAS, the Housing Task Force reached a consensus that encouraging increased density in multi-unit dwellings in the downtown area and limited other districts where it currently exists and is allowed within the Town’s Zoning Ordinance would be a way in which to increase taxable value in certain zoning districts, as well as promote redevelopment of existing properties. Further, it would allow existing properties utilized for rental housing to expand the number of occupants under very limited circumstances, thereby further encouraging rental housing within already established areas; and....

WHEREAS, on May 9, 2008, the Economic Development Committee discussed and recommended that the Town Council move forward with the amendments to Section 175-7 "Definitions" of the Durham Zoning Ordinance by amending the definition of "habitable floor area" and amending Section 175-54, Dimensional Standards, Minimum Lot Area Per Dwelling Unit, in the Central Business District (CB), and Church Hill District (CH). These changes are consistent with Ad Hoc Housing Task Force Group discussions held in 2006-2007 and will allow for greater density downtown area by allowing more of the floor area within the units to count as habitable, therefore allowing greater density.

[The ordinance then details the Council forwarding the amendments to the Planning Board on June 2, 2008, the Planning Board discussing them on June 25, 2008, and holding a Public Hearing on them on July 9, 2008, and then, after unanimous supportive vote, forwarding them back to the Town Council which held a Public Hearing on them on August 18, 2008, and then supported the following resolution by a vote of 8 to 0.]

NOW, THEREFORE BE IT RESOLVED that the Town of Durham, through the Durham Town Council, the governing body of the Town of Durham, New Hampshire, hereby adopts Ordinance #2008-13 and does hereby amend Chapter 175 "Zoning", Section 175-7 "Definitions" of the Durham Zoning Ordinance relative to the definition of "habitable floor area". Wording to be deleted is annotated with ~~strikeout~~ type. New wording is annotated with underscoring as indicated below.

ARTICLE II DEFINITIONS

....

175-7. Definitions.

A. As used in this chapter, the following terms shall have the meanings indicated:

FLOOR AREA, HABITABLE - Heated areas used daily for living, eating, cooking or sleeping, including bathrooms and bedroom closets; but excluding garages, circulation areas (stairways, hallways, corridors), storage areas, (including but not limited to attics, unfinished basements, and utility rooms). ~~etc.~~ For the purposes of this chapter, "habitable floor area" is deemed to be seventy (70) percent of the gross floor area of a given building unless evidence sufficient to rebut that presumption in the form of complete floor plans drawn to a standard scale is submitted to the Durham Code Enforcement Officer. This presumption shall not apply in any instance where the owner or occupant(s) of the building permit allow inspection and measurement of such interior floor areas by the Code Enforcement Officer. ~~town authorities concerned~~ It is recognized that, under ~~thisese~~ definitions, it is possible for the "habitable floor area" to exceed 70% of the gross floor area.

The full 2008-13 Ordinance can be read here:

<https://www.dropbox.com/s/eph76h85917eoze/2008-13%20Habitable%20Floor%20Area.doc?dl=0>

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August 18, 2008—Town Council: Minimum Lot Area Per Dwelling Reduced from 1,200sf to 900sf

As detailed in the meeting minutes, the intent of the change was to "encourage redevelopment" and "create a better downtown with less student turmoil" by enticing property owners to redevelop their properties with housing above shops or offices or parking. The Council Chair explained that "if students were in better living situations, and felt they were getting more value for their dollar, they would perhaps be better behaved." Moreover, profitable student housing was to be the bait to create more ground-floor commercial space. [This 2008 change had been credited with stimulating the addition of close to 2,400 student beds through 2013.]

ORDINANCE #2008-14 OF DURHAM, NEW HAMPSHIRE
AMENDING CHAPTER 175 “ZONING”, SECTION 175-54 “TABLE OF DIMENSIONAL STANDARDS” TO LOWER THE
MINIMUM LOT AREA PER DWELLING UNIT IN THE CENTRAL BUSINESS (CB) DISTRICT
[Excerpts]

... **WHEREAS**, the Ad Hoc Housing Task Force Group worked on some possible zoning amendments that would encourage increased density in multi-unit dwellings as a way to increase the tax base, promote redevelopment of existing structures, promote and encourage professional property management, and make the perceived “cloud” over existing multi-unit dwellings go away; and

WHEREAS, in April 2007 the Town Council discussed draft zoning amendments proposed by the Ad Hoc Housing Task Force Group and referred the draft zoning amendments back to the Task Force; and....

WHEREAS, at the EDC meeting on May 9, 2008, members of the EDC discussed and recommended that the Town Council move forward with the amendments to Section 175-7 “Definitions” of the Durham Zoning Ordinance by amending the definition of “habitable floor area” and amending Section 175-54, Dimensional Standards, Minimum Lot Area Per Dwelling Unit, in the Central Business District (CB) and Church Hill District (CH); and...

[The ordinance then describes the Town Council forwarding the amendments to the Planning Board, with resulting discussion and a July 9, 2008, Public Hearing followed by a 4-3 vote in favor of the ordinance and its return to the Town Council, where there was an August 18 Public Hearing and a vote in favor of it 8 to 0.]

NOW, THEREFORE BE IT RESOLVED that the Durham Town Council, the governing body of the Town of Durham, New Hampshire hereby adopts Ordinance #2008-14 and does hereby amend Chapter 175 “Zoning”, Section 175-54 “Table of Dimensional Standards” to lower the minimum lot area per dwelling unit in the Central Business (CB) district from 1,200 SF to 900 SF as recommended by the Durham Planning Board. The document, in its approved form, is attached to this Ordinance as a matter of final record.

The full meeting minutes for the Council’s August 18, 2008, meeting can be read here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/town_council/meeting/33631/council081808.pdf

The full Ordinance #2008-14 can be read here:

<https://www.dropbox.com/s/ib1ekcd27heg4tp/2008-14%20Central%20Business%20District.doc?dl=0>

2009

MILL PLAZA TRIED AGAIN TO ADD PARKING AT REAR IN WETLAND BUFFER

(This attempt led to a multi-month series of Planning Board and Conservation Commission meetings.)

In May 2009, the Mill Plaza revived its attempt to add more parking spaces at the Southern, rear of the Plaza – in effect, requesting retroactive permission for the unlawful and still unrestored bulldozing in 2002 and making the implausible claim that more parking was needed behind the second Plaza building for the customers of Plaza businesses. The Plaza also pressured its commercial tenants to testify falsely to the parking need.

Initially, at least, the Planning Board seemed to accept at face value the Plaza’s claim that it needed more parking for its businesses, even though there were (and are) always dozens of available spaces in the lot. At that time (2009), the rear of the lot, where the expansion was planned, was almost empty most of the time, except for skateboarders (as documented in resident photos). Also, the Planning Board did not immediately reject the application based on the well-known “secret” that the Plaza already had at least 28 extra spaces in the parking lot, spaces it rented (and rents) to students (without ever having requested a “change of use” for this side business). [UPDATE ON MILL PLAZA PARKING SPACE RENTAL: In 2018, the rear of the Plaza

often has cars parked in it – 24 hours a day – indicating that they are mostly rental spaces, not the cars of customers of plaza businesses. Over 100 cars are often parked in different parts of the Plaza overnight when UNH is in session, suggesting a thriving, but unlicensed, parking-space rental business.]

At the 2009 meetings, several Plaza business owners testified publicly about a supposed need for additional parking for their businesses, but then a few of them apologetically told residents privately that they were pressured to say that by the Plaza manager or by a direct call from Plaza owner John Pinto. (One bank manager told residents that he refused to succumb to Plaza pressure to come to a Board meeting and lie.)

Additionally, the Plaza's expanded parking application implicitly asked for **retroactive permission for its 2002 unauthorized bulldozing and paving of the hillside buffer** between the Plaza and the residential zone at the Southern rear of the Plaza (which was halted first by Town officials and then by a unanimous ruling of the Planning Board in October 2002). As outlined above, the 2002 Planning Board rejected the Plaza's claim that this paving was covered in the 1978 site plan (while also expressing concern about the degraded nature of the College Brook and its greenway, and pointing out that the Plaza had not yet complied with many features of that 1978 plan, such as wide planting areas, a bike path and pedestrian walkway along the brook, etc.). The 2002 Planning Board also considered the Plaza's plan to rent spaces at the rear of the Plaza to be an unauthorized "change of use," and a study conducted for the Planning Board found that the Plaza had been turned down previously for a variance from a required 70-foot or more buffer from the adjacent residential lots.

The Plaza had hoped in 2002 to put more parking spaces right up against the bulldozed and paved boundary with the residential zone. (The 2009 Plaza application strategically treated the degraded results of its 2002 unauthorized bulldozing and paving as the "pre-existing" conditions for 2009 "improvement" – rather than as damage from a major violation that had not yet been reversed. Therefore, they claimed that the 2002 damage they caused was not relevant to the 2009 application's environmental or stormwater impact.)

And, finally, the 2009 application asked to pave over the last bit of green at the rear of the Plaza: the 2,600 square feet that the previous manager of the Plaza said he "mistakenly" gouged out of the hillside in 2002, and which the Planning Board in 2002 required to be left as absorbent surface. The Plaza's request, if granted, would put paving, cars, headlights, and engine noise within 25 feet of the Chesley Marsh wetland and reduce the green corridor from the College Brook Bridge to the parking lot by about 50%. The gain for the Plaza from this requested additional paving: Just four additional parking spaces (in a usually empty rear lot area).

These requests by the Plaza ran directly counter to the thrust of the 2000 Durham Master Plan, which recommended restoring and enhancing the College Brook Greenway and buffers between commercial and residential zones. The Plaza's application also ran counter to the 2007 College Brook Study Report that was part of the 18-month collaborative effort of the Mill Plaza Study Committee (which many residents participated in for a major redevelopment of the Plaza), which called for enhancing the neighborhood buffer. That report, for example, offers the following recommendation: ***"Restore vegetated buffers to improve water quality, moderate flood waters, provide wildlife and plant habitats and travel routes, contribute to the scenic quality of the site, and improve protection of the residential neighborhoods from the noise and visual impact of the commercial area...."*** (p. 8). [See excerpts from the 2000 Master Plan and 2007 College Brook Study Report and 2008 Mill Plaza Study Committee report, earlier in this chronology.] [FN100609]

The sequence in the 2009 parking lot application and its consideration by Town boards and resident reactions – over several months – is detailed below:

May 27, 2009—Planning Board: Application to Create More Plaza Parking Spaces [RESCHEDULED]

VII. [Acceptance Consideration on an Application for Site Plan Review submitted by Daniel Sheehan, Durham, New Hampshire on behalf of Colonial Durham Associates, New York, New York, to amend a previously approved site plan to create an additional 31 parking spaces. The property involved is shown on Tax Map 5, Lot 1-1, is located at Mill Road Plaza and is in the Central Business Zoning District.](#)

(Mr. Campbell [Town Planner] explained that Mr. Sheehan would like to reschedule this because there were still some issues to be resolved. He said the application would be re-advertised and re-posted.)

September 9, 2009—Planning Board— Application for CDA Parking Expansion NOT Accepted

V. Acceptance Consideration on an Application for Site Plan Review submitted by Daniel Sheehan, Durham, New Hampshire on behalf of Colonial Durham Associates, New York, New York, to expand the Mill Plaza Parking to create an additional 28 spaces. The property involved is shown on Tax Map 5, Lot 1-1, is located at Mill Road Plaza and is in the Central Business Zoning District.

From the September 9, 2009, Planning Board’s meeting minutes:

[Plaza Manager] Mr. [Dan] Sheehan said what was proposed was to enlarge the existing parking area and do some enhancements, which would balance the needs of the property owner, businesses and abutters. He noted the changing businesses in the area, including a new [Mexican] restaurant at the former Movie Stop space, the upgrade of the Chinese restaurant, significant changes to Durham Marketplace, expected growth at Wildcat Fitness, etc. He provided some details on the existing parking at the Plaza, and said it needed to be addressed first in order to accommodate the growth that was expected....

Mr. Kelley said he would not support acceptance of the application that evening, and said one reason for this was the lack of a stormwater analysis, which was critical to what the applicant was proposing.... Mr. Kelley said he would like to see a professional parking analysis which discussed what parking was there now, and what would be needed there in the future....

Richard Kelley MOVED to not accept the application because it is lacking some critical materials. Councilor Smith SECONDED the motion, and it PASSED unanimously 6-0.

Full minutes of the Sept. 09, 2009, Planning Board meeting on parking expansion can be reviewed here:
https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/30581/pb090909.pdf

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9-22-09 Site Diagram for Mill Plaza with North on Top (submitted with parking expansion application)

For this parking expansion application, CDA submitted a Plaza diagram with the correct “north-up” orientation:
<https://www.dropbox.com/s/dphl3lpycpq1r7r/2009%20North%20on%20Top%20Plaza%20Plan.jpg?dl=0>

As noted in this CDA diagram, the rear of the Plaza is not East, but Southeast, and the pedestrian entrance to the Plaza through the Chesley Marsh (and College Brook at that point) are at the Southern tip of the Plaza.

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September 23, 2009—Planning Board—Site Plan Review & Conditional Use Permit, Parking Expansion

IV. Acceptance Consideration on an Application for Site Plan Review submitted by Daniel Sheehan, Durham, New Hampshire on behalf of Colonial Durham Associates, New York, New York, to expand the Mill Plaza Parking to create an additional 28 spaces. The property involved is shown on Tax Map 5, Lot 1-1, is located at Mill Road Plaza and is in the Central Business Zoning District.

V. Acceptance Consideration on an Application for Conditional Use Permit submitted by Daniel Sheehan, Durham, New Hampshire on behalf of Colonial Durham Associates, New York, New York, to expand the Mill Plaza Parking to create an additional 28 spaces. The property involved is shown on Tax Map 5, Lot 1-1, is located at Mill Road Plaza and is in the Central Business Zoning District.

From the September 23, 2009, Planning Board meeting minutes:

....Mr. Campbell [Town Planner] said the applicant had gone to the Conservation Commission concerning the shoreland issues, and would be there again in October.

Mr. Roberts said he had some concerns about the application. He noted issues of noncompliance with the

original site plan, and also the question of whether renting of parking spaces was a change of use that was never presented to the Planning Board. He noted that at the last meeting, he had asked that the Planning Board get a table laying out what the applicant's parking requirements were. He said his understanding from Mr. Campbell's notes was that this was still forthcoming. He said he was not prepared to move forward with the application until he saw this information. [Emphasis added.]

Mr. Roberts noted that he was on the Board at that time the revisions to the original site plan were made, concerning buffering, etc., after major negotiations. He also said would need to see all the documentation in order to know whether or not the applicant was in compliance with the original site plan. [CDA] Attorney Ratigan said the total number of striped parking spaces was 337, and the proposal was to add 28 more spaces. He said one of reasons the applicant was seeking this was that there was a new restaurant going in at the Plaza, which involved bumping out of the structure and thus eliminating 9 parking spaces. He said it had also recently been learned that the Credit Union wanted to put in a drive-through, which would take out 18 parking spaces. He said the removal of these 27 spaces would eat up all but one of the 28 new parking spaces the applicant was seeking.

After discussion of the Applications, the Planning Board voted 7-0 to hold a Public Hearing on them on October 14, 2009.

Full minutes for the September 23, 2009, Planning Board meeting can be reviewed here:
https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/30431/pb092309.pdf

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PREVIEW regarding CDA expanded parking application: After three related expanded-parking applications by the Plaza in 2009, the last one finally advanced to a Public Hearing by the Planning Board. To residents' eyes, the Planning Board seemed to have warmed-up to the proposal and Town officials in general seemed to be in a "pro-business" mood, hesitant to anger the owner of the Plaza in a bad economy. A resident petition (eventually signed by 310+ people from 70 different streets all over Town) and a cartoon, illustrating the history of the long struggle to protect the College Brook greenway buffer were completed. A UNH student who had grown up in Durham spoke eloquently about the potential further damage to a cherished greenway that would become a "blackway," and a petition against the proposed parking expansion from the Student Environmental Action Coalition (SEAC) at UNH was submitted with 93 signatures. A petition against the parking expansion was submitted from neighborhood children who walk through the wooded path between Faculty Road and the Chesley Marsh and through the Plaza to school. More than three dozen residents spoke at the meetings and/or wrote letters to the Planning Board and Conservation Commission. Many others attended the meetings.

One hand-written letter was from a Faculty Neighborhood middle-school student, who wrote:

*I walk through the path in the woods and through the parking lot everyday. I can feel the life that surrounds me. I hear the squirrels in the trees and I see the plants swaying in the wind. I cannot stand for these organisms' homes to be invaded by humanity. The parking lot doesn't need more spaces, and few are filled as I walk by on my way to school. -
(name), 7th grader at Oyster River Middle School (address)*

Also, a lawyer (Scott Hogan) was brought on board by some Town residents regarding the "irregularities" of the application and its treatment by the Planning Board. (Residents expressed hope that appropriate resistance to the Plaza's proposal in unacceptable stage might lay the foundation for eventually working together with the Plaza on a future plan that would meet everyone's needs—in the same collaborative spirit that fed that Mill Plaza Study Committee process.)

See “The Mill Plaza & the Return of the BUFFER-EATING BULLDOZER” here:

<https://www.dropbox.com/s/q2p4ukftg5r81gv/Mill%20Plaza%20Cartoon%2010-07-09%20v3.pdf?dl=0>

Text of Petition Opposing Expansion of Mill Plaza Parking—October 2009

<https://www.dropbox.com/s/gfax52azbqclmaa/PETITION%20re%20PLAZA%20Parking%20expansion%20S%2010-7-09%202.doc?dl=0>

PETITION OPPOSING EXPANSION OF MILL PLAZA PARKING - October 2009

(Signed by more than 310 residents from 70 different Durham streets throughout the Town)

We, the undersigned residents of Durham, respectfully ask the Durham Planning Board to reject the current application by Colonial Durham Associates (aka The Mill Plaza) to expand parking at the rear of the Plaza. Scores of town residents and outside experts have worked together over the last decade to create a vision of our downtown core. These community-wide efforts—including the 2000 Master Plan and the 2008 Mill Plaza Study Committee Report—have laid out clear goals:

- ❖ *Expand the greenway buffer between the Plaza and the adjacent residential neighborhood.*
- ❖ *Reduce impervious paving surfaces along the College Brook Greenway.*
- ❖ *Enhance the pedestrian gateway to and from the rear of the Plaza (with its paths along the Chesley Marsh, the wooded path to Faculty Road over the College Brook foot bridge, and the Chesley Drive walking link to the Mill Pond and Milne Park).*

The Plaza’s current application runs directly counter to these community recommendations. The Plaza is asking to add 24 parking spaces in an area it bulldozed and paved without a permit in 2002 (before being stopped by the Planning Board) and 4 additional parking spaces in the 2,600 square feet of what is now grass that runs along the pedestrian entrance to rear of the Plaza. The first request would put cars right at the residential boundary; the latter plan would push impervious paving, car noise, and headlights further into the greenway buffer and within 30 feet of the Chesley Marsh wetlands.

Many of those who live or work in Durham enjoy this stretch of nature in the center of our town. Most Faculty Neighborhood children use the pedestrian paths to enter the plaza and to walk to and from school. The College Brook/Chesley Marsh greenway is a crucial habitat for wildlife that enhances the aesthetic and psychological pleasure of human residents. Please reject this application. Protect this valuable Town resource from more asphalt and from added light, noise, trash, and odor pollution

We also urge you to require any new Plaza parking expansion plan to include:

- 1) *Documentation by the Plaza of the claimed shortage of parking spaces.*
- 2) *Cessation of unauthorized long-term rental of Plaza parking spaces unless “change of use” application is submitted and approved.*
- 3) *Protection of the limited remaining green space and restoration of the trees and plants that were destroyed in 2002 in an unauthorized bulldozing of the hillside at the rear of the plaza.*
- 4) *Planning Board consultation with independent stormwater experts who can assess the drainage claims of consultants paid by the Plaza.*



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The **bolded streets** below (from 2009 petition signers) are outside of the Faculty Neighborhood:

Ambler Way, Bagdad Road, Bennett Road, Briarwood Lane, Bucks Hill Road, Burnham Avenue, Cedar Point Road, Chesley Drive, Church Hill Road, Coe Drive, Cormorant Circle, Croghan Lane, Dame Road, Davis Avenue, Deer Meadow Road, Dover Road, Durham Point Road, Edgewood Road, Emerson Road, Faculty Road, Falls Way, Fellows Lane, Frost Drive, Fitts Farm Road, Foss Farm Road, Garden Lane, Garrison Avenue, Gerrish Drive, Griffiths Drive, Hampshire Avenue, Hoitt Drive, Jenkins Court, Langley Road, Laurel Lane, Littlehale Road, Longmarsh Road, Madbury Road, Magrath Road, Main Street, Maple Street, Meadow Road, Meserve Road, Mill Road, Mill Road (portion), Mill Pond Road, Newmarket Road, Noble K Peterson Drive, Old Landing Road, Oyster River Road, Packers Falls Road, Park Street, Pinecrest Lane, Ross Road, Sandy Brook Drive, Shearwater Street, Simons Lane, Smith Park Lane, Stagecoach Road, Stevens Way, Stonewall Way, Strout Lane, Sunnyside Drive, Surrey Lane, Thompson Lane, Valentine Hill Road, Wiswall Road, Woodman Road, Woodridge Road, Woodside Drive.

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Oct. 8, 2009—Conservation Commission Discusses Plaza Parking Expansion Proposal for Almost 5 hrs

REASON FOR DCC MEETING: The 2009 Plaza parking application came before the Durham Conservation Commission (DCC) primarily because the 2,600 s.f. of grass the Plaza wanted to pave is within about 25 feet of the wetland, and the Zoning Ordinances require a 75-foot buffer. (The DCC also considered parts of the plan that came within the Shoreland Protection Zone, but approved that variance because the incursion was mostly for an improved stormwater system.) The Plaza filed for a “conditional use permit” based on Zoning ordinance 175-61, which states:

The Planning Board shall approve a Conditional Use Permit for a use in the WCO (Wetland Conservation Overlay) District only if it finds, with the advice of the Conservation Commission, that all of the following standards have been met in addition to the general standards for conditional uses and any performance standards for the particular use:

- 1. There is no alternative location on the parcel that is outside of the WCO District that is feasible for the proposed use;*
- 2. The amount of soil disturbance will be the minimum necessary for the construction and operation of the facilities as determined by the Planning Board;*
- 3. The location, design, construction, and maintenance of the facilities will minimize any detrimental impact on the wetland, and mitigation activities will be undertaken to counterbalance any adverse impacts; and*
- 4. Restoration activities will leave the site, as nearly as possible, in its existing condition and grade at the time of application for the Conditional Use Permit.*

FOCUS OF THE DEBATE: The DCC had a long discussion about whether the “pre-existing condition” for analyzing the impact of the Plaza’s application should be the site as it was before the unauthorized 2002 bulldozing and paving (since an acceptance of the current application would be the first legal permission to alter the hillside from the wooded forest it was up until mid-2002 into its current condition) or whether the “pre-existing condition” should be the 2009 degraded condition of the site following the illegal 2002 bulldozing. (The twist was that the degraded 2009 condition could possibly be improved by aspects of the Plaza’s 2009 plan, including a modest stormwater filtration system and a little landscaping).

The DCC also had to grapple with the devil’s bargain presented by the Plaza to them, which was essentially: ~Allow us to do even more damage to the greenway (by paving over 2,600 s.f. more of green and violating the 75-foot setback from a wetland in order to gain 4 more parking spaces), or we’ll withdraw the whole plan, including a modest stormwater mitigation system that will reverse at least some of the damage we’ve already done and are doing.~

DCC CONCLUSION: In the end, through Jamie Houle's³ masterful chairing of the meeting, he was able to bring a very diverse set of views into a coherent motion that was approved unanimously, which can be summarized as follows: If the "pre-existing" condition is the current degraded site (after the illegal 2002 bulldozing), then the DCC believes the overall project meets three of the four standards for conditional use (#'s 2, 3, and 4 above). But even with that definition of "pre-existing" condition, the DCC expressed reservations about the "need" and "necessary location" for the four spaces the Plaza wanted to put in the wetland buffer (at that time, thin grass along the pedestrian path to the College Brook Bridge planted over compacted sub-surface prepped for paving before the stop-work order was issued). "Buffers are created for a purpose," said Chair Houle. The DCC then left it to Chair Jamie Houle to craft a footnote (which he had preferred to put right into the motion) that if the "pre-existing condition" is determined by the Planning Board to be the site before the illegal 2002 bulldozing, then the application failed to meet ANY of the standards necessary for conditional use.

Resident comments and letters to the Commission and the Planning Board addressed the following themes:

1) "PRE-EXISTING" SITE: Since the acceptance of the current application by the Planning Board would be the first Town approval for the illegal 2002 bulldozing, the legal "pre-existing" condition should be the un-bulldozed hillside. Otherwise, the case would set a precedent for landowners: damage a property as you wish, by violating zoning ordinances, then say the site is degraded and that you can improve it if the Town will just give you retroactive permission for the illegal damage you did earlier. (Commission Chair Jamie Houle expressed this concern during the DCC meeting.)

This key argument was also relevant to the Plaza's claim that perforated pipe surrounded by crushed stone along the College Brook edge of the plan will improve the "pre-existing" condition. Although the Plaza's engineer claimed this mitigation system would undo the damage from the illegal 2002 paving, Jamie Houle, one of the nation's top stormwater experts, didn't buy that claim. If the Planning Board takes the current degraded site as the "pre-existing" condition, he noted, then almost *anything* would make it better. The same is true for the Plaza's lawyer's claim that the modest landscaping would improve the site. Residents suggested that the Town should order the Plaza to restore of the hillside to its mid-2002 condition (and residents even offered to help in landscaping the restored hillside). If the Planning Board considered the pre-2002 site as "pre-existing," then they should reject the application based on the DCC advice. (Kevin Gardner, Professor of Civil & Environmental Engineering, with a specialty in remediation of contaminated sediments and wetlands, was unable to attend the meeting because he was in Italy, but he also challenged the CDA drainage analysis in a September 21, 2009, email to Planner Jim Campbell.)

2) "NEED" FOR 28 MORE SPACES? Residents questioned how the Plaza could claim that it "needed" 28 more parking spaces overall for shoppers when the lot had many empty spaces at all times, and the rear lot which was being proposed for expansion usually looked like (and was, in 2009, often used as) a skateboarding park? Additionally, if the Plaza did (or would soon) really need 28 more parking spaces, all it had to do was stop renting that number of spaces in its non-approved side business.

3) "NEED" TO IMPINGE ON WETLAND BUFFER? Given the proximity of the thinly grassed 2,600 s.f. both to the wetland and the pedestrian entrance to the Plaza (about 50% of the green on one side of the path from the current edge of the parking lot to the College Brook Bridge), what excuse was there for destroying this green area and eating into the legal wetland buffer to add a mere *four* parking spaces? The idea that the Plaza would say "we need to violate buffers and do more damage in order to do a little good" (with a stormwater mitigation

³ From UNH Stormwater Center, 2018: "James Houle is the Program Director for the Stormwater Center. His responsibilities include directing and managing the Stormwater Center's growing body of research projects. Areas of expertise include diffusion of innovative stormwater management solutions, the design and implementation of innovative stormwater control measures including green infrastructure (GI), and low impact development (LID) strategies, planning and implementation, operation and maintenance, and water resource monitoring. Dr. Houle holds a Ph.D. in Natural Resources and Environmental Science and has over fifteen years of experience with water quality related issues in New England and is a certified professional in storm water quality (CPSWQ) and a certified professional in erosion and sediment control (CPESC)." <https://www.unh.edu/unhsc/faculty-staff-and-students>

system), residents argued, was a kind of blackmail that the Town should not accept. Also, residents were told that the modest stormwater mitigation system proposed would probably cost less than \$100,000. (In later private conversations with residents, the Plaza manager estimated a significantly lower cost, as described further below.) The Plaza rented spaces for \$1,000 a year. Thus, even with “only” 24 new spaces, and even at the \$100,000 publicly stated estimate, it would gain back the cost of the mitigation in about 4 years.)

Again, residents expressed hope that, in the long run, the Plaza would give up on this idea of decreasing green in favor of more asphalt, restoring instead the already degraded buffer, and put in stormwater mitigation systems as part of any future Plaza changes. (The islands between parking rows were supposed to be significant planting areas and, with some modifications, could help significantly with stormwater.) [FN101009]

One of the many letters to the Conservation Commission in 2009 was from **Roy & Star Snyder, Church Hill Road:**

Greetings Chair and fellow Durham Conservation Commissioners,

We ask you to not recommend the parking lot proposal to the Planning Board for the Mill Plaza site. It seems to us to be the last remaining “greenway” in that area and we worry any disturbance would be too close to the Chesley Marsh. My wife walks thru that greenway path frequently to visit Bank and shop and to enjoy that quiet area. Our twin Granddaughters love that area and love to climb up the hill and on the rocks. We see NO NEED for more parking spaces, there are ALWAYS vacant spaces in that area, so we don’t understand why anyone needs more!!!

We’d like you also to know that my wife saw her very first Black-billed Cuckoo in that very same wooded hillside that someone wants to destroy. Not many Cuckoo's left in Durham as it is and now that habitat will be destroyed? I ask you to please vote NO to the parking lot proposal to the Planning Board.

We are unable to come to your meeting in person tonight, so I ask that our note be read into the minutes.

Thank you,
Roy & Star Snyder
1 Church Hill Road

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October 14, 2009—Planning Board: Public Hearing on Plaza Parking Expansion Applications

IV. Public Hearing on an Application for Site Plan Review submitted by Daniel Sheehan, Durham, New Hampshire on behalf of Colonial Durham Associates, New York, New York, to expand the Mill Plaza Parking to create an additional 28 spaces. The property involved is shown on Tax Map 5, Lot 1-1, is located at Mill Road Plaza and is in the Central Business Zoning District.

V. Public Hearing on an Application for Conditional Use Permit submitted by Daniel Sheehan, Durham, New Hampshire on behalf of Colonial Durham Associates, New York, New York, to expand the Mill Plaza Parking to create an additional 28 spaces. The property involved is shown on Tax Map 5, Lot 1-1, is located at Mill Road Plaza and is in the Central Business Zoning District.

[NOTE: CDA described the project as: “Mill Road Plaza Parking Lot *Improvements*” (emphasis added). See CDA Attorney letter to Planning Board, October 1, 2009.]

From the Planning Board’s meeting minutes:

John Rattigan of Donahue, Tucker and Ciandella represented the applicant. He noted that Mr. Sheehan and engineer Tobin Farwell were present. He noted the letter from the applicant dated October 1, 2009 that

addressed the Conditional Use criteria, and suggested that Mr. Farwell first give a brief presentation of the application. Mr. Farwell said the storm water management that was proposed was to put a perforated pipe between two catch basins, and also above the pipe to put a rain garden to help infiltrate runoff.... He said they had met with the Conservation Commission, and said the Commission was very much in favor of the best management practices that were proposed. He said they had some concerns regarding the buffer area for the offsite wetlands.

Mr. Roberts said some comments from abutters had included the issue of lighting.... He noted that the elevated lights mounted on the northeast corner of the Credit Union building that were directly pointed at the neighbors. Mr. Sheehan said currently there were two lights mounted on the Credit Union building that shined into the woods, and said these would be gone when the area was redesigned. He also said he had talked with abutter Peter Andersen about putting a dome on the existing lighting to address this for the time being.

[LIGHTING UPDATE: Lighting on the rear building still shines directly into neighbors' windows; see April 28, 2018, picture here:

www.dropbox.com/s/fu3lwq3jfxonrn1/Rear%20Plaza%20Lights%20from%20Window.JPG?dl=0]

[Mr. Sheehan] said there would be downward lighting with the new plan, and nothing on the side of the building to his knowledge that would shine onto peoples' windows.

Planning Board members posed a number of questions and then asked for a summary of the input from the Conservation Commission, which included "gratitude at the developer's willingness to help mitigate some of the poor drainage control and runoff treatment around existing impervious surfaces as part of the expansion proposal, an action this proposal did not outright require." But the summary also included:

The memo stated that the Commission had debated at length the exact determination of what the actual "existing condition" should be in assessing the overall improvements. It said that while seemingly outside of the purview of the Commission's role, members felt a need to note reservations with respect to a perceived lack of attempt to honor the WCO [Wetland Conservation Overlay] buffer while doing little to address restoration of the wetland and wetland buffer that was originally altered in violation of the WCO article.

Next the Planning Board voted to open the Public Hearing, and asked first for comments in support of the applications. A few of the owners of Plaza businesses got up to speak in favor of the expanded parking plan, claiming the spots were needed by their businesses. (To repeat: Several of these business owners later privately apologized to residents for speaking under pressure from the manager and/or owner of the Plaza regarding a need that they freely admitted they did not have, with all the empty spaces in the lot.) Then, Town Engineer Dave Cedarholm spoke in favor of the stormwater improvements proposed, noting that College Brook was on the Clean Water Act 303 (d) list.

About eight residents who opposed the parking expansion laid out a series of detailed concerns (similar to those presented to the Conservation Commission and in the residents' petition, as detailed above), sometimes to the applause of about two dozen other residents who came to the hearing to express opposition to the plan. Land-use attorney **Scott Hogan** summarized the irregularities surrounding the application, and that **Deborah Hirsch Mayer of Garden Lane** presented the petition that had been circulating with the 120 names gathered (to that point) on completed sheets of ten names. (There were about 30 more names on partial sheets, and those were not immediately presented. Later, a fuller petition, with more than 300 names from 70 different Durham streets, was presented, as described earlier.) [FN101509]

After extending the close of the public hearing from 9:00 pm to 9:30 pm to try to accommodate the many comments in opposition to the plan, **the Planning Board voted to continue the hearing at its next meeting on Wednesday, October 28, 2009, to allow others to speak.**

The full minutes from the October 14, 2009, meeting can be reviewed here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/30531/pb101409.pdf

October 28, 2009—Planning Board, Continued Public Hearing on Plaza Parking Expansion Attempt

V. Continued Public Hearing on an Application for Site Plan Review submitted by Daniel Sheehan, Durham, New Hampshire on behalf of Colonial Durham Associates, New York, New York, to expand the Mill Plaza Parking to create an additional 28 spaces. The property involved is shown on Tax Map 5, Lot 1-1, is located at Mill Road Plaza and is in the Central Business Zoning District.

VI. Continued Public Hearing on an Application for Conditional Use Permit submitted by Daniel Sheehan, Durham, New Hampshire on behalf of Colonial Durham Associates, New York, New York, to expand the Mill Plaza Parking to create an additional 28 spaces. The property involved is shown on Tax Map 5, Lot 1-1, is located at Mill Road Plaza and is in the Central Business Zoning District.

October 28, 2009—The Planning Board continued the Public Hearing on the Mill Plaza’s application to expand their parking areas into the greenway and wetland buffer at the rear of the Plaza with the addition of 28 parking spots

Before the public was invited to speak, Planner Jim Campbell said he thought that CDA was “allowed to do some of the asphalt in the parking area they wanted. He said the parking area that was going to be paved from the 1978 plan wasn’t to have parking. He said it was within the 70-foot buffer, and led to the back where the driveway went up to future employee parking. He said in 2002, they were attempting to bulldoze that area and pave it and park there. He said [Code Enforcer] Mr. Johnson asked them to stop and not park in that area, part of which had already been paved. Mr. Campbell said the area they wanted to fill in now was an area they bulldozed but did not pave over. He said Mr. Johnson had told them to loam and seed this area and not park there, which they did. He said it was a fair question as to whether this had held, but said at the time, Mr. Johnson was satisfied.” This was followed by discussion of what informal adjustments had been made to the original site plan

At the opening of public input, two people spoke in favor of the application, a manager of a Plaza business who claimed a need for more spaces for her employees and a Durham Point Road resident who was interested in more downtown parking options and lower taxes.

Following that, about a dozen other people spoke against the expanded parking, some adding descriptions to petitions signed by many residents and letters written by those who were unable to attend the meeting.

A number of residents highlighted what they saw as the far-fetched assertion that the Plaza is tight on parking spaces, especially around 5pm on weekdays, even though anyone walking, biking, or driving through the Plaza at that time would discover scores of empty spaces. (At the prior Planning Board meeting, Durham Marketplace owner Chuck Cressy expressed support for the Plaza’s plan by showing pictures taken at 5pm that day of crowded parking rows *right in front of the grocery store at the front of the Plaza*. But residents showed pictures taken the next day at the same 5pm time, and they revealed a mostly empty parking lot (residents stopped counting at 100 empty spots). At this “prime shopping time” but in the rear parking area—the parking area proposed by CDA for expansion—the number of skateboarders, just three, outnumbered the parked cars.)

Other residents expressed concern that by holding this public hearing, the Planning Board seemed to be considering bending and breaking all the rules for the Plaza because the Plaza had for the first time promised to install a small stormwater management system (primarily pipes with holes over rocks), which would partially undo the increased runoff damage from the illegal 2002 bulldozing and paving. Perhaps the final irony, therefore, was that Plaza manager told a few residents that he wasn’t certain what the cost of this stormwater system would be, but he didn’t think it would be more than \$20,000. (The Plaza also said it planned to spend some money on landscaping.) In exchange for this unique stormwater “gift” from the Plaza, the Planning Board was considering giving the Plaza twenty-eight more spaces in the greenway and wetland buffer, where no parking spaces were supposed to be. Since the Plaza was renting 28 parking spaces for \$28,000 a year, the

Plaza payback for its investment (even if somewhat higher than Mr. Sheehan's estimate) would be remarkably quick, with pure profit beyond that. [FN102809]

The longest comments came from resident-hired attorney (Scott Hogan) who addressed irregularities in the application. Quoting from the October 28, 2009, Planning Board minutes:

Attorney Scott Hogan said that for his clients and the broader community, Mill Plaza was a resource they wanted to succeed, and wanted to have the parking it needed, but in a way that was compliant with the Town's regulations and the Master Plan. He said what was clear was that there had always been a 70-75 ft buffer between the parking lot and the residential neighborhood. He said what had been heard that evening from the applicant was that the regulations had changed. He said they had also heard from Mr. Campbell that there wasn't ever a condition of approval to impose the 70 ft buffer. But he said if one looked carefully at the Harwood memo from 2002, it was made very clear then.

He read from this memo, which said the Zoning Ordinance at the time of the approval gave the Planning Board the authority to determine what an appropriate setback would be for a parking lot. He said the memo said a 70 ft buffer was chosen by the Planning Board, given the discretion at the time. Attorney Hogan said Mr. Harwood also said [the buffer] showed up in every plan and should be recognized. He said in the context of 2002, the consultant documented that portion of hillside bulldozed. He said they were told to stop, and said he did not think it was a formal cease and desist, but were told to stop, because it was in violation of the site plans.

He said for decades, the neighborhoods and broader community had tried to maintain and enhance the greenway, as recognized by the Master Plan, the Mill Plaza Study, and Mr. Harwood in 2002. He said whether the regulations had changed or not, the Planning Board had determined that a 70-75 ft buffer was appropriate. He said the current plan would bring the parking lot 40 ft closer to the residential neighborhoods. He said it would not maintain or enhance the buffer and instead would detract from it.

Attorney Hogan said the memo on the numbers of parking spaces provided that evening was the fifth opinion on how many spaces there were. He also noted that in the Board's discussion on the restaurant, it was said that maybe the proposal would calm traffic and maybe it would not. He said the white elephant in the room had been that the Plaza was asking for an additional 28 spaces, yet it was known where these spaces could be found. He said these 28 spaces were documented as an unlawful parking lot, and said what if they were not occupied by commercial renters, and instead were available to patrons, tenants, and employees. He said if this happened, the discussion would be over. He said whether or not the Town took action on this, the law was very clear that the Planning Board could not approve a plan that violated the Zoning Ordinance.

*He quoted from *Cesere v Windham* and other related cases on this issue and said the proposed plan did violate the Ordinance. He said the applicant could seek a variance, or could try to get a Zoning amendment to eliminate the requirement. But he said it was a requirement now, and said this had been documented for almost 10 years.*

Attorney Hogan said that concerning the 70 ft buffer, another issue of concern to his clients and the broader group they were in touch with was that it was very difficult to understand the applicant's critical need for parking. He said there seemed to be many times the lot was not full. He said he understood the needs articulated by the new businesses, but said there were 28 spaces available in the middle of the lot. He said the applicant had to prove to the Board that there was no other feasible alternative outside the wetland or shoreland zone where the spaces could be located.

He asked if there was some way to provide some percentage of compact spaces somewhere on the lot, re-stripe the spaces, address the travel lane widths, etc. He said there were designs for this lot that could achieve the number of spaces needed and maybe more. He said nobody he represented wanted to stop Mill Plaza from having more parking if it was needed. He said if the applicant decided to have a commercial parking lot, and went through a change of use site plan review, there would be an analysis of traffic, stormwater

management and lighting. He said the application said existing impacts from stormwater, lighting, etc., would be improved, so acknowledged these impacts existed.

Attorney Hogan said it had been a long time since there had been a full site plan review, and said the traffic issues alone merited this kind of review. He said the different uses coming along merited that, as did the 28 spaces being rented in the middle. He said there had been no global analysis of traffic. He also said the stormwater plan didn't talk about maintaining the buffer. He said it seemed that both the concerns of the neighborhood regarding the buffer, and the concerns of the applicant to have more parking could be met with a little more effort.

He said the easy way for him right now was to say there was an unlawful use under the Ordinance, and that the site plan couldn't be approved because it violated the Ordinance. But he said those he represented wanted to make sure the greenway was maintained. He said it seemed clear that everyone's interests could be accommodated, but not within the framework of this application.

Attorney Hogan said the Harwood memos documented noncompliance easily, and said whether the regulations had changed or not, it was already decided long ago what was appropriate here, and said this was reiterated in the Master Plan and the Mill Plaza Study. He said the 70 ft buffer should not be encroached by 40 ft. It should be remedied to the condition it was in back when it was lawful. He said there were ways to do this that were appropriate and lawful and in the interest of good planning and good neighbors, but not this way. He said there were many issue right now that were unknown, but said the issues they did know about were easy for the Board to respond to. He said the Board couldn't approve this application, but he said there were ways to redesign this that would have broad support from the neighbors and the community. He asked that everybody's interests be respected, and said these people had as much respect for the Plaza and as much interest in its success as anyone in the room.

Board member Richard Kelley then addressed some questions to Attorney Hogan:

*Mr. Kelley said similar to the number of parking spaces, the Board often got different opinions from attorneys. He asked Attorney Hogan to expand on *Cesere v Windham*, and asked if it specifically addressed a situation like this, and if it was an exact fit. Attorney Hogan provided details on this. He also said that in 2002, the Planning Board had denied a similar request from the applicant, and a reason was because of the documentation that the buffer was part of the original approval and something that was appropriate for this area.*

Mr. Kelley asked if the Town could be sued because it was denying an application because of something going on at the property. Attorney Hogan said if there was an aspect of an application that violated the Zoning Ordinance, the Board had no authority to approve the application. [Emphasis added.]

An important theme that emerged at the October 14, 2009, public hearing was how the Town had failed repeatedly over the decades to compel the Plaza to stick to its promises and requirements under prior approved site plans and Town rulings. The 1970s Plaza plan included an as-yet uninstalled raised and curbed 6-foot sidewalk along the brook for the safety of walkers and bikers. (In 2009, trucks and cars routinely blocked the narrow and level path there.) A February 1973 Durham Conservation Commission letter calling on the Town to require the Plaza to reverse its damage to the College Brook and the Mill Pond before being allowed to build the second building had been ignored. The 1975 Town Tree Warden's assessment of the landscaping as "laughable" and "woefully and shockingly inadequate" had not been acted on. The parking lane medians were supposed to absorb water and have diverse plantings, yet they were paved over with concrete a few years before the 2009 hearings. And although the Town's own planning consultant reported in 2002 that the Plaza should be stopped from renting parking spaces, no action has been taken by the Town as of 2018 to stop that unauthorized business or require the Plaza to go through the steps required to make it legal.

[PLAZA LANDSCAPING UPDATE: The Plaza has made some landscaping improvements in recent years in the narrow planting areas within the Plaza, adding evergreens along the brook and rear of the Plaza and stopping direct plowing of snow into College Brook (though piles of plowed snow no doubt still melt into the brook), painting a clear line marking the bike lane along the brook, and enforcing no-parking of vehicles on the marked bike lane. To date, in mid-2018, the Town has not compelled the Plaza to restore the hillside buffer that was illegally bulldozed and partially paved in 2002. And in May 2018, one can still find cars and trucks parked in the bulldozed and paved area in defiance of Town rulings.]

At the October 28, 2009, meeting other residents wanted to speak in opposition, but **the Planning Board stopped the hearing for the night around 9:45 pm, saying that it would continue the following week (Wednesday, November 4, at 7pm).** One resident urged the Planning Board to allow five more people to speak. Another audience member pointed out that some residents had come to two meetings in a row, without being allowed to speak. The Planning Board Chair replied, "No. We have other things to do." (And, the PB did indeed have a very full agenda.) [FN 102909]

In the meantime, a number of residents submitted letters to the Planning Board, including former Town Counselor (1998-2001) **Bill Woodward of 76 Madbury Road:**

Dear Planning Board Members,

I am writing to ask you reject the current application by the Mill Road Plaza to add 28 parking spaces at the rear of the Plaza. It is difficult to believe that the Plaza needs more spaces in a parking lot that always has many empty spots. But most importantly, approving the Plaza's application would run counter to the will of the community, as reflected in the Durham Master Plan and the Mill Plaza Study Report. These documents both recommend restoring, enhancing, and expanding the greenway buffer between the Plaza and the residential area. Let's not go backwards. The Plaza is asking to further compromise the already compromised buffer by paving over the last patch of green adjacent to the wetland. This is an arrogant and outrageous request!

Also, please don't reward the Plaza for its illegal 2002 bulldozing and paving of the hillside buffer with the neighborhood. The fact that the current application, with some modest storm water mitigation, may partially undo some of the major damage caused by the 2002 destruction is no reason to "forgive" the Plaza for its past violations and give it what it was not allowed to have under the Town rules. The Plaza should be required to restore the hillside it destroyed. And the 2002 Planning Board ruling against parking in the buffer should not be overturned. Thank you,

Former Planning Board member **W. Arthur Grant** wrote from **33 Christian Ave.,** Concord, NH:

To the Durham Planning Board:

*Although no longer a Durham citizen, as a 40-year resident and former Planning Board member it is very upsetting to see and hear that the residents of the neighborhoods surrounding the Mill Road Plaza are **once again** being subjected to efforts by the Plaza owners and their local overseer to expand their parking lot into clearly forbidden areas – with attendant environmental, ecological and social damages to the community. Instead, the Plaza owners and manager should be coming to the Planning Board with a well-developed plan for ending the plowing of the Plaza's toxic winter snowfall into College Brook and the resultant polluting of the Mill Pond and the Oyster River, something even the Town is not allowed to do. [Emphasis original.]*

Joy Winston, 16 Griffiths Drive, sent a brief email

I have been a customer of business in the Mill Pond Plaza for 32 years and have never been unable to find a parking space. In fact, I have frequently noticed many vacant spaces in the area east/southeast of

the NH Credit Union where the expansion is proposed. The proposed expansion is simply a money-making scheme to rent spaces to UNH students and has nothing to do with the convenience of customers and businesses in the plaza.

The full minutes from the October 28, 2009, Planning Board meeting can be reviewed here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/30501/pb102809.pdf

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November 2, 2009—Resident Attorney Letter Submitted in Opposition to Mill Plaza Parking Expansion

Scott Hogan (representing Durham residents) wrote a letter to the Planning Board arguing that the Plaza's application had to be denied for, among other reasons, being out of compliance for its unlicensed parking space rental business. See:

www.dropbox.com/s/yti2qf5tsea7qyo/Attorney%20Scptt%20Hogan%20Letter%20to%20PB%2011-2-09.pdf?dl=0 [FN110209]

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November 4, 2009—Planning Board—Continued Public Hearing and Vote on Plaza Parking Expansion

V. Continued Public Hearing on an Application for Site Plan Review submitted by Daniel Sheehan, Durham, New Hampshire on behalf of Colonial Durham Associates, New York, New York, to expand the Mill Plaza Parking to create an additional 28 spaces. The property involved is shown on Tax Map 5, Lot 1-1, is located at Mill Road Plaza and is in the Central Business Zoning District.

THE HEADLINE: The November 4, 2009, Planning Board meeting saw a dramatic end to the Plaza's 2009 application to expand parking with 28 spaces in the greenway and wetland buffer. After some interesting twists and turns, **the Planning Board voted 5 to 2 to reject the Plaza's application.**

THE DETAILS: The twists and turns of the meeting revolved primarily around a legal issue raised by Scott Hogan (the land-use attorney who was representing the interests of residents opposed to the application). At the October 28th meeting, attorney Scott Hogan informed the Board that, in addition to many other problems with the application raised by him and by residents, the Planning Board could not approve the current application because "the unapproved commercial rental of 28 spaces is an unauthorized, unlawful use, which violates the clear language of the Zoning Ordinance...."

This led the Town to seek the advice of the then Town lawyer, Walter Mitchell, in time for the November 4, 2009, meeting. But a suspenseful question hung over the meeting: would the Board release what the Town lawyer told them? (They were not required to do so because of client-attorney privilege.) Residents' attorney, Scott Hogan, urged the Planning Board members to make the lawyer's comments public. Planning Board member Steve Roberts was the most resistant to the release of the lawyer's emails, but, after discussion, the Board voted to make it public. And the statement was surprisingly unequivocal: The Town's attorney agreed with Scott Hogan's conclusion (though based on somewhat different reasoning) that once the Plaza began renting parking spaces however many years ago it was in violation of the Plaza's site plan and that, just as Scott Hogan had claimed, the Planning Board could not approve the current application until the Plaza applied for a conditional use permit to allow the long-term rental.

TOWN ATTORNEY WALTER MITCHELL'S NOVEMBER 2009 RULING ON THE APPLICATION

To quote, in part, from the Town Attorney letter:

- *"Once the property owner leased out 30 some spaces for long term parking, they were no longer available to support the retail uses, and from that point on the property owner was violating the site plan approval — and apparently still is.*
- *"In the absence of obtaining approval for an amended site plan to incorporate this second principal use of the property (I do not agree that it is an accessory use since...the long-term parking is not incidental to any*

principal use of the property), the use must cease. Further, in order to be approved as a second principal use, the property owner will have to apply for and obtain a conditional use permit from the board.”

Attorney Mitchell’s full assessment can be seen here:

<https://www.dropbox.com/s/2z6ttnm xp8hnzd0/2009%20Walter%20Mitchell%20opinion%20letter.pdf?dl=0>

A dozen people (including attorney Scott Hogan, representing more than 8 clients) also spoke at this hearing in opposition to the parking expansion. One resident (not an abutter of the Plaza) expressed anger over the months of time that residents had given to this issue and how it was only by hiring a lawyer that residents could be “heard” by their own Planning Board. From the meeting minutes:

***Hillary Scott, 20 Davis Ave.,** said if the 28 spaces were not approved, she questioned why this application was before the Planning Board at all. She said Attorney Mitchell’s letter spoke to this, and she asked how this had come before the Board when this issue had been ongoing since 2002. She said people had paid money to hire Attorney Hogan, when perhaps this application shouldn’t even be before the Board. She said she hoped there was consideration of looking at outstanding issues before bringing it before the Planning Board. She also said it was disturbing that townspeople felt they couldn’t be heard by the Board without hiring an attorney.*

The Town lawyer’s decision led the Plaza’s lawyer, John Ratigan, to request a month extension on the consideration of the application in order for his client to consider what steps to take next. A number of residents spoke out strongly against that further extension of this process, noting that the first version of this application was submitted six months earlier, and that residents had lived through a similar ordeal for months in 2002.

The second concern raised by residents was over the “technical” reason for denying the application (plat out of compliance) might lead to the Plaza applying for and receiving a conditional use permit for the rental spaces and then reapplying for essentially the same plan that residents had been resisting because of other concerns. All the Town residents in the room (from a variety of Durham neighborhoods) wanted the Board to reject the application for all the other expressed reasons as well: no documented need for more parking for customers, access to 28 spaces currently rented by the Plaza (whether legally rented or not), the illegal 2002 bulldozing of the rear hillside, violation of the 70- or 75-foot buffer with the residential zone, violation of wetland setbacks, the strong consensus for protecting and enhancing—not further degrading—the greenway, as outlined in the Master Plan and Mill Plaza Study Committee Report, and so on.) These reasons were laid out clearly in the petition (presented again at the November meeting by Deborah Hirsch Mayer, this time with over 300 signatures from 70 different Durham streets).

After the Public Hearing was closed, the Board deliberated. Town Planner Jim Campbell at first advised the Board to hold off voting until he wrote up the reasons for the denial for the next meeting. But eventually, the Board voted 5 to 2 to deny the application, with the understanding that the statement of reasons for denial would be ready for consideration at the November 18th meeting. Steve Roberts voted against the motion, apparently because he was in favor of giving the Plaza time to modify the current application in light of the Town lawyer’s statement. William McGowan was the other no vote, apparently because he wanted to see the notice of denial before voting.

The Board’s discussion before and after the vote was also quite interesting. Board member Richard Ozenich spoke of the Plaza’s responsibility to restore what was destroyed illegally in 2002 and to bring the Plaza into compliance with earlier requirements. Board member Richard Kelly raised good ideas about requiring a traffic circulation study, wanting a raised 14-foot wide multi-use path for bikes and pedestrians, and a stormwater system for the whole parking lot.

Another item of note from the November 4, 2009, Planning Board meeting related to another possible entrance to the Plaza from Main Street: “Councilor Smith said the previous week he had spoken with John Pinto, who asked him where new parking could be put. Councilor Smith said he had reminded Mr. Pinto that the Grange on Main Street, which was owned by the Town, could be purchased and would make good access to a parking

deck above surface parking. He said there were other options, when it became obvious that more parking was needed for the Plaza.”

[GRANGE UPDATE: Mr. Pinto did not act on this suggestion for the Plaza to buy the Grange, and the Town approved the sale of the Grange to Peter Murphy in August 2011. Murphy moved the building closer to Main Street and renovated and expanded it with commercial occupancy on the first floor and residential occupancy above. The property is no longer a viable routine entrance/exit to/from the Plaza, though a car-sized emergency vehicle might be able to fit through the pedestrian passage from the Plaza to Main Street. See: http://www.fosters.com/article/20110812/GJNEWS_01/708129945. Additionally, the recently completed Orion housing complex next to the Grange eliminated another possible Main Street exit/entrance to the Plaza.]

The full minutes for the November 4, 2009, Planning Board meeting can be read here:
www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/30441/pb110409.pdf

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November 18, 2009—Planning Board on Findings of Fact and Reasons for Denial

VIII. Review of Findings of Fact and Reasons for Denial for a Site Plan and Conditional Use Permit submitted by Daniel Sheehan, Durham, New Hampshire on behalf of Colonial Durham Associates, New York, New York, to expand the Mill Plaza Parking to create an additional 28 spaces. The property involved is shown on Tax Map 5, Lot 1-1, is located at Mill Road Plaza and is in the Central Business Zoning District.

November 20, 2009—Planning Board Notice of Denial of Proposed Parking Expansion

Planning Board Notice of Denial

The Board carefully considered the arguments presented by the applicant and interested citizens both for and against, together with the purpose and specifics of the current zoning ordinance.

As stated at the Planning Board meeting of November 4, 2009, the motion to disapprove the applications stated that the applications were denied for the following reason(s):

- 1. Based on the advice of the Town Attorney, the Planning Board is not in the position to consider approval of this application without the owner first applying for approval of the existing leased spaces.*
- 2. The applicant has failed to address activities that were not approved by the Planning Board in 2002 such as clearing, excavating and grading.*
- 3. The 70 foot buffer approved on the original plan in 1978 is an important residential buffer and should be maintained as approved in the 1978 plan.*
- 4. The Planning Board is in agreement with the Durham Conservation Commission who finds that items 2-4 of Zoning Ordinance Section 175-61 are met assuming acceptance of the current existing conditions. The Commission has reservations regarding item one (1) which deals with alternative location/configuration for parking that could achieve the developer's needs while respecting the integrity of the wetlands buffer.*

See full Notice of Denial letter at:

www.dropbox.com/s/fpmvqy734zyhe05/Notice%20of%20Denial%20Mill%20Plaza%20Nov%202009.pdf?dl=0

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Resident Requests for Enforcement of Town Rules Regarding the Plaza Are Not Addressed

After the Planning Board denied the Plaza's parking expansion application, **Diane McCann, Oyster River**

Road, was among those resident requesting further action, to no avail. Writing to Town Administrator Todd Selig and two members of the Town Council, she wrote:

I was not able to attend the hearings re the plaza and the increase of parking spaces but Frank did. We have signed the petition and supported the presence of the lawyer for those in opposition to the increase of spaces.

I would like to know what is going to be done to fix the hillside and what can be done re the rental of the parking places in the plaza. If this business is allowed I would like to know how many spaces can be rented. If this enterprise is a business does the owner pay a tax on the business profits?

I would also like to know why there hasn't been any penalty to the owner for being non-compliant with the repair. If a home owner in Durham ignored laws and rules wouldn't there be a penalty? A fine depending on the situation? Why do we allow special consideration to the owner of the plaza? I am tired of the way business property owners seem to have a way of doing what they please while we home owners do our best to comply with the rules and regulations.

Can you please let me know what the plan is to follow up on this situation?

[LACK OF ENFORCEMENT UPDATE: As of mid-2018, the hillside remains in its damaged form, and the parking space rental business (about 100 spaces), continues unabated—and unlicensed.]

2010

June 23, 2010—Planning Board: Acceptance Consideration for Bank Drive-Thru

IX. Acceptance Consideration of an Application for Site Plan Review submitted by Jim Keenan, Atkinson, New Hampshire on behalf of Colonial Durham Associates, New York, New York and Federal Savings Bank, Durham, New Hampshire to construct a two-lane, drive-up banking facility for an existing bank. The property involved is shown on Tax Map 5, Lot 1-1, is located at 7 Mill Road Plaza, and is in the Central Business Zoning District.

July 14, 2010—Planning Board: Public Hearing on Bank Drive-Thru

V. Public Hearing on an Application for Site Plan Review submitted by Jim Keenan, Atkinson, New Hampshire on behalf of Colonial Durham Associates, New York, New York and Federal Savings Bank, Durham, New Hampshire to construct a two-lane, drive-up banking facility for an existing bank. The property involved is shown on Tax Map 5, Lot 1-1, is located at 7 Mill Road Plaza, and is in the Central Business Zoning District.

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July 26, 2010—Town Council Adopts Ordinance regarding composition of 3- and 4-story buildings

After a Public Hearing, the Town Council adopted Ordinance #2010-09 regarding the composition of 3- and 4-story buildings in the Central Business District. This ordinance allowed more flexibility regarding where in the building non-residential space might operate, with the goal of additional desired downtown commercial space being encouraged by **allowing 4-story buildings only if they have an additional floor's worth of non-residential space beyond what is allowed in 3-story buildings.** (Three story buildings may have up to two floors of residential over ground-floor commercial; a 4-story building has to have two floor of non-residential.)

ARTICLE XII Zone Requirements

175-41. Central Business District (CB)

F. Development Standards in the Central Business District

In addition to the dimensional standards, development in the Central Business District shall conform to

the following additional requirements:

7. **Maximum Height of Mixed-Use Buildings** – The height of a new or redeveloped mixed-use building that provides both residential and nonresidential space shall be a maximum of three (3) stories notwithstanding other height limitations. The first floor shall be nonresidential. However, if the building contains nonresidential uses on the first floor and one additional story of nonresidential, the maximum permitted height shall be four (4) stories except on the south side of Main Street. If the proposal is for a four (4) story building, the first floor shall be nonresidential and the remaining three floors shall consist of two residential and one nonresidential.

2011

June 6, 2011—Town Engineer Warned Durham about the Impaired Great Bay Estuary

“An overabundance of nutrients, principally nitrogen, has been identified as adversely impacting the water quality and natural habitat of the Great Bay Estuary to the point at which NHDES has listed the Great Bay as an impaired water body.” [College Brook, which has been negatively impacted by runoff from the Mill Plaza, leads to the Oyster River, which then joins with the Great Bay.]

2012

Michael Behrendt is hired as Town Planner for Durham in July. For brief bio, description of duties, and Planning Department “Mission Statement,” see: <https://www.ci.durham.nh.us/planning/durham-planning-department>

2013

UNH Struggling to Keep up Enrollments

In response to UNH Faculty complaints about the declining quality of incoming first-year students, some UNH officials selectively disclosed that UNH enrollment standards had dropped significantly in order to try to keep enrollment numbers up as the college-age population is dropping. In one chart given to members of the UNH Writing Committee, the percentage of first-year students in the top 25% of their high school class dipped dramatically from 73% in 2008-2009 to only 50% in 2012-2013. In recent years, UNH’s overall acceptance rates rose to 80%, challenging the definition of a selective, high-quality research university.

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Between 2011 and 2013, The Planning Board approved 1,835 new student housing “beds” in Durham

www.ci.durham.nh.us/boc_planning/planning-board-approvals-new-student-housing-developments-2013

[Capstone](#) – 619 beds of student housing

[Madbury Commons/17 & 21 Madbury Road](#) — 525 beds of student housing

[Orion/25-35 Main Street](#) – 197 beds of student housing

[Pauly's Pockets/49 Main Street](#) – 34 beds of student housing

[Peak Campus \(The Cottages\)](#) – 460 beds of student housing

*(These were in addition to 536 beds added between 2008 and 2011, for a total of **2,371** new beds since 2008.)*

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Strong sense among Durham residents that recent student housing has saturated market and taken over too much of the downtown leads to Town Council & Planning Board ordinance changes

In response to overwhelming sense from Durham residents that the Town had overbuilt for student housing and that other types of housing (such as senior and workforce) were needed downtown, the Council and

Planning Board moved in 2013 and 2014 to increase required space per unrelated occupant and to make housing in the Central Business District by "Conditional Use" only.

September 9, 2013—Town Council Reduces Number of Unrelated Occupants per 300sf from 1.5 to 1

ORDINANCE #2013-07 OF DURHAM, NEW HAMPSHIRE

A COUNCIL-INITIATED ORDINANCE AMENDING CHAPTER 175 "ZONING", ARTICLE II, SECTION 175-7 "DEFINITIONS" CHANGING TABLE II-1 "DWELLING DENSITY BY TYPE" SUCH THAT THE MAXIMUM NUMBER OF OCCUPANTS IN UNRELATED HOUSEHOLDS PER 300 SQUARE FEET OF HABITABLE FLOOR AREA IS CHANGED FROM 1.5 TO 1 FOR DWELLING TYPE "APARTMENT" (EXCLUDING THE ORLI AND MUDOR DISTRICTS) AND REMAINS UNCHANGED AT 1.5 FOR DWELLING TYPE "ACCESSORY APARTMENT"

[Excerpts]

WHEREAS, the current allowable maximum number of occupants in unrelated households per 300 square feet of habitable floor area is 1.5 for Dwelling Type "Apartment, including accessory apartments"; and

WHEREAS, the minimum lot area per Dwelling Unit in the Central Business District is 900 square feet; and

WHEREAS, the minimum lot area per Dwelling Unit when combined with the minimum habitable space encourages redevelopment in the Central Business District having Apartments of six or more occupants; and

WHEREAS, such Apartments appeal primarily to the student housing market due to the number of occupants and limited space; and

WHEREAS, a high number of students in redevelopments located in the Central Business District may have adverse impacts on Town services; and

WHEREAS, the 2000 Master Plan encourages construction of a variety of multi-unit housing with fewer bedrooms that reduces the impact on Town services; and

WHEREAS, increasing the habitable space per occupant in Apartments encourages Apartments with fewer bedrooms and thus better serves the Town by offering a variety of multi-unit housing that may reduce the impact on town services; and

WHEREAS, changing the habitable floor area for accessory apartments does not impact redevelopment and is not necessary;....

[The ordinance then describes the authority of the Town Council to make such changes and the movement of the ordinance between the Council and the Planning Board.]

NOW, THEREFORE BE IT RESOLVED that the Durham Town Council, the governing body of the Town of Durham, does hereby adopt Ordinance #2013-07 amending Chapter 175 "Zoning", Article II, Section 175-7 "Definitions" changing Table II-1 "Dwelling Density by Type" such that the maximum number of occupants in unrelated households per 300 square feet of habitable floor area is changed from 1.5 to 1 for Dwelling Type "Apartment" (excluding the ORLI and MUDOR districts) and remains unchanged at 1.5 for Dwelling Type "Accessory Apartment" as shown below.

The full #2013-07 Ordinance can be read here:

<https://www.dropbox.com/s/u7d2goo7vj54ooz/2013-07-Chap%20175%20Zoning%20Change->

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Council & Planning Board Act to Make CBD Housing by Conditional Use Only

(in order to “make properties more conducive to rental by families” and to control and limit the density of downtown student housing, which was seen as reaching or surpassing its tolerable & sustainable limit)

October 21, 2013—Town Council Recommends Zoning Changes to Planning Board AGENDA:

www.ci.durham.nh.us/sites/default/files/fileattachments/town_council/meeting/38951/oct_21_agenda.pdf

From the meeting minutes:

*Chair Gooze provided a brief overview on the purpose of the five Zoning changes that were proposed. It was noted that these changes could **make rental properties more conducive to rental by families**. Chair Gooze said **these changes reflected what residents were asking for**. [Emphasis added.]*

Mr. Behrendt said all five proposed Zoning changes addressed different needs, and together were a good package.

Councilor Lawson MOVED that the Durham Town Council does hereby, in accordance with Section 175-14 (B), refer to the Durham Planning Board for its review and study a proposed Council initiated ordinance to amend Chapter 175 "Zoning", of the Durham Town Code to:

- 1) Change Mixed Use Residential in the Central Business and Church Hill districts from permitted to conditional use;**
- 2) Modestly increase the minimum lot area per dwelling unit in the Central Business and MUDOR districts;**
- 3) Set the maximum number of bedrooms per dwelling unit in Multi-Unit and Mixed Use residences at four;**
- 4) Prohibit new basement dwelling units in Multi-Unit and Mixed Use residences; and**
- 5) Allow for flexibility in the arrangement of Nonresidential Uses in the Central Business district by conditional use to address the definition of "basement use" and the square foot amount per person in the Central Business and Church Hill districts.**

Councilor Carroll SECONDED motion.

Councilor Howland asked if there had been input from the developers who were doing the kinds of things the Council was trying to curb with these changes. Chair Gooze said no. Councilor Lawson said they would have the opportunity to speak about the proposed changes.

The motion PASSED 9-0.

See the full meeting minutes for the Town Council October 21, 2013, here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/town_council/meeting/38951/102113_0.pdf

A video of the October 21, 2013, Town Council discussion of this issue can be viewed here (04:20 on):

https://www.ci.durham.nh.us/sites/default/files/fileattachments/town_council/meeting/38951/102113_0.pdf

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From the November 13, 2013, meeting minutes:

Public Hearing - Proposed zoning amendments initiated by Town Council on October 21, 2013:

Recommended action: Vote to support...

A. Change Mixed Use Residential in the Central Business and Church Hill districts from permitted to conditional use;...

*Mr. Behrendt said Town Council Chair Jay Gooze, Councilor Lawson and Councilor Carden Welsh had initiated these Zoning changes. He said some of this was driven by **some fairly broad concerns in Town about the amount of student housing that had been built over the last few years.** He also noted **Councilor Lawson's analysis, which had indicated that the supply of student housing would potentially be exceeding demand in the coming years.** [Emphasis added.]*

*Mr. Behrendt said **the proposed Zoning changes were intended to recalibrate things so the Town would see more incremental growth in student housing.** He briefly reviewed the Zoning changes proposed, and said A-D were motivated largely by this but by other concerns as well. He said A was a good proposal, and said conditional use would allow the Planning Board a fair amount of judgment in terms of allowing student housing as part of mixed use applications.... [Emphases added.]*

Councilor Lawson said he had looked at a lot of data regarding the supply and demand of student housing in Durham, and said it justified the Zoning changes being recommended. He said he was very comfortable with the changes proposed regarding density, and said he personally didn't believe that 8 unit student apartments served the community well....

He said they were getting to the point where there should be less concern about the percentages of commercial space in a project and more concern about where the commercial space would be located so that it would serve the community and would be the most viable. He noted that the Town needed to move forward with these Zoning changes as quickly as the changes they had been seeing taking place in the community.

Chair Kelley said that regarding A, the conditional use process allowed the Planning Board to provide more influence and authority in regard to an application.

Mr. Parnell asked whether with B, the Council was thinking in terms of affecting the density of projects or affecting the economics of projects.

*Councilor Lawson said any time there was a change in the allowed density of dwelling units, this changed the economics, but he said he didn't believe this Zoning change would change the economics to the point where re-development was no longer viable. He said it would however put developers in the position where they would pay a lot more attention to the viability of the commercial space in a development, and wouldn't treat it as an afterthought as had happened in the past. He said this Zoning change would get them to where commercial and residential space were both important to the viability of a project, and said developers would therefore spend more time considering how to make the commercial space work. **He noted that there was a great concern in the community about the density of student housing. Mr. Behrendt said a flaw of the existing Zoning Ordinance was that it didn't control density very well.** He said a typical Zoning Ordinance managed density by setting the maximum number of dwelling units per acre. He said by setting a maximum of 4 bedrooms per dwelling unit, the Town would be able to manage density more accurately than had previously been the case. [Emphasis added.]*

David Williams *MOVED* to open the Public Hearing on Proposed Zoning amendments A- E initiated by the Town Council on October 21, 2013. Andy Corrow *SECONDED* the motion, and it *PASSED* unanimously 7-0.

Council Chair Jay Gooze said he and the other two Councilors who had developed the proposed Zoning changes had been in constant touch with members of the community as part of this process. He said the proposed changes reflected the sense that a limit had been reached in terms of the density of student housing that was good for the downtown.

He noted that each “Whereas” in the Resolution provided a reason why the Council thought a proposed Zoning change was important. He said the Council voted unanimously to recommend these changes to the Planning Board, and he urged the Board to send them back to the Council with their recommendation....

Councilor Lawson *MOVED* to close the Public Hearing. David Williams *SECONDED* the motion, and it *PASSED* unanimously 7-0....

Chair Kelley suggested that the Board go through each of the proposed Zoning changes and vote on them individually.

A. Change Mixed Use Residential in the Central Business and Church Hill districts from permitted to conditional use.

Mr. Williams said he thought this Zoning change would empower the Planning Board to consider what was going on with a particular site. Others Board members were also in favor of the Zoning change.

Councilor Lawson *MOVED* to recommend to the Town Council that it approve the Amendment to the Table of Uses to change Mixed Use Residential in the Central Business and Church Hill districts from permitted to conditional use. David Williams *SECONDED* the motion, and it *PASSED* unanimously 7-0.

See full minutes for the November 13, 2013, Planning Board meeting here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/38991/111313_1.pdf

Watch the video of the November 13, 2013, Planning Board meeting on Conditional Use CBD housing here:

<https://dcat22.viebit.com/player.php?hash=b1c32d1c9d1773d6d750c4308e3eeee3#>

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December 2 & 16, 2013—Town Council First Reading, Public Hearing, & Passing of Ordinance 2013-10

Following up on the meetings above, the Town Council had a “first reading,” scheduled a Public Hearing (at which no one spoke) and passed Zoning Amendment article #2013-10 below, which (among the other changes listed) changed housing in the Central Business District (including the Mill Plaza site) from “permitted” to by “Conditional Use Only.”

The minutes from the December 2 & December 16 Town Council Meetings can be read here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/town_council/meeting/39041/120213_0.pdf

https://www.ci.durham.nh.us/sites/default/files/fileattachments/town_council/meeting/39091/121613_0.pdf

ORDINANCE #2013-10 OF DURHAM, NEW HAMPSHIRE

A COUNCIL- INITIATED AMENDMENT TO CHAPTER 175 “ZONING” OF THE DURHAM TOWN CODE TO:

- 1) CHANGE MIXED USE RESIDENTIAL IN THE CENTRAL BUSINESS AND CHURCH HILL DISTRICTS FROM PERMITTED TO CONDITIONAL USE;**
- 2) MODESTLY INCREASE THE MINIMUM LOT AREA PER DWELLING UNIT IN THE CENTRAL BUSINESS AND MUDOR DISTRICTS;**

- 3) SET THE MAXIMUM NUMBER OF BEDROOMS PER DWELLING UNIT IN MULTI-UNIT AND MIXED USE RESIDENCES AT FOUR;
- 4) PROHIBIT NEW BASEMENT DWELLING UNITS IN MULTI-UNIT AND MIXED USE RESIDENCES; AND
- 5) ALLOW FOR FLEXIBILITY IN THE ARRANGEMENT OF NONRESIDENTIAL USES IN THE CENTRAL BUSINESS DISTRICT BY CONDITIONAL USE

[Excerpts]

WHEREAS, there has been tremendous growth in the number of beds created for student housing in recent years as a result of changes in the Zoning Ordinance enacted years ago to encourage new growth of student housing; and

WHEREAS, the goals of the former zoning changes have been more than met through this recent growth in student housing; and

WHEREAS, a report written by James Lawson titled Estimating Off-Campus Student Housing Supply and Demand examines in detail the number of new student housing units created in recent years and the balance between supply and demand and concludes, among other things, that “the supply of beds in the fall of 2014 and 2015 is expected to exceed the need for off-campus housing” and “slowing the pace of student housing redevelopment allows Durham to better assess how the new housing supply is absorbed into the market.”; and

WHEREAS, a market where the supply and demand are out of balance can have significantly harmful consequences, including high vacancy rates, deterioration of property, and depressed property values; and

WHEREAS, student housing can have substantial impacts (both positive and negative) upon the dense downtown areas and it is appropriate that proposed developments be reviewed under the conditional use criteria in order to minimize adverse impacts; and....

WHEREAS, the Town Council may initiate Zoning Ordinance amendments in accordance with Section 175-14 (B) of the Durham Zoning Ordinance which states: “*The Town Council may, upon its own initiative, from time to time, consider changes to the Zoning Ordinance, including its overlay districts. All such Council-initiated changes shall be referred to the Planning Board for its review and study. The referral shall be made in writing by the chair of the Town Council. The Planning Board shall, after following the public notice and hearing requirements contained in Subsection D below, submit a recommendation regarding the changes to the Town Council members within sixty (60) days of their referral*”;

WHEREAS, the Town Council desires to move forward with the proposed Zoning Ordinance amendments presented below....

PASSED AND ADOPTED by the Town Council of the Town of Durham, New Hampshire this 16th day of December, 2013 by Eight (8) affirmative votes, Zero (0) negative votes, and Zero (0) abstentions.

See full Ordinance 2013-10 document here:

<https://www.dropbox.com/s/fca5rad7y0v9daq/2013-10%20Chap%20175%20Change-Council%20Initiated.doc?dl=0>

With this vote, Plaza housing would be subject to Conditional Use criteria Zoning Article, as excerpted here:

2. External impacts: *The external impacts of the proposed use on abutting properties and the neighborhood shall be no greater than the impacts of adjacent existing uses or other uses permitted in the zone. This shall include, but not be limited to, traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting*

and glare. In addition, the location, nature, design, and height of the structure and its appurtenances, its scale with reference to its surroundings, and the nature and intensity of the use, shall not have an adverse effect on the surrounding environment nor discourage the appropriate and orderly development and use of land and buildings in the neighborhood.

3. *Character of the site development:* *The proposed layout and design of the site shall not be incompatible with the established character of the neighborhood and shall mitigate any external impacts of the use on the neighborhood. This shall include, but not be limited to, the relationship of the building to the street, the amount, location, and screening of off-street parking, the treatment of yards and setbacks, the buffering of adjacent properties, and provisions for vehicular and pedestrian access to and within the site.*
4. *Character of the buildings and structures:* *The design of any new buildings or structures and the modification of existing buildings or structures on the site shall not be incompatible with the established character of the neighborhood. This shall include, but not be limited to, the scale, height, and massing of the building or structure...*
5. *Preservation of natural, cultural, historic, and scenic resources:* *The proposed use of the site, including all related development activities, shall preserve identified natural, cultural, historic, and scenic resources on the site and shall not degrade such identified resources on abutting properties. This shall include, but not be limited to, identified wetlands, floodplains, significant wildlife habitat, stonewalls, mature tree lines, cemeteries, graveyards, designated historic buildings or sites, scenic views, and viewsheds.*
6. *Impact on property values:* *The proposed use will not cause or contribute to a significant decline in property values of adjacent properties....*
8. *Fiscal impacts:* *The proposed use will not have a negative fiscal impact on the Town unless the Planning Board determines that there are other positive community impacts that off-set the negative fiscal aspects of the proposed use. The Planning Board's decision shall be based upon an analysis of the fiscal impact of the project on the town. The Planning Board may commission, at the applicant's expense, an independent analysis of the fiscal impact of the project on the town.*

As noted in the preface to the Article on Conditional Use Permits:

Further Conditions may be placed on the Conditional Use Permit by the Planning Board to ensure that the Conditional Use will have a positive economic, fiscal, public safety, environmental, aesthetic, and social impact on the town.

See **Durham's Full Conditional Use Permit Criteria**

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/21491/article_vii.pdf

2014

April 2014—CDA Met with Durham Officials to Notify Them of General Plaza Redevelopment Plans

Representatives of Colonial Durham Associates met with Town Planner Michael Behrendt and Town Administrator Todd Selig to alert the Town that CDA was beginning the process of redeveloping the Mill Plaza. CDA engaged a private design and engineering team over the summer to initiate redevelopment plans.

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September 4, 2014—Town Officials Met with CDA to Get Update on Redevelopment Plans

At the request of Town officials, CDA representatives met with Town Planner Michael Behrendt, Administrator Todd Selig, and Economic Development Coordinator Mary Ellen Humphrey to discuss Plaza redevelopment plans. Per a later CDA lawsuit against Durham, Town officials "had strongly encouraged" CDA to "engage in

public disclosure, conceptual consultations, and charrette-style planning discussions.” As CDA later summarized in its lawsuit: “At the September 4th Meeting, Petitioner’s [CDA’s] representatives disclosed the proposed plan for the Mill Plaza, which then mixed 120 residential apartments with substantial retail and commercial redevelopment, among other environmental and aesthetic enhancement and features. The residential apartment were not proposed with any age, family or other tenant restrictions, but were likely to appeal to young adults, university students, and unrelated households, such as young unmarried couples” [Summons, pp. 5-7].

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September 8, 2014—Town Council Agenda Amended to Include Mill Plaza Redevelopment Discussion

From the September 8, 2014, Council meeting minutes:

Councilor Howland said he would be interested to hear about the potential large scale redevelopment of Mill Plaza. He said there had been a lot of [student housing] development in Durham since the work the Mill Plaza Study Committee had done in 2007-2008. [Howland had chaired that committee.] He noted that consensus had been built at that time around a possible development project. He said it was important to ask about the wisdom of additional large scale housing projects in the downtown at this point....

Administrator Selig described in some detail the design concept the owner of Mill Plaza had in mind for the property, including the proposed commercial use of the existing front building on the site as well as commercial and residential uses in new buildings on the site. He noted that the back of the site was primarily ledge, and said the Mill Plaza people were evaluating whether it made sense to put an additional structure there to house students and provide parking.

*He said he didn’t know when the design concept would be presented. **He noted that the Mill Plaza owner was asked if he was aware of the housing analysis that indicated that Durham appeared to be at capacity in terms of student housing. He said the owner said Mill Plaza had a good location for the student housing so perhaps beds elsewhere might not be filled.*** [Emphasis added.]

*Administrator Selig said the Mill Plaza group asked if there was an objection to opening up Chesley Drive. He said from a transportation perspective, it made sense to do this in order to provide an outlet for traffic, and he noted that some of the Mill Plaza merchants would be interested in this. But he said he had told the Mill Plaza people that there would be tremendous opposition from the community to opening up Chesley Drive, and also said they should get guidance from the Planning Board on this. **He said Mr. Behrendt told the Mill Plaza people that the community would likely look negatively on this much additional housing, and encouraged them to look at the housing studies that had been done.*** [Emphasis added.]

Administrator Selig said the Mill Plaza group was moving toward a conceptual conversation with the Planning Board in the next 1-2 months. He said it appeared that there would be 90-100 units, and 300-400 beds. He said the only change to building one would be a new façade, and said there would be no additional floors. He said an addition to it for student housing would contain three stories, and said it would have possible access onto the park area. He said he’d challenged the Mill Plaza group to do the development without residential uses, but said they weren’t interested in this. He said the economic driver for the project was student housing.

The full minutes for the September 8, 2014, Town Council meeting can be reviewed here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/town_council/meeting/40691/090814.pdf

A video of the September 8, 2014, Town Council meeting can be watched here:

<https://dcat22.viebit.com/player.php?hash=4388469c12f4637e7da125b44a3e54ed>

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Change in Table of Dimensions for Housing (from 300sf per person to 600sf per person)

(proposed September 10, 2014; approved December 1, 2014)

September 10, 2014—Planning Board Proposed Doubling Square Footage for Unrelated Occupants

This was a fateful Planning Board meeting. One of its outcomes led eventually to a lawsuit against the Town of Durham by Colonial Durham Associates, owner of the Mill Plaza.

The Board first dealt with seven agenda items (including five brief Public Hearings). Then, toward the end of the meeting, in the “Other Business” section and after a motion was passed 6-1 to extend the meeting past 10:30 pm, Julian Smith, the Council representative on the Planning Board, suggested that the Planning Board initiate a zoning change. As described in the meeting minutes:

Councilor Smith said he would like the Planning Board to initiate a change in the minimum floor area per resident in the Central Business district, Churchill District and Professional Office district from 300 sf to 600 sf. He said the purpose of this was that if anyone wished to develop any more housing in the downtown area, it would be attractive to families and married couples. He said the 600 sf requirement per resident would apply only to unrelated individuals.

Councilor Smith explained that the Council regretted having made some Zoning changes a few years back to try to develop new commercial space downtown, and making it financially attractive to do this by giving them two stories of apartment space. He said some members of the Council would now like to see a doubling of the minimum floor area in unrelated households. He said this was not a Council initiated Zoning change, and said he was suggesting that the Planning Board do this.

Councilor Smith MOVED that the Planning Board initiate a proposed Zoning change to amend the Table of Dimensional Controls to change the maximum number of occupants in unrelated households in 300 sf of habitable floor space from 1 to 0.5, and schedule a Public Hearing for October 8, 2014. Richard Kelley SECONDED the motion.

Mr. McGowan said the Planning Board was doing this at 10:30 pm and asked why the Board couldn't discuss this next week instead. Mr. Parnell said he would second that comment. Ms. Tatarczuch said she agreed. Mr. Williams asked what the sense of urgency was.

Councilor Smith said if this was done now, the Planning Board was closing a gate. He said that was why he would like the clock to start ticking now, as soon as the public hearing was voted on.

Mr. Kelley said the Board would simply be considering this proposed Zoning change, and nothing would be final yet. He said it was important to start considering it, and noted that there was a lot of development going on in Town right now. He said he would like to see what occurred with that before allowing any more development, and said this was a tool to allow them to do this, rather than a prohibition on new building permits in these districts, which was something he didn't support. He said he supported the motion.

There was discussion that this was getting the ball rolling in order to be able to discuss whether this proposed Zoning change was a good thing for the Town. There was further discussion on doing this now as opposed to in a week or so.

The motion PASSED 5-2, with Bill McGowan and Lorne Parnell voting against it.

The minutes for the September 10, 2014, Planning Board meeting can be read here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/44271/091014.pdf

A video of the September 10, 2014, Planning Board meeting can be viewed here (Smith proposal at 03:38:30):

<https://dcat22.viebit.com/player.php?hash=cf322008d30af7bc1b6e304472bf946#>

Colonial Durham Associates protested the timing of the proposed amendment, arguing that the suggested zoning change was targeting the Mill Plaza Redevelopment in particular, since CDA had met with the Town prior to filing a formal application for Plaza redevelopment. Councilor Smith, in contrast, argued that the proposed amendment had been previously discussed in Town as a general idea that was merely the next step in an ongoing process of reaction to the explosion in the number of student beds since 2008 (close to 2,400), with the supply of available beds in town exceeding demand.

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CDA PLAZA REDEVELOPMENT SITE PLAN #1 (Sept. 12, 2014)

September 12, 2014—CDA Submits Proposed Redevelopment Site Plan & Design Review Application

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/proposed_site_plan.pdf

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/application_25.pdf

The proposed project consists of the redevelopment of the Mill Road Plaza to include an addition to the existing Durham Market Place building, two new mixed use commercial/residential buildings and a separate bank with drive-thru outparcel. The project will include 120 residential apartments, and approximately 44,110 sf of new commercial space. The development will also include parking, landscaping and utilities to support the project.

The submitted design (just a single black and white line drawing, as in link above) showed a new structure between the Works Bakery Café and the Mill Road sidewalk, the area where there are five picnic tables and five mature trees. (This new structure would destroy the only green space in the Plaza with shade trees, and eliminate the only public spot for sitting at tables and eating). In addition to the new Mill Road building replacing the green space, the plan proposed a bank building along Mill Road with a drive-thru window, and the plan seemed to be designed for 480 student beds. Some of the plan's buildings and pavement were within the wetland setback,

The Planning Board was scheduled to receive more information about the project on October 8th, 2014, (meeting in the Durham Public Library) and have some preliminary discussions with the developer and among members of the Board. Also scheduled was a Public Hearing on October 22, 2014, where people with an interest in the redevelopment would be able to express their thoughts about the proposal for the consideration of the Board and the applicant alike.

[NOTE: Mixed-Use development and redevelopment in the Central Business District is subject to Conditional Use, per Durham Zoning Section 175-53, Table of Land Uses, which lists all mixed-uses as Conditional Use.]

Again, the criteria for Conditional Use are described here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/21491/article_vii.pdf

Durham's Planning Department Conditional Use Application, Application Checklist, and Conditional Use Compliance Checklist are posted with other forms here: <https://www.ci.durham.nh.us/planning/durham-planning-department>

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Friday Updates: September 12, 2014 & September 19, 2014—Rite Aid Will Remain in Mill Plaza

Durham's "Friday Updates" discussed status of the Purchase & Sales Agreement with Scott Mitchell for the old Town Office Site. Mitchell had until September 1, 2014, to obtain redevelopment permits, and he had not done that. "In addition, Mr. Mitchell had been working with Rite Aid (presently located at the Mill Plaza) to move to the 15 Newmarket Road location but Rite Aid informed him on September 1st that it will remain in its present

location desiring to be part of a redevelopment at the Mill Plaza instead which is presently under development by the Mill Plaza owner. Mr. Mitchell has approached other pharmacies with whom he does business to find another user for the site. It will take time for Mr. Mitchell to gain approval from another pharmacy for a project on the site.”

[Note in relation to the later (August 2017) CDA-requested drive-thru variance for the in-Plaza Rite Aid: Had Rite Aid moved in 2015 from the Mill Plaza to a new store at the site of the old Town Office, there might have been at least a little less resident resistance to a variance for a drive-thru pharmacy for Rite Aid in that location, since that new Rite Aid would have been on a major commuter road and not have been in the middle of a pedestrian-heavy downtown-core site such as the Mill Plaza, where, in addition, the proposed drive-thru was near the foot/bike path along College Brook and within sight, sound, and smell of Brookside Commons residences. Of course, what would have then happened with the Rite Aid site within the Plaza is not known.]

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September 16, 2014—Planning Department Published Notice of Proposed Density Zoning Amendment

[In its subsequent ZBA appeal and then lawsuit, CDA contended that the Durham Planning Department purposely manipulated the dates of legal notices so that the date of the zoning amendment notice to increase minimum habitable space for unrelated occupants preceded the September 26, 2014, legal notice of the Plaza redevelopment design, in an attempt to undermine the Plaza’s vesting in the prior zoning ordinance.]

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Sept. 17, 2014: Planning Board—Comments on Mill Plaza / Need for More Downtown Senior Housing

Excerpts from September 17, 2014, meeting minutes follow, starting with two Public Comments on Mill Plaza:

Councilor Robin Mower, Faculty Road, noted that several members of the Planning Board were not on the Board in 2006-2008, when the Mill Plaza Study Committee was in existence and issued a report, and she urged Board members to read it. She said residents were seeing a change in the face of the downtown, and said many people were aware that Mill Plaza might be redeveloped. She said the report was a joint effort of many people and would shed light on what the community valued downtown and on what could possibly go there. She read from the Executive Summary of the report, including some of the recommendations

*Councilor Wayne Burton said he’d **spoken to most of the people with businesses in the back building at Mill Plaza, and said they had no warning that the design review application was coming and that as part of what was proposed the building would come down.** He provided details on the fact that the owner of the fitness center there had recently invested a significant amount of money in his business. He asked the Planning Board to keep an eye on the businesses there and make sure that they were taken care of, and were heard concerning the proposed development.*

MPAC Presentation. *Presentation by Molly Donovan, chair of the Master Plan Advisory Committee, and Strafford Regional Planning Commission on **information related to housing, demographics, and existing land use in Durham....** She said the MPAC had looked at this data - on where Durham had been, where it was now and projections for the future and agreed that it should be shared. SRPC planner Matt Sullivan provided an overview of the Housing and Demographics chapter.... [Emphasis added.]*

Housing Preference and demand evolution

*Mr. Sullivan said home ownership was declining in Durham.... **He said the older population wanted to live in downtown areas and closer to the services needed as people age....** He said Durham’s existing housing stock might not be flexible enough as the age demographics changed. He said competition between older and younger generations for single-family homes and rental units in areas adjacent to community centers could create excessive demand on those homes. He said a question was how additional housing like this would be provided, and said communities might consider implementing ordinances and regulations that*

allowed for innovative re-purposing, retrofitting, and redevelopment of homes. [Emphasis added.]

Additional information on the aging of the baby boom population [Emphases added]

> **Aging of baby boomers is expected to result in a doubling of the senior population by 2030; housing occupancy by seniors will double**

> **Seniors choose to age in place - only 3% of NH seniors move annually to other states....**

> Ability of seniors to remain in their community is directly related to factors such as income, healthcare, housing stock, and housing cost burden.

> 75% of the state's senior population lives in suburban or rural areas, which typically lack access to key services and amenities such as healthcare and food. **Downsizing seniors are searching for housing in downtown areas and want close proximity to these vital services**

> Much of the existing community center housing stock is older and not senior friendly

> **How can Durham design and retrofit its housing for seniors with and without disabilities....**

> Can seniors afford to stay in Durham, with increasing taxes and real estate costs....

> Assisted living demand will rise - elder housing was a focus of the 2000 Master Plan, and it should be a focus of the updated Master Plan as well....

> A comment from the Master Plan survey: **"Policies are needed that allow seniors on limited fixed income to stay in Durham."**

The full minutes for the September 17, 2014, Planning Board Meeting can be reviewed here:
www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/44281/091714.pdf

See more on the Master Plan survey here:
www.ci.durham.nh.us/sites/default/files/fileattachments/planningandzoning/09172014_hdpresentation_0.pdf

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SITE PLAN REGULATIONS APPLICABLE TO MILL PLAZA—September 17, 2014

This document applies only to the Mill Plaza project. It contains provisions that were noticed for the original public hearing scheduled for October 22, 2014 and which survived into the final document that was adopted by the Planning Board on September 9, 2015. In several locations where language was changed slightly in the adopted version the change is noted for consideration. [Emphases below added.]

Article 3. Purpose: *The purposes of these Regulations are to:*

1. *Further the safe and orderly development of the Town*

2. *Promote sustainable design and development that supports long-term economic vitality and ecological integrity;*

3. ***Achieve high-quality site appearance that conserves and protects natural resource systems, helps to reduce infrastructure costs, conserves energy, and provides for a pleasant, walkable environment for the future users and residents;***

4. Encourage site design techniques that protect water quality and natural hydrology, prevent increases in the quantity of stormwater runoff, and manage stormwater runoff at the source;
- 5. Protect abutters against hazards, unsightliness, and nuisances detrimental to property values;**
6. Ensure that development of land is appropriate for the public and private services and facilities available;
- 7. Ensure that pedestrian, bicycle, vehicular circulation, and public transit can be accommodated in a safe manner;**
8. Preserve and enhance the historic and cultural character of the community;
9. Encourage attractive, harmonious, and high-quality design that is compatible with the architectural heritage of Durham, New Hampshire, and New England;
10. Prevent scattered and/or premature development; and
11. Include such provisions as will tend to create conditions favorable for health, safety, convenience and prosperity.

Article 4. Compliance

Compliance with these Site Plan Regulations does not relieve the applicant from compliance with the Zoning Ordinance, Subdivision Regulations, Building and Fire Codes, Historic District Ordinance, specifications of the Department of Public Works, or any other local, state, or federal ordinance, regulation, code, or statute that pertains to the proposed development. **The standards contained in these regulations shall be interpreted as minimum requirements, and compliance with these minimum requirements shall not obligate the Planning Board to approve any particular application solely on that basis. The Planning Board may at its discretion require higher standards in individual cases or may waive certain requirements for good cause in accordance with the procedures outlined in these regulations. Only after the Planning Board is reasonably satisfied that a proposed application complies with all pertinent requirements of the Site Plan Regulations and other applicable requirements and objectives, will the application be approved.** [“will” in the last sentence changed to “may” in the adopted regulations]

The above excerpts are from 11 pages of Part I, regarding the “Purpose” of the regulations. See: https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/19061/part_i_-_site_regs_-_mill_plaza_project.pdf (pp. 3-8)

All three parts of the Site-Plan Regulations applicable to the Mill Plaza (including 12 pages on the “Review Process” and 86 pages of “Development Standards”) can be reviewed here: https://www.ci.durham.nh.us/boc_planning/site-plan-regulations-pertain-mill-plaza-development

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September 26, 2014—Planning Department: First Legal Notice for Plaza Design Review

[As noted earlier, CDA claimed that this notice was purposely delayed by the Planning Department to undermine the Plaza’s vesting in the prior zoning that permitted only 300 sf per unrelated occupant.]

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October 8, 2014—Planning Board Meeting with Two Major Plaza-Related Agenda Items

**Public Hearing on Habitable Square Footage and
First Review of Mill Plaza Redevelopment Plan**
(Held in the Community Room in the Durham Public Library)

IX. Mill Plaza Redevelopment. Design Review for partial redevelopment of Mill Plaza Shopping Center site including 44,110 square feet of new commercial space, with an addition to the existing Durham Marketplace building, two new mixed-use buildings, a separate bank with drive through, 120 residential apartments, and other site changes. Colonial Durham Associates, LP, c/o John Pinto, owner. Joseph Persechino, Tighe & Bond, Design Engineer. Adam Wagner, DeStefano Architects, Architect. Tax Map 5, Lot 1-1. Central Business Zoning District. Recommended action: Discussion and continuation to October 22 for public hearing.

Public Hearing on Proposed Change in Habitable Floor Area per Resident

On October 8, 2014, the Planning Board held a **public hearing on the proposed zoning amendment** to change the habitable floor area in Durham apartments from 300 sq. ft per occupant to 600 sq. feet per occupant. It also held a preliminary design review for major redevelopment of the Mill Plaza.

At the Public Hearing, two members of the public spoke against the proposed zoning amendment, and five members of the public spoke in favor of it.

Those opposed to the zoning amendment:

Ashlee Iber Amenti, Executive Director of the Workforce Housing Coalition of the Greater Seacoast, argued that the zoning change would make it more difficult for young adults to afford housing in Durham. Chair Wolfe and Councilor Smith offered responses and Ms. Amenti responded to those responses.

Luci Gardner, Durham Point Road, suggested that instead of this amendment, the Planning Board should institute a temporary moratorium on student housing. “Chair Wolfe said legally the Planning Board couldn’t create a moratorium and single out student housing. There was discussion on this with Ms. Gardner.”

Those in favor of the zoning amendment:

Beth Olshansky, Packers Falls Road; Annmarie Harris, Oyster River Road; Peter Andersen, Chesley Drive; and Joshua Meyrowitz, Chesley Drive, all spoke in favor of the Amendment. The themes covered included the coming “demographic bubble” in housing needs for seniors who wanted to downsize and be downtown; UNH’s enrollment trends suggested no need for additional student housing, particularly now that almost 2,400 new student beds has already been built in town since 2008; and the wisdom of having a variety of apartment sizes in town (with many small apartments already recently built).

The longest comment was by **Jim Lawson of Deer Meadow Road**, who gave this verbatim statement urging the passing of the habitable space amendment [emphases added]:

*“I have **two primary concerns** when I evaluate a proposed amendment like this. The first is **whether the change is likely to achieve the intended result** or is it so restrictive that it is the same as making the use not permitted in our Table of Uses. The second is **how the change will affect our downtown and community**, but evaluating that in the context of the state RSAs for Planning and Zoning. To evaluate the first consideration requires information. And while I can’t shell out the \$1,500 or more for the market reports available from groups like the National Multifamily Housing Council, there is still good information available from the US Census Bureau that includes their data on 2013 multiunit construction. That data can be coupled with information from a sampling of new multi-unit apartments in New Hampshire to help form an opinion about whether this change can fulfill the intent and align Durham with what is happening elsewhere or whether the change really precludes mixed-use and multi-unit development. [Emphasis added.]*

“My conclusion is that this change does not prevent multiunit or mixed use development, and that it does better align Durham with the broader market. Let me explain. Census Bureau data continues to show that the multiunit occupant density in Durham is far greater than in other communities – even with previous zoning changes. Economics and ROI really provide an incentive for developers to cram as many people as possible into small downtown Durham apartments. This zoning amendment does align Durham multiunit housing to what was being built elsewhere during 2013 – specifically densities of 600 to 700 square feet per bedroom based on Census Bureau data. It is also consistent with what is being seen in other New Hampshire

communities based on a sample, albeit unscientific, of recent multi-unit developments. So my conclusion is that this change does not preclude Durham multiunit or mixed-use development, and it does better align multiunit apartment characteristics with what is being built both in our region and nationally.

“To answer the second concern requires thinking about the stated purpose of RSA 672⁴ which allows municipalities to use zoning to meet the demands of an evolving and growing community with regulations intended to enhance public health, safety and general welfare. Durham is a community of 7,000 permanent residents and we have finite resources, including our police and fire services, that are delivered at a very high cost compared to other communities. The core area of the downtown places a disproportionate demand on these services. For example, nearly 40% of emergency fire and rescue calls in Durham (off the UNH Campus) during 2011 were to the downtown areas with housing attractive to only students. Nearly 50% of non-emergency calls were to this area. Durham police arrests are 5-10 times greater when UNH is in session compared to January and June when the UNH is out of session. Data collected and distributed by the town planner clearly shows that the supply of student housing is aligned with demand, and now is the time to align our zoning so that multiunit housing addresses a broader market with less impact to our public safety and other services. This amendment starts that process. I urge you to move forward with it.” [Emphasis added.]

After discussion (with some Board members questioning the manner in which the amendment had first been proposed—in the “New Business” section at the end of a Planning Board meeting on September 10, 2014), the habitable space amendment (increase to 600 sf per person) passed by a vote of 5 to 2. (Those voting in favor of it were: Peter Wolfe, Planning Board Chair; Julian Smith; Andrew Corrow; Linda Tatarczuch; and David Williams. Those opposed (largely for procedural reasons) were: Lorne Parnell and William McGowan,

The new ordinance includes the following justifications (among others):

WHEREAS, a high numbers of students in developments may have adverse impacts on Town services and town character; and

WHEREAS, the 2000 Master Plan encourages construction of a variety of multiunit housing types: and

WHEREAS, increasing the habitable space per occupant in Apartments encourages Apartments with fewer bedrooms and more space per occupant and thus better serves the Town by likely offering a variety of multi-unit housing that may reduce the impact on town services; and

WHEREAS, there has been an enormous amount of new residential multi-units built in recent years thereby causing significant concern about overbuilding of these units and the numerous potential adverse impacts of great numbers of students living in the core downtown areas; and

WHEREAS, since 2008 the Town has approved new student housing developments with a total of 2,371 occupants/beds/bedrooms. All of these projects have been built or are currently under construction; and....

WHEREAS, the Planning Board may initiate Zoning Ordinance amendments in accordance with Section 175-14 (A) of the Durham Zoning Ordinance which states: “The Planning Board may, upon its own initiative, from time to time, consider amendments to the Zoning Ordinance, including its Overlay districts, and submit recommendations thereon to the Town Council....

With this Planning Board vote, the proposed Zoning Ordinance on increasing the habitable square footage per unrelated occupant was sent to the Town Council for consideration. (See the December 1, 2014, listing below.)

⁴ See RSA 672 here: <http://www.gencourt.state.nh.us/rsa/html/LXIV/672/672-mrg.htm>

The full minutes for the October 8, 2014, Planning Board meeting can be reviewed here:
www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/44291/100814.pdf

A video of the October 8, 2014, Planning Board discussion of habitable s.f. for unrelated occupants can be viewed here from 00:9:35 to 00:57:23: <https://dcat22.viebit.com/>

The Zoning Ordinance approved at this meeting is posted here:
https://www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/page/15881/2014_ordinance_to_increase_habitable_area_for_apartments.pdf

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October 8, 2014—Preliminary Planning Board Review of Mill Plaza Redevelopment Plan #1

At the same October 8, 2014, meeting, the Planning Board also considered a design review application submitted by Colonial Durham Associates (CDA), proposing a major redevelopment of the Mill Plaza site. The proposal was for 44,110 square feet of new commercial space and 120 residential apartments on the upper floors of some of the new buildings. The plan would add new buildings and appeared to include up to 480 beds of student housing.

To the surprise (and disappointment) of many members of the public, the plan also included adding a 4-story building (retail below three stories of student housing) crammed into the space between the Durham Marketplace and the Mill Road sidewalk. (Such a building would eliminate the only true green space in the Plaza with mature trees and public picnic tables, in contradiction to all prior recommendations to enhance, rather than diminish, “green space” in the Plaza. Additionally, such a building would not meet the Town’s regulations, since four-story buildings are allowed only if there are two stories of commercial space.) Moreover, some of the overall plan’s proposed buildings and pavements would infringe on the 75-foot wetland buffer.

To view the one sheet diagram of the proposed redevelopment, click on:
www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/proposed_site_plan.pdf

Planner’s Report for October 8, 2014 Meeting:

Town Planner Michael Behrendt, who was on vacation during the October 8, 2014, meeting had sent his comments on the plan in advance. He noted some favorable aspects of the plan, including “turning the rear building perpendicular to the existing front building will create a much better sense of space; the landscaping will be improved; there is potential to create harmonious pedestrian circulation through the site, the proposed bank as an outbuilding will reinforce the streetscape along Mill Road; the Durham Marketplace building will get a new design and an addition to front Mill Road.”

But the Town Planner added that the Planning Board “will certainly want to evaluate the proposal to add 120 residential apartments to accommodate 480 residents very carefully.” The Planner noted that the application would be subject to a pending amendment to the Zoning Ordinance to increase the minimum habitable area per occupant from 300 sf to 600 sf unless the amendment is ultimately rejected.

Additionally, “**Multi-unit dwellings are permitted by conditional use only, so the applicant would need to satisfy the eight criteria for multi-unit dwellings to be approved.**” [Emphasis added.]

The Planner’s report for the October 8, 2014, Planning Board meeting can be read here:
www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/planners_recommendation.pdf

Regarding the **preliminary design review for the Mill Plaza** at the meeting, Planning Board members expressed enthusiasm for the general idea of redeveloping the Plaza, but strong disappointment with most aspects of the preliminary plan as presented (which was still just one helicopter-view diagram, though enlarged and in color in its presentation at this meeting). Although the Plaza’s representatives at the meeting claimed

that their preliminary plan was in the spirit of the 2008 Mill Plaza Study Report, that claim was strongly contradicted by a few members of the Planning Board. (To review the details of the 2008 study suggestions, see: <https://www.ci.durham.nh.us/planning/mill-plaza-study-2008> and see the summary of suggestions further above.)

The Mill Plaza portion of the October 8, 2014, Planning Board meeting regarding Mill Plaza redevelopment, began with CDA Attorney Ari Pollack noting the upcoming October 22, 2014, Public Hearing on the proposal. He commented critically on the recently proposed zoning amendment to increase the required habitable space per unrelated occupant, but said he would prefer to speak about that with Planner Behrendt, rather than at this Planning Board meeting.

From the minutes of the October 8, 2014, Planning Board meeting:

Engineer Joe Persechino said the design team was very aware of the Mill Plaza study. He said some aspects of the results of the study could obviously not be done, such as locating the Library and Town Hall on the site. He provided an overview of the proposed redevelopment, noting that it would result in an increase of 44,000 sf of developed area on the site. He said there would be approximately 120 apartment units. He said the number of parking spaces went up a bit from the existing number with what was proposed. He said this was all about in line with multiple renditions of the Mill Plaza study, besides the configuration.

He noted that vehicular access to Main Street, as discussed in the Mill Plaza study, was not possible anymore because of the development of the Orion property and said there was no intent to connect to it as part of redevelopment project. He said there would be pedestrian connectivity to Mill Road as a result of the project as well as a stormwater management and an enhanced buffer along College Brook. He said the team wanted feedback right now in order to get ideas on what might be discussed at the next Planning Board meeting concerning the proposed development. Mr. Persechino said the existing right of way to Chesley Drive would be abandoned as part of the plan. There was discussion on this with Councilor Smith

Councilor Smith said he sat on the Mill Plaza Study Committee, and saw no relationship between the recommendations of that study and the current proposal. He also noted that one of the proposed buildings would intrude into the 75 ft wetland protection buffer, and asked if the plan was to go to the ZBA and the Conservation Commission concerning this. Mr. Persechino said yes.

Chair Wolfe said he was underwhelmed by the project, stating that it looked like a mall and wasn't done in a creative way. He said the Mill Plaza Study had provided good suggestions for making a redevelopment at Mill Plaza look like part of the town-scape, and said he was disappointed with what was proposed instead now.

Councilor Smith said he would like to have someone representing Colonial Durham tell everyone what would happen to the commercial tenants whose businesses were in the building that would be torn down. He said those businesses were well supported by the community, and said a lot of citizens would be inconvenienced if these businesses had to relocate. He spoke further on this, and said the construction would drive a lot of customers away from the businesses in the building to be torn down as well as the front building where Durham Marketplace, Rite Aid and Bella's were located....

Mr. Kelley said it was hard to see any sort of connection between what was proposed and the studies done as part of the Mill Plaza Study Committee. He said the owner of Mill Plaza had encouraged the community to tell him what it would like to see, and several designs were proposed as a result of this. But he said he didn't see any connection to them now. He said hopefully something could be done there because everyone would like to see this [redevelopment]. [Emphasis added.]

Attorney Pollack said this discussion was the essence of the design review process, and said the applicant was happy to get feedback tonight and at the public hearing. He said they would then take back what they'd heard and incorporate it into a plan that hopefully satisfied the Board.

Mr. Kelley suggested that the design team should look at the studies that were previously done, incorporate recommendations made then into the context of today's environment, and fit this in with the client's interests....

Chair Wolfe noted that the Mill Plaza Study Committee included street-scape designs for a project that had the connectivity the Town wanted to see with the rest of the downtown, as compared to a shopping mall on Route One.

Mr. Parnell said with the Mill Plaza study designs, there were two entrances and exits. He said Chesley Drive had now been removed as an option for the proposed redevelopment, and said he thought another entrance/exit would be needed. He said the one entrance/exit to the site now was extremely dangerous, and noted that there had been a fatality there. He said he didn't have anything to suggest, but said this issue should be given some thought.

Ms. Tatarczuch asked if there was a plan to address the dislocation of the commercial tenants in the second building, and also asked if the plan was to retain those businesses in Town. She said the Planning Board was clearly concerned about attracting viable businesses to Durham, and was concerned about possibly losing these existing businesses. [At the time, these businesses included: Mei Wei Restaurant, two banks, Wildcat Fitness, the cleaners, a doctor's office, and others.]

Attorney Pollack said the owner of Mill Plaza wasn't looking to throw anyone out. He said this was the beginning of the process, and said there would be a full planning process, so there would be plenty of opportunity to speak with the current tenants concerning whether they wished to remain or wanted to relocate. He said the owner would be accommodating, but said there was no plan for this yet because there wasn't a building plan. [It became clear after a few minutes, that CDA was coming before the Planning Board at a public meeting with a plan to tear down the rear building before having alerted tenants in that building about that possibility. CDA had been in touch, however, with a real estate broker who might help the tenants relocate.] Councilor Smith asked for details. Attorney Pollack said there was a real estate broker in Town who knew of commercial spaces available for those businesses who might want to relocate. There was further discussion.

Mr. Williams said the plan showed significant encroachment into the wetland setback, and said he had real concerns that this should not take place. *Mr. Persechino said the existing development had the same encroachments or greater, and said the redevelopment would be pulling away somewhat from that.*

Chair Wolfe said the design for the site reminded him of the pentagon shape in the original design for Madbury Commons, which didn't go very far in Town. Mr. Persechino said he appreciated the comment, and said he would talk with the architect about this.

Councilor Smith read into the public record a letter from Mill Plaza owner John Pinto to Town Administrator Todd Selig dated September 13, 2006. He said it was as a result of this letter that the Town of Durham had embarked upon the Mill Plaza study. He said the study was done and provided recommendations, and it then fell into a vast silence. He said what was proposed now had very little to do with what was discussed and labored over for a year and a half by the Mill Plaza Study Committee. [The Pinto letter can be read in full here: www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/2006_letter_to_todd_from_owner.pdf]

Mr. Kelley noted that the [Mill Plaza] study came about as a result of a grant received from the American Institute of Architects, and said everyone benefited from this. He said in the spirit of Mr. Pinto's letter, he hoped the goals described in it could be achieved....

Mr. Kelley said in the past, the Planning Board had challenged applicants to dazzle them. He said this current proposal didn't dazzle him, but said it was a point to start from.

Although the Planning Board members seemed “underwhelmed” by the preliminary plan, the Wednesday, October 22, 2014, public hearing remained scheduled. The Plaza representatives said that they were interested in hearing feedback and suggestions on the plans. [FN101414]

The full minutes for the October 8, 2014, Planning Board meeting can be reviewed here: www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/44291/100814.pdf

A video of the October 8, 2014, Planning Board discussion of the Mill Plaza can be viewed here from 01:24:08 to 01:50:59: <https://dcat22.viebit.com/player.php?hash=27de8cd291231a926b632f967bbeea67#>

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October 21, 2014: Economic Development Committee Discusses Mill Plaza Redevelopment

From the meeting minutes:

Ms. Humphrey reported that she met with some Plaza business owners today. The business owners are, worried and uncertain regarding what the redevelopment will look like and how it will impact them. The current proposal requires building II to be demolished. Ms. Humphrey said the affected business owners would like a representative from the Plaza to have a discussion with them.

Mr. Welsh asked what types of leases the affected business owners hold. Ms. Humphrey said most are three years or less.

*She said **one owner, for example, invested a large sum of money recently, and used his personal assets (home) to borrow the funds for the project. Ms. Humphrey said if the business is shut down for a year for redevelopment of the Plaza, this owner would not only lose his business but his home as well. She said that type of information needs to be communicated with the landlord.*** [Emphasis added.]

Ms. Humphrey stated it would be best to maintain all of the businesses by working with the property owner, who told her he will work with the impacted business owners. Ms. Humphrey said she has received inquiries from people looking to bring their businesses to Durham. She has met with quite a few realtors and is working on building that relationship. Ms. Humphrey said several of the companies (technology companies) that want to locate in Durham want to take advantage of student workforce. She said that would bring employment to the downtown and fill vacant spaces in the downtown. Ms. Humphrey said she is currently compiling a list of all of the vacancies and speaking with the realtors to make them aware of it. She said she has moved to the new office and said that bringing prospective investors to the new offices is a very positive thing and it shows that Durham wants quality investments. Ms. Vannata asked if there are any prospective businesses to fill the IOL space in the Goss building. Ms. Humphrey said the space is listed on the market with a broker.

A presentation by Colonial Durham Associates’ representatives followed (which overlapped significantly with the detailed presentation the next day at the Planning Board, as detailed further below).

The minutes from the October 21, 2014, Economic Development Committee can be read here: www.ci.durham.nh.us/sites/default/files/fileattachments/economic_development_committee/meeting/40821/102114.pdf

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October 22, 2014: Planning Board—Public Hearing on Plaza Redevelopment Plan

[IX. Public Hearing - Mill Plaza Redevelopment. Design Review for partial redevelopment of Mill Plaza Shopping Center site including 44,110 square feet of new commercial space, with an addition to the existing Durham Marketplace building, two new mixed-use buildings, a separate bank with drive through, 120 residential apartments, and other site changes. Colonial Durham Associates, LP, c/o John Pinto, owner. Joseph Persechino, Tighe & Bond, Design Engineer. Adam Wagner, DeStefano Architects, Architect. Tax Map](#)

5, Lot 1-1. Central Business Zoning District. Recommended action: Continue design review and public hearing.

In his recommendations for the Public Hearing, Town Planner Michael Behrendt wrote: “I recommend the design review and public hearing be continued to an upcoming meeting.” Planner Behrendt continued:

- Design review. *This is in design review. At the appropriate time the Planning Board should close the design review, but it would be best to continue it until a general plan is developed that seems to be acceptable. This is the purpose of design review. If the applicant wishes to continue it could take a while to develop such a plan given the range of concerns. This is the opportunity to discuss the full range of potential issues – design, proposed uses, traffic, impact upon the neighborhoods, impact upon businesses, etc. – recognizing that the concerns need not be resolved at the design review stage provided there is confidence that the general plan will ultimately be workable. **In my opinion, it will not be beneficial for the applicant to go to the expense of engineering a formal plan until there is some sense of support for the preliminary plan** (though the applicant also retains the right to close the design review whenever they wish). [Emphasis added.]*
- Residential apartments. *Again, the Planning Board will want to evaluate the proposal to add 120 residential apartments to accommodate 480 residents very carefully. This use is permitted only by conditional use.*
- New ordinance. *The Planning Board initiated an amendment to the Zoning Ordinance to increase the minimum habitable area per occupant in apartments from 300 square feet to 600 square feet. In accordance with RSA 676:12, this application is subject to the proposed amendment (unless the amendment is ultimately rejected). I understand that the applicant disagrees with this finding....*
- Mill Plaza Study. *As numerous people have pointed out, **a great deal of work went into the Mill Plaza Study for this site. The designs should comport as closely as possible to the findings of that study**, given that some elements of the study may no longer apply (such as the construction of the library and Town Hall and the development of the Orion site on Main Street).... [Emphasis added.]*
- College Brook. ***If the project goes forward, there will likely be the need for conditional uses (and possibly variances) for construction in the vicinity of College Brook.** [Emphasis added.]*
- Faculty Road Neighborhood. ***A key consideration will be potential impacts of the project upon the adjacent Faculty Road and Chesley Drive Neighborhoods.** [Emphasis added.]*
- Existing Business. *I understand that the Planning Board raised the question with the applicant [of] the potential impact upon existing businesses in the development.*
- Sustainability. ***There is a strong desire in this community for various environmental sustainability measures to be incorporated.** [Emphasis added.]*

The Town Planner’s Recommendations for the October 22, 2014, Public Hearing can be read in full here: https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/planners_recommendation_10-22-14.pdf

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October 22, 2014—Planning Board Public Hearing on the September Plaza Redevelopment Plan (#1)

Excerpts from the October 22, 2014, Planning Board meeting minutes:

Chair Corrow asked that members of the public keep their comments to about 3 minutes, given the very long agenda [and how many people would want to speak]. There was discussion. It was noted that it was likely that the public hearing would be continued.

Sean McCauley of Colonial Durham Associates said the team for this project wanted to have a series of local meetings with various stakeholders in order to look at the design ideas and help the design team develop a plan that worked for everyone. Architect Adam Wagner of DeStefano Architects said this was the first step in the process, and said the team looked forward to getting feedback from the community on what was proposed. Mr. Wagner provided a detailed summary concerning the project [addressing comparison/contrast with Mill Plaza Study report]....⁵

He said the team had worked through each of the seven recommendations in the Mill Plaza study, and had tried to incorporate them into the current plan. He said one was to work together for success, and noted that the team was here tonight, and had met with the EDC last night. He said there was a lot of work to do, but said they had to start somewhere, and wanted to create a project downtown that everyone could be proud of.

Mr. Wagner said another recommendation was to create a village center with quality design, and said the owner and the design team wanted that as well. He said they'd started to develop the architectural design and would share this. [Emphasis added.]

He said another recommendation was that a project on the site would promote a balanced mix of uses, and he provided details on how this would be accomplished with what was now proposed. He said there would be retail space and potentially office space, specifically medical office space and other similar uses. He noted that Economic Development Director Mary Ellen Humphrey was hearing about technology companies that wanted to tag onto the IOL [Interoperability Lab] theme, and he said uses like these would be considered.

Mr. Wagner said the upper floors of the new buildings would contain 120 residential units, and said it was likely but not definite that there would be a mix of 1, 2 and 4 bedroom units. He said they were looking at doing market rate units, so this would be wherever the market went—to families, students, etc. He said the owner wanted a product that had wide flexibility. He said 5 and 6 bedroom units would not be proposed, noting that only students would rent such units. [Emphasis added.]

Councilor Smith asked how many beds were proposed, and Mr. Wagner said this wasn't known yet. Mr. Williams asked what the ceiling was on the number of beds, and Mr. Wagner said there was no number yet. Councilor Smith asked how they had been able to come up with 120 units when the number of beds wasn't known yet.

Mr. Wagner said they were looking at what would be an appropriate density for a downtown parcel. He noted that he was a board member of Plan NH, and said density was difficult to define. He said the Sierra Club said an appropriate density for an urban setting was 100 units/acre, but he said there weren't going to be 950 units on the Mill Plaza property. He said the Sierra Club said the appropriate density for a suburban area was 10 units/acre, which would mean 95-100 units for this site. He said the Orion development would have about 46 units/acre and the Pauly's Pocket development would have about 30 units per acre. He said the design team landed on 12 units/acre for the Mill Plaza site, which was a density that was more suitable for a suburban location, but he said it seemed reasonable.

Councilor Smith said most people living in Durham didn't consider the downtown to be an urban area, and Mr. Wagner agreed, but said it wasn't really a suburban area either, yet they were close to the suburban numbers. Councilor Smith asked if the Sierra Club had a density for "village", and Mr. Wagner said he would look into this....

Mr. Wagner...said another recommendation was that the project would respect the neighborhood, and said the design team was committed to setting up community groups and hearing people's concerns.

⁵ The seven recommendations from the Mill Plaza Study Committee can be read further above at the 2008 summary of that planning effort, or they can be read directly in original context, in the Mill Plaza Study Committee report on the third of the unnumbered opening pages here: <https://www.ci.durham.nh.us/planning/mill-plaza-study-2008>

He said another recommendation was to protect College Brook, which was not in the best of health. He said they proposed to pull the asphalt away from the brook and create a larger buffer and management plan that included the appropriate vegetation to protect it. [Emphasis added.]

He said the team proposed to discontinue the paper street that would have connected Mill Plaza to Chesley Drive because they realized this was a hot button issue because residents didn't want traffic to go through there. He said the easement for the street existed on the survey, and said if the Town wanted to give it back to the owner, he was sure the owner would abandon the connection. **He said it was important to maintain the pedestrian connection, but said putting vehicles through there didn't make a lot of sense.** [Emphasis added.]

Mr. Wagner spoke further about plans to keep the Durham Marketplace building, and to re-clad the exterior using a village architectural style. He said an addition to the building was proposed and said on the first level, there would be an addition to the commercial space, and 3 residential floors above it. He said they wanted to bring the building out to the edge of the sidewalk, with some height, and also said they would take advantage of the existing pocket park that Mill Plaza owned. He said the park could be a much better, activated space that could be used as the front floor for the two floors of residential space. He said this would activate the back of the building and engage it with Main Street.

He said a small single story bank building was proposed on the site, and said one of the existing banks currently at the Plaza could relocate there. He provided details on landscaping changes proposed there.

Mr. Wagner said a big change proposed to the site was the removal of the current second building in the back and the construction of a new building at a right angle to the Durham Marketplace building, noting that the current building faded off into the distance. He said this new building would be constructed in phase I. He said the front of the building would be totally commercial, and said existing tenants at Mill Plaza could perhaps relocate and possibly expand there. **Mr. Kelley asked whether if Rite Aid moved there as part of phase I, Durham Marketplace could possibly expand into the former drugstore space. Mr. Wagner said that was possible.** [Emphasis added.]

Mr. Wagner said some commercial space was also proposed at the rear of the site, which would be very specific to whatever the multi-use residential would be, and could include something like a bike shop, coffee shop, etc.

Mr. Wagner said the second building had residential uses on the top floor, and noted that multi-unit housing was a conditional use in this district, but was not allowed on the first floor without a variance. He said it had been recommended that the project fit in with the Zoning Ordinance as much as possible. But he said if there was some flexibility with the Ordinance and residential was allowed on the first floor, they could open things up more on the parking side. [Emphasis added.]

Mr. Wagner next spoke about building C. He said they proposed to excavate the granite outcropping in the back, and include parking on the lower level of the building and two stories of residential above it in a small scale building. Mr. Kelley asked how many stories there would be above the commercial floor in building B. Mr. Wagner said there would be one floor of commercial and two stories of residential, facing Mill Road. He said along the side, there would be 3 stories of residential above a parking level, and explained that this didn't affect the building height. He said the total height would be 43 to 45 ft, and said the building height could be up to 50 ft in the CB district.

He said there was current 55,337 sf on the site, and said the proposed development would have 75,563 sf of new commercial space, 20,226 sf of which would be new commercial office and retail space. He said the residential space for 120 units would take up 198,279 sf. He noted that the original financial analysis in the Mill Plaza study in 2007 said the value of residential space would be about \$188/sf, and the value of commercial space would be about \$124/sf, resulting in an estimated assessment increase of \$28.5 million with the current

proposal over the current assessment. Mr. Wagner showed members of the Planning Board and members of the public the architectural elevations and described them in some detail.

Mr. Behrendt said he assumed that a variance would be needed for the 3 floors of residential space, and Mr. Wagner agreed.... [Emphasis added.]

There was further discussion of the disruption to the businesses in the to-be-torn-down rear building, the nature of the soil on the site (clay), the lack of proposed green space, and further infringements on the wetland.

Mr. Behrendt said in an urban, town setting, parking lots were anathema, and were managed carefully and to some degree were minimized, screened, etc.... He said the overriding sense of this plan was that it was a parking lot. He said there was a long way to go to make this a successful project. He said he thought the 2008 Mill Plaza study plan provided a signpost, and he spoke further on this. He also said the student housing issue needed to be addressed. Mr. Wagner said he didn't necessarily disagree with what Mr. Behrendt had said, from a fundamental planning standpoint. He noted that the parking problem in nearby communities was sometimes solved with municipal parking garages. [Emphasis added.]

+ + + + +

“Strategic Language”

As one can see from the quotations from the meeting minutes above, the Plaza representatives seemed very calculating in the language that they used at this hearing and at earlier presentations (and later ones as well).. The redevelopment plan was referred to as a “Durham Village Center” (an echo of the goal of the Mill Plaza Study Committee), though the plan, as presented by CDA, appeared to be primarily a massive student housing complex with no spaces for the public to gather. The only “village center” was in the *label* on the plan drawings.

As quoted from meeting minutes above, one Plaza designer described the new plans as “engaging” with Mill Road (which actually meant that an expansion of the Durham Marketplace building to the sidewalk would destroy the only real green space in the plaza, where 5 older-growth trees, five picnic tables, and grass create the one small, highly valued shaded area and gathering space. The touted “engagement” would destroy it.

The CDA representative also referred to the triangle between Pauly’s Pocket and The Works Bakery Café (formerly the Bagelry) as a “park” (when the plan was to make that small triangle the entrance to new housing, with up to 4 beds per unit, over the new, wedged-in building – a plan that was labelled by the designer with the positive sounding phrase of “activating that space”). Similarly, the Plaza designer was criticized by a Planning Board member for previously referring to a new parking lot surrounded by a triangular building of housing as a positive-sounding “courtyard.”

Also, what was almost certainly to be student housing was couched in ambiguous phrases such as “market-rate” rentals that might attract families. And “units per acre” calculations were presented as if the Plaza would be entirely a housing development and not also (and for last half century, entirely) an active shopping center.

The project presenters also indicated that they were not looking to “throw anyone out,” but the plan first presented was to tear down Building 2 without any phased movement of businesses. Indeed, businesses in the second building had not even been warned about the possible demolition of their building and some had spent considerable amounts of money renovating what was now to become a pile of rubble. (Later redevelopment plans, however, included CDA attempts at phased construction with commercial tenant relocation on the site.)

Additionally, in the Plaza designer’s claimed attention to the suggestions of the 2008 Mill Plaza Study Group, he explained that “Respecting the Neighborhood” referred not to anything specific in the actual plans that would protect the lifestyles of families but “having *conversations*” with the neighborhood – as he claimed was already happening at that public hearing as he spoke those words!

(Later, at a January 14, 2015, Planning Board meeting, CDA architects continued to use similar strategic language, such as when Lisa DeStefano described the destruction of the one green space in the Plaza – with a revised plan for a hotel with valet parking in that spot– in these terms, per the meeting minutes: “She noted that the existing one- story Durham Marketplace building would remain, which would be anchored in a village green with a new two-story commercial structure and a 4 story boutique hotel, both of which would be constructed close to the street edge on Mill Road” [emphasis added]. (See further details on the January 14, 2015, meeting further below.)

Similarly, at the March 10, 2015, ZBA hearings, Attorney Pollack used phrases such as “paying homage to” and “paying respect to” the Mill Plaza Study Report – while Pollack argued for a redevelopment plan that bore little to no relationship to what the Mill Plaza Study Committee had recommended (as architects and Board members, and others who participated in the Mill Plaza Study detailed in meeting comments and letters).

At the January 27, 2016, Planning Board meeting, the phrases used to describe the elimination of the cherished green space adjacent to the Bakery Café were: “This will create an extension of Main Street down Mill Road, and will provide an urban edge to the site.” [Emphasis added.] Regarding Planning Board concerns at the same meeting that the tiny “park” created as part of the Pauly’s Pocket redevelopment (though on Mill Plaza property), would diminish in community gathering-spot value by being used as an entrance to the new wedged-in building, “Mr. Wagner said they wouldn’t want to undo this, and would enhance the park by creating an entry there into Building A, which would activate the park area.” [Emphasis added.] Similarly, in both January 2015 and February 2016 presentations, the Plaza architect described how a 4-story building (which Durham zoning stipulates must have two floors of non-residential space) would appear to be only three stories tall because the top floor would “tucked under the roof.” As one resident commented/questioned at that meeting, aren’t all top stories under a roof?

The September 2014 plaza redevelopment plan was criticized by members of the Planning Board and the Town Planner, Michael Behrendt, and also pummeled by virtually all the members of the public who spoke – more than a dozen. Indeed, the public comments (including statements and letters that were read) were so detailed that they lasted almost two hours, and the Planning Board’s acting chair begged for mercy – and for a continuation of the public hearing to a future meeting. Also noteworthy is that almost all the people who spoke outlined a positive vision for what a Plaza redevelopment should/could look like, which actually created a rather upbeat atmosphere for those in attendance – except for the Plaza representatives.

Two Durham architects (Bill Schoonmaker and Art Guadano) who were part of American Institute of Architects (AIA) effort to redesign the Mill Plaza spoke of the relationship (or not) between the submitted plan and the Mill Plaza Study report. For example,

Art Guadano, Pine Crest Lane, said he’d served on the AIA committee as part of the Mill Plaza Study, and said this had been a process where there was strong community input. He said one piece of this was the idea of creating a village center with quality design. He said the current site plan was very unimaginative, with a sea of asphalt around the buildings. He said it needed landscaping, a plaza, a courtyard, and pedestrian spaces that created a true walking experience into the rest of the Town. He said the plan needed to be rethought. [Emphasis added.]

General concerns that were raised during the Public Hearing included:

< > The glut of student housing (particularly over the coming years with anticipated UNH enrollment drops) that could leave apartments elsewhere in town vacant and multi-unit residence owners bankrupt (offsetting the increased tax revenue from a redeveloped Plaza with lower tax revenue from housing complexes further from the campus). Some speakers argued that a wiser form of housing in the Plaza would entail units that could accommodate working singles and families, or provide housing for seniors – with such convenient walking access to stores and campus events.

[See September 17, 2014, Planning Board presentation, excerpted above, on the Master Plan survey showing the strong need for downtown senior housing. And see more on the Master Plan survey at the link below, such as p. 5 on the “New Hampshire ‘silver tsunami’” from growing size of elderly population:
www.ci.durham.nh.us/sites/default/files/fileattachments/planningandzoning/09172014_hdpresentation_0.pdf]

< > The destruction of recently renovated businesses in the current rear building of the Plaza. (The owners/managers of those buildings have been caught off guard by the current proposal.)

< > The uncertain impact of almost 500 students living directly adjacent to Brookside Commons and the Faculty Neighborhood.

< > Potential additional pollution heading into College Brook, the Mill Pond, and beyond.

< > Potential additional flooding of the College Brook (some downstream properties have already lost trees, other vegetation, and large swaths of soil from prior development in the Plaza, including the illegal 2002 bulldozing and paving of the rear hillside).

< > Possible threats to the very functional pedestrian and bike paths behind and into the Plaza from the Chesley Marsh (although a well-designed plan could – per the 2000 Master Plan and the 2008 Mill Plaza Study report – actually enhance the functionality and aesthetics of that route into and out of the Plaza).

RESIDENT LETTER (154 signatures) for Plaza Redevelopment Priorities

Also among the statements and letters read was one by **Erin and Iago Hale, Mill Road**, which was signed (by the time of a follow-up meeting) by 154 Durham residents from across Town. **Key excerpts** from the letter follow, with a different conception of what “activating a space” might refer to.

As homeowners and year-round residents of Durham, we are dismayed by the proposed design for the redevelopment of Mill Plaza. As the thoughtful 2008 Mill Plaza Study demonstrates, many opportunities exist to increase the commercial activity of the plaza while at the same time activating the space and serving the broader community by addressing current shortcomings of both our downtown and the current plaza configuration. We recognize the critical need for continued development in our downtown, and we submit that such development must own up to its civic responsibility.

The following is a short list of things we believe should be incorporated in the redesign of Mill Plaza that are conspicuously absent in this current proposal:

1. Community space - *We strongly agree with the statement from the 2008 Mill Plaza Study that “A redeveloped Plaza property should serve as a ‘Village Center’ that stands as an example for future downtown development and provides residents a ‘sense of place’. By this we mean year-round community space – indoor and outdoor areas where people linger to meet and talk to their friends, shop, and enjoy all of the seasons.” In contrast to this recommendation, the proposed plan cuts out the little green space that currently exists, creates no new pedestrian space, and provides no civic gathering space. Because of a lack of civic space in our downtown, we are a community that assembles in the median of our main street for town events. One of the only outdoor gathering places for families is Kaleidascoop, a destination that is for all intents and purposes in a shadeless parking lot. We are a town in desperate need of a Village Center, and the logical site for such a center is Mill Plaza....*

2. Mixed use - *We’d like to see mixed-use development that is not just a euphemism for more student housing. While we agree that our town needs a more diverse and expanded tax base, we are concerned about the pending glut of student housing. We also sympathize with abutters about the likely quality of life impacts of living next door to a large student housing complex. For us, mixed use means mixed commercial activity,*

flexible civic space, and housing for families, workers, seniors, low-income residents, etc.

3. Connectivity – *Almost all of the designs that came out of the 2008 Mill Plaza Study concluded that connecting Mill Plaza more strongly with Main Street (physically and architecturally) was an important design feature both for enhancing the commercial core as well as contributing to a visually cohesive downtown. Such connectivity is absent in the current proposal.... We would like to see not only increased access to Main Street but also enhanced pedestrian and bike paths along the brook with linkages to residential neighborhoods and UNH.*

4. De-emphasize the parking lot – *Vibrant community space doesn't happen on the edges of parking lots. Durham needs a Mill Plaza that is not primarily a paved lot (as it is now) but rather a dynamic mixed-use space that also provides adequate parking....*

5. Protect and enhance College Brook – *Echoing the recommendation of the 2008 Mill Plaza Study, "the redevelopment should work to protect and restore the brook and its buffer's natural functions on the site. This would add value to the Plaza, reassure residential neighbors, and set an example for good environmental stewardship."...*

Despite our criticism of this particular proposal, we are wholeheartedly in favor of redeveloping Mill Plaza in a way that enhances our community. We sincerely appreciate the effort that went into the 2008 Mill Plaza Study and feel that any redevelopment plan should honor those findings.

The full October 22, 2014 resident letter on priorities for Plaza redevelopment can be read here:
www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/mill_plaza_response_114_14.pdf (with 154 names and addresses)

Two letters from residents who were unable to attend were read by others at the meeting:

One letter read was from **John Hart, a Plaza abutter at Brookside Commons** and specialist in horticulture, natural systems, and ecological landscape design. Hart wrote that "reconfiguration and some creative re-use of the Mill Plaza could be a great asset to Durham's residents, to its student population, and to its culture, aesthetics, sense of place, and ecology." But "as presented, the proposal of Colonial Durham Associates, LLC, falls far short of any cogent vision of an improved Durham." Hart noted lack of attention to the "ecological needs and aesthetic possibilities of College Brook." Hart detailed deficiencies and offered suggestions. He described the parking lots as "poor designs from the 1970's in terms of addressing ecological and aesthetic issues (diversity of vegetation, water filtration and infiltration, runoff, heat-island effect, removal of pollutants from surface runoff, etc.)." Hart described the importance (and financial payback) from creating a low-impact, sustainable development in keeping with reality and with the Town's master plan. I would like to see a major push toward energy-efficient buildings, green roofs, permeable paving, carbon-neutral buildings, water recycling on site, etc." See full Hart letter here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/hart_comments.pdf

The second letter read was from **Charles Forcey of Thompson Lane** (Senior Software Engineer at Logikcull.com). Forcey described being "thrilled to hear about the recent plans to redevelop the Mill Plaza (within walking distance of our house and one of our prime shopping spots through the wonderful wooded path connecting Faculty Road and Chesley Drive)." But he offered eight ways to address the shortcomings of the proposed plan, as seen in the full letter here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/forcey.txt

Plaza abutter Robin Mower, of Faculty Road, read her own very detailed letter into the record at the meeting. Mower described how a "redevelopment of the Mill Plaza could be a real benefit to the community." But she described the current proposal as "a nonstarter" because the "developers who have not done their homework before requesting a preliminary application review."

It might surprise some of you to know that I am among those who believe that a redevelopment of the Mill Plaza could be a real benefit to the community. It won't be a surprise that I'm not going to pull any punches when I talk about the current proposal to redevelop it.

Today, the Plaza is an underdeveloped, poorly designed, un-attractive nuisance that has brought us desirable services at the cost of continual environmental degradation from poor snow removal practices, visual blight, loss to the quality of life for its immediate residential neighbors, and less property tax revenue than had it been redeveloped decades ago—all in the heart of our downtown. That it has remained so is testament to the neglect by its owner, who now comes before us with a suggestion to give it a facelift but not to address the underlying unhealthy conditions.

The Plaza could be so much better. But the proposal before the Board does not lead me to believe that is in the cards anytime soon, because the proposal before you is a nonstarter. This is not the first proposal brought to us by developers who have not done their homework before requesting a preliminary application review. Nor is it the first that asks us to negotiate to the point where the developers should have started their conversation in the first place. In other words, they bring us Plan A, when we know that in the end they will accept Plan E, although we believe that Plan F is really the best for the community and still economically viable for the property owner and developer.

I don't believe that the applicant has started off on the right foot.

Over the decades, Durham residents have collectively put in many thousands of hours of volunteer time and, at times, professional expertise, to shape a community that is attractive to current residents and, by extension, to potential new homeowners, businesses, developers, and, more recently, to real estate investment trusts and other out-of-town investors. Those volunteer hours add up.

Councilor Mower added up the hours at Town Council, various boards and committees, including the Mill Plaza Study committee of 2007-2008, public hearings, and so on. Mower continued:

So you see, it's not just that this proposal turns its back on the recommendations of the Mill Plaza Study Committee Report. It's that the applicant hasn't bothered to become sufficiently educated about us and our values—or doesn't care. Our meeting proceedings, documents, opinions, conclusions, and recommendations are all available to anyone who cares to review them.

Many of us were drawn to Durham by its unique sense of place. We value that uniqueness. The proposal before you could be plopped down in Anywhere U.S.A. It ignores the topography, Main Street, the College Brook, the adjoining Historic District, Faculty Neighborhood, and even UNH.

One of my expectations is that developers show respect for my community's values. I ask the Board to request that Colonial Durham Associates go back to the drawing board and not return until they can return with something that manifests that respect. I hope the applicant will consider and incorporate features that address the following:

- Design attractive and safe pedestrian and bicyclist accessways through the site—One-third of Durham's single family homes lie in the downtown neighborhoods. Nearly 16,000 students attend UNH and approximately 4,000 people work at the university.*
- Leverage the College Brook—Build townhouses and a river walk along it to provide attractive housing that simultaneously buffers noise and visual impacts to the Faculty Neighborhood. Do more than the minimum cosmetic improvement. Read Appendix E, the "College Brook Report," of the Mill Plaza Study Committee Report.*
- Create streetscapes that coordinate with downtown to benefit both business owners and the community—Studies show that customers will spend more in locations that provide visual and*

functional amenities such as public spaces, landscaping, and pedestrian and bicyclist facilities.

• **Meet real needs of the community and create a win-win economic outcome—Take advantage of the gap between demand and supply of elderly housing and of Durham’s density bonuses.** As the Board heard from Strafford Regional Planning Commission, and as many recent studies, both specific to New Hampshire and nationwide, point out, opportunities abound. (Times have changed since the 2007 RKG Economic Report was added to the Mill Plaza Study Committee’s Report.)

We live here. At the end of the day, the applicant goes home. There’s a world of difference in our respective rights to enjoy the properties in which we have each invested. I ask the Board to keep us in mind as it considers what the applicant is requesting.

The full October 22, 2014, Mower letter can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/mower_20141022_mill_plaza.pdf

Continuing from the October 22, 2014, meeting minutes:

***Nancy Miner** said she had worked with Mr. Pinto, the owner of Mill Plaza, and said profit was his motivation. She noted the proposed commercial space on the first floor, and also noted that there was retail space in the Town that wasn’t currently being used. She asked if any effort would be made to ensure that there were some interesting retail businesses, and said the commercial space would sit empty if it was too expensive or unattractive. She said she was probably more qualified than anyone present to discuss the concept of workforce housing in Durham, and noted that there were 3 workforce housing units downtown, 2 of which she had lived in.*

She said they were lovely apartments, but said they were impossible to live in, in conjunction with the students. She said it wasn’t feasible to call the police every night, and said if there were any students living in the proposed development at Mill Plaza, no one else would want to live there. [Emphasis added.]

Mr. Wagner said having a commercial first floor was required by the Zoning Ordinance, and also said he thought the development that was proposed would have a distinct competitive advantage because of Durham Marketplace and Rite Aid. He said there was 100% occupancy at Mill Plaza now, and said it was expected that the new commercial spaces would be highly desirable....

*[Former State Senator] **Katie Wheeler, Mill Road**, said when she and her husband Doug moved to Durham, it was truly a village. She said the proposed development might increase the tax base, but said she feared that it would lower their property values. She said it was probably too late for Durham to have a village feel, but said the Town needed a commons. She noted that before Mill Plaza was built, it was a field. She said a town without some kind of park in its center had no heart, and said what was proposed now could hardly be called a village green.*

She questioned the idea of including more student residential density downtown, and said this was destroying the Town’s character. She said if there must be more housing, it should be affordable and shouldn’t be for students. She also said she didn’t see how families would want to live near the Town center. But she said Durham couldn’t become a giant campus for UNH. She said she loved Durham Marketplace, and said everything possible should be done to protect it. She also said she supported the other businesses in Mill Plaza, and said Durham needed businesses like these that families liked and that not just students supported. She said she hoped there would be some serious remaking of the current plan....

***Tim Horrigan, Faculty Road**, noted that he was a State Representative but was speaking as a citizen. He said the only connection of this current process to the Mill Plaza study process was that the same site was*

involved. He said the Mill Plaza study paid a lot of attention to how to keep the existing tenants, but said this current plan didn't seem to do this. He said the access way in front of the buildings in Mill Plaza had become a fairly vibrant street because of the businesses there, and he suggested building the new buildings on the other side of the access way. Mr. Horrigan also said the prospect of another project downtown that required major excavation wasn't good. He said this plan needed a lot of work.

Bruce Campbell said he had signed the letter that was read, and said many of his thoughts were in it. He asked for clarification on the amount of new commercial space that would be provided with the project [and received a response.]...

Alison Adamczyk, Madbury Road, said she shopped at Durham Marketplace a lot, and said it was difficult to watch young mothers there taking shopping carts back because there were no shopping cart corrals in the parking lot. She also questioned building out the building to the sidewalk along Mill Road [where the picnic tables and shade trees are], and asked if this could instead be staggered so there could be places outside for people to sit. She suggested the idea of having a second commercial story for the Durham Marketplace building that could be accessed with an escalator, and also said it would be nice to have some community space on the site with some shade.

Beth Olshansky, Packers Falls Road, noted that the current plan used the terms "Durham Village Center", but said residents were pretty disappointed in terms of how the plan was supposed to be a village center. She said the courtyard was really just more parking and pavement. She said the plan indicated that the green space next to the bagel place was supposed to be demolished, and she asked that it remain, stating that it could be an extension of the pocket park the team wanted to enhance. She said she hoped the mature trees there would remain.

Ms. Olshansky asked if the approximately 20,000 sf of new commercial space would be on top of what there was before the second building on the site now was torn down. Mr. Wagner said this number was the increase based on what was there now and what would be on the site post development. Ms. Olshansky said it sounded like there would be relatively little new commercial space. She said she would like the owner to consider phasing the project, and she provided details on this.

She said given the proposed Zoning amendment to require 600 sf of habitable space per unrelated occupant, it was important to be upfront about who would be living here. She said she had heard that it didn't work well when students and residents lived near each other. She said she found the mix of 1, 2 and 4 bedroom units interesting but problematic, and said 4 bedroom apartments were intended for students. Ms. Olshansky said 2007 demographic information was quoted at the EDC meeting, but said over 2000 beds of student housing had been added since then, so there was now a glut. She noted two reports that discussed the need for senior housing, including Durham, and specifically in Durham, and said she would like the owner to consider making this an over-55 development. She noted that 20% of such a development could be in a mixed age range, and said if 80% were seniors, the other people who would want to live there would be faculty or graduate students. She said this approach should be considered. She said she was pleased to hear last night that input from the community was welcome, and noted that Durham residents were highly qualified, engaged citizens.

Mr. Wagner said at the EDC meeting, he read from a Town report that said there was an adequate supply of over 55 housing, and said he didn't make a comment that there wasn't enough student housing.

Suzy Loder, Oyster River Road, read a letter into the public record. She said she recently moved into the Faculty Neighborhood, after living in Durham for 40 years, and said she appreciated having close neighbors and being able to walk to Town. She said the potential this project had for the entire community was great, and said she supported the redevelopment of the Plaza but she said there was no rush. She said she hoped the owner would work with residents to create a win-win situation. The brief Loder letter is posted here: www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/loder.pdf

Peter Andersen, Chesley Drive, said he was a direct abutter to Mill Plaza and was also a developer. He

asked the Planning Board and the ZBA to be extremely flexible and creative with this unique site. He noted that College Brook could rise quickly to flood stage largely due to runoff upstream from UNH and also from Mill Plaza. He said this problem could be eliminated, and also said there was an opportunity to get rid of the grade changes in the area. He spoke about a possible design that involved putting a parking garage close to the brook, putting housing on top of that, and installing a cistern below the garage to store stormwater runoff and gradually release it into the brook. He said he hoped to see a wonderful project with a lot more green space, including green roofs. He said perhaps more density could be allowed, and the development could be built along the perimeter of the site, with the green space in the middle.

The other letters sent to the Planning Board regarding this Public Hearing were overwhelmingly critical of the specifics of the submitted plan (while all being in favor of Plaza redevelopment), as in the October 22, 2014, letter from **Thomas Newkirk of Mill Pond Road**, who served on the Mill Plaza Study :

To the Planning Board:

When I heard that there were plans for redeveloping the Mill Plaza, I was naturally interested because I was a neighborhood representative on the original Mill Plaza study committee. We met regularly for over a year and sought advice from a range of experts--architects, planners, environmentalists, energy experts--and from community members. We did everything we could to imagine what it would be like to live, walk, cycle, congregate, and shop in a newly-designed plaza. We spent days considering the environmental effect of development on College Brook; we reimagined ways in which the Plaza could link up with Main Street; we explored various mixes of housing and businesses. And we were proud of our work, hoping that even if it wasn't redesigned as we planned, it might set a standard for future development.

The current preliminary plan put forward to the Planning Board bears little resemblance to our plan. In fact, it removes the small bit of greenspace we now have. It places a big apartment complex at the center of the Plaza that will create a glut of student housing (assuming we are not already glutted). There seems to have been no consideration of how people walk and move and meet in the Plaza. It is difficult to tell if there is any consideration of College Brook.

Our current Mill Plaza was created in the mid 1960s as a strip mall and parking lot. The central concern was--can you drive and park close to stores. It was a mistake we have lived with, though understandable given the era. Everything deferred to the automobile then. We now know so much more about creating a livable town center, so there is no excuse for a plan that is essentially buildings and parking spaces.

In his 2006 letter to town manager, John Pinto wrote about working with the town on a "vision" for the Plaza. I fail to see the "vision" in the proposed plan. It seems a hurried attempt to cash in on the expansion of student housing. We should expect far more.

*Sincerely,
Tom Newkirk
40 Mill Pond Road
Durham, NH 03824*

Newkirk's letter can be read in full here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/newkirk.txt

Other submitted letters are excerpted here, with links to the full texts below them:

Yet more student housing? Really? It's difficult to believe these won't lie vacant in the years to come.... Less objection would be to workforce or married graduate student housing, but the idea of still more youngsters in the only downtown we have leaves us shaking our grey heads!... Surely some brainstorming would result in a more sensible plan for this significant place in our village. But more

student housing for downtown? Let's not. – Mark & Jean McPeak, Brookside Commons
https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/mcpeak.txt

Durham appears to be reaching capacity for student housing. Surely business owners and economic development gurus have discerned that students, while bringing a youthful vitality to Durham, only live, shop, and eat here six months of the year. More student housing is a poor way to spur economic growth. I also worry about the downward economic pressure these new student apartments will exert on the town's "legacy" student housing, much of it locally owned and managed. If students flee the older apartment complexes for the gleaming amenities across Main Street, I fear that the older complexes will lower their rent, in turn lowering their income to spend on the good management that helps the student renters remain good neighbors. I'm concerned, too, about the impact of any redevelopment on the existing small businesses in the plaza, many of which provide critical and well-used services to the community.... –Beth Potier

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/potier.txt

The plan submitted by developers is inadequate and does not meet needs of our community. We need green spaces and the arrangement suggested by the developers will not enhance the appearance one bit. I would suggest we take the park by eminent domain as the developers are not interested in working with our community and are not offering a contribution. We have let the developments create a downtown that will be terrible for us, and I will not utilize it in the future and would rather travel to Lee or Dover for services if this is the way we will allow Durham to grow. –Diane McCann, Oyster River Road

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/mccann.txt

We live on Mill Pond Rd and my 4 children walk down Chesley Drive, through the plaza and up the pathway past the old grange back and forth to the middle and high schools every day. I am very concerned about any changes to the plaza that do not improve the pedestrian experience and which will add to the student population in that area.... My children are already adversely impacted by the college students living along their route to school – with litter (including cigarette butts and beer containers) and at times inappropriate behavior, like swearing, calling out to them, even pot smoking. Cinco de mayo last year was quite the negative education for them – and this was at 2:30 in the afternoon! I have also witnessed cars screeching to a halt (barely) into the crosswalks, especially that double lane near the post office where my children have to cross. The increase in student traffic in town is a real concern for us.

**—Karen Crowley, Marie Crowley (my wheelchair-bound mother who lives with us) Shane
Chinburg 16, Riley 15, Caleb 13 & Josie 11, 48 Mill Pond Rd**

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/crowley.txt

A plan of this size and magnitude can positively impact the lives of those who are full-time Durham residents like us. Or, it can stifle community. I urge you to please carefully consider the effort of this proposal and the waste of time and energy that was put forth in 2008 for the mill plaza plan if this new fast proposal is permitted to come to fruition without consideration of past community involvement.

–Jennifer Pribble, 8 Bayview Road

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/pribble.txt

I also want to go on record as strongly opposed to more housing development, as the saturation point is already becoming an unpleasant issue for the site planned and for the quality and remaining small town nature of Durham.... Traffic has already increased so much, I've seen and heard from many people driving into Durham, they are taking streets other than Main St. to get to the UNH campus, completely by-passing Main St. That doesn't sound business friendly. It also has increased traffic on neighborhood roads which were safe for young families. Let's not lose that. –Phyllis Heilbronner, 51 Mill Pond Road

NOTE: There were NO letters submitted *in support of* the CDA site plan (#1) for this Public Hearing.

See “Comments from Citizens and Others on Mill Plaza Redevelopment”

These comments are in chronological order with the newer comments (but only through June 2017) at the top.

https://www.ci.durham.nh.us/boc_planning/comments-citizens-and-others-mill-plaza-redevelopment

In all, 174 members of the public (including 152 others who signed the Hale letter) spoke and/or wrote about the September 2014 plan, expressing enthusiasm for redevelopment of the Plaza, but also strong criticism of the submitted plan. No one spoke in favor of the plan as submitted.

Continuing from the October 22, 2014, meeting minutes:

Chair Corrow said perhaps the applicant might consider reworking the design, and the design review process could be continued. Mr. McCauley said they would like to keep the public hearing open, and would also like to establish a working group that would include Town staff, Planning Board members and stakeholders, who would work cooperatively in order to create a meaningful plan.

Mr. Behrendt said this offer was appreciated. He said creating a working group had been an effective approach for Durham, and might be appropriate in this situation. But he recommended not creating the working group at this point because there was a large difference between where the project was now and the next step. He encouraged the applicant to come back with a revised plan when it was ready, and said if at that point it looked like it was taking some shape, a committee could be formed.

Mr. Kelley said he disagreed. He said he thought the design team needed to consider what it had heard, and should move forward with a stakeholder group now if it wanted to and show them something that reflected what it had heard.

Mr. McCauley asked that the public hearing be kept open and said they would try to come back to the Planning Board in January. But he said it would be great to have a discussion with stakeholders now.

Ms. Tatarczuch said she disagreed with the idea of creating a committee now. She said some really good points had been made tonight, and said she thought the applicant needed to incorporate some of them and develop some fleshed out drawings. She said there might be a lot of push back at this point if there was a committee.

Mr. McCauley said they wanted to keep the process open, and said they could come back with another plan. Mr. Corrow said that was probably the best approach. Attorney Pollack asked that the Planning Board leave the design review phase open and table it to the applicant’s estimated date of return, which was the first meeting in January. Mr. Behrendt said he was hearing that this would not be a public hearing, and no notices would be needed for this.

The Public Hearing on Mill Plaza redevelopment ran for about 90 minutes, and concluded at close to 10pm.

The Plaza representatives at the meeting decided to ask for a delay of the continuation of the public hearing to give them a chance to regroup and come up with a better plan, which would be no earlier than January. They repeatedly asked for the clarification that this would be a “continuance” not a new application (no doubt because they wanted to challenge the notion that the new zoning ordinance that increases the living space per unrelated occupant to 600 sf from 300 sf, if approved by the Town Council, applies to this application).

The full minutes from the October 22, 2014, Planning Board meeting can be reviewed here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/44301/102214.pdf

The video of the October 22, 2014, Public Hearing on Mill Plaza redevelopment can be seen here:
<https://dcat22.viebit.com/player.php?hash=3d782bed093555a05ce37a48a9a55fcb#>

A news story about the hearing appeared as: "Mill Road Plaza redesign plan draws ire from all sides,"
http://www.fosters.com/article/20141029/GJNEWS_01/141029325

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ZONING AMENDMENT PASSED ON SQUARE-FOOTAGE PER INHABITANT

December 1, 2014—Town Council passes zoning amendment to increase s.f. per unrelated occupant

In December, the Town Council unanimously passed the zoning amendment to increase the minimum square footage per unrelated apartment resident from 300 square feet to 600 square feet). Planning applications submitted after an amendment is proposed are subject to the amendment if it is later passed. But the Mill Plaza attorneys challenged that administrative decision by Town Planner Michael Behrendt (arguing that the Plaza should be able to build apartments based on the 300 s.f. per resident ordinance because Town officials knew about the planned redevelopment application before it was submitted and before the zoning amendment was proposed).

A Resolution adopting the above-referenced habitable space zoning Ordinance unanimously passed the Town Council on December 1, 2014. It reads in part:

The Durham Town Council does hereby ADOPT as presented Ordinance #2014-14, a Planning Board-initiated ordinance amending Chapter 175 "Zoning," Article II, Section 175-7 "Definitions" changing Table II-1 "Dwelling Density by Type" such that the maximum number of occupants in unrelated household per 300 square feet of habitable floor area is changed from 1 to .5 for Dwelling Type "Apartment (excluding accessory apartments), except in the ORLI & MUDOR Districts."

In other words, the Ordinance halved the previously permitted density. That is, developers would have to provide occupants with twice as much living space per person as before (600 square feet, as opposed to 300 square feet). The Council passed the Ordinance in recognition that the past few years have seen a significant growth in the construction of downtown housing, the impact of whose occupancy on the community had yet to be fully evaluated. Yet the indications were that housing unit availability was already exceeding demand, even before anticipated drops in enrollment at UNH and other New England Colleges in the coming years. On top of that, there was a general sense among residents that they were losing the core of the Town as a community space for full-time residents.

The full habitable space zoning ordinance can be read here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/page/15881/2014_ordinance_to_increase_habitable_area_for_apartments.pdf

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In response to the Town Planner's determination that the new 600 sf per occupant rule would apply to the Plaza, the Plaza upped the ante by proposing to build "dormitories," which allow for even greater density than 300 sf per person (as low as 100 sf per occupant). The Plaza lawyers argued that since dormitories were not explicitly listed as forbidden in the CBD, they must be an allowed use.

December 12, 2014 – Applicant's letter to the Town Planner Regarding Plaza Dormitories

In a letter to Michael Behrendt dated December 12, 2014, the applicant's attorney (Ari Pollack, of Gallagher, Callahan & Gartrell in Concord) wrote:

This update is intended to advise the Planning Board that the applicant has modified its application for design review to focus on dormitory-type dwellings instead of apartments. Whereas the prior version proposed 120

apartment units with an undetermined number of total beds, the modified application proposes dormitory units with an undetermined number of total beds. Thus, while the application remains within design review, and while the applicant continues to shape the application in recognition of the comments voiced at the Board's October 22, 2014 meeting, the project is being refined to pursue a different form of dwelling type within the same use category of mixed redevelopment with upper-floor multi-unit residential dwellings.

The applicant may make further submissions to better align its prior filing with the definition of dormitory (though floor plans are not required at this level of review). In addition, and at the clear urging of the Planning Board, the Applicant is continuing to use this interim period to adjust its design in connection with other public comments.

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December 12, 2014—Applicant's Letter to the ZBA appealing Administrative Ruling re: sf per inhabitant
https://www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/page/15881/application_supporting_documentation_4.pdf

2015

Hannaford Lease Renewal, 2015 to 20XX?

The Strafford County Registry of Deeds shows that a 20-year lease with Hannaford at the Mill Plaza ran from 1975 to 1995. (Hannaford Brothers held the lease for the store since the beginning of the Plaza, first under the Shop 'n Save name and then in arrangement with Chuck Cressy of the Durham Marketplace, who sold his business to Hannaford in July 2015.)

If another lease was extended for 20 years (no record of such lease has been found so far at the Registry of Deeds, where leases of more than 7 years in length are encouraged to be filed, per the concept of "Constructive Notice"), it would have run out in 2015. In response to repeated Planning Board and resident queries, CDA has been very evasive about the details (even their basic length or terms of renewal) of leases for Hannaford and Rite Aid, which operate on the Northern end of the Plaza.

Yet, if the leases were renewed in 2015, their content would reveal whether CDA has indeed been trying to have those anchor stores move to allow for housing to be concentrated on the Northern end of the Plaza, which would match the 2015 legal Settlement and be more compatible with Conditional Use criteria for housing in the Plaza (by keeping the housing as far as possible from the adjacent neighborhoods and minimizing the impact of added noise, light, trash, odors, traffic, and hours of activity on family residences). If the Planning Board and Council could see the leases, then they would know whether CDA entered the Settlement of December 2015 in good faith. The Settlement called for most housing to be on the Northern half of the property "to the extent reasonably practicable." Did CDA facilitate, undermine, or passively disengage from that "practicableness"? Or perhaps Durham officials would learn that CDA has been honestly reporting that their anchor tenants have had and continue to have long-term leases over which CDA has no significant control.

(See further below for meeting minutes for January 27, 2016, where Sean McCauley is reported as saying that **"the applicant's [CDA's] intent was to provide commercial space for restaurants and shops that could pay more rent than Hannaford,"** which suggests that CDA may not really have been eager to have Hannaford move to a larger store, taking up a higher percentage of the commercial space. Again, the content of the most recent Hannaford lease might reveal key information regarding whether CDA has been negotiating with the Town in good faith, as well as other significant possibilities and constraints associated with Plaza redevelopment.)

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January 5, 2015—Town Planner (revised) letter re: Administrative Decision on 600sf per occupant
https://www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/page/15881/micha

[els_memo_revised.pdf](#) (NOTE: The letter is mis-dated “2014” – both on the document and at the click link)

January 8, 2015—Zoning Determination Regarding “Dormitories” in Durham

On January 8, 2015, Town Planner Michael Behrendt sent an official zoning determination via email to the Mill Plaza applicant. It read, in part: “...dormitory is not a permitted nor conditional use (nor even listed) anywhere in the Table of Uses. Section 175-53 A. of the Zoning Ordinance states that **Any use that is not listed as Permitted or a Conditional use in the district is prohibited in the district.** The purpose of including Dormitory in the Definitions section of the ordinance is for reference only, since dormitories would be allowed only on the campus of the University of New Hampshire in Durham, which is exempt from Town zoning. Thus, Mill Plaza would not be permitted to build a dormitory in its project unless it were to obtain a variance or a zoning amendment allowing for this use.”

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January 9, 2015—From FRIDAY UPDATES: Town to Defend Behrendt Decision re: Zoning Change

MILL PLAZA DEVELOPMENT PROPOSAL UPDATES - Administrator Selig has asked the Town Attorney to Defend Town Planner’s Administrative Decisions Regarding Applicability of Recent Zoning Changes at January 13th ZBA Appeal Hearing

Those residents who attended the October 8, 2014 Planning Board meeting held at the Durham Public Library may recall many concerned citizens regarding the proposal to build multi-unit apartments with office/retail on the first level and possibly on an upper floor in the parking lot of the Mill Plaza.

Many residents stated that they did not want to see student apartments in the Mill Plaza and that Durham in general and downtown Durham in particular had maxed out on new student beds for the time being from their perspective.

The 600 sq. ft. per unrelated occupant amendment had, at that time, been submitted in part so that new construction would be more amendable to housing types catering to a broader segment of the population than simply student beds.

During the same Public Hearing, Plaza representatives said they were taking careful notes as residents spoke and would come back with a plan in January 2015 which better met the wishes of the community.

The Plaza’s attorney subsequently submitted a letter to Town Planner Michael Behrendt informing him that the Plaza owners had modified their original plan and would replace the multiunit apartment concept with dormitory-type dwellings.

Mr. Behrendt informed Plaza representatives that “dormitory” was not a permitted use in the Central Business District. (The only reason there are dorms in the CBD is that they are on UNH property and UNH does not have to abide by our local regulations—and many of those older dorms were grandfathered in before regulations likely existed). This administrative decision is being challenged by the Plaza owners and will be before the ZBA on Tuesday, January 13, 2015. This will be a Public Hearing. [This “dormitory” hearing was actually held in March 2015.]

In addition, the ZBA will hear the appeal of Mr. Behrendt’s administrative determination that the Mill Plaza’s application is subject to the 600 sq. ft. per unrelated occupant zoning change that is now in effect.

Administrator Selig has asked Town Attorney Laura Spector to appear before the ZBA on January 13th along with Mr. Behrendt to defend Mr. Behrendt’s administrative decisions on behalf of the Town.

From: <http://www.ci.durham.nh.us/fridayupdate/friday-updates-january-9-2015>

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CDA PLAZA REDEVELOPMENT SITE PLAN #2 (Jan. 2015)

January 8, 2015—New Mill Plaza Site Plan Submitted (documents dated January 14, 2015)

See the 9-pages of diagrams here for what is labeled as “Durham Village Center.”

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/updated_site_plan_1-8-15.pdf

This revised plan is described further below under the January 14, 2015, public hearing regarding it, which occurred after the January 13, 2015, ZBA hearing (described immediately below) at which CDA appealed Michael Behrendt’s Administrative Decision that the new 600 sf per unrelated occupant zoning amendment applied to CDA Mill Plaza redevelopment plans.

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January 13, 2015—Zoning Board of Adjustment: Appeal of Habitable Space Administrative Decision

C. PUBLIC HEARING on a petition submitted by Ari B. Pollack, Gallagher, Callahan & Gartrell, Concord, New Hampshire, on behalf of Colonial Durham Associates, New York, New York, for an APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION from a December 4, 2014, administrative decision by Michael Behrendt, Director of Planning & Community Development regarding the application of Ordinance #2014-14 to the Mill Plaza Design Review Application. The property involved is shown on Tax Map 5, Lot 1-1, Mill Road Plaza; and is in the Central Business Zoning District.

Excerpt from the ZBA January 13, 2015, Meeting Minutes:

Attorney Robert Dietel said he was representing the applicant in place of Attorney Pollack. He said the applicant was appealing Town Planner Michael Behrendt’s Administrative decision, and said this decision was inconsistent with NH law in regard to the language of the statutes at issue and perhaps more important, the intent of the provisions. He said the series of facts that led to the Administrative decision spoke for themselves and laid clear what actually went on.

He said the dialogue regarding the property had been extensive. He said in the first week of September, representatives from Colonial Durham Associates met with Mr. Behrendt, Code Officer Tom Johnson and Economic Development Director Mary Ellen Humphrey. He said during this meeting, there was discussion on the purpose and plans for the Mill Plaza site. He said shortly after this, the Planning Board met on September 10th, and raised the Zoning amendment at the end of the meeting under Other Business, at 10:30 pm, at the end of a long meeting, and he said the item wasn’t on the Agenda. Attorney Dietel said the timing of this was odd, and also said the presentation was odd in terms of the significance of the change proposed, which was a doubling of the density requirement. He noted that the Planning Board had considered some other Zoning amendments that night, and at that time Mr. Behrendt didn’t mention that this item would be considered. He said two days later, the design review application was submitted, and said the Planning Department held onto it for approximately two weeks before sending out the notice, and used that time to post the notice of the proposed Zoning change.

After lengthy exchanges (regarding rules and scheduling of Planning Board “notice,” sequence of events, relevant state laws and legal precedents, whether the ZBA was the proper entity to rule on this issue), lively debate, and a presentation by the Town Attorney, Laura Spector-Morgan, in support of the Administrative Decision by Michael Behrendt, the ZBA voted 3-1-1 to deny the CDA’s appeal from the Administrative Decision (regarding sf per occupant). The denial can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/page/15881/5-1-1.pdf

The full minutes of the January 13, 2015, ZBA hearing can be reviewed here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/meeting/45821/01

[1315.pdf](#)

Links to the individual documents related to the ZBA appeal and decision can be seen here: https://www.ci.durham.nh.us/boc_zoning/appeal-administrative-decision-mill-road-plaza, including the zoning ordinance, whose applicability to the Plaza's 2014 redevelopment plan was being challenged.

The video of the January 13, 2015, ZBA hearing
<https://dcat22.viebit.com/player.php?hash=1cfa2e372ba2825a8d947656afbf2afe>

[UPDATE: This is the case that was later taken to Superior Court and was settled in December 2015, as described in detail further below.]

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January 14, 2015—Planning Board: Public Hearing on Plaza Redevelopment (Site Plan #2)

XII. Public Hearing—Mill Plaza Redevelopment. Design Review (preliminary application) for significant redevelopment of Mill Plaza Shopping Center site including 89,400 square feet of commercial space (existing and new), an addition to the existing Durham Marketplace building, five new buildings, 185,750 square feet of residential space, 442 beds, greenspaces and plazas, and 168 parking spaces (there are 345 existing spaces). Colonial Durham Associates, LP, c/o John Pinto, owner. Sean McCauley, representative. Joseph Persechino, Tighe & Bond, Design Engineer. Adam Wagner, DeStefano Architects, Architect. Tax Map 5, Lot 1-1. Central Business Zoning District. **Recommended action: Discussion and continuation of design review and public hearing.**

During “**Public Comments**” at the January 14, 2015, Planning Board meeting (prior to the Public Hearing), **Councilor Robin Mower, Faculty Road**, “said she’d noticed that when applicants had been before the Planning Board for a while, there could be a relaxation of the formality that was needed in order to retain the proper distance between an applicant and the Board. She said Board members might want to consider calling applicants by their proper names, and said this would help the community trust in the application review process. She also suggested **concerning the Planning Board’s Rules of Procedures that there should be a rule that Board members who were going to vote on an agenda item should previously have heard the members of the public who spoke at the public hearing on this item, either in person or on DCAT.**” [Emphasis added.] This is an important concept to keep in mind, especially when a design review extends over several years (and there are differently composed Planning Board memberships).

Moving to the January 14, 2015, Public Hearing on Site Plan #2

Colonial Durham Associates presented the revised plan pictured here (9 pages):
www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/updated_site_plan_1-8-15.pdf

As residents noted, the January 2015 plan would have cars entering the plaza along the back of a new 3-story building (partially in the wetland buffer) that would block most of the existing car access lanes (and the view of) the grocery and pharmacy (and plunge the abutting Brookside Commons senior housing into the shadows).

Additionally, CDA again proposed a building extension wedged in between Plaza Building #1 and Mill Road, though this time as a 4-story boutique hotel, with 36-40 rooms. As with the September 2014 plan, the hotel would destroy the only shaded green space in the Plaza. This one green area (with five mature trees and five picnic tables) is one that residents had long been urging the Plaza to preserve and enhance – as in the 2008 Mill Plaza Study and in the 2014 letter from 154 residents, excerpted above. Additionally, since parking spots for the grocery and pharmacy are at a premium (and apparently built into store leases), the proposal was to have valet parking for hotel patrons (with no location for that parking yet being specified). A hotel with valet parking in that location would add a significant vehicle bottleneck to the only congested parking location in the Plaza. With both a three-story building at the entrance and hotel guests’ cars and their valet parkers, there

would be a lot more car movement with a lot fewer lanes of travel.

Also of note: the number of parking spaces would be drastically reduced (by more than half) in the revised plan. (Long-time residents recalled with a sense of irony the passion with which the Plaza claimed in 2009 that it needed *more* parking spaces at the rear of the Plaza lest its new businesses in the second building, and even its businesses in the first building, would suffer from lack of parking. As detailed in the entries for 2009 above, pressure was put on those business owners/managers to come to meetings and declare the need for more parking. Those 2009 claims turned out to be false. Yet, reducing the number of spaces by more than 50% in the January 2015 redevelopment proposal, while adding more businesses and hundreds of residents, *did* seem very problematic.) [FN031015]

A portion of the materials submitted by CDA for the January 14, 2015, Public Hearing initially wowed some residents because they included many “inspiration” photos from other sites that did match the label of a “Village Center.” These included pictures of people at café tables surrounded by greenery, mature trees lining bicycle paths and winding walkways, people gathered around fountains, rows of parked bicycles.

See pages 5-7 at the plan link for the “inspiration photos”:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/updated_site_plan_1-8-15.pdf

Yet, as the submitted plan diagrams were more carefully scrutinized by Planning Board members and members of the public, it became clear that the crowded design did not actually afford the creation of any spaces such as those in the pictures. (Moreover, no submitted plan between October 2014 and April 2018 has ever included any significant number of the elements in those “inspiration” photos.)

Residents were not opposed to the idea of a boutique hotel in the Plaza, but the proposed location was odd (almost sticking out into Mill Road), adding to the congestion at the anchor grocery and pharmacy stores, taking away the one park-like area in the Plaza. The proposed location also suggested that the designers did not understand the difference between Durham and an urban location. (Durham is not on Long Island, NY, where there are often multiple plazas along one road and where any commercial entity not visible from the speeding lanes of traffic is not very viable.) Durham is small town with only *ONE* plaza, and a hotel (or other commercial property, such as a medical office) would not need to be jutting out in the road for it be easily found. As neighborhood residents suggested, a hotel could work very well toward the Southern rear of the Plaza and would benefit from the quieter and prettier location with more trees and footpaths through the wetland toward Mill Pond. And, conversely, the Faculty Neighborhood would benefit from having a hotel (and not student housing) near it, as hotels quiet down at night (as do medical facilities).

Excerpts from the January 14, 2015, Planning Board meeting minutes:

Attorney Ari Pollack, representing Colonial Durham Associates, noted that at the October Planning Board meeting, there was a design review public hearing, and it was agreed that it would be continued to tonight's meeting to allow some revisions to the plans. He said the design team had reviewed notes from the meeting, regulations, and also spoke with neighbors⁶ and was back now with a responsive next step. He said the intent

⁶ The term “neighbors” would normally apply to those next door (abutters) or very close by. Yet, residents who matched those definitions did not know anything about such a meeting with CDA. The mystery was solved when Julian Smith wrote to correct a spelling error in the Planning Board minutes and then added this other comment: “As best I can determine, Attorney Pollack's claim about a ‘caucus with some of your neighbors’ refers to a meeting that seems to have been held on Wednesday, January 7th, and attended, I believe, by members of the Plaza design team and the following Durham residents, in alphabetical order: Andrea Bodo, Art Guadano, Walter Rous, Bill Schoonmaker, Peter Stanhope, and Robbi Woodburn. Given that this “caucus” seems to have taken place the day before the new site plans for the Mill Plaza redevelopment were received in the Planning Office on January 8th, I think it might be useful to inquire of those in attendance, ‘neighbors’ and planning team alike, how much if any input from the ‘neighbors’ these plans represent. If there was no meaningful input from our neighbors, then Attorney Pollack's comment about this caucus was both true and, well, meaningless.” [See a related issue further below regarding a May 2016 meeting between CDA and neighbors at the Public Library and the detailed account provided by the “neighbors” about how their input was actually treated in the submitted plan (#4) that followed.]

was to continue to listen to positive as well as negative comments.

He said on December 1st [2014], the Town Council met and adopted a Zoning change concerning apartments not occupied by family members that would not be economically feasible in Durham. He said Planner Michael Behrendt then determined that this Zoning change applied to the Mill Plaza project, and said this was then appealed to the ZBA. He said Mr. Behrendt had also determined that dormitories was not a permitted use, and said Mill Plaza would file an appropriate appeal concerning this.

Attorney Pollack said today, the applicant had received a menu of choices from Mr. Behrendt relative to housing type, with what sounded like a warning, to pick smartly from this menu or the design review process would be closed. He said the first choice was that the applicant could request a rehearing of the ZBA decision, and/or appeal this decision to Superior Court. He said the second choice was to appeal the determination made on January 8th [2015] that dormitories were not a permitted use. He said the third choice was to seek a variance from the recent Zoning change in order to allow student housing with a density of 300 sf per occupant. He said the fourth choice presented was that the applicant could build apartments at the required 600 sf habitable density for non-families. He said if options 1, 2 and 3 failed, the applicant might consider doing this, but said it was their opinion that this approach was not economically feasible for the Mill Plaza site or any other site in Durham. Attorney Pollack said other suggestions for the Mill Plaza project, concerning elderly and family housing or removing residential uses, while helpful were not viable for this project. He said the last suggestion was to withdraw the application, and said while this was always an option, it wasn't the one the applicant preferred. He said it was hoped that a middle ground could be found in order to deliver a win-win project that recognized the need to upgrade the property and responded to the Mill Plaza study. He said the applicant was trying to clear the air procedurally, but noted that this was difficult because the appeals weren't resolved yet. He said meanwhile, they were moving forward with the mixed use application, and said he hoped discussion on this would continue. **He said if the appeal of the ZBA decision was denied, it would then be appealed to Superior Court.** [Emphasis added.]

Councilor Smith said he thought a request for rehearing of the ZBA's recent decision wasn't an efficient way to proceed. He then read a statement into the public record. [See 25:56 in video for Julian Smith's statement regarding his proposal to change the square footage minimum for unrelated occupants and what he saw as misrepresentations of it by the CDA attorney at the ZBA hearing.] Attorney Pollack asked for a copy of the statement.

Architect Adam Wagner noted that he had provided a concept for a site plan a few months ago and was told it was unimaginative. He said his client had then said the design team shouldn't be afraid to do something great. He said the various comments received had been considered, and said Lisa DeStefano would walk the Planning Board through the revisions to the plan. **He said key words that would describe this plan were: village center, green, traffic calming, phasing in part to address current tenants, engaging of College Brook, pocket parks, amenity space, pedestrian approach, reduction in parking spaces.** He provided an overview of what was proposed, including the proposed square footage, number of beds, parking spaces, greenspace and plazas. He said the 442 beds mentioned in the application was based on having 300 sf of habitable area per occupant. He said the application had not been targeted to 100 sf per occupant per the dormitory classification. [Emphasis added.]

In response to a question from Councilor Smith, he said they would be single occupancy beds. Councilor Smith said he would like to see this stated in future documents.

Architect Lisa DeStefano next described the revised design in detail. She noted that the existing one story Durham Marketplace building would remain, which would be anchored in a village green with a two-story commercial structure and a 4-story boutique hotel, both of which would both be constructed close to the street edge on Mill Road. She said there would be green areas between the new structures that allowed pedestrians to gather and access into the site, and said this access would align with the access way on the other side of Mill Road.

She said there would be commercial space on the first floor of these new buildings, and residential space on the upper floors. She noted the current pocket garden at the corner of Mill Road and Main Street, and the change in grade there, and said they were investigating having the main entrance to the second floor of the hotel come off of the park.

She also noted the proposed 3-story mixed use building along College Brook, across from the Durham Marketplace building, as well as the proposed 4-story mixed use building to be set at a right angle to both of those buildings. She explained how cars and delivery vehicles would be able to access the site and to park, and also spoke further about how pedestrian access that would be available at various locations.

Ms. DeStefano spoke about the proposed phasing of the project. She said the tenants currently in the angled building in back could be moved to the new buildings in front, and said this would allow the second phase of the project to be built in the back. She said the tenants had been contacted concerning this. She described the plans for building in the back of the site, and said there would be a building with parking on the first floor, and two to three stories of residential above. She also described a courtyard area that had been designed for the back of the site. She explained that the proposed 4 story buildings were actually 3 stories with a 4th floor tucked under the roof so the building wouldn't appear to be as tall, and noted that this design was similar to what the Orion project included.

She said there would be pedestrian access along College Brook, which would connect with other activity on the site. She noted the current edge of road pavement against the brook, and said the design hadn't gone any closer to it. Engineer Joe Persechino said there would be 50% less wetland encroachment with this design than there was currently.

Ms. DeStefano showed visuals of the project from various angles. She noted that a lot of time was spent on designing gathering spaces for the development, and provided details on where these were included. She also spoke in detail on the proposed view corridor extending inward from the entrance to the property. She explained that green areas would extend through the site, and would help draw people into the site.

She noted a proposed bike and walking trail that would connect from Mill Road to Chesley Drive. She also spoke about opportunities for outdoor space for restaurants, etc. with the proposed commercial building along College Brook.

Councilor Smith said he liked the design, and said he might like to live in the development if it was on a subway stop, in a city. But he said there was a limited amount of space in downtown Durham, and said there would have to be discussion on the parking issue. He said he supported including parking over some other uses, in this instance.

Ms. Tatarczuch asked how many guest rooms were planned for the 4-story hotel. Ms. DeStefano said it would be a small hotel with 36-40 rooms, and noted that the owner was looking for some buy-in on this idea before signing someone up. Ms. Tatarczuch asked about parking for the hotel, and Ms. DeStefano said there would be 30-40 spaces for guests at the hotel and also there could be valet parking, so that cars could be parked elsewhere.

Councilor Smith asked if there would be valet parking for residential tenants. Mr. Wagner provided further details on the parking, and noted that with valet parking, there could be some stacking of parking.

Chair Corrow confirmed that the current design was based on using 300 sf of habitable area per occupant. Mr. Parnell said he didn't understand what the applicant was hoping to accomplish tonight, given the ZBA decision last night and that the applicant didn't think 600 sf of habitable space per occupant was viable. Chair Corrow agreed. Mr. Wagner spoke about the dormitory concept, and Mr. Parnell said the Planning Board had been told that this wasn't viable either. He said he thought what was presented this evening was a great plan, but said he

wasn't sure why they were discussing something like the number of rooms in the hotel when the plan was either not viable or not legal.

Attorney Pollack said the applicant was trying to move forward in some manner. He said they were showing the amount of space dedicated to residential, and couldn't say now whether it would be dorm style, apartments at 300 sf, or apartments at 600 sf. He said the answer to this would come from others. He said the recent ZBA decision was a split vote. Councilor Smith said the vote was 3-1-1. Ms. DeStefano said the presentation was of a mixed use development, and said while the number of beds might change, there would be retail space, a hotel, etc. Ms. Tatarczuch said the plan was probably a very good design in terms of the amount of green space in it, etc., but she said the Planning Board had gotten into difficulty by not getting into enough detail on some projects. She said the number of beds/occupants was a critical detail that the Board would have to take into consideration, and said if it was above a certain level, the project wouldn't fly.

Eight members of the public spoke about the plan. Most noted that there were some improvements over the prior site plan from September 2014, but all but one resident also raised concerns, including:

>> Lack of coordination with likely redevelopment of Main Street property across from Mill Plaza.

>> Destruction of the small park-like area adjacent to the Bakery Café (which has 5 picnic tables and 5 mature trees, and is the only shade spot on the Plaza site).

>> Additional attention was needed to the nutrient overload in College Brook and further down the waterways (Oyster River, Mill Pond, Great Bay) and the submitted plan needed to be modified to properly label and respect the shoreland and wetland setbacks and buffers.

>> There were too many student "beds" proposed, which undermined the positive aspects of the "new urbanist" style of the design, which could work for "families with children, some older people, etc." but "if there were dorms with students living in them, it would become a slum."

>> Threats to the lifestyle and property values of the adjacent neighborhood.

>> Need for the Planning Board to do more "planning" and push redevelopment toward what was worked on collaboratively with the 2008 Mill Plaza Study and other efforts.

The criticisms of Site Plan #1 from 174 residents (including a group letter) – as detailed above – were still relevant to Site Plan #2. Seven new resident letters were added before, at, or after the January 2015 Public Hearing on Site Plan #2. Of these seven new letters, 5 were very critical of the redevelopment plan submitted, and two were supportive.

New Supportive Letters, January 2015:

Cathy and David Leach wrote that "It is obvious that the design team resolved initial concerns of some residents and added more amenities and beauty to the project. This is an exciting project that will provide a strong economic and aesthetically pleasing anchor to our downtown. Please do what you can to bring this vision to fruition." The Leach email is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/leach.txt

Peter Stanhope wrote to say that he had the "opportunity to review the current plan before the Board and find it to have merit." He added that the "Plaza has the potential of being a major contributor to the ad valorem tax base of Durham as redeveloped." The Stanhope letter can be read here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/stanhope.txt

New Critical Letters, January 2015:

Diane Woods, 21 Garden Lane, wrote in “vehement” opposition to more student housing complexes (unless built by UNH *on* campus). “Out of town developers should not be allowed to come in and overbuild in an unsustainable way. We need to be vigilant about this now!” She wrote about the “extraordinary plan” that was “developed for the Plaza by outstanding architects and a huge amount of citizen participation in 2008.... I think that plan should be used as a template for any development that happens in the Mill Plaza area. The full Woods letter is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/woods.txt

Robin Mower, 11 Faculty Road, focused on the degraded College Brook, how the submitted plans seemed to show buildings within the wetland setback, the need to protect and enhance the buffer, and more. Full letter:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/20150114_mower_to_pb_re_mill_plaza.pdf

Meredith Davidson, 2 Sumac Lane, wrote with concern about projects that will “saturate our town with student housing.” She adds: “I think it would be prudent of the Town to put any housing developments in the downtown area on hold until the effects of the current under-construction projects are felt – maybe two years or more.” See full letter here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/davidson.txt

Jennifer Pribble, 8 Bayview Road, wrote: “The downtown is tapped out for student density. I believe that studies conducted by town council representatives demonstrate this. We need to be very cautious about further development of our downtown core. The rapid expansion of private student housing hasn’t been tested. Does UNH anticipate increased enrollments? Will these enrollments continue over time - or will Durham be left with a ghetto of uninhabited buildings in our downtown core? Are we creating housing options and interest for long-term residents of Durham? Are we creating affordable housing for families?” Ms. Pribble questioned whether the 600 sf zoning amendment was the best mechanism for addressing the glut of student housing, but added: “I ask you to call for a moratorium on new developments (including mill plaza) until the town can see what the impact of almost 2000 additional beds is in our downtown core.” The full Pribble letter is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/pribble_2.txt

Noelle Khlif, Garden Lane, wrote: “Enough is Enough. We don't need any more student housing.... Our Durham lost its beauty and charm and downtown is turning into a students ghetto. What a shame to allow this to happen. I urge you all not to allow more student housing, especially in the mill road plaza.” Full email here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/khleif.txt

As noted above, most of the critical letters addressed concerns about the center of Town being lost to full-time residents with the density of student housing and/or argued that Town should put a hold on more student housing until the impact of the nearly 2,000 extra student beds added in Durham between 2011 and 2013 is assessed.

Continuing from the January 14, 2015, Planning Board meeting minutes:

Chair Corrow asked if the Board wanted to keep the public hearing open. Councilor Smith said he would prefer to close the design review and invite the applicants to submit an application.

Mr. Behrendt said he thought it made sense to close the design review. He said there was one big issue, which was occupancy, and said he thought substantial strides had been made with the design, other than the student housing. He said unless the student housing issue was removed or a plan met the standards, he didn't see value in continuing to talk about refinements to the design.

He also said if the design review was closed tonight, he would discourage the applicant from submitting a formal application. He said the purpose of design review was to see if everyone could get to the same page, but said there were some big obstacles. He noted that even if 600 sf was provided per occupant, what was proposed was very different than having the required commercial space on the first floor and two stories of residential space above.

Councilor Smith said another large elephant was the parking issue. He said the Planning Board would have to give the applicant a waiver in order to allow a reduction in parking by half. He said he wanted to make sure that the Planning Board discussed whether it would look favorably upon such a reduction.

Chair Corrow agreed that the public hearing could be closed this evening, and said he would like to hear from additional Planning Board members on this. Mr. Williams said Mr. Parnell's earlier comment was helpful. He said he didn't see how the Planning Board could proceed if the decisions to be made by others on the various options had yet to be made. He also said he shared a deep concern about College Brook, and said its rehabilitation should be given conscious attention, along with the parking and occupancy issues.

Ms. Tatarczuch said she agreed, and said the Planning Board had no reason to invite the applicant back under the current circumstances. She said the housing described this evening didn't meet the standards set for the Town, and said she agreed that the design review discussion should be closed.

Councilor Bubar said she thought the Planning Board needed to let the legal issues run their course, and said until the Court decided what the density requirements were, they couldn't do anything. **She said she agreed that it was a really nice design, but said it had been made clear that what the applicant wanted to do was much too dense.** [Emphasis added.]

Mr. Kelley said if there was a case to be made by the owner, it wouldn't be with the Planning Board, and said the Board should let this process transpire first. Attorney Pollack agreed that the authority to decide on the legal issues might not rest with the Planning Board, and he spoke further on this.

Councilor Bubar said if the Board was dealing with something it couldn't do anything about, it would be nice if it didn't have to deal with it at each meeting. She suggested that perhaps a design committee could be developed that would meet with the design team, until the underlying density issues were resolved. Chair Corrow said it could be premature to have such a committee. Mr. Behrendt said the Board could push the design review out a few months, or could close it, and then if and when the applicant believed the student housing issue had been worked out, a new design review application could be submitted. He said there were some significant zoning issues right now, and also said the parking was a huge question. He also noted that it would be a conditional use application, so the Planning Board would have a lot of discretion.

Mr. Parnell said traditionally the Planning Board used the design review process to provide its concerns about a proposed project, and an applicant then came back with a formal application. He said the Board had done this concerning this project, but said perhaps the concerns could be expressed more formally before closing the design review. He said the Board had issues with occupancy, parking, some of the buildings being in the wetland buffer, and the two buildings in the back having no commercial space. He said he thought whether the design review was closed or not was irrelevant, and said it could perhaps be continued to a date when there was firm information on some of these issues. But he said it shouldn't be continued to upcoming meetings.

Attorney Pollack said they would like a 3-4 month continuance, and would come back with answers concerning the occupancy issue. Councilor Smith asked whether if the court affirmed Mr. Behrendt's administrative decisions that 600 sf applied and also that dorms were not permitted, this would kill the project. Attorney Pollack said no. He said he wasn't convinced that the owner would not proceed with some units, and was also not ruling out the possibility of receiving a variance. [Emphasis added.]

Councilor Smith asked whether if the applicant accepted the 600 sf per occupant ruling and then designed and

built luxury apartments, these apartments would be rentable without a guarantee of parking on the site. Attorney Pollack said he didn't know, and spoke further on this.

Richard Kelley MOVED to continue the Design Review to the April 8, 2015 meeting [incorrectly written as "April 8, 2014" in the minutes]. **Lorne Parnell SECONDED the motion.** *Mr. Kelley said there were some other options the applicant could potentially exercise, and said he commended them for trying to make a project work, and said the plan presented tonight was a step in right direction, There was further discussion. **The motion PASSED 5-2 with Councilor Smith and Linda Tatarczuch voting against it.*** [Bold in original]

The full January 14, 2015, minutes can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/45611/011415.pdf

A video of the January 14, 2015, meeting can be seen here (with CDA presentation starting around 17:00):

<https://dcat22.viebit.com/player.php?hash=ec504e02674142f08232aa54cf6ddeb8#>

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January 30, 2015 – Friday Updates: CDA Urged to Comply with Zoning or Await Appeal Outcomes

MILL PLAZA UPDATE – Owner Urged to Comply with Zoning Requirements if He Desires to Continue Review by Planning Board

Planning Board Chairman Peter Wolfe and Administrator Todd Selig asked Dir. of Planning Michael Behrendt this week to reach out to the owner of the Mill Plaza to talk with his design team about the application for a major redevelopment of the parcel.

The Mill Plaza design team has submitted two iterations of plans for the redevelopment of the 10 acre parcel, both of which have included 442 residential beds that would in all likelihood be student housing, evidently based on the old zoning standard of 300 square feet of habitable floor area per bed....

The Mill Plaza has the right to ask for a rehearing before the ZBA and then appeal to Superior Court and Mr. Behrendt understands the owner may also appeal a separate determination made by Town staff that dormitories are not a permitted use in any zoning district.

However, in the absence of an authoritative determination that student housing is allowed in this zone as the Mill Plaza proposes it, it is the opinion of Chairman Wolfe and Administrator Selig that further discussion of any plans that include a student housing component predicated on 300 square feet of habitable area is a poor use of time for the Planning Board, the public, Town staff, and the applicant.

The Planning Board simply cannot approve an application that is in clear violation of the Durham Zoning Ordinance.

The Planning Board continued the Design Review and Public Hearing on the Mill Plaza proposal to its April 8th meeting.

Mr. Behrendt has suggested to the Mill Plaza design team that it either redesign its plans based upon the current zoning ordinance or request a postponement to another meeting if the owner is waiting for some other definitive determination.

<http://www.ci.durham.nh.us/fridayupdate/friday-updates-january-30-2015>

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March 10, 2015–Zoning Board of Adjustment: Multiple Plaza Issues

www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/meeting/45841/3-10.pdf

D. PUBLIC HEARING on a petition submitted by Ari B. Pollack, Gallagher, Callahan & Gartrell, Concord, New

Hampshire, on behalf of Colonial Durham Associates, New York, New York, for an APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION from a January 8, 2015, administrative decision by Michael Behrendt, Director of Planning & Community Development denying the use of a dormitory dwelling in the Central Business District. The property involved is shown on Tax Map 5, Lot 1-1, Mill Road Plaza; and is in the Central Business Zoning District. [DENIED]

E. PUBLIC HEARING on a petition submitted by Ari B. Pollack, Gallagher, Callahan & Gartrell, Concord, New Hampshire, on behalf of Colonial Durham Associates, New York, New York, for an APPLICATION FOR VARIANCE from Article II, Section 175-7.A, from Article XII, Section 175-53(A) and Article XII, Section 175-41(F)(7) of the Durham Zoning Ordinance to permit the construction of a mixed-use development of four, 4-floor buildings wherein some buildings will contain one floor of non-residential space with three floors of residential space, wherein one building will have all residential units on all floors and wherein the density requirement is calculated using gross floor area instead of habitable floor area. The property involved is shown on Tax Map 5, Lot 1-1, Mill Road Plaza; and is in the Central Business Zoning District. [DENIED on gross floor area; tabled on ratio of residential to commercial.]

VI. Other Business: A. REQUEST FOR REHEARING on a January 13, 2015 denial of a petition submitted by Ari B. Pollack, Gallagher, Callahan & Gartrell, Concord, New Hampshire, on behalf of Colonial Durham Associates, New York, New York, for an APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION from a December 4, 2014, administrative decision by Michael Behrendt, Director of Planning & Community Development regarding the application of Ordinance #2014-14 to the Mill Plaza Design Review Application. The property involved is shown on Tax Map 5, Lot 1-1, Mill Road Plaza; and is in the Central Business Zoning District. [DENIED]

SEE ZBA RULES OF PROCEDURE here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/page/9371/zbarules_final_7-09.pdf

The Plaza's Attorney came to the Zoning Board of Adjustment on March 10, 2015, for three separate matters (with the second request having two parts).

ZBA Appeal #1: Public Hearing on an appeal of an administrative decision by Michael Behrendt that "dormitory" is not an allowed use in the Central Business District.

From the ZBA March 10, 2015, meeting minutes:

Attorney Ari Pollack introduced the project team. He asked that he be allowed to make one presentation on all of the applications, and said they represented a series of choices for the ZBA. He said the applicant was looking for some way that the project could continue through the design review process.

Mr. Lawson said he objected to that approach, stating that while it might be convenient for the applicant and for members of the public, it wouldn't be convenient for the ZBA to be looking at the different choices, which was likely to be confusing. The other Board members agreed with this. Chair Starkey asked that the Appeal of Administrative Decision [on dormitories in the Plaza] be presented first.

Attorney Pollack said the Application for Appeal of Administrative Decision regarding allowing a dormitory pertained to a 10 acre, undivided property that bordered the UNH campus, the central core of Durham, and an environmentally sensitive waterway. He said the property was underutilized, and had the potential to be a centerpiece of the downtown for years to come.

He said the applicant was appealing the Administrative Decision that dormitories were not a use that was available for private property anywhere in Durham. He said there was no question that dorms were addressed by the Zoning Ordinance, and were treated like other housing uses. He said there was nothing in the definition of dormitory in the Ordinance that would distinguish a dormitory that was private vs one that was owned by the

University. He said while one might think something was stated or should be stated in the Ordinance, the distinction being raised by the Town Planner wasn't supported by the language of Ordinance.

Attorney Pollack spoke about the recent Zoning change to require 600 sf per bed for unrelated occupancy, and said as a result of this ruling, the applicant was forced to try to redesign the project with a viable housing type so there could be a successful redevelopment project. He said the Zoning Ordinance said the density for dormitories was 100 sf per resident/bed, which was considerably denser than the old or new requirements in the Zoning Ordinance. He said the plans were updated to show that a dormitory approach was being pursued.

He handed out a sheet of definitions from the Ordinance. He said dormitory dwellings were undistinguishable from other dwelling types, and said they should have been recognized as a Conditional Use that was allowed in the Central Business District. He noted that Section 175-53A of the Zoning Ordinance stated that mixed use residential was permitted in the CBD through a Conditional Use permit. He also said dormitories were recognized as a form of multi-unit residence in table 2.1 of the ordinance, which was in the Definitions section.

He said the definition for mixed use with residential - office retail down, residential up didn't say this didn't include dormitories, and also didn't list what was to be allowed. He noted the definition for residence, multi-unit. He noted the definition for dwelling unit, and that there was no reference there to apartment, dormitory or any other type of dwelling use. He also noted the definition for dormitory. He said despite the Ordinance's unambiguous definitions, Town Planner Michael Behrendt had determined that dormitory wasn't an allowed use for the proposed project or anywhere in Town unless it was a University project, which didn't have to comply with the Ordinance anyway. He asked why the use was mentioned at all in the Ordinance if it couldn't be done. He said there was no authority for that determination, and also said there was plenty of precedent that when words were used in an ordinance, they were not to be ignored. He said the presumption was that those who had adopted the words knew what they were doing, and chose them purposefully.

Ms. Woodburn said there did seem to be a distinction between dormitories and dwelling units, in that there were common dining and cooking facilities for a dorm. She said she didn't think they could be lumped in together as multi-unit housing.

Attorney Pollack said there was a potential distinction, but said there was no definition of how common the common facilities had to be. He said some of the dorms on the UNH campus had a suite arrangement, with bedrooms that shared bathrooms and common cooking areas, and said these common areas weren't dedicated to the whole building.

Chair Starkey said dormitories had 10 or more occupants, with individual sleeping arrangements but everything else in common. He said he saw a very big distinction between that and an apartment layout. He said the allowed uses were laid out well in the Table of Uses in the Zoning Ordinance, and didn't include dormitory. He also said just because there was a definition for dormitory, this didn't mean it needed to be included in the Table of Uses.

Attorney Pollack said he didn't believe the Table of Uses included apartment either. He also said it didn't say what the residential units looked like. He said there was nothing in the Ordinance that said he couldn't put forth the dormitory use. Chair Starkey said the applicant could ask for this, but said he didn't see it in the Table of Uses. Attorney Pollack said they wouldn't see apartments either, and said it was treated the same way. Ms. Woodburn said the definition of apartment included the words dwelling unit, and Chair Starkey said there was nothing that said dwelling unit in the dormitory definition. Attorney Pollack said this didn't foreclose the possibility that a dorm could be a dwelling unit. There was discussion about whether or not the Ordinance was purposely written that way.

Ms. Woodburn said there was an explicit statement in the Ordinance that said if the use wasn't called out in the Table of Uses, it wasn't allowable. There was discussion that apartment wasn't in the Table of Uses, but the definition for apartment mentioned dwelling unit.

Attorney Pollack said the applicant was trying to bring forward something that allowed a project that was desirable. He said when they tried to get creative and get around what was put in their way, this was found to be an available idea because the Ordinance didn't say no.

Chair Starkey confirmed that the applicant wanted the dormitory style to be an available choice. Attorney Pollack said the applicant would like the Administrative Decision to be reversed so this use was available. Chair Starkey said the use wasn't in the Table of Uses, so it wasn't available. There was further discussion.

Mr. Lawson said they were talking about mixed use, and said the definition for this was very specific to multi-unit residential, which was then defined specifically in the Ordinance. He also said he didn't believe the Table of Uses used the word apartment consistent with multi-unit residence. He said there were a lot of definitions in the Ordinance that weren't included in the Table of Uses, and weren't allowed. He said mixed use was office retail down, multi-residential up and was carefully defined. He said the Town had been very careful with these definitions.

Attorney Pollack spoke further on why the dormitory approach had been pursued. Chair Starkey asked if there were any members of the public who wished to speak for or against the application.

Five people spoke against the application, including **Town Planner Michael Behrendt, Councilor Julian Smith of Packers Falls Road, residents Annmarie Harris of Oyster River Road and Shane Malavenda of an abutting home on Faculty Road.**

Additionally, **Councilor Robin Mower, an abutter of the Plaza on Faculty Road,** provided detailed arguments against the application citing Durham zoning ordinances and related cases. She also submitted a letter addressing Faculty Road residents' experiences with property and home invasions by students: https://www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/page/18701/20150310_mower_to_zba_variance_mill_plaza.pdf

In a more neutral input, **Ken Entz, owner of Wildcat Fitness** "said the owner and landlord of Mill Plaza had treated him fairly. He said everyone wanted to see something happen at the Plaza, and said he hoped that between the Town and Colonial Durham Associates, this could happen."

Chris Sterndale MOVED to deny the petition submitted by Ari B. Pollack, Gallagher, Callahan & Gartrell, Concord, New Hampshire, on behalf of Colonial Durham Associates, New York, New York, for an Application for Appeal of Administrative Decision from a January 8, 2015, administrative decision by Michael Behrendt, Director of Planning & Community Development denying the use of a dormitory dwelling in the Central Business District. The property involved is shown on Tax Map 5, Lot 1-1, Mill Road Plaza; and is in the Central Business Zoning District. Robbi Woodburn SECONDED the motion and it PASSED unanimously 5-0. [Emphasis in original]

For more details on this appeal from administrative decision that no dormitories are allowed beyond the UNH campus, see pages 6-11 of the March 10, 2015, ZBA meeting minutes here: www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/meeting/45841/031015.pdf

ZBA appeal #2 (two parts): Public Hearing on Variances from Limited Levels of Housing & Gross vs. Habitable Space Calculations

Next was the **Public Hearing at the ZBA on a request for a variance to permit the construction of a mixed-use development of 4 four-floor buildings, in which some buildings contain one floor of "non-residential" and three floors of residential and some will have all floors residential. Additionally, this variance request asked for permission to calculate "density" based on "gross floor area" (including such areas as hallways, stairwells, entrances), rather than "habitable floor area" (the actual living spaces).**

Were this (double) variance to be granted, it would result in increasing the density of the housing units. (It is important to note that even apart from housing being a “conditional use” in the Plaza, something that the Planning Board, not the ZBA, would consider for any plan involving housing, Durham’s current zoning allows only 3 floors within a multi-unit housing building with the first floor being commercial OR four floors *only if* the first floor and a second floor are non-residential. Given that some of the Plaza’s previous designs show parking on the first floor as a “non-residential use,” granting this variance could mean that the Town would get very little actual commercial/retail space within a very dense multi-unit housing development (apparently designed for hundreds of students). Again, another key part of this variance request was whether the applicant (CDA) could calculate how many “beds” could be included in a building based on “gross floor area” (including closets, hallways, etc.) instead of “habitable space.”

Context for Plaza’s ZBA Appeal #2 at March 10, 2015, Meeting: This second public hearing was for a variance (or for two combined variances, as outlined in the previous paragraph). According to state law regarding variances, five criteria must be met if the ZBA is to grant a variance. And the applicant and board and public comments must address these criteria:

- (1) no diminution of value of surrounding properties will be suffered;
- (2) granting the permit would be of benefit to the public interest;
- (3) denial of the permit would result in **unnecessary hardship** to the owner seeking it;
- (4) by granting the permit substantial justice would be done; and
- (5) the use must not be contrary to the spirit of the ordinance.

(“Unnecessary hardship” is NOT about financial hardship but rather relates to a uniqueness of the property in question and whether some unique feature about the property makes its use difficult if the ordinance is followed strictly.)⁷

March 9, 2015—Town Planner Behrendt Memorandum on Variance Application

The Town Planner treated this application as two separate variance requests, one for relief from Article II, Section 175-7.A, in order to use “gross floor area” instead of “habitable floor area” to calculate required area per occupant, and one variance from Article XII, Section 175-53 (A) and Article XII, Section 175-41 (F) (7) to allow for four 4-floor buildings wherein some buildings will contain one floor of non-residential space with three floors of residential space and one building will have all residential units on all floors.

Planner Behrendt summarized his assessment before going into detail on each variance request in terms of each of the five criteria for granting variances:

I do not believe that either variance request meets the five required criteria required for consideration by the Zoning Board of Adjustment. As you know, the burden is on the applicant to meet all five criteria. This is a substantial hurdle.

⁷ For example, if a subject property is unusually shallow and that means that an ordinance regarding front and rear setback distances for a building would not allow a house of typical size for the neighborhood to have space for a few steps to enter/exit the house, the property owner could claim “hardship” to support a variance from the setback distances. The unique shallowness of the lot would make the application of the normal setback requirement a hardship. In contrast, unique features of the property that bear no relation to the restriction in the ordinance would generally *not* justify relief from an ordinance. For example, the shallowness of a lot would not justify building a multi-unit dwelling where only single-family homes are permitted. As Cordell Johnston writes in “New Law Defines ‘Unnecessary Hardship,’” *New Hampshire Town and City, September 2009*, “To establish unnecessary hardship, the applicant in every case will first have to demonstrate that there are ‘special conditions of the property that distinguish it from other properties in the area.’ **The property must be different, in a meaningful way, from other properties in the area, and must be burdened more severely by the zoning restriction.** Second, the applicant must establish that, because of the special conditions of the property, ‘no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.’ Finally, the applicant will have to demonstrate that because of the special conditions of the property, the proposed use is reasonable. The reasonableness of the use will depend, to a large extent, on how the proposed use would affect the surrounding area.” <https://www.nhmunipal.org/TownAndCity/Article/181> [Emphasis added.]

The pertinent ordinances are well thought out, were subject to a rigorous review and adoption process involving both the Planning Board and the Town Council, and are consistent with good planning practice. The desire of the applicant to build the way he wishes, regardless of the community's ordinance requirements, is simply not a sufficient reason for the granting of the requested variances by the Zoning Board of Adjustment.

Mr. Behrendt's detailed arguments regarding each variance criterion (none of which he saw as being met with either appeal) can be read in the 4-page document here:

www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/page/18701/michaels_memo.pdf

Of particular note was Planner Behrendt's argument regarding the crucial "hardship" criterion. That is, what special characteristics of the site create an unusual problem for the owner/developer in being compliant with Town ordinances, making it unfair in some way *not* to grant the variance.

Regarding the use of "gross area" vs. "habitable area," Behrendt notes: "There is nothing unique about this particular property in the context of this request that merits special treatment making it at variance with the provisions of the Zoning Ordinance."

Regarding the second variance request, Behrendt notes: "There is nothing unique about this particular property pursuant to this request that merits special treatment, at variance with the provisions of the Zoning Ordinance. The specific requirements for a maximum of 2 floors of residential development are long established in Durham in order to carefully manage the number of new residences (likely students) that will reside in the downtown. It also ensures that along with residential, the Town obtains nonresidential space for other purposes in the community."

[PREVIEW NOTE ON THE CHALLENGES OF "HARDSHIP" VARIANCE APPEAL: These comments from March 2015 about the challenge of making a "hardship" claim should have alerted CDA representatives that their 2017 ZBA variance requests were going to require special attention to the "hardship" criterion. Yet, their "hardship" appeal for variance for their June 2017 plan was woefully inadequate, referring again to the *size and potential* of the property – which suggested "opportunity" rather than hardship. Mr. Behrendt's comments on the other criteria not being met should have further alerted CDA to the need for careful work on variance appeals, including collaborating with residents in refining the requests and gaining broader support. As Cordell Johnston was quoted on in the footnote above, "The reasonableness of the use will depend, to a large extent, on how the proposed use would affect the surrounding area." That care in preparing the ZBA variance appeal and that collaboration with residents did not happen. And both 2017 variance requests were denied, as detailed further below.]

From the ZBA meeting minutes on the March 10, 2015, variance request:

Attorney Pollack said the evolution of the redevelopment concept had recently been fairly well received. But he said the elephant in the room was how the development could be constructed and comply with the recent Zoning amendment regarding density to require 600 sf per unrelated occupant. He said an apartment with 4 occupants at 2400 sf would probably be larger than most single family homes for 4 persons.

He noted again that a project on the Mill Plaza site had the unique potential to become a centerpiece in the downtown for future generations. He said variances were for unique situations and sets of facts, and said this was a rare and limited opportunity to allow a project to move forward. He said the vision for the property went back to 2008, and paid considerable homage to the Mill Plaza study.

Attorney Pollack said what had been designed was a mix of commercial and residential, and said it had been blended into the site in a way that provided screening of residential uses, made commercial uses accessible to the traffic pattern, provided adequate parking, didn't overburden the site, took away some of the pavement, and provided additional greenspace to activate the environmental nature of the property, including College

Brook.

He said the project would create an opportunity for public gathering spaces, which were scarce off campus. He said it would also pay homage to the Main Street streetscape and to residential areas nearby. He said the commercial properties would be prominently displayed, and would include a hotel, grocery store, retail areas, spaces for dining, health and fitness, etc. He said there would be a village feel to the site that spoke to its uniqueness.

Attorney Pollack said the first variance requested was from Article II, Section 175-7.A, to permit the construction of a mixed-use development of four, 4-floor buildings where the density requirement was calculated using gross floor area instead of habitable floor area. He said the gross floor area included the entire space on each floor, including attics, cellars, etc., and said using this calculation, there could be approximately 310 occupants, which would back into 420 sf of habitable floor area per occupant. He said this was proposed because the applicant was trying to find a compromise, and bring an otherwise desirable project forward. [Emphasis added.] [Note that this compromise offered was more restrictive on CDA's redevelopment plan than what was ultimately included in the legal Settlement reached in December 2015.]

Attorney Pollack went through the variance criteria and how they were met. He said granting the variance would not decrease the value of surrounding properties. He said a redevelopment of the property was long overdue, and said the proposal tried to pay homage to the Mill Plaza Study report. He said the variance would enable Mill Plaza to be redeveloped as a bridge between the downtown commercial core, UNH, College Brook and surrounding residential areas, and said these changes would enhance the value of surrounding properties and the community. He noted that currently, Mill Plaza had an extreme amount of pavement and parking, and very little in the way of environmental friendly areas.

Attorney Pollack then went through the claims in Mr. Behrendt's memo, challenging each. His overall argument was that since the Plaza was a large site ripe for redevelopment, anything that facilitated CDA's plan for redevelopment was in the public interest and entailed "substantial justice," and any ordinance that stood in the way of CDA's general financial plan created a "hardship" that should be removed with variances.

He noted that Mr. Behrendt's memo said property values could suffer as a result of this large, out of scale project. Attorney Pollack said the density the applicant was asking for was similar to or less than other approved projects, some of which involved a substantial number of variances. He said the applicant's request was also more important in terms of the community.

He said granting the variance would not be contrary to the public interest, noting that mixed use development was permitted and encouraged in the Central Business District (CBD). He quoted from the Ordinance on this. He said a balance of commercial, retail and residential uses was necessary to enable redevelopment of Mill Plaza from a financial perspective, and also said it was important to achieve a balance between the needs of the property owner and the community, which in this case was very well documented.

*He said the Town Planner was prepared to say the project would be very detrimental, but he said people should keep an open mind as to whether the impacts could be mitigated. **He also noted that a project would have to meet conditional use criteria.** He said he hoped the ZBA gave the applicant the green light to continue what should be a detailed design review process. [Emphasis added.]*

Concerning the hardship criterion, Attorney Pollack said no fair and substantial relationship existed between the general purpose of the Ordinance provision and the specific application of that provision to the applicant's property. He said redevelopment of Mill Plaza was long overdue, and said the requested relief provided the applicant with the necessary flexibility to proceed with a viable residential component of a mixed use proposal for the site. He said the applicant believed that the proposed balance of commercial, retail and residential uses was necessary to make the goal of a redeveloped Mill Plaza viable.

Attorney Pollack said the Town Planner had stated that there was nothing unique about this property, but said he couldn't conceive how that was correct. He noted that it was a 10 acre site adjacent to the downtown, the waterway was nearby, the location of the site was in the midst of a pedestrian connection, and the property had been the subject of a public study to create redevelopment concepts for private land.

[Note that Mr. Behrendt did *not* say that there was nothing unique about the property as a whole, but rather that there was no unique feature of the property that related to the specifics of the variance requests. See footnote #7 above. This is the same "unique distinction" that came up again in CDA's unsuccessful variance requests in 2017, as noted further below, where the Board found CDA's "hardship" case questionable.]

He [Ari Pollack] said the proposed use was reasonable because limiting the density requirement in Section 175.7.A, Table II-1 to "habitable" floor area jeopardized the feasibility of the redevelopment proposal, by requiring the apartment units to be wildly overbuilt beyond what the market could sustain. He said this would mean that apartments for unrelated households were no longer on the table for the districts where the 600 sf per unrelated occupant requirement applied.

Attorney Pollack said the Planner said the Ordinance was carefully crafted for the intended result. But he said careful planning didn't involve an announcement at 10:30 pm at a Planning Board meeting of a Zoning amendment to double the density requirement. He said this was seen as an intentional block of this project.

He said owing to special conditions of the property that distinguished it from other properties in the area, the property could not be reasonably used in strict conformance with the Ordinance, and a variance was therefore necessary to enable a reasonable use.

He said Mill Plaza was a unique and important property in Durham given its dominant size, slope and proximity to College Brook and Main Street, and was entitled to special handling because it was different.

He said strict conformity to the Ordinance would remove the type of flexibility that needed to be applied to this project in order to allow it to move forward. Attorney Pollack said the Planner thought no special treatment was justified, but he asked how many other private properties were the focus of a redevelopment study.

He said substantial justice would be done in granting the variance. He said it would allow the applicant to move forward with a design review process that was already underway, whereas the Ordinance as applied to the applicant said the project wasn't wanted. He asked which message the ZBA wanted to send to the applicant.

He said the Town Planner said granting the variance would create an injustice because it would temper the carefully crafted nature of the Ordinance. Attorney Pollack said he would call it a carefully crafted midnight ordinance, and also said a variance was supposed to be available because sometimes one size didn't fit all. He said this wasn't a standard project.

He said the use would not be contrary to the spirit and intent of the Ordinance. He said the Ordinance recognized the importance of enhancing the achievement of the Town's economic development goals, including the successful redevelopment of underperforming properties with mixed use redevelopment that included residential housing types. He quoted from Section 175-3 and 175-41.A concerning this. He also said the proposed redevelopment was in keeping with the Mill Plaza Study Committee Final Report.

Attorney Pollack said the Planner said the applicant would be circumventing the ordinance if the variance was granted, but he said by definition, variances were intended to circumvent an ordinance and allow some deviation from it. He said the question was whether there was good reason to do so, and said he believed in this instance, there was good reason.

Ms. Woodburn said it was indicated that going with gross square footage, there could be 185,750 sf resulting in 310 occupants. She asked what the other math would result in, using habitable square footage and 600 sf per occupant, and Attorney Pollack said it would be about 215 occupants. Ms. Woodburn said she understood the

argument that a 2400 sf apartment for 4 occupants would be quite large. She also noted that in the 2008 Mill Plaza study, the final hybrid design had significantly fewer residential units. She said most people were on board that upgrading the site was a good thing, but said it was a question of how they got there.

Attorney Pollack said his understanding was that the applicant wouldn't build the project if 600 sf per occupant was applied. Ms. Woodburn said for everyone else, the number of units allowed, using a variance, was the most important thing.

Chair Starkey said Exhibit 2 showed 442 beds, but the request for variance was for 310 occupants. Attorney Pollack said the request for variance wording was correct, and said if the ZBA approved the variance, the applicant would accept that condition.

Attorney Pollack said the second variance requested was from Article XII, Section 175- 53.A.VII to permit a mixed use development with residential units on all floors of one of the buildings in the redevelopment proposal. He noted on the plan the building that was involved, near and horizontal to College Brook, and explained that the request was not looking to increase the total number of occupants, but to adjust the composition of the proposed building(s). [Emphasis added.]

He said no decrease in the value of surrounding properties would be suffered because the change would be internal to the building. He said this building would be screened from abutters, traffic, frontage, and would also be buffered by the waterway. He said the variance would allow the project to move forward while recognizing that the project was being looked at as a whole in terms of the mixed uses. He said if the applicant tried to make the first floor and second floor of this building commercial, it would be very hard to find commercial tenants. He noted that the intent was to include a residential courtyard.

Attorney Pollack said granting the variance would not be contrary to the public interest. He said as stated earlier, mixed use redevelopment with upper floors that were residential was encouraged by the Ordinance. He said this project offered a balance of commercial, retail and residential uses in order to enable the redevelopment of Mill Plaza. He said the variance would be limited to the internal composition of one interior building, which was a less visible building and thus was less desirable for commercial tenants.

He said that concerning the hardship criterion, there was no fair and substantial relationship between the general purpose of the ordinance provision and the specific application of it to the property. He said the applicant and design team were bringing forth the kind of mixed use concept contemplated on a whole project basis. He said if potential customers couldn't see a commercial use, the space wouldn't be rented, and said that would be a fail scenario for the redevelopment. He said owing to special conditions of the property that distinguished it from other properties in the area, it couldn't be reasonably used in strict conformance with the Ordinance, and a variance was therefore necessary to enable reasonable use.

Attorney Pollack said the size of the overall redevelopment site and the diversity of uses surrounding it warranted two primary areas of use: commercial and retail areas primarily located near Mill Road and Main Street with walkability from the various properties there including the UNH campus; and more private residential spaces to the rear that took advantage of College Brook and the hillside, and were somewhat protected by those features. He said commercial tenants were likely to be interested in the Mill Plaza property in its entirety because of the proximity to the downtown, and said commercial space would be preserved in the front portion of the site.

He said substantial justice would be done in granting the variance because it would allow a development there a better likelihood of success, while maintaining the flexibility to convert residential space to commercial space later if there was demand for this. He provided some examples of how this might happen.

Attorney Pollack said granting the variance would not be contrary to the spirit and intent of the Ordinance. He said the ordinance recognized the importance of "enhancing the achievement of the Town's economic development goals", including the successful redevelopment of underperforming properties. He said granting

the variance allowed the project as a whole to be viable.

Attorney Pollack spoke next about the variance requested from Article XII, Section 175- 41.F.7, to permit development of two 4 floor buildings wherein some buildings would contain one floor of nonresidential spaces and three upper floors of residential units. He noted the two buildings involved. He said prior variance requests like this had been granted by the ZBA. In answer to a question from Chair Starkey about the back side of the building, Attorney Pollack said that building was built into the hill, and said there would be three stories of residential in that back portion of the building. [Emphasis added.]

He said no decrease in the value of surrounding properties would be suffered as a result of granting the variance. He said the redevelopment would enhance the value of surrounding properties by replacing an underperforming expanse of asphalt with a modern, mixed use property with structures placed throughout the property, an available village center, improved aesthetics, protection of College Brook, and a pedestrian link to downtown Durham. He said the applicant would not be depriving the Town of commercial uses, and was simply choosing the buildings with the best potential for that commercial use.

Attorney Pollack said granting the variance would not be contrary to the public interest because a balance of uses was necessary to enable the redevelopment of Mill Plaza as proposed.

Concerning the hardship criterion, he said there was no fair and substantial relationship between the general purpose of the ordinance provision and the specific application of it to the property. He said the proposed redevelopment incorporated multiple structures and said it was necessary to have a cohesive and unified redevelopment of a large and important property.

He said based on the current economic condition, the applicant didn't believe there was sufficient demand to fill the upper floors with commercial at this time. He said if it turned out that there was interest, the applicant could disavow portions of a variance granted, and re-design building(s) for that accommodation.

Attorney Pollack said the proposed use was reasonable. He said Mill Plaza was one of the largest and most important redevelopment sites in Durham, as recognized in the Mill Plaza Study Committee report. He said expecting nonresidential users within second floors threatened the economic feasibility of the redevelopment proposal. He said owing to special conditions of the property that distinguished it from others in the area, the property couldn't be reasonably used in strict conformance with the Ordinance. He said it was a uniquely large property, and said the opportunity presented itself right now.

He said substantial justice would be done in granting the variance because it would allow the redevelopment proposal a better likelihood of success, and provided the applicant with the appetite to take on what was undoubtedly a large and costly construction project.

He said granting the variance would not be contrary to the spirit and intent of the Ordinance. He said it would achieve enhancement of the Town's economic development goals, as stated in the Ordinance. He said it would pay homage to mixed use development encouraged in the Ordinance, where upper floors were used for residential purposes.

Attorney Pollack said the applicant was trying to build on the shared goal of redevelopment of the Mill Plaza site, recognizing the realities of the market and asking that the Town recognize the uniqueness of the property. He said they were engaged in substantial efforts to work with the Town boards, and said participation in the design review process was evidence of that good faith effort.

He said despite many efforts to work with the Town, the applicant felt the site had been targeted regarding the Zoning amendment passed and an unsustainable interpretation of the Ordinance. He said these obstacles had put the applicant in a position where he needed to come to the ZBA for relief in order to allow a project to go forward. He said the applicant might have to go outside of the Town for help if he couldn't get these variances approved.

Attorney Pollack said the applicant's choices were grounded in the uniqueness of the property and the public's interest in seeing the property redeveloped, while also paying respect to the work of the Mill Plaza Study Committee and the language of the Zoning Ordinance. He said the applicant would like the project to work for him, the Town and its residents, and said if this couldn't happen, he might have to look outside of the Town for help, which would have a chilling effect on the partnership they were looking to achieve. He said if the variances were granted, this would allow the applicant to keep working on the project.

There was clarification that the back portion of the building Chair Starkey had spoken about, built into the hill, would have two stories.

Ms. Woodburn said an exhibit provided showed that the total amount of commercial space would be 89,400 sf. She asked how much commercial square footage was there today, and was told there was 52,000 sf, which meant there would be an increase of approximately 37,000 sf of commercial space. There was discussion.

Mr. Lawson said 4 new buildings were proposed for this project, and asked what the percentage of nonresidential space in those buildings would be. There was discussion. Mr. Wagner said he would work out that calculation for the Board. Attorney Pollack noted that for the whole project, there would be roughly a third nonresidential space and two thirds residential space.

There was discussion that the red line on the plan was the edge of pavement, and the blue line was the 75 ft wetland setback. It was noted that no relief was being requested from this with the current application. Attorney Pollack said it wasn't certain that the applicant wouldn't be able to comply with the blue line, and said he didn't want to ask for a variance that might not be needed or that he couldn't demonstrate a hardship for. He also said it was important to deal with the larger issue of density right now. He said if the applicant came back to ask for another variance, the Board was certainly empowered to say no to this.

Ms. Woodburn said the Mill Plaza report indicated that abutters and others living in the nearby neighborhood would have preferred any student housing to be on the other side of the site from them, up the hill and backing up to the new development on Main Street. She asked if an effort was made to look at that option.

Attorney Pollack said the applicant was aware of this, and tried to spread the residential space around. He said this could be looked at again as part of the design review process. He said at least, what was shown in the plan was an improvement over the existing conditions regarding College Brook.

Chair Starkey asked if there were any members of the public who wished to speak for or against the three variance applications.

Councilor Jay Gooze, Meadow Road.... said there were other choices for this property, including doing senior housing at the back, which would create much less noise and other problems. [Emphasis added.]

He said that concerning the hardship criterion, gross versus habitable square footage related to the density within a building. He said when passing the first of two density changes related to habitable floor area in 2013, the Town Council in a Council Communication was very explicit concerning the purpose of proposed Ordinance #2013- 07:

The purpose of the change is to: 1) Better align zoning with the 2000 Master Plan, 2) **Reduce the occupants density in downtown redevelopment projects,** 3) **Encourage redevelopments with apartments appealing to housing markets beyond student needs,** and 4) Better align the occupant density with the current Dwelling Unit density in the CBD such that developers are not incentivized to design apartments with a high numbers of occupants (exceeding 6). [Emphasis added.]

Councilor Gooze said unfortunate but true was that greater population density was associated with problematic behavior in Durham. He said granting this variance would allow more occupants. He said although this was a

large piece of property, there were other similar properties such as the Orion project and Madbury Common properties in the commercial zones. He said all of these properties were expected to follow the Zoning Ordinance concerning the floor area for occupants, and said none had special characteristics that would allow a variance to change habitable floor area to gross floor area.

He said as stated in the publication “Zoning Variances 2013”, April, 2013 by H. Bernard Waugh Jr. and Joshua M. Pantesco, “If all or most of the other properties in the zoning district are affected the same way by a restriction, the proper remedy is still an amendment to the zoning ordinance, not a variance. Rowe v. Town of North Hampton, 131 N.H. 424, 429 (1989)”. He said he saw nothing about this particular application that qualified for hardship as it related to this variance request. [Emphasis added.]

Councilor Gooze said that concerning the spirit and intent of the Ordinance, RSA 674:17 said zoning ordinances should be designed “to avoid undue concentration of population.”⁸ He said this served as the justification for choosing habitable floor area versus gross floor area to decide on occupant density. He said using the ruling in Bacon v. Town of Enfield, 150 N.H. 468 (2004) from “Zoning Variances 2013”, **the importance of cumulative impact should be taken into account. He said more occupants would result in more noise and more unruly foot traffic into the Faculty Road neighborhood. He said granting the variance would therefore be contrary to the spirit and intent of the Ordinance. He said the same arguments outlined above pertained to the public interest criterion.** [Emphasis added.]

He said that concerning the substantial justice criterion, the question was whether the loss to the property owner outweighed the injury to the public by not granting the variance. He said he would contend that **the inability to put more occupants in the buildings did not outweigh the injury to the public regarding more noise and undesirable foot traffic into the Faculty Neighborhood if the variance was granted.** [Emphasis added.]

Concerning the possible decrease in property values as a result of granting the variance, Councilor Gooze quoted from Christopher L. Boldt, Esq in his Municipal Law Lecture series lecture on Property Values in 2011. **He said Attorney Boldt said the ZBA could listen to expert testimony and decide on the credibility, but also could rely on persons living in neighborhoods and their own experience and knowledge concerning the result of granting a variance on property values of surrounding properties.** [Emphasis added.]

Councilor Gooze said he would contend that **additional density (of students) allowed at this site by granting the variance would adversely affect property values of the Faculty Road homes due to increased noise and undesirable foot traffic into the Faculty Road neighborhood. He asked that members of the ZBA who knew this area think about property values for homes affected by this project.** [Emphasis added.]

Chair Starkey noted that a large amount of density had been added to the downtown within the last three years with the projects built or being built. He asked what made this proposal so much different than these other projects.

Councilor Gooze said the location was right near an area that had already been affected by noise and behavior issues. He also said demographic information lately showed that the commercial area downtown was pretty much saturated with student apartments. He said the idea with the recent Zoning amendment was to slow things down and to provide a different way to provide residential rental space. He said three times the density could be put in if it was elderly housing, and the variances wouldn’t be needed. He said the ZBA had the right to say the applications didn’t meet the variance criteria, and said the applicant could come up with something that met the Ordinance and worked for the Town. [Emphasis added.]

⁸ See RSA 674:17 at <http://www.gencourt.state.nh.us/rsa/html/LXIV/674/674-17.htm>

Ms. Woodburn asked Councilor Gooze for a response concerning the 600 sf rule resulting in 1800 or 2400 sf dwelling units. Councilor Gooze said that didn't work for student housing, but might work for some other kind of housing. Ms. Woodburn noted that the gross square footage vs habitable square footage approach was a result of the applicant looking for a way to find a compromise so he could move forward.

Councilor Gooze said while the applicant wouldn't do student housing with 600 sf per occupant, there were other choices. He said the Town had previously made a conscious effort to allow multi-residential space above and commercial space below, and had now made a decision to change this and to mold further what could possibly go in. He said the Town had a right to do this, and said a developer needed to work with that. He said the developer could ask for more, but said this didn't mean the ZBA had to grant this.

Councilor Julian Smith, Packers Falls Road, said he agreed with Attorney Pollack that this project was different than other projects. He said the Madbury Commons project replaced a rundown student housing ghetto that had no commercial space, and said the Orion project replaced some run-down buildings with just a few small businesses.

He said that regarding the public interest criterion, **granting the several variances requested tonight would have the cumulative effect of greatly increasing the residential density where there now was none. He said they wouldn't know whether there was going to be continued demand for this additional student housing until the new projects downtown were occupied.** He said the public interest would not be served by making the drastic change to Mill Plaza that was proposed, and said this public interest included the long established convenience to the public from the various businesses there that served them. He said these businesses were currently functioning very well. [Emphasis added.]

Councilor Smith also said the public interest related to health and safety. He said the applicant proposed to put 300-400 residents on the property, and to cut in half the amount of parking currently on the site, which would require a waiver from the Planning Board or a variance. He also said there would be a lot more traffic coming in searching for parking spaces that wouldn't be there.

He noted that the development would only have one entrance. He also said the residential units potentially would put more demand on police and fire services, and said when he showed the plan to the Durham Police chief, he saw that the area planned between some of the residential buildings would be a gathering space for students. Councilor Smith spoke further on this. He said granting the variances was an invitation to disaster, and would not fill the needs of the community.

He noted that Attorney Pollack said the Plaza was an under-performing property, but **[Smith] said the Plaza performed quite well as a place to gather, stop and chat, shop, etc. He said it was a very useful property, and said he wanted to see it redeveloped in a way that would be beneficial to the entire public, the developer and the neighbors.** But he said the way the applicant was proceeding was not designed to get them to that point. He said the applicant's team needed to sit down with the Planning Board and discuss the realities of redeveloping the property, after all of the [student housing] development that had gone on in recent years. [Emphasis added.]

Further comments at the March 10, 2015, ZBA hearing were made by eight other people: **Shane Malavenda, Faculty Road; Councilor Robin Mower, Faculty Road; Peter Andersen, Chesley Drive; Joshua Meyrowitz, Chesley Drive; Erin Hale, Mill Road; Diane McCann, Oyster River Road; Councilor Carden Welsh, Fairchild Drive; and Town Planner, Michael Behrendt.** Abutters described the impact of 50-foot high student housing buildings looking down on their homes and the limits of shielding from possible tree buffers (especially in winter), which could also take decades to mature. Also addressed were CDA attempts to bypass the Town's goal of stimulating *commercial* development (not just student housing). [See details of 2008 rezoning, above, in which allowing more student housing was the lure for gaining more commercial space.] Residents also detailed negative impacts on neighborhood lifestyle and property values; frustration of how a shared vision for an exciting redevelopment of the Plaza (a major community asset) was being supplanted by hunger for a lucrative student-housing complex (that might reduce the economic viability and tax-revenue

benefit of the recently added 2,000 or so beds in other student-housing complexes in Durham); that the community would support Plaza variances for workforce or senior housing; how the October 2014 letter signed by 154 residents (see earlier and again at link below)⁹ still accurately reflected what was desired by the community and what was missing in the current plans and in the variance proposal; and how the desire to maximize profits was not a justification for variances that would be against the public interest. One abutter, also a contractor, gave specifics showing that senior housing in the Plaza could be even more economically viable than student housing in the long run, with much less negative impact on neighborhood lifestyle and property values.

Councilor Carden Welsh, Fairchild Drive, said it had been argued that the variances would allow the applicant to go forward with discussion about the property. But he noted that variances went with the land, and said a final project could look radically different than the current one. He said a variance for wetland impacts was clearly needed, and said that was a reminder that this was not the [final submitted site] plan people would see. He noted a variance request when he was on the ZBA that was granted, and the property owner then turned around and sold the property for a higher price than he would have gotten if he hadn't gotten the variance....

Town Planner, Michael Behrendt said there was a big difference between this project and the Orion and Madbury Commons projects, which the ZBA granted wise variances for. **He said those proposals were carefully crafted through a real design review process with the Planning Board and the community. He said when the plans couldn't quite fit the Zoning Ordinance, the applicants went to the ZBA with much community support, and that Board worked to make the plans work.** [Emphasis added.]

Mr. Behrendt said the variances proposed here were premature, and he urged the ZBA to deny them. He said if all went well, the applicant would make some serious adjustments, work with the Planning Board and come up with a design that everyone loved, for something like elderly housing, etc., which perhaps wouldn't need variances. He said if there was a lot of community support and the proposal had been thoroughly vetted, then it could come to the ZBA if needed. He said what the applicant was presenting now was ambiguous and broad, including a 4 story building in back with all student housing....

[Mr. Meyrowitz] said those here speaking against the variance would probably be supportive of variances to make another iteration of the plan happen, which had more of what they wanted. He said if there was a shared vision for something that pushed the regulations but was altogether wonderful, there would be a lot of positive energy and a much better downtown. He said having as a centerpiece 4 stories of student housing wasn't what they wanted for Durham.

Chair Starkey MOVED to close the Public Hearing. Jim Lawson SECONDED the motion, and it PASSED unanimously 5-0....

The Board agreed to discuss the variance requests individually, and then decide on how to make the motions.

Variance requested from Section 175-7.A, where density is calculated using gross floor area instead of habitable floor area.

Mr. Lawson....looked at the Resolution that adopted the Ordinance 2014-14 to change to 600 sf of habitable space, which showed the intent of it. He referred to four Whereas clauses in the Resolution.

He noted the 4th Whereas: "Such Apartments appeal primarily to the student housing market due to the number of occupants allowed presently in a limited space", and said this made it clear that the intent of the Zoning change was to solve that issue. He said granting this variance was contrary to that intent.

He read the 5th Whereas: "A High number of students in developments may have adverse impacts on Town

⁹ www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/mill_plaza_response_11_4_14.pdf

services and town character". He said the intent was to solve that problem, and said the variance seemed to be contrary to that intent.

He read the 6th Whereas: "The 2000 Master Plan encourages construction of a variety of multi-unit housing types." He said granting the variance seemed to be contrary to that intent.

He noted the 7th Whereas: "Increasing the habitable space per occupant in Apartments encourages Apartments with fewer bedrooms and more space per occupant and thus better serves the Town by likely offering a variety of multi-unit housing that may reduce the impact on Town services." He said it seems that the intent of this was to increase the habitable space per occupant, and said granting the variance appeared to be contrary to that intent.

Mr. Lawson also noted that in 2013, the Council looked at the characteristics of apartments, and as part of this looked at US Census data from the 2011 American Housing Community survey, which showed that the square footage per occupant was pretty close to this change, at 560 sf.

He said he didn't see how the variance would do anything but decrease the value of neighborhood properties. He also said with variances applications for something as simple as a shed, the ZBA had required far more detail than the applicant was able to provide at this point. He said they just didn't seem to be at that point yet. [Emphasis added.]

Ms. Woodburn said she agreed with Mr. Lawson, especially after listening to input from Councilor Gooze and others. She said she did think granting the variance regarding the density was contrary to the spirit and intent of the Ordinance.

Mr. Sterndale agreed, and said he couldn't see that there was something about this property that said they had to waive the density requirement. He said he appreciated the fact that the developer was looking for a way to move forward, but said he didn't think it was for the ZBA to negotiate compromises based on one party's assessment of market forces.

Mr. Toye said he had a different take on the diminution of value criterion. He said any development of the Plaza would affect the backyard of abutters, but said student housing in an organized fashion pulled students out of residential neighborhoods, into a more controlled environment. He spoke further on this. He also noted that a portion of the Faculty Neighborhood had a deed restriction that further restricted the number of unrelated occupants in that neighborhood.

He said it would be a shame for the ZBA to turn down the second and third variance applications tonight because there wasn't enough detail on the plan. He said if this happened, the applicant couldn't come back to the ZBA with these variance requests. Ms. Woodburn said that was a good point, noting that the plans might be revised, based on further input. Mr. Toye also said he didn't think 31 people per acre was an outrageous density.

Chair Starkey said he felt this was a very incomplete plan, so wouldn't be comfortable granting any of the variances. He said he agreed with the public comment that the project was at square one and that there were too many variables still in play. There was discussion.

Mr. Toye said a good argument was made that the back corner wasn't viable for commercial space, so could be a good location for this use. He said this was similar to the situation with the Madbury Commons site.

Mr. Sterndale said he wouldn't want to preclude the second and third variance requests from a conceptual perspective, but he said there wasn't enough detail to make a decision on them right now. There was further discussion. Ms. Woodburn said if the ZBA decided not to decide on these applications, or the applicant decided that they shouldn't be decided on now, perhaps something more pinned down would come back to the ZBA later, with all of the variances that would be needed.

Mr. Lawson said the Zoning Ordinance changed in 2008 to allow the type of mixed use development they were seeing in Durham now. **He said Town Council Minutes of the discussion in 2008 as well as other discussion indicated that student housing was being used to create the public benefit of commercial space. He said this had also been a constant theme of discussion since that time.** [Emphasis added.]

He said with the second and third variance applications, the ZBA didn't have nearly enough information to assess whether there was enough public benefit in the commercial space the applicant wanted to provide, in order to allow a reduction in the amount of it. He said based on the detail they had now, he could only conclude that granting these variances wasn't in the public interest.

Chair Starkey said variance A was the most important one to the applicant. After further discussion, Chair Starkey reopened the public hearing to hear from Attorney Pollack concerning not having the ZBA vote on the second and third variance requests, and the applicant therefore being able to come back with a more complete plan so the ZBA could assess the variance requests better.

Attorney Pollack said he would prefer a maybe than a no, but asked where that left them regarding the density variance. Chair Starkey said the Board would vote on that variance application this evening. It was noted that the possible need for a variance concerning things like the wetland setback issue could be looked at as well before the applicant came back.

Attorney Pollack said he didn't know that he would be coming back if the variance concerning the density issue was denied, but said he accepted time to work on the other two variance requests. He asked the ZBA if there was an opportunity to say what was acceptable. Chair Starkey said that would come from the planning process. There was further discussion. Ms. Woodburn noted that there had been a lot of comments concerning possible alternatives to student housing, and said the applicant should give serious consideration to this.

Chair Starkey MOVED to close the Public Hearing. Chris Sterndale SECONDED the motion, and it PASSED unanimously 5-0. Robbi Woodburn MOVED to DENY a petition submitted by Ari B. Pollack, Gallagher, Callahan & Gartrell, Concord, New Hampshire, on behalf of Colonial Durham Associates, New York, New York, for an APPLICATION FOR VARIANCE from Article II, Section 175-7.A, of the Durham Zoning Ordinance to permit the construction of a mixed-use development of four, 4-floor buildings wherein the density requirement is calculated using gross floor area instead of habitable floor area. The property involved is shown on Tax Map 5, Lot 1-1, Mill Road Plaza; and is in the Central Business Zoning District. Chris Sterndale SECONDED the motion, and it PASSED unanimously 5-0.

Chair Starkey MOVED to Continue the Public Hearing on the Applications for Variances submitted by Ari B. Pollack, Gallagher, Callahan & Gartrell, Concord, New Hampshire, on behalf of Colonial Durham Associates, New York, New York from Article XII, Section 175-53(A) and Article XII, Section 175:41(F)(7) of the Durham Zoning Ordinance to permit the construction of a mixed-use development of four, 4-floor buildings wherein some buildings will contain one floor of non-residential space with three floors of residential space, wherein one building will have all residential units on all floors. The property involved is shown on Tax Map 5, Lot 1-1, Mill Road Plaza; and is in the Central Business Zoning District. There was no SECOND.

Chris Sterndale MOVED to TABLE the Applications for Variances submitted by Ari B. Pollack, Gallagher, Callahan & Gartrell, Concord, New Hampshire, on behalf of Colonial Durham Associates, New York, New York, from Article XII, Section 175- 53(A) and Article XII, Section 175:41(F)(7) of the Durham Zoning Ordinance to permit the construction of a mixed-use development of four, 4-floor buildings wherein some buildings will contain one floor of non-residential space with three floors of residential space, wherein one building will have all residential units on all floors. The property involved is shown on Tax Map 5, Lot 1-1, Mill Road Plaza; and is in the Central Business Zoning District. Chair Starkey SECONDED the motion and it PASSED unanimously 5-0.

For more details on the variance requests for floors of housing and gross vs. habitable space, see pages 11-29 of the March 10, 2015, ZBA meeting minutes here:

www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/meeting/45841/031015.pdf

ZBA Appeal #3: Rehearing on ZBA Denial of Relief from Admin. Decision on 600sf per Occupant

3) Finally, at the March 10, 2015, ZBA meeting there was a request for a re-hearing on a previous ZBA decision regarding the 600 sf. per unrelated inhabitant amendment. (The ZBA previously voted 3-1 with one abstention to support the Town Planner's administrative decision that the 600 sf. rule applied to the Plaza and other new development plans. The abstention resulted from the ZBA chair accepting the Town attorney's argument that the ZBA did not have jurisdiction over this request.) This item was NOT a public hearing. Such an appeal is required before the Plaza owners can turn to the courts to try to have the ruling reversed (as they indicated they planned to do).

From the minutes, "Other Business" section of March 10, 2015, meeting (appeal from administrative decision):

REQUEST FOR REHEARING on a January 13, 2015 denial of a petition submitted by Ari B. Pollack, Gallagher, Callahan & Gartrell, Concord, New Hampshire, on behalf of Colonial Durham Associates, New York, New York, for an **APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION** from a December 4, 2014, administrative decision by Michael Behrendt, Director of Planning & Community Development regarding the application of Ordinance #2014-14 to the Mill Plaza Design Review Application. The property involved is shown on Tax Map 5, Lot 1-1, Mill Road Plaza; and is in the Central Business Zoning District.

Chair Starkey said the purpose of the rehearing was for the ZBA to determine if the applicant had provided information that would give them pause and suggest that the application should be reheard based on that information. Mr. Sterndale said there didn't seem to be much new information and said they were pretty much the same arguments the Board had heard a month ago. Others agreed. Ms. Woodburn said there was nothing new, and the Board didn't err.

Chair Starkey MOVED to deny the REQUEST FOR REHEARING on a January 13, 2015 denial of a petition submitted by Ari B. Pollack, Gallagher, Callahan & Gartrell, Concord, New Hampshire, on behalf of Colonial Durham Associates, New York, New York, for an APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION from a December 4, 2014, administrative decision by Michael Behrendt, Director of Planning & Community Development regarding the application of Ordinance #2014- 14 to the Mill Plaza Design Review Application. The property involved is shown on Tax Map 5, Lot 1-1, Mill Road Plaza; and is in the Central Business Zoning District. Jim Lawson SECONDED the motion and it PASSED unanimously 5-0.

The minutes from this brief section of the ZBA meeting can be read on p. 29 here:

www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/meeting/45841/031015.pdf

SUMMARY OF RESULTS OF THE EVENTFUL MARCH 10, 2015, ZBA MEETING:

1) The ZBA upheld (5-0) Town Planner Michael Behrendt's administrative decision on dormitories (that is, that dormitories are NOT an allowed use in the Plaza or anywhere beyond the UNH campus), denying the Plaza's appeal of that decision.

2A) The ZBA denied (5-0) the Plaza's variance request to use gross square footage (including hallways, closets, etc.) instead of habitable square footage to calculate square feet per occupant in their proposed plaza redevelopments plan.

2B) The ZBA tabled the Plaza's second variance request regarding use of residential and nonresidential floors to give the applicant an opportunity to continue its discussions with the Planning Board. (This was a request for a variance "to permit the construction of a mixed-use development of four, 4-floor buildings wherein some buildings will contain one floor of non-residential space with three floors of residential space, wherein one building will have all residential units on all floors." Durham's zoning allows only 3 floors within a multi-unit housing building with the first floor being commercial OR four floors only if the first floor and a second floor are commercial.) There was consensus that the overall Plaza development plan was not yet refined enough (with possible other variances yet to come) for the Board to determine whether there was any validity to this particular variance request. [CDA returned with a similar variance request in 2017.]

3) Finally, the ZBA denied the request (5-0) for a rehearing on its earlier decision to uphold the Planner's decision that the requirement for 600 habitable square feet applies to their project. (This denial would now allow the Plaza to take the matter to court, as they did.) [FN 031315]

You can watch the almost 4-hour March 10, 2015, ZBA meeting at the following link:

<https://dcat22.viebit.com/player.php?hash=146308229b1c0da2bd8aab042d164991>

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April 8, 2015—Planning Board: Mill Plaza Redevelopment Design Review Public Hearing [POSTPONED]

Public Hearing –Mill Plaza Redevelopment. Design Review (preliminary application) for significant redevelopment of Mill Plaza Shopping Center site including 89,400 square feet of commercial space (existing and new), an addition to the existing Durham Marketplace building, five new buildings, 185,750 square feet of residential space, 442 beds, greenspaces and plazas, and 168 parking spaces (there are 345 existing spaces). Colonial Durham Associates, LP, c/o John Pinto, owner. Sean McCauley, representative. Joseph Persechino, Tighe & Bond, Design Engineer. Adam Wagner, DeStefano Architects, Architect. Tax Map 5, Lot 1-1. Central Business Zoning District. *POSTPONED. The applicant has requested the application be tabled. The application will not be taken up other than the board responding to the request for tabling.

The Town Planner Recommendations for the April 8, 2015, Planning Board meeting: "I recommend that the application be tabled until 30 calendar days after the date when the ZBA process has ended. At that point, the Planning Board can determine whether it is appropriate to continue the design review."

The Planner's document then added: "The applicant requested that the application be tabled (indefinitely) as stated in Attorney Ari Pollack's email to me, as follows:"

Michael,

As we pledged we would in January, I am writing to again update the members of the Planning Board as to the Mill Plaza design review, and to address our preparedness to return to the Board on April 8, 2015.

Recently, the project team presented administrative appeals and variance requests to the Durham ZBA. Our hope was that some combination of relief would allow the project to move forward in design review and towards final planning. Unfortunately, the ZBA refused to offer any relief, and the project nearly has exhausted administrative remedies within the Town. Recognizing the reality of its present situation, Colonial Durham is forced to weigh its appellate and judicial options.

Accordingly, and until a Court may reverse the Town's treatment of our requests/application, Colonial Durham believes it is unable to make forward progress in design review. For this reason, it is requesting that the design review application be tabled indefinitely. At such time as the redevelopment plan is able to reasonably move forward, we will ask that the Board remove the application from the table and schedule the continuation of public discussions. For its part, Colonial Durham will agree to reimburse the Town's reasonable notification expenses associated with future consideration.

Please confirm that you will distribute this e-mail to the Planning Board for its consideration and action.

Please also confirm that the attendance of our design professionals on April 8 is unnecessary. Thank you. -Ari

Ari B. Pollack, Esq.

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/planners_recommendation_4-8-15.pdf

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April 14, 2015—Zoning Board of Adjustment—Rehearing Request Regarding Dormitories in Plaza

Other Business | A. REQUEST FOR REHEARING on a March 10, 2015, Denial of a petition submitted by Ari B. Pollack, Gallagher, Callahan & Gartrell, Concord, New Hampshire, on behalf of Colonial Durham Associates, New York, New York, for an APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION from a January 8, 2015, administrative decision by Michael Behrendt, Director of Planning & Community Development denying the use of a dormitory dwelling in the Central Business District. The property involved is shown on Tax Map 5, Lot 1-1, Mill Road Plaza; and is in the Central Business Zoning District.

The Plaza requested a rehearing on the March 10, 2015 application of appeal of the Planner Administrative decision. It was denied. And the Plaza moved to court action.

From the minutes of the April 14, 2015, ZBA meeting:

Chair Starkey said the ZBA was looking to see if any information had been brought forward that was new, or if the Board had erred in making its decision.

Ms. Woodburn said she didn't find any errors, or new information that would cause her to change her mind.

Chair Starkey said he didn't see anything either. He said the applicant's argument was related to the claim that since dormitories were defined in the Ordinance, they should not be considered an excluded use in the Table of Uses. But he said if a use was not in the Table of Uses, it wasn't allowed. He said he didn't see that the ZBA should rehear this application. The other ZBA members agreed with this.

Chris Sterndale MOVED to deny the Request for Rehearing on a March 10, 2015, Denial of a petition submitted by Ari B. Pollack, Gallagher, Callahan & Gartrell, Concord, New Hampshire, on behalf of Colonial Durham Associates, New York, New York, for an APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION from a January 8, 2015, administrative decision by Michael Behrendt, Director of Planning & Community Development denying the use of a dormitory dwelling in the Central Business District. The property involved is shown on Tax Map 5, Lot 1-1, and Mill Road Plaza; and is in the Central Business Zoning District. Robbi Woodburn SECONDED the motion, and it PASSED unanimously 5-0. (Emphasis original.)

The full minutes from the April 14, 2015, ZBA meeting can be reviewed here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/meeting/41561/041415_1.pdf

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**Colonial Durham Associates files suit against the Town of Durham;
summons to be served on June 13, 2015**

Friday Updates, May 8, 2015

COLONIAL DURHAM ASSOCIATES, LP V. TOWN OF DURHAM – Owner of the 10 Acre Mill Plaza Property

Files Suit Against Durham in Superior Court

The owner of the Mill Plaza property filed suit in Superior Court this week against the Town of Durham in a case entitled Colonial Durham Associates, LP V. Town of Durham.

In December 2014, the Town Council, upon recommendation of the Planning Board, adopted Ordinance 2014-14 which amended the Zoning Ordinance of the Town and halved the maximum allowed dwelling density for unrelated household apartments from 1 occupant per 300 square feet of habitable floor area to 0.5 occupants per 300 square feet, effectively doubling the square footage of living space required per unrelated occupant.

The 24-page court filing by Colonial Durham Associates can be viewed here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/town_administration/page/16581/fl9687-summons_and_petition.pdf

CDA's lawsuit argued that the zoning amendment (proposed at the Planning Board on September 10, 2014, and adopted by the Town Council on December 1, 2014) was "initiated and enacted in bad faith, with the intent to block Petitioner's [CDA's] specific property from redevelopment." Additionally, the suit alleged that "the Amendment has the intentional and foreseeable effect of substantially increasing the cost of housing and unjustifiably discriminating against residents of New Hampshire based on age and family status" (p. 2).

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June 10, 2015—Planning Board—Plaza Redevelopment Design Review (TABLED to June 25, 2015)

X. Public Hearing –Mill Plaza Redevelopment. Design Review (preliminary application) for significant redevelopment of Mill Plaza Shopping Center site including commercial space (existing and new), an addition to the existing Durham Marketplace building, new buildings, 442 beds in new residential buildings, greenspaces and plazas, and change in the layout and number of parking spaces. Colonial Durham Associates, LP, c/o John Pinto, owner. Sean McCauley, representative. Joseph Persechino, Tighe & Bond, Design Engineer. Adam Wagner, DeStefano Architects, Architect. Tax Map 5, Lot 1-1. Central Business Zoning District. Recommended action: Tabling continued review (See conditions in recommendations). [Tabled until June 25 (date per motion), 2015]

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June 24, 2015—Planning Board—Plaza Redevelopment Design Review (TABLED to next meeting)

X. Public Hearing - Mill Plaza Redevelopment. Design Review (preliminary application) for significant redevelopment of Mill Plaza Shopping Center site including commercial space (existing and new), an addition to the existing Durham Marketplace building, new buildings, 442 beds in new residential buildings, greenspaces and plazas, and change in the layout and number of parking spaces. Colonial Durham Associates, LP, c/o John Pinto, owner. Sean McCauley, representative. Joseph Persechino, Tighe & Bond, Design Engineer. Adam Wagner, DeStefano Architects, Architect. Tax Map 5, Lot 1-1. Central Business Zoning District. **[Tabled until next meeting]**

Town Planner's June 24, 2015, Recommendation:

I recommend that the design review application be tabled as follows.

****Draft* NOTICE OF TABLING***

Project Name: Mill Plaza Redevelopment Type of Project: Design Review for site plan Applicant: Colonial Durham Associates, LP Engineer: Tighe & Bond Map and Lot: Map 5, Lot 1-1 Zoning: Central Business District Date of action: June 24, 2015 The Planning Board tabled the application on June 24, 2015 with the following terms and conditions: 1) The design review application is hereby tabled and the public hearing is closed. 2) If the application is not otherwise continued or extended by the Planning Board, the design review application will automatically end/be closed 30 days after the exhaustion of all appeals by the applicant (including appeals to

the ZBA or court). 3) *The applicant may bring the design review application back to the Planning Board for any scheduled meeting of the board, prior to the expiration stated above. A request in writing (including email) to bring an application back to the board shall state the specific meeting (“first meeting”, below) at which the applicant wishes to be heard, and shall be submitted at least three weeks prior to that meeting.*

4) *New notices for the application and a new public hearing shall be sent and paid for by the applicant. Pursuant to the Planning Board Rules of Procedure, the application shall be presented at the first meeting as specified by the applicant, above, and the public hearing shall be held on the next available meeting after that.*

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/planners_recommen dation_6-24-15.pdf

FINAL NOTICE OF TABLING:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/notice_of_tabling.pdf

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June 2015 – Parent Company of Hannaford Bought by Dutch Company

“A giant Dutch operator of supermarket chains in the United States and Europe [Ahold] has agreed to buy the Belgium-based parent company of Hannaford [Delhaize], the largest supermarket brand in Maine.” (Subject to final approval.) www.pressherald.com/2015/06/24/hannaford-to-merge-with-european-supermarket-chain/

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July 8, 2015—Hannaford Bros. Supermarkets Announced the Purchase of the Durham Marketplace

which for decades was the prime draw for residents to the Plaza. The grocery chain (in the process of a merger with Delhaize-Ahold) promised to expand the offerings at the store.

http://www.hannaford.com/catalog/news_pressrelease.cmd?leftNavArea=AboutLeftNav&productInfo=937492

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September 2015—Durham Hannaford Grand Opening: Aisles Widened, Stock Reduced

The new Hannaford grocery opened. Residents were saddened by the removal of the very popular Kaleidoscoop ice cream stand. Initial excitement over promised expanded organic and other fine foods, residents were also disappointed to see that, with the widening of the aisles and other changes, the store had dramatically reduced the type of foods that drew full-time residents to the store. This began a dramatic cycle of decline: residents more frequently shopped elsewhere (such as Market Basket in Lee), and the store continued to cater less to full-time residents and more to limited product lines aimed at students. The range of high-quality wines, cheeses, organic produce, etc. dramatically narrowed. The shelves of junk food expanded. And, now, when the students are away, the store is almost empty, often with more staff on hand than customers.

[Hunger for a better store and public interest in seeing that any student housing (if necessary) would be placed where Hannaford operates – as far away from the adjacent family neighborhood as possible – fed the energy that eventually led, in July 2017, to a resident petition sent to Hannaford for the grocery chain to move their Durham store to a new and larger building on the Plaza site, facilitating housing above retail where the old grocery building sits.]

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2015 MASTER PLAN

November 2015—Adopted Master Plan Chapters Address Need for Aging-in-Place Senior Housing

<https://www.ci.durham.nh.us/planningandzoning/master-plan>

Issue: Mill Plaza is a high-priority site for strategic development and/or redevelopment.

Goal: Encourage high quality and attractive redevelopment efforts of Mill Plaza.... [Emphasis added.]

Recommendations: Redevelopment

1. Use the Commercial Core Strategic Plan and Mill Plaza Study to guide redevelopment of the site.
2. Encourage enhancements if/when Mill Plaza is redeveloped or improved through application of the architectural standards, better landscaping in the parking areas and enhancements of the green space and other open space.

Linkage

1. Improve the physical and visual linkage of Mill Plaza with Main Street.
2. Ensure safe, convenient and welcoming crosswalks, sidewalks, alleyways and paths for non-vehicular traffic. [DC-24]

Recommendations: Alternative Transportation Infrastructure...

2. Expand and improve the bicycle lanes (e.g., designated paths, lanes or sharrows) to create an integrated network that promotes non-vehicular traffic....
8. Continue to plan for pedestrian connections (including sidewalks), bicycle paths, and transit linking downtown, UNH, Church Hill, nearby residential neighborhoods, Mill Pond, Town Landing, Courthouse, Jackson's Landing, and the schools. [DC-25]

See full 2015 "Downtown & Commercial Core" chapter here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/18691/downtown_commercial_core_12312015.pdf

Senior housing is a concern. The aging of the Baby Boom generation is expected to result in the doubling of New Hampshire's senior population by 2030. In parallel, housing unit occupancy by seniors will double, requiring consideration of how to design and retrofit housing for seniors with and without disabilities.

Seniors choose to "age in place". Despite anecdotal evidence suggesting that seniors migrate to southern, warmer climates, only 3% of New Hampshire's seniors move annually. A 2010 AARP survey of 45 and older indicated that 86% of respondents would "like to stay in their current residence as long as possible". However, the ability of seniors to remain in their community is directly related to factors such as income, healthcare, housing stock, and housing cost burden.... More than 75% of the state's senior population lives in suburban or rural areas; these areas typically lack access to key services and amenities such as healthcare and food. As a result, **down-sizing seniors are searching for housing in downtown areas with close proximity to these vital services. Unfortunately, much of the existing community-center housing stock is older and not "senior-friendly"**. (DH-29; emphasis added)

Provide mixed-use developments that create housing for seniors and younger residents in close proximity to shopping and services and encourage multigenerational neighborhoods. (DH-36; emphasis added)

Issue: An aging population will create additional demand for housing options for seniors.

Goal: Create and maintain attractive and affordable senior housing....

Recommendations: Senior Population Retention and Attraction

1. Partner with the University to develop senior housing/alumni housing close to the campus and downtown....

Future Senior Housing Siting [Emphases below added]

1. Find ways to site senior housing in the downtown area in a way that avoids noise and light pollution.

2. **Provide an opportunity for repurposing underdeveloped sites in the downtown area for senior housing.**
3. **Support the development of affordable senior housing in the downtown that provides access to vital services and amenities.**
4. **Actively encourage senior housing development on lands most suitable, such as locations within walking distance to the downtown, and those served by existing infrastructure....**

Zoning Changes

1. **Consider allowing senior multi-family housing by right in the Central Business district.**
2. **Consider an incentive-based zoning ordinance provision that allows increased density for development reserved for seniors. (DH-37-38.)**

See the full Demographics and Housing Chapter of the 2015 Master Plan here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/18691/demographics_housing_12312015.pdf

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December 2015—Legal Settlement Agreement Reached and Signed

December 14, 2015—Town Council action

Settlement agreement signed by the Town Council—DURHAM AND OWNER OF MILL PLAZA REACH SETTLEMENT AGREEMENT ON LAWSUIT—A settlement agreement has been reached by and between the Town of Durham and Colonial Durham Associates, LP, relative to the redevelopment of the Mill Plaza. The application will now move on to the Durham Planning Board and will proceed through the planning process subject to several conditions. [Friday Updates, December 18, 2015]

Key excerpts from the settlement include:

- a. The Revised Application will propose construction of not more than 330 residential beds for the entirety of the Mill Plaza site, with a density of not less than 300 SF per occupant.
- b. **To the extent reasonably practicable, and subject to planning review, the Revised Application shall locate the residential beds upon the Mill Plaza Site with the goal of placing as many beds as possible in the buildings proposed to be located in the Northern half of the property; [emphasis added; note that the Hannaford/Rite Aid building is on Northern tip of Plaza]**
- c. The Revised Application will provide for a total development of existing and new non-residential commercial space, exclusive of parking, totaling at least 80,000 to 90,000 sq. ft.
- d. The Revised Application will provide for proposed buildings and vehicular roads outside of the shoreland and wetland buffers such that variances from town ordinances are not required and the buffers are maintained by the property owner.
- e. Proposed on-site parking shall be increased from the existing 345 spaces to a number acceptable to the planning board based on the zoning ordinance and site plan regulations.
- f. The Revised Application will have increased natural buffer along the southern property line adjacent to the College Brook; such buffer to be maintained by the property owner in perpetuity.
- g. The proposed center building shall provide for a ground level connector to encourage pedestrian connectivity through the site toward Main Street.
- h. The proposed development will have dedicated on-site professionally staffed management office and security 24 hours a day, 7 days a week, 365 days a year.

The full settlement can be read at the following link:

Dec 14 2015—Durham-CDA Settlement re: Mill Plaza

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/colonial_durham_settlement-stay_proceedings_agreement.pdf

2016

CDA PLAZA REDEVELOPMENT SITE PLAN #3 (January 2016)

January 20 2016—Site Plan (one-page diagram; see also Jan 27 Architectural Renderings)

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/site_plan_19.pdf

January 27, 2016—Architectural Renderings (of January 20 site plan) submitted

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/color_architectural_plans_1-21-16.pdf

In Site Plan #3, the one shade spot in the Plaza (the area with 5 mature trees and 5 picnic tables next to the Bakery Café) was still slated for destruction, this time with a two-story commercial building next to the unchanged Hannaford/Rite Aid building. A three story building is still proposed for the entry road to the Plaza (again blocking the sight of and access to the grocery and pharmacy building), though it is now just beyond the wetland setback. A new 4-story building is proposed for the middle of the Plaza facing Mill Road (2 stories commercial under two stories of housing), and housing complexes (residential over parking) are proposed for the Southern rear of the Plaza.

January 19, 2016—Economic Development Committee: Mill Plaza Site Plan #3 Presentation

Sean McCauley and Adam Wagner from Colonial Durham Associates discussed their redevelopment project

Excerpts from the EDC meeting minutes:

Sean McCauley and Adam Wagner presented the Mill Plaza Redevelopment project concept. Ms. Humphrey noted that the project will be brought before the Planning Board at the next meeting (on the 27th).

Mr. McCauley indicated that he had met with residents regarding the redevelopment plan, but once again he did not specify who they were, how they were selected, when the meeting was, or what input or suggestions was provided – and what, if any, of that input was reflected in the plan. [See related issue above regarding a claimed meeting with “neighbors” for the January 2015 plan, and see below regarding the meeting with residents on May 14, 2016, the subsequent plan submitted, and the detailed “report” on that meeting from the residents who attended as it related to – or did not relate – to the subsequent plan submitted by CDA.]

Mr. McCauley...said they would like to re-energize the plaza and create a village like community. Mr. McCauley said they will be incorporating office space and retail commercial as well as residential properties. Mr. McCauley said they will add four buildings to the site in a phased project. He said they would like to be able to build the first phase of the project on the commercial side of the property; relocate tenants in the current rear building and then demolish the rear building and begin the second phase of the project. Mr. McCauley said the second phase of the project will include commercial and residential space with structured parking. He said the agreement with the Town is to have 330 residents living in the property and 80,000 square feet of commercial space (excluding parking) and to maintain at least the number of parking spaces that are on site today.

[Note that the agreement with the Town does NOT guarantee that the Plaza can have 330 residents, but rather specifies “not more than 330 residential beds” (emphasis added), and the agreement does not override other land-use ordinances, which might limit the number of beds, depending on what is specifically being proposed.]

Mr. McCauley said the proposed plan is an evolution; they will submit later this week with a tighter plan that looks at some of the limitations of the site more critically and repositioning some buildings.

Mr. Wagner displayed a proposed plan and went over some of the design features. He said they plan to re clad the front façade of the building where Hannaford's is located and extend the edge of the building to Mill Road and house additional commercial space. Mr. Wagner said they are considering phasing in an attempt to create the least amount of disruption to their tenants possible. He said it would consist of a multi-year and multi-phase project. Mr. Wagner said Phase Two would consist of a four story building (first floor retail, second floor commercial and two floors of residential above). He said there will also be a three story building (first floor parking with two floors of residential). Mr. Wagner said a third building would consist of a first floor for parking (partially underground) with two floors of residential above.

Ms. Luxem asked how much parking will be reserved for residents and where the public parking would be located. Mr. Wagner said the parking will increase from 345 to 360 spaces; the majority of the residential parking would be in the rear of the site.

Ms. Vannata asked about the other existing tenants in the "Hannaford building".

Mr. McCauley said that Rite Aid will be staying; they have spoken with the other tenants about staying also but do not know what will occur given that the rents will be structured differently with the new construction. He said they would very much like to accommodate and keep current tenants....

Mr. Wagner said the building with residential, commercial and office spaces will have **separate stair wells etc. to separate the students from the businesses.** [Emphasis added.]

Mr. Rodon asked if any of the apartments would be appropriate for tenants other than students. Mr. McCauley said that they plan to build it as an "at market project" and not designate as student housing. [Emphasis added.]

Mr. Wagner said they have presented that the units will be one, two, three and four bedroom units. He said when there are five and six bedroom units those are usually for students. He said they would like the plan to be flexible.

Mr. McCauley said seniors would not work well in a shopping center. He said they are looking for tenants that will support the commercial and retail spaces in the plaza. He said seniors are on a fixed income and mostly do not spend much.¹⁰ [Emphasis added.]

Mr. Daniel asked if there will be a pedestrian way from Chesley Road into the Mill Plaza. Mr. Wagner said there will be a pedestrian/bicycle way from Chesley Road into the Plaza.

¹⁰ This claim (that senior tenants would spend less in a shopping center than would UNH student tenants) deserves some further analysis. A few weeks after this meeting, news articles such as this one were appearing nationwide regarding the high economic status of many seniors today: "Baby Boomers will control 70% of disposable income," <https://impactbp.com/baby-boomers>. A UNH Economics professor commented on Sean McCauley's assertion, noting that most Durham seniors (unlike seniors in many other area towns) also have investment asset incomes. At the same time, many UNH students are on pre-paid campus meal plans (reducing their off-campus food shopping/dining), and UNH students face some of the highest student debt amounts in the nation. See also the December 7, 2016, letter from landlord Dick Gsottschneider, further below, which suggests that student renters do a very large part of their shopping online. Moreover, seniors shopping downtown would more likely support the types of businesses that other full-time Durham residents want in town. Looking at the overall prospect of enrollment drops at New England colleges (see more on this in the 2018 entries), the UNH Economics professor also commented: "I fear a glut of student rentals in a few years. We should expect bank foreclosures." The recommendations of Durham's master plans, from 1978 to 2015 (as cited above and echoed in many Planning Board members' recommendations as recorded in Design Review minutes), suggest that senior housing in the Plaza would have sustainable long-term benefit to the economic and social health of Durham.

Mr. Selig asked about the wetland setback between the brook and Building B. Mr. Wagner said they would respect the wetland setback and will plant additional green spaces.

Ms. Humphrey asked if there will be more commercial space than there is currently located in the plaza now. Mr. Wagner said current site has 53200 square feet and the proposed plan has 83850 square feet of commercial (not including parking) and increase of 30650 square feet....

The phasing of the project and the connection of the project to Main Street was discussed.

A video of the CDA presentation at the January 19, 2016, EDC meeting can be seen here, starting at 05:53: <https://dcat22.viebit.com/player.php?hash=815116e5584c1488b1e428bbd9c1fea4#>

The full January 19, 2016, EDC minutes can be reviewed here: https://www.ci.durham.nh.us/sites/default/files/fileattachments/economic_development_committee/meeting/43451/011916_edc_minutes_0.pdf

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January 27, 2016—Planning Board: Attorney Summary of Settlement // Mill Plaza Design Review

Durham Town Attorney, Laura Spector-Morgan, explained the legal Settlement at the January 27, 2016, Planning Board Meeting and answered questions from the public

From the January 27, 2016, Planning Board meeting minutes:

Mill Plaza –Settlement Agreement. Overview from Laura Spector-Morgan, Durham Town Attorney, about the settlement agreement between the Town and the applicant for the Mill Plaza project and the role of the Planning Board in light of the agreement.

Attorney Laura Spector-Morgan Morgan provided background and details on the recent settlement agreement with Colonial Durham Associates, the owner of the Mill Plaza property. She said the court had treated it as civil litigation, which would involve depositions, etc., and she spoke further on this. She said the Town Council ultimately decided to settle the lawsuit, as a business decision. She noted that the settlement agreement could be found on the Town website.

She said as part of the agreement, the owners of Mill Plaza would not be subject to the Zoning amendment that required 600 sf per occupant, and would be subject to the original requirement in the Ordinance of 300 sf. She said in return, there were some good concessions from Colonial Durham. She noted the following other aspects of the agreement:

- as many units as possible will be located on the northern part of the property
- there can be a maximum of 330 beds; the Planning Board can't impose a greater density and require less than 330 beds
- there will be an increase in nonresidential commercial space from 45,000 sf to 80,000-90,000 sf
- building of commercial space will be in phases so current tenants aren't displaced
- all buildings and roads will be outside of shoreland and wetland setbacks
- no variances will be required
- there is a proposed increase from 345 to 360 parking spaces.
- the natural buffer along the property line will be maintained by the property owner.
- a pedestrian walkway will connect the front and back of the property.
- there will be dedicated professional onsite property management 24/7.

Attorney Spector-Morgan said the location of the buildings in the current plan prevented a connection to Chesley drive, a connection which she understood was not palatable to the neighborhood there. She said other

than the items she'd reviewed, the project would be subject to the Site Plan regulations.

A key question asked was: "Is the Planning Board under any obligation to waive any requirements under this Settlement Agreement, any existing requirements in our zoning?" Attorney Spector-Morgan replied: "**The Planning Board can't waive zoning requirements.**"

FULL TRANSCRIPT—Durham Town Attorney, Laura Spector-Morgan, explaining Durham-CDA Legal Settlement at Planning Board Meeting:

<https://www.dropbox.com/s/oqn8znb32iinkts/TRANSCRIPT%20g%20Town%20Attorney%20at%20Jan%2027%202016%20PB%20on%20Settlement%20Agreement.doc?dl=0>

A video of Attorney Spector-Morgan can be seen starting at 05:31 here:

<https://dcat22.viebit.com/player.php?hash=fb2b77d7c1347bf9eeb4c6ad2ef854e0#>

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January 20 2016—Site Plan (one-page diagram; see also Jan 27 Architectural Renderings)

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/site_plan_19.pdf

January 27, 2016—Architectural Renderings (of January 20 site plan) submitted

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/color_architectural_plans_1-21-16.pdf

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January 27, 2016—Planner's Recommendation on January 2016 Plaza Site Plan (Plan #3)

From Town Planner Michael Behrendt's January 27, 2016, review of Plan #3:

• We received the updated plans on Wednesday. I will prepare a detailed review of the project for the next packet, in advance of the February 10 meeting. The project is being presented to the Technical Review Group on February 2.

Design review. This is a preliminary design review application. The purpose of the design review process is to allow the applicant and the Planning Board to work through the general design, incorporating changes as appropriate, in the hope of arriving at a plan that all parties think is workable. The application can then be engineered for a formal application with the understanding that making the smaller adjustments and adding necessary information at that stage will not be overly challenging. If the applicant engineers the formal plan before there is confidence that the general approach is workable then the applicant will be resistant to making significant redesigns potentially resulting in an impasse. Given the complexity and challenges of this project I encourage all parties to be patient and to allow the design review phase to take whatever time is needed....

Basic Plan

(Note: The proposed residential use on the upper floors is generally classified as "multiunit dwellings" or "multi-family residential" or simply "apartments." Given that the vast majority of this type of housing in Durham is occupied by UNH students, it is expected that most or all of it would be occupied by students.)

The rear commercial building will be demolished. There will be five buildings including four new buildings and the existing Hannaford Building onto which an addition will be constructed. The site will effectively be developed as two separate sections – a front section toward Mill Road with three buildings facing a parking lot and a rear section dedicated to student housing.

In the front section:

• The Hannaford Building will remain as one story with a 2-story commercial addition at Mill Road;

- A new 4-story commercial building, placed at a right angle to Hannaford, will contain two floors of commercial (likely the first floor as retail and the second floor as office) and two floors above of residential.
- A new 3-story building parallel to the Hannaford Building will contain one floor of commercial and two floors above of residential.

In the rear section:

- A smaller 3-story building on the southerly side will contain one story of garage parking, presumably at grade, and two stories of residential above.
- A larger 4-story building on the northerly side will contain two stories of garage parking and two stories of residential above.

Various issues

Of course, there are many issues to work through. At the design review stage, we should examine in some detail those elements which are fairly determinative for the plan, including the site layout, building configuration, massing of buildings, proposed uses, parking and circulation, traffic impacts, pedestrian circulation, green/open space amount and locations. We need look in less detail at elements that can more flexibly be grafted onto the formal application including architectural renderings, specific landscaping plans, hardscape and open space details, stormwater management, utilities, fire access. However, these elements should be reviewed in sufficient detail that we avoid significant surprises at the formal stage which could impact the plan in a substantial manner.

The issues to consider include (more on this later):

- Site Plan
- Massing of buildings
- Amount and location of commercial uses. We will want to put together data comparing the existing and proposed square footage and uses.
- Amount and location of residential uses
- Amount and location of greenspace and open space areas. This includes the connection with the existing park that was recently developed next to the Pauly's Pockets building. The park is on land owned by Mill Plaza. The Town has an easement to create a park here but subject to some limitations.
- The amount and location of parking provided. We will need to look at this very carefully. According to the plans, there are 345 spaces currently and a total of 360 spaces is proposed. Would there be sufficient parking in the front commercial part of the site?
- Traffic impacts, circulation through the site, and capacity of the access. The Town has a traffic model which should be run for this project. Note that the updated plan changed the access into the site. It is shown as an access road, of sorts, along the southerly boundary of the site. This seems to be an effective approach. It should have more traffic capacity, is simpler, and may offer a more attractive entrance to the businesses. The road will need to be carefully designed to limit speed. Consideration will need to be given to the rear of the building fronting the access road.
- The amount of development of the site overall, including buildings and impervious pavement.
- Architectural design. I think we will definitely want to create an architectural review committee for this project. We will also want to review proposed auxiliary structures (like fencing and pavers) and street furniture (benches and permanent tables).
- Construction management and phasing.
- Plans for existing and future business. The Town is limited in what it can require regarding the applicant's business plan but the community is very interested in knowing the applicant's thinking regarding existing and future businesses on the site.
- Pedestrian and bicycle use and transit connections. Optimizing pedestrian connections to adjoining sites and throughout the site is critical.
- Trucking access and loading.

- *Fire access.*
- *Security issues.*
- *College Brook. Protection and prospective restoration of the brook.*
- *Energy issues. We will review the Energy Considerations Checklist with the applicant now and later.*
- *Permeable pavement. Where is permeable pavement workable?*
- *Lighting. This is the kind of issue that can easily be put off until the formal application is submitted as a lighting plan is highly adaptable to various site plans.*
- *Signage. Like lighting, this is easily put off until the formal application.*
- *Operational issues. This includes solid waste, recycling, snow storage, maintenance, management of student housing.*
- *Outside consultants. We will need to determine which outside consultants are needed for: 1) the site plan review; and 2) to conduct later inspections and help oversee construction.*

Regulatory issues

- **Zoning Ordinance.** *I will review the project for conformance with the Zoning Ordinance in advance of the February 10 meeting. One question that has arisen pertains to whether the rear buildings are an allowed use. There is some complexity with the ordinance and the history of zoning interpretations. I will consult with the Town Attorney on this.*
- **Site Regulations.** *We should have clarification by the February 10 meeting which set of Site Plan Regulations apply to this project, given that the overhaul of the regulations was proposed around the time the project was submitted.*
- **Conditional use.** *Residential and nonresidential use is allowed as a conditional use (I will discuss the question surrounding this proposed use with the Town Attorney, above) so the conditional use process will be followed.*
- **Agreement.** *The project must be in compliance with the settlement agreement. One question that has come up is the location of the beds. A goal of the agreement is to place as many beds on the northerly side of the site as possible.*

Preliminary critique of plan

• **Intensity of development.** *The proposed redevelopment is very intensive. The Planning Board will want to review the proposed amount of development, especially the residential use, to determine if it is appropriate. This review will naturally occur as part of the conditional use review. Is the amount of development appropriate given traffic and access considerations? Parking limitations? Impacts on neighboring properties? Aesthetic considerations? The limited amount of greenspace preserved/created? We should get a Floor-Area-Ratio (FAR) of the proposed development. FAR's can be a helpful tool to see the level of intensity of a site. If information is available we could compare the FAR for this project with other projects (such as Madbury Commons, Orion, the Lodges, the current site, etc.) [Emphasis added.]*

• **Hannaford Building.** *I think that every effort should be made to add at least one story onto the existing Hannaford Building. The applicant says that they have diligently explored this but the building is too wide to span and they would need to insert columns on the interior of the Hannaford store potentially disrupting the business. I think that the scale of the project will be adversely impacted with a one-story Hannaford, a two-story addition, and adjacent 4 and 3-story buildings. This may be easier to accomplish if the Hannaford will be undergoing renovations anyway. [Emphases added.]*

• **Parking.** *While this is a downtown site and we seek to often limit private parking on downtown sites, the Mill Plaza is a unique site. Many users drive to the site. We need to carefully calibrate the right amount of parking for both the commercial and residential uses. The amount of parking directly accessible to the businesses would drop significantly, which may be a real concern. We will get the actual numbers of spaces for this.*

• **Downtown location.** *The design is not the ideal for a downtown location (See note below about the*

Mill Plaza Study) but the site is unique with a long history and practical constraints. Ideally, downtowns are based on a tight network of relatively narrow streets rather than being oriented around parking lots. How do we make the site as pedestrian friendly and attractive as possible? [Emphasis added.]

- **Rectilinear layout.** For a site oriented around parking lots, the basic design of the front section (which will be used far more by the general public) is fairly effective. It is desirable to enclose and define space in a pleasing manner. The rectilinear layout of the three buildings and the small park is effective. But we want to look at optimal placement, size, configuration, and design of the buildings.

- **Landscaping.** The site needs significantly more landscaping and shade trees, along pedestrian paths and certainly within the parking area at the front of the site. [Emphasis added.]

- **Mill Plaza Study.** The community worked closely with architectural consultants over a year to develop the 2008 Mill Plaza Study. This excellent document can serve as a touchstone for review of the site. The concept designs and summaries from the Mill Plaza Study Report can be viewed here (contained on the Town website under the Mill Plaza project): www.ci.durham.nh.us/planning/mill-plaza-study-2008. The plans are significantly different from the applicant's proposal. So, the questions arise: Which aspects of the Study are most important and most worthy to try to incorporate? Which features, though worthy, may not be appropriate for the Town to require or realistic for the applicant to implement? [Emphases added.]

- **Building Official comments.** Audrey Cline, the new Durham Building Official offered these preliminary comments: A couple of thoughts on the Mill Road Plaza preliminary drawings:....

Public bathrooms. Every successful public use area has access to clean safe bathrooms. Durham needs to address this issue.

The creation of a sense of neighborhoods within the Plaza configuration. Presently, there are no spaces besides walkways that take people from their apartments to their cars to off-site. Areas created as neighborhood interaction spaces need to also meet the safety standards of the pathways.

Building "C" seems to attempt to create a central design element with the open covered walkway. This is a good start, but the open walkway aligns with nothing but parking on either side, where it would be better aligned with the pedestrian/neighborhood types of spaces that this site desperately needs.

The walkway/bike path from the eastern property line drops people off mid-development onto a sidewalk. This doesn't work well for bicycles. They need an option that is not the sidewalk and is not the traffic lane (unless marked as bike path in addition to vehicle travel lane. As a pleasure cyclists, I would "take the lane" in this instance, which means cars would be intermingled in line with bikes. Not the best scenario.)...

The full Town Planner's Review for the January 27, 2016 meeting can be read here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/planners_recommendation_1-27-16.pdf

January 27, 2016—Planning Board Design Review, Mill Plaza (Mill Plaza Site Plan #3)

Mill Plaza Redevelopment – 7 Mill Road. Design Review (preliminary application) for the site involving demolition of rear commercial building, construction of four new buildings and an addition onto the existing Hannaford Building, addition of new commercial space in three buildings on the front/Mill Road side of the project, addition of new residential units on the upper floors of four buildings, garage parking on the first/first and second floor(s) of two buildings in the rear, new parking areas, several open space/seating areas, and other site changes. Colonial Durham Associates, LP, property owner; Joe Persechino, Tighe & Bond, design engineer; Lisa DeStefano and Adam Wagner, DeStefano Architects, architect. Central Business District. Map 5, Lot 1-1. The public hearing is set for February 10, 2015. Recommended action: Presentation of project and Planning Board comments.

Representatives of Colonial Durham Associates (CDA), owner of the Mill Road Plaza, presented their latest proposal to the Planning Board on a major redevelopment of the plaza, which the owners continued to call the "Durham Village Center." (The plan was dated 1-27-16 with 1-21-16 in the file name and can be seen here: https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/color_architectural_plans_1-21-16.pdf)

KEY QUOTE FROM CDA (as reported further below): When the issue of putting housing where Hannaford now operates came up at the January 27, 2016, Planning Board meeting, Sean McCauley, CDA's project leader, claimed, without supporting evidence (since Hannaford has been excluded by CDA from meetings), that Hannaford was not looking to expand its store. And per meeting minutes, "He also said **the applicant's [CDA's] intent was to provide commercial space for restaurants and shops that could pay more rent than Hannaford.**" [This comment suggested to members of the public in attendance or watching on DCAT that CDA may not have been making a serious effort to encourage Hannaford to move in order to put housing on the Northern part of the Plaza where Hannaford now operates (which would be in keeping with the December 14, 2015 legal Settlement with the Town) because such a move would not maximize CDA profits.]

Excerpts from the January 27, 2016, Planning Board Minutes:

Mr. Wagner said Colonial Durham Associates was back to continue with the design review process. He provided details on the most recent plan that had been designed:

- Building A will include a two story commercial space in addition to the existing one story building containing the supermarket. This will create an extension of Main Street down Mill Road, and will provide an urban edge to the site. The façade of Hannaford Market will be refaced.*
- The landscaped park area at the front that will engage with the University property across the street.*
- The main entrance to the site will be located further south than the entrance previously proposed.*
- Building B will be the first building constructed, and will be done in conjunction with the addition to Building A. This first phase of the project will allow tenants currently located in the rear building on the site to be relocated to Building B. The entire first floor of Building B will be commercial.*
- Building C will contain 4 stories. The first floor will be retail and the second floor will be commercial office space of some kind. The third and fourth floors will be residential. The applicant will explore options to separate the commercial and residential space vertically so stairs and elevators aren't shared.*
- Building D will be the largest building on the site. It will be tucked into the hillside at the back of the site, where there is a significant grade change of about 26 ft from the Orion property down to the parking lot. The parking space will be built into the hillside as a 2 story structure, and there will be 2 floors of residential space. The building won't look like it has 4 stories because of the change in grade.*
- Building E will contain 3 stories. The first floor will be for parking, and the upper two stories will be residential. Mr. Wagner noted concerns expressed by neighbors about the height and mass of this building, and said it had been moved further back from College Brook.*
- The property currently contains approximately 52,000 sf of commercial space. When the site is redeveloped, there will be approximately 84,000 sf of commercial space, which does not include parking. A modest increase to 360 spaces from the current 345 parking spaces is proposed. Mr. Wagner noted that the applicant was still exploring options concerning the parking that would be provided in the redevelopment.*

Mr. Wagner said there would be a meeting with the Technical Review Group next week. He said the team was very excited to be back before the Planning Board, and was looking forward to working with them.

Chair Corrow asked if Planning Board members had questions at this point.

Mr. Kelley asked what the thinking was regarding the parking, and said there was quite a deficit to consider. Mr. Wagner said the parking for the development was a challenge and said it would be explored in further detail. He said a lot of people walked and biked to the site, and said it was somewhat atypical in terms of the parking that would be needed for a grocery store and the pharmacy. He said the applicant wanted to provide what the businesses needed in order to thrive, and said a lot of options would be explored, including whether the parking provided at the back would be for staff, residents, etc. He said they weren't sure yet, but said the parking issue was one they wanted to solve. He said there was a 10 acre site, 360 spaces proposed, and they were limited in terms of mass for appearances purposes.

Mr. Kelley said he assumed that the target audience for the residential space would be students. Mr. Wagner said housing would be provided, and said whoever was willing to pay that would be able to live there. Mr. Kelley asked if any floorplans had been developed yet, and Mr. Wagner said no. Mr. Kelley asked if the applicant would be asked to design units for a more universal market, or for students. Mr. Wagner said it would be a disservice to his client and the community to design 5-6 bedroom units there, which became very restrictive in terms of how they could be used in the future. He said in the current setup there would be 4 different buildings with residential space, and said there could be 1-4 bedroom units in these buildings, which provided flexibility so they wouldn't just be rented to students. He said his client felt there was a strong market for students, and said that was one of the markets that would be pursued. [Emphasis added.]

Mr. Kelley said he felt that the community and the businesses that served them would be far better served if parking for the businesses was given a priority, and there were fewer residential parking permits and spaces provided, so that many of the residential clients wouldn't have cars. Mr. Wagner said this was a fantastic point and was something his client would be considering.

Mr. Parnell asked how many of the 345 parking spaces currently on the site were leased to students so were not available to others. He said this was an important question as part of discussing the future direction of parking on the site. He said if 200 spaces were currently being leased, and the new residents would need that much parking, there would be no change. Mr. Wagner said he would provide that information. Mr. Parnell noted that this would be important information to include in the traffic study.

Councilor Gooze said most likely the expansion of Building A would be for Hannaford, and said that didn't leave much room for other businesses to be in that building. He said he was trying to figure out the logistics of how this would work. Mr. Wagner said the assumption concerning a possible expansion of Hannaford wasn't correct. Sean McCauley, the project leader, said Hannaford was not looking to grow its store. He also said the applicant's intent was to provide commercial space for restaurants and shops that could pay more rent than Hannaford. [Emphasis added.]

Councilor Gooze said looking at an aerial view of the design, **the access way next to Hannaford seemed narrow in terms of allowing traffic flow, and said it would be essentially one lane as compared to the many lanes available now to access the market.** Mr. Wagner said the location of the entryway into the site allowed separation of the commercial and residential vehicles on the site, and he demonstrated how the traffic flow to Hannaford was proposed. Councilor Gooze said there could be significant conflicts trying to get to the stores there, especially depending on the time of day. Mr. Wagner said that was a very good point. [Emphasis added.]

Mr. Roberts asked how many drive-up windows there would be for businesses. Mr. Wagner said currently one drive-up window was proposed for a financial institution, which was allowed according to the Zoning Ordinance. He said another drive-up was on the plan but said it wasn't something being pursued by his client with this application. He said the tenant interested in doing this would need to pursue this on its own. Mr. Kelley asked if it would be proposed on Building A, and Mr. Wagner said yes. Mr. Kelley said currently, it was rare to experience difficulty finding a parking space at Mill Plaza. He noted that the current configuration of the

buildings lent itself to having a segment of parking in front of one of the buildings, and another segment of parking in front of the other building. He asked how many spaces would be afforded to the existing commercial tenants when they were in Buildings A and B, and was told there would be 126 spaces. He said what was needed were some micro parking studies, which considering current uses and the closest parking to those uses, and comparing that to what was required and what was proposed with the project. Mr. Wagner agreed.

Mr. Kelley said they didn't want to see vehicles looping around the lot waiting for someone to leave until a commercial parking spot opened up. Mr. Wagner said they were looking at how they could get more parking in there, and said this required more study. Mr. Kelley said there was a vast amount of space now used for snow storage, and said that issue would also be a challenge moving forward. Councilor Marple asked for details on truck deliveries to businesses in Building B. Mr. Wagner provided details on this. He said they were looking to put retail uses in buildings B and C, which predominantly would be getting smaller deliveries. He also said it was recognized that a challenge would be how to accommodate restaurant users, and said it wasn't known where this would be right now. Engineer Joe Persechino said as part of the design of the site, they were looking to separate larger commercial vehicles coming to the site from the main parking areas. He provided some details on this.

Chair Corrow asked if access for fire trucks had been looked at. Mr. Persechino said yes, but said this would require further study in coordination with the Fire Department. Mr. Wagner said this would be a critical part of the discussion with the TRG next week.

Mr. Roberts asked about possible emergency access to the site from Chesley Drive. Mr. Wagner said this would be discussed next week.

Councilor Gooze asked if the applicant had looked at adding residential space above Building A, and getting rid of one of the other buildings proposed to contain residential space. Mr. Wagner said a challenge was that Hannaford had a long-term lease. He also said construction of upper floors would involve putting in footings, etc., and would be very disruptive to the market. In addition he said there was a significant amount of refrigeration equipment, etc. on the roof. He said he didn't see great potential at this point for a floor of residential space.

Councilor Gooze said if half of Building C wasn't built there would be more area for parking spaces, and movement on the site would be easier. Mr. Wagner said the plan provided fulfilled the settlement agreement, including the 80,000 sf of commercial space, but said the comment was well received.

Mr. Behrendt asked if senior housing had been considered for Building B. Mr. Wagner said they were looking to rent to whoever was willing to pay the rent, and said if this resulted in some senior housing, his client was open to this. Mr. Behrendt said it would have to be specifically designated as senior housing, and could be done for a portion of the site. [Emphasis added.]

Chair Corrow said he was trying to visualize how the one story and two story aspects of Building A would work together. Mr. Wagner said this wasn't easy, and he spoke about how the design was being approached.

Ms. Dill asked about the park area that had been redeveloped as part of the Pauly's Pockets redevelopment. Mr. Wagner said they wouldn't want to undo this, and would enhance the park by creating an entry there into Building A, which would activate the park area. He provided details on this. Mr. Kelley asked if the transformer located in the park area would need to be relocated. Mr. Wagner said they didn't know at this point, and noted that there had been a meeting with Eversource today. Mr. McCauley said Eversource and the Planning Board would be kept updated as the plans for this developed.

Mr. Parnell said it looked like there would be enhanced landscaping at the southern edge of the site next to College Brook as part of the agreement. Mr. Persechino said the buffer would increase significantly, and he spoke in some detail on this. [Emphasis added.]

Mr. Behrendt asked if there was any way that Building D, the larger building at the rear of the site could be pushed further to the north so the parking area between it and Building E could be wider. Mr. Wagner said this could be explored. Mr. Kelley asked if there was something preventing the applicant from adding 25 more parking spaces opposite the 25 spaces shown on the plan, between Buildings D and E. There was discussion.

Mr. Kelley said a lot of aspects of the plan were still up in the air, and asked if there was a timeline. Mr. Persechino said no, and said this depended on how much the applicant needed to address after meeting with the Town boards. Mr. Kelley said it was time to start thinking about doing a parking and traffic analysis.

Mr. Behrendt said he'd been told about flooding east of the site in the Chesley Drive area, which had been aggravated due to some development on the Mill Plaza site 7-8 years ago.¹¹ He asked if as part of the drainage analysis, there was a chance to mitigate some of the runoff issues. Mr. Persechino said there would be a reduction in impervious area with this project, which would reduce runoff. He also said he would look at what Mr. Behrendt had described. [Emphasis added.]

Mr. Rasmussen asked about having a possible U shape building design with a courtyard instead of what was proposed. There was discussion.

Mr. Behrendt said he realized the site was tight, but asked if there was a way to fit a 5 ft strip of landscaping into the front parking area on the left portion of the site. Mr. Persechino said they could look at this, but said it was really tight there. He noted that Building B was already pretty narrow.

Mr. Kelley asked about sewer for the development. Mr. Persechino said a large, deep sewer line ran through the site, so there shouldn't be an issue connecting to it. He said the TRG would discuss this. Mr. Kelley asked if the line ran through the area for potential stormwater treatment, and Mr. Persechino provided details on this.

Councilor Gooze asked how high Building D would be relative to the Orion building behind it, and suggested possibly putting another residential floor on Building D so the applicant could do away with Building B. He said with this design, there would be more room for parking and landscaping, and it would also be easier to get to Hannaford, etc.

Mr. Wagner said that was a great idea, but said a variance would be needed. Councilor Gooze said although a variance would be needed, he didn't think the applicant should write off the idea. He said it might be something that the Planning Board thought was better than the current design, and said he would like it to be a possibility. Mr. Wagner said he appreciated the comment.

Mr. Behrendt asked about possibly putting a building on Mill Road where the park area was currently shown, which would frame the road and the space. Mr. McCauley said there had been conversations about this approach with the tenants of the site, and said they spoke about how being visible from Mill Road was essential to their success. He noted that they had some approval rights concerning this, and also said some tenants liked the idea of the park as a gathering space for customers.

Mr. Wagner said Buildings B and C were more viable commercial spaces than what was there now. He said currently it was hard to identify some of the businesses until one was far into the site, and also said a friendlier commercial atmosphere could be created there. Mr. Roberts asked if this meant the applicant would be resistant to getting rid of Building B in the proposed redevelopment, and instead putting another level on Building D. Mr. Wagner spoke about the importance of Building B in regard to phasing, so the existing tenants

¹¹ The cited "development on the Mill Plaza site" that led to "increased flooding" downstream was the unauthorized bulldozing of the rear hillside in 2002, as described in detail further above. And, again, as one can see in this brief video shot on January 10, 2016, from the second-floor window of a Chesley Drive home and looking toward the Mill Plaza, the area around College Brook downstream from the Plaza (which is usually a narrow and tame brook) often becomes a lake, the brook channel rages like a major river, and a new brook channel (also with some "white water") opens and then merges into the regular brook stream: <https://www.dropbox.com/s/zedz7hdlwh6davp/College%20Brook%20flooding.MP4?dl=0>

could be relocated. Councilor Gooze said this could be done using Building C. Mr. Persechino spoke about this aspect of the design.

Ms. Dill said she regretted the loss of the landscaped strip with this plan as compared to the previous plan, in an effort to get more parking spaces, and said this perpetuated the sense on the site now that there were buildings plunked in the midst of a giant parking lot. Mr. Wagner said they appreciated this concern.

Mr. Behrendt said if there wasn't room for a landscaped strip, at least there might be some islands of landscaping. He said even if this meant a few parking spaces would be lost, there would be some tree canopy provided. Mr. Wagner agreed. Councilor Gooze noted that parking spaces were at a premium there. Councilor Marple said it would be critical to know how many spaces on the site were currently being rented. She noted that she'd never had a problem finding a parking space at Mill Plaza. Mr. Kelley suggested that the applicant could get some information on the parking situation from the businesses currently there.

A Public Hearing on the proposal was scheduled for two weeks later at the Planning Board Meeting on Wednesday, February 10, 2016.

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February 2, 2016—Technical Review Group (TRG) Discusses Mill Plaza Redevelopment (Site Plan #3)

The site plan being discussed is posted here (the document is dated 1-27-16 with 1-21-16 in the file name): www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/color_architectural_plans_1-21-16.pdf

Mary Ellen Humphrey suggested that the Hannaford store be relocated to Building B at the southerly end. Then there could be a new building where Hannaford is with 2 or 3 stories. Sean McCauley said that Hannaford controls their space, but they will see.

Audrey Cline said that the **Hannaford building is key. Every effort should be made to relocate it so the present building can be redeveloped. There are lots of reasons that Hannaford might want to move.** Several businesses might want drive thrus: Hannaford, Rite Aid, the banks. [Emphasis added.]

Mike Lynch: Drainage should include low impact development and bioretention systems.... There should be traffic islands and rain gardens in strategic places – corners and low spots. You might consider an underground drainage system with slow discharge toward the brook. This has worked well at the Irving Station which has a 30,000 gallon system. But we also want as much natural treatment as possible. **Taking care of the brook is critical. There will need to be strong erosion control, 90% at the bottom, a superfortified system with several different measures.... Snow in the past has been left at the brook to melt into the brook.** You might consider getting snow melting equipment. It is a big initial cost but pays off over time.... You can only take it to NHDES permitted sites. You cannot take it to the Town's DPW site. Consider LED lighting to match the Town's lighting.

Dave Kurz, Michael Behrendt, and Robin Mower made additional comments.

See the complete February 2, 2016, TRG meeting minutes at: https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/notes_from_trg_meeting_2016-02-02.pdf

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February 8, 2016—Letter from USDA Urban Forestry Expert John Parry (excerpts):

I am writing to provide comment on the proposed redevelopment for Mill Plaza. I feel much of the recent development for housing and retail space has not been a positive addition for the Community. Pavement and concrete dominate the Downtown, and there is less and less greenspace remaining.

Despite being called “the Durham Village Center” this new proposal is primarily commercial space with more pavement, parking, student housing and un-needed retail space. I feel the planning board should take a very conservative approach on approving any conditional uses, and instead should protect the community character and the environment by keeping the expansion of the Mill Plaza to a minimum.

Some specific suggestions/concerns I have related to the natural resources on the site are:

....Planned buildings not meeting zoning guidelines should be rejected.... The area of additional asphalt should be reduced and best management practices used to reduce run-off.

The wetland and shore land setbacks on the property should be honored, and carefully enforced. No construction activity should occur within the setback. Recent construction at Madbury Commons allowed construction activity to occur in the shoreland setback (storage of equipment, soil compaction, storing of supplies & soil, significant grading, etc.). This degraded the protection area along Pettee Brook and should not be permitted.

There is a nice wood lot on the northeast edge of the property. Much of this sloped area will be cleared for the development. Though it is private property the wooded area adds significant value to the community in providing environmental services. A larger amount of this area should be preserved....

A minimum wooded buffer of at least 75’ should remain.

Existing large individual trees on the site, deemed desirable for the landscape, should be clearly identified, and guidelines developed to protect a significant portion of the root system of each tree during construction....

New trees and other landscaping planned for the development is inadequate. More green space needs to be added, include large tree planting along Mill Road. For trees to become large, space and infrastructure needs to be planned into the development. As seen by the slow growth and poor condition of trees in the current Mill Plaza parking lot, and on Main St. Downtown, cutting small openings in the hardscape is not adequate. Adequate rooting space and drainage needs to be designed into the infrastructure (see Architectural Graphic Standards – Section on Tree Planting in Urban Areas).

A proposed path is suggested along College Brook. Path construction should be designed to have a low impact, keeping disturbance to a minimum. Consider surface materials other than pavement/concrete (stone, etc.)

Construction of a path through wetland at the Peak Development on Mast Rd. was poorly done, removing a large # of trees and vegetation and negatively impacting the wetland.

The full February 8, 2016, John Parry letter can be read at:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/e-mail_from_j._parry.txt

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February 10, 2016—Planning Board Public Hearing on Mill Plaza Redevelopment (Site Plan #3)

X. Public Hearing - Mill Plaza Redevelopment – 7 Mill Road. Design Review (preliminary application) for a site plan and conditional use for the redevelopment of this 10-acre site. The project involves demolition of rear commercial building, construction of four new buildings and an addition onto the existing Hannaford Building, addition of new commercial space in three buildings on the front/Mill Road side of the project, addition of new residential units on the upper floors of four buildings, garage parking on the first/first and second floor(s) of two buildings in the rear, new parking areas, several open space/seating areas, and other site changes. Colonial Durham Associates, LP, property owner; Joe Persechino, Tighe & Bond, engineer; Lisa DeStefano and Adam Wagner, DeStefano Architects, architect. Central Business District. Map 5, Lot 1-1. Recommended action: Discussion and continuation to February 24. Determine whether to keep public hearing open.

February 10, 2016—Planner’s Review of January 2016 Redevelopment Proposal (Site Plan #3)

[https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/planners_recommen-dation - february 10 2016.pdf](https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/planners_recommen-dation_-_february_10_2016.pdf)

The site plan being discussed in the Planner’s Review (the doc is dated 1-27-16, yet with 1-21-16 in file name): www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/color_architectural_plans_1-21-16.pdf

From the 20-page Planner’s Review, which discussed 162 issues related to the submitted plan (#3):

I recommend hold the public hearing, discuss the various issues, continue to February 24, and decide whether or not to continue the public hearing.

The Planner’s Review then quoted from the Mill Plaza Study Committee’s (MPSC) recommendations and added a link the MPSC report, after noting that “The community worked closely with architectural consultants over a year to develop the 2008 Mill Plaza Study. This excellent document can serve as a touchstone for review of the site.... The questions arise: Which aspects of the Study are most important and most worth trying to incorporate? Which features, though worthy, may not be appropriate for the Town to require or realistic for the applicant to implement?”

A redeveloped Plaza property should serve as a “Village Center” that stands as an example for future downtown development and provides residents a “sense of place”. By this we mean year-round community space – indoor and outdoor areas where people linger to meet and talk to their friends, shop, and enjoy all of the seasons. The redevelopment should link visually and physically to Main Street, Mill Road and the UNH campus. The architecture should embrace principles of sustainability and green building. This approach holds the greatest potential for community support and the future success of the Plaza.

Pages 2-3 of the Planner’s Recommendations for the February 10, 2016, outlines a number of issues related to Design Review; whether the Public Hearing should remain open or be closed, with the hearing reopened later “once a generally acceptable revised plan is submitted”; the need soon for a Site Walk; suggested work toward an Optimal Design, even if it requires “relief from some Town requirements; how any significant departures from the Settlement Agreement would require approval of the Town Council and the Applicant; how a Formal Application must, Per RSA 676:12 VI, be submitted within one year of when the Design Review closes; the need to determine what Outside Consultants are needed “for the site plan review” and “to conduct later inspections and help oversee construction”; Department of Public Works review and inspection needs; Fire Department review. Finally, the planner points to Earlier Plans: “There were two earlier iterations submitted as part of this Design Review, included on the website, one identified as ‘Proposed site plan’ dated September 12, 2014, and one identified as ‘Updated Site Plan 1-8-15.’”

The Planner then outlined **Additional Information Needed** or desired, including the locations of the businesses in the existing buildings, an Area Plan (“a scaled plan with neighboring lots including building footprints and property owners’ names. This should include at least Brookside Commons, Faculty Road, Chesley Drive, and the Town’s pedestrian way to the Faculty Road/Thompson Lane intersection”), an Existing Conditions plan either existing conditions only “or a rendering of some kind that makes clear the existing conditions in comparison to the proposed plan”; and a 3-dimensional Model.

Pages 3-5 of the Planner’s Report continue with discussion of Zoning Ordinances, noting first that “we can use the current zoning ordinances for reviewing the project, and then continuing with the following:

*17) Residential uses.... Per the Table of Uses, residential uses are allowed in the Central Business District only under the use category “Mixed Use with residential (office/retail down, multiunit residential up)” as a conditional use. **Audrey Cline, Building Official/Zoning Administrator, and I have determined that the two***

rear buildings do not fall into this category and thus are not allowed uses. Building D is proposed to have two stories of parking and two stories of residential. Building E is proposed to have one story of parking and two stories of residential. These buildings do not fall into the use category because parking is not an “office” or “retail” use. This issue will need to be addressed in some manner (See Floor distribution, below). [Emphasis added.]

18) Floor distribution. 175-41 Central Business District F. 7. states that the first floor must be nonresidential. There may be two floors of residential above for a maximum of 3 stories. If there is a second nonresidential floor, there may be up to 4 stories. The Town determined several years ago that a parking garage (regardless of who it serves) is considered “nonresidential” for the purpose of this provision. Perhaps the applicant was thinking of this provision (rather than the separate Table of Uses) when proposing parking on the lower floors of Buildings D and E. Note that F.11. allows for a departure from having the nonresidential use by conditional use. The intent of this recent amendment to the ordinance was to allow for flexibility in allocating nonresidential/commercial uses for larger sites where there are multiple buildings, and where creating nonresidential/commercial space on some buildings may not be practical (such as on the Orion site which allowed a few all-residential buildings by variance). **We will consult with the Town Attorney to see whether this provision may be applicable to Mill Plaza in some manner.** [Emphasis added.]

19) Parking garage. The garage parking is permitted by right, as “structural parking” in the Table of Uses.

20) Parking in front. 175-41 Central Business District F. 1. states: “No new parking shall be located on the portion of the lot between the front wall of the principal building and the front property line.” **It appears that this provision could prohibit the construction of Building C since the parking area would be in front of the building. If so, then a variance or other relief would be needed. We will clarify this.** [Emphasis added.]

21) Commercial uses. Most typical downtown commercial uses are permitted in the Central Business district by right, including retail store, restaurant, bank, personal services, and office.

22) Drive through facility. A drive through facility is allowed only as an accessory to a financial institution by conditional use.

23) Setbacks. There are no minimum or maximum setbacks in this part of the Central Business District.

24) Building height. The maximum building height is 30 feet (which generally accommodates a 2-1/2 or 3 story building). With Planning Board approval (at its reasonable discretion as no criteria are provided) the maximum height is 50 feet, which generally accommodates a 4 or 5-story building.

25) Impervious surface. 100% impervious surface is allowed in the Central Business District.

26) Habitable area. Based on the Settlement Agreement, the new zoning amendment setting a minimum of 600 square feet of habitable area per resident will not apply. The old standard of 300 square feet will apply.

27) Density/residential use. The minimum lot area per dwelling unit is 1,200 square feet. A 10 acre site would allow 363 dwelling units. Of course, far fewer units are proposed to accommodate 330 beds. The limitation of 3 unrelated occupants does not apply in the Central Business District. There is a maximum of 4 bedrooms per dwelling unit in all zones. Basement dwelling units are not permitted.

28) Abutting residences. Section 175-76 D. states: “Nonresidential or multiunit structures abutting or within residence districts. No nonresidential or multiunit structures, other than permitted signs, and no parking shall be permitted within seventy (70) feet of a side or rear lot line abutting a residence district or use unless screened as provided in Article XXII. The adjacent Church Hill district is not a “residence district” per the heading in the Table of Uses. The abutting Map 6, Lot 7-59 is a single-family residential use. Map 5, Lot 1-16 is

not a residential use as it is currently vacant land. There are two small residential structures on Map 5, Lot 1-15. **At any rate, at a minimum, a buffer as prescribed in Article XXII should be established along the entire easterly property line, if not already sufficient.** [Emphasis added.]

29) **Conditional Use.** *Mixed use residential and commercial buildings are allowed by conditional use. Certain activities are allowed within the 75 foot wetland buffer by conditional use including roads/driveways, footpaths (nature trails/paths are allowed by lesser criteria), nonresidential buildings, and accessory structures. Article VII lays out special provisions regarding conditional uses.* [Emphasis added.]

30) **Variances.** *At some point, it will need to be determined which, if any, variances may be needed.* [Emphasis added.]

The Planner then described **Applicable Regulations** (see https://www.ci.durham.nh.us/boc_planning/site-plan-regulations-pertain-mill-plaza-development), which had not yet been compared with the submitted plan, adding: “The applicant is encouraged to review the Site Plan Regulations in detail, if they have not already done so, to ensure that there will not be obstacles in conforming with the requirements at the formal stage.”

The Planner then compared the January 27, 2016, plan with the plan from a year earlier, concluding overall that **this new plan was worse than that earlier one:**

35) **Earlier plan submittal.** *This plan below, the prior iteration, was submitted in January 2015. I think this [earlier] plan is significantly superior to the current plan in that the buildings are better spaced, there is more parking, there is a more appealing entrance to the commercial area, and there is a terrific pedestrian promenade in the middle. The main concern with this plan is whether the curved entrance could accommodate traffic satisfactorily as there could be stacking issues at Mill Road. This design, should be reconsidered. This might place Building C within the wetland buffer (rather than the road) and only nonresidential buildings are allowed there by conditional use.*

The year-earlier January 8, 2015, plan (CDA Site Plan #2), just referred to, can be seen in detail here: http://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/updated_site_plan_1-8-15.pdf (see pages 2-9)

Next, the Planner addressed the elephant in the Plaza regarding all plans to date, the retention of the oldest structure on the site, where Hannaford and Rite Aid operate, which is on the Northern tip of the property (where housing is to be concentrated, per the December 2015 legal Settlement).

36) **Hannaford Building height.** *Every effort should be made to add at least one story onto the existing Hannaford Building (or better yet to demolish it; see below). The applicant says that they have diligently explored this but the building is too wide to span and they would need to insert columns on the interior of the Hannaford store potentially disrupting the business. Hannaford has utility equipment on the roof. I think that the scale of the project will be adversely impacted with a one-story Hannaford, a two-story addition, and adjacent 4- and 3-story buildings. This may be easier to accomplish if the Hannaford will be undergoing renovations anyway.* [Emphasis added.]

37) **Hannaford relocation location.** *It would be a real lost opportunity if the existing Hannaford Building were to remain and remain as a 1-story building. Mary Ellen Humphrey raised the idea of Hannaford (and Rite Aid, Bella’s, and The Works?) relocating into the new Building B to the south. This would allow for replacement of the old Hannaford Building with a new multistory structure and provide Hannaford with a new space and better visibility for vehicles entering from Main Street. I think this is a very good idea worth exploring. If the Hannaford Building is demolished a new 3 or 4-story building could be erected, and more apartments could be placed there, away from Faculty Road. Mary Ellen suggested Building B rather than Building C because the rear building to be demolished overlaps with*

the Building C location causing phasing challenges. [Emphasis added.]

38) **Hannaford to Building C.** Josh Meyrowitz has suggested that Building C, which is parallel to Mill Road, would be a much better location for Hannaford. This would provide excellent visibility for Hannaford and emphasize its presence as the anchor business in the project. It would preclude having a pedestrian walkway through the middle of Building C to the rear of the site (as specified in the Agreement) so that would need to be addressed. [Emphasis added.]

39) **Phasing for Hannaford to Building C.** This would present a challenge with phasing but it is probably workable. Building B (southerly building) could be constructed in Phase 1 to accommodate businesses relocating from the rear building which will be demolished (or at least those businesses located on the northwesterly end of the building). Then the rear building, or at least the northwesterly portion of it (where Federal Savings is located), could be demolished to accommodate construction of Building C. Building C could then be built to accommodate relocation of Hannaford (and other tenants). The Hannaford Building could then be demolished.

40) **Addition – Building A.** There are some distinct disadvantages to the 2-story addition onto the [Mill Road side of the] Hannaford Building: the structure would be very close to the sidewalk, possibly giving a looming presence, the existing park there would be eliminated, and open access from Main Street to Mill Plaza would be reduced. A one-story addition would probably fit better. **A better solution would be to replace the Hannaford Building with a new 3 or 4-story building retaining the park. Then there could be a series of 3 parks along Mill Road – Bicentennial Park, the existing park next to the Works, and the new park proposed. A new storefront could face Mill Road retaining some open space in front of it.** [Emphasis added.]

41) **Rectilinear layout.** For a site oriented around parking lots, the basic design of the front section (which will be used far more by the general public) is fairly effective. It is desirable to enclose and define space in a pleasing manner. The rectilinear layout of the three buildings and the small park is effective. But we want to look at optimal placement, size, configuration, and design of the buildings.

42) **Building B.** One person suggested eliminating Building B. This would accommodate more parking in the commercial area but it would be difficult to make up for the residential and commercial space lost.

43) **Building D residential.** Building D, located at the northeasterly corner of the site seems to be the best place to concentrate the residential. It would seem worthwhile to create as large a building footprint as possible here (notwithstanding that there is ledge in the rear) with as many floors of residential as acceptable. There was discussion at the January 24 Planning Board meeting about seeking a variance to add residential floors here.

44) **Rear buildings.** It would be desirable to create more space between Buildings D and E. Building D should be pushed as far northerly as possible, recognizing there is a slope and ledge there. There would be an overpowering canyon effect in between Buildings D and E, as presently configured. At least one more row of parking should be added along with some green space between the buildings.

45) **Building E parking.** I suggested looking at putting 3 floors of garage parking in Building E and having all of Building D as housing (this would probably require some relief under zoning). The applicant will look at this but one challenge is that the footprint for the parking in Building E is set up for 1 floor of parking. The larger footprint for parking in Building D more easily allows for a ramp for upper floor access.

46) **Building on Mill Road.** It would be desirable to have an “outbuilding” on Mill Road (along with the addition proposed for the Hannaford Building). A building was shown here in the prior plan (January 2015). The Mill Plaza report states: “...we recommend that the development “wrap” business uses/buildings around from Main Street to Mill Road to increase retail along these two major roads, better connect Main Street and Mill Road, increase pedestrian traffic, and provide a visual buffer between Mill Road the site.” Sean McCauley has stated

strongly that they do not want to do this due to the need for visibility of the plaza. I would suggest exploring adding a small building there that would not obscure visibility.

On pages 8-9 of his February 2016 review of site plan #3, the Planner discusses various aspects of **Traffic**: a **Traffic Model** operated by Resource Systems Group (RSG) of White River Junction, Vermont; the possible need for a **Traffic Study**; possible need for **Traffic Improvements**; and coordination with any **UNH hotel project** plans for 66 Main Street; possible **Transit** changes. The Planner also mentioned the *exclusion* of **Chesley Drive** as a vehicular connection and through street to Mill Road, a contentious issue that dates back to the 1960s, but has repeatedly been defeated by overwhelming public opposition to any damage to the Chesley Marsh, College Brook Greenway, and the pedestrian paths to, from, and through the Faculty Neighborhood.

[See entries above from 1969, 1973, 1974, 1994, 1999, 2000, and 2009, which address how the pedestrian/bicycle linkage to/from the Faculty Neighborhood at the Southern rear of the Plaza – and the blockage to through vehicle traffic – is the critical natural buffer that makes the largest downtown neighborhood a “neighborhood” rather than a bunch of houses on small lots adjacent to the commercial core.]

52) **Chesley Drive**. The applicant does **not** propose connecting to Chesley Drive. [Emphasis original.] Many members of the community, on numerous occasions, have stated strong opposition to connecting Chesley Drive to Mill Plaza for vehicular use. The Mill Plaza report states: “After independently studying the idea, the design teams recommended against opening Chesley Drive to vehicles for several reasons, among them: 1) it would negatively impact a natural, pleasant feature of the current site; 2) it would pose numerous additional traffic challenges including increased traffic not only on Chesley Drive, but on the roads that lead into it; 3) it might adversely affect College Brook; 4) it would likely require property takings and other difficult actions; and, 5) a second vehicular access at Main Street presents a better design alternative.” Connection at Main Street is no longer viable due to subsequent development on Main Street.

Next, the Planner addressed **Vehicular Circulation** on the site, including **Truck Traffic**, **Drive Throughs**, **Loading**, a 50-foot **Easement** shown on the plans, a recommended **Additional Lane** for exit only. The issue of a road within the buffer is discussed at greater length:

54) **Road in buffer**. Under the Zoning Ordinance, for College Brook, the wetland buffer is 75 feet wide and the shoreland buffer is 25 feet wide. The existing pavement is located well within the wetland buffer for the entire length of the site. Much of it also appears to be located within the narrower shoreland buffer. The proposed new road is located within the buffer but it is pulled back a fair amount from where the existing pavement is. Roads are allowed in the buffers by conditional use. **Per the Agreement, “The Revised Application will provide for proposed buildings and vehicular roads outside of the shoreland and wetlands buffers such that variances from town ordinances are not required and the buffers are maintained by the property owner.” We will need to clarify if the proposed design is consistent with the Agreement.** [Emphasis added.]

Pages 10-11 of the Planner’s Report analyzed 15 issues related to **Parking**, including where student residents should be discouraged from bringing cars and whether a test (using barriers) could provide a preliminary sense of the impact of proposed Building B blocking access to the grocery and creating traffic jams.

Pages 11-13 discussed details of **Pedestrian Circulation**, first citing the recommendations of the Mill Plaza Study report for “numerous pedestrian access points and paths” that tie parts of the site together.

74) **Mill Plaza report**. The report states: “Pedestrian. We recommend there be numerous pedestrian access points and paths that tie the grocery store other parts of the site to one another as well as to Main Street, the University, and neighborhoods. These paths should be inviting, well designed, and take practical account of pedestrians’ current and likely future use of the site... Bicycle. We recommend a bike path be available on at least the buffer/park along College Brook and that sufficient bike racks and storage facilities be provided in various locations to ensure site users are encouraged to bike. This might mean a bike storage facility in part of

any parking garage, for instance.”

75) Network of paths. It is key that there be an attractive, efficient, and safe network of pedestrian ways through the site, connecting with places off site in all directions – Chesley Drive to the east, Main Street to the north, UNH to the west, and Faculty Road to the south. It would be helpful to highlight on one of the site plan sheets or on a separate sheet the existing and proposed network of pedestrian ways through the site, including formal sidewalks and informal paths.

76) Orion connection. Is a connection to the pathway on the easterly side of the Orion project desirable? Would this be acceptable to Orion?

77) Path through Grange property. This is a very important path that should be easily usable. Should this path be reconfigured or modified in any manner?

78) Path designs. At the appropriate time, the design of each section of pathway should be determined – width, material (concrete, asphalt, brick, or stone dust/gravel), and lighting.

79) Arcade. As Audrey Cline noted it would be desirable for the opening through Building C to connect directly with a sidewalk. Per the Agreement, “The proposed center building shall provide for a ground level connector to encourage pedestrian connectivity through the site towards Main Street.”

80) Faculty Road. Many residents from Faculty Road walk down the dirt/gravel path south of the site starting at Faculty Road/Thompson Lane and into or through Mill Plaza. I believe that the Town has an easement for this path and maintains it. The Town also maintains the asphalt path leading from Chesley Drive to Mill Plaza.

81) Multi-use path. A path is shown along the brook (partly obscured by vegetation). This “River walk” can be a fine amenity. It should be carefully considered to allow for multiple users, including bicyclists; use of permeable pavement might be the best approach. This is allowed in the buffer as a conditional use. The path should extend all the way to Mill Road. It is shown this way on the color renderings but not on the black and white plan.

82) Brick pavers. I recommend use of brick pavers as much as possible to enhance the character of the parking lot and plaza areas and to unify the overall development. It is very desirable to use them at all of the cross walks.

83) Awnings. Given that there is much pedestrian movement through the plaza, it would be desirable to include awnings over some of the paths that extend in front of buildings to make passage more pleasant in case of rain.

84) Passage in parking lot. It would be desirable to widen and enhance the pedestrian passage, through the parking lot, between the Hannaford Building and Building B (passage parallel to Mill Road). There should be shade trees and brick pavers. This would require the loss of 3 parking spaces though.

85) Connection to Chesley Drive. It is probably desirable that there be no direct path from the rear residential buildings to the multi-use path along College Brook at the southeasterly corner. Students may walk to the Mill Pond potentially adversely impacting Chesley Drive. [Emphasis added.]

86) Bicycle infrastructure. The plans should include an attractive, safe, and efficient network into and through the site, and appropriate storage facilities for both the commercial and residential uses.

Page 13 of the February 2016 review (of Plan #3) discussed Commercial Uses on the site, addressing Mix of Uses, Age of Buildings, Plans for Existing Businesses, Commercial Space, Serving Alcohol (including possible limits given expected hundreds of new student residents), Other Desired Businesses (e.g., bakery and a

hardware store).

Pages 13-14 discussed Residential Uses,

93) Location of beds. Per the Agreement, “To the extent reasonably practicable, and subject to planning review, the Revised Application shall locate the residential beds upon the Mill Plaza site with the goal of placing as many beds as possible in the buildings proposed to be located in the northern half of the property.” [Emphasis added.]

94) Number of beds. Per the Settlement Agreement, there will be a maximum of 330 residential beds for the entire site with a density of not less than 300 square feet of habitable area per occupant. The disposition of beds is: Building B – 64 beds on 2 stories, Building C – 64 beds on 2 stories, Building D – 126 beds on 2 stories, and Building E – 76 beds on 2 stories.

95) Square footage. The residential floor space totals 143,800 square feet: Building B – 27,200 square feet, Building C – 29,200 square feet, Building D – 55,600 square feet, and Building E – 31,800 square feet.

96) Interior use. The applicant has stated that they will have separate access (elevators and stairs) for students and for businesses since the two users can be incompatible.

97) Senior housing. It would be desirable to include some senior (elderly) housing. The upper floors of Building B would seem a natural place for senior housing. We ask that the applicant explore this possibility. [Emphasis added.]

98) Workforce housing. This should be explored. But we have seen that workforce housing is probably not compatible with student housing in the same building (or floor of a building). [Emphasis added.]

99) Dwelling units. How many dwelling units are proposed? Are these being designed in a way that they might be readily convertible from student housing to apartments for nonstudents?

100) Outside space. A seating area is shown to the east of Building D. What is the optimal location, size, and character of outside space to serve the (likely) student residents while minimizing disturbance to neighbors?

Pages 14-15 of the February 2016 Planner’s Review discuss Landscaping and Open Space:

101) Landscaping. The site needs significantly more landscaping and shade trees, along pedestrian paths and certainly within the parking area at the front of the site. The Site Plan Regulations require more landscaping areas within the parking area. Perpendicular planting islands could be added as well as landscaping strip parallel to the Hannaford Building.

102) 5% landscaping. The zoning ordinance requires that at least 5% of parking and driveway areas be landscaped.

103) Other requirements. There are numerous requirements related to landscaping in both the Zoning Ordinance and Site Plan Regulations. In the design review phase the applicant should ensure that sufficient areas are designated for landscaping, or that reasonable adjustments can be made at the formal phase.

104) Foundation plantings. It is always desirable to have a planting strip around the base of buildings where they meet parking lots and driveways. The Site Plan Regulations require a 4 foot wide strip. These strips should be added, especially along the front of the three buildings fronting on the commercial area, unless a waiver is granted.

105) Impervious surface. The plans show a reduction in impervious surface from the current ~62% to a

proposed ~55%.

106) **Buffer**. ***As part of the formal application, the Planning Board should look at whether additional screening/fencing is needed between the multi-unit housing and adjacent residences.*** [Emphasis added.]

107) **Bicentennial Park**. *The park that was recently redeveloped by the Town is situated on the Mill Plaza property. The Town has an easement to create this park. The easement retains the right of the property owner to use this land in the future. We would like to talk with the applicant about ways to potentially keep the park open in perpetuity. The applicant may want to provide direct access from the park into the adjacent building.*

108) **Mill Road park**. *A new park along Mill Road is proposed. A formal park with a combination of shade trees, green space, hard scape, and street furniture could be a fine amenity for the project and the community.*

109) **Green roofs**. *Is it possible to install green/vegetative roofs on any of the buildings?*

Pages 15 and 16 of the Planner's report discusses **Natural and Cultural Resources**

110) **Mill Plaza Report – brook**. *The report states: "College Brook, a tributary of the Oyster River, and its wooded wetland surroundings provide stormwater filtration, aesthetic beauty, wildlife habitat, and a valuable buffer for light and noise between the downtown commercial core and the Faculty Neighborhood. As supported by a report of the College Brook Restoration Group to the MPSC, the redevelopment should work to protect and restore the brook and its buffer's natural functions on the site. This would add value to the Plaza, reassure residential neighbors, and set an example for good environmental stewardship."*

111) **Mill Plaza report – brook functions**. *The report also states: "We recommend that public space be provided along College Brook for: 1) a brookside park for walking, biking, and other activities; 2) access between neighborhoods, the Plaza, and the University; and, 3) key functions such as flood storage, water filtration, and wildlife habitat. This brookside park should incorporate curves and other features to appear more natural. The Committee further encourages "low impact" designs incorporating features such as rain gardens, natural swales, permeable asphalt, retention ponds, underground filtration systems, and roof gardens to effectively and more naturally manage storm water."*

112) **Brook restoration**. ***It would be desirable to restore the brook as appropriate, including the riparian buffer along the brook.*** *Madbury Commons restored the brook adjacent to its project adding significant value to the development. It appears that more than half of the brook is situated on two abutting lots. However, **it has been noted that Mill Plaza has deposited large amounts of snow along the brook historically (I forwarded photos sent to me). What responsibility does Mill Plaza have now for restoration of the brook and the adjacent greenway?** See the email from Robin Mower, an abutter, showing photographs of snow piled along the brook.* [Emphases added.]

113) **Abutting lots**. *The abutting lots to the south of Mill Plaza are Brookside Commons Condo Association on the westerly side (Lot 3-18), and Martin Lee Trust on the easterly side (Lot 3-19). College Brook weaves among the three lots, with more of it located on the two adjacent lots.*

114) **Buffer along brook**. ***Per the agreement, "The Revised Application will have increased natural buffer along the southern property line adjacent to the College Brook; such buffer to be maintained by the property owner in perpetuity."*** [Emphasis added.]

115) **Wetland and shoreland**. ***The precise wetland and brook and buffer locations will need to be delineated by a wetland scientist on the formal plans.*** [Emphasis added.]

116) **Shoreland District**. ***There are numerous provisions in the Shoreland Protection Overlay District***

that will likely apply to this project. We will examine these provisions in light of proposed plans as we move along. [Emphasis added.]

117) Invasive species. There is a great deal of Japanese Knotweed, a highly invasive plant, along the brook. We should coordinate for the eradication of this plant.

118) Flood zone. The brook is located in a flood zone, which should be shown on the plans. The flood hazard requirements apply largely to buildings so this should have minimal if any impact on the design.

119) Other features. Are there any special natural or cultural resources on the site, such as a stone wall? An overview should be provided as part of an existing conditions plan.

Pages 16-17 of the February 2016 Planner's report on Site Plan #3 discuss **Fire Issues**, including fire-truck circulation, sprinklers, fire hydrants, proximity of new buildings to buildings on other sites, as well as emergency access, as follows:

120) Emergency access. The Fire Department will need a second/emergency access into the site. The best location would probably be off Mill Road toward the north of the site, adjacent to the park. This could simply be a wide asphalt or concrete pedestrian way at other times. There could be up to a 6" reveal on the curb to prevent use by other vehicles. Plants in pots that are readily movable could be placed there. (As an alternative, if not feasible, the applicant could probably satisfy this need with extra building requirements.) [Emphasis added.]

Page 17 addresses **Police Issues**, including a needed property management plan, the Town's strict noise ordinance, recommended video monitoring, and the impact of students downtown from recent projects. Regarding the last item, Chief Kurz indicated that "The impact upon the Police Department was minimal but that was due in large part to significant interaction with each landlord/management team to ensure management protocol was in-place and enforced as well as outstanding coordination with move-in this fall."

Pages 17-18 discuss **Utilities**, including burying utilities, need for careful location of dumpsters for trash and prevention of flyaway trash, "which goes toward the brook and Chesley Drive"; encouraging recycling; water service, sewer service, and other utilities such as gas.

Page 18 discusses **Stormwater Management**, including low impact development, underground retention, erosion control, permeable pavement, College Brook evaluation, increased flooding on land south of the Plaza [following CDA's unauthorized 2002 bulldozing of the rear hillside].

Construction issues are outlined on pages 18-19, including phasing, hours of work, and **the priority of protection of College Brook during construction.** [Emphasis added.]

On page 19, the Planner outlines issues of **Architectural Design**, including the value of placing balloons "at several building corners to give a sense of height and scale for the site walk." Regarding street furniture and site details, "We will want to see details of all proposed street furniture that is permanently affixed such as benches, tables, fencing, light fixtures, and pavers. An architectural review committee could assist in reviewing proposed designs."

Pages 19-20 address **Other Issues**, including Energy Considerations Checklist, Fiscal impact, commercial/advertising signage, directional signage, lighting shielding and dark-sky compliance, clean/safe bathroom access, clear street addresses for emergency access, 24/7 management, and LEED (Leadership & Energy & Environmental Design). Snow storage received the longest treatment (because of historical damage to College Brook):

153) **Snow storage. Certainly, handling snow will be a challenge. It should not be stored next to College**

Brook, since the sand or salt could get into the brook and the snow storage could damage vegetation. Snow cannot be stored (i.e. the “dumping of snow”) within 75 feet of College Brook per the Shoreland Overlay District. This would likely not occur with the new plan anyway with the parking lot separated from the brook area. Arrangements will need to be made for removing snow in the event of excessive accumulation. In the past, Mill Plaza has placed a great deal of snow along the brook. Mike Lynch suggested looking into acquiring snow melting equipment. He said there are various technologies including portable and pad mounted equipment. He noted that snow can be dumped off site only at NHDES permitted sites. The snow dump at Durham DPW is for use only by DPW. When snow needs to be removed from the site arrangements should be made for daytime removal so that trucks with back up beepers do not disturb residents. Our engineering consultant should review this plan carefully. [Emphasis added.]

Again, the full Planner’s Report for the February 10, 2016, Public Hearing can be read here: https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/planners_recommenation_-_february_10_2016.pdf

February 10, 2016—Planning Board: Public Hearing on Mill Plaza Redevelopment (Plan #3)

Again, the site plan (#3) being discussed for this Public Hearing is posted here (the document is dated 1-27-16, yet with 1-21-16 in the file name):

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/color_architectural_plans_1-21-16.pdf

Excerpts from the Planning Board minutes on the February 10, 2016, Public Hearing on CDA Plan #3

Attorney Ari Pollack said the project team was present concerning the design review submission for the redevelopment of the Mill Plaza property. He noted that the Town Attorney had provided the Planning Board and the public with an overview of the settlement agreement terms at the last Planning Board meeting [January 27, 2016], and there was then discussion on them. He said the team had used those terms and the proposed redesign sketch that was appended to the agreement as the basis for the design review submission to the Planning Board. He said the plan hadn’t changed since the team was before the Board in January [2016], and said they were waiting to hear comments from the public before making any revisions to it.

He briefly summarized what was proposed. He said there would be 5 buildings, one of which was the existing building where the supermarket space was located. He said that building would receive a renovation and [a two-story commercial] addition at one end, and said the supermarket would remain in its current location. He said the aesthetics of the entire building would be renovated in keeping with the new structures that were proposed. He said the plan included provisions in accord with the agreement for parking, pedestrian connectivity, and stormwater treatment. He said beyond the terms of the agreement, there were provisions for gathering spaces and other enhancements beyond what was there today, which was a limited and underperforming property....

He said the team’s role this evening was to take in information, and not to provide counterpoint. He said they would return with something they hoped would be responsive to a substantial portion of what they heard. He asked everyone to keep in mind that this was a functioning commercial site today. He said they were approaching the development process with the hope of keeping as many tenants as possible during the phasing of the project, and relocating them without significant interruption. He noted that the tenants’ needs were driving many of the decisions that could and could not be made. He said some things could be considered and done, but said some things might not be feasible, and said it would be beneficial if everyone understood this context. [Emphasis added.]

*Attorney Pollack said at the end of this meeting, **the request would be that the Planning Board table the application until the March 23rd [2016] meeting.** He said this was the amount of time the design team expected to need to do the revision, which would include meeting with Town staff in a collaborative way.*

Chair Corrow asked if Planning Board members had any questions before the public hearing opened.

Councilor Gooze said if for some reason it looked like the design submitted with the settlement agreement would change, it would probably need to come back to the Town Council. He said if there was a design that was satisfactory to the applicant and the public, he assumed the Council would make a revision that would be satisfactory to everyone. He noted that the density couldn't change, but said other aspects of the design could change based on the settlement agreement....

Councilor Gooze confirmed with Councilor Marple that his words were appropriate. Chair Corrow said after the public comments were received at the public hearing, he would ask the Planning Board for their comments.

Steve Roberts MOVED to open the Public Hearing. Lorne Parnell SECONDED the motion, and it PASSED unanimously 7-0.

Julie Haines, 42 Oyster River Road, said the rear of the Mill Road Plaza near the Chesley Marsh path into their family neighborhood was a fragile and important buffer that protected the neighborhood from the commercial core and concentrations of university students. She said placing a large number of students at the entrance to the Faculty Neighborhood would have a negative impact on the entire neighborhood. She noted that her kids and others walked to the Middle School on the path through the woods that led to Mill Plaza, and said this path was used by a lot of adults as well. She also spoke in detail about possible negative impacts from the student housing that was proposed, including an increase in noise and trash, odors and light pollution, especially Thursday through Saturday nights. She said the proposal would harm the delicate balance between University needs and family needs that the neighborhoods had taken time to achieve.

A related February 7, 2016, letter from Julie Haines to the Planning Board can be read in full here: www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_j._haines.txt

Ms. Haines also read a letter from **Monica Chiu and Brian Locke, 14 Burnham Avenue.** They said their family had been in Durham for 12 years, and said they enjoyed and encouraged change, but it should be thoughtful change that considered the community within which the change occurred. They said the residents of the Faculty Neighborhood worried that the proposed plan seemed to exacerbate the potential for noise, trash, pollution, traffic, etc., rather than creating positive impacts such as exciting new businesses and hopefully affordable housing.

They said the proposed placement of student housing on the south end of the property was in violation of the settlement agreement, which said such housing must be built on the north end of the Plaza. They spoke in some detail about wild student celebrations that occurred in Durham, and their impacts on their family and other residents of the neighborhood. They said if there were no consequences to the college students, which had been the case, the walk to the Middle School and High School amidst the new student housing would be very unpleasant for the young people who lived in the neighborhood.

They said Ms. Chui's 90-year-old mother strolled to the Plaza using her walker when she visited 3-4 times a year, and said if the parking lots became "encased" by buildings, which demanded new traffic patterns to accommodate an increased flow of traffic including possibly opening up Chesley Drive, she would be hard pressed to feel safe walking to the Plaza. They spoke in detail on this, and noted that while students on foot expected vehicles to stop for them, sometimes on a dime, when the students were driving they were often too rushed to stop for pedestrians. They said despite recent laws against using handheld phone devices while behind the wheel, many students and nonstudents still did so, which made an increase in cars around Durham a hazard for pedestrians of all ages. They said while private business property owners could claim these weren't issues under their purview or control, the issues should not be overlooked and should be considered in the plans for the property....

They asked if some of the new housing that was proposed could perhaps attract a range of residents for an appealing population variety, including seniors and foreign visitors/scholars. They noted that at the previous Planning Board meeting, a representative of the property owner said anyone able to pay market price for a unit was welcome to rent it. They said the owners had an expected ethical responsibility to the community into which they were building, and said an offer of low income senior housing might spur other wealthy property owners to do the same. They said this was the kind of leadership the Durham community expected. They noted the Mill Plaza plan done several years ago, and questioned why it was rejected. They said they appreciated the fact that the current plan included restoration of College Brook, a natural buffer between the property and the water, and consideration of green spaces.

The full text of the February 8, 2016, Chu and Locke letter can be read here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/letter_from_m._chiu_and_b._locke.pdf [This letter was re-submitted by Chu & Locke in November 2017, since the #6 plan submitted by CDA then was even worse with respect to the criteria that concerned Chu & Locke.]

*Resident **Sally Tobias** read a letter from **Diana Carroll, 54 Canney Road**. Ms. Carroll said the proposed design for the Mill Plaza redevelopment was unacceptable, and said it was unrealistic to think it would work. She said the transportation plan within the Mill Plaza was unrealistic, with only two passage ways to carry cars used by customers, people working in the Plaza commercial buildings, Plaza residents, delivery trucks, trash and recycling trucks, etc. She said another deficiency was parking, and said it should be increased particularly to satisfy the needs of the commercial tenants and their customers. She said a third deficiency was the building layout, and said residences should be located on the north side of the Plaza as per the settlement agreement and not on the south side. She recommended that the current Hannaford building should be replaced by a new building to accommodate mixed use. Ms. Carroll said if the project was to move forward, the design needed to be fundamentally changed in order to be congruent with the settlement agreement and the Durham Zoning Ordinance.*

The full text of Diana Carroll's February 10, 2016, letter to the Planning Board can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/letter_from_carroll.pdf

***Mark McPeak, Brookside Commons**, said he lived in the 55-plus community that abutted Mill Plaza and was invisible in the plan. He said renovation of the Plaza was overdue, and described it as a generational opportunity to get it right. He said his impression was that the plans had gotten progressively unbalanced, and that they now disregarded the property's potential to be an asset to the community while being commercially viable. He asked the Planning Board to correct this imbalance, and as part of this to review the plan that came out of the Mill Plaza Study Committee. He said his community, which immediately abutted proposed Building B would be seriously harmed if that building was built. He said about half of the proposed student beds had been put there, and asked why conflicts concerning noise, litter, etc. were being created on purpose. He said the channeling of traffic including commercial vehicles south of Building B would echo against his community, and also said traffic into Mill Plaza would block access to the driveways into Brookside Commons. He said there would also be harm to the College Brook area, and noted that activity at Mill Plaza was already impacting this area. He said the increased offsets and greenspace increases in the plan were good, but said the increase in occupancy proposed and the nature of it would make things worse for the brook. Mr. McPeak said he hoped the Planning Board would reject the plan and ask for significant changes. He said there were many ways to improve the design, including making his community more visible in it. He said he welcomed a vibrant, redeveloped Mill Plaza, and said they should all take the time to get it right.*

Suzy Loder, 38 Oyster River Road, posed several questions:

1. Now that we have added "X" hundred new student beds [1835 between 2011 and 2013] do we know the occupancy/vacancy rates of current supply?
2. Do we know if there is satisfaction with these housing units with respect to location, size, maintenance,

transportation and cost?

3. Is there really a market for more beds, or will there be an oversupply and therefore vacancies?

4. Who provides the documentation for this?

5. What happens to the tax rate when we're asked to lower the assessment because of loss of income?

6. Could we instead consider housing for some of our older citizens who would appreciate being close to stores and professional businesses? This is an increasing segment of the population, and one that is likely to grow in the future. This housing might not bring in the same high rental income, but it might be more reliable.

7. We need a vibrant business district. We need businesses that serve a complex community of students and townspeople. Townspeople depend on the grocery store, the primary business in the present plaza. They trade at the pharmacy, dry cleaners and banks. Having medical and dental facilities close by as well as other professional services would bring in residents from the outlying areas of Durham. Will these kinds of businesses be included?

8. The current Mill Plaza contains the potentially lovely natural area associated with College Brook which has been neglected and disrespected. What guarantee do we have of care and follow through in the current plan?

9. Will it be enough?

10. Who decides the standards and whether or not they are met?

11. Is this a case of past town oversight on our part?

12. "Who speaks for the trees?" [Lorax] Snow piles bend the trees and shrubs; salt, debris and runoff clog and contaminate the brook. What was designed to serve as a buffer and possible place of rest and retreat is compromised now; what will be the future?

Ms. Loder noted that she was on the Planning Board at an earlier time, and appreciated the task they faced. She asked them to look beyond tomorrow and next year to how this project could benefit not just Colonial Durham but the vibrancy and growth of the Town of Durham for the next half century.

A related February 10, 2016, letter from Suzy Loder can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/letter_from_loder.pdf

Allan Bennett, 573 Bay Road, noted that at the meeting two weeks ago, there was discussion on the issue of police and fire emergency vehicle access and egress. He spoke in some detail on this and on the sewerage issue, and said he thought the current plan was unworkable. He said he hoped there was sign off about addressing these issues in the plan.

Phyllis Heilbronner, 51 Mill Road, said she lived near Mill Plaza, but was also concerned about the impact this project would have on the whole town. She said Mill Plaza was there for the people who lived in Durham. She said there had been so much development so quickly in recent years, and she urged caution in proceeding too quickly to add the density proposed with this project. She said it would have an impact on traffic into and within the Plaza, and would affect pedestrians and people on bikes who were going there. She noted that there were elderly residents who depended on being able to walk there. She said the huge increase in traffic with the proposed development might result in people not wanting to come to the Plaza anymore. She said many things in the plan were extremely unattractive, including the parking garage proposed. She said it felt like the Plaza was making the Town feel like it was an attachment, and said this felt like an invasion. She noted that 3 years were spent on the Mill Plaza study, and said she didn't see much of it in what was proposed.

She said her bank would be leaving the Plaza, so she would have to drive to it, which ended up being a pollution issue. She said the idea proposed of having a mix of ages in housing at the Plaza wasn't a great idea, and she spoke in some detail on this. She asked the developer to take a step back from the current plan.

The next day, Phyllis Heilbronner made additional comments in writing, including "I forgot in my comments at the public hearing to refer to my concern about building out to Mill Rd. My understanding is that The Works might be taken over by a Hannaford renovation, bringing the building out to the street. If I'm understanding it, that would result in eliminating the beautiful little park with picnic benches, two glorious Flowering Crab trees and three healthy larger trees creating a very nice buffer from Main Street and also adding oxygen to offset the increasing carbon monoxide from increased traffic on Mill Rd. I think this would be devastating from the present appeal of that spot for the use of students and townspeople and a rare spot of beauty and shade in the plaza. It's also a real landscaping gem and it would be beyond unfortunate to have those trees sacrificed to the commercial 'bottom line.'" The full additional Heilbronner comment can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_phyllis_heilbronner.txt

Bill Hall, Smith Park Lane, said there were currently 30 empty units and about 100 empty beds at Madbury Commons. He provided details on the sewer line for Mill Plaza, noting that it still wasn't on the plan, and said nothing could be built over it. He said he believed the sewer line was sitting on marine clay, and said soil borings were needed. He said the current space for the grocery store and Rite Aid was inadequate, and said three decent loading docks were needed for 30,000 sf space. He said there should be a bump out, and also said Rite Aid should be moved to the right so it would have enough space. Mr. Hall said it was very important to control the Mill Plaza parking lot. He said he was afraid this control of parking would be lost because of the apartments that were proposed. He said this was asking for trouble for the grocery store customers and customers of the other businesses.

Annemarie Harris, Oyster River Road, said the principal business that drew everyone to Mill Plaza was the grocery store, and said its location should be the first priority. She said commercial development would be of benefit to the community and should take precedence over the housing component of this project. She said there needed to be adequate parking with safe and effective circulation of cars for businesses in the Plaza and the downtown. She said by relocating the grocery store, a parking garage could be built into the hill with the possibility of an access from Main Street where there currently were outdated buildings east of Libby's or just east of the Orion buildings. She said parking associated with apartment rentals wasn't necessary in the Town center and was contrary to the UNH/Town goal of a walkable community. She said some of the proposed residential units should be built for mature adults including seniors, preferably in a separate building overlooking the brook. She said snow should be dealt with in a much more responsible way that respected the natural environment. She said noise and lights from activity in the Plaza at night, including pedestrians and cars, would negatively impact the quality of life and the value of homes in adjacent neighborhoods. She also said safety for children and adults walking from adjacent neighborhoods through the Plaza must be given special consideration. A related letter to the Planning Board from Annemarie Harris can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/letter_from_annmarie_harris.pdf

Ms. Harris read a letter from **Al Howland, 32 Frost Drive**. Mr. Howland said there were several problems with the plan, and said one was the proposed location of student housing on the site.... He also said the project increased the amount of commercial space, but decreased the existing parking spaces. He said a major attraction of Mill Plaza to residents was that it provided easy access, and said making it more difficult to park increased the likelihood that residents would shop elsewhere. He also said there was a lack of greenspace to draw people to spend time downtown, and said helping to provide these spaces would greatly improve the chance of community support of local businesses. The full text of the Howland letter can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/letter_from_howland.pdf

Kate Ruml, 7 Thompson Lane [Master of Architecture from Harvard Graduate School of Design], said the redevelopment of Mill Plaza was long overdue, and had the potential to improve the quality of life for Durham residents. She said her wish was new businesses like a bakery, ice cream shop, hardware store, restaurants,

etc. that would be attractive and useful for families and other year- round residents. She said creating good pedestrian design should drive the whole design, and said it should include a design network of walking paths across the site based on careful observation of existing patterns. She said the path to Building C was intended to create connectivity, but said it wasn't clear what points on the site the path was connecting to and how it connected to areas beyond the site. She noted the Town Planner's recommendation that overlays should be developed to show existing and proposed paths. She also described an approach where grass was planted, it was then observed where people walked and these paths were then made more permanent. She said there should be a design of safe paths for kids walking to the local schools, noting that the current plan indicated there would be greatly increased car traffic. **She suggested there should be a focus group with kids who currently walked through the site.** Ms. Ruml said she assumed structured parking was necessary in order to provide adequate parking, but said every effort should be made to hide it. She said the parking that was part of Building D was partially set into the hillside, but said the challenge of this site was that for pedestrians and bicyclists, there was no front and back of the site. She said the current design could make the entire back of the site inhospitable because of the structured parking in Buildings D and E, and she spoke in further detail on this. **She said a design that was pedestrian friendly would bring more customers to the site and throughout downtown, and would make Mill Plaza the vibrant, useful place they all hoped for.** [Emphasis added.]

Julia Ruml, 7 Thompson Lane, said she went to the Middle School, and most days walked through the Plaza. She said she wouldn't want to walk through it if all of the student housing was there. She said people enjoyed the picnic tables next to The Works, and said she would definitely value that more than the 2 story commercial area that was in the plan. She spoke against the current parking garage design. She said she would like it if there were restaurants and an ice cream place, and said she and her friends had loved Kaleidoscoop. She also said a dollar store would attract lots of business. A related hand-written note from Julia Ruml can be read here: www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/letter_from_ruml.pdf

Robin Mower, 11 Faculty Road, showed a set of slides entitled "A View Toward the Plaza".

[The Mower comments and slides can be seen here, starting at 01:10:09

<https://dcat22.viebit.com/player.php?hash=d32af303e4cc5f9e51941d020c624982>]

She noted that many of the design characteristics Kate Ruml had mentioned were part of new urbanist principles, and said she hoped they would be considered by the Planning Board and the applicant's designer. She also said she hoped the Board would continue the public hearing for several meetings, given the size of the project and its impact on the community. She said over the decades, residents living in this area, including her mother, had urged protection of the deciduous wooded path [from Faculty Road to the Chesley Marsh and footpath into the Plaza]. She showed several slides of the path. She also discussed a slide that showed the view of Mill Plaza from some portions of Faculty Road when there were no leaves on the trees. She said no trees the residents planted would be able to grow tall enough to screen their properties from that view. She noted that with the original development of Mill Plaza, the owner was required to provide a buffer, but said both the owner and the Town had continuously failed to meet their obligations regarding this. Ms. Mower read a March 4, 1975 letter from Doug Routley, the Town's Tree Warden to the Selectmen regarding the inadequacy of landscaping at the Plaza: "However, the whole landscaping of this site is woefully and shockingly inadequate. It grieves me that I was not consulted earlier in the planning stage and that I, and the town, should be forced to accept such a miserable landscaping job. Considering the amount of money spent on the building, that devoted to landscaping is laughable. It is essentially nothing."

She also noted the April 2, 1973 Planning Board minutes, which she said addressed silting of College Brook since 1968; landscaping inadequacies; and the absence of required walkways along the southern portion of the Plaza. She said the property owner's disregard for screening had continued since that time, and she showed slides of arborvitae planted more recently that hadn't been taken good care of. She also showed slides of snow storage on the site that had had a negative impact on College Brook. She said this snow could have been stored instead in dozens of parking spaces it was believed had been rented without Planning Board approval for decades.

Ms. Mower noted that two years ago, her home was visited by a drunken student who bushwhacked at night from the Plaza through the woods in search of a party. She also spoke about how residents on Faculty Road and in Brookside Commons suffered from glare from the Plaza's lighting, and said this was documented in Town files. She said they also had to put up with the clang of skateboarders, beeping of delivery trucks and blaring radios of returning pizza delivery cars, motorcycles and other loud vehicle noises. She said snow removal as part of a future development was apt to mean big trucks with big beepers in the middle of the night. She said it was very likely that this proposal would pit neighbor against neighbor unless the Planning Board, the Town and the applicant cooperated fully to find a better solution than any of the three iterations submitted since October 2014. She made several requests and observations:

- 1. Use compass directions when referring to locations on the site. "Rear" and "Back" may be interpreted differently; east, southeast, etc., leave no room for misunderstanding.** [Emphasis added.]
2. Ask the applicant for an extended site locus plan, not just the architectural drawings, and to look at aerial photographs as you consider any proposed reconfiguration, even during Design Review (which is your right under the site plan review regulations under Part II, sections 1.2.5 and 1.2.6: "...information and preliminary plan shall be displayed in sufficient detail to enable the Board to understand the proposed project and identify potential issues" and "...If the Board determines that the request does not describe the proposed project in sufficient detail, it may request additional information.")
3. Make sure there is space between buildings to allow for pedestrian and vehicular circulation of all types, for adequate landscaping, snow removal, and protection and collection of trash. The eastern buildings shown in the proposal before you do not meet those criteria.
- 4. Refer frequently to the Article VII of the zoning ordinance on Conditional Use Permits, as you discuss options for this preliminary Design Review. Specifically, note that "The proposed layout and design of the site shall not be incompatible with the established character of the neighborhood and shall mitigate any external impacts of the use on the neighborhood."** [Emphasis added.]
5. Request that the applicant return to the drawing table to develop a plan that focuses on the New Urbanist principles that ensure a walkable, vibrant development. I and others are likely to address those points in detail at future meetings. We know more today about what makes for a vibrant community than we knew in the 1970s, across the country shopping malls were built that led to the death of downtowns. Let's make sure we put that knowledge to work.
6. Request a report from the Police Department regarding the impact on Thursday, Friday, and Saturday night activity as a result of the increased downtown student housing. Additional student housing a block away from Main Street will also bring visitors and parking challenges. Can Town staffing handle the challenge—and does the community have the capacity to absorb the likely behavioral fallout?
7. Please request that the Town Planner and Town Attorney provide you in writing their rationale for specific judgments and opinions regarding adherence of any proposal to the zoning or site plan regulations. Audrey Cline—our new Zoning & Code Enforcement Officer and holder of an Associate of Science degree in Architectural Engineering—noted at the recent Technical Review Group meeting, "It's a difficult site, but right now, I'm feeling like it's run by the engineering, and the engineer needs to support the design, not vice versa."...

A related February 10, 2016, letter from Robin Mower to the Planning Board can be read here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/20160210_mower_re_mill_plaza.pdf.

Two days earlier, Ms. Mower had sent the Planning Board pictures that showed:

*“1) the foot bridge over College Brook that leads from the Mill Plaza extension (*path to Chesley Drive) over the Town-owned easement to the Faculty Road-Thompson Lane intersection; and 2) the path that continues from the bridge through the woods. As you can see, the path is well-trodden.”* See

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/20160208_mower_re_mill_plaza.pdf

Sandra Hebert 3, Chesley Drive and David McCormick, 5 Chesley Drive shared the reading of a letter from themselves and several other residents of the Chesley Drive neighborhood (**Kirk and Kirstie Brote, 2 Chesley Drive; Matt and Yvonne Legge, 4 Chesley Drive; Marshall Banks, 5 Chesley Drive; Joshua Meyrowitz and Adam Meyrowitz, 7 Chesley Drive; Peter Andersen and Martha Andersen, 6 and 8 Chesley Drive**). They said this proposal was subject to the Town’s conditional use criteria for Mixed Use in the Central Business District, and said these conditional use criteria took into account the impact on abutting properties and the adjacent neighborhood. They said the proposal currently didn’t pass the criteria of Conditional Use. They said the proposed housing would negatively affect their adjacent property values and lifestyle, and said their neighborhood in particular was likely to suffer from increased noise, loud music, odors, trash, long “hours of operation” (late-night student parties on Thursday, Friday, and Saturday nights), and degradation of the fragile wetland buffer and up College Brook Greenway that followed the path of their street. They said the mass of the proposed structures was out of scale with the abutting neighborhood, and said development at the rear of the Plaza should be related to activities that quieted down at night and weren’t associated with frequent disruptive or illegal activities. They said Mill Plaza was an important asset to the Faculty Neighborhood, which included a range of age groups. They noted the path their children took through the woods into the Plaza on the way to school, and also said the Plaza was a safe walk from the senior housing at Church Hill and for seniors in private homes throughout the Faculty Neighborhood.

They said the Plaza could certainly benefit from thoughtful redevelopment, but also functioned quite well now, as a Town Commons. They said they’d been excited by the vision in the 2008 Mill Plaza Study for a “Village Center”, but said just about the only feature from it now before the Planning Board was the name of the proposed development. They said there were a few promising components in the current plan, such as a more protected brook and wetland buffers, and some proposed added green spaces, but said there were also some terrible features. They said one was the addition of a claustrophobia-inducing 3-story building along the entrance road, which would block the visibility of, and access to Hannaford. They also noted that the plan entailed blocking all but one of the 6-7 current lanes of access to the grocery store. In addition, they said the placement and height of this building was highly disrespectful to their neighbors at Brookside Commons. They said the proposed crowded layout of the project would likely lead to “traffic jams” in the Plaza by creating basically a single route to be shared by customers, student-resident cars, emergency vehicles, delivery trucks, and snow plows. They also noted the proposed dramatically reduced parking for customers of the Plaza while the project would increase the amount of commercial space by over 50%, thereby creating the need for more parking rather than less. They said this threatened the economic viability of the central business area that so many relied on, since it would send the non-walking customers to other locations to shop, including stores in other towns.

They spoke against the plan to leave in place the Hannaford building and keep it as a single-story structure while starting with a blank slate for the rest of the site and crowding it with new 3 and 4 story structures that were out of scale with the surrounding neighborhood and weren’t even in harmony with each other. They said both sense and the settlement agreement suggested a multi-level building where Hannaford was. They spoke against the proposal to destroy the pocket park located next to The Works and fill it with a structure that would loom over the sidewalk along Mill Road. They said this would block possible public-space connections with the park and the proposed added green space in the Plaza further down Mill Road.

They said the worst proposal in the current plan was the transformation of the Plaza from a commercial and communal gathering place into a major housing development that would almost certainly contain student housing. They said the proposal to reserve most of the parking at the Plaza for new student residents was very

troubling, and said customer difficulty in finding parking would threaten the viability of the Plaza as a Town-wide commercial center. They said the Plaza could possibly devolve over time into merely a student-housing annex to the University, and said this would mean another lost civic space for the citizens of the Town.

They said of particular concern to them was that the current plan that placed 3 and 4-story buildings with 76 beds and 126 beds, respectively adjacent to the pedestrian entrance to their neighborhood. They said this represented over 200 of the maximum 330 beds permitted for the development. They said these buildings would be within sight of some of the residential properties on Chesley Drive and would be quite visible from the heavily used wooded path that went from the Chesley Marsh to Thompson Lane. They said this placement did not reflect a good-faith effort to respect the legal settlement, which indicated that every effort would be made to place housing in the “northern half of the property”, which was furthest away from the southern pedestrian entrance to their neighborhood.

They said the proximity of what would functionally be a 200-student college dorm, on private property, and thus not routinely patrolled by the Town or UNH police, would affect the adjacent family neighborhood and the wetland and wooded area that currently served as a buffer. They noted that other parts of Town had already suffered from proximity to mass student housing, with declining lifestyle and property values, and said they didn't wish to be next in line for this. They said they already had some difficulty with a small number of college students who drifted into the neighborhood's only wooded path for drinking, smoking tobacco and marijuana, and other activities that were not compatible with the path and neighborhood. They described what adding a concentrated mass of students living within sight of this area would do to increase these problems. They said they were also concerned about how the daily experience of their young children walking to and from school through the Plaza would be transformed by having to pass by potentially large groups of college students. They said the demonstrated fact in Durham and elsewhere was that family living and adjacent mass student housing were not compatible with each other.

They asked that the Planning Board consider their concerns and reject the proposed plans as currently submitted, as well as any broadly similar amended proposals, because of their incompatibility with the recent settlement agreement; because they were in violation of conditional use criteria that protected adjacent properties; because they did not reflect common sense; and because they were not in the economic and social interests of the Town. [Emphasis added.]

The full 4-page letter from eleven Chesley Drive homeowners regarding Site Plan #3 can be read here: https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/chesley_dr_d_homeowners_to_pb_2-8-16.pdf

John Mince, 23 Faculty Road, said he moved to Durham from Long Island, New York 6 years ago, where cars, concrete, steel, speed and greed had taken away great beauty. He said this often happened despite the intelligent and passionate concerns of the people. He noted that he lived one door away from the path [from Faculty Road to the Chesley Marsh and rear pedestrian entrance to the Plaza], and said it shouldn't back up to a high density community of college students. He said the current layout of buildings, parallel to the brook would amplify the effect of the students, and said taller buildings at the north of the site, broken up more like the new buildings on Main St. would be better. He said he agreed with concerns expressed about the loading area at Hannaford, and spoke about how difficult it would be to compete with 50 ft long vehicles that could barely get in safely. He said the proposed configuration wouldn't be safe, and spoke further on this.

Beth Olshansky, Packers Falls Road read the following comments into the public record:

1. The plan represented the demise of the Village Center. She said to call it the “Durham Village Center” was an insult to residents and to the Mill Plaza Study Committee, who spent long hours working to develop several options that met the needs of a wide range of community interests. She said this current plan would more appropriately be named: “University East Edge Mall,” because with the reduction of parking for the commercial enterprises by almost 2/3rds (from 345 to 126 spaces as indicated by Mr.

McCauley at the EDC meeting), and the dedication of 234 spaces for tenants (most likely students), there wouldn't be enough parking for townspeople to shop. She said they would therefore stop shopping at the Plaza, and the only businesses that could survive would be those serving foot traffic, i.e. mostly students. She said this would inadvertently promulgate more pizza and beer establishments.

2. The Plan doesn't live up to the Settlement Agreement, which indicated that the plan would meet all current Zoning and applicable Site Plan Regulations except for the 600 sq. ft. per occupant amendment. Ms. Olshansky said Buildings D & E at the rear of the property were not permitted in the CB district, as noted in the Table of Uses. She said parking on the first floor with residential above was not a permitted use, or allowed as a conditional use. She noted that Section 175-11 of the Zoning Ordinance stated: "any use not specifically permitted or permitted by conditional use permit is prohibited." She also said that while the settlement agreement stated that a majority of students would be housed on the north side, away from the neighborhoods, it didn't appear that an effort was made to follow the agreement. In addition, she said despite the fact that protection of College Brook was promised in the settlement agreement, she wasn't happy to see a road going through the shoreland/wetland buffer. She asked why this road was considered an improvement over the current paved parking lot next to the brook.

3. There is a lack of green space in the Plan. She said the existing green space next to The Works to be eliminated was well used and cherished by residents, and was protected from the road by the only mature trees on the lot. She also said the "park" in the proposed plan appeared to have more paved area than green and was sandwiched between the parking lot and Mill Road. Ms. Olshansky said that park was also now threatened by the possibility of needing to create a second outlet because there weren't any other reasonable options on this very constrained parcel. She said the developer would gain much social capital if he took seriously the Mill Plaza Study's desire for functional green space.

4. Building B is ill-placed, obstructing the entrance into The Plaza, and forcing shoppers to drive all the way into the middle of The Plaza before turning to go to the market. Ms. Olshansky said this possibly would create a safety issue if there was need for an emergency vehicle to get to the market. She said the location of Building B promised to create a traffic nightmare, especially given the proposed allowance of parking for tenants. In addition, she said if Building B was to have student tenants, it was too close to the neighborhood. **5. Building C is too tall.** She said placing a 4-story building anywhere in sight of Mill Road defied the feeling of a small town Village Center.

5. Building C is too tall. She said placing a 4-story building anywhere in sight of Mill Road defied the feeling of a small town Village Center.

6. The plan promises to create a traffic nightmare. She said adding 330 occupant vehicles traveling in and out several times a day, along with the very limited design for traffic flow and parking would make the Plaza very unattractive to Durham residents.

7. The Plan tries to pack too much into the allotted space. Ms. Olshansky said they had all seen proposals approved in the past where the developer attempted to squeeze so much onto the parcel that things like trash storage and pick up had become an issue. She said functional issues such as these as well as snow removal, traffic, limited parking and pedestrian activity should not be overlooked. **8. The Plan lacks imagination and has too many flaws to meet the Conditional Use Criteria.**

Ms. Olshansky said she urged the following, if the Plaza was going to continue to serve as a functional shopping center for townspeople:

- She said the Planning Board should not waive any of the 320 spaces required for the 80,000 sq. feet of commercial space. She said the Site Plan Regulations clearly stated that the Board could grant waivers only when a waiver served the public interest, and said she would have a hard time imagining how the reduction of parking for shoppers would serve the public interest. She said the Planning Board should waive 100% of the

parking required for tenants, as was done for the Madbury Commons and Orion applications.

- She said the developer should be required to meet the Zoning Ordinance and Site Plan Regulations.
- She said from her read of the Ordinance, this included a complete redesign of buildings D & E.
- She said she believed that a stand-alone structured parking garage was the only structured parking permitted, by Conditional Use, in the CB district based on the Table of Uses.
- She said the developer should consider moving the Market to the general location of Building C, perhaps pushed back some, which would create ample new residential space above (no more than 2 or 3 floors total) and create space for a large 2-3 story building where Building A currently existed.
- She said Building B should either be eliminated or moved eastward to allow shoppers entrance to the parking at the front of the Plaza. She said if Building B remained, it should be designated for seniors.
- She said the developer should figure out how to add more green space.

Ms. Olshansky said rather than bullying their way into Town, she urged the developer to work with residents to come up with a design that would be a win-win for all. She said she'd learned that yellow lines indicated rental spaces at the Mill Plaza site, and said she'd counted 100 rental spaces. She noted that this was a use that was never approved by the Town. [Emphasis added.]

Shane Malavenda, 15 Faculty Road, said he was a direct abutter and would like to see a usable space at Mill Plaza, noting that this was one of the reasons he chose to live downtown. He said he had concerns about noise, aesthetics and privacy as a result of the proposed development, but said the plan was an improvement concerning maintaining a natural buffer along College Brook. He said a proposed residential courtyard would be located near his house, and asked that instead of courtyards, any plans would improve upon the natural buffer to give the neighborhood some privacy and buffering from possible noise and aesthetic issues. He said it would help if the housing was concentrated on the north side, and said this plan fell short of doing that. He said perhaps the site wasn't large enough to hold as many people as was proposed, given the regulations concerning building height, residential and commercial space allowed, and access needed for shoppers, emergency vehicles, etc.

Erin Hale, 74 Mill Road, noted that in October of 2014, she came before the Planning Board with a letter signed by 154 Durham residents urging that Colonial Durham Associates be held accountable to the countless hours of design work and community conversations that led to the 2008 Mill Plaza Study. She said since then, the Town had been taken to court over policies developed with the whole community in mind. She said they were now all essentially in the same place again. She said she continued to speak on behalf of those residents and the numerous other families in Town who couldn't be at this meeting. She said the 2014 letter was attached because many of its points, drawing on and building upon the work of the 2008 study, remained valid. She asked the Planning Board to keep the interests of year-round, tax-paying Durham residents with families in mind. She said a sound, innovative, and inclusive redesign of the Plaza would be enormously welcome, because Durham needed a true "village center". She said this design was not in the best interest of residents, and she urged the Planning Board to fight on their behalf.

Ms. Hale said there were four main issues with the revised plan:

1. Community space and green space – If Mill Plaza is to function as a "village center", there need to be spaces for people to gather, meet, and linger outside of the commercial spaces that will attract them. Such spaces require thoughtful connectivity, and need to rise to the status of actively designed elements. This plan proposes to remove the only green space that now exists in the plaza; and there don't appear to be any spaces that could fulfill this function in the current plan (landscaping within and bordering the parking lot does

not count).

2. Connectivity and safety – Many people, including school children, pass through Mill Plaza on their way to Main Street or to the Middle or High Schools. Increased traffic and commercial activity within the plaza will complicate this commute and have the potential of discouraging such transit altogether. Rational, designated pedestrian ways and bikeways that safely allow people to walk or bike through the development are critical to enhancing and maintaining safe connections for our kids and others who walk and bike downtown.

3. Parking – In the current plan, only 126 of the 360 spaces are dedicated to shoppers at the plaza, reducing the number of spaces we currently have by 2/3. Given that commercial space is supposed to increase dramatically with this new plan, this reduction in parking for town residents is untenable; it threatens the new businesses in the plaza and promises to make the prospect of venturing into downtown for business a frustrating and discouraging affair. While I applaud the developer's attempts to hide some of the parking in various ways so that the site is not just one sprawling parking lot (as it is now), the reduction in the number of spaces is unacceptable. Many of the new student housing developments downtown have little or no parking allotted for students. This is a strong encouragement to students to leave their cars in long-term UNH lots, accessible by public transit. Mill Plaza could follow this forward-thinking lead.

4. Relative locations of commercial spaces and housing - Although the settlement with the town stipulates that the plan must place as many beds as possible on the northern half of the property, over 200 of the 330 beds in the current design are in the southern part of the plaza, abutting the Faculty Neighborhood. I believe much more can and must be done to shift the balance of student housing to the Main Street and Mill Road borders of the property, leaving commercial and office space or parking closer to the Faculty Neighborhood, buffering and maintaining the quality of life of those residents as much as possible.

A related February 8, 2016, letter on Site Plan #3 from Erin Hale to the Planning Board can be read here: www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/letter_from_ms._hale.pdf
The original group letter with 154 signatures is posted here: www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/mill_plaza_response_11_4_14.pdf

Keith O'Brien, 14 Croghan Lane, said he had chosen to live in the Faculty Neighborhood because of the families there. He said his neighbors had been eloquent in expressing concerns about the proposed density of the development, their access as full time residents to the grocery store, and the safety of their children as they walked to and from the downtown and the schools. He said many people agreed that finding a smart way to redevelop the Plaza was the most important goal, but he said the current layout was too student oriented and was a commercial center, rather than being a community center. He spoke further on this, and on the need to strike a proper balance between college students and the kids who were growing up in Durham.

Don Padgett, 13 Mill Road, Brookside Condominiums, unit 3, said he was concerned that Building B would loom above him, and also said as a result of its location the traffic flow would splash noise to the south, where his property was. He said the building would be 150 ft from his back porch, and would block 20% of the morning sun. He said this would destroy the current feeling of light and space he experienced living there, and also would result in a significant loss of privacy. He said the entire plan seemed terribly cramped and vertical, and felt like a city scape, which was completely out of character with the Town.

Jennifer Pribble, 8 Bayview Road, noted that she grew up in the suburbs. She said this was an exciting opportunity, and said a good design affected human behavior and could bring people of different generations together. She spoke about how the ice cream place at Durham Marketplace had done this. She said she would like to see the developer partner with the Town and be visionary and less concerned with the bottom line. She said this design wasn't doing it.

She noted that her backyard abutted Young Drive, and said the quality of life in that area had improved since

the student housing there wasn't being leased. She said she continued to doubt the need for the quantity of student housing the owner of Mill Plaza proposed. She said the Town needed to be careful that as the college student population fluctuated, there was housing that was suitable and interesting for people of different backgrounds and needs. She said she wanted Mill Plaza to be a viable community center, and said any student housing there would need to be monitored well. She spoke about the importance of keeping the buffer, putting the buildings on the northern part of the property, and making sure the pedestrian ways worked for people of all ages.

Matt Komonchak, One Thompson Lane, said it was unfortunate that the plan reflected the settlement agreement, and he noted that the agreement didn't specify height limits and the minimum amount by which the buffer must be extended. He also said it didn't look like good faith to have none of the residential structures wholly on the north side of the property, and he asked the Planning Board to ask the Town Attorney about this.

He said the proposed scale and density of the development were incompatible with the neighborhoods, and were inconsistent with the notion of a village center. He spoke about uncertain commercial head winds in the Seacoast area, and also noted that the commercial space in each of the recently built properties in Durham wasn't fully leased. He also spoke about commercial space available in Portsmouth, Dover and Rochester that was cheaper than the space in Durham, and said they therefore shouldn't get ahead of themselves with massive increases in commercial space.

Mr. Komonchak said the Town had said student housing was being built in order to extract students from family neighborhoods, and said it seemed bizarre to pursue those projects and then place large dorms on the doorsteps of family neighborhoods. He said the Town's fiscal interest might not be best served by accepting more of the costs that should be borne by UNH. He also said the loss of possible civic space was an important point to consider, and noted that the Town had lost the 66 Main St. parcel to UNH. He urged the Planning Board to help find an arrangement that had a lot fewer than 330 beds, that placed any beds on the far northern side of the parcel, and that considered senior housing or other alternatives to student housing. He read some recent statistics about crimes on UNH property.

Peter Andersen, 6 Chesley Drive, said he was a direct abutter to Mill Plaza. He said it was important to clarify what the north side of the property was, and he showed this on the plan. He said the only thing in the plan that was on the north side was the building the grocery store was in. He also spoke about locations of ledge and marine clay on the site. He said what was proposed was not a good design. He said tall buildings, even with 5 stories in the northern portion wouldn't impact anyone, and recommended decreasing building height going from the northern portion of the site to the southern portion. He said he was tempted to read the Planner's 162 recommendations into the Minutes, and said he didn't find one he disagreed with. He said he was glad Mr. Behrendt was the Town Planner. He said if the recommendations were followed, and the team looked at the Mill Plaza study, there was no reason they all couldn't be dazzled. He noted that he was a builder, and said this current design review process was putting the cart before the horse. He said the plan reflected an underutilization of the site, which could be a town center that included student housing, elderly housing, etc. He said there could be greenspace, and the commercial parking spaces that would be needed. He said he found it disturbing that the Plaza had previously [in 2009] said it needed more parking, and now would need more parking but didn't propose to increase the parking. He spoke about having buildings that would have sloped roofs that looked more like New England structures. He also said there could be separate sections of the site for workforce housing, retirement housing, and student housing. He said Colonial Durham could address all of these markets, and could start by meeting with people in the community before going to the Planning Board....

Andrea Bodo, Newmarket Road, said she was Vice Chair of the HDC/Heritage Commission, and was there to represent some thoughts of the Heritage Commission concerning possible impacts of the project on one of Durham's historic resources, the bicentennial park at the corner of Main St. and Mill Road. She said this lovely little park was a focal point for the community downtown, and noted that it was owned by Colonial Durham Associates but the Town had an easement on it. She said it was a small outdoor museum containing historical artifacts that allowed citizens to feel a connection with the heritage of the Town. She said the Heritage

Commission discussed the park at its last meeting, and made some recommendations for the Planning Board to keep in mind. She said one was that hopefully the park would be integrated with the new development, creating pedestrian connections and a cohesive, pedestrian friendly streetscape. She personally suggested that not building the addition to Building A, as currently proposed, would help with connectivity. She noted that the utilities in the alley behind the Pauly's Pockets building were an eyesore, and said the Heritage Commission recommended that they should be buried so there would be a more attractive viewscape. She suggested that the park could perhaps be made on one level as part of burying the utilities. She said the Heritage Commission also encouraged the Planning Board to make sure there were good buffers of arborvitae along Mill Road, so pedestrians walking there wouldn't have to look at the utilities behind the Hannaford building.

Joshua Meyrowitz, 7 Chesley Drive, said most residents would appreciate a bold plan to redevelop a plaza they depended on so much. He said this plan appeared to be reckless, and disregarded the neighborhood and how the Town functioned or could function. He said this plan didn't reflect a town that had one plaza, and instead reflected towns similar to where he'd grown up in New York, which had a plaza every few miles. He noted the previous idea of putting a boutique hotel on Mill Road, which had been a very NY mentality. He said it would be much better to put it or other uses such as medical offices, which quieted down at night, at the back of the site. He said ideas like this, for something functional and beautiful, should be considered. He said he didn't see how the beautiful pictures the team had provided fit with the current plan. He spoke about possible uses, such as a bakery and an ice cream parlor. Mr. Meyrowitz said potential good faith with the neighborhoods near Mill Plaza had been wasted over the years. He noted that in 2002, Plaza manager Dave Garvey removed a chain link fence and ended up taking out an entire hillside. He also noted paving put in then was out of compliance but was still there, which had led to increased flooding of the brook. He said this had impacted his property, causing a loss of trees and topsoil. He said in 2009, the owner said more parking was needed for existing businesses, but now the proposal was to add more commercial space and decrease the parking. He recommended that cones should be laid out on the site where the buildings would be and where the parking would be, in order to analyze the traffic circulation that would result from the proposed development.

Annamarie Harris, Oyster River Road, said she'd checked Craigslist and University listings of student rentals today, and had seen that reduced rent bonuses were being offered. She said a question was how many more student rental units were needed.

Mr. Meyrowitz said the new buildings downtown look pretty good, but said all of them were given over to temporary residents. He said Mill Plaza was the last best hope to have a place that functioned for the people who lived in Durham all year, year after year. He said if this was lost, the Town would become basically an annex of the University.

NOTE: There were NO public comments *in favor* of the redevelopment proposal (#3) under consideration at the February 10, 2016, Public Hearing.

In total, 26 comments/letters significantly critiqued Site Plan #3 for the February 10 Public Hearing, representing 36 people, including the 11 residents of Chesley Drive, These critiques echoed resident letters/comments on Site Plans #1 & #2, representing the views of more than 200 people on core deficiencies in the proposed plans to date

As cited below, other critical views came via 16 letters before and after the Public Hearing, representing 33 Durham residents

(As noted earlier, there were also two letters in favor of Site Plan #2, and it is likely that the three people who views were in those letters would be in favor of Site Plan #3 as well)

Chair Corrow said the Board would keep the public hearing open. He thanked residents for their testimony and said there was a lot to synthesize. He also thanked Attorney Pollack for his opening statement. He said Planning Board members would now provide some comments on the proposal.

He said he had some concerns about the design, including concerns about traffic circulation, and said the safety of people traversing the Plaza would be an issue. He said he was at the Plaza every day on foot and/or in his car, and said the traffic volume coming in and out was amazing. He said the circulation issues would be exacerbated by Building B, noting that currently there were 6-7 lanes heading to the buildings on the site, but the plan had essentially one lane in and out.

He said he didn't think there was enough parking in the front for the retail uses, and said the Planning Board needed to see the numbers on this. He also said he wanted to ensure that every effort was made to move residential uses to the northern side of the site. **He said the owner should investigate either renovation or replacement of the building Hannaford was in, and putting some residential space there.** He said snow removal would be problematic with this proposed development, and said it would have to be taken off the site. He said sewer capacity for the development would need to be investigated. He said another concern was whether emergency vehicles would be able to get to Buildings C and D, noting that the turns would be very tight, and said the TRG would be providing comments on this. He said pedestrian circulation was another concern. [Emphasis added.]

Mr. Rasmussen said in regard to the issue of traffic flow on the site, he envisioned two access ways on Mill Road, an entrance only driveway, and an exit only driveway that would be right turn only. He noted the pedestrian crosswalks on Mill Road and said increase in commercial traffic would result in a safety hazard if access to Mill Road wasn't better. He said there were conflicting desires of having walking space as well as an increased tree buffer near the brook that would block lighting from the development and also increase filtering of runoff. He said he was inclined to want to see the proposed walkway further from the stream and to see the buffer area go wild rather than be managed.

Mr. Roberts said he'd written to Mr. Behrendt about his primary concerns, which were concerning transportation planning for the development. He noted the 4-page list of issues he'd provided, along with information on transportation planning approaches used by planners in the NE area for small compact cities. He said there was a knowledge base on this, and said the necessary planning staff could be put together to do this right.

He noted that the Town had decided after the Mill Plaza Study to put the Library into a neighborhood and near the schools, and had put the new Town Hall near a major thoroughfare in Town. He also said when the Grange property, which the Town had owned was sold and developed, leverage and potential access to Main St. from Mill Plaza was lost. He said a question now was what part of the Town center they were looking for. He said a conflict was that it was all private property now, and said unfortunately it was next to a residential area. He spoke further on the issue of the viability of Mill Plaza as a Town center. He said the developer had shown some interest in providing landscaping that invited people into the property. But he said not everyone could walk to Mill Plaza, and said most people had to drive there. He asked whether access would be provided to everyone or if they would be so aggressive at keeping this a walkable area serving nearby residences, and said there were tradeoffs. He said he agreed with residents' comments on the proposed layout regarding the student housing and landscaping.

Mr. Parnell said he had some thoughts on what he would like the applicant to look into before coming back. He said one was the possible **relocation of Hannaford.** He said it had been explained that Buildings B and C would be built first, and commercial tenants of the existing back building would be moved into them. He said he thought it made more sense to move Hannaford into one of these buildings, which would therefore need to be larger. **He said the building Hannaford was currently in could be removed and replaced with a 3-4 story building that could house some students.** [Emphasis added.]

He said he also would like the applicant to look into doing senior housing. He said a lot of student housing projects had come to the Planning Board, and lately there had been more senior housing projects because the market had changed. He said he wouldn't recommend mixing the different residential uses in the same building, but said it would be relatively easy to have a building for senior housing, and said he thought there was more value in doing that from a marketing point of view. [Emphasis added.]

Mr. Parnell said he would also like to see monitoring proposed for the College Brook area, as part of a very proactive plan from Colonial Durham Associates on how it would increase the buffer, fix the brook and continue to maintain it over time. He said in the future, he would like to see a traffic study and a comprehensive, fiscal impact study to take into account changes in the value of surrounding areas, changes in administrative costs to the Town, and possible negative or positive assessments resulting from the project. He said the Planning Board also needed to see a parking management plan for the redevelopment.

Councilor Marple said she understood how concerned residents, especially those living near Mill Plaza were about what was proposed. She said this was a very hard project, and she noted that the settlement agreement wasn't making people happy. She said her guess was that not everyone would be thrilled with the outcome, but **she asked the design team to try their best to dazzle everyone. She said residents were hungry for something beautiful at Mill Plaza. She said people were grateful for this effort to do something better and new to a strip mall with a parking lot, which wasn't a meeting place. She asked the developer and design team to put themselves into the residents' position when thinking about how to proceed.** [Emphasis added.]

Mr. McGowan said the team needed to come back with how many parking spaces were needed. He noted that since he'd been on the Board, the number of spaces required had always been reduced if an applicant requested this. He said the big concern was what to do with the Hannaford Building. He also said there was a question of whether Building B would serve as a buffer to keep noise from the development directed up toward Main St.

Councilor Gooze said he thought Building B should be taken out because this would alleviate a lot of problems. He said the student housing proposed there should be put in Buildings A and D, all the way to the north of the site. He said another level could perhaps be put on Building D, but said a variance might be needed for this. He said the Town Council would probably be amenable to this, relative to the settlement agreement. He also said Building E should be removed. He said he worried about trash pickup and large truck deliveries, noting issues with this at the new Orion properties. He said he liked the idea of putting cones out to analyze traffic circulation that would result from a proposed development. [Emphasis added.]

Ms. Dill said she liked the idea of getting rid of Building B, which would be a major contributor to a traffic nightmare. She also said she thought a big part of the traffic problem would go away if there wasn't parking as part of the student housing, which was something Orion and Madbury Commons had done. She said this would fit with Durham's goal of becoming a more walkable city. She noted that it was already difficult coming in and out of Mill Plaza. **She said she loved the idea of rebuilding [Hannaford] Building A.** [Emphasis added.]

Mr. Brown said he was a proponent of beginning with the end in mind, and said there was a lot of work to do on this. He listed the various planning issues to be considered with this development, including Mill Plaza as a Town center and/or a commercial center. He said best practices coming out of new urbanism could be looked at for the project, and said other towns had been able to use them well.

Chair Corrow said the number one recommendation of the Mill Plaza Study was to work together for success, and said he was sure they all would get there.

Attorney Pollack said the team had found the meeting very constructive. He said the current plan was an attempt to combine the settlement agreement, which was very specific, and Durham's regulations, and said the team had tried to deliver a plan that fit through that narrow space. He said they wanted to be as thoughtful as

the comments that had been received, and needed time to develop the next version. He said the comments with constructive suggestions were appreciated.

He said they would take a hard look at what could and could not be accomplished. **He said they wanted a plan that could be embraced, and understood that this was a special property and opportunity.** He said the project needed to be economically feasible, but said within this realm, he was sure there was a project they could all think was better than what was proposed. **He said the team wouldn't be overly bound by the settlement, and would come back with ideas that might require some flexibility from the Town Council and Planning Board, and maybe the ZBA.** He said this wouldn't be ruled out. He said the plan would need to be received with the same flexibility they would try to bring to the table. **He said they would try to dazzle everyone, while recognizing the economic reality behind a project.** [Emphasis added.]

Councilor Gooze noted that he'd been speaking for himself earlier, not the Town Council, and Attorney Pollack said he understood this.

Ms. Dill asked if the project would/should go before the Conservation Commission. Mr. Behrendt said it needed to be clarified whether a conditional use permit would be needed if pavement was still within the buffer. There was further discussion.

Councilor Gooze said the Board would want to see a traffic plan that included a pedestrian plan, and said a traffic light might be needed. Mr. Roberts urged that regional expertise in transportation planning be utilized to look at these things. Mr. Parnell said the Board needed to see a design that was somewhat final before asking for a traffic study. Mr. Behrendt said the Board would probably want to see either a full or partial traffic study at the design review phase. Mr. Roberts said they needed to see a plan for retail traffic flow. There was further discussion on vehicle and pedestrian flow issues now on the site, and traffic flow problems anticipated with what was proposed, especially with one access way. Mr. Roberts spoke about the idea of getting rid of Building C. Mr. Rasmussen said he thought a dazzling design would only have 3 buildings.

Chair Corrow said Mr. Behrendt's report was great. He asked for clarification on #17 of the report:

"...Per the Table of Uses, residential uses are allowed in the Central Business District only under the use category "Mixed Use with residential (office/retail down, multiunit residential up)" as a conditional use. Audrey Cline, Building Official/Zoning Administrator, and I have determined that the two rear buildings do not fall into this category and thus are not allowed uses. Building D is proposed to have two stories of parking and two stories of residential. Building E is proposed to have one story of parking and two stories of residential. These buildings do not fall into the use category because parking is not an "office" or "retail" use. This issue will need to be addressed in some manner".

Mr. Behrendt spoke about possible contradictory language on residential uses in the Table of Uses and section 175-40 on the Central Business District. Mr. Parnell said what wasn't covered anywhere in the Ordinance was a multi-building site, and noted that the Board had run into this issue with the Orion application. There was further discussion. Mr. Behrendt said the Madbury Commons application contained multiple buildings and needed some variances, and the Planning Board supported the variances because it liked the design for the project. He said he needed to speak with the Town Attorney about this issue.¹²

The Board then turned to "Other Business" before closing the February 10, 2016, Planning Board meeting.

¹² Perhaps of relevance here is Zoning Ordinance of the Town of Durham, New Hampshire 175-11: "Scope and Interpretation— In interpreting and applying the provisions of this chapter, affected parties shall be held to be the minimum requirements for the promotion of the health, safety, convenience and general welfare of the Town of Durham and its residents. Where a provision of this chapter differs from that prescribed by any other applicable statute, ordinance or regulation, that provision which imposes the greater restriction or the higher standard shall govern. Any use not specifically permitted or permitted by conditional use permit is prohibited." <https://www.ci.durham.nh.us/municipal-code/chapter-175-zoning>

The full minutes for the February 10, 2016 Planning Board meeting can be reviewed here:
https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/45781/021016.pdf

A video of the Public Hearing can be viewed here:
<https://dcat22.viebit.com/player.php?hash=d32af303e4cc5f9e51941d020c624982>

A very brief article on the February 10, 2016, Public Hearing was posted on Foster's web site at 10:47 pm:
"Residents Concerned about Mill Plaza Plans," <http://www.fosters.com/article/20160210/NEWS/160219855>

LETTERS SENT TO THE PLANNING BOARD REGARDING THE 2-10-16 PUBLIC HEARING

In addition to those residents who spoke at the Public Hearing, others made their concerns about the project known via emailed letters.

A group letter was submitted by email from **15 Brookside Commons residents** (including Mark McPeak, whose additional comments at the Public Hearing are summarized in the meeting minutes above). The letter outlined concerns about the Brookside Commons residences (the closest abutting homes) being absent from the site drawings. Also troublesome to the letter writers was that the CDA never met with Brookside Commons residents "to hear our thoughts and concerns about a project that will have significant impact on our quality of life as well as property values." That omission was "very worrisome" to Brookside Commons residents, as it indicated "a disregard for our community." The letter outlines further apprehensions about: noise pollution, proposed residential units abutting Brookside Commons, increased vehicular traffic, insufficient protections for College Brook, persistent environmentally damaging snow removal practices, needed landscaping maintenance, fire safety, reducing light pollution, and, more broadly, the excessive scale of the proposed buildings. "In summary, our property values and quality of life will be harmed significantly by the proposed redevelopment." The full 3-page Brookside Commons letter can be seen here:
https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/brookside_condo_a_ssoc_letter.pdf

Karen Crowley of 48 Mill Pond Road wrote a long email that included these concerns:

I am a parent of four children who walk to school through the Mill Plaza. We also use the path through to Chesley and up to Faculty Road frequently during school and summer times for getting to and from town and for walking our dog. I have major concerns about the impact of the proposed changes to the plaza. Whenever UNH is in session, we already see a huge increase in cigarette butts/packaging, alcohol containers, condoms etc. along the pathway. We've seen an increase in similar garbage in the plaza and the pathway up through the middle of the plaza next to where the old grange building was since the new housing has gone in there and along Main St. We've also seen an increase in traffic and given the number of times my children have to cross Main and Madbury Rd and Woodman Ave on the way to and from school, this is a big concern.

I see absolutely no benefit to the citizens of Durham to having the changes proposed and I'm very concerned about the down side of increased traffic, refuse, exposure to drinking and pot smoking, bad language, partying etc. with having even more students living in the plaza area. We have had such a large increase in student housing come into the town along our walking route already....

I would love to see an update to the existing buildings and an expansion to the pedestrian-friendly spaces with a mind towards full-time residents and families in Durham NOT with the priority being student-type housing.

I'm not sure how I would handle having my 12 year old daughter walk to and from school with the increased exposure to college-aged students and the type of behavior that entails. Again, I don't see the

pro-side for residents, families and children of these proposed changes and I'm very worried about the psychological and physical safety of my children....

The full text of Karen Crowley's letter can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_k.crowley.txt

Ellie and Donald Sutherland, 25 Faculty Road, sent a three-page letter addressing how the proposed plan does "not satisfy the town's desires to have a vibrant and successful 'Durham village center' and that would negatively affect property values and quality of life. The proposal, they wrote, had crowded, too-tall buildings, with "confined, segmented" and "uninviting" arrangement with "no overall flow" and "inadequate" traffic circulation. The route that children from throughout the Faculty Neighborhood take through the wooded path from Faculty Road to the Chesley footpath and then into the plaza and to Town schools "will be through college student housing which will be a college-age campus experience, not the 'village center' experience we want for the plaza." The Sutherlands also describe concerns about wetland encroachment, light pollution from buildings and headlights, and how "multiple stories of apartments which most likely will be filled with students is completely incompatible with the established character of our neighborhood. From our neighborhood we can easily see and hear what goes on in the plaza." The Sutherlands continue with concerns about student-generated noise directly behind neighborhood homes "with their music, car noise, and outdoor evening loud conversations." They add: "We will see an increase in drunken students wandering through the woods between the plaza and our homes and down the path in to our neighborhood further degrading our quality of life and property values." They also note: "The settlement with the Town stipulates that 'as many beds as possible' of housing would be placed on the northern half of the property (toward Main/Mill), yet over 200 of the 330 beds are proposed for the southern part of the Plaza adjacent to the Faculty Neighborhood in three-story structures combining parking and housing." The Sutherlands conclude aspects of their "positive visions" for the Plaza.

The full text of the Sutherlands' three-page letter can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/letter_from_sutherland.pdf

Plaza abutters **Nancy Lambert and Marty Lee, 17 Faculty Rd.**, wrote a long letter expressing enthusiasm for improving the commercial center of Durham through Plaza redevelopment. "As you know, the Mill Plaza is not only central to Durham's commercial well-being but also serves as a community crossroads and meeting place." They also expressed support for "increasing the residential density in the town core as a way of protecting open space outside of the core. We believe it is wiser to have residential development in the town center than building on forests, farmlands and wetlands. We see the increased density as necessary in order to promote more sustainable lifestyles by increasing the number of residents without cars and generally reducing residents' reliance on automobiles." Yet, they "hope these objectives can be achieved without compromising the existing quality of life enjoyed by those of us who already live in downtown neighborhoods."

In particular, Lambert and Lee urge the "Protection of the buffer between the Faculty Neighborhood and the commercial area," and, particularly, protection of the "Forest Path" that is cherished throughout the Faculty Neighborhood:

One of the wonderful things about living in the Faculty Neighborhood is having a lifestyle that is less dependent on cars and more conducive to walking. The Mill Plaza is a daily destination, and we are particularly fortunate to access the Plaza by way of a beautiful walking path from the Thompson Lane/Faculty Road intersection through the woods and across College Brook. People throughout the neighborhood use this path including many neighborhood children who walk to the middle and high schools. We have encountered residents from outside of our neighborhood who drive into town in order to walk their dogs in our neighborhood and along our forest path. Our young nieces and nephews beg to walk through "the secret path in the woods" when they come to visit. If you are not familiar with this area, we would urge you to walk along our path before making any decisions.

Lambert and Lee report that they purchased, at considerable expense, an acre of wooded land along the

forested path to protect it from development and as an important contribution to “protecting one of the most important features that makes our neighborhood special. We request that the Planning Board prioritize protecting this important buffer and pedestrian access from development, vehicles and misbehavior.”

Lambert and Lee add concerns that the current redevelopment plan will eventually lead to pressure to extend Chesley Drive as a road into or out of the Plaza. “Even providing access to emergency vehicles (as was mentioned at the Planning Board meeting) would turn what is now a pedestrian path linking Chesley Drive to the Mill Plaza into a road and severely impact the adjacent wetland as well as diminish the quality of the pedestrian access.” They suggest that redevelopment of the Plaza should entail some permanent barrier to extending Chesley Drive.

Lambert and Lee express concern that “the current configuration seems to put large numbers of students within close range of non-student housing in the neighborhood. We have seen the problems such situations create in other parts of town and hope that the Planning Board will be proactive in preventing similar conflicts on this site.” Lambert and Lee hope that any student housing would be located on the north side of the site.

Rather than a Plaza that is primarily student housing, Lambert and Lee “think the downtown location of the Mill Plaza would be particularly attractive to seniors.” They say that “Designing at least one of the residential buildings (perhaps on the southern edge of the property) with the needs of seniors in mind seems desirable and would expand the market of potential tenants for the owners. It also would anticipate market trends in response to changing demographics as the population ages and the student population decreases.”

Lambert and Lee are very concerned about the “improvement of College Brook’s water quality”:

Currently, the management of water runoff from the Mill Plaza into College Brook does not meet best management practices, and we have seen plumes of gasoline in water running across the parking lot and into sewers that drain directly into College Brook without any filtering. College Brook is very “flashy” because of the large proportion of impervious surfaces in its watershed, including the Mill Plaza. Improving the quality of the water draining from the site (i.e., reducing nonpoint pollution sources) into College Brook and reducing runoff by increasing infiltration should be a priority of the redevelopment. Improved water management from this large site should contribute significantly to improving ecological conditions not only for College Brook but the Mill Pond, Oyster River and Great Bay as well.

Aesthetics is also of great concern to Lambert and Lee:

The current Mill Plaza is ugly, and we hope the Planning Board will insist on architectural standards that will make the Plaza an attractive asset to the community for many decades to come. The “park” planned for the area between the Mill Plaza parking lot and Mill Road seems like it may end up as a trashy network of cow paths. While it would be nice to replace the current outdoor seating area adjacent to the Bagel Works that will be turned into a building under the current proposal, the strip along Mill Road hardly seems like a desirable place for people to gather. The current picnic area enjoys some protection from the road whereas the proposed green space is completely exposed to the street traffic.

Lambert and Lee also address their hopes for reduction of light pollution, a better designed entrance, more Plaza management attention to picking up trash that blows into the brook area and the neighborhood.

The full 7-page Lambert-Lee letter can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/letter_from_lambert_lee.pdf

A. Dwight Baldwin, Jr., 6 Fairchild Dr., wrote that he was out of state for the Public Hearing but “would like to add my voice in writing to the many who have expressed their desire to make the Plaza Durham’s carefully planned ‘town center’ where people live, do business and informally gather to talk. A golden opportunity will be lost if the plan submitted by Colonial Durham Associates does not include the concept of a ‘village center’ with

its implied 'quality-of-life' design." He concludes: "it looks to me as if the current plans have been drawn with little thought and concern given to implementing few if any of the ideas that were presented in the 2008 Mill Plaza Study. It is my hope that you will insist that the developer/owner of Mill Plaza incorporates into the plans those design features that will make the Plaza Durham's vibrant village center. In so doing, you will not only be making it an exciting and invigorating place to live, gather and do business, but will also insure the economic success of the venture."

The full Baldwin letter can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_d_baldwin.txt

Jennifer Lee at 18 Faculty Rd. wrote "I cannot attend the meeting on 2/10 but feel strongly that if this plan goes through, we, the residents, have lost Durham. Many studies have shown that, for a town to be viable, a center—a physical center—is needed, where residents can meet each other: a town common."

Ms. Lee recognizes "the difficulties presented by a university town but have noticed in 10 years residence here a tendency to grant many variances or simply to give in to violations by developers of established guidelines or rules as well as the master plan. As a resident, I'm beginning to feel 'Why bother? Why bother participating in town issues when the well-being of the town is not a factor in decisions?'"

The full Jennifer Lee letter can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_j_lee.txt

Jayson Seaman, Bagdad Road, wrote "to express some concerns I have about the Mill Road Plaza redevelopment. In addition to a general frustration about the volume of student housing now in town, and relative lack of businesses which would serve year-round residents, I am particularly concerned that the town will miss yet another opportunity to create common gathering space in the downtown core. I look at Madbury Commons as a comparable development and there are two features of that design that best capture my point. The first is that the corridor is not pedestrian-only, and the second is that most of the first-floor retail space is occupied by entities that have very limited appeal to townspeople. Each time I pass by, I think 'what a missed opportunity to create a vibrant pedestrian corridor with cafes, outside seating, micro-parks, and general gathering space.' Instead it favors vehicular traffic and contains businesses that don't draw people in. I look at the proposed Mill Road Plaza design and I think, 'here we go again.'"

Seaman does not have "specific design changes in mind, but a major priority to any future development in the downtown core I believe should be to drastically increase the common space and make the town inviting to businesses that facilitate use of it."

The full Seaman letter can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_j_seaman.txt

Nancy Sandberg, 15 Langley Rd., wrote:

As a longtime resident of Durham who needs to be able to easily access Rite-Aid, Durham Market, and occasionally Bela's, I worry that the current, negotiated plan is designed to cater to the needs of students and developers, rather than residents. The Planning Board and Durham citizens have worked long hours on many Master Plans, Zoning Ordinances and the 2008 Mill Plaza Study to guide the growth of our town, only to have them ignored by Colonial Durham whose property is located in the heart of our town.

While it may be economically more profitable to house students on the second and third floors in our commercial core, I think we should be dedicating more space for retail, office and medical and dental services space in this project to benefit all residents....

Lastly, I would wish that you, the Planning Board, would require the developer to restore College Brook as a greenway with a pathway, flowering shrubbery and a dense treed buffer on the north side to screen out downtown buildings and bright lights from Faculty Rd. and Chesley Drive residents.

Nancy Sandberg's full February 9, 2016, letter can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_n._sandberg.txt

Joshua Meyrowitz, 7 Chesley Drive, wrote, in part:

... I do hope that we end up with a revitalized plaza (a potential Town jewel!) without damaging its present functions or threatening the delicate balance we've achieved and maintained between family neighborhood, commercial core, and masses of students.

I'm also glad that you have "toured" the Faculty Neighborhood's one little wooded path at the Chesley Marsh, the College Brook Bridge, and the path to Thompson Lane and Faculty Road. The one small, but significant correction I would make regarding your description of the use of that path in your report (I write from perhaps flawed memory of my reading of it) involves your mentioning that it is used heavily by people on Faculty Road. Actually, it is routinely used by those living throughout the larger Faculty Neighborhood (even when covered with ice and snow). And it's one of the reasons that people cite for buying houses here in an otherwise not very "lush" area. And I can assure Town officials that any threat to that pedestrian pathway as a resource for the neighborhood (and particularly for the schoolkids who have a whole routine for picking each other up and chaining through the path through the Plaza and to our schools) will meet with fierce opposition that is based on decades of emotional attachment to it.

The full text of Joshua Meyrowitz's February 8, 2016, letter can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_j._meyrowitz_2.txt

Henry Smith, 93 Packers Falls Rd, wrote to criticize the "massive scale" of the proposal, providing details and then concluding: "The Planning Board is compelled to direct Colonial Durham Associates, in the strongest and clearest terms possible, to return to the drawing board and work on a dramatic reduction in the number and size of buildings proposed for Mill Road Plaza AND in the number of student apartments proposed."

See full Smith letter here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_h._smith.txt

Scott & Heidi Bogle, 4 Croghan Lane, wrote to address various concerns about the proposed plan: better bicycle/pedestrian accommodation, including bike parking; how the Hannaford building would look out of scale unless the grocery moves and the old building makes way for a taller structure (which would also allow housing to shift to the northern half of the site and away from the neighborhood). The Bogles also express concern about the glut of student housing in town as it could affect the long-term assessments of student housing: "With the recent spike in supply of student apartments downtown, do we know what the vacancy rate is in the new units - both during the school year and during the summer? Is there adequate demand for this many new student units in the downtown along with all of the other recent expansion? If inadequate market exists and units are vacant, what happens when the town is asked to lower the assessment due to loss of income?" The Bogles also suggest "mixing target audiences" for housing: "What would be the potential to have apartments in one or both of the back buildings (say E which has the best access to green space and faces Faculty Neighborhood) be designed as somewhat larger units to target seniors and or young family workforce housing? Downtown has more of a need for housing units for those markets than for yet more student apartments." Finally, the Bogles are relieved to see that the "plan doesn't call for opening up through traffic on Chesley Drive." But they add: "Let's ensure that this remains the case."

Carol Birch, Garden Lane, wrote in agreement with resident comments at the Public Hearing, underscoring one point: “Please do not destroy the one community green area next to The Works in order to build one more building to “engage” with the town. We already have more than enough buildings doing that. Those crab apple trees growing in that green area are gorgeous in the spring time. Instead of tearing down our only beautiful spot in that plaza, wouldn’t it be possible to extend it to meet the little garden next to the Pauly’s Pockets building?” Ms. Birch’s full letter can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_carol_birch.txt

Charles Forcey, Thompson Lane, wrote that he agreed “with many of the comments made to date on the original plan, especially those by Bill Schoonmaker...and the collected input from Chesley Drive residents.” He then laid out, “the vital elements of a successful community plan,” including safe walking routes.

The Charles Forcey letter can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_charles_forcey.txt

Ten or more days after the February 10, 2016, Public Hearing, letters were still arriving:

On February 21, 2016, **Richard England, Professor of Economics, UNH, and Foss Farm Road** resident, wrote as a former member of Economic Development Committee (EDC) with concerns about the increase in vehicular traffic from the much higher density in the Central Business District from the proposed plans for the Mill Plaza. “We could handle parking problems, I suppose, by building a parking structure downtown at great expense. But the fact remains that narrow two lane roads lead to and from our CBD [Central Business District]. Imagine the traffic congestion on Mill Road if the proposed redevelopment proceeds, especially if there remains only one point of entry into the Plaza. The other end of the Plaza property could also have an entrance from Chesley Drive but I can imagine the outrage if that were to be proposed.” England offers his opinion that “the densification of downtown Durham cannot continue. I would favor the creation of a satellite CBD, perhaps at the intersection of Route 108 and Bennett Rd., to relieve traffic congestion downtown.”

Richard England’s letter can be read in full here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_richard_england.txt

On February 23, 2016, **Susan Richman, 16 Cowell Drive**, agreed with Richard England’s concerns about increased traffic, and described the difficulty she and others on Cowell Drive (and Sauer Terrace and Glassford) near the Post Office have in leaving their homes. “The only egress from our neighborhood is onto Madbury [Rd.], between St. Thomas More and the Post Office. That short block has traffic converging from 108 south, Main Street north, the post office parking lot, and trucks making deliveries to businesses along the street – and these same vehicles then diverge onto Pettee Brook or Madbury going north. The wait to leave Cowell Drive and enter Madbury is markedly longer this year.” Ms. Richman also addresses general quality of life concerns as the population balance downtown shifts.

Ms. Richman’s letter can be read in full here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_susan_richman.txt

[See also Richard Gsottschneider’s related email from December 7, 2016 (quoted more fully further below in the section on Site Plan #5) in which he notes – from his experience as a landlord – that “even if there is no on-site parking for students, there will be lots of student generated vehicular traffic.”]

On February 24, 2016, **Diane Freeman, Laurel Lane**, wrote a 1,350-word letter expressing concern about the scale of the proposed Plaza redevelopment project. “The Plaza represents too small a land mass in too dense an area to sustain all of the development proposed for it. The plans represent too many people, too many activities, too many structures, too much traffic congestion, and, in the end, too much taxpayer inconvenience (= too much “cost”). That does not mean no redevelopment! But concerns follow.”

After expressing a preference for *no* housing at all the Plaza, Freedman adds: “It is clear from the facts and

from the sentiments already expressed that there are too many residences and residents nearby who will be disturbed by the resultant projected noise and activity (I say this as a non-abutter, please note, though probably I could hear “party” noise from such a location were it to occur). Noise and other pollution along with stalled traffic negatively impacts human quality of life along with that of the ecosystem of which the Town of Durham is a part.” Dr. Freedman notes that even if Plaza residents are not supposed to have cars, they will likely rent parking spaces in or around the Plaza, “thus depriving residents of much needed parking for current and proposed retail activities and generating too much traffic for one small town with few and narrow streets in the area.”

Dr. Freedman states that “Durham already has or soon will have more than enough housing. Any more in a historic time when residential college-towns and college life are being challenged by on-line learning and when populations of students, families with children, and workers desiring in-town accommodations wax and wane risks no capacity to ebb and flow in kind.” If extra student apartment space is indeed needed, notes Freedman, the more flexible location is in family homes, which “more directly helps the economics of families than does building new buildings that necessitate expensive upgraded infrastructure and likely busier Police and Fire Departments.”

Prof. Freedman continues: “By all means attractively redevelop the site to accommodate a larger grocery store and continue to accommodate a drugstore/variety store, a variety of restaurants, a drycleaner/tailor, medical offices, fitness businesses, banks, coffee shops, ice cream stands, and more (garden supplies? Art supplies? Healthfood store/restaurant? Bookstore? Jazz club? Small cinema? Clothing store? Housewares? Music shop? Bicycle shop?) but leave as much open-air parking (not to mention open-air greenspace) as possible.

The full letter from Dr. Freedman can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_diane_freedman.txt

NOTE: There were NO resident letters submitted in support of the plan for redeveloping the Plaza that was the subject of the February 10, 2016, public hearing at the Planning Board.

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March 23, 2016—Planning Board [Public Hearing on Plaza Redevelopment: POSTPONED]

IX. Public Hearing - Mill Plaza Redevelopment – 7 Mill Road. Design Review (preliminary application) for a site plan and conditional use for the redevelopment of this 10-acre site. The project involves demolition of rear commercial building, construction of four new buildings and an addition onto the existing Hannaford Building, addition of new commercial space in three buildings on the front/Mill Road side of the project, addition of new residential units on the upper floors of four buildings, garage parking on the first/first and second floor(s) of two buildings in the rear, new parking areas, several open space/seating areas, and other site changes. Colonial Durham Associates, LP, property owner; Joe Persechino, Tighe & Bond, engineer; Lisa DeStefano and Adam Wagner, DeStefano Architects, architect. Central Business District. Map 5, Lot 1-1. ***POSTPONED TO MAY 11 [but was not on the May 11 agenda]

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MILL PLAZA REDEVELOPMENT PROPOSAL REVIEW DELAYED UNTIL WEDNESDAY, MAY 11, 2016

Per the request of the applicant, the Planning Board’s review of the Mill Plaza was delayed from May 23, 2016, until Wednesday, May 11, 2016. Ari Pollack, attorney for the Plaza, wrote to Town Planner Michael Behrendt:

“The Mill Plaza project team is still processing the many comments received during the prior design review hearing and the Staff’s technical review session. In addition, we have supplemented our team with a planning firm that specializes in walkable, mixed-use urban design.” [Emphasis added.]

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MILL PLAZA REDEVELOPMENT PROPOSAL REVIEW DELAYED AGAIN TO WED., JUNE 8, 2016

Colonial Durham Associates requested a further delay in the presentation of revised Mill Plaza redevelopment plans to the Planning Board to the June 8, 2016, meeting.

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Colonia Durham Associates brings in the Cecil Group/Harriman to help design the site plan

Colonial Durham brought the Cecil Group [merging at the time with Harriman] onto their team to work on site planning and general planning issues. DeStefano Architects is still on their team to do the three-dimensional architectural work. Joe Persechino of Tighe & Bond is still the project engineer. Harriman's website includes:

Our Mission: [Harriman](#) pursues creative partnerships to design relevant and innovative solutions to human needs. [Our work](#) is based on the belief that design is a collaborative human endeavor centered on knowledge, ingenuity, and beauty. Through practicing the art of architecture and the science of engineering, we create environments that honor context, embrace wisdom, and enhance well-being.

Firm Profile: Harriman combines the legacy of two design firms into an even stronger, more flexible and robust firm dedicated to enhancing the built and natural environment. Harriman and its [urban design](#) and [planning](#) studio, formerly known as [The Cecil Group](#), are dedicated to providing clients with thoughtful solutions through distinctive design and innovative strategies. Together we are a more comprehensive integrated, full-service practice in [architecture](#), [engineering](#), [urban design](#), [planning](#), and [landscape architecture](#).

Our [firm](#) applies a holistic approach that is based on collaborative teamwork and a commitment to service — an approach verified by the number of repeat clients, and an on-time, on-budget track record. Our architects, engineers, urban designers, planners, and landscape architects work closely throughout all phases of a project, providing an integrated, multidisciplinary approach that delivers creative and cost-effective solutions.

Our [clients](#) are able to realize the potential of their buildings, towns, cities, developments, parks and open spaces because they are better planned, better designed, and better engineered. We're better because our team members in all disciplines share information continually throughout the process — a special advantage with the sophisticated, high-tech infrastructure needed in today's built environment. Our experience, expertise, and approach result in spaces, places and buildings that are both high performing and aesthetically appropriate.

Our team is able to translate strategic goals into practical plans and designs that are highly responsive to complex economic, regulatory and community considerations. Our emphasis on effective communication allows us to foster cooperation among public and private interests and inspire local pride. As a multidisciplinary team of planners and designers we are better able to deliver the diverse expertise needed in order to successfully "put places together." From: <http://harriman.com/about/>

The Cecil Group worked with the city of Dover on its "**Downtown Pedestrian and Vehicular Access and Streetscape Study.**" www.dover.nh.gov/government/city-operations/planning/special-projects/downtown-access-plan/index.html. **Final report on the Dover study**, issued in March 2015, can be seen here: www.dover.nh.gov/Assets/government/city-operations/2document/planning/outreach/Transportation/Dover%20Access%20and%20Streetscape%20Study%20Preferred%20Design%202015-03-06.pdf

Harriman is one of Hannaford's store architects, which led to some excitement in Durham that bringing in this design team signaled that Durham's Hannaford store might relocate to a new Harriman-designed spot on the Plaza, facilitating a new building where Hannaford has been (Building A), which could include some stories of housing over ground-floor retail, matching the primary housing location, per the 2015 legal Settlement.

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May 14, 2016—The "Saturday Library Meeting" between Residents and CDA Team (including Harriman)

There was an unofficial meeting at the Durham Public Library between Colonial Durham Associates team and about a dozen residents to review possible site plans. The meeting was held at the Durham Public Library.

Eleven days after the “Library Meeting,” CDA submitted plans with a cover letter indicating that they had met with both Durham residents and commercial tenants (separate meetings), which gave the impression that the submitted plan reflected what the residents present had suggested:

This conceptual plan is a response to questions and comments from Town officials and members of the public at earlier stages of the design review process, and the settlement between the Town and Colonial Durham.

Representatives from the project team met with members of the public and tenants in two separate meetings on Saturday, May 14 to discuss possibilities for the site and to gather input from meeting participants about different options for siting the proposed uses. The location of uses within this plan reflect those discussions, while incorporating development goals and tenant considerations. A major assumption is that both Hannaford and Rite Aid remain in their current positions within the site. Both have long-term leases which must be taken into account in the site planning process. [Emphasis added.]

See further below for the report that the residents who attended the “Library Meeting” wrote to the Planning Board about whether their views were indeed “reflected” in the submitted plan.

See the full CDA cover letter here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/cover_memo_ram_05.25.16.pdf

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CDA REDEVELOPMENT SITE PLAN #4 (May 25, 2016)

See the one-page diagram submitted May 25 (and dated May 18) of Site Plan #4 here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/mill_plaza_redevelopment_concept_5-25-16.pdf

The proposed project involves demolition of rear commercial building; construction of new 2-story commercial building, bank, and 2-story addition to the existing Hannaford Building; construction of building(s) at the rear of the site with 4 stories of residential over 1 story of garage parking; and parking, circulation, and other site changes. Colonial Durham Associates, LP, property owner; Sean McCauley, agent; Joe Persechino, Tighe & Bond, engineer; Steve Cecil and Emily Innes, The Cecil Group, planner; Lisa DeStefano and Adam Wagner, DeStefano Architects, architect. Central Business District. Map 5, Lot 1-1.

The new conceptual plan involved demolishing the rear Plaza building, but leaving Hannaford and Rite Aid where they were in Building A, with no added levels, in the oldest, most run-down structure. Once again, a new small building was to be wedged in between Building A and the Mill Road sidewalk, destroying the little park (and only green space with mature trees and public picnic tables in the Plaza). A bank building with drive-thru window was proposed along Mill Road, and a new commercial structure was proposed perpendicular to Building A. Last, but not least, the plan proposed a massive 5-story student housing complex (four stories of residences over one story of garage parking) at the Southern rear of the Plaza pushed into the buffer with the Faculty Neighborhood, with landscaped party decks aimed into the adjacent neighborhood. This plan was in violation of Conditional Use criteria, in violation of Durham’s building codes, and in contradiction to the terms of the Settlement (which was supposed to lead to housing primarily on the Northern half of the property).

Although the plan drawing is dated just four days after the Library Meeting (and submitted a week after that), this was not a design that was shown to the residents at the Library Meeting. Additionally, since the actual submitted plan did not reflect the input of residents who participated in the Library Meeting (nor the public input at the February 10, 2016, Public Hearing), residents who attended the Library Meeting subsequently submitted a letter to the Planning Board (at the June 8, 2016, Public Hearing) correcting what Colonial Durham Associates suggested about “resident input” being incorporated in Site Plan #4.

Excerpts from:
**June 8, 2016 Report to the Durham Planning Board & Town Planner
Regarding the “Input” from “Members of the Public”
to the Mill Plaza Planners on Saturday, May 14, 2016**

We write to you as ten “members of the public” who were invited to meet with Steve Cecil, Emily Keys Innes, and Sean McCauley on Saturday, May 14, 2016, as mentioned in the “Submission of Conceptual Plan for Mill Plaza” cover memorandum to Michael Behrendt by Emily Keys Innes, dated May 25, 2016.

We were very pleased to have an opportunity for a small and informal gathering to “discuss possibilities for the site” and to provide input “about different options for siting the proposed uses,” as noted in the just-mentioned cover memorandum. The meeting was extremely cordial, and there was general consensus among members of the community regarding optimum features for a redeveloped Plaza site.

Although we were clear at the meeting that such a small group of residents could not represent all the potential views from the larger community, we felt that we were focusing on issues that reflected broad consensus, as expressed in scores of letters, petitions, and comments at Public Hearings over many years.

At that May 14 meeting, we were shown and discussed TWO different general concepts for redeveloping the Plaza. We were told that Colonial Durham would be presenting BOTH concepts to the Planning Board for the Public Hearing on June 8, 2016. (We have more to say about the second concept later in this report.)

Sadly—and with some surprise after such a positive and optimistic meeting—we see that what the Cecil Group has submitted to the Planning Board largely disregards both our input and the best ideas expressed by all present.

Our community group’s input and concerns clustered into ten sets of criteria that must be met for us to lend our support to a redevelopment plan. They were as follows:

1) Housing Location: *If housing (almost certainly, student housing) is to be included as part of a mixed-use site, it should—following both the December 14, 2015, settlement agreement (“the Settlement”) and the Conditional Use criteria for housing in the Central Business District—be concentrated on the Northern end of the Plaza (where Hannaford now sits)....*

3) Keeping Structures in Scale: *We emphasized that there should be no large/tall housing structures close to the surrounding residential neighborhood. That would violate Conditional Use criteria for housing in the Central Business District. (“**External Impacts:** ...In addition, the location, nature, design, and height of the structure and its appurtenances, its scale with reference to its surroundings, and the nature and intensity of the use, shall not have an adverse effect on the surrounding environment nor discourage the appropriate and orderly development and use of land and buildings in the neighborhood.”)*

4) Protecting the Neighborhood: *Any structures near the neighborhood should be compatible with residential living. Specifically, we emphasized that any new buildings near the adjacent neighborhood should entail activities that quiet down and darken at night (such as senior housing, workforce housing, medical offices, a hotel, etc.) and minimize the generation of trash (such as beer cans and bottles) so as not to disturb neighbors’ quiet and peaceful enjoyment of their homes and not to decrease their property values. (Again, see the Conditional Use criteria: **External Impacts:** “... The external impacts of the proposed use on abutting properties and the neighborhood shall be no greater than the impacts of adjacent existing uses or other uses permitted in the zone. This shall include, but not be limited to, traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare.... The proposed use will not cause or contribute to a*

significant decline in property values of adjacent properties.”)

In particular, we emphasized that no large cluster of student housing should be placed close to any of the pedestrian entrances to the neighborhood, with its marsh, College Brook Bridge, and wooded path to Faculty Road and Thompson Lane. A large student housing cluster would tempt college students to wander into the residential area even more than they do now. With that threat, such a design could prompt police interest in an expanded, and environmentally damaging, back entrance to the Plaza.

At the same time, our group thought that the community might be open to considering structures that might require variances if, and only if, the uses of the structures were compatible with the adjacent properties. For example, we expressed openness to a suggestion from the Cecil Group regarding possible first-level “townhouse-style” residences—if it were for senior housing.

5) Child/Adult Pedestrian Safety: *Safe and comfortable pedestrian passage into and through the plaza should be assured. We emphasized through, not just around, the plaza.*

Vehicular and pedestrian traffic should be isolated from each other. In keeping with past public input, schoolchildren should not have to pass alongside or through student housing, for reasons cited in letters posted on the Town’s website. (For decades, schoolchildren from throughout the Faculty Neighborhood have passed over the wooded path and bridge and through the Chesley Marsh path into the Plaza and up toward the Post Office to get to school.)...

9) View from Faculty Road & Brookside Common Residences: *We argued that any plan should be mindful of the view onto the Plaza by the residents of Faculty Road and Brookside Commons. The higher elevation of Faculty Road creates a view down to the Plaza, which would suggest particular attention be paid to signage, lighting, and rooftop appearances, including, perhaps, landscaped rooftops. Similar attention needs to be paid to the view from Brookside Commons residences (which are adjacent to the Plaza, across College Brook).*

10) Coordination with Other Main Street Development & Overall Town Fiscal Health: *Additionally, members of our group mentioned the wisdom of coordinating any plans for Plaza development with the evolving plans for redevelopment of the former ATO fraternity site at 66 Main Street. We also reminded the design team that Conditional Use criteria require evaluating the fiscal impact on the Town of any Conditional Use housing. For example, a negative impact might occur as a result of declining tax value of other town properties, including adjacent single-family homes and other student housing developments (which might lose economic viability from vacancies due to oversaturation of the student-rental market).*

THE MISSING SECOND CONCEPT

Given the above concerns and criteria, the most exciting parts of our May 14 meeting focused on the second concept that the Cecil Group shared with us, a concept that we were told would also be submitted to the Town. It would relocate Hannaford to a new building parallel to and set back from Mill Road and that would be topped by a floor of office/commercial space. In addition, this concept could locate at least 75 of the residential units to the northern area of the site (in keeping with the Settlement) parallel to Main Street, where Hannaford currently sits. This new commercial/residential building would have first floor retail and two or more stories of residential units.

That second concept was refreshingly responsive to prior public input including comments made by a number of community members at earlier Public Hearings. That plan would also maximize the potential for meeting the criteria we discussed at the meeting. We were also excited to hear Steve Cecil emphasize that the Cecil Group had recently merged with the architectural firm for Hannaford’s stores.

We were told that discussions regarding Hannaford's move to a new building had been in progress, and although Hannaford had not yet agreed to such a move, it had also not yet said "no." ... We are disappointed that this second concept has not been presented to the Planning Board for consideration at the June 8, 2016 Public Hearing, as we were led to believe it would be. Instead, only one plan—labeled "Scheme A"—has been submitted, and it is deficient in many ways.

Comments on the submitted plan

The submitted concept violates just about every criterion discussed at our citizens' meeting.

1) It has a massive five-story housing complex pushed up near a well-used pedestrian entrance to the adjacent Faculty Neighborhood, a neighborhood comprised of single- and two-story homes. Placing housing at this location is contrary to the Settlement and also violates Conditional Use criteria for housing in the Central Business District. The proposed structure also has large outdoor decks over ground-level parking, decks that face into the neighborhood and would likely become the sites for loud student parties.

2) The plan has the pedestrian paths through the Plaza (including those to be used by schoolchildren) passing alongside student housing.

3) In addition, we note that a loading dock at the southern edge of the "18k x 2 Commercial" building is shown on the recently submitted Concept Plan. Delivery loading and unloading are noisy activities and should occur away from residential areas. The small number of trees shown on the plan will not block those sounds.

4) The current scheme destroys the only park-like area next to the Works Bakery Café and adds no significant new green spaces. And no increased Brook protection or buffer is indicated in violation of the Settlement.

5) The submitted plan leaves the ugliest and least-improved building (with Hannaford/Rite Aid) in place....

In short, this redevelopment plan, if accepted, would eliminate the possibility of any meaningful development of this central and essential "town center" for the foreseeable future.

Conclusion

In summary, we, the undersigned attendees of the May 14 meeting, do not believe that this new plan reflects the interests and wishes of the community as conveyed over many years, including in the 2008 Mill Plaza Study report and in the scores of resident letters, petitions, and public comments at Town meetings. The plan certainly does not reflect our input at the recent meeting referenced in the Cecil Group's cover memorandum.

The current concept violates Durham's zoning ordinances, fails to meet Conditional Use criteria for housing in the Central Business District, and is not consistent with the Settlement Agreement. Ironically, the current plan also drops all pretenses in prior Plaza plans of creating what they called a "Durham Village Center." (See, for example, the pages of "inspiration" photos in both the 2015 and 2016 plans posted on the Town's website.)

We continue to hope for an imaginative plan for a positive redevelopment of the Plaza, which is a major Town resource.

The full resident report on the May 14, 2016, meeting, and the subsequent Site Plan #4, can be read here:
June 8 2016—Resident Report to the Planning Board on 5-14-16 Design Meeting with CDA
www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/letter_from_community_members_to_pb_on_06-08-16.pdf

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May 31, 2016—Technical Review Group discussed Mill Plaza Redevelopment Plan #4

Excerpts from the Planner's notes on the TRG meeting (full names added and bolded):

Steve Cecil presented. 157 dwelling units. The goal is to have parking for half the Units. 330 beds is a baseline. They will be 1, 2, and 4 bedroom units. The parking goal is 425 spaces but could squeeze in 465.. Hannaford wants to retain their lease. They will excavate ledge in the back for the apartments. The building height for the apartments will be 50 feet.

They met with the public recently. The plan tries to respond to those ideas and concerns. There were ideas about permeability, walkability, and separating commercial from residential. They are aware of the need to accommodate people walking through the site. They see value in separating the commercial from the residential. The Hannaford building is not built to have residential above.

Mary Ellen Humphreys asked if it was important to show Hannaford the prospective plans. She said she got the sense this is not happening. This is important to the town. She offers this to be helpful, not to be critical. This could be much more attractive with a different configuration. **Ari Pollack** said they have talked to Hannaford and Rite Aid. The stores do have the concept for a relocation but the applicant is not showing it here because they can't deliver it.

Ari Pollack asked the TRG how they felt about separating residential and commercial. **Chief Kurz** asked about the landscaped terraces. He said he wasn't sure if this would work, that it could be a major draw for Cinco de Mayo. He said they would need 24-7 site security. **Ari Pollack** said this is an obligation for the project.

Steve Cecil said this will not be "student housing." **Chief Kurz** said, "Bless your heart, but in our world in Durham, rental housing means student housing."...

April Talon asked about drainage. **Steve Cecil** said this was to be determined. Some will need to be underground. She asked about porous pavement. **Steve Cecil** said it depends. **April Talon** said prior iterations of plans showed some green areas for treatment. She asked if this issue had been overlooked in the new iteration and said drainage should be considered now. She asked about brook restoration and said UNH is doing some restoration upstream. **Ari Pollack** said this would be fine with the developer. **April Talon** said there has been flooding on Chesley Drive....

Michael Behrendt said it would be best for the park next to Bagel Works to remain and to have a continuous park/plaza/open space along Mill Road to buffer the parking lot and to provide connectivity to Main Street. **Andrea Bodo** said there is a stone wall on the right side of the site near the Red Tower....

John Powers said there are no big red flags here. Fire vehicles could probably get around but he would need to review the plans carefully and see how they develop. Landscaping and lighting needs to be considered carefully. If there is underground drainage it must support the fire trucks. Fire lanes will need to be identified. Type of construction must be considered for 4 story buildings. As long as they can get to one exterior door they do not need fire lanes all around buildings. There could be rollover curbs as a second access into the site. A 6" reveal would keep cars off it.

Audrey Cline said it would be better to integrate residential and commercial in response to their question, and spread the residential around the site. The community has asked for a buffer from the residences on the southerly side. Solar orientation should be considered. We thought there would be more public greenspaces.

Steve Cecil said if there is some residential on the first floor there is more flexibility. **Audrey** questioned if they can design parking and have 330 beds without needing a variance. **Ari Pollack** said they didn't need any variances with their prior plan. **Michael** and **Audrey** said that was not necessarily the case at all.

Mr. Behrendt mentioned numerous items that would be beneficial to incorporate into the plans.

Planner Michael Behrendt's full notes on the TRG meeting were provided to the Planning Board:

<https://www.dropbox.com/s/nh5jod41lvn9xad/2016-05-31%20TRG%20notes%20Mill%20Plaza%20Behrendt.docx?dl=0>

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June 2016: Town Plan to Meet with Hannaford Leads to CDA Lawsuit Threat

With strong consensus among Town residents (and among various Planning Board, Council, EDC, and TRG members) that a positive redevelopment of the Plaza depended on restoring a grocery store that drew residents to the Plaza and on putting any proposed housing on the Northern end where the Hannaford building has been (per the legal Settlement), Town officials arranged in June 2016 to meet with Hannaford to discuss the chain's future plans in Durham.

This plan was subverted, however, by CDA's threatened lawsuit against the Town for allegedly interfering with its tenant relationships. As a result of the threat, the Town canceled the meeting without explanation to Hannaford.

Residents who independently contacted Hannaford discovered that Hannaford knew of the 2015 legal Settlement (and its stipulation regarding housing to the extent possible on the Northern part of the property) but thought that their grocery store was on the Southern end of the Plaza! (This may be the reason that CDA did not want Town officials to meet with Hannaford, a meeting at which Hannaford would learn that its Northern location put it in an excellent negotiating position with respect to terms for a new building on the site.) Hannaford also told residents that CDA does not speak for Hannaford and that Hannaford had not ruled out a move/expansion.

Additionally, there are various indications that CDA recently provided the grocery store with a multi-decade extension of its lease in its current location in Building A, without including any stipulations related to moving the store to match the Settlement. (But since the latest lease extension and the lease before that are not recorded at the Registry of Deeds, where leases of more than seven years in length are to be recorded for "constructive notice," residents and Town officials do not know for certain what, if any, flexibility CDA had in negotiating a new lease as it might relate to a potential Hannaford relocation on the site.)

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Town Planner's June 8, 2016, Project Review (Site Plan #4):

I recommend that the board hold the public hearing and discuss the project. The project should remain in the design review phase and be continued as necessary to an appropriate date....

Process

1) Updated plans. An updated plan was submitted on May 25 [2016] and is posted on the website. The plan is significantly different from the prior plans and thus merits a fresh review....

2) Technical Review Group. The updated plan was presented to the TRG on May 31. I will send notes of the meeting to the Planning Board shortly.

3) Public Hearing. The review on June 8 [2016] is a public hearing and is continued from the prior hearing. Given that the plans may well change again, it would be prudent to keep the public hearing open at this point.

4) Site walk. A site walk should be scheduled at the appropriate time.

5) Design Review. The application is still in the preliminary design review process. The goal for this process is to develop a preliminary plan that seems to be acceptable to the Planning Board. The applicant would then

engineer the project and return with a formal application. Again, it is not essential that all aspects and details of the preliminary plan be presented during this phase but all significant elements of the project which are reliant on the basic plan should be discussed. Either the Planning Board or the applicant may close the design review process at any time. It would be prudent to keep the hearing open until the board receives a plan that appears acceptable.

6) Outside studies. At the appropriate time specific studies may be desired in this preliminary phase, such as a traffic study and parking study.

Overview of Plan

7) Revised plan. The revised plan is simpler in form than the earlier plans. The front portion of the site (adjacent to Mill Road) would be changed much less than what was shown in earlier plans and would remain 100% commercial; all of the multi-unit housing would be situated in the rear third of the site (away from Mill Road). Significant changes from existing conditions include the following:

a) The rear commercial building is demolished and a new one built perpendicular to the building in which Hannaford and Rite Aid is located. Hannaford Building. A second story, most likely for office use, is added

b) A two-story addition is built on the Mill Road side of the building containing Hannaford and Rite Aid.

c) A bank with a drive through is added as an outbuilding.

d) The front parking area is somewhat reconfigured with new trees placed at the end of the parking aisles.

e) A path is constructed along the brook and connections are made to new sidewalks to be built in front of the rear buildings.

f) A new building(s) is erected at the rear of the site with garage parking on the first floor and four floors of multi-unit residential above.

General Comments

8) Redevelopment. **From a planning standpoint, it would be desirable to completely redevelop the site in order to start fresh and provide an optimal design. The plan shows the building presently containing Hannaford and Rite Aid remaining in its present location.** The applicant has indicated that Hannaford has a long-term lease and has not indicated yet whether or not the supermarket company is interested in relocating on the site. The applicant indicates it cannot build over the building containing Hannaford. [Emphasis added.]

9) Two-story addition [on Building A]. **I recommend giving consideration to retaining the existing park located where the two-story addition is shown. The park is well established with mature vegetation and a tree canopy. It is desirable to connect Mill Plaza with Main Street and providing continuous open space from Bicentennial Park to the north through this park will facilitate this. Placing an addition here will almost certainly hinder the connection. Also, this addition (at two stories with minimal setback) may crowd the sidewalk especially since there are two lanes of traffic just beyond the sidewalk and no other buildings on Mill Street to either side.** Building frontages along the street are desirable but generally such buildings should feel as though they are placed parallel to, alongside the street, rather than perpendicular. A frontage to the south along Mill Road would be desirable but the applicant does not want to close off the view into the plaza. [Emphasis added.]

10) Bagel Works Space. I understand that Bagel Works may be leaving their space at the westerly end of the building containing Hannaford and Rite Aid, and that this space may be utilized by Hannaford in which to expand. If so, this section of the building could potentially be rebuilt with a second floor (setback further from Mill Road than the proposed addition) and an entrance could potentially be added from the adjacent park. If Hannaford were to occupy the space perhaps public focused uses such as a bakery or café could potentially

be incorporated there more efficiently activating the green space at the corner for public use and enjoyment while simultaneously increasing public exposure/activity for the commercial uses within the building to the benefit of all parties.

11) Park along Mill Road. The illustrative plan submitted with the Settlement Agreement shows a formal park along Mill Road, in front of the parking lot. This should be retained. It will form a pleasant connection with the parks to the north, offer attractive open space, and soften the view toward the extensive asphalt of the parking lot.

12) Greenspace. It would be beneficial to add greenspace on the interior of the parking area to break up the asphalt. **The Site Plan Regulations call for parking lots to be broken up with greenspace.** The illustrative drawing in the Settlement Agreement shows outdoor seating space and a plaza in front of the building containing Hannaford and Rite Aid.

13) Residential Neighborhood. **A key goal is minimizing and mitigating any potential adverse impacts from the multi-unit housing upon the adjacent residential neighborhoods, including houses located to the east and south of the development. This is an important consideration for the conditional use review.** The illustrative drawing in the Settlement Agreement shows a residential building at this corner but there is no access to the south of that building, resulting in more separation from the neighborhood than the current plan. [Emphasis added.]

14) Senior Housing. **It would be beneficial to try to find an appropriate location to include senior housing as part of the project. If this could be included at the southerly corner of the site near Chesley Drive it would help to buffer the immediately adjacent neighborhoods.** [Emphasis added.]

Additional Information Needed

15) Existing businesses. It would be helpful to show the locations of existing businesses in the two existing buildings, including the names of the businesses and square footage used.

16) Area plan. It would be helpful to show a scaled plan with neighboring lots including building footprints and property owners' names. This should include at least Brookside Commons, Faculty Road, Chesley Drive, and the Town's pedestrian and bicycle routes to the Faculty Road/Thompson Lane intersection.

17) Drawing. What is the bold rectangle on the plans at the upper right?

18) Brook buffer. **The Settlement Agreement calls for an increased natural buffer along College Brook. The edge of existing pavement and 75 foot wetland buffer should be shown on the plans.** [Emphasis added.]

19) Existing conditions. The existing conditions drawing is from 2008. Is there additional information that should be included on this drawing? Has any pertinent aspect of this drawing changed? An up to date existing conditions drawing will be required with a formal application so it is probably worthwhile for the applicant to prepare one now to facilitate the design review process.

Zoning Ordinance

20) Multi-unit residences. The Zoning Ordinance allows multi-unit dwellings in the Central Business District only as a Mixed Use with residential (office/retail down, multiunit residential up). The proposed first floor parking does not conform with this use.

21) Building height. The maximum height in the Central Business District is 30 feet with an allowance for up to 50 feet at the discretion of the Planning Board. The five-story building would likely be about 50 feet tall.

22) Number of stories. **The Central Business District provides that mixed use buildings (with**

nonresidential on the first floor) are a maximum of 3 stories and that buildings with two floors of nonresidential are a maximum of 4 stories. The proposed building contains 5 stories with 4 floors of residential. The proposed number of stories and uses do not conform with this requirement. [Emphasis added.]

23) Conditional use for nonresidential. The requirement for nonresidential use on the first floor would have to be addressed as part of the conditional use process as provided for in the Central Business District section.

24) Drive through facility. A drive through facility for the bank is allowed by conditional use.

25) Setbacks. There are no minimum or maximum setbacks in this part of the Central Business District.

26) Impervious surface. 100% impervious surface is allowed in the Central Business District.

27) Habitable area. Based on the Settlement Agreement, the new zoning amendment setting a minimum of 600 square feet of habitable area per resident will not apply. The old standard of 300 square feet will apply.

28) College Brook. The Shoreland Protection Overlay District extends 75 feet from College Brook. Structures must be set back 25 feet from the brook.

Conditional Uses

29) All of the following eight criteria (key points excerpted here) must be addressed for the approval of a conditional use.

1. Site suitability: The site is suitable for the proposed use...

2. External impacts: The external impacts of the proposed use on abutting properties and the neighborhood...

3. Character of the site development: The proposed layout and design of the site shall not be incompatible with the established character of the neighborhood and shall mitigate any external impacts of the use on the neighborhood...

4. Character of the buildings and structures: The design of any new buildings or structures and the modification of existing buildings or structures on the site shall not be incompatible with the established character of the neighborhood...

5. Preservation of natural, cultural, historic, and scenic resources: The proposed use of the site, including all related development activities, shall preserve identified natural, cultural, historic, and scenic resources on the site and shall not degrade such identified resources on abutting properties...

6. Impact on property values: The proposed use will not cause or contribute to a significant decline in property values of adjacent properties.

7. Availability of Public Services & Facilities:...

8. Fiscal impacts: The proposed use will not have a negative fiscal impact on the Town unless the Planning Board determines that there are other positive community impacts that off-set the negative fiscal aspects of the proposed use...

The Planner continued with a request for a detailed **Parking Analysis** for Site Plan #4, including analysis whether parking should be focused on Plaza customer needs over residents, whether there would be assigned spaces. Next, the Planner addressed **Traffic & Circulation Issues**, including a possible traffic study, a possible transit pullout/shelter, and truck access. Then **Pedestrian & Bicycle Circulation** were addressed,

including “bicycle infrastructure” would exist and whether bicycle lanes meet “nationally accepted best practices.”

Next the Planner’s June 2016 review addressed Landscaping and Other Issues regarding Site Plan #4:

Landscaping

41) Landscaping. *The site needs more landscaping, along pedestrian and bicycle paths and within the parking area at the front of the site. Perpendicular planting islands (along with those now shown at the end of the parking aisles) could be added as well as landscaping strip parallel to Mill Road (per the site plan regulations).*

42) 5% landscaping. *The zoning ordinance requires that at least 5% of parking and driveway areas be landscaped.*

43) Other requirements. *There are numerous requirements related to landscaping in both the Zoning Ordinance and Site Plan Regulations. In the design review phase the applicant should ensure that sufficient areas are designated for landscaping, or that reasonable adjustments can be made at the formal phase.*

44) Foundation plantings. *It is always desirable to have a planting strip around the base of buildings where they meet parking lots and driveways. The Site Plan Regulations require a 4 foot wide strip. Several strips have been added at the rear of the site. They should be added in front, as well, as practical.*

Other Issues

45) Stormwater Management. *How will this be handled? The applicant said there will be some underground storage. Space should be indicated where any above ground structures will be needed.*

46) Snow storage. *Where will the snow be stored? It should not be along the College Brook buffer. This should be shown as part of the preliminary plan.*

The Planner continued with questions of where Dumpsters will be located, Loading & Unloading areas for each building, encouragement to explore Permeable Pavement and an Electric Vehicle Charging station, and a need for clarification on what types of Water & Sewer upgrades may be needed.

Finally, the Planner provided relevant excerpts from the December 2015 Settlement Agreement.

The full 8-page Planner’s Review from June 8, 2016, on Site Plan #4, can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/planners_review_6-8-16.pdf

Again, the May 2016 Site Plan (#4) being addressed is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/mill_plaza_redevelopment_concept_5-25-16.pdf

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LETTERS SENT BY RESIDENTS BEFORE THE JUNE 8, 2016, PUBLIC HEARING

On June 5, 2016, **Ellie and Donald Sutherland, 25 Faculty Road**, wrote to the Planning Board:

We write to express our enormous disappointment in the latest proposal for the redevelopment of the Mill Road Plaza. This latest plan is a large move backward in its vision for the Mill Road Plaza. We have attached our letter of February 6, 2016 to the Planning Board voicing our concerns and providing suggestions.

Most egregious in the new proposal is the location of five-story student residential buildings in the

southern part of the plaza directly adjacent to our neighborhood and right next to the path that links the plaza to our neighborhood. This is completely incompatible with the established character of the Plaza and our neighborhood, and will adversely affect our quality of life and property values.

In addition, this new plan does nothing to promote the village center feel that our town desires. We do not need to build more student housing in Durham. The student population in Durham is not increasing. In fact, student housing supply in Durham has eclipsed demand, evidenced by the For Rent signs during this past school year on both newly-built and established rental property. Why are we building more student housing in the Mill Road Plaza? Studies show that the senior population in New Hampshire is increasing. Why not build 55-Plus and/or Senior housing instead of student housing in the Mill Road Plaza?

The Sutherland June 5, 2016, letter on Site Plan #4 is posted here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/donald_ellie_sutherland_6-5-2016.pdf. The letter they attached from February 6, 2016, is excerpted further above and posted here: www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/letter_from_sutherland.pdf

On June 6, 2016, **Diane Freedman, Laurel Lane**, wrote:

The property in question is very small and already crowded, with insufficient parking for customers. Downtown is a bottleneck created by yield and stop sign placement along with on-street parking added in recent years. In such a situation, the redevelopment proposed for Mill Plaza strikes me as NOT in keeping with conditional-use requirements and the good of the community and the value it places on green space, quiet, convenience, community, aesthetics, consistent character. Period.

While I would like to see the Hannaford expand in size and aesthetics, offerings, and access (parking), there is nothing desirable about more student housing, certainly not in the density and location on the lot proposed by the developer (in opposition to the Town's actual preference of minimum size per bedroom and even signed agreement with respect to location on northern rather than southern end).

I do not understand why the Town has not a stronger stance to begin with and more control and vision in working with possible developers for the heart of our Town. The point of a Master Plan and Town Planning Department is to my mind to have control over the situation from the get go.

I sorely wish I could be more complimentary and positive about the redevelopment of our Town to date. But I wince and grieve every time I chance to see the new buildings off Madbury Road and Pettee Brook Lane, and my blood pressure rises as I try to make my way on a simple errand to the Post Office or shopping expedition. All fondness for the layout, structures, establishments, activities, and circulation of our Town has completely drained out of me and my friends and neighbors, who are so despondent and hopeless about it that they do not even bother to write. They feel no one will listen or do anything in response. Their numbers are legion. This is a very sad state of affairs on so many levels.

The full Diane Freedman letter can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_diane_freedman_2.txt

Shane & Katelyn Malavenda, 15 Faculty Road, also wrote to the Planning Board on June 6, 2016:

My wife and I own and live in 15 Faculty Rd and are direct abutters to the Mill Plaza (tax map 6-6-5). Regretfully, we are unable to attend the meeting on June 8 due to work related commitments that could not be rescheduled.

My wife and I purchased the property in December 2014 and chose a property close to downtown so that

we could enjoy dining and shopping that a downtown typically offers. We look forward to a redevelopment of the Mill Plaza that would enhance our options for these activities. However, being direct abutters, we have three main concerns with redevelopment of the Mill Plaza: noise, aesthetics, and privacy.

The latest design takes a step backwards from addressing these concerns, and it seems to ignore one other key component of the joint Motion to Stay Proceedings between the town and the developers. That key component was the plan to locate the majority of residence on the north side of the property. Instead of concentrating residence to the north side of the property, the new design includes a five story building on the southern portion which sits directly behind my home. We acknowledge that there is a wooded buffer between our property and the Mill Plaza. However, those trees only have leaves in the spring and summer, and, in addition, we anticipate that a five story building will extend above those trees. A large five story building looming over our backyard does not improve the aesthetics and reduces our privacy.

The latest design is also likely to increase the noise that our home and the rest of the Faculty Neighborhood are subjected to. A five story residence facing the neighborhood will broadcast noise from televisions, stereos, and conversations across the neighborhood. Furthermore, if residents of the proposed design have access to the proposed courtyards, these courtyards would likely become areas for gatherings which may become loud and unruly. Already, on Saturday afternoons in the fall and spring, the cheers from drinking games can be heard throughout the neighborhood. We fear that with the proposed design, those cheers would now literally be emanating from our backyard.

We believe that the Mill Plaza property is too small to support the amount of housing and commercial space that the developers are proposing, and the fact that the design includes buildings that disregard the height guidelines established by the town is evidence of this. The current design would add large buildings and an abundance of new residences right on the edge of the Faculty Neighborhood, changing the character of the neighborhood which has been a draw to many families for so long. We urge the council and the developers to once again revisit the plan and create a design that better addresses the concerns of Durham residents to provide a usable commercial area while maintaining a family feel in the Faculty Neighborhood.

The Malavenda letter on Site Plan #4 is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/mill-plaza_hearing-060816_malavenda_letter.pdf

Another June 6, 2016, email came from **Peter Wolfe**, former chair of the Durham Planning Board.

I am out of state and cannot make the meeting this Wednesday but would offer these thought about the design presented by Mill Plaza.

The front of the project toward Mill Road reminds me of the first plan presented to the planning board when I was chair almost 2 years ago. If you remember there was unanimous dislike for the "L" shaped design for the following reasons:

- 1. It has no conductivity with Main Street and the rest of Durham.*
- 2. It looks like a typical Route 1 Shopping center with no integration into a more community style design. (some of the developers earlier designs did better in this area)*
- 3. It does not incorporate any of the design concepts from the Mill Plaza study committee.*
- 4. If there is going to be commercial space in the rear, this type of design discourages customers from traveling to the back.*

Later I will raise different concerns with the rear portion of the project. You have identified many but I see other ones.

Peter Wolfe's full email about Site Plan #4 can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_peter_wolfe.tx

On June 7, 2016, **Doug & Katie Wheeler, 27 Mill Pond Road**, wrote:

After reading the revised Mill Plaza redevelopment Plan submitted by Colonial Durham, we find that it is unacceptable. Many features of the Revised Plan omit earlier efforts to create a Durham Village Center, and seem to have ignored the concerns of Durham residents that oppose dense student housing, wherever it is located, in the Plaza....

As elderly residents just up Mill Road, we find the implications of this revised Plan raise grave doubts about the viability of a future Mill Road Plaza and of a desirable spirit of a multi-generational approach to living near Durham's center and to sustaining a spirit of community. We urge you, the Planning Board, to reject this revised Plan. The future of the Mill Road Plaza will profoundly influence Durham's future as a viable community where different generations can co-exist and flourish.

The full Wheeler letter can be read here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/letter_from_douglas_wheeler.pdf

A few hours before the meeting, **Anmarie Harris, 56 Oyster River Road**, sent an email (with in-text date of June 1, 2016),

As a 40+ year resident of Durham and a former member of various Town Boards I offer the following observations:

Redevelopment of the Mill Plaza may be of benefit to the community depending on the rearrangement of buildings on the site. Location of commercial space and student housing will determine community support.

The principle business that draws everyone to the Mill Plaza is our grocery store, therefore its location should be the priority.

Durham's small town character is being eroded by over-building student housing in the town center. Student life styles are not compatible with existing residential neighborhoods regardless of well-intentioned management. Therefore adding even more student housing may be undesirable.

Any housing units intended for students should be located as close as possible to campus in the northwest quadrant and away from existing neighborhoods.

A parking garage should be a high priority for redevelopment. It could be built into the hill with the possibility of an access from Main Street through one of the properties where currently there are outdated buildings.

The UNH Transportation Policy Committee and Town goal for a walk-able community should be considered.

Any parking plan should address effective circulation for emergency vehicles, delivery trucks, etc. Safety for children and adults that walk from adjacent neighborhoods through the plaza must be given special consideration.

Noise and lights from activity in the plaza at night negatively impacts the quality of life and the value of homes in adjacent neighborhoods. Commercial uses that cause noise and intrusive lighting should be avoided and residential uses should be located as far as possible from Chesley Drive and Faculty Road.

Residential units for mature adults should be included in the proposal, possibly in a separate building near the brook.

Respect for the natural environment that separates the plaza from existing neighborhoods should be in the plan including snow removal.

We have high hopes for a plan that will “dazzle” and will therefore be worthy of support from the citizens of Durham.

Annmarie Harris’ June 2016 letter is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_annmarie_harris_2.txt. A related letter from Annmarie Harris can be read here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_annmarie_harris_0.txt

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June 8, 2016—Planning Board: Public Hearing on Mill Plaza Redevelopment, Plan #4 (May 2016)

IX. Public Hearing - Mill Plaza Redevelopment – 7 Mill Road. Design Review (preliminary application). Review of updated design for site plan and conditional use for the redevelopment of this 10-acre site. The proposed project involves demolition of rear commercial building; construction of new 2-story commercial building, bank, and 2-story addition to the existing Hannaford Building; construction of building(s) at the rear of the site with 4 stories of residential over 1 story of garage parking; and parking, circulation, and other site changes. Colonial Durham Associates, LP, property owner; Sean McCauley, agent; Joe Persechino, Tighe & Bond, engineer; Steve Cecil and Emily Innes, The Cecil Group, planner; Lisa DeStefano and Adam Wagner, DeStefano Architects, architect. Central Business District. Map 5, Lot 1-1. Recommended action: Discussion and continuation of design review and public hearing.

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Again, the May 2016 Site Plan (Site Plan #4) being addressed at this Public Hearing is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/mill_plaza_redevelopment_concept_5-25-16.pdf

From the minutes of the June 8, 2016, Public Hearing on the Plaza Redevelopment, Site Plan #4

Attorney Ari Pollack said the project team tonight included members of The Cecil Group, who were brought into the project in order to add some fresh ideas to the plan. He reviewed how the process had unfolded in February when the team was previously before the Planning Board. He said after that, the applicant’s team did its best to memorialize the extensive public comments that had been received. He said they also organized a meeting with some residents, with the help of Town staff to try to get some additional public input. He said they then redeveloped the concept of their plan, and said this was before the Board this evening. He said the differences between it and the previous plan and how it was responsive to the comments received would be explained.

Mr. Cecil said the focus of his company’s work was on how to put the pieces together for new developments in existing communities, including developments in downtowns. He said they appreciated the many comments and concerns received on the Mill Plaza project, and how it could best fit into the community. He explained the current plan [see pages 3-4 of the meeting minutes for a repeat of these plan details, described earlier]....

Mr. Cecil concluded that the team was confident that they had provided a plan that responded to many

concerns and considerations, and that could be successfully built.

Chair Corrow asked Board members if they had any questions.

Ms. Dill asked about a black dotted line on the plan in the northeast corner. There was discussion, including discussion about getting an aerial view of the abutting properties in that area in addition to the site itself. Mr. Cecil spoke about the significant grade change in this area, and how it affected the spatial relationship of buildings there.

Mr. Parnell noted the comment from the applicant's team the last time they were before the Board that Building B would remain in place while the new buildings were being built. He said with this new plan, that didn't seem possible. Mr. Cecil said they weren't sure that was the case, and he spoke further on this.

Councilor Lawson asked what the default parking ratio was for the commercial space. Mr. Cecil said it was often about 3.5 spaces per thousand gross sf of commercial space. Councilor Lawson asked if the plan would meet this objective in the central parking area for the retail businesses, and Mr. Cecil said the plan was a little short on this. He said some of the parking would have to be provided in other locations, including possible parking underneath the residential space, and noted that it would be recommended that employees park there. He said the team was comfortable that the scale of parking provided in the plan was practical for this site. Councilor Lawson asked if it had been stated that some of the parking would be for people visiting the downtown center. Attorney Pollack said that wasn't correct, and said the parking areas on the site would not be public parking.

Councilor Lawson asked if there was any opportunity to trade off some of the proposed landscaped terrace area for apartment structure, as part of moving the apartments further away from the Faculty Neighborhood. Mr. Cecil said that was a very reasonable question. He said the greenspace provided views for the apartments, and added to the sense of buffering, but said there were also concerns that on a nice day, it could be noisy if people were gathering there. He said perhaps a building edge could be better. Attorney Pollack said it came down to weighing the priorities, and said perhaps providing greenspace wasn't as important as possible nuisance and security issues. He spoke in some detail on this.

Councilor Lawson noted that it had been stated that a variance might be needed in order to have residential space on the first floor, but said he believed the Planning Board could make a decision on that under the Zoning Ordinance. There was discussion between Councilor Lawson and Attorney Pollack on this.....

Mr. Cecil said they were working on creating a new façade for Hannaford, and introducing a continuous sidewalk along the edge that connected it to the edges of the new commercial building. He said there would be spaces for restaurants, which would make use of the pedestrian environment, and said they were hoping there would be a better pedestrian environment than was there today. He noted that there was very little signage about the great businesses at the back of the site, and said there might be suggestions for new signage....

Mr. Roberts said perhaps the applicant should consider retaining the park located next to the bagel restaurant. Mr. Cecil said the team had heard two different views on this, including the view that it was an attractive area and it would be beneficial to retain it....

Ms. Dill said this seemed like a good time to ask again about the possible idea of not providing the student tenants with parking on the site, which was what the most recent developments downtown had done. She said this would relieve significant congestion. Attorney Pollack said providing parking under a building was expensive, and said if it was felt they could provide less parking and still have units that were attractive to the market, the applicant was ok with this. He said perhaps providing parking for 50% of the residential tenants was too high, and he spoke further on this.

Councilor Lawson asked if there was a risk that some parts of the plan couldn't be implemented because of the

area on the site needed for stormwater management. Mr. Cecil said while it was more expensive not having an area on the site to put open basins for stormwater management, they were confident that they could provide a stormwater management design that would work. He spoke further on this.

Paul Rasmussen MOVED to open the Public Hearing. Councilor Lawson SECONDED the motion and it PASSED unanimously 7-0.

Joshua Meyrowitz, Chesley Drive, noted the applicant's meeting with some community members, and said he'd been asked to read a report of that meeting, and their comments concerning it. The report was signed by the following residents in addition to Mr. Meyrowitz: **Heidi Ely, 177 Durham Point Road; Elaine Fink & Steve Fink, 11 Fellows Lane; Erin Hardie Hale, 74 Mill Road; Annmarie Harris, 56 Oyster River Road; John Hart, 13 Mill Road, Brookside Commons; Beth Olshansky, 122 Packers Falls Road; Mark McPeak, 13 Mill Road, Brookside Commons; and Kate Ruml, 7 Thompson Lane.**

The community members said they were writing to the Planning Board and Mr. Behrendt as ten "members of the public" who were invited to meet with Steve Cecil, Emily Keys Innes, and Sean McCauley on Saturday, May 14, 2016, as mentioned in the "Submission of Conceptual Plan for Mill Plaza" cover memorandum dated May 25, 2016. They said they were very pleased to have an opportunity to "discuss possibilities for the site" and to provide input "about different options for siting the proposed uses," as noted in the memorandum from the applicant. They said the meeting was extremely cordial, and said there was general consensus among members of the community regarding optimum features for a redeveloped Plaza site. They said although they were clear at the meeting that such a small group of residents could not represent all the potential views from the larger community, they felt that they were focusing on issues that reflected broad consensus, as expressed in scores of letters, petitions, and comments at public hearings over many years.

The community members said that at the May 14 meeting, they were shown and discussed 2 different general concepts for redeveloping the Plaza, and were told that Colonial Durham would be presenting both concepts to the Planning Board for the Public Hearing on June 8, 2016. **But they said, sadly, what the Cecil Group had submitted to the Planning Board largely disregarded both their input and the best ideas expressed by all present at the meeting.** [Emphasis added.]

They said their input and concerns clustered into 10 sets of criteria that must be met in order for them to support a redevelopment plan. Their letter went into detail on each of these criteria:

1. Housing Location
2. Building to Building Siting
3. Keeping Structures in Scale
4. Protecting the Neighborhood
5. Child/Adult Pedestrian Safety
6. Pocket Parks
7. Parking
8. College Brook and Stormwater
9. View from Faculty Road and Brookside Commons Residences
10. Coordination with other Main Street Development and Overall Town Fiscal Health

The community members noted that given these criteria and the concerns expressed in regard to each of them, the most exciting parts of the May 14 meeting focused on the second concept the Cecil Group shared, which they were told would also be submitted to the Town. They explained that this concept would relocate Hannaford to a new building parallel to and set back from Mill Road, and would top that building with a floor of office/commercial space. They said this concept could also include locating at least 75 of the residential units to the northern area of the site (in keeping with the Settlement) parallel to Main Street, where Hannaford currently sat. They said this new commercial/ residential building would have 1st floor retail and 2 or more stories of residential units.

They said this second concept was refreshingly responsive to prior public input, including comments made by a number of community members at earlier public hearings. They said it would also maximize the potential for meeting the criteria discussed at the meeting. They said they'd been excited to hear Steve Cecil emphasize that the Cecil Group had recently merged with the architectural firm for Hannaford's stores. They said they were told that discussions regarding Hannaford's move to a new building had been in progress, and that although Hannaford had not yet agreed to such a move, it had also not yet said "no." They said they then suggested that the Plaza owners offer incentives to Hannaford to agree to the move to a new building facing Mill Road in order to make attainable the larger and longer-term goal of a finely redeveloped Plaza. They said they also noted at the meeting that in addition to solving so many other redevelopment issues, a new supermarket building would offer Hannaford a more visually prominent and dominant spot in an aesthetically pleasing Town center.

The community members said they were disappointed that the second concept had not been presented to the Planning Board for consideration at the June 8, 2016 Public Hearing, and instead Scheme A, which they said was deficient in many ways, had been submitted.

They said the submitted concept violated just about every criterion discussed at the meeting on May 14th:

1) It has a massive five-story housing complex pushed up near a well-used pedestrian entrance to the adjacent Faculty Neighborhood, a neighborhood comprised of single- and two-story homes. Placing housing at this location is contrary to the Settlement and also violates Conditional Use criteria for housing in the Central Business District. The proposed structure also has large outdoor decks over ground-level parking, decks that face into the neighborhood and would likely become the sites for loud student parties.

2) The plan has the pedestrian paths through the Plaza (including those to be used by schoolchildren) passing alongside student housing.

3) In addition, we note that a loading dock at the southern edge of the "18k x 2 Commercial" building is shown on the recently submitted Concept Plan. Delivery loading and unloading are noisy activities and should occur away from residential areas. The small number of trees shown on the plan will not block those sounds.

4) The current scheme destroys the only park-like area next to the Works Bakery Café and adds no significant new green spaces. And no increased Brook protection or buffer is indicated, in violation of the Settlement.

5) The submitted plan leaves the ugliest and least-improved building (with Hannaford/Rite Aid) in place. Although community members at the May 14 meeting favored waiving 100% of the residential parking requirement for any housing in the Plaza, we now see that, with the current submitted plan, even more parking spaces for occupants of the residential units have been added, moving from a calculation of 0.5 spaces per unit to 0.5 per spaces per occupant. The community members said this redevelopment plan, if accepted, would eliminate the possibility for the foreseeable future of any meaningful development of this central and essential "town center".

The meeting minutes then quote the final 160 words from the letter (which appear in the excerpts from the letter further above. Again: [The full resident report on the May 14, 2016, meeting can be read here:](#)

June 8 2016—Resident Report to the Planning Board on 5-14-16 Design Meeting with CDA
www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/letter_from_community_members_to_pb_on_06-08-16.pdf

[More from the minutes with comments at the June 8, 2016, Public Hearing on Plaza Redevelopment Plan #4:](#)

Tim Horrigan, Faculty Road, said the existing Plaza was thriving, especially the businesses that provided essential services [to full-time residents]. He said he worried about how this plan served them, and asked how

the parking spaces they relied upon would be affected by the construction of new buildings. He asked how realistic it was to put that many apartments, with one entrance and exit into an area that what was already fragile and impacted by flooding. He also spoke about possible safety issues if there was an emergency situation. He said it might be safer to have the units near the front of the property. He said there were a lot of problems with this plan, noting especially the 5-story building(s) planned.

Phyllis Heilbronner, Mill Pond Road, said the cart was before the horse, and said a traffic study was needed. She said there was already an issue getting in and out of the Plaza. She said this and other background work was needed in order to see if what the applicant was planning fit into the needs of this community, was sustainable, and took into consideration the traffic issue.

John Hart, 15 Mill Road, noted that he was an abutter, and said he was one of the residents who met with Plaza representatives and others and was a co-signer of the letter Mr. Meyrowitz had read. He said this project was one whose results the Town would have to live with for 50 years. He said the Durham village center concept kept getting lost, and said there was no reference to making this a sustainable project. He said there were minimal efforts proposed to mitigate/enhance the brook corridor and the ecological functions of the site. He said with some creative thinking, this could be an award winning project. He said it was time to get creative, and said he looked forward to seeing the next rendering, of a project with a village center that was sustainable and ecologically sensitive.

Annamarie Harris, Oyster River Road, said she was one of the signers of the summary of the May 14th meeting between residents and the applicant. She said as a long term resident of the Faculty Neighborhood, she'd seen that student lifestyles had changed, and that students were sometimes rude and disruptive to families who lived nearby. She said a student complex that close to the neighborhood was very likely to be detrimental. She noted that the conditional use criteria were intended to provide the Planning Board with tools to protect the welfare of the community, and said this plan was not in keeping with those criteria. She urged the Planning Board to seriously consider whether to allow student housing anywhere on the site except where the settlement agreement said it could be, which was in the north quadrant of the property. She said she hoped the applicant would present a viable plan, and would avoid continuing delays that wasted the time of the Planning Board and Durham residents.

Mark McPeak, Brookside Commons, noted that he was an abutter. He said he'd attended the meeting between residents and the applicant's team, and signed off on the summary letter. He said at the meeting, his sense was that the second plan that was discussed did something creative with the existing building where Hannaford was rather than just looking at the constraints concerning the existing leases and the loading dock issue. He spoke further on this second plan, and said he didn't see a lot of what was in it happening with the plan that had been provided. He said the concept provided seemed to be driven by the desire for a short-term return on investment, and said they should be looking at a 50-year window. He said residents wanted people to be drawn to Mill Plaza, and said he hoped the Planning Board would ask the developer to work further on the design.

Bill Hall, Smith Park Lane, said the right of way for the sewer lines wasn't included in the drawing provided. He said it appeared that the southernmost point of one of the buildings appeared to be located on the edge of this right of way. He noted that there had been problems with other parts of this sewer line, and that it would need to be redone in the foreseeable future. He provided details on this, and asked how this issue would be addressed.

Robin Mower, Faculty Road, said since the release of the May 18th Concept Plan, many residents had spent hours figuring out how to respond. She said she'd first respond with a letter she'd written, and would also provide a slide presentation in order to make some points visually. She asked that the Planning Board request that Colonial Durham Associates inform Hannaford in writing that the proceedings of the Board were recorded, and were available for viewing on demand even at a distance, at <https://dcat22.viebit.com> (Ms. Mower's slide presentation can be viewed here: <https://dcat22.viebit.com/player.php?hash=pefWdqGmNnK9> starting at

around 01:44:14.)

Ms. Mower also asked that any site walk for this application extend to locations at Brookside Commons, Chesley Drive, and Faculty Road in order to provide abutter and neighborhood perspectives. She said a site walk in late fall would be appropriate to reveal the impact of the Plaza during the six months of the year when there is no foliage buffer.

Behavioral impacts of student behavior must be mitigated by physical means. Abutting neighborhoods appreciate Plaza businesses and services. They want safe foot and bicycle access to the site. However, they are also concerned about what comes out of, or off, the Plaza.

Increase the visual buffer along the brook for multiple reasons. In addition to providing better buffering to the neighborhood for expected reasons, a redevelopment could help to deter the kind of behavior that likely comes only when a community hosts a college. Twice in the last three years, drunk young people have stumbled into my backyard, one coming from the Plaza through the snow to Faculty Road in search of a party and the second a month ago on Cinco de Mayo. The latter was observed by a 12-year-old neighbor, which prompted a call to the police and the dispatch of six emergency vehicles and their staff. The appeal of a shortcut across the brook can be thwarted by proper site design.

Create noise reduction measures. Young people are heedless of their noise impact. Mopeds sometimes circle a loop from the Plaza through Chesley Drive [ignoring the “No motorized vehicles” sign], Faculty Road, and Mill Road. After the bars close at 1:00am, groups of young people hang out at the Domino’s Pizza and walk through Chesley to student rental houses in the Faculty Neighborhood. Music from revelers on Main Street sometimes blasts Faculty Road residents working in their yards. So does the applicant plan to manage these noisome impacts through physical constraints or barriers of some sort?

Employ Durham’s land use regulations to their full to protect the neighborhood.

Zoning ordinance: Conditional Use criteria; The “external impacts” and “character of the site development” Conditional Use criteria should be invoked to their full degree (see sections 175-23 (C) 2 and 3):

Site Plan Review Regulations: In addition, our site plan regulations, via two subsections of Part III, Article 1. General Standards, give the Planning Board authority to augment the Conditional Use criteria of the zoning ordinance:

1.1.1 The standards contained in these regulations apply to all site plans. These standards shall be construed as minimum standards. The Planning Board, at its discretion, may require higher standards in individual cases or may waive certain requirements for good cause in accordance with the procedures outlined in these regulations.

1.1.2 In addition to these standards, the Planning Board may stipulate any appropriate special measures to eliminate or mitigate potential adverse impacts upon abutters, neighbors, or the general public that might result from a proposed project.

Delivery of zoning objectives

I served on the Town Council from 2009 to 2015. During that time I voted for amendments to the zoning ordinance related to occupancy in the Central Business District. However, the first of these amendments was approved earlier, in 2008. It acknowledged that student housing is a point of leverage for the town and was intended to use student housing to jumpstart revitalization of our downtown. The amendment was to result in a win-win situation: developers would benefit from the higher rental rates that students would pay, and the community would enjoy new commercial enterprises. This was to be effected by allowing a combination of commercial and residential uses, restricting the first floor to a commercial use. The intent was clear: It was not to allow parking on the first floor of an otherwise residential building.

Question: Is this conceptual plan adequate to move forward?

Do you believe that this May 18th concept plan includes “sufficient detail to enable the Board to understand the proposed project and identify potential issues?” As you know, the Site Plan Review Regulations authorize the Board to ask for more detail. Comments from members of the Technical Review Group prompted my question.

In addition, I recently reread the minutes of the Board's meeting on May 9, 2012, when Peak Campus Development presented its plan for a conceptual consultation. As some of you may recall, Peak came to the Board with extensive national experience in developing, and managing, student housing, reflected in its professional presentation and fielding of questions at Board meetings. We do not know whether Colonial Durham Associates will hire professionals of similar stature and experience in these arenas, but I suspect that its own hands-on experience in this realm is limited if not nonexistent. With a project of this scale, that gives one even more reason to press for more information and reassurances.

Sewer service capacity: Finally, while the Colonial Durham proposal is only in the preliminary Design Review phase, site constraints must be considered early in the game. I suggest that in particular the issue of sewer service be addressed now, i.e., prior to the applicant's return with a revised plan.

Robin Mower's related June 8, 2016, letter to the Planning Board can be found here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/20160608_mower_re_mill_plaza.pdf. A follow-up Mower letter with pictures of plaza delivery trucks at 9:00am can be seen here: www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/20160628_mower_re_mill_plaza.pdf

Matt Komonchak, Thompson Lane, said he echoed other public comments made this evening. He noted that Mr. Behrendt's memo had pointed out many shortcomings of this plan, and asked how far short it had to fall for the Planning Board to say the plan wasn't ready. He said he hoped any further plans would take into consideration the many comments made tonight. **He said Hannaford needed to be engaged, and said he didn't think there could be an imaginative, vibrant plan without this and knowing more precisely what it was and was not willing to do. He said he thought being able to get Hannaford to move would facilitate complying with the terms of the settlement agreement, and would also fit with the Mill Plaza study and the conditional use requirements.** [Emphasis added.]

He noted that the proposed plan reduced and privatized what was currently public green space on the site that people enjoyed. He also said he thought the applicant should consider the idea of putting senior housing on the site. He said it couldn't be put right next to a college dorm, and said instead of student housing, there could be workforce housing. He noted that one business had recently left the Plaza and another was planning to leave. He said the more plans like this that came forward, the more commercial tenants could be expected to leave. He said it therefore behooved the applicant to have a better plan.

Mr. Komonchak said he thought that having private security guards at student housing developments had been proven to be ineffective in Durham, and he spoke further on this. He also said placing a residential structure as far to the southeast portion of the site was incompatible with families and others living in the nearby neighborhood.

Peter Andersen, Chesley Drive, said he was a direct abutter, and imagined having to look up at students partying on the decks of their apartments. He said the plan provided was ridiculous, and said he didn't think everyone's time should be wasted with bad faith efforts like this. He noted that he was a developer and had reached out to the applicant, but never got a call.

Catalina Celantano, Community Relations and Economic Development Specialist for Eversource, said that as the project was developed, it would be important for the applicant's team to contact Eversource to make sure that the electric utility aspect of the project fit with Eversource's requirements.

Beth Olshansky, Packers Falls Road, first asked that the team not take away the precious little green space and mature trees on the site. She also asked the Planning Board to consider waiving 100% of the residential parking that was required. She noted the other developments downtown where this had been done, as well as the Council goal of reducing vehicles downtown as part of improving pedestrian safety. She also noted a new Council goal for 2016 of encouraging other Town committees to honor the Council goals. She noted that reducing the parking spaces would also allow the height of the residential buildings to be lowered.

She said the proposed placement of a building for a bank could be problematic in terms of traffic circulation, and said she would prefer to see it on the end of another building. She said she didn't understand what had happened to the second plan [from the Saturday Library Meeting], which involved moving Hannaford, and said the community favored a better design that would include that. She said this would allow the option of having more stories there [where Hannaford and Rite Aid now operate]. She said she hoped to see a more imaginative plan.

Chair Corrow asked Planning Board members if they had any comments to make at this point.

Mr. Rasmussen said at the recent Technical Review Group meeting, Chief Kurz said onsite security was of great benefit in regard to the new student housing developments, and resulted in fewer problems than were seen in student housing in individual homes.

Mr. Komonchak said a police officer he spoke with said officers spent a disproportionate amount of time at the large student housing complexes, and said property management staff had to call the police when something happened.

Chair Corrow asked Planning Board members to make their final comments for this evening, and said after that he'd ask the applicant's team what they wanted to do. He said the Board could close or continue the public hearing, or the applicant could ask that the public hearing be closed.

Mr. Parnell said what was on the site now was a strip mall that was very unattractive but served the purposes of residents, and always had a lot of parking available. He said the businesses there were the only ones in Durham that got sales from all members of the community, especially non-students. He said it looked like the restaurants would be essentially eliminated with what was proposed, at least in the first part of the process. He said the concept with this most recent plan was to divide the site into two parts, commercial and residential, and said it took what was working well now and moved it into a smaller area with not as much parking. He said he wasn't sure this would benefit residents of the Town. [Emphasis added.]

He said the proposed residential units in the two new buildings at the back, to be located on top of a parking area, was not allowed in the Central Business district. He also said having landscaped terraces above the parking areas in each of the buildings wasn't very forward thinking, and didn't show much knowledge of what was required for student housing. He said if the developer had more experience with student housing, it would be understood that residents were more concerned about student behaviors than the views students would have from their apartments. He spoke further on this. [Emphasis added.]

Mr. Parnell said he wasn't sure there was anything for the Planning Board to decide right now because there were too many issues that were still outstanding. He said while the people living in the area would prefer that there was no student housing, the owner had rights concerning this. But he said there had to be some more realization of the issues involved with student housing in Durham, as well as issues involved with the retail sector.

Councilor Lawson said some of the comments made this evening highlighted the issue that the Faculty Neighborhood met the Zoning definition of being a part of the neighborhood that was impacted by this

project. He said this made more conditional use criteria applicable, and said he thought it would be difficult or impossible for this current design to meet 4-5 of those criteria. He said he'd hate to see further resources spent when that was the case, and said a lot of work was needed on the plan.¹³
[Emphasis added.]

He said when the Zoning Ordinance change occurred in 2008, **the tradeoff in allowing student housing was that it would drive the engine for retail/services that would be of benefit to the community. He said there was a lot of student housing now, but said the community was not seeing the benefit they envisioned when the Zoning was changed. He said this was important because the demographics in Durham were changing. He said there might be a negative fiscal impact from this project because the housing supply now exceeded the demand, and said there would be ripple effects from this.** He said the only thing the Planning Board could do if there was a negative fiscal impact would be to waive the issue of if there were offsetting community benefits. He said he feared that the Board wouldn't see that there were compelling community benefits with a design like this. He said much more work was needed, and said it was ironic that the second design community members had seen and discussed went a long way to address the conditional use issues. [Emphasis added.]

Chair Corrow said there wasn't a lot of imagination in this design, and quoting former Board member Richard Kelley, said he'd like the applicant to dazzle them. He said he realized that the applicant wasn't obligated to comply with the Mill Plaza study recommendations, but said the other plan recently discussed went further toward creating a community center than the current one did. He said there was twice as much residential space as commercial space proposed, and said the design didn't respect the neighborhood. He also said he didn't think the plan complied with the settlement agreement.
[Emphases added.]

Mr. Roberts said he was interested in the businesses in the Plaza, and said he would like to see equal traffic access in front of all of them. **He suggested putting Hannaford and Rite Aid in the back, with the smaller businesses in front and the students to the north of the site.** He said parking was needed on the site because residents generally used cars to get to the Plaza. He said somehow there needed to be a plan where student housing wouldn't be a burden. [Emphasis added.]

Mr. Rasmussen said Hannaford seemed to be an anchor business on the site, but said it was hard to see a good solution if it stayed where it currently was. [Emphasis added.]

Chair Corrow asked the applicant's team how they'd like to proceed.

Attorney Pollack said it would be easy to give up at this point, having heard the comments. He said they didn't want to do that, and said he didn't think the public wanted that either. He said the design hadn't done nearly enough to make people happy, and he suggested continuing on as part of the design review process and bringing back something that got at more of the issues that had been raised. He said this was a good faith effort to be responsive, and to provide a plan they could deliver and build. He said they had to work within the confines of the existing site, the existing businesses, the leaseholder rights, and the regulations. He suggested tabling things for 60 days, and said they would ask for more time than that if needed. He said they wouldn't come back with something they thought would waste anyone's time, and said it was hoped the next plan would

¹³ **Councilor Lawson's** exact statement at the June 8, 2016, Planning Board meeting (on CDA Site Plan #4) was as follows: "When you listen to some of the comments that have been made, um, they highlight an issue where, I think that – the Faculty Neighborhood will meet the zoning definition of part of 'the neighborhood' that's impacted by this, not just the adjacent properties, but the definition of 'the neighborhood.' And that makes more Conditional Use criteria applicable. And I think that this preliminary design will inevitably have four, maybe five, Conditional Use criteria which will be very difficult, impossible to meet. And I would hate to see the applicant expend the resources, the Planning Board expend the resources, and community members expend the resources when we get to an application, I just think it would be very difficult to pass or to meet those criteria. So I think a lot of work needs to be done in that area." See <https://dcat22.viebit.com/player.php?hash=pefWdqGmNnK9>, 02:20:43 to 02:22:02. Again, see **Durham's Full Conditional Use Permit Criteria here:** https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/21491/article_vii.pdf.

be well received.

The Board agreed to hear from the applicant's team again at the first meeting in September. Attorney Pollack said if there was the opportunity to come back before that, they would let the Board know.

Ms. Dill said she admired the work the Cecil Group had done on a plan for Dover, and said there must be some answer here. Mr. Rasmussen noted that some community members had really liked the second plan, and said perhaps they could speak with Hannaford. Attorney Pollack said it was important to be careful about pressuring Hannaford, but said the team was open to getting some help when this could be fit into the conversation.

Bill McGowan MOVED to continue the Public Hearing to September 14, 2016. Lorne Parnell SECONDED the motion and it PASSED unanimously 7-0.

To briefly summarize: The May 2016 redevelopment plan was out of compliance with Town regulations, not consistent with "the Settlement" that had indicated that the bulk of student housing would be on the Northern half of the Plaza where Hannaford now sits, and threatened the Faculty Neighborhood with a 5-story student housing complex on the Southern end of the Plaza, at the foot entrance to the Chesley Marsh and bridge, complete with what appeared to be large green-roof "party decks" aimed into the neighborhood.

Twenty residents wrote and/or spoke with strong criticisms of the submitted May 2016 plan. Two of the public comments were neutral (Catalina Celantano from Eversource spoke about power issues, and Bill Hall, Smith Park, spoke about sewer lines.) Most of the Planning Board members were critical of key aspects of the plan.

There were NO positive comments or letters about the May 2016 CDA plan (#4)

Almost all the criticism about the earlier three plans (as expressed in letters and comments from over scores of residents) also applied to Site Plan #4. Residents were very aware, for example, that all four site redevelopment plans from September 2014 to May 2016 entailed destroying the only real "green space" and "community gathering spot" in the Plaza: the one shady area next to the Bagelry Café with 5 mature trees and 5 picnic tables. Some residents believed that this repeated proposal to destroy that cherished area was a calculated strategy to wear down the public and get them focused on protecting that small park, so that when a plan finally came along that preserved the small park area, the public would be relieved and overall resistance and attention would fade. Redevelopment plan #5 seemed to test that theory.

The full Planning Board meeting minutes for June 8, 2016 (reviewing May 2016 plan), can be read here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/45681/060816.pdf

A video of the June 8, 2016, Planning Board meeting can be viewed here:

<https://dcat22.viebit.com/player.php?hash=pefWdqGmNnK9>

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Saturday, October 8, 2016—CDA meets with small group of residents at the Durham Public Library

This meeting between some residents and the CDA team was interactive and cordial. Residents in attendance restated the prior years of public input and suggestions (as in the May 14, 2016, meeting summarized in detail further above). Yet, as it became clear that CDA did not intend to make any fundamental changes in its overall plans to address long-stated public concerns, residents attending began to feel as if the real purpose of the meeting was for CDA to be able to claim that such a meeting had occurred and to suggest that a subsequent plan was reflective of public input. (See Planner's October 26, 2016, review for such a CDA claim.)

One interesting revelation, however, came at the very end of the gathering. When CDA's project agent Sean McCauley was pressed about the importance of Hannaford moving to a larger, more resident-focused store on the site for the redevelopment to be supported by the community (as more consistent with the Settlement and Conditional Use criteria). "Surely, you can make Hannaford an offer that will get them to move," said one

resident. Mr. McCauley responded, “Yes, I could, but we want to make a good profit.” This remark seemed to echo Mr. McCauley’s Planning Board remarks almost 10 months earlier, as reported in the January 27, 2016, meeting minutes: “the applicant’s [CDA’s] intent was to provide commercial space for restaurants and shops that could pay more rent than Hannaford.”

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CDA PLAZA REDEVELOPMENT SITE PLAN #5 (October 2016)

October 11, 2016—Revised Site Plan (dated Oct 8 on drawings), 6 pages (Redevelopment Plan #5)

Cover Memorandum and 6-page site plan:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/cover_memo_ranum_10.11.16.pdf
www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/submission_materials_10.11.16_email.pdf

In Plan #5, as in earlier CDA site plans, the Hannaford/Rite Aid building would remain as is, and the rear building would be demolished. However, in this plan, the small green space near the Works Bakery Café was, finally, to be retained and expanded. A new, small pavilion building at the Plaza entrance might serve something such as ice cream. Yet, once again, student housing would be close to the neighborhood. A non-compliant 4-story buildings (with more levels of housing than are permitted) was being proposed, along with a non-allowed 5-story building. (See more details in Planner’s Review from October 26, 2016, detailed below.)

An updated, 6-page, Plaza site plan – ***dated the same day as the Library Meeting with residents*** – showed:

<> Existing Conditions (with Google image of the site dated 4-27-16 and 12 photographs)

<> Constraints (wetland buffer, construction clearance from existing building B, parking, truck circulation & loading)

<> Opportunities (pedestrian access, public & private spaces, additional commercial/retail)

<> Scenario A (revised site design from above, longitudinal section A, and transverse section B)

<> Scenario A (including bird’s eye views looking east and south, view from house near College Brook, and view from Chesley Drive)

<> Design Precedents (photographs of other retail/residential, public space, pedestrian/bicycle sites, and parking sites)

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October 11, 2016—Police Chief Kurz Comments on Mill Plaza—Commercial/Student Housing

After reviewing the October 11, 2016 site plan, Police Chief Dave Kurz sent a memo to Town Planner Michael Behrendt with his “initial comments,” which included how it is best to keep students away from the adjacent neighborhood.

Chief Kurz prefers to see student housing on the Plaza as “abutting the Orion and Grange properties which are currently student housing.” He sees the importance of on-site 24/7 security and management. “It is my contention that owners must be involved with the building complex, the community and desirous of being responsive to the surrounding neighborhood. The management company that is invested, literally and figuratively into the Durham community, is the most critical component for a well-managed and mutually successful property.” He continues:

Even a well-managed property will have an impact upon policing services. However, it is my opinion and

aspiration that a complex of this nature with the housing located in the most appropriate location of the property may assist in **providing student housing as far away from residential neighborhoods** where the lifestyles of students and residents often collide. When this collision occurs, there is increased demand for police presence straining our resources. [Emphasis added.]

Parking: The location of this complex and the philosophy of the management group should discourage renters from having automobiles through a definitive statement via lease agreements. While parking is limited, it should be designed for the use of the commercial entities within the Mill Plaza. While several spaces may be available for handicap renters, the proximity to the UNH campus should serve as encouragement that renters do not require automobiles.

Chief Kurz comments on increasing traffic challenges to the single egress with the added student housing, visibility, lighting needs, preference for video surveillance. **“The continuous addition of students living in the downtown area, even with well-managed oversight, presents challenges for the Durham Police Department.”** [Emphasis added.]

See Chief Kurz’s full 3-page initial comments on the October 11, 2016, site plan here:
https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/chief_kurz_comments_10-13-16.pdf

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October 13, 2016—CDA Submits Updated “Scenario A” & Updated “Constraints” for Site Plan #5

The one-page “Scenario A (Revised)” shows an overview, with bird’s eye views looking east and south, and two entrance views (original and revised). See the one-page revised submission here:
https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/10_13_updatedscenario_email-3.pdf

The one-page revised “Constraints” includes wetland buffer, construction clearance from existing building B, parking, truck circulation & loading, with added excavation diagram.

See the one page revised “Constraints” here”:
https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/10_13_updated_constraints_email.pdf

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October 18, 2016 – Technical Review Group (TRG) discussed Site Plan #5 (October 2016 version)

TRG members present: Michael Behrendt, Town Planner; Andrea Bodo, Historic District Commission; Mary Ellen Humphrey, Economic Development Director; Mike Lynch, Public Works Director; John Powers, Deputy Fire Chief; Todd Selig, Town Administrator. **Applicants present:** Steve Cecil; Emily Innes; Ari Pollack. **Others present:** Andrew Corrow, Planning Board chair; Barbara Dill, Planning Board member; Paul Rasmussen, Planning Board member; Robin Mower, Faculty Road abutter.

From the meeting notes (with bolded names added; some paragraph breaks taken out):

Emily Innes and **Steve Cecil** reviewed the updated plans. She said that Hannaford and Rite Aid are not willing to relocate. They would like to have a public use like an ice cream parlor in the out building. There are a series of streets and pedestrian ways. There will be streetscape connections. They will cut into the hillside. Rear views will be onto the slope. All buildings will be under 50 feet in height. They will break up the building designs so they are not like a single block. They have a sustainability program. There will be a little less parking with some overflow at the rear. It is possible that one floor from the small middle building could be transferred to the large building behind it. They will look at that.

The buildings will have pitched roofs. There will be 80,000 square feet of commercial, 330 beds, about 157 dwelling units, 328 surface parking spaces plus 42 garage spaces. **There will be no parking for residents.** Employees will park in the garage. There are about 57,000 square feet of commercial on site now.

Mary Ellen Humphrey said Durham is now pretty much 100% [commercial] occupancy, so they should be able to accommodate a fair amount of retail and office, including some office on the second floor. It was agreed that she and Sean McCauley should coordinate on this. She said we want to help the existing businesses to survive.

The applicant said there will need to be some relocations that require 2 moves due to construction constraints. Construction will occur in phases.

Mike Lynch said the path will need to be carefully maintained to look good. There is a history of Mill Plaza dumping snow there. The applicant said there would be underground drainage. Trash would be placed at the rear. There may be interior trash storage in the middle building with roll out dumpsters. The applicant should coordinate with Mike on recycling. He said the entrance driveway is a raceway. Some traffic calming or deflection could be incorporated....

Andrea Bodo requested that the above ground utilities behind Hannaford be screened from Bicentennial Park or buried.

Steve Cecil said he has a background in urban agriculture. We discussed having rooftop gardens. We discussed the terrace for residents. Steve said this area could probably be closed off if there were problems.

John Powers said there needs to be a second means of access for the site. This could probably occur through the park next to Hannaford with rollover curbing or another method. The fire trucks need to maneuver through the site without obstructions. Underground drainage must support the trucks and ladder setups. He suggested some drop off areas for parking for residents. Habitable spaces will probably need to be sprinkled. We will discuss solar. The applicant said it will depend on viability. Panels would be visible. **Steve Cecil** said there is no room for additional structures on site.

Robin Mower said the soil by the brook is heavy marine clay and there could be drainage issues. The applicant will speak with April Talon about drainage. She expressed concern about delivery trucks stacking up.

Management will need to prevent parties outside.

Ari Pollack said their timeframe is to hopefully get approval in the Spring and to break ground in the Summer of 2017.

The full notes from the TRG Meeting for site plan #5 (October 2016 version) can be read here: https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/2016-10-18_trg_notes.pdf

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October 26, 2016—Town Planner’s Project Review for October 26, 2016 Public Hearing on Site Plan #5

I recommend that the board hold the public hearing, discuss the project, schedule a site walk, and continue the design review and public hearing to November 9 or December 14, or later, as appropriate....

2) Hannaford and Rite Aid. The applicant informed us that they spoke with representatives of Hannaford and Rite Aid, and those businesses are not willing to relocate. The applicant states that they have long-term leases which allow them to remain in their present locations. The applicant also states that it is not feasible to build

over the existing building.

3) Neighborhood meeting. The applicant called a meeting of various members of the community on Saturday, October 8 to receive additional input. Staff and Planning Board members did not attend this meeting. The applicant said the October 13 plans were revised pursuant to this meeting....

6) Site walk. I think that it would be beneficial to schedule a site walk now. The applicant could stake or spray paint the corners of the proposed buildings. This would be helpful to get a better sense of the buildings' locations and potential impact.

7) Design Review. The application is still in the preliminary design review process. The goal for this process is to develop a preliminary plan that seems to be acceptable to the Planning Board. The applicant would then apply for any needed variances and then engineer the project and return with a formal application. Again, it is not essential that all aspects and details of the preliminary plan be presented during this phase but all significant elements of the project which are reliant on the basic plan should be discussed. Either the Planning Board or the applicant may close the design review process at any time. It would be prudent to keep the public hearing open until the board receives a plan that appears acceptable.

8) Comments. It would be helpful for each Planning Board member to offer comments on the updated plans after the public hearing is held.

9) Next meetings. I would think one or two more design review meetings after this Wednesday, may be sufficient.

10) Outside studies. At the appropriate time specific studies will be needed, including a traffic study and probably a parking study and fiscal impact study. Would it be useful for the applicant to prepare any studies as part of this preliminary review?

11) Zoning interpretation. Once the design review process closes, and the applicant is clear about the final plans they expect to submit, the applicant should meet with Audrey Cline, Zoning Administrator, and me to determine exactly which variances and which conditional uses might be needed. The applicant should then apply for any needed variances before submitting the formal application to the Planning Board.

Positive elements of revised plans

12) I think there are numerous positive elements of these revised plans as follows.

3) Rectilinear layout. This plan has a rectilinear layout in contrast with earlier plans. This is a more pleasing, pedestrian-friendly, and efficient layout. I think this is a good template to proceed from.

14) Main corridor. There is a primary corridor along the northerly part of the site, running in front of the Hannaford Building. Steve Cecil referred to this as an "organizing principle" of the site. It is hoped that this corridor, along with secondary corridors running perpendicular to it (along Mill Road, in front of the middle building, and in front of the rear building), may function like public streets with wide sidewalks, outdoor sitting areas/plazas, street trees, traffic calming (such as with a speed hump or bump outs), handsome fronting architecture, street furniture, good signage, and welcoming store and office fronts.

15) **Existing park**. **This plan retains the pocket park located along Mill Road, next to the Works and extends it further along Mill Road to the south, eliminating the building addition there that was proposed earlier.** [Emphasis added.]

16) Outbuilding. A small commercial outbuilding is shown along Mill Road next to the entrance to the site. I think this is beneficial and serves several purposes: a) It provides a pleasing visual enclosure to the main space/parking lot; b) It helps to screen the parking lot from Mill Road; c) It extends building frontage down Mill

Road serving to extend the downtown and reduce the traffic-oriented character of this section of Mill Road; and d) It will hopefully have the character of a “pavilion” (as described by Steve Cecil) and house an attractive public use such as an ice cream parlor. This building configuration is superior to that shown earlier as it is smaller and fits into the Mill Road frontage well, the drive through is eliminated, and no parking is lost.

17) Path along brook. The revised plans show a buffer for most of its length between the path along the brook and the driveway. It would be desirable to incorporate a buffer for the entire length, if possible. The seating area in the middle should be moved to the south a little so that it is well buffered from the driveway.

18) Residential areas. The residential areas in the rear building are now somewhat further from the Faculty Road and Chesley Drive than there were in prior iterations.

Next, the Planner addressed the “number of floors” in the October 2016 #5 plan and how they do not meet zoning: “1 commercial floor and 3 (or 2- 1/2) residential floors above on the middle building. It shows 1 commercial floor and 4 (or 3-1/2) residential floors on the rear building.”

20) Central Business District requirement. Section 175-41 Central Business District, F. 7. Allows for a maximum of 4 floors with a maximum of 2 floors of residential only if there are 2 floors of commercial.

The planner then quotes from the Ordinance and from a conditional-use exception and describes what he sees as the intent of the exception (see p. 4 of his review), and then describes his determination about this issue, probable variances needed, and the preferred number of floors (apart from conditional use and variances):

23) Conformance with conditional use? **The proposed layout does not appear to meet the requirements of this conditional use.** The first question is whether the existing square footage of the Hannaford Building should be allowed to count. This is debatable. Even if it were determined that the square footage of the Hannaford Building should count, it appears (from the depiction of building footprints in the drawing) that there would not be sufficient square footage to allow for 3 floors of residential, let alone 4 floors of residential. Furthermore, subsection 7 indicates that there should be a maximum of 4 floors total, in any case (The rear building is 5 floors). The applicant will need to provide information on the square footage of every floor, including that of the Hannaford Building, to clarify this issue. [Emphasis added.]

24) Variances. **It appears that one or more variances would be needed to allow for the number of floors as proposed.** [Emphasis added.]

25) Preferred number of floors. Apart from any variances or conditional uses that might be needed, it would be preferable for the middle building have 3 rather than 4 floors, and the southerly portion of the larger rear building (the section labeled as “13” in Scenario A) also have 3 (or perhaps 4) floors rather than 5. These are the two buildings/sections closest to the residential neighborhoods.

Design recommendations

26) Middle building. We discussed at the TRG possibly reducing the height of this building by one floor and relocating residential units to the building right to the north. This would be desirable if there is room to do so. Ideally, the middle building will have 1 floor of retail, 1 floor of office above, and 1 floor of senior housing on top. We urge the applicant to explore this approach.

27) “Main Street”. As I mention above, numerous elements should be incorporated to make the main corridor function like a public street. How wide are the sidewalks that are proposed? There is a drive through on the northerly side of the middle building. This drive through should be relocated or eliminated as it will significantly impair the feeling of a public street here. Presumably, this is for the bank, which is located on the opposite side of the building.

28) The Works Space. I understand that the Works restaurant may be leaving their space at the westerly end

of the Hannaford Building, and that this space may be utilized by Hannaford in which to expand. If so, this section of the building could potentially be rebuilt with a second and an entrance could potentially be added from the adjacent park. If Hannaford were to occupy the space perhaps public-focused uses such as a bakery or café could be incorporated there more efficiently activating the green space for public use and enjoyment while simultaneously increasing public exposure/activity for the commercial uses within the building to the benefit of all parties.

29) Park along Mill Road. The park should probably be wider. It appears to be about 45 feet wide. The park is much wider in the rendering that is part of the Settlement Agreement.

30) Greenspace. **Significant greenspace is needed to break up the main parking lot – with landscaped medians and islands - and this is called for in the Zoning Ordinance and Site Plan Regulations.** Specific plantings need not be provided now but the areas for landscaping should be shown in the design review phase so that we know there is sufficient space for plantings. **The Site Plan Regulations require a 4 foot wide strip around building foundations, on either side of the sidewalk. This should all be shown on the next iteration.** [Emphasis added,]

31) Public space. **A seating area/plaza should be incorporated, somewhere along the main corridor – such as in front of Hannaford or in front of the middle building. The illustrative drawing in the Settlement Agreement shows outdoor seating space and a plaza in front of the Hannaford Building.** [Emphasis added.]

32) Senior Housing. **As I mentioned above, we would like to see some senior housing incorporated.** The upper floor(s) of the middle building would probably be quite desirable for this purpose. [Emphasis added.]

The Planner then lists “Additional Information Needed,” noting: “We have asked for these items several times.” (These include area plan, assigned parking spaces, existing businesses, brook buffer, and scale).

The Planner then goes through Zoning Ordinances with respect to Site Plan #5 (similar to what the Planner wrote for his review in June 8, 2016, report, as quoted further above), with one significant addition to earlier Planner comments on zoning ordinances:

40) Garage parking. I have confirmed with the Town Administrator that first floor garage parking counts as nonresidential. While the description of the use in the use table refers to “office/retail down,” above, the specifications for each floor in Section 175-41 Central Business District, F. 7. (See above under Number of Floors) refers to “nonresidential” for the first floor. The former Zoning Administrator determined that garage parking on the first floor meets this requirement, and that determination still applies.

Next, the Planner addresses Parking issues, modified to address that the October 2016 plan is based on no parking for residence of the site.

47) Number of spaces. Scenario A states there are 370 total proposed parking spaces, but the parking detail calls for 100 spaces for Hannaford, 115 next to those spaces, 65 spaces in the rear lot, and 42 spaces in the garage, for a total of 322 spaces. It appears there would also be a dozen or so spaces near the outbuilding. This discrepancy should be clarified.

48) Parking analysis. Parking is a key part of this project. It will be useful to have a detailed parking analysis prepared by the applicant showing the exact amount of building space by type of use and how the various parking spaces would be allocated. The analysis should address the specific requirements in the Zoning Ordinance and Site Plan Regulations.

49) Residential parking. **The applicant states that there will be no parking for residents and that the garage parking will be reserved for employees. A number of other student housing developments have**

been built in the downtown in recent years with little or no parking for the tenants. However, how will the applicant prevent residents from parking in the lot that is best reserved for customers? [Emphasis added.]

50) Overflow. A rear area, to the lower right, is shown as overflow parking. This could incorporate brick or grass pavers so that the area is not covered in asphalt. Steve Cecil said this area could be a public space, such as for a farmer's market. However, it should not be an attractive place for students to congregate in proximity to the neighborhood.

51) Parking exemption. The Zoning Ordinance exempts development in the Central Business District from meeting the minimum number of parking spaces provided: 1. A parking impact fee (\$750 per space) is paid by the developer for the number of spaces required less the number provided; and 2. The existing number of required parking spaces cannot be reduced in the proposed project unless approved by the Planning Board. Refer as well to Section 1.e. of the Settlement Agreement envisioning a minimum of 345 parking spaces with the actual number of spaces to be approved by the Planning Board based upon the zoning ordinance and site plan regulations.

52) Short term parking. At the TRG it was suggested that there be some kind of short term parking/drop off/loading areas for residents. [Emphasis added.]

Next, the Planner discusses Traffic and Circulation Issues, including the need for a traffic model (which the Plaza should share the cost of as part of the formal review), whether a traffic study is needed, the need for more attention to truck access & circulation, and the need for main drive traffic calming to prevent a raceway effect. The Planner then turns to the following:

Pedestrian and Bicycle Circulation

57) Pedestrian access. An updated detail is provided. The sidewalk in front of the middle building should be quite wide to accommodate pedestrian flow. It would be a nice amenity to include awnings here for rainy weather. A cross walk with perhaps a speed hump should be added along the main drive along the brook, leading from the footpath to the front of the middle building.

58) Connection to Main. Note that a switchback is shown along the path leading to Main Street. Presumably this is needed for the path to be accessible.

59) Infrastructure. Various elements of bicycle infrastructure should be included on later plans.

60) Private Terraces. A terrace is shown at the second floor in the rear building, and three others are shown. It seems appropriate to provide public space for the residents, and these would be partly shielded from the neighborhoods. Would these become loud and distracting for shoppers walking down the main corridor? This should be explored more. The applicant suggested at the TRG meeting that the space (at least the main terrace) could be closed off if there were problems.

Under Other Issues, the Planner describes various aspects of Commercial Uses (near 100% occupancy of retail/office space in Town suggests that the site could accommodate more of that type of space), Architecture (something that will be presented later with formal application), what appears to be an interesting Archway for trucks in the middle of the large rear building, the challenges associated with the ledge at the rear of the Plaza, Stormwater Management (where will the underground storage be?), required Snow Storage (which must *not* be along the Brook), location of Dumpsters (with frequent pickup and trash compacting recommended), Utilities (with recommended burying or shielding of utilities adjacent to Bicentennial Park), Fire Department (second means of egress through the park area adjacent to Hannaford and interference-free Fire truck circulation throughout the site), exploring Permeable Pavement, location for charging Electric Vehicles, Water & Sewer needs, **requirement to submit Brook Restoration plan as part of the formal application (including addressing aggressive invasive species there)**, and encouragement of the applicant to meet with the Energy

Committee to discuss issues related to Sustainability such as rooftop gardens and rooftop solar. [Emphasis added.]

Finally, the Planner quotes from relevant portions of the Settlement. Again, the details of the December 2015 Settlement can be read at the following links: Dec 14 2015—Durham-CDA Settlement re: Mill Plaza: https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/colonial_durham_settlement-stay_proceedings_agreement.pdf

The full 11-page Planner's Review for the October 26, 2016, Public Hearing (on initial Plan #5) be read here: https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/planners_recommendation_10-26-16.pdf

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Letters sent in advance of Public Hearing

A number of letters/emails were sent to the Planning Board ahead of the Public Hearing on the October 2016 Mill Plaza Redevelopment plan by those who would be unable to attend the meeting.

Two days before the Public Hearing on the October 2016 plan, **Ellie and Donald Sutherland, 25 Faculty Road**, wrote again to the Planning Board, as follows:

We write to express our continued disappointment with the proposal for the redevelopment of the Mill Road Plaza. We forwarded letters on February 6, 2016 and June 5, 2016 to the Planning Board voicing our concerns and providing suggestions which we've attached to this letter, and do not see a move away from student housing in the plaza with the recent updated proposal. The plan to include a student housing complex within the plaza is completely incompatible with the established character of the plaza and our neighborhood, and will adversely affect our quality of life and property values. We sincerely hope and insist that the Planning Board keep in mind that housing of any kind remains a "conditional use" in the plaza and the current plan seems to violate conditional use criteria of scale, additional noise and light, hours of operation, and overall negative impact on adjacent properties.

The October 24, 2016, Sutherland letter (and their two earlier letters) can be read here: www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/letter_from_sutherland_2.pdf

Maura Slavin, 10 Burnham Ave., also wrote on October 24, 2016:

To the members of the planning board:

Unfortunately, I have a conflict, and am not able to attend the meeting on Wednesday, 10/26. I did look at the new proposed plan, and have a few concerns:

- it does seem like there is still an awful lot of student housing, including noise, late-night activity, etc. that comes with that;*
- there is still a fairly large amount of student housing close to the Faculty Road neighborhood;*
- the buildings still seem very big for Durham; and*
- can delivery trucks and firetrucks really navigate the right turn at the back corner of Rite Aid?*

It is an improvement over the last plan, but there are still concerns!

Thank you, Maura Slavin

Maura Slavin's email is posted here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_mike_maura_slavin.txt

Joy Winston, 16 Griffiths Drive, also wrote to express concerns about the October 2016 plan:

I think the new plan for the Durham Plaza area is awful. It looks crowded. The developer is just greedy. It was not enough for him to obtain rent from the business tenants, he decided that renting parking space for students would be a great idea! And now he wants to change everything. I can't believe the town is actually working with this man—the same man who ignored the water plumbing problem between the Bagelry and Durham Market, which was caused by his builders. I hold no hope for fair reconciliation of any future problems that might occur; I see no reconciliation at all. Anyone who refuses to deal with a little problem is certainly not going to be Johnny on the Spot for larger ones.

Joy Winston's email and Michael Behrendt's response can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_joy_winston.txt

Architectural Designer **Kate Ruml, 7 Thompson Lane**, wrote a few hours before the Public Hearing:

I will not be able to attend the Public Hearing this evening, but I wanted to submit a couple of thoughts about the most recent iteration of the Mill Plaza Redevelopment proposal.

First, I would just like to add my voice to those of many others who have serious concerns about locating student housing in the rear portion of the site close to Chesley Drive and the Faculty Neighborhood. Other types of housing developments (such as senior or workforce housing) could work well in that location, but whatever is placed in that portion of the site absolutely must be a use that is quiet at night; otherwise quality of life, and property values in the abutting residential neighborhood would certainly be diminished.

Second, I want to urge that pedestrian paths crossing the site be intentionally designed, rather than simply being space leftover once the buildings and truck routes have been accommodated on the site. As has been pointed out many times, one of the important walking paths through the site is the route used by children walking from the Faculty neighborhood to the Middle school. I'm concerned that the path shown in the current plans would be significantly worse, and much less safe, for children to walk than the route that they currently use. The new plan shows a much less direct path across the site from Chesley Drive to the Post Office (including a switchback to accommodate the retaining wall along the north edge of the site), a greatly narrowed passage between the Hannaford Building and the adjacent building, and perhaps most concerning, a drive-through along the northern edge of the center building, which would dump cars right into the path that school children would be walking, forcing them to navigate cars (and trucks) in a very tight space with not very good visibility. I think this is a disaster waiting to happen.

If the pedestrian experience of this heavily used site can be truly used as a driver of the design, rather than being treated as an afterthought, I believe that the resulting development has a chance of being a place where people want to walk, shop, and visit. This will be good for business and residents alike.

Thank you for your consideration.

Kate Ruml's email about the October 2016 site plan can be seen here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_kate_ruml.txt

NOTE: There were NO advance letters *in support of* the submitted plan for this Public Hearing

October 26, 2016— Planning Board PUBLIC HEARING on Mill Plaza Redevelopment (Plan #5)

XII. Public Hearing - Mill Plaza Redevelopment – 7 Mill Road. Design Review (preliminary application). Updated design for site plan and conditional use for the redevelopment of this 10-acre site. The project involves demolition of the rear commercial building; construction of 2 new mixed-use buildings, 1 with commercial on ground level and 3 floors of residential and 1 with commercial on ground level and 4 floors of residential; construction of 1 retail outbuilding; 370 parking spaces, including 42 garage spaces; a total of 80,000 square feet of commercial; residential space for 330 occupants; new public spaces; and other site changes. Colonial Durham Associates, LP, property owner; Sean McCauley, agent; Joe Persechino, Tighe & Bond, engineer; Steve Cecil and Emily Innes, The Cecil Group, site planner; Lisa DeStefano, DeStefano Architects, architect. Central Business District. Map 5, Lot 1-1. Recommended action: Discuss and continue design review and public hearing.

From the minutes from the October 26, 2016, Public Hearing on Site Plan #5 for Mill Plaza Redevelopment:

Mr. Behrendt explained that this was still the design review phase. He said the project had been in this phase for many months, and said the first plan was submitted in September of 2014. He noted that there had been several iterations, and several public hearings. He said hopefully they would end up with a preliminary plan that people thought was pretty good, and said then there would be a formal, fully engineered plan....

Ms. Innes described the existing conditions/constraints at Mill Plaza, including the existing conditions along College Brook, the variations in topography on the site, the currently used pathways, etc. She said another constraint was that the design team had been asked by the client to find a way to keep the [commercial] tenants in the existing back building in place and in business while construction was going on, perhaps through phasing of construction. She said additional constraints were concerning parking on the site as part of a project and vehicles being able to access and move through the site.

Mr. Cecil addressed opportunities with this project, and noted that he'd received input from residents on these opportunities.

- He said people were currently on foot and on bikes moving through the site, but it wasn't set up for that, so a question was how to set up safer conditions for bikes and pedestrians, where they would be separated from vehicle traffic. He spoke in some detail about possible ways to create more of a pedestrian experience on the site.*
- He said there was the opportunity to create additional and more effective green space/public space on the site, along College Brook and at Bicentennial Park.*
- He said there was the opportunity to add more commercial and retail space in order to create a more active site and tie it into the downtown.*
- He said the housing could sit on top of commercial space and parking, and said buildings could be pushed into the hillside so the tops of the buildings would be roughly the same as those on Main Street.*
- He described a possible pathway along the edge of College Brook, and the creation of an open landscape there that could include places to stop and sit. He said such an area would be well lit, but said the lighting would be contained on the site.*
- He described a smaller retail space that could be placed on Mill Road, and said this would create a frame for the site and would help block the parking field.*
- He described having possible green roofs which would provide visual and environmental benefits. He also spoke about ways to break up building massing and create interesting profiles with different kinds of roofs, and*

different architectural styles and elements.

- *He explained that there was an opportunity to provide an overflow parking area with grass pavers, which was a good idea from a stormwater management standpoint.*
- *He spoke about how the design moved the new development away from the residential edges.*

Mr. Lawson asked for more clarity on the amount of parking in this design. Ms. Innes said right now there were 370 parking spaces, and said the minimum requirement of the settlement was 345 spaces. She said some of the 370 spaces might be located in the green area. She also said they planned to provide some side parking spaces along the drives.

Councilor Lawson asked if the proposed parking deck was included in the total calculations. Mr. Cecil said the parking deck was not included in the commercial space. He said it was understood that a Town goal was to have more commercial uses. Councilor Lawson said it would be helpful to have the square footage estimates of this.

Councilor Lawson said in the revised design, the Hannaford building looked larger. Mr. Cecil said creating another layer on the façade provided more depth and more height, but said it was only a difference of a few feet.

Councilor Bennett asked how practical overflow parking on green pavers was in this climate. Mr. Cecil said the new paver materials were plastic, didn't hold the heat and were tough. But he said if cars parked on them all the time, there might have to be asphalt there instead. He said the green pavers would have to be drained properly. He provided detail on areas on the site that potentially could be treated this way.

There was detailed discussion about whether the habitable space per occupant met the minimal requirement of the settlement agreement. There was also discussion about the circulation needed on the site for delivery trucks. Mr. Cecil said it would be similar to what it was today. Mr. Brown asked about the potential for increased traffic getting in and out as a result of additional retail space. There was discussion about this with Mr. Cecil.

Wayne Burton, Madbury Road, *said a green roof usually meant it could capture rainfall, filter it, and store it in a cistern. He asked if there would be any attempt made to make this a LEED certified project, which included alternative energy generation including solar on the site. He said this would fit with the Town's theme of reducing its carbon footprint.*

Mr. Cecil said there were several environmental considerations in the design, which also represented good business decisions. He said there was a good opportunity to do groundwater recharge and filtering on the site, and he also spoke about planting rain gardens, swales, etc. at the edges of College Brook as part of good stormwater management. He said they were thinking about orientations of roofs and different pitches, as well as having green plants on a roof, as part of energy considerations for the project. He said they would have to look at what was cost effective.

Nancy Lambert, Faculty Road, *said Mill Plaza currently rented parking on the site, and asked what would happen to that as a result of this project. She also said the commercial area on the east side of the property seemed to be distant from the parking, and asked if this would put businesses there at a disadvantage. Mr. Cecil spoke about the park once strategy and how it could work on the site, as part of being an active space that promoted walking. He said he didn't have information on the number of rented parking spaces.*

Attorney Pollack *said last spring, it was explained that Mill Plaza did a limited amount of rental parking that wasn't related to the existing tenant base. He said the numbers fluctuated and said he didn't have them. But he said renting spaces to third parties would end in the redevelopment scenario, because of*

increased commercialization of the property. He said with the proposed redevelopment, all of the spaces would be used to support commercial endeavors, with limited spaces for loading/unloading, drop offs and ADA compliance. He said there were ITE [Institute of Transportation Engineers] parking standards for each of the uses proposed. He noted that the existing tenants had parking provisions in their leases that would be honored. [Emphasis added.]

Robin Mower, Faculty Road, read a letter she'd written into the public record. Among other things, she said she would be much more comfortable if Hannaford and Rite Aid stated that they were not interested in moving in a letter written on their letterhead.

She questioned any assumption that if there was no one to speak against an issue, generally people were in favor of it. She said she'd heard a question from a Planning Board member asking whether it was reasonable to assume that at a meeting in July. She said there were various reasons why people couldn't show up at a particular meeting. She noted that many people watch meetings on DCAT.

She suggested coming to Faculty Road when the site walk was done, to view Mill Plaza from inside the houses there, especially when the trees were down. She said she disagreed as to the value of the proposed outbuilding along Mill Road. She said someone come up toward Main Street would have a different view of the downtown if that building was there.

Her letter and comments questioned in detail what the community would get from this project, and she asked if 80,000 sf of commercial space was the best the applicant could do. She noted that the downtown was currently at 100% occupancy and needed more commercial space. She said the current Plaza businesses occupied about 57,000 sf and might want to expand, so the amount of additional commercial space would be about 20,000 sf.

She said there was precious little acreage zoned for commercial development or redevelopment, and asked why this site shouldn't host 90,000 sf of commercial space. **She said the Town had adopted mixed use zoning [in 2008] in order to expand commercial opportunities, and said it shouldn't back down on that goal. She said 330 residential beds was the ceiling, not the floor, and said if it made the redevelopment work better, so be it. But she asked the applicant to consider what could be done if fewer square feet were used for residential space. Her letter went into the possibilities in detail.** Ms. Mower said she would like to hear more about how the Planning Board would address the current gap in the Zoning Ordinance concerning multi building projects. She also said she appreciated it that an aerial view had been provided, but said she wanted to see something that showed the site plan along with the immediate vicinity beyond the site. She said perhaps this information could be included in the formal application submission. [Emphasis added.]

She said the Town Assessor was currently assessing 97 parking spaces on the site [more than the "limited number" cited by Attorney Pollack.]

Robin Mower submitted a letter with the comments she made at the Public Hearing, which can be read here: www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/20161028_mower_re_mill_plaza.pdf.

Shane Malavenda 15 Faculty Road, said this was the best proposal so far, because it was less congested, with fewer buildings on the site. He said he saw that the designers had taken some steps to reduce the heights of buildings with this design, but said he was against seeing a 4-story building on the site. He asked that people remember that there were building height regulations that needed to be followed, and said higher buildings changed aesthetics and impacted noise transmission. He said another concern was the idea of having patios on the second and third floors of buildings, but noted that they'd been removed in the latest design. He said because of Hannaford and Rite Aid, the Town was stuck with a one-story building, in what was a prime location on the site for a multi-story building.

Matt Komonchak, One Thompson Lane, said he echoed what Ms. Mower and Mr. Malavenda had said about potential negative externalities for the neighborhood from redevelopment of the Plaza. He asked Board members to put themselves in the shoes of people living nearby, and consider what putting up a project of this scale would do to the neighborhood. He noted the statement “Dazzle me/us” said to developers coming to Durham in recent years. He said this design was better than the last one, but said he wasn’t dazzled by it.

He said getting Hannaford to the table was important, and said he hoped the Planning Board would take an active role in engaging the tenant. He said if not, he hoped the applicant would try to do this. **He said people didn’t have a clear idea of Hannaford’s position and were taking the applicant’s word on this. He said he’d like to hear directly from Hannaford, and said the community deserved this.** [Emphasis added.]

Mr. Komonchak reviewed items in the design.

[From 01:56 to 01:58:10 in the meeting video: “I’ll just go down the list: So Hannaford, Number 1, is as is. So there’s nothing added for the Town. I’m looking at what in this plan benefits the town. Number 2—Park and Plaza, well we already have that. Number 3—Bicentennial Park. We already have that. 4—Hannaford; we have that. 5—Rite Aid; we have that. We have Number 6—it’s a loading dock.... Number 7—Pathway connection to Main Street; we already have that. Number 8 is a Residential Tower; that’s new, but again, what’s in it for the Town? Number 9—Commercial ground level; we already have that. Number 10—Another residential tower; again, what’s in it for the community? Number 11—A bank...we actually already do have one.... Number 12—Ground Level Commercial; we have it. Number 13—another Residential Tower; that’s what’s in it for the community. Number 14—The Terrace; again, that’s nothing for the Town. And on and on.... We need the Planning Board to push back and ask a little bit more of the applicant to develop a plan and a project that is exciting for the Town. This is unfortunately not very innovative.”]

He said the proposed overflow parking reserve was very unrealistic, given the parking constraints in Durham. He also said the idea of drop offs and carpooling in the Plaza wasn’t realistic. He said dramatic increases in commercial space were proposed, and also said there would be three residential towers with negative externalities.

He said the Planning Board needed to push back and ask the applicant to develop a project that was exciting and innovative. He asked them to ask more questions about fire safety, snow removal plans, the environment including by how much the green belt along College Brook would be expanded, etc. He said more detail was needed on pedestrian flow on the site that would be safe for children on a routine basis. He also noted that traffic flow just outside the Plaza was already quite messy, without redevelopment of the Plaza.

Mark McPeak, Mill Road, Brookside Commons, said he agreed with everything other residents had said, and said he’d be interested in hearing the Planning Board discuss the issue of north/south location of residential components. He said he believed there was a technical requirement in the settlement agreement that the majority of the residential space be in the northern half of the property, but said it looked like the great majority of it was planned for the south side. He also said he was greatly concerned about the scale of the proposed middle building, which he was a direct abutter to, because of its proximity to residences.

Anmarie Harris, Oyster River Road, said it was her understanding that north was where Hannaford was. She said 1,000 [actually closer to 2,000] beds had been added downtown in recent years, and also noted the Cottages and the Lodges, and said she was concerned that if there were vacancies because of overbuilding of student housing, the taxable value of recently constructed properties would decline. She said unless Durham got a dazzling redevelopment of the entire lot, including the ancient Hannaford building, it could simply be re-faced. [Ms. Harris’s actual statement about the planned façade for Building A was “It’s not a very far-sighted concept to simply reface that and have the added impact of the incompatibility of students to close to our residential neighborhood.” See 02:03:50+ in the DCAT video.] She said the current design had the additional

impact of students being located so close to the existing residential neighborhood, and said the conditional use criteria would need to be very carefully reviewed.

Beth Olshansky, Packers Falls Road, said there had been some improvements compared to the last plan, including getting back the greenspace next to The Works, and regaining 97 parking spaces. She said there had been more care in thinking about how to work with what was a very challenging set of criteria. She asked for the dimensions of the little building proposed along Mill Road, and said that visually it could be quite detrimental. She noted among other things that it would block the green buffer along Mill Road. She said she agreed with the need to hide the parking, and said she thought this could be done with a 5 ft hedge there.

She asked how tall the 2nd floor façade on Hannaford would be, and she also asked what the actual height of the middle building and the building behind it would be. She said the architectural design regulations talked about creating harmony with building heights of different buildings, and about keeping a human scale in a small space and avoiding the canyon effect.

Ms. Olshansky said she didn't think this design met the Zoning Ordinance because of building heights, and she noted that the settlement agreement required that the Ordinance would be met. She said she hoped that the Board would insist that it did. She said perhaps there would have to be some adjustment in the number of beds to get the building heights down, or have more commercial space. She said the design was still very much a work in progress.

Councilor Diana Carroll, Canney Road, said this was a plan for buildings and cars, and said it didn't present itself as a plan for people, with amenities residents said they wanted downtown, such as walkability, at least a little bit of nature, and a place to gather. She noted that the pedestrian walkway from the Plaza to Main Street starts behind a building, and said it looked like the buildings were drawn in first, and the walkways were put in after. She spoke on further detail about walkability issues with the design. She said residents at the recent forum said safety on the property for children was very important, and they shouldn't have to walk next to student housing. But she said here it was on the plan.

Councilor Carroll said the wetland buffer along College Brook was labeled as a constraint and an opportunity. She said as an opportunity, there could be 25 ft of greenspace, with a pedestrian and bike pathway that would be separated from the parking lot, and would span from Mill Road to Chesley Drive. She said it could be the first protected bikeway in downtown Durham.

In regard to the conditional use issue, she read from section 175-21A of the Zoning Ordinance, which addressed the purpose and intent of requiring a conditional use permit. [At 02:18:44+: "Lastly, I would like to address the topic of Conditional Use. This application comes to the Planning Board under Conditional Use... I consider what I'm prepared to say next as the most important thing that I can say this evening. And it is important because it's not my opinion, or my reflection, or even based on research I've done. It's most important because it comes directly from our zoning. And on p. 44 of our zoning, Article VII—Conditional Use Permits, 175-21... This section deals with the purpose and the intent of a Conditional Use permit. I want to focus on one critical sentence.... **'Further Conditions may be placed on the Conditional Use Permit by the Planning Board to ensure that the Conditional Use will have a positive economic, fiscal, public safety, environmental, aesthetic, and social impact on the town.'** ...And you, the Planning Board, can hold the developer to ensure that this development: Will have a positive economic impact on the town, will have positive fiscal impact on the town, will have a positive public safety impact on the town, will have a positive environmental impact on the town. Will have a positive aesthetic impact on the town, will have a positive social impact on the town... And if the Mill Plaza plan does not reflect these, then you, members of the Planning Board, do not have to move forward with this application."] She said if the plan didn't reflect the wording in the Ordinance, the Planning Board didn't have to move forward with this application.

Joshua Meyrowitz, Chesley Drive, said the previous plan was designed to wear residents down, and to make a subsequent plan seem less horrible. He said the new plan was less horrible, and was done by gifted, caring

designers who were trying to do the best they could but were operating under the owner's concerns to maximize profit from this land. He said this conflicted with public needs, put other businesses, including existing student housing at risk, and didn't meet the conditional use criteria. He spoke further, and among other things said if there was a different use of the space planned for housing, a lot of people would be willing to waive some of the conditional use criteria. He suggested that there could be professional offices and other commercial uses next to their neighborhood, which quieted down at night, and were walkable by their kids.

Mr. Meyrowitz said **he agreed with those who said it was important to hear directly from Hannaford and Rite Aid**. He asked how long their leases were, and said more information was needed regardless of mergers they were currently going through. He said **if the current plan went into effect, this would preclude Durham from ever having a full-service supermarket**. He said the building in the middle would block any growth. He said it was important to look at long term impacts, and to keep any housing at the north end of the site. He said otherwise, Durham would lose the downtown and become an adjunct to the University. [Emphasis added.]

Robin Mower said the Board should get a legal opinion on the terms of the settlement agreement regarding the College Brook buffer.

Chair Corrow asked if the applicant would like to address any of the public comments. Mr. Cecil said he appreciated the comments, and would take them into consideration.

Chair Corrow said he would go around the table and get comments from Planning Board members. He started with himself, and said he didn't like the out building along Mill Road visually as a design element. He said it seemed better not to have it, and instead have more contiguous green area. **He noted that exhibit one in the settlement showed a larger amount of greenspace and a larger gathering area, which were elements the Town would like to see**. [Emphasis added.]

He said in the new plan, everything was further on the northern side, and pushing further into the hillside. He asked if there were details on blasting and excavation that would be required because of ledge. He said this design was much better than the previous iterations, but said he'd like to walk the site with the Board so he could better judge the distances involved. He said he didn't think a number of the residential floors of some of the buildings met the Zoning Ordinance requirements. He also said he had questions about the design for increasing the natural buffer along College Brook. [Emphasis added.]

Mr. Rasmussen said if there was a site walk, it should be shown where the increased buffer along the brook would be. He also said including three levels of residential in the plan would require variances, and said he didn't see that they would be granted without the support of the community. [Emphasis added.]

Councilor Bennett said there had been a lot of comments about the need for elderly housing in Town, and he noted the proposed Zoning change from the Town Council in regard to this. He said he didn't see any effort on the part of the developers to look at that possibility for this project. [Emphasis added.]

Councilor Lawson said the Zoning Ordinance didn't provide good guidance for a shared parking environment, and said the design and management of parking would be very important. He said using the best criteria available, it was possible that the parking quantity proposed might not be necessary, and the area not used for parking could create pedestrian and other opportunities.

He said generally speaking, the environmental considerations outlined by Councilor Burton were important in Durham. He also said **the proposed ratio of commercial to residential appeared to need a variance**. He said he was of the very strong opinion that the Planning Board couldn't directly engage Hannaford or Rite Aid, and he recommended talking to the Town attorney if clarification was needed on this. [Emphasis added.]

Mr. Parnell said the Board had seen various iterations of the project, and had to assume that the application it would get was essentially what was here now, which was Hannaford, Rite Aid, 80,000 sf of commercial space and 330 beds. **He said the Planning Board would have to go through the conditional use criteria, and said a supermajority would be needed to approve the application. He said he therefore thought it would be very useful for the Planning Board to comment on these criteria on a noncommittal basis, and indicate for the applicant areas where there might be problems getting approval of the conditional use application.** He noted that he wasn't saying this discussion should be done this evening. He said he thought there were some things that it would be hard to get a unanimous vote on. [Emphasis added.]

Chair Corrow said he could see Mr. Parnell's point. Mr. Parnell said he thought this discussion should take place with the applicant and members of the public present. He said issues that had been raised were in the criteria.

Mr. McGowan said some things that came up in comments were that the applicant could look at what could be done to reduce the beds, could look at other options for the housing, and could consider increasing the commercial space and what specifically that would look like. [Emphasis added.]

Ms. Dill asked Councilor Lawson what he meant by shared parking. Councilor Lawson said it meant someone could park once and then shop at various places. He said it also meant a parking space that was used for different purposes. He said shared parking could avoid overbuilding of parking. Ms. Dill said she was intrigued by that idea. But she said there was still a huge parking lot planned, and asked if there was a way to break up the parking lot because that many spaces weren't needed. She also said she totally supported Mr. Parnell's idea.

Mr. Brown said he was still concerned about the parking, and traffic flow on the site. He said the issue of pedestrian safety was very important, and he spoke further on this.

There was discussion about having a site walk at this point, and then having a discussion on the conditional use criteria. Chair Corrow asked Attorney Pollack if what the Board proposed would be helpful.

Attorney Pollack said the applicant had no objection to a site visit. **He also said the conditional use criteria were a critical piece of the analysis, and said the applicant would react to what the Board said, and come forward with something that was more compliant. He spoke further on this.** [Emphasis added.]

Mr. Behrendt asked if there would be a revised design for a meeting in December. Mr. Cecil said the input this evening had been very helpful, and said if there was a site walk, he would listen to the observations. He said he could be prepared to provide refinements and more detail by the December meeting. It was agreed that the site walk would be scheduled after the meeting.

Mr. Rasmussen asked if the applicant would like to be present for the discussion on the conditional use criteria. Attorney Pollack said he would like to be there to interact with the Planning Board. **Mr. Behrendt said the public hearing should be continued to December 14th, [2016] and recommended that the conditional use criteria be reviewed as well in December.** Attorney Pollack requested that the application not be discussed at the November meeting. He also said he wasn't sure if there would be a revised plan at the December meeting, Mr. Behrendt strongly recommended that one more full iteration of the plans be provided. Mr. Parnell noted that he'd heard this evening about the middle building being lower as a result of discussion with neighbors. He asked if this was reflected in the plans, and there was discussion.

The Planning Board moved to the next item on the agenda.

The full minutes for the October 26, 2016, Planning Board meeting can be reviewed here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/42581/102616.pdf

A video of the October 26, 2016, Planning Board Public Hearing on Mill Plaza Redevelopment is posted here: <https://dcat22.viebit.com/player.php?hash=f13c5b13adcc6f67a37322846da81af3#>

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Following the October 26, 2016, meeting, Robin Mower wrote to request clarification on selected terms of the December 2015 legal Settlement:

Greetings, Michael—

The content of this note is very similar to that I read at the [October 26, 2016] public hearing for the proposed redevelopment of the Mill Plaza at Wednesday night's meeting of the Planning Board. Please do share this note with the Planning Board and post it online.

It is time to obtain a legal opinion regarding the terms of the Colonial Durham Associates-Durham December 2015 settlement agreement pertaining to the College Brook. It would be helpful to the Planning Board and to the community to obtain clarity about this matter, particularly as the Board evaluates a proposed conceptual site plan. The location of structures—buildings and pavement— may depend on the answer.

Specifically, the Agreement is vague. (See relevant excerpts on the following page.)

- *What exactly does “increased natural buffer” mean?*
- *What does maintaining that buffer mean? (Does that mean removing invasives in perpetuity?)*
- *Who will monitor whether it is actually being maintained—Town staff?*

My personal interpretations:

- *“increased”—The extension should be meaningful in terms of the facilitation of stormwater management AND screening AND protection of the brook and its banks from “undesirable behavior” as well as any planned or inadvertent snow storage (also undesirable)*
- *“natural”—The area is not to become a manicured landscape area. Indeed, it should consist of native species and facilitate filtration of stormwater runoff. I look forward to hearing the answers to these questions.*

Ms. Mower then quoted from the settlement. The full October 28, 2016, Mower letter can be read here: https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/20161028b_mower_re_mill_plaza.pdf.

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November 14, 2016—Planning Board: Mill Plaza Site Walk

Attendees at 1:05 pm: **Planning Board**—Andrew Corrow, Paul Rasmussen, Barbara Dill, Bob Brown, Alan Bennett. **Town Staff**—Michael Behrendt, Todd Selig, April Talon. **Applicant**—Ari Pollack, Emily Innes, Sean McCauley. **Town Residents**—Sally Tobias, Jesse McKone, Robin Mower, John Hart, Ken Entz, Sandra Hebert, Jean McPeak, Mark McPeak, Annmarie Harris, Joan Graf, Kate Ruml.

The public session was called to order at 1:05 by Andrew Corrow. The applicant provided poster boards and verbal description of the proposed site.

The walk started along the eastern edge of the property where the east wall of the back building would start. The second stop was to walk out the lines of the center building. The third discussion point was at the bottom of the walking path up to Main Street where the new path layout was discussed along with the location of the northern wall, alley, and hillside excavation. It was noted that due to vehicular traffic that some of the cones

had been moved after initial placement and were not exactly where they belonged. The fourth stop was at the edge of the eating [?] along Mill Road where the extended greenspace buffer and potential small shop were described. The group then walked along the creek up to Chesley Drive, then back over the footbridge and along Faculty Road, to Mill Road. Views were noted from the different residential streets while the trees are bare of leaves. Robin Mower allowed pictures from her property.

Discussion and questions covered the following points.

1. Amount of fill and ledge to be removed during excavation and its effect upon the community.
2. The marker on the hillside indicates the direction of the east wall from the cone on the parking area. The marker was situated 50 ft along the proposed wall which would be 210 ft in length.
3. Building heights in relation to the median ridge line, peak, and in comparison to other buildings.
4. What would the post-excavated area translate into the property? Retaining walls would be used to separate the excavated area from the non-excavated area.
5. Snow storage - is still under study
6. Explanation of the arch. Roadway underneath that connects the alley to the north of the building with the drives in between the two new buildings. It would be residential space above.
7. The Hannaford building facade would raise the building to a minimum full two-story height around its entire circumference.
8. The outdoor eating area at Bella's would move to the front of the building. The future of the bump out is undetermined.
9. There was discussion pertaining to truck traffic density, its stacking and flow. It was noted that Friday morning represents the weekly peak for this traffic.
10. There is zero parking allowed for residential tenants of the property. The "tenant parking" is strictly for the business' employees.
11. The path to Main Street would be extended westerly and utilize a switchback format to meet standards for wheelchairs.
12. Utilities would be moved by the utility companies and may be buried. The utility companies would be involved in the decision to bury.
13. Some of the parking area along Mill Road would be replaced with a 40ft wide section of greenspace that would be an extension of the greenspace along the Bagel Works.
14. The buffer between the parking area and College Brook was discussed. The bike lane may be converted to a curb and walking path separated from the vehicular traffic. [Note: this is what was in the original 1970s site plan, as noted further above.]
15. **Trash and shopping carts in the creek were noted.** [Emphasis added.]
16. Specific vistas from the center of Chesley Drive and from the vicinity of 15 and 17 Faculty Drive were noted.

The meeting was closed at 2:47pm. The November 14, 2016, site-walk minutes are posted here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/site_walk_minutes.pdf

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November 28, 2016—Letter from former Town Councilor Robin Mower on “Deceptive” Plaza drawings

Robin Mower, Faculty Road (a Plaza abutter who participated in the November 14, 2016, site walk) wrote to the Planning Board, regarding “deceptive” site plan illustrations (bolded text is in the original letter):

It is the job of designers to deliver an aesthetically pleasing product. The reality of a built project, however, may be quite different. It is important that everyone be clear on that point as we proceed.

Specifically, those illustrations present an unrealistic, prettified proposal.

Today, the vegetated/tree buffer along the southern edge of the Plaza parking lot along the College

Brook is aesthetically pathetic and ineffective as a noise buffer—even when in full foliage over the summer and early fall months. Apart from the sparseness of the tree buffer, most of the few remaining trees are unhealthy (made so by the snow removal practices of Colonial Durham Associates and the runoff from the parking lot). Indeed, as my neighbors and I have pointed out in comments to the Board, we see into the Plaza even through the woods along the Brook.

The drawings for Scenario A show a thick buffer of mature trees, softening the border between the huge, hard-surfaced commercial property and the family residences at Brookside Commons, on Faculty Road, and on Chesley Drive.

However, we still do not have the buffer that was required back in 1975, more than 40 years ago. I remind the Board of the March 4, 1975 letter to the Selectmen from D.C. Routley, Tree Warden, that I quoted a few months ago:

“...the whole landscaping of this site is woefully and shockingly inadequate. It grieves me that I was not consulted earlier in the planning stage and that I, and the town, should be forced to accept such a miserable landscaping job. Considering the amount of money spent on the building, that devoted to landscaping is laughable. It is essentially nothing.”

*Today, our Site Plan Regulations address landscaping requirements in greater detail. For that we have much to be grateful. However, even if a few existing mature trees along the brook can be saved, and even if many new trees are planted and well maintained as terms of an approved redevelopment, **the thick buffer depicted will not develop in our lifetimes.***

*It is important for both the Planning Board and the public that the applicant present **site plan designs stripped of landscaping.** To use an analogy, wine often tastes better with food, but professional tasters taste wine on its own so they can focus on the elements of the wine without external influence.*

While it is still “early days” (despite more than two years elapsing since the first Design Review submission), at the appropriate time, a separate plan should be presented for the buffer itself, indeed for the “increased natural buffer” required in the Settlement Agreement. But even now, during Design Review, a minimum space allotted for that buffer should be identified, so that other planned “uses” do not encroach upon it.

In the meantime, let’s be clear: There will be no effective visual or aural buffer between the Plaza and the neighborhood residences for many years to come. So your job is to make sure that the uses you allow at our borders today are appropriate for the location.

The November 28, 2016, Robin Mower letter is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/20161128_mower_re_mill_plaza.pdf

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December 5, 2016— Planning Board: Updated Site Plan #5 Submitted for Design Review

Cover Memo from Emily Innes on December 5, 2016, plan

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/updated_memo_12-5-16.pdf

Nine-page updated illustrations for Plaza redevelopment site plan #5

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/updated_plans_12-5-16.pdf

The cover memo from Emily Innes outlines the “refinements and additional information...provided, taking into account the questions and suggestions that we have received.” These include an aerial context, and update on parking and landscape (more compact parking area facilitating additional landscaping), sustainable surface area of pervious material as part of stormwater management but also flexible use for additional parking, wetlands & waterway setback (with no new paving closer to the brook), special paving and layout that create a streetscape character and “traditional composition of village centers,” green roofs, and pedestrian connection to Main Street. Then, the cover memo describes what is in the new diagrams:

Building Elevations

- Massing – *The buildings have been broken into a variety of building forms drawn from traditional New England building types and scales. They use of gables and dormers in sloped roofs provides space for some housing units, but is also a practical response to a snowy environment. Excavation will allow the ground levels of the new structures to be well below the ground level of the buildings along Main Street in general, and the Orion project in particular. The combination of excavation and roof massing is intended to reduce the apparent scale from residential land to the south and east of the site.*
- Façade composition – *The facades emphasize a ground floor with commercial and retail uses along the new sidewalks, internal “streets”, and parking edges. The facades use changes in planes, colors, and materials to provide a diverse character and human scale.*
- Materials – *The new structure near the middle of the site (Building D) is envisioned as a brick-faced building. The other buildings would have primarily a clapboard expression. The materials will be compatible with and reminiscent of other treatments in the center.*

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Resident Letters to the Planning on Pending Plan #5, as Updated December 2016

On December 5, 2016, **Richard Gsottschneider, Durham Point Road** wrote an email to Michael Behrendt.

Hi Michael; I like this version better than the other I have seen, but aside from the fact that there are enough apartments in town, the traffic implications of this plan are my major concern. Contrary to what many people think, as a landlord I can tell you that students generate lots and lots of automobile and scooter traffic, and all this activity will be using the same limited access point which will now conflict with the business related traffic into the Mill Plaza. I know it is controversial, but Chesley Drive should be seriously revisited.

Michael Behrendt responded: “I have gathered that there is not much traction to look at opening Chesley Drive but it might be worth considering creating a limited number of parking spaces for scooters.”

Mr. Gsottschneider’s email and Mr. Behrendt’s response can be seen here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/comments_from_dick_gsottschneider_1.txt

Two days later, **Richard Gsottschneider** wrote again (implicitly addressing the Conditional Use criteria of avoiding additional “traffic” from any proposed housing in the Plaza as well as the “added trash” problem from delivery boxes):¹⁴

¹⁴ See, for example, these articles on the trash impact of online ordering: Hae Young Yoo, “How to Deal with the Cardboard Tsunami,” *Boston Globe*, December 14, 2016 www.bostonglobe.com/business/2016/12/13/how-deal-with-cardboard-tsunami/P30HFevljGoltv88yrWPGO/story.html, and Beth Teitell, “One Side Effect of Online Ordering: Boxy Buildup,” *Boston Globe*, March 1, 2018, pp. A1, A3 (with different headline online: www.bostonglobe.com/metro/2018/02/28/like-sisyphus-tough-keep-with-incoming-amazon-boxes/2CNQbcIIxJlcBe4xUUUnyJN/story.html).

*I would further add that **even if there is no on-site parking for students, there will be lots of student generated vehicular traffic.** For example, move-in and move-out, parent and friend visits, pick up and drop offs for a wide variety of activities ranging from going out to eat in Portsmouth, going to parties, shopping, as well as the almost daily visits from Fed. Exp. And UPS. It is amazing how much stuff students order online. I have only 25 beds at one location and notice a delivery truck on site almost every day. Not sure how all this is factored into a traffic model, but it is real and will potentially have an adverse impact on residents accessing the Plaza for shopping. [Emphasis added.]*

See Mr. Gsottschneider's second email here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/comments_from_dick_gsottschneider.txt

On December 11, 2016 a letter was submitted to the Planning Board by **14 residents of Brookside Commons: Rosemary Thomson, owner, Unit 1; Donald Padgett, owner, Unit 3; Pamela Bapp, tenant, Unit 4; Diane Zirkle, owner, Unit 5; Merrill family, owner, Unit 6; Steve and Melodye Merrill, owner, Unit 7; Carol Knox, owner, Unit 8; John Hart, owner, Unit 9; Barbara Siegert, owner, Unit 10; Robert Cote, tenant, Unit 10; Martha and Wesley Smith, owner, Unit 11; and Jean and Mark McPeak, owner, Unit 12.**

Brookside Commons, our over-55 community of 12 homes, immediately abuts the Mill Plaza shopping complex, along our entire northerly edge. Our homes and lives will be the most directly affected by any redevelopment of the Plaza. We engage with the Planning Board again in the hope our concerns will be heard and addressed, and that our community will be taken into account as the planning process continues.

As noted in an earlier letter (February 2016), in many ways our proximity to Mill Plaza is a great convenience and positive force for us, providing a variety of shopping and service functions in a livable walkable community. Many of us were excited by the potential for the redevelopment of Mill Plaza as illustrated by the concepts and drawings of the 2008 Mill Plaza Study Committee and AIA-NH. Central to the conclusions of that extensive year-long professional planning charrette were such ideas as creating a Village Center, increasing green space and people space downtown, providing more services, helping restore and protect College Brook and its buffers, possible workforce/senior/family/low-income (and not more student) housing, improving the architecture of the area, moving toward more sustainable practice, and other small-town, neighborhood and long-term amenities.

Given that the December 2016 iteration of the redevelopment proposal – the fifth(?) preliminary design – fails rather spectacularly to meet any of the above criteria and goals, we have lost hope that this project will ever serve our homes or the larger Durham community in any meaningful way. Over the past two years, we have seen rectangles of buildings scurry around the Plaza space, and we have seen green coloring appear here and there, and we have seen buildings move out of their illegal wetlands encroachments (what were the designers thinking???), but we have not seen any serious attention to our or the Townspeople's concerns. From our perspective as immediate abutters and as Durham citizens, after two years the plans remain inadequate for the Town's needs. The only clear and consistent goal has been and continues to be to maximize commercial and residential-student square footage and income; we have seen no compromise whatsoever in this, beyond moving the asphalt and buildings out of the legally unbuildable wetlands buffer. As abutters, our primary concerns were detailed in our February 2016 letter to the Planning Board. These are summarized below, and remain primary concerns:

- Increased noise pollution
- The placement of large residential units near our community
- Increased vehicular traffic
- Increased degradation of College Brook

- *Snow removal issues and environmental damage by large applications of salt and sand*
- *An abysmally poor track record on maintenance of the soils and vegetation of Mill Plaza*
- *Fire safety concerns*
- *Increased light pollution*
- *Out-sized scale (footprint, height, and extent) of the overall development*
- *Less tangible but of serious concern, reductions in our property values and quality of life.*

We ask the Planning Board at this point to do what is legally possible to simply put a halt to this proposal, which over two years has consumed a very large quantity of frankly wasted time for all concerned parties. It is woefully apparent that the development team has consistently resisted any meaningful alterations or compromises. Further, the redevelopment continues to be in violation of numerous articles of our Zoning regulations for downtown Durham, as well as in serious and direct violation of Conditional Use guidelines for development. It is our understanding that these violations will be presented in detail in other's submissions to the Planning Board at the December 14 public meeting. We respectfully request that you put an end to this apparently futile redevelopment fiasco. We thank you for the opportunity to voice our concerns.

The Brookside Commons letter (which was read at the Public Hearing) can be viewed here: https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/comments_from_brookside_commons.pdf

On December 14, 2016, USDA Urban Forestry expert **John Parry, 5 Denbow Rd.**,

Dear Planning Board:

I wanted to pass on brief comment regarding the Mill Plaza Design.

1. The small wooded area that is behind the current buildings provides environmental benefits and a visual buffer for the buildings. It appears much of this will be removed in the proposal. As we have seen in past development, existing vegetation is often over-looked in the pre-planning, and then the public is surprised by the loss of that buffer after construction. I think more of this small forest needs to be retained as a visual buffer. Having some conceptual drawings of what the buildings will look like (with and without the buffer) would be useful.

2. There needs to be more trees (at least 30% more) planted within the parking area. The proposed trees should be a species that reach a mature height of over 30 - 45 feet. The underground tree boxes should be designed to provide adequate soil volume and drainage, to support health tree growth. I can provide design examples for this.

3. A vegetated buffer area along College Brook needs to be increased in width to protect the setback area and additional tree/shrub planting and management needs to be planned there.

Thank you for your consideration.

John Parry's email (which was read at the Public Hearing) is posted here: https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/comment_from_john_parry.txt

On December 14, 2016, **Melanie Joy-Bruner, 9 Thompson Lane**, and **Julia Rodriguez, 12 Thompson Lane**, sent similar emails, referring, as many others have, to the neighborhood use and appreciation for the "small woody path" that runs from the Thompson Lane and Faculty Road intersection to the Chesley Marsh and the pedestrian and bike entrance to the southern rear of the Plaza:

I am a resident of the Faculty Neighborhood, and am very concerned about the plans to develop the Mill Plaza. Numerous children walk through the pedestrian zone every day, and I believe it will be detrimental to have a large student apartment right where they pass on their way to and from school and after school activities.

Needless to say, many adults use that path as well. The town has already seen a large increase in student apartments in the downtown area and it's hard to imagine why the Mill Plaza location is necessary, especially when it is a corner of pedestrian space so heavily used.

I also am concerned about the traffic increase in that part of town, and the small woodsy path that so many of us enjoy. What will that look like, with 300+ students living there?

Please reject the proposed plan and preserve this small remaining part of our pedestrian culture in Durham.

Melanie Joy-Bruner's email is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_melanie_joy-bruner.txt

The Rodriguez email is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_julia_rodriguez.txt

Robin Mower, Faculty Road, submitted a 4-page letter on December 14, 2016, with regard to the continued Public Hearing for Design Review:

Greetings,

Over the 26 months that this application has been under Design Review, you've heard numerous concerns from residents. The overall concern is that the applicant is attempting to cram too much onto the site and that the primary intended uses—intense multiunit housing combined with a sea of parking for the existing Hannaford and Rite Aid businesses—do not contribute incremental services valued by the community and have the potential to be detrimental to the community's well-being.

As you know, I share those concerns.

But tonight I want to talk about five other concerns, at least one of which I believe has not been discussed in public.

1. Premature illustrations

First, in this most recent plan, we are presented with some pretty illustrations that should be disregarded. Harriman has taken on a difficult challenge, as others have acknowledged, and tried to help us visualize how they see a reasonable solution. But I believe these are not relevant at this point in the process, may obscure other issues, and in fact may not represent what will be provided by the architect of record—DeStefano Architects, nor what would in the end be built. I refer to both structures and landscaping.

2. Missing information

My second concern is that we are missing information that, even at this conceptual design phase, should inform a decision whether to move on to the next step. Some of those items have been listed in emails forwarded to you by the Town Planner. Another missing item is a reference point for the heights of the proposed buildings and, perhaps more important, how they would fit in the context of buildings along Main Street and Church Hill, including the recently built Grange and Orion buildings that the Historic District Commission so beautifully guided into being. You may remember that one of the Orion buildings

was built taller than it should have been relative to an adjacent historic structure, at least in part because the Planning Board did not have to-scale information at the appropriate time.

So I am formally asking that the Board request that the applicant provide a to-scale drawing that clearly shows the surrounding buildings labeled with their heights.

3. Site Plan Regulations: Architectural Design Standards on height and mass

Third: To date little mention has been made about how the proposal would fit with the site Plan Regulations. Height and mass are just one example where we have focused on the zoning ordinance but not referenced the Architectural Design Standards.

We should always pay particular attention to the transition along a site's boundaries with its adjoining zoning districts. In this case, that means between the Plaza and Residence A and between the Plaza and Church Hill, a key element of our physical cultural and historical heritage.

The Plaza lies in the Central Business District, but this plan proposes to place a building on the site quite a bit nearer to Church Hill than exists today. The Architectural Design Standards comment on the general character of buildings on Church Hill, stating:

New development shall be designed to resemble a single-family house...rather than an apartment block.

What does this proposal before you do? It would place a massive apartment block-size building right next to Church Hill.

Additional arguments that address concerns about the proposed buildings may be found in Section J of the Architectural Design Standards—which, remember, cover all downtown districts. This section covers Scale and Massing. It states:

1) Human scale. Buildings shall above all possess a human scale, both in terms of their overall size and in their details and materials, in order to promote a sense of pedestrian friendliness.

4) Smaller masses. Especially large structures shall be broken into smaller masses, or even made to appear to be separate buildings, in order to provide human scale, variation, and depth. These smaller masses shall have a strong relationship to one another and each smaller mass shall have integrity of form (see the Portsmouth building under Appropriate, immediately below).

4. Excavation of Church Hill and removal of mature trees

a. Criteria Required for Consideration of a Conditional Use Permit Section 175-23 (C) 5: Preservation of natural, cultural, historic, and scenic resources

b. Impact on buffer to abutters

c. Impact on stormwater management, flooding to Chesley Drive and College Brook

The fourth point I want to make tonight is one that may have struck others who participated in the site walk, which shows how important it is to go on a site walk. We all saw the conceptual site plan, but it was only on the site walk and then looking at the site from Faculty Road that the proposal's intent to excavate Church Hill sunk in.

I believe that would this would violate the Conditional Use criterion to preserve natural, cultural, historic, and scenic resources. It would also present a challenge for managing the stormwater that is now largely

handled by the mature trees, native vegetation, and soils of Church Hill itself. I'll address those points in order.

The Conditional Use criterion states that:

The proposed use of the site, including all related development activities, shall preserve identified natural, cultural, historic, and scenic resources on the site and shall not degrade such identified resources on abutting properties. This shall include, but not be limited to, identified wetlands, floodplains, significant wildlife habitat, stonewalls, mature tree lines, cemeteries, graveyards, designated historic buildings or sites, scenic views, and viewsheds.

I would propose that among the natural and scenic resources we would wish to preserve is Church Hill itself, as well as its mature trees, which form a visual buffer to Main Street.

Durham's character is very much defined by our topography. Hills, waterbodies such as brooks and streams, and wetlands both limit and add small New England-town character to the town. Durham does not look like "anywhere U.S.A." and certainly not like either a large city or a midwestern town where there may be large expanses of very flat terrain.

Dr. Wallace Bothner, Professor Emeritus of Structural Geology and Tectonics at UNH, confirmed that, while he sees nothing unique about the geological features of Church Hill, it was indeed formed through glacial activity and, in his words, "will continue to contribute to our understanding of the long geologic (over 430 million years) of the Durham and seacoast region of New Hampshire."

Excavating Church Hill would compromise our small New England-town character by significantly altering our topography.

Furthermore, removing the mature trees along Church Hill would alter the visual buffers between the historic district and the commercial Plaza and between the Faculty Road and Chesley Drive homes and Main Street. It would also reduce the environmental services that mature trees provide, including the uptake and filtering of stormwater and passive cooling—which will become more valuable as temperatures rise. This is a point made also by urban forester and Durham resident John Parry.

In fact, it is possible that the impact of excavating Church Hill should be considered from the standpoint of hydrology. Our stormwater management regulations focus on on-site measures. However, offsite impacts should also be considered. Chesley Drive resident Josh Meyrowitz is an abutter to the Plaza at the southeast corner. In January [2016], he wrote to the Town Planner:

...ever since Dave Garvey took out the rear hillside of the plaza [in 2002]...and replaced it with asphalt and also packed down more of the permeable soil (though then surfaced it with loam and grew some grass, thus making it look pretty but still adding to the flooding), College Brook flooding during heavy rains or snow melts has increased dramatically. I've lost trees along the brook, topsoil has washed away, and a corner of the (expensive!) new landscaping in my backyard has disappeared.

Removing mature trees from one site affects abutting sites. According to the U.S. Geological Survey website, single large oak tree can transpire 40,000 gallons per year.

5. College Brook and the Settlement Agreement: "Increased natural buffer"

Finally, I'd like to comment on one of the points made by the Town Planner in his review of the current proposal:

21) Path along brook. ...The Settlement Agreement calls for an increased natural buffer along

College Brook, but I believe this refers to the driveway and parking lot, not the footpath.

I'm afraid that I have to take issue with this observation. Until such time as the applicant clearly lays out its intention, we should not make any assumption about what is proposed for the "increased natural buffer" nor make any attempt to interpret the Settlement Agreement. As Administrator Todd Selig advised, that will be part of a future negotiation between the Planning Board and the applicant. I would add, "presumably with the advice of the Conservation Commission."

Robin Mower's December 14, 2016, letter is posted here (and was read at the Public Hearing):
https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/20161214_mower_re_mill_plaza.pdf

Mark and Jean McPeak, Brookside Commons, wrote, in part:

Our residential community has forwarded a submission to the Planning Board.... Residents at Brookside feel that the time has come to halt this process, take time to reconsider, and ask the project team to rethink their overall approach.

Our additional individual comments tonight are meant to emphasize one aspect of the submission that Brookside Commons made to this public hearing. In particular, we make reference to the Conditional Use criteria of the Durham Zoning Ordinance. The specific sections that we will address are 175.23, paragraphs CZ (External Impacts) and C4 (Character of the Buildings and Structures).

We feel that the proposed redevelopment of the Mill Plaza, as currently presented, is not consistent with these conditional-use criteria.

Paragraph C2. External impacts.

The external impacts of the primary proposed new use of the Plaza, i.e., a dense multiunit residence, on our abutting property and on the wider Faculty Road neighborhood will be significantly greater than the existing uses of the Mill Plaza. Placing over 300 units of what we all know will be student rental housing directly next to our over-55 community will certainly increase traffic, noise levels, and light and glare levels for us. It will undoubtedly extend the hours during which operation of the Mill Plaza negatively impacts our lives.

We respectfully point out that, therefore, the proposed redevelopment of the Mill Plaza, as proposed, does not meet section 175.23, paragraph CZ (External impacts) of the conditional use criteria.

Paragraph C4. Character of the buildings and structures.

The location of Building D in the site plan dated December 2016 is of concern to us. At the November 14th site walk, several members of the Planning Board stood with us in the footprint of this proposed building and noted that we could look directly into the windows of adjoining Brookside Commons. It's very close.

The scale, height, and massing of the proposed buildings, in particular of Building D, are fundamentally incompatible with the established nature of our neighborhood in the sense that a massive 3½-story tower will directly abut our two-story dwelling. That Building D's residential apartments are located on the Main Street side does not substantially mitigate their likely impact. Therefore, we suggest that the proposed redevelopment of the Mill Plaza, as proposed, is not consistent with this second conditional use criterion, either.

While the community will derive some benefits from the expansion of the retail and other business activities foreseen, overall the planned redevelopment would degrade the quality of life of the abutting neighborhood in general, and of those of us who live at Brookside Commons and homeowners directly south on Faculty Road in particular.

None of the proposals that we have seen so far appear to comply with several conditional use criteria – those highlighted here, and others. In that light, given that the application is in Design Review, we respectfully request that the Planning Board ask the project team to fundamentally reconsider their proposal.

Thank you very much for the time and thoughtful consideration that members of the Planning Board are investing in this process....

The full McPeak letter is posted here (and was read at the Public Hearing, as noted below):

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/letter_from_marc_jean_mcpeak.pdf

Peter Wolfe, 6 Riverview Road, wrote in December 2016, starting by noting: “I would like to see Mill Plaza redeveloped. However, to date a set of plans has not been submitted that will meet the concerns of the residents of Durham. Having said that, I must say that each set of plans appears to get closer and closer to something that will ultimately be approved.”

What attorney Wolfe sees as “the obstacle” is “the size of the project required to meet the applicant’s desired number of beds and related massing of the buildings. Should the applicant propose a plan that is scaled down, with fewer beds and lower massing of the buildings, I am convinced that the town will overwhelmingly get behind the project.”

Mr. Wolfe describes how the restrictions in the December 2015 legal Agreement may seem to stop the Planning Board from going through “its standard process of determining the appropriate scope and size of the project” and that the Board may think that is “stuck.”

My suggestion as a former planning board member is to do your due diligence and make a determination of the appropriate size for this project relative to number of beds and building height. If your due diligence determines that the site is inappropriate for 330 beds, and you have a factual basis for that determination – whether it be traffic-related, massing of buildings, or other factors relating to the public health, safety, or general welfare, then it is your duty to deny the proposal for 330 beds.

In fact, the NH State Legislature has granted the Board with what lawyers refer to as “police powers” relating to determining what is appropriate development. So, if you determine – based on articulable standards or facts – that 330 beds is not appropriate or the building massing is not appropriate, then it is your obligation to deny the application. Such a course of action would likely send this case back to court.

There are many ways the legal process may handle such a denial but in the long run, the Town will prevail. The reason I say that the Town will prevail is that the court will look at the factual basis for the Town’s denial. The courts have upheld numerous New Hampshire towns’ findings as long as the factual basis for denials have been valid.

I believe I am correct on these statements and I would ask the attorney for the applicant whether he has seen any case where a planning board’s factual base for denial was overturned.

Mr. Wolfe’s full letter can be read here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/comments_from_peter_wolfe.pdf. See more below, from the Meeting minutes on the Planning Board response to similar Public Hearing comments by Mr. Wolfe.

NOTE: There were NO advance letters sent in support of the pending proposal (Site Plan #5), subject of the December 14, 2016, Public Hearing, as described further below.

December 14, 2016—Planning Board: Public Hearing - Mill Plaza Redevelopment

Design Review (preliminary application). Updated design for site plan and conditional use for the redevelopment of this 10-acre site. The project involves demolition of the rear commercial building; construction of 2 new mixed-use buildings, 1 with commercial on ground level and 3 floors of residential and 1 with commercial on ground level and 4 floors of residential; construction of 1 retail outbuilding; 370 parking spaces, including 42 garage spaces; a total of 80,000 square feet of commercial; residential space for 330 occupants; new public spaces; and other site changes. Colonial Durham Associates, LP, property owner; Sean McCauley, agent; Joe Persechino, Tighe & Bond, engineer; Steve Cecil and Emily Innes, Harriman, site planner; Lisa DeStefano, DeStefano Architects, architect. Ari Pollack, attorney. Central Business District. Map 5, Lot 1-1

From the Public Hearing minutes of the December 14, 2016, Planning Board meeting:

Ms. Innes reviewed changes to the design since the last time the project was before the Planning Board. She described how the development would look, moving through it at the pedestrian level, noting a widened sidewalk, defined crosswalks, awnings, outdoor seating, lighting, use of different materials to break up building mass, etc. all as part of providing a human scale. She discussed some building elevations that had been created.

She also spoke about the proposed greening up of the existing parking area. She spoke in some detail about proposed vehicular flow, and also described how a pervious parking area would be used to provide additional parking if needed, and would also be part of plans for stormwater management and snow storage. She said they were still looking at the design for the path along the brook, and provided details on this. She noted the proposed expanded green border that lead up to Bicentennial Park.

Ms. Innes explained how building density would increase on the site, getting closer to Main St., and would diminish, getting closer to the neighborhood. She described in some detail how they'd tried to recreate a village pattern of density and stores, in an easily walkable area. She said the design team was cognizant of resident and town-wide concerns, and said they'd tried to be as responsive as possible.

Councilor Lawson said there appeared to be 3½ floors of residential above the commercial floor in Building B. Ms. Innes said that depended on which roof line one was looking at, but said she would doublecheck this with the designers. She said they'd been going back and forth on that building because of height concerns. There was discussion that the elevations were simply illustrative at this point.

Ms. Dill asked where the enhanced buffer along the brook was in the plan, and Ms. Innes described this. Attorney Pollack said there was a choice to be made about where to put the pathway on the lower side of the parking lot, either within the buffer, or further away into the parking area, and said the team would like to hear opinions on this.

Councilor Lawson said according to the Zoning Ordinance, the amount of residential space allowed was a function of commercial space and nonresidential space like a parking area, and said given this, he'd like to know how much of the 174,000 sf programmed for residential was allowed under the Zoning Ordinance, and how much of it required a variance. There was detailed discussion about this with Attorney Pollack, including whether the analysis was to be done on a per building or per project basis.

Councilor Lawson asked if for every building with greater than 2 floors of residential, the applicant would be going to the ZBA. Attorney Pollack said the calculations on this needed to be done, and said perhaps they did need to go to the ZBA. He noted that they hadn't run into this issue with the original concept plan. There was further detailed discussion on this issue.

John Hart, 13 Mill Road, read from a letter from his Condo association that spoke in detail against the current design. **Mark McPeak, 13 Mill Road** read a letter that spoke in detail against the current design. [See full text of December 14, 2016, group condo letter further above.]

Mark McPeak, 13 Mill Road, read a letter that spoke in detail against the current design. [See full text of December 14, 2016, McPeak letter further above.]

Councilor Diana Carroll, read a letter from **John Parry**, and also noted that there were other residents with concerns about the design who couldn't be here this evening. She also said she believed that the natural area along College Brook needed to be increased significantly. [See text of John Parry's December 14, 2016, email further above.]

Matt Komonchak, 1 Thompson Lane, asked the Planning Board to put themselves in the shoes of residents of the Faculty Neighborhood and others living near the Plaza. He said this was the 5th proposal from the applicant, but there were no substantial changes. He said residents had all pointed out that this project was destined to fail without Hannaford's cooperation, and had encouraged Colonial Durham to bring the company into the process. But he said incredibly, Hannaford hadn't been heard from. He spoke further on the need to engage Hannaford.

Mr. Komonchak provided some neighbors with his full remarks at the December 14, 2016, Public Hearing:

I am Matt Komonchak, Thompson Lane, “within a stone’s throw of the plaza”

Thank you for continuing to listen to the community on this important issue. I ask you, as you consider this redevelopment project, to please place yourselves in the shoes of a family that lives in the Faculty Neighborhood, the Brookside Apartments, or Smith Park Lane [on Church Hill].

I believe this is something like the fifth redevelopment proposal made. I was happy to see, in this latest iteration, that all Durham residents will drive sports cars in the future, yet I also noticed no substantial modifications to the redevelopment plan itself. Sadly, this proposal still doesn't appear to value or incorporate the community's extensive input and we continue to see a project of massive scale and character that is totally incompatible with maintaining a decent quality of life in nearby family neighborhoods.

Residents of the Town of Durham have long pointed out that this project would be destined to fail without Hannaford's cooperation, given the limited area and building space within the plaza. At several times, residents and Planning Board members alike encouraged Colonial Durham to bring its INVISIBLE FRIEND to the meetings or into this process. Yet, INCREDIBLY, each and every time we meet, the plaza's ANCHOR TENANT – is neither seen nor heard. We don't even know when Hannaford's current lease is up – information we should have known in the first or second planning board meeting, in 2014.

Engaging Hannaford would have facilitated a proposal consistent with the findings of Durham's Mill Plaza Study Group, a group that met on a volunteer basis for MORE THAN A YEAR in order to help the town realize the plaza's great potential. Engaging Hannaford would have also facilitated compliance with the SETTLEMENT TERMS reached by the developer and the town. Bringing Hannaford to the table would also have made it easier to put forth a plan that complied with TOWN ZONING and CONDITIONAL USE REQUIREMENTS. Instead, we get yet another proposal that fails on all four of those fronts. It makes a mockery of Durham's town government and citizen concerns.

The Mill Plaza Study Group prioritized a village feel, green space, and commercial connectivity with Main Street, yet the current Colonial Durham plan simply drops residential towers and more commercial space down onto the parking lot, with no regard for the community.

The legal Settlement that is supposed to guide this proposal calls for the developer to place residential structures on the NORTH side of the plaza, yet this plan and previous plans place most of the residential buildings on the SOUTHERN HALF, much closer to residential neighborhoods.

The proposal violates Durham's Zoning with its exaggerated building heights and reduced allocation of commercial space in buildings of 3 floors or more.

As mentioned, the plan also violates the town's Conditional Use requirements. The change of the plaza's use from purely commercial to a commercial/residential mix, AS WELL AS the intensification of activity within the plaza are sure to generate a series of troubling negative impacts on nearby residential neighborhoods, including:

- o Noise pollution – shouts, sirens and other late-night disturbances
- o Increased traffic
- o More litter, trash and associated odors
- o Further degradation of the brook
- o Increased glare of exterior lighting
- o Visual blight due to significant height and scale of the buildings
- o Diminished quality of life and property values in adjacent neighborhoods

The Planning Board has been extremely patient with the developer, but with all due respect, I don't see how this process can be allowed to go beyond tonight and continue to waste valuable town resources and community time. The applicant has had ample opportunity to come forth with a serious, workable plan, but has been unable to do so. I urge you to reject its application. Thank you.

Continuing from the minutes from the December 14, 2016, Public Hearing at the Planning Board:

Robin Mower, Faculty Road, said it might be helpful for the application to include the same kinds of cross section drawings provided with the Young Drive proposal, given the changes in topography. She said discussion about how Colonial Durham had arrived at the current site plan and the number of beds brought to mind the Technical Review Group meeting in December, where the Code Officer had said it felt like the design process was being run by the engineering, when it was the engineering that needed to support the design. Ms. Mower read from a detailed letter she'd submitted. [See text of Robin Mower's December 14, 2016, letter further above.]

Beth Olshansky, Packers Falls Road, spoke in detail about the number of stories allowed in new mixed use buildings according to the Zoning Ordinance. She said nowhere did it allow more than 2 stories of residential. She said the plan was to tear down one whole building, but said this would only result in 23,000 of additional sq ft of commercial space, but there would then be 3-4 floors of housing on each of the three large buildings. She said this was completely out of proportion with what the Town envisioned in having mixed use. She asked the applicant to consider the particular location of the Mill Plaza property, as part of a transition zone from residential to commercial, and said the conditional use criteria therefore had to be looked at seriously. She said Mill Plaza was within 1000 ft of the Faculty and Chesley neighborhoods, and said that needed to be considered as part of a conditional use application.

Ms. Olshansky said she still believed that putting a new building next to Mill Road would be a mistake, and said it would block the green buffer for very little commercial space in return. She said it would better to have a dense hedge there to block the parking lot. She noted that the architectural regulations discussed the ideal variation in height between buildings, but said there was more variation than this in the design, which created a sense of being out of scale. She also questioned how the issue of the half floor should be interpreted.

Ms. Olshansky submitted a "revised" letter regarding her concerns about the December 2016 Plan #5, and it is

quoted from below and posted here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/letter_from_beth_olshansky_2.pdf

Erin Hale, 74 Mill Road, noted that during the first design review hearing, she submitted a letter with over 200 signatures from neighbors. She said while she appreciated the time the designers had spent to incorporate details about bringing pedestrians into the current design, the original concerns remained regarding having all of these students here. She also said the design didn't seem to be a village center, and she spoke in some detail on this. **Ms. Hale read a note from Iago Hale (see below)**, which said he was frustrated by the plans, and said they didn't address the fundamental concerns put forward by the community. Mr. Hale's note said it seemed that the only intention of the current design review process was to wear everyone down, and said it was difficult to continue fighting this fight given peoples' busy lives.

From 03:09+ at <https://dcat22.viebit.com/player.php?hash=feec572473365d1299ad888e19997449#>:

I am incredibly frustrated by the developer's continuing to put forth plans that are incrementally different from one another without addressing the fundamental concerns so clearly put forward by the community. I don't understand why someone is allowed to continue to act in this way, wasting the time of the PB and residents, when it seems their only intention is to wear people down to the point of finally saying "FINE." Dropping numbers [of residents] at these hearings is no indication, I believe, of a lack of strong feeling in the community. If others are anything like me and Erin, it is simply difficult to continue fighting this fight given the schedule of our lives. – Iago Hale, 74 Mill Road

Deborah Hirsch Mayer, Garden Lane, noted that she'd served on the Mill Plaza Study Committee several years ago, which delivered a plan that was exciting and inspiring. She asked the Planning Board to reject this current design. She said this was a very frustrating situation, and said she'd rather live with the Plaza as it was now, with the hope that Colonial Durham would come up with something better in the future.

Peter Wolfe, Riverview Road, said the design was still nowhere where it needed to be. He said clearly, if the number of beds was reduced to 200 and the massing of the buildings was reduced to 3 stories, the design would fly through this Planning Board. He said the Board was stuck with the settlement agreement between Mill Plaza and the Town that allowed 330 beds, and said the only way to get around it was if the Mill Plaza owners decided to reduce the number of beds to a number that might be appropriate. He said the other way was for the Planning Board to reject an application when it came before them.

He suggested that the Board should do due diligence, and determine the appropriate mass for the buildings and the appropriate number of beds. He said the Zoning Ordinance provided good guidelines on this, as did the Architectural regulations. He also noted that the Legislature had given the Board police powers to regulate general welfare, health and safety with site plan review. He spoke about how a fiscal analysis and a traffic analysis could consider whether 330 beds made sense, and whether this would violate health, safety and general welfare provisions so that the project would have to be denied. He said if there was a factual basis for saying there were good grounds for approving less than 330 beds and if this could be articulated, no court would rule against the Planning Board in the long run. [See link above to related letter by Wolfe.]

Mr. Wolfe said regarding the project itself that he'd heard from the site walk that it wasn't clear where the loading zone for Building C would be. Ms. Innes said it would be along the front, and Mr. Wolfe spoke further on this. He also noted that the TRG had discussed the idea of a second access to the site for emergency access. He suggested that if there was going to be an easement in regard to a second access, this should be spelled out legally.

Councilor Lawson said the settlement agreement said the revised application would propose **not more than** 330 beds, and a density of not less than 300 sf per bed. He said he objected to Mr. Wolfe's characterization of the Planning Board as having determined that 330 beds was appropriate. He spoke further on this. [Emphasis

added.]

Attorney Pollack said he wasn't interested in a legal debate about the police powers issue. He said the team was there to present what they believed was a better product and to be as responsive as they could be. Chair Corrow noted that it was a resident who had made a comment on the police powers issue.

Peter Wolfe's related December 2016 letter is quoted from further above, with a link to the full letter.

Tim Horrigan, Faculty Road, said a single entrance was problematic for a 330 bed development, and he spoke in detail on this. He said the existing shopping center was thriving and valuable to the community, and said he thought some of that could be lost in building 330 beds. He said it wasn't a given that there was a large unmet market for student housing. He noted that UNH was working hard to keep the existing enrollment numbers up, and said there was no need to rush into this project. [Emphasis added.]

Councilor Diana Carroll, Caney Road, said residents had heard ideas from the design team having to do with awnings, greening up the site, walkways, etc., and said these things could be done now, without needing 330 students on the site. She spoke in some detail on her ideas for more green space for College Brook, and good design of the site for bikes and pedestrians. She said the community wanted to support a project on this 10-acre parcel that was underdeveloped, but said they wanted to see it done right. She said she hoped they would get to see some substantial changes, or the process would end. She said Conditional use gave the Planning Board much more control than there otherwise would be, and said the Zoning Ordinance spelled out what the Town wanted to see.

Joshua Meyrowitz, Chesley Drive, thanked the Planning Board for their patience, but said at this point, the design review process had taken on some abusive properties. He said everyone here tonight would like to see Mill Plaza redeveloped, and he commended the [Harriman] design team for their sensitivity to a lot of issues. But he said these were marginal issues to the central concern about a large project. He said he loved students and had taught them for 45 years, but said he didn't see how 330 more students could be put in a residence that was within walking distance to the Chesley Marsh, and to their neighborhood and not have a greater negative impact than the existing structures from noise, light, trash, etc. He said if there was senior housing put in there, a lot of these concerns would disappear.

*He said the current plan prevented having a centrally located market that served the community. He also said including green terraces in the current plan was just symbolic, but said if there were seniors living there, the terraces could be of value to the community and profitable to the owners. He spoke about the benefits of providing seniors with an opportunity to walk to stores and events at the University. He encouraged Hannaford to bring back a full store and further enhancements, and also encouraged the developers to keep the residential housing at the northern end of the site in keeping with the settlement agreement. **He said he hoped the Planning Board and the Mill Plaza owners had read all the letters and petitions residents had sent.*** [Emphasis added.]

Councilor Lawson MOVED to extend the meeting past the 10:30 adjournment time and address the remaining items on the Agenda. Paul Rasmussen SECONDED the motion and it PASSED unanimously 7-0

Chair Corrow said this [Mill Plaza redevelopment] process started about 26 months ago, and also noted that it had been a year since the settlement agreement. He said he didn't agree that this process had been a waste of time, because the Planning Board's charge was to come up with the best possible plan. But he said he understood residents' frustrations. He recommended that Planning Board members provide their comments on the current design this evening. He asked how the applicant would like to proceed.

Attorney Pollack said they would like to hear feedback from the Board, so they would have as much

information as possible. He also said the design review process could either be closed or tabled until January.

Mr. McGowan said the applicant had gotten input, and had revised the drawing to address issues, but he said there were still outstanding issues from residents. He said at this point, the applicant could continue with the design review process, or could ask that the hearing be closed and could come back with an application.

Mr. Rasmussen said he didn't agree with a comment about the green roof space being a waste of time unless it was part of senior housing, and said noise could still be a problem if there was senior housing. He said the green roof area could address water issues and could be decorative. He also said he believed that separating the walkway from the driveway would create snow removal issues, so believed they should be together.

He said at the site walk, he walked to the end of Chesley Drive and looked at the view scape of Mill Plaza from there, *including the skyline*. He said there was very little vegetative buffer between that neighborhood and the Plaza, so the people living there really did feel like the Plaza was in their backyard. He also said looking at the Plaza from the Faculty Neighborhood, what was proposed would match the Orion ridge lines, but would also be 40% closer to the neighborhood so would be impactful. He spoke further on this. [Emphasis added.]

Councilor Lawson said he was convinced that Mill Plaza could be redeveloped in a way that could be approved by the Planning Board and that could be supported by the neighborhood. He considered whether from a Zoning perspective, Chesley Drive, Brookside Commons and the Faculty development were abutters or the neighborhood. He said he thought they clearly met the criterion of a "neighborhood," which meant that there were significantly more criteria that an application would have to meet, concerning how a development would impact the neighborhood. He said this was going to be very challenging with the current design, and he spoke further on this. He said even if variances were granted, the Planning Board would still have to look at the Conditional use criteria. [Emphasis added.]

Chair Corrow thanked the applicants, and said each iteration had gotten better in response to comments from residents, He said the layout was generally good, using the criteria they had been working with, but said there was still this massing of buildings, and density.

Councilor Bennett said at the last design review session, a question came up about who would rent the property, and the Mill Plaza group said it would be adults, meaning people over 21. He asked if that was true, and Attorney Pollack said that would be the target audience. Councilor Bennett asked what the layout of the units would be. Attorney Pollack said there would be apartment style units, and said there would be a variety of living arrangements to offer the market. He said they did have a preference to avoid the younger student population, but also hadn't restricted things to the elderly housing extreme. He said the intent was to keep this open to whoever wanted to live there. Ms. Innes noted that the layouts hadn't been finalized yet. [Emphasis added.]

Ms. Dill said she wished this could work out for the Town, and said if Colonial Durham was willing to keep going, she would like the design review to be kept open. But she also said she felt they all were seeing the same thing over and over again.

Mr. Brown said he would like to see redevelopment of the Plaza in some form. He said in a college town the reality was that there were students. He said he was still concerned about the traffic and parking issues.

Attorney Pollack said the Mill Plaza owners didn't want to cut the design process off and deprive the Town of a redevelopment opportunity. He suggested that the Planning Board table the design review until the second meeting of January, and also allow the owners the opportunity to cut off the process if they didn't want to return.

There was discussion about whether there would be a significantly different plan if the team came back. The

Board agreed to keep the public hearing open, and hear from the team again on January 25th.

Paul Rasmussen MOVED to continue the Public Hearing to January 25th, 2017. Bob Brown SECONDED the motion and it PASSED unanimously 7-0. [Emphasis original.]

The full minutes from the December 14, 2016, Public Hearing at the Planning Board can be read here:
https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/42601/121416.pdf

A video of the Public Hearing can be viewed here:
<https://dcat22.viebit.com/player.php?hash=feec572473365d1299ad888e19997449>

NOTE: There were NO public comments at the Dec. 2016 hearing *in favor* of the latest site plan (#5).

Counting both letters and comments (but not double counting those who wrote *and* spoke), 27 residents wrote and/or spoke against CDA's proposed site plan #5 at the December 2016 Public Hearing. (Additionally, the scores of people who had signed letters previously were cited.)

No one wrote or spoke *in support* of the current proposal.

+ + + + +

Residents continued to submit letters after the December 2016 Public Hearing

The day after the December 14, 2016, Public Hearing, **Phyllis Heilbronner, Mill Pond Road**, wrote:

I just want to add a few thoughts as a non-abutter to last night's presentation and community input. I hope I can make future meetings, and I hope this e-mail will be a helpful substitution for my lack of physical presence, but not concern.

The plaza is, as Diana Carroll said, a community asset and I hope it stays that way. What was presented was a plan in dire need of changes and very lacking in much-needed information. In addition, many of the suggestions for mitigating appearances were of a cosmetic nature and could apply to the existing plaza.

What was lacking was a sense of proportion, lack of appreciation for the inappropriateness of scale, the bulky look of the buildings, lack of addressing access adequately and delivery trucks, impact of putting too much in the space, with the intent of offering some mitigating landscaping (where?), and the absolute desire no matter where one lives in Durham of adding more student housing (referred to as beds).

I also disagree that mixed housing of putting students and older residents in the same building has any realistic appeal, knowing from experience what the generational differences can bring about.

I could add many more details, but I really wonder what benefits do these changes offer the town compared to the problems they cause for people living nearby and that extends to those of us who are not directly next to the plaza, but within walking distance, making it a car-free destination for many, even if it begs the question of what is considered a neighborhood.

Ms. Heilbronner's full email is posted here:
https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/observations_from_phyllis_heilbronner.txt

Beth Olshansky, Packers Falls Road, submitted a revised letter based on her comments Dec. 14 comments:

- *While the design team has worked hard to try to accommodate both the requirements of the property*

owner and concerns voiced by the public, after several iterations, I fear the design team was asked to accomplish the impossible. Given the size of the parcel, the goal of the developer to house 330 students (allowed but not required by The Settlement Agreement), the proximity to Chesley Drive and Faculty Road, our zoning regulations regarding height, number of stories, required amount of commercial space, and our Conditional Use Criteria, a project of this size simply does not fit on the site, nor, according to our Conditional Use Criteria, does it belong on the site. Keep in mind that despite The Settlement Agreement, the PB is obligated to follow our normal PB procedures and our Zoning Ordinance except for the current density requirements.

- Please consider **ZO 175-41. Central Business District (CB)**

F. Development Standards in the Central Business District

In addition to the dimensional standards, development in the Central Business District shall conform to the following additional requirements:

1. Maximum Height of Mixed-Use Buildings – The height of a new or redeveloped mixed-use building that provides both residential and nonresidential space shall be a maximum of three (3) stories notwithstanding other height limitations. The first floor shall be nonresidential. However, if the building contains nonresidential uses on the first floor and one additional story of nonresidential, the maximum permitted height shall be four (4) stories. If the proposal is for a four (4) story building, the first floor shall be nonresidential and the remaining three floors shall consist of two residential and one nonresidential.

Clearly the developers have no intention of meeting this zoning regulation, which is unfortunate because not only does it provide reasonable height restrictions based on our vision for our town, but also it addresses the desired balance between commercial and residential uses in our downtown. Because we share our Main Street with the University, Durham struggles with available commercial space. Thus this particular regulation represents our good faith effort to incentivize redevelopment of some underutilized space balanced with our need to eke out additional commercial space in a downtown. You will note that in 175-41F(1) above, our zoning clearly indicates that: 1) there is a desired ratio between commercial and residential space (1:2 for 3 stories or 1:1 for 4 stories) and 2) the desired height is three stories and under no circumstances will a building be taller than four stories or have more than two floors of residential. It is regrettable that the developer chooses to ignore these very reasonable regulations.

- Regarding the need for commercial space downtown, also keep in mind that while the developer is required to provide a minimum of 80,000 – 90,000 sq. feet of new commercial space per The Settlement Agreement, they are also removing one large commercial building from the site (approx. 57,000 sq. ft of commercial space, thus the promised 80,000 sq. ft. represents a total gain of approximately 23,000 sq. ft. of additional space. Not much. Weigh this very small gain of commercial space against the addition of 3 large buildings, each with 3-4 floors of residential space designed for students equaling approximately 174,000 sq. ft. The ratio of additional commercial space to benefit our community is pathetically small compared to the amount of student housing the developer will benefit from. The ratio of commercial to residential is off the charts in terms of what our ZO requires (approximately 1:7.5 rather than 1:2 or 1:1).

- **Please consider that this particular parcel is the only site in which the CBD directly abuts a residential zone.** North of the CB, you have the PO District. East of the CB, you have Church Hill. West of CB, you have campus. South (and southeast) of the CBD and The Plaza, you have the RA District. There is no transitional district. **Thus honoring the Conditional Use Criteria is particularly important because this intensive CB District redevelopment abuts places where families live. In fact, Chesley Drive and Faculty Road fall within our definition of neighborhood (being within 1,000 feet of the proposed development parcel).** Add to this the fact that this intensive redevelopment is going to house students in a very small, dense area and you have got a major problem—as testified by many,

many neighbors who experience negative impacts of students regularly even without adding 330 students to the Plaza parking lot. The CU Criteria must be taken seriously. [Emphasis added.]

- *Due to the intensity of the CBD redevelopment and its position next to RA, the buffers are going to be particularly important. The Settlement requires an increased buffer along the Brook. To my knowledge, we have not seen any significant increase.*
- *Likewise, the green buffer strip (grass and the only mature trees on the site) along Mill Road serves as a critical visual buffer between the very dense CBD streetscape along Main Street and the residential neighborhood streetscape along Mill Road. While The Plaza has had an abysmal record maintaining healthy trees on site; along Mill Road is the one place where we do have mature trees. This vegetation serves to soften the transition from RA to CB. Please do not take this away by placing a small building at the entrance of The Plaza. This building greatly reduces sight lines to the trees and the park as you approach The Plaza from the south and diminishes the green transition between our downtown and the residential zone. In return, it offers us very little commercial space in return. I believe it is a huge mistake to situate that small building at the entrance of The Plaza, especially because, if this project does get built, Durham residents are going to feel overwhelmed and intruded upon by the massive out of scale buildings cropping up out of a parking lot. Our sense of breadth (i.e. air space and sky) is going to be greatly diminished. To buffer the Mill Road viewscape from the sea of parking, I recommend a thick 5-foot evergreen hedge along that green strip. If it were positioned next to the sidewalk, it would also serve to create more of a park feel along the enhanced buffer strip rather than creating the look and feel of a wider grass buffer sandwiched between the road and the parking lot.*
- *Finally, our Architectural Regulations L(6) Variations in Height state that in order to create a harmonious look and feel of new development, adjacent buildings should vary no greater than 1-1.5 stories. Even with the false floor built on top of the Hannaford building, it looks like the current design goes from a two-story building to an adjacent 4.5-story building, once again indicating that the scale of this project is greater than what the site can hold. The desired 330 beds simply do not fit with the constraints of our Zoning.*
- *I understand that this Plan will likely end up at the ZBA, however I urge members of the Planning Board to perform their due diligence in insuring that the project is approved only if it meets all of the Conditional Use Criteria and Durham Zoning Regulations.*

Beth Olshansky's revision of her December 14, 2016, Public Hearing comments is posted here:
https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/letter_from_beth_olshansky_2.pdf

A week after the December 14, 2016, Public Hearing, **Diane and Frank McCann, Oyster River Road**, wrote to the Planning Board, Town Council, Zoning Board, and Town Administrator:

How long should we allow our paid employees to spend our tax dollars working on this project and our Planning Board members expend their valuable volunteer time.

We still have the same concerns presented with the original plan. The plan does not reliably indicate any dimensions of space along the brook, the size of walks, the elevation of buildings, the number of trees. The project doesn't increase safe pedestrian access despite some who say it does, provide good design for deliveries or respect abutters, the neighbors or the environment. And now comes some question regarding the ability to add more floors of residential occupancy than the regulations allow.

If we continue to allow more discussion without serious pressure on the developer to be sincere about meeting the requirements of our zoning and planning it would be foolish and diminish the voices of the community.

The developer seems not even to know the market it is seeking and thus seems unable to develop a realistic design. Sure let this play out, but be wary of the wily attempts to circumvent our correct and appropriate regulations.

Durham residents know when we see those who appear sincere but only are only interested in making the most profit and we aren't interested in these kind of projects .

The McCann's December 22, 2016, email is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_mccann.txt

On January 2017, **Nancy Sandberg, Langley Road**, wrote to the Planning Board addressing several pending issues, including Mill Plaza redevelopment:

I would like to go on record as being opposed to the Mill Plaza Development as most recently put forth. The current proposal is totally unacceptable because of its four stories and the density of buildings on that property. I can imagine an attractive grouping of townhouses could be sited along College Brook with plenty of new trees screening Faculty Rd. properties and with two stories of commercial buildings on the north side of the property.

The full Sandberg email can be read here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_nancy_sandberg.txt

NOTE: There were NO submitted letters (before, at, or after the December 14, 2016, Public Hearing) in favor of the October/December 2016 CDA Site Plan #5 for redeveloping the Mill Plaza.

2017

By the start of 2017, there had been close to two and a half years of Plaza redevelopment site-plan reviews. The Town Planner, Planning Board members, and members of the public had attempted to nudge the project closer to what the 18-month Mill Plaza Study Committee (MPSC) had proposed in an award-winning plan, after being encouraged by CDA to “develop its vision for the future.” The MPSC’s “Durham Village Center” would be a Plaza of enhanced commercial and aesthetic value that “provides residents a ‘sense of place,’” with “year-round community space – indoor and outdoor areas where people linger to meet and talk to their friends, shop, and enjoy all of the seasons.” Central features would include “an expanded grocery store, retail shops, offices,” with any housing (student, senior, workforce) “distant from current residential neighborhoods.” The Plaza would also feature “a brookside park for walking, biking, and other activities” with “curves and other features to appear more natural.” The MPSC vision built on Durham’s Master Plans and decades of prior Town planning.

Although the surface features of the first five CDA site plans varied, the consensus in Town was that all the plans proposed to that point entailed an overly dense redevelopment with too much student housing near the adjacent neighborhood (contrary to Conditional Use criteria for housing on the site) and without much enhanced benefit for full-time residents. In particular, the one part of the Plaza that screamed for demolition and redevelopment – the half-century old building with Hannaford – was to remain in place as a one-story structure amid much taller buildings. That would mean that the added housing would not be at the only logical spot for it in the Plaza (at the Northern location most distant from family residences, as stipulated in the 2015 Settlement); it also meant that residents would not gain an expanded grocery store for the foreseeable future. By taking away that potential for a full-service grocery (the prime draw to the Plaza for full-time residents), residents felt that the Plaza’s long-term value to them would be *reduced*, in the guise of enhancing its value.

By early 2017, Town residents were anticipating that one of three courses of action by CDA would be taken: 1) That CDA would finally address the shared problems underlying all the prior plans (as detailed at every

meeting) and revise the redevelopment proposal to come closer to the Town's vision of a downtown "commons," with good results for all, 2) that CDA would withdraw the redevelopment application after accepting the large gap between their profit-maximizing student-housing hopes and what the Town could accept on the key property at its downtown core (particularly with concerns that the Town had already overbuilt student housing in the face of anticipated enrollment declines and had almost no community-activity space remaining), or 3) that CDA would simply try to push through their Plan #5, or some minor variation of it, despite the detailed critiques of it from hundreds of Town residents and from a number of Board members – and see what happened.

In an unexpected turn of events, a fourth course of action emerged in February 2017, when Town Administrator Todd Selig temporarily pulled the Mill Plaza site-plan review out of the public planning process and began non-public negotiations with CDA. The public heard nothing for months.

Early February: Todd Selig initiated non-public meetings with CDA team & architect Patricia Sherman

The negotiations between Todd Selig and Sean McCauley of Colonial Durham Associates (with the input of Durham's Economic Development Director Mary Ellen Humphrey and the participation of architect Patricia Sherman, who had worked on the Mill Plaza Study Committee) were an attempt to break the log jam that was apparent in the prior meetings and correspondence, from September 2014 to December 2016, as detailed above, where so many residents expressed extensive criticism of all the prior plans.

Yet, the subsequent months of meetings out of public view and outside of the normal planning process, also led to some anxiety among residents about what was going on "behind closed doors," with no monitoring by, or input from residents or Planning Board members. In private conversations and limited-distribution emails, Town officials indicated that the Plaza had been very intimidating and threatening in various meetings that included the developer's agent shouting things such as "DON'T YOU DARE TELL ME HOW TO SPEND OUR MONEY!!!!!" (all caps were used by a Town official to convey the voice volume employed). Thoughts of such interactions (with no residents present to represent their views) led to uneasiness among many members of the public.

Moreover, as described in more detail below, when the "secretly" negotiated Redevelopment Plan #6 was finally posted on the Town website, late on Friday, June 9, 2017, just three business days before a June 14, 2017, Public Hearing – and when the usual email notice of such plan postings did not occur in a timely manner (instead spreading in a limited way by word-of-mouth over the weekend) – rumors and suspicions swirled. Residents' concerns mounted when the new plan was seemingly endorsed in unconventional "introductory remarks" by Town Administrator Todd Selig and consulting architect Patricia Sherman at the start of the June 14, 2017, Planning Board meeting and Public Hearing. Additionally, many residents were shocked when the long-postponed "design review" was closed that very night – at that same June 14, 2017, meeting – before the public (and the Board as well) had a chance to digest all the specifics of the new plan.

As is detailed further below, this "wait-wait-wait-wait, then rush" schedule backfired in a dramatic way because no one presenting the plan on June 14, 2017 (not Todd Selig, Patricia Sherman, Sean McCauley, Emily Innes, nor Steve Cecil) made it clear to the public that the best news in the new plan – Rite Aid relocating on the site, thus allowing housing to be built above ground-floor retail where Rite Aid had long been operating – was contingent on a variance being granted for the drive-thru pharmacy pictured on the plan. (That connection, as detailed below, was also not stated in the Planner's review of the plan, a review which was not in any way corrected by CDA.) Thus, when residents objected at the ZBA in August to a drive-thru pharmacy for several reasons detailed further below (including its proposed unusual location near the foot/bike path along College Brook and close to residences), they did not realize that they were vetoing the entire "improved plan." Moreover, the dynamic from the above non-public process, apparently led CDA to be over-confident about that "officially endorsed" Plan #6 flying through, and they therefore agreed to a close of the design review phase on June 14, 2017, setting a clock of 12 months for submission of a final submission under that application.

What began as a well-intentioned effort to move the project forward in a positive direction, fell victim to the law

of “unintended consequences.” And the denial of ZBA variances, led to the withdrawal of Plan #6, and the submission of a desperate and awful Plan #7, which when professionally judged as a terrible plan by the Town Planner, Michael Behrendt, led to his removal from oversight of CDA design review – and the normal Planning procedures in Durham crashed. See more on all this below.

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February 22, 2017— Planning Board: Mill Plaza Redevelopment [postponed]

Public Hearing - Mill Plaza Redevelopment – 7 Mill Road. Design Review (preliminary application).

POSTPONED to March 22; then again to April 19, and then to June 14, 2017

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February 27, 2017: UNH’s Enrollment Manager Describes Enrollment Challenges Ahead

At UNH’s Faculty Senate, Victoria Dutcher, Vice President for Enrollment Management, discussed the difficulties that UNH will face in the coming years to maintain recent enrollment levels, even if recent enrollments had been (and might for a short while remain) relatively steady. As the minutes noted:

She attributed this to fewer high school students applying to college in general and to the decline in birth rates in this region. She asserted that we need to position the university to maintain a robust institution down the road five, ten, or twenty years. She said that if we make no changes to how we’re handling enrollments now, we should expect a significant decline in our enrollments.... Victoria acknowledged that with declining populations of high school students in the state, it is a challenge to grow our enrollments without reducing academic standards, asserting that we want to bring in students who are ready to be here and who will have a successful experience.... A senator asked what we can do to attract more non-traditional students. Victoria said that they have no specific plans to do this, but that making ourselves more adult-student friendly would be effective and desirable. Another senator expressed concern about the increasing acceptance rate, noting a correlation to declining academic ability.... Victoria acknowledged that selectivity has dropped with the market....

<https://www.unh.edu/unhtoday/2017/03/faculty-senate-meeting-minutes-feb-27>

[NOTE: According to Kenneth M. Johnson, Senior Demographer at the UNH Carsey School, NH births were (as with the nation as a whole) relatively stable from roughly 1995 to 2005, went up slightly just before the recent Recession, and then dropped significantly. Johnson observed that neither NH nor the US as a whole has recovered from the birth dearth of the Great Recession. Johnson estimates that about 500,000 fewer births are occurring in the US each year compared to how many births could have been predicted from pre-recession fertility rates. Additionally, NH has traditionally depended on migration from other places in the US (mostly MA) for growth. Prior to the Recession, New Hampshire gained significant numbers of young adults—and their future children—from such migration. But the Recession greatly reduced the “migration gain” to New Hampshire. Whether these trends will continue or reverse is not yet clear. For updates on projected enrollments, see 2018 entries on the “enrollment cliff” projected for UNH and other New England colleges.]

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March 2017: The Durham Hannaford is a “Ghost Market” when the UNH students are away

Pictures taken in the Durham Hannaford on Friday evening of Spring Break (when the students were not yet back on campus) showed that the store no longer caters to Durham residents. One has to look very closely at the pictures of each aisle to see that only two customers are in the store at what used to be “prime time” for residents to shop (and also to catch up with neighbors and friends), a few hours before the store closed at 9 pm. See nine pictures at: <https://unh.box.com/s/rkbf0aek5q0y12ix7rf6xs7z3pl4qn7j>

For most Durham residents, the reduction in offerings at the local grocery store has been a major loss of a

community anchor. Citizens and Town board members continued to press CDA to include a move of Hannaford a larger store in the Plaza, allowing for the oldest building on the site to be replaced, thereby allowing any added housing to be concentrated on the Northern end of the Plaza where Hannaford and Rite Aid operate (in keeping with the December 2015 legal settlement and in better compliance with Conditional Use criteria for housing in the Plaza, in that housing is not allowed in the Plaza if it negatively affects the adjacent neighborhood with additional noise, light, trash, odors, hours of activity, and traffic beyond what is currently in the *housing-free* Plaza).

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On March 20, 2017, **Rick and Susie Renner, 28/30 Newmarket Road**, wrote to the Planning Board on the general subject of “Student Housing”:

We are writing in opposition to more downtown school/university housing until such time that a serious need would exist and another location out of the ‘Town of Durham’ proper is deemed less desirable.

Susie and I live within walking distance to the town. We hear, on a regular basis, unwanted noise and are recipients of the general disrespect for the homeowner’s need for quiet enjoyment

Whether it’s having kids ignore crosswalks, drinking to excess, loud swearing and drug use (specifically the smell of pot), our community is being swallowed by students. We are out of balance. What does the University offer the residents? I don’t believe that it is property tax reduction!? I don’t believe that the University makes their plans in great consideration of Durham’s residents!? So let’s move towards balance...if elder housing were to be suggested, we would be for it. If parks were to be considered, our land and location would be of benefit. Let’s think carefully and look at the master plan for the balance of students, parks and recreation, the arts and local business survival.

Thanks for allowing our voices to be heard.

The Renner letter (which did not clearly state whether it was about Mill Plaza redevelopment or a proposed mixed-use housing amendment for the CBD – or both – is posted with letters about the latter):

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/47051/email_from_rick_and_susie_renner.txt

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March 22, 2017—Planning Board: Best Practices for Trees in Durham by USDA Urban Forrester

As noted on the March 22, 2017, Planning Board meeting agenda: “Presentation by John Parry, forester and former member of Durham Conservation Commission. John gave this presentation to the Conservation Commission last year. He has generously agreed to share it with the Planning Board.”

Excerpt from the March 22, 2017, Planning Board meeting minutes:

Proper tree planting is important. With new developments, make sure contractors have specs to follow on tree planting. Provide adequate space for trees. Mr. Parry said recent developments in Durham wanted to use the full space on a property for the buildings, etc., so the landscaping was an afterthought. He said this meant that not a lot of room was left for tree planting, and explained that if the soil beyond the area where the trees were planted was compacted, they would gradually decline and die.

Design infrastructure to accommodate trees. Mr. Parry provided details on some sophisticated approaches being used these days, including “structural soil”, and tree boxes designed to help take in stormwater collecting on streets. He noted that the UNH Stormwater Center had constructed some of these systems, and also said it would be great to try one as a demo project in Durham on Main Street.

• Look at how to protect trees during construction. He noted that when the paved path out on Mast Road was constructed, it severed most of the roots on the right side of an old maple tree. He also spoke about how compaction during construction impacted nearby trees. He said a simple approach to provide tree protection was to save the critical rooting area. He said for every inch of tree diameter, a circle 1.5 feet in radius. He explained that at least 60% of this saved area needed to be protected in order to save a tree, and said once the circle was identified, a chain link fence could be used around the tree.

• Encourage developers to include trees in early design work. Innovative developers do an assessment of wooded areas, and identify specimen trees.

• Tree maintenance is important. Having some policies, specifications to reduce damage from poor pruning, damage from salt, etc. is important.

• When trees get old, removal should be part of an urban program, as part of the responsibility of the town/city to maintain public safety....

Chair Corrow said he learned best by demonstration, and had attended Mr. Parry's urban tree walk in Durham. He said it was great to observe tree issues on the ground, and said this information would be helpful when reviewing future development applications. He suggested having another urban tree walk.

Mr. Parry said there was a really good payoff to the Town from doing this kind of tree work.

A video of the presentation can be viewed here, from 09:26-52:30:
<https://dcat22.viebit.com/player.php?hash=fViicS0ET5Cy#>

A summary of Mr. Parry's presentation can be read on pp. 2-15 in the meeting minutes:
www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/47321/032217.pdf

[Also refer back to the excerpts from John Parry's letter to the Planning Board on February 8, 2016, specifically related to Mill Plaza redevelopment.]

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April 3, 2017: Council Halts Proposal to Bar Mixed-Use with Residential in Central Business District

On October 17, 2016, the Town Council initiated a zoning amendment to change Mixed-Use with Residential from "by Conditional Use" to "Not Permitted" in the Central Business District, while also adding a new definition for "Mixed Use with Elderly Housing," to be allowed in the Central Business District by Conditional Use.

The text of the Ordinance which ultimately failed after almost six months of meetings (as detailed further below), included the following reasoning (excerpts), which echo some the concerns that residents have about adding a significant number of student beds in the Mill Plaza:

WHEREAS, the Durham Central Business District, in the heart of the community's downtown commercial core, has experienced significant Mixed Use with Residential redevelopment providing beds of additional student housing since zoning was changed in 2008; and

WHEREAS, this redevelopment achieved many of the anticipated goals of the community by increasing the supply of quality student housing and commercial space; and....

WHEREAS, the demand for student housing in Durham can be reasonably estimated from publicly available enrollment and residential data from the University of New Hampshire; and

WHEREAS, the supply of unrelated student housing in Durham now exceeds demand; and

WHEREAS, an oversupply of student housing can have negative consequences when the enrollment projections of the University of New Hampshire do not indicate increasing demand sufficient to absorb an oversupply; and

WHEREAS, the University of New Hampshire is working diligently to adapt to an increasingly competitive national landscape in attracting prospective students from a shrinking pool of college age citizens in the United States; and

WHEREAS, unrelated student housing places an inordinate and disproportionate burden on Durham's police, fire, and emergency medical service resources creating significant financial strain on the municipality and its taxpayers; and....

WHEREAS, national trends demonstrate that there is a strong market for elderly housing within college communities, where prospective residents within this demographic want to be located proximate to universities to take advantage of classes, lectures, cultural, and sporting events hosted in universities; and

WHEREAS, Durham desires to broaden the residential mix in its Central Business District to include housing types that cater to elderly residents; and

WHEREAS, a more diverse mix of ages living within the downtown core would serve to foster a greater sense of community for our downtown and a more robust pool of potential clientele for our downtown establishments; and....

WHEREAS, the Master Plan specifically states that over the next 10-20 years, the town aspires to have a vibrant downtown with thriving retail and service businesses, high-quality office space, more diverse shopping opportunities, and a range of housing opportunities, in addition to student housing, such as working singles and couples, and seniors (elders)....

The full text of the (failed) Ordinance #2017-04 can be read here:

<https://www.dropbox.com/s/82zutaymgv9onua/2017-04%20-%20Council%20initiated%20amending%20ZO--FAILED%20at%201st%20Reading%202-7%20Vote.doc?dl=0>

The minutes for the October 17, 2016, Town Council meeting can be read here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/town_council/meeting/43691/101716.pdf

To summarize community response: Public input on these proposed Zoning Amendments was divided to an unusual degree. The split, however, was *not* based on beliefs that more student housing units were a good idea for downtown Durham, but rather over the method employed for limiting such housing and encouraging different types of development downtown, whether the proposal process had been sufficiently transparent and inclusive of residents and of affected building owners, and what the impact might be on the long-term property values of the small business owners downtown. The downtown business owners argued that they were being asked to bear the burden of prior Town decisions to promote large-scale student housing complexes and that, now that those earlier decisions had led to massive housing complexes with supply for such housing exceeding projected demand, the options that they might have for long-term redevelopment of their properties or resale were being unfairly limited by formal zoning changes. When it was not clear what the outcome of the series of Public Hearings would be, those business owners hired an attorney to argue their case,

The Planning Board held a first Public Hearing on the Amendments on November 9, 2016, with the agenda note of "positive recommendation." But with four of six speakers arguing against the amendments, and a fifth resident speaking in favor of elderly housing but questioning whether elderly would want to live on Main Street,

the Public Hearing was continued to January 11, 2017 (with agenda note downgraded to “make recommendation”).

Of the nine people who spoke at the January 11, 2017, meeting, 5 were in favor of the Amendments for the type of reasons stated in the draft of the Ordinance above (a sixth voice of support came from a letter read at the meeting from a resident who was unable to attend), and 4 who spoke were opposed because of the direct impact on the value of their downtown properties. This split and the issues raised by speakers led Board members to question the amendments, as originally framed (“too draconian,” “more of a stick than a carrot for redevelopment,” etc.) and to consider what incentives (“carrots”) could be put in place to develop non-student housing. As the recap of the January 11, 2017, Public Hearing meeting stated, the Board then “discussed taking another approach – retaining this [mixed-use with residential] as a conditional use but increasing the required habitable floor area per occupant from 600 to 1,000 or 1,200. Habitable floor area applies to unrelated households but not to families.” See:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/47271/1-11_recap.pdf

Thus, the agenda on this topic for the February 8, 2017, Planning Board meeting added a third proposed Zoning Amendment: “reduce Maximum number of occupants in unrelated household per 300 square feet of habitable floor area for Apartment from .5 to .25 (thereby increasing the minimum area per occupant in an unrelated apartment from 600 to 1,200 square feet). This change would not affect family households, single or two-family dwellings, accessory apartments, elderly housing, nor apartments in the ORLI and MUDOR zones.”

This third items, however, did not receive enough support to be moved to a Public Hearing. And it was excluded from the agenda of the March 8, 2017, Planning Board meeting. Comments at the March 8, 2017, Public Hearing continued to be very split (with some commenters directly responding critically to what others had said, adding an uncomfortable level of contention). The Public Hearing on the original amendments was continued yet again, to March 22, 2017, where the contentious split in views persisted and where a tally of resident input was given, including letters submitted.

Beyond the input at Public Hearings, about a dozen residents submitted letters in support of the Amendments. (In three cases – as the consideration of the proposal extended over several months – the same writer submitted more than one letter.) One of those supportive writers, however, also added a “P.S.” endorsing an alternative suggestion by someone else for a “moratorium” rather than the proposed zoning change. Those letters can be read here: https://www.ci.durham.nh.us/boc_planning/zoning-ordinance-amendment-mixed-use-cb-zone

Writing in opposition, **Peter Stanhope, 37 Dover Road**, expressed concern over the “clear intent to discriminate against a specific group in Durham’s population” after the Town previously encouraged student housing in the CBD. Mr. Stanhope also thought the amendment was contrary to “Smart Growth,” which he described as “a well-researched successful goal of concentrating growth in the compact core of a community mixing commercial, residential, and cultural activities.” Finally, he concluded that “with the business park under development and Young Drive in planning for over 55 housing there will be an adequate supply to meet the foreseeable needs of Durham’s population. The language as proposed is poor planning.”

Carol Tuveson, Watson Road, captured the mixed feelings of many residents in town. She separated the goal, which she shared, with the method she opposed: “I am not in favor of the zoning ordinance making its way through the process, while I’m also in favor of preventing any more student mega-plexes being built downtown. With lawyers becoming involved, something has gone awry. There has to be a better way.” Ms. Tuveson’s full letter with additional details can be found here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/47051/email_from_carol_tuveson.txt

The most forceful opposition, as one might expect, came from the attorney hired by downtown business owners. On February 3, 2017, **Attorney Justin Pasay** submitted a 9-page letter in opposition to the

Amendments, along with attachments, including a supporting letter from a business-property assessor. Mr. Pasay, wrote in part:

By way of brief introduction, together, the properties referenced above have been in consistent family ownership for over 150 years. Ken, Cathy, Steve, Rennie, Roger and Jay, and their respective businesses, are staples of the downtown scene. For decades, they have invested and reinvested in the Town of Durham and supported the community and UNH student body. They are invested and ingrained not just in the economic vitality of their respective properties and business interests, but in the very fabric of the Durham community. In fact, over the years many of them, in different contexts, have advocated against their own business interests in an effort to preserve the aesthetic appeal and vibe of the downtown area. Most recently, for example, several of the aforementioned property owners advocated against raising the maximum building height in the CBD and decreasing the minimum square footage per occupant requirement in unrelated household apartments from 300 square feet to 200 square feet. The property owners sincerely believe that a balance can be struck between their individual business interests and the greater needs of the Town of Durham.

Executive Summary: The impetus behind the Town Council's proposed amendments, as well as the Planning Board's alternative recommendation, is singularly focused: the Town desires to prevent more student housing in the CBD. The primary argument in support of the proposed amendments, as articulated by Jim Lawson on behalf of the Town Council during his power point presentation at the Planning Board Hearing on 11 January 2017, is adherence to the vision articulated in the Town's Master Plan.

As proposed, however, the amendments and alternative Planning Board recommendation are not in accord with the Town's Master Plan. Moreover, the feasibility of and demand for senior housing in the CBD has not been thoroughly researched and the Town should do so as an alternative to making drastic zoning changes which will severely impact CBD property owners. Finally, the proposed amendments and alternative Planning Board recommendation, if adopted, would devalue property in the CBD, would constitute an unconstitutional taking under the New Hampshire Constitution and would constitute a violation of the property owners' substantive due process and equal protection rights.

The Planning Board should not recommend adoption of either the proposed amendments or the alternative recommendation. If the goal is to encourage senior housing in the CBD, the Planning Board should simply recommend that the Town Council make the mixed use/elderly use a use permitted by right in the CBD in accordance with the Master Plan (See Master Plan DH - 38) and leave the rest of the Zoning Ordinance alone.

The full letter adds detail to these assertions (buttressed by the attached analyses of a business-property assessor), including: that although it is clear that the Town has carefully analyzed trends in UNH student housing leading to some panic about oversupply, the Town has not similarly studied the demand for elderly housing downtown; that senior apartments on Main Street would not be attractive to seniors (no elevators, limited parking, no buffering from student noise, no close access to medical and other important services, etc.); and that while property owners understand that market forces may shape their long-term property values in one way or another, the municipality should not intentionally impose a depressor on market value. The letter also argues in detail that however similar some of the Master Plan's *goals* are to some of the stated goals of these amendments, the Master Plan does not endorse the *methods* being proposed. The letter also argues that the proposed amendments would undermine Master Plan goals of creating downtown workforce housings and residences for young professionals.

The full Attorney letter (and included letter from an appraiser) can be read here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/47051/letter_from_donahue_tucker_2-3-17.pdf

In early March 2017, **Councilor James Lawson** (Council Representative to the Planning Board) submitted a 10-page "Additional Information" document regarding the proposed zoning ordinance, as it related to the conditional use criterion of no overall "negative fiscal impact on the Town."

Councilor Lawson discussed the prior fiscal analyses for The Cottages of Durham, the Lodges on Mast Road, and Madbury Commons, which were based on sufficient demand for Unrelated Housing. By 2017, in contrast, **“There is no doubt that the supply of Unrelated Housing in Durham now exceeds the demand based on anecdotal evidence of apartment vacancies and, more importantly, analyses of Unrelated Housing supply and demand that have been publicly available for several years.”**¹⁵ Therefore, argued Lawson, new student housing would likely cause vacancies in other student housing or repurposing for non-student housing (e.g., faculty and graduate-student housing), which generates less rent, lowering assessed value of the properties and thus lowering the Town’s tax income. Additionally, faculty and graduate-student housing (more likely to include young children) could lead to increased ORCSD enrollments and further added tax burden for Town residents. [Emphasis added.]

Lawson also offered key questions for the Planning Board: “Does current and new Unrelated Housing place inordinate and disproportionate demands on Fire, Emergency Medical and Police services?” (Lawson offered a tentative “yes,” citing sources, for example, that “the Central Business District and other areas with concentrations of Unrelated Housing require an increased police presence, particularly during weekend evenings and nights when UNH is in session.”)

“Is increasing the unrelated student housing in the downtown consistent with the general health, safety and welfare of the community when an enhanced multijurisdictional police presence is already required for the existing housing?” (Lawson answered with a tentative “no.”)

Lawson posed a key question to the Planning Board: “Should a claim by property owners that a contemplated zoning change will diminish their property values take precedence over zoning that addresses the public health, safety and general welfare of the community, encourage the appropriate and wise use of land and is consistent with the new Master Plan?” He concluded his document with: “Zoning changes, including the one proposed, have the potential to impact property values both positively and negatively. There is a rational basis for the proposed zoning, and there is ample evidence that the proposed zoning is intended for the public’s interest because of its effect on public safety, health and the welfare of the community.”

Lawson’s full 10-page document can be read here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/47051/additonal_info_to_planning_board_from_jim_lawson_3-6-17.pdf

Councilor Lawson had presented similar arguments at town meetings, and when Justin Pasay, the attorney for those opposing the Amendments, submitted a second letter on March 3, 2017, he challenged Lawson’s analysis regarding a correlation between student housing and police arrests. (He did not address the extra costs of police activity unrelated to arrests.) Pasay also added that he had confirmed with the Planning Department that no building permits for housing in the CBD had been issued since the increase in required per-occupant habitable space (arguing, therefore, that the proposed zoning change is unnecessary).

Pasay’s 6-page follow-up letter (and attachment on police activities) can be read in full here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/47051/letter_from_attorney_justin_pasay_3-3-17.pdf

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/47051/attachment_for_letter_from_justin_pasay.pdf

The most passionate and detailed letter of support from this zoning amendment (and for limiting more downtown student housing in general) came on March 19, 2017, from Town Councilor **Firoze Katrak, 565 Bay Road**, who wrote, in part:

¹⁵ Lawson cited: “Tally of Student Housing/Apartments in Durham”; Durham Planning Department, September 15, 2015; and Lawson, Jim; “Estimating Off-Campus Student Housing Supply and Demand”; Durham Planning Board, 2013: https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/18681/density_amendment_-_jim_lawsons_writeup1.pdf

In essence, unless this proposal to restrict mixed use residential in downtown is accepted as a necessary preventive first step, Durham risks losing its soul, and residents will suffer a steady, unrelenting decline of our downtown to students and decrease in property values throughout the town. Accepting this proposal will preserve our town for all residents as well as for our businesses.

The old saw that *comfortable zones are only created through much discomfort* is now in full view in Durham, as we continue trying to create a thriving downtown through zoning and other changes....

Around 2008, the town allowed dense, mixed use residential in downtown, to encourage commercial space and improve tax base. Residents took on burdens allowing students to reside in downtown. Various property owners benefitted by developing mixed use residencies. Durham benefitted from commercial space and improved tax base.

Since then, residents have become concerned of the crowding, inconvenience, litter, noise, drunken nuisance, biking and driving challenges, exposing our school children to lewd rowdiness by university students, property damage by rowdy crowds, trespassing intrusions in residents' gardens/homes, and more serious crimes if we allow further future increases in students living downtown. Residents do not want downtown to be exclusively a dormitory. This is reflected in our updated Master Plan.

Also, the supply of student beds has reached a stage whereby future downtown beds will have negative fiscal impacts on the town....

We should all visualize our town's future if we do not make this proposed change to restrict more students living in our downtown:

- There will be more and larger crowds, more bikes/cars, driving will become more difficult for our aging residents; residents will over time abandon doing any shopping or activities in downtown, even avoid groceries or laundry or drugstore; and, residents will find other places to go....
- Our downtown will degenerate into a student dormitory complex
- The town will become a widely dispersed residential community, spread around a central core of student dormitory complex, and our town will have no social core, and no soul!
- It is also likely that then real estate values may stagnate or decline throughout Durham as it begins to lose its appeal....

Unless this proposal is accepted, Durham risks losing its soul, and residents will suffer a steady, unrelenting decline of our downtown and decrease in property values throughout the town. Accepting the proposal, is essential for the future of our town, and it will preserve our town for all residents as well as our businesses. This first step will help us subsequently encourage a more diverse developments of our downtown, which will be safer and more vibrant.

The full Katrak letter (which rebuts claims by Attorney Pasay) can be read here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/47051/comments_from_fir_oze_katrak.pdf

The March 3, 2017, letter from Attorney Pasay, posted here, rebuts some of Councilor Katrak's rebuttals:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/47051/letter_from_attorney_justin_pasay_3-3-17.pdf

After five Public Hearings at the Planning Board, the Board voted on March 22, 2017, 6-1 *against* recommending the “Town Council initiated Zoning amendment to change Mixed Use with Residential (office/retail down, multiunit residential up) from conditional use to not permitted in the Central Business District.” Then the Board voted 7-0 in favor of adding a “add a new definition for Mixed Use with Elderly Housing (office/retail down, elderly housing up), allowed as a conditional use in Central Business District, and add references to this use in Section 175-41 Central Business District and Section 175-53 B.”

Planning Board Minutes for November 9, 2016, January 11, February 8, March 8, and March 22, 2017:
https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/42591/110916.pdf
https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/47271/011117.pdf
https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/47291/020817.pdf
https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/47311/030817.pdf
https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/47321/032217.pdf
Video of these meetings can be selected by date at DCAT Video on Demand: <https://dcat22.viebit.com/>

The action then moved to the April 3, 2017, Town Council meeting. Although a Public Hearing at the Town Council on the zoning amendments was not yet on the agenda, the Public Comments section of the meeting became a *de facto* mini Public Hearing, with 4 people speaking against the amendments and two speaking in favor of holding a hearing on them.

When the Council moved to the “first reading” of the ordinance, Councilor Rotner read a statement that he said represented his views and those of Councilor Howland and Lawson. It summarized the rationale for the proposed zoning amendments, the strong negative reaction of the downtown business owners, and the subsequent development a dialogue through which “the property owners grew to understand the vision of the Master Plan and how such cited development might provide them with a profitable and more sustainable form of development than student housing could provide. We in turn, developed a greater understanding of their concerns and the challenges they face in further developing their properties.... Based on the relationship that has formed and the opportunity for good faith conversations and planning going forward, we are asking the Town Council not to move this proposed zoning amendment forward on first reading.”

Robust discussion continued, but ultimately a motion to move the ordinance to a Second Reading and a Public Hearing failed by a vote of 2-7. Councilor James Lawson, who played the major role in moving the amendment proposals forward in the first place, voted *not* to proceed with a Council Public Hearing, saying per the meeting minutes, that “he preferred making Zoning changes where the Council developed a consensus, rather than where it counted votes. He said out of consensus and compromise came better solutions.”

The minutes for the April 3, 2017, Town Council meeting can be read here:
https://www.ci.durham.nh.us/sites/default/files/fileattachments/town_council/meeting/50651/040317.pdf

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May 12, 2017—Todd Selig Alerts Town Council “The Plaza has a good plan to move forward”

On Friday, May 12, 2017, Town Administrator Todd Selig wrote to the Town Council about a Mill Plaza redevelopment plan that would entail Rite Aid moving to a new location, but still leaving Hannaford where it is.

Today’s meeting with the Mill Plaza went well. I believe we have a new design that is workable for the community and the owner. Given the circumstances and the people with which/whom we have had to work, the progress we have made with the owner’s team is equivalent to having moved a mountain. The mountain’s name is Rite Aid. While all aspects of this new design have yet to be finalized (and in fact the owner is still working with Rite Aid on locking in Rite Aid’s move to another part of the site), I would give the owner’s chances 90 - 95% that it is doable. By moving Rite Aid we accomplish being able to move

residential space where we want it on the site (north section of the plaza), lowering the height of everything (stepping up to 4 stories max in some locations), and with our team's help, we have achieved a layout that in fact considers and reflects what we learned and desired from the Mill Plaza Study Committee process years ago....

A variance would be needed for three stories of residential over one story of non-residential in few locations — yet when compared to a more or less “by right” project that would spread out residential close to Faculty Neighborhood and meet few if any of the Mill Plaza study goals, it will be well worth the Town's careful consideration. (The Mill Plaza claims it has such a plan and indicates it is willing to pursue this path in court if necessary.) The number of beds of residential complies with the Settlement Agreement.

Hannaford, the second metaphorical mountain on the site, will not be moving anytime soon so we (and the community) need to drop that idea.

I'd appreciate if you would more or less keep this low key (though I know this is a public document).

[Note that there is no mention in Administrator Selig's email to the Council about a drive-thru pharmacy window. Only one type of needed variance is mentioned: “for three stories of residential over one story of non-residential in few locations.” As described further below, the idea that Rite Aid would not relocate on the site without a drive-thru window (requiring a variance, since only financial institution drive-thrus are permitted in Durham) was also not relayed to the public or the Planning Board at the June 14, 2017, Public Hearing on Plan #6, though CDA later claimed that it had been.]

The full Selig email to the Town Council can be read here:

www.dropbox.com/s/f25qh3dceow5jmt/Todd%20Selig%20to%20Council%20May%202017.docx?dl=0

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June 6, 2017—Joshua Meyrowitz to Todd Selig, et al. on “Enthusiasm for a Redeveloped Plaza”

Dear Todd,

In an email you sent a while ago about discussions with the Mill Plaza representatives, you wrote: “Mr. McCauley expressed a concern on the part of Colonial Durham that no matter what the company offered the public, it felt it would never be enough with townspeople. This has made Colonial Durham mistrustful of the public's intentions.”

I know that the process has advanced considerably since you wrote that email. Nevertheless, in case you have not had a chance to see and closely review it before, I attach the June 8, 2016, “Report to the Durham Planning Board & Town Planner Regarding the ‘Input’ from ‘Members of the Public’ to the Mill Plaza Planners on Saturday, May 14, 2016.” This was also handed out to the Planning Board members and to the Plaza representatives and designers at the June 8, 2016, meeting and was posted on the Town's web site. [See excerpts from the May 14, 2016, community letter further above, or full letter at: www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/letter_from_community_members_to_pb_on_06-08-16.pdf]

As is clear from our report, there is strong community enthusiasm for a redeveloped Plaza – as long as the plan does not violate Town regulations. Additionally, there was even strong enthusiasm for a particular plan proposed to a community group at the library by the Plaza team. But the plan that received enthusiastic response was not then presented to the Planning Board and public as we had been told it would be. Nevertheless, the Plaza team wrote a cover letter to a plan that disregarded all of our concerns suggesting the plan reflected community input at that library meeting.

Additionally, there was community enthusiasm for aspects of earlier plans, including the January 2016

one that had beautiful pictures that were said to be the “inspiration” for the designers. (See pp. 5-6 here: www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/color_architectural_plans_1-21-16.pdf) But then the community was understandably disappointed that none of those “inspiration” features were incorporated into the subsequent plans that were formally submitted.

Personally, I do not know any Town resident who is not supportive of the idea of a redeveloped Plaza. But, to reverse Mr. McCauley’s statement, the community remains “mistrustful” of the Plaza’s intentions – but still hopeful that with a diligent Planning Board we will eventually achieve a plan that meets everyone’s needs to a reasonable measure and does not, in any case, violate Town regulations and conditional use criteria for housing in the Plaza – or that receives variances with the strong backing of the adjacent neighborhood and community. We all want a vibrant Town center.

Moreover, the Cecil Group designers are clearly very skilled and very aware of community needs and desires. Thus, the possibilities for a winning plan are strong.

Please feel free to share this email with any interested parties.

Best, j m // Joshua Meyrowitz, 7 Chesley Drive

Joshua Meyrowitz’s June 6, 2017, email is posted here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_josh_meyrowitz.txt

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CDA REDEVELOPMENT SITE PLAN #6 (June 2017)

June 9, 2017— Planning Board: Revised site plan submitted for Design Review (#6)

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/2017-6-9_submission_to_town.pdf

Late on Friday, June 9, 2017, some residents learned through informal means (emails and phone calls from neighbors) that a new Plaza redevelopment plan had been posted on the Town website. This was much later in the week than usual, and much closer to a Public Hearing (the following Wednesday) than seemed reasonable to many residents, especially after six months of silence after seeing the December 2016 refinement of the October 2016 plan (Site Plan #5), which had been the subject of two Public Hearings in 2016. Even more significantly, the June 2017 plan also came without the usual email notice to those on the Town Planner’s email list.

At 1:14 pm on Monday, June 12, 2017, just two days before the Public Hearing on the new site plan (#6), Planner Michael Behrendt wrote to one of the many residents who had not received an email about the new plan’s existence or its posting to admit that “Yes, I missed numerous residents that I have under my main group list. I just resent the information. Thank you for alerting me to this oversight!” The Public Hearing on the dramatically different plan would start just 55 hours later.

Disturbingly, although the new plan had many elements needing careful review and was significantly different from all the prior plans, it was not being reviewed in advance by other Town entities, such as the Technical Review Group (TRG). And, most disturbingly, the Planner’s Report recommended *closing* the Public Hearing after public comments at the June 14, 2017, meeting – even though the public would not hear more details on the plan until that very meeting (thus having no time to digest, reflect, and comment in full). This rapid move to closing the design review was being recommended even though there were new members of the Planning Board who were not fully familiar with what the public had said and written in the past, and even though the plans were posted too late (and too secretly!) for the public to submit letters in time to be included in the Friday, June 9, 2017, packet sent to Board members to review over the weekend prior to the hearing. (The deadline

for such submissions came *before* the new plan was even posted.) Additionally, the new plan (#6) was not accompanied by any explanatory documents.

Several members of the public protested this unusual timing and the other unconventional circumstance and asked for a delay in the hearing to the following Planning Board meeting in order for the public (and Planning Board) to reflect on and digest the new plan. Residents also expressed hope that there could be some meetings between the design team and abutters and other residents to discuss the plan informally before it was presented for the first time at a Public Hearing. But those requests came too late on Friday to get a response. Despite the timing (“wait until March, wait until April, wait until May, wait until June), the rush for a June 14, 2017, Public Hearing schedule went forward.

Again, the June 2017 plans are posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/2017-6-9_submission_to_town.pdf

The major changes in Plan #6 included moving Rite Aid to a new building and putting some of the proposed student housing in the old Rite Aid location (over ground-floor retail). That was a major shift in the direction of moving at least some of the housing away from the adjacent neighborhood and in the direction of the Settlement stipulations (housing concentrated on the Northern part of the Plaza). But there was a continuing major limit: Hannaford, was to remain where it had been (perhaps expanding into the Bakery Café), and that continued to push significant student housing toward Brookside Commons and to the Southern back of the Plaza near the wetland buffer with the Faculty Neighborhood at the Chesley Marsh pedestrian and bicycle path (in violation of the thrust of the Settlement and Conditional Use criteria). This plan was the best submitted to that date (but that was in comparison with what appeared to many residents to be a series of “purposely atrocious” plans). And Plan #6, as with the earlier plans, would lock the grocery store into its old and limited location for decades to come, a real loss to the long-term benefit of the Plaza to full-time residents. Also, the plan entailed a drive-thru pharmacy near College Brook and close to the foot and bike path along the brook and directly across from the eyes, ears, and noses of Brookside Commons residences.

The Town Administrator, Todd Selig, does not usually attend the Planning Board meetings, but he was scheduled to appear at this one to explain his role in negotiating with the Plaza in private for the previous four months. [FN 061017]

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Despite the very late posting of the new plans, two letters arrived in advance of the Public Hearing:

On June 12, 2017, **John Hart, 13 Mill Road**, wrote in detail:

Many of the concerns I’ve voiced over the years of public hearings regarding the Mill Plaza redevelopment have had to do with moral, social, cultural, aesthetic and ecological issues: Trying to get the best development for the Town of Durham, something which will enhance our lives over the next fifty years. In my view these issues have been buried repeatedly by financial considerations. So again in the June 2017 iteration, we have the most extensive build-out possible with the fewest amenities and a hypothetical maximum profit. I understand that, sadly, the property owner has the legal right to do that.

However, this project in its current form appears to require a Conditional Use Permit, and frankly I cannot conceive of it receiving this authorization as presented. There are serious questions regarding 1) site suitability, 2) external impacts on abutters and the neighborhood, 3) the character of the development, 4) the character of the buildings, 5) preservation of natural and scenic resources, 6) impact on property values, and 7) fiscal impacts. In my opinion, the project fails each and all of these tests, some rather horrifically.

But I want to address just one of these issues here, the preservation (or lack thereof) of natural and scenic resources. In addition to being a certified abutter, I also have some expertise in this area. I hold a masters degree in resource ecology and a second masters degree in landscape architecture. I've been an active member of the America Society of Landscape Architects for 25 years. I have over 40 years of experience in grounds and parks maintenance and management, including a stint as deputy director of horticulture in Central Park (the one in New York City). So there are some notches on the handle of my ecological and landscape six-gun.

What has been done to College Brook over the decades – by the Town, by the University, and by commercial enterprises – is criminal. In the past, “criminal” was metaphorical, but now such degradation is criminal in actuality. Regarding the Mill Plaza preliminary site plan of June 2017, I have several recommendations:

- 1) *This is a once-in-50-year opportunity to correct past errors by moving construction to or beyond the 75-foot wetland buffer line. As designed, this buffer is largely covered in asphalt – as I said, criminal. Using that space as an actual wetland buffer would accomplish several positive outcomes. If properly restored, it would:*
 - *Provide a significant natural buffer for the College Brook;*
 - *Allow for infiltration of surface runoff water from the massive asphalt parking area;*
 - *Similarly, allow space for rain gardens/bioswales, mitigating the need for most of the designed rain gardens and permeable paving, although those are still good ideas;*
 - *Allow for diversion of pollutants from College Brook (salt, sand, petroleum and other chemical products from vehicles, fertilizers and chemicals from planting areas, etc.);*
 - *Provide horizontal space for significant plantings which would help screen and buffer abutting properties and the neighborhood from visual pollution, noise pollution, litter, etc.;*
 - *Increase biodiversity and carbon sequestration;*
 - *Increase aesthetic value and possibly adjacent property values;*
 - *Provide sufficient space for seating, picnic tables, a pedestrian pathway, and a bike path.*
- 2) *The 75-foot wetland buffer seems legal. Variances might reduce this width and still allow significant ecological, aesthetic and cultural advantages.*
- 3) *The preliminary site plan of June 2017, to its credit, does show minimal square-footage of roof gardens, rain gardens, and permeable paving. Barring (1) above, these should be increased in size, number, and capacity, based on research recommendations from UNH’s Stormwater Research Center (a 10-minute walk from Mill Plaza), which should be consulted in any case. They are doing nationally recognized work on ecological solutions to surface drainage and stormwater.*
- 4) *This site plan is preliminary, but the areas shown to be vegetated are extremely small and disconnected. These tiny fragments of plants and plant groupings will have an ecological impact approaching zero, and a very short life span. The currently stressed and dying vegetation at Mill Plaza is grim testimony to poor planting design, installation and maintenance. Mill Plaza is a wholly urban setting and demands modern urban planting design and constructed soil media, and planting areas suitable for multiple layers of vegetation (canopy and sub-canopy trees, shrubs, perennials, groundcovers, and compost mulch) in much more expansive planting areas.*
- 5) *A snow removal concept needs to be included, with sustainable techniques of removal.*
- 6) *A long-term sustainable maintenance plan for all planted areas must be created and then implemented.*

- 7) *Outdoor lighting should be the minimum to ensure safety, and the light should be kept on site with minimal spillage into the neighborhood.*
- 8) *The pond in College Brook, near the northeastern corner of 13 Mill Road (Brookside Commons) must be dredged and restored. The sand load from Mill Plaza runoff has filled in this pond almost completely over the past 30 years. I've been told that Mill Plaza did dredge this once in the 1990's. The spoils can be utilized in the 75-foot wetland buffer to provide a free substrate for planting.*
- 9) *Scenic resources will be lost with the removal of areas currently forested and the removal of many cubic yards of granite ledge.*
- 10) *I worry that the current site plan, with a large 3-story building very close to my living room and adjacent to my backyard, will reduce the sales value of my property, not to mention the aesthetic contamination.*

These are my recommendations with regards to natural and scenic resources. Without these adjustments in the site plan, to my mind this project cannot support a Conditional Use Permit by the Town of Durham. I remain hopeful and even excited about the prospect for a new improved Mill Plaza, but not as currently proposed.

Sincerely, John L. Hart ASLA, 13 Mill Road #9, Durham NH

The John Hart letter is posted here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/comments_from_john_hart.pdf

On June 13, 2017, **Beth Olshansky, 122 Packers Falls Road**, wrote to the Planning Board with her comments for the Public Hearing on the latest plan (for which she would be out of town):

While moving the Rite Aid is a great improvement in that it allows more student apartments to be moved closer to Main Street and further away from the neighborhoods, I find fault with the plan for the following reasons:

The proposed plan is supposed to be the result of a negotiated settlement. That means both parties came together to come up with a compromise solution. Both parties gave something in order to avoid lengthy and expensive court proceedings. I would like to see The Plaza present a plan that lives up to their end of the Agreement. What does that mean? It means honoring the buffer along the brook that was clearly established in the Agreement. It means honoring our Town's zoning regulations, including height restrictions. In essence, it means providing us with a plan that does not require any variances. Doesn't going to the ZBA for variances mean that The Plaza is not living up to its end of the Agreement?

The height of the buildings should be no greater than 3 stories, not only because of our dimensional standards but also because of our Architectural Design Regulations that state that height variation in adjacent buildings should be no greater than 1-1½ stories max. Even with a false front on the Hannaford, we end up with at minimum a 2 story height difference, and that is assuming the false front is an entire second story, which is unlikely. There are reasons why Durham has height restrictions and Architectural Standards in place. They need to be honored.

The Settlement Agreement requires 80,000-90,000 square feet of commercial space. We are getting the minimum—80,000 sq. ft. There is no minimum set for the number of beds, only a maximum. Why is it that the Town gets the minimum and The Plaza insists on getting the maximum? If the building heights need to be reduced to meet our ZO without variances, then that may mean fewer beds. So be it. We are

under no obligation to approve the maximum number of beds unless it all fits within our ZO.

One final note, I repeat my earlier concern that those small buildings along Mill Road take away much of our meagre green space and several of the very few mature trees on the site in return for not much commercial space. The trees along Mill Road serve to soften the entrance to our commercial core and The Plaza. I believe many members of the community already feel “imposed upon” by the prospect of jamming so many large, tall buildings into a relatively small parking lot. As some members of the Planning Board have already pointed out, the space is too densely packed. The plan basically proposes to build a very urban environment immediately adjacent to two family neighborhoods. Please leave us our mature trees along Mill Road to soften the enormous hardscape that is proposed.

The full Olshansky June 13, 2017, email is posted here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_beth_olshansky.txt

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June 14, 2017—Michael Behrendt’s Town Planner’s Project Review

From the Planner’s review for the June 14, 2017, Public Hearing on Site Plan #6:

I recommend that the board open the public hearing, discuss the project, offer comments, and close the design review. Please note the following:

1) Iteration. *The most recent iteration of the project is included in the packets and posted on the website. I saw the plans only on Wednesday in a meeting with the applicant so I am including only basic comments here. The plans will be forwarded to the Technical Review Group on Friday when submitted.*

2) Rite Aid. *The applicant discussed with Rite Aid relocation of the drug store to a new building on site and believes this can be realized. The updated plans show Rite Aid in the new building. This adjustment has allowed for a number of positive changes in the plans, including adding a multi-story, mixed use building where Rite Aid is now located and reducing the highest buildings to 4 stories.”¹⁶*

3) Basic design. *There are a number of other adjustments that were made which the applicant describes in the new material and will explain at the Planning Board meeting. The basic configuration of buildings, streets, parking lots, and pedestrian ways, however, has not changed substantially from the prior draft.*

4) Design review phase. *This project has been in the design review phase for several years and the public hearing has been open throughout most of this phase. The applicant has revised the plan half a dozen times.*

5) Administrative meetings. *The applicant postponed the project several times over the past several months to*

¹⁶ Note that in this section of the Planner’s Review about Rite Aid moving, there was not even a mention about a drive-thru, let alone a note about the described Rite Aid move being *dependent* on a drive-thru variance being granted. Later in his review of the plan, Planner Behrendt does mention possible variance requirements (including for a drive-thru), but without explicit mention of the move of Rite Aid being *voided* if the drive-thru variance were to be turned down (which, if that connection was indeed there, would mean the whole plan, as submitted, would be voided). That link—and risk—were not mentioned in the Planner’s report. And there is no record of CDA “correcting” the Planner’s review of this site plan. Moreover, that drive-thru/Rite Aid move linkage was not stated explicitly at the June 14, 2017, meeting. (It was *not* mentioned by Todd Selig, Patricia Sherman, or by any member of the applicant’s team at the Public Hearing.) Thus, when abutters and other members of the public expressed concerns at the ZBA about a variance for a drive-thru near the foot/bicycle path along the College Brook they were not (as some Town officials later seemed to suggest) purposely “sabotaging” a Rite Aid move, a relocation that was a clear step in the right direction for redevelopment of the site. This disconnect could have been prevented if CDA had met with neighbors, explained what Rite Aid expected in agreeing to a move, why the drive-thru window was positioned where it was as opposed to other locations (and also shared some details about what attempts had been made to try to induce Hannaford to move).

give them time to work on the design and coordinate with Rite Aid about relocating. The applicant met with Todd Selig, Town Administrator, and Mary Ellen Humphrey, Economic Development Director, on several occasions to discuss potential ways to improve the project. Todd hired architect Patricia Sherman, who worked with the Town on the 2008 Mill Plaza Study, to join these discussions and advise the Town on ways to improve the design. We had a final meeting on Wednesday where the updated plans were submitted. Note that these were administrative/staff meetings convened by Todd Selig for discussion purposes only. The updated plans that were developed in the course of those meetings are now presented to the Planning Board and the public for review. It is common practice to include administrative/staff meetings in the course of larger, more complex projects to help improve the design potentially and to provide suggestions to the Planning Board. Of course, the Planning Board may respond to the updated plans as it sees fit. Todd, Mary Ellen, and Patricia will attend the board meeting to answer any questions.

6) Variances. The applicant will likely need to apply for several variances, possibly including configuration of building floors and uses, setbacks from the College Brook wetland, adding a drive through for the drugstore, and other elements. Once the design review is closed, the applicant will coordinate with Audrey Cline, Building Official/Zoning Administrator, and me on which variances exactly would be needed.

[Note again, that while a “likely” need for a variance for a drugstore drive-through is mentioned here, there is no hint that the earlier-mentioned Rite Aid move is *dependent* on such a variance being granted.]

7) Quality of design. I think that the design is quite good given the various constraints for the project. Patricia Sherman stated in our meeting yesterday that, given the constraints, she believes it is consistent with the principles embodied in the Mill Plaza Study. Again, this is a preliminary submission and many details will be submitted and reviewed carefully as part of the formal submission later.

8) Architecture. The architectural renderings presented now are largely for the purpose of conveying a sense of space. Detailed renderings will be developed with the formal site plan application. The Durham Architectural Regulations apply to this site so there will certainly be much discussion about all of the details at that time. We will want to analyze the streets and passageways through the development carefully to optimize the attractiveness and pedestrian character of those spaces (including paving colors and materials, proportions of the spaces, building frontages, widths of sidewalks, treatment of parking, etc.).

9) Issues. There are numerous items to discuss further as part of the formal review. For example, there have been different views on whether there should be any outbuildings in the buffer/park area along Mill Road. Many items are customarily not addressed in detail until the formal application – such as stormwater designs, landscaping designs, architecture, signage, lighting, utilities, a traffic study, etc. – provided it appears that the basic preliminary plan can reasonably accommodate those concerns later.

10) Close design review. Unless there are significant elements of the project that warrant further discussion or submission of additional documentation, recognizing this is a preliminary submission, I think it appropriate to close the design review process now (which the Planning Board or applicant may do at their option). Once the design review is closed, the applicant will submit a formal application when they are ready.

11) Timeframe. The applicant said they hope to submit the formal application soon and then to start construction this time next year.

12) Comments. If the Planning Board closes the public hearing on Wednesday, it would be helpful if each Planning Board member could offer general (nonbinding) comments on this updated draft.

The Planner’s Review for the June 14, 2017, meeting and Public Hearing on Site Plan #6 can be read here: https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/planners_review_6-14-17.pdf

June 14, 2017— Planning Board Public Hearing on Mill Plaza Redevelopment Plan #6

Continued Public Hearing Mill Plaza Redevelopment – 7 Mill Road. Design Review (preliminary application). Updated design for site plan and conditional use for the redevelopment of this 10-acre site. The project involves demolition of the rear commercial building; construction of 2 new mixed-use buildings, 1 with commercial on ground level and 3 floors of residential and 1 with commercial on ground level and 4 floors of residential; construction of 1 retail outbuilding; 370 parking spaces, including 42 garage spaces; a total of 80,000 square feet of commercial; residential space for 330 occupants; new public spaces; and other site changes. Colonial Durham Associates, LP, property owner; Sean McCauley, agent; Joe Persechino, Tighe & Bond, engineer; Steve Cecil and Emily Innes, Harriman, site planner; Lisa DeStefano, DeStefano Architects, architect. Central Business District. Map 5, Lot 1-1. [note new description] [At end of meeting: Design Review closed, which set the clock for a final application to be submitted by June 14, 2018.]

From the meeting minutes for the June 14, 2017, Planning Board Public Hearing (Site Plan #6):

Administrator Selig provided some history on redevelopment plans for Mill Plaza over the past few years, including the eventual settlement agreement between the owners and the Town. He said in 2016, the Mill Plaza owners came forward with additional iterations of a possible project, and members of the public and Planning Board members provided significant feedback. He said it became clear to him at that time that there appeared to be no resolution that worked for everyone.

He said as he'd done with the Madbury Commons project, he approached the Mill Plaza owners about having a discussion to come up with a project that would be as close to the Mill Plaza Committee report goals as possible while also being financially viable. He said he, architect Patricia Sherman and Economic Development Director Mary Ellen Humphrey then met with the owners. He said he would now step back from the process and said Ms. Sherman would provide further details on it. [Todd Selig from the recording at 040:50: "And then administratively I am going to step back and the project essentially re-enters the full public process of the Planning Board process." Note that Mr. Selig made no mention here of any needed variances for Plan #6.]

Ms. Sherman first spoke about the AIA150 design process in 2008 concerning redevelopment of Mill Plaza, which she'd been a part of. She said the project that came out of that process had different components than today's project, and was a product of a very different economic time. But she said the urban design principles reflected in it still applied today, and said they'd been given the test of time so there was now the opportunity to choose the best of these principles for special communities like Durham and Mill Plaza.

*Ms. Sherman said it was realized that there was disappointment about many of the plans previously proposed for the Plaza, but said there were significant changes to the current plan to meet the desires of the community and to fit with urban design principles. She described some of the features of the design, and said Mill Plaza could become a community gathering place. She described the collaborative process over the past six months to get to this point, which she noted was not mandated by Durham's regulations and was done on a voluntary basis. She also noted that there were many more phases to the review process, which would bring in more details about the project. **She challenged everyone to be open minded enough to look at this as an urban design project, and not as a student housing project.** [Emphasis added. Note that Ms. Sherman made no mention of variances that would need to be approved for Plan #6 to move forward.]*

Sean McCauley said he was the project development leader, and said the team was at a point where they were prepared to share the vision of relocating Rite Aid to a new building that was more central on the site so that residential units could be relocated to that part of the site. He said all things considered, this was the best option for Mill Plaza to proceed with. He thanked everyone who'd been involved with the collaborative process over the past several months, and said he hoped people would be open to the design ideas being presented. [Emphasis added.]

[Note that Mr. McCauley did not mention here that Rite Aid's move was dependent on the drive-thru variance being granted by the ZBA.]

Ms. Innes said the team had focused on addressing what they'd heard at previous meetings. She provided details on the key changes to the design since the last iteration [with the biggest change being the move of Rite Aid to a new building, facilitating more housing units "closer to Main Street boundary" and a move for buildings further "away from Chesley Drive and the College Brook boundary." Also, parking would be reorganized to "reduce 'the sea of asphalt,'" allow "clear routes for trucks, cars, pedestrians," and increase in "ability for targeted lighting and stormwater treatments"].

For more details, watch Emily Innes' & Steve Cecil's presentation, which runs from 00:49:35 to 01:25:00 here: <https://dcat22.viebit.com/player.php?hash=IQWBgbxRVcVq#>

Harriman PowerPoint Presentation on the June 14, 2017 plan

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/2017.06.14_planning_board_final_ppt.pdf [shows 75-foot wetland buffer]

[NOTE: The very impressive and detailed PowerPoint presentation included a *list* of "Proposed drive-throughs," one that was "merely a replacement for the existing bank drive-through" and the second as "a proposed new drive-through for Rite Aid." Yet, there were no images of the drive-thrus in the PowerPoint slide show, and the video of imaginary travel through the site did not include the pharmacy drive-thru and its relationship to the foot/bike path along College Brook. There was also no mention in this presentation of whether the main new feature of this plan – Rite Aid moving to a new building – was directly contingent on the not-at-all assured granting of a variance for a drive-thru pharmacy (when only bank drive-thrus are permitted in Durham and when the Mill Plaza Study Report and recent Master Plans all emphasize a *pedestrian* focus on this site and downtown surrounds). Moreover, there were no apparent informal discussions with residents before or after the meeting about the thinking behind the brookside location of the new drive-thru, whether other locations were considered, or of the consequences for the next steps if a variance for a drive-thru pharmacy were denied. Additionally, the presented animation of travel through the site had one entering only from Mill Road, without a representation of walking or biking into or out via the heavily used rear foot/bike path through the Chesley Marsh to and from the Faculty Neighborhood (a foot/bike path that would also pass along the proposed drive-thru). On another note: One needed to keep in mind that the Harriman designers of the site are not the architects for the redevelopment, and therefore, the actual building designs might not look anything like what was in these inspiring slides and animated walk-through.]

Chair Rasmussen asked if Planning Board members had any questions before the public hearing was opened.

Councilor Welsh said there were a lot more trees shown on the walk through than on the plan. Ms. Innes said that in developing the final site plan, they would continue to look for locations where trees could be reasonably added, and would use several different species. Councilor Welsh noted that including evergreens would be important given the weather. Councilor Welsh also said he had some concerns about how stormwater runoff would be managed on the site. He noted that some rain gardens were proposed and that there would be permeable surfaces in some small locations. But he said he didn't think that would improve condition on the site significantly, and asked what else could be done.

Project engineer Joe Persechino noted that this was a conceptual stormwater management plan at this point. He spoke about elements included in the plan, and said a key part of it would be to redirect runoff that would otherwise go to College Brook, and to treat as much runoff as possible on site and to current standards. He said they were also looking at snow management, which had been a big issue for the Mill Plaza site. He said the plan right now would be to relocate as much of the snow as possible to the back portion of the site, where it would drain into a bioretention basin, gravel wetland, or something else.

He said a comprehensive stormwater management plan would be developed. Councilor Welsh asked Mr. Persechino if he was confident that Town and state standards could be met. Mr. Persechino said yes, and said the standards would be exceeded in some instances.

Resident comments came next; some of which were followed by applause by residents in the audience.

Linda Tatarczuch, Fitts Farm Road, read a letter into the public record from **Beth Olshansky, Packers Falls Road**. The June 13, 2017 Olshansky letter on Site Plan #6 is excerpted above and posted in full here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_beth_olshansky.txt

John Hart, 13 Mill Road reviewed some of the comments he'd made in the letter he submitted. (See the June 12, 2017, letter above, with online link.)

He noted that a conditional use permit was required for this project, and said he thought it failed on some criteria when it needed to pass on all of them. He spoke in detail on the issue of preservation of natural resources, including the importance of restoring the wetland buffer as part of this project, and provided a number of recommendations. He said Mill Plaza demanded a modern urban landscaping design.

Tim Horigan, Faculty Road, said Mill Plaza was currently a vibrant area, and said he was concerned that this plan/project could change that. He considered whether the businesses there could survive years of construction. He said the current plan seemed ill conceived when UNH was having trouble with enrollment, and said there might not be a large demand for the proposed apartments. He also said one egress from the Plaza might not be adequate, especially in an emergency, and said he worried about the entrance to the Plaza washing out during some storm events.

Susy Loder, Oyster River Road, said she welcomed the opportunity to redevelop the Plaza. She said as people aged, many of them gave up driving a car, but still needed to have a variety of services nearby. She spoke about including in the plan some housing for elderly people, and said this would be reliable income and would result in fewer management problems.

She said she'd witnessed the lack of respect for the College Brook side of Mill Plaza, and said she hoped that this was the time to get this right for everyone. She said she appreciated the existing shortcut through Mill Plaza for pedestrians, and said it was important to protect that connection for people like herself and for children walking to school. She also said that as a supporter of alternative energy, she hoped the project would be designed so buildings could be fitted with solar panels. She said they might also consider using heat pumps to meet HVAC needs.

Joshua Meyrowitz, Chesley Drive, said he'd first like to convey from a neighbor the idea of [the Planning Board] reading the Minutes from previous meetings on Mill Plaza, and reading letters received about it over the past several years. He said it was unreasonable for residents to have to come out and speak repeatedly about the same concerns.

He said he didn't know anyone who didn't want to see the redevelopment of the Plaza, and said there was broad support for the idea of a village center. He noted the inspirational photos the Mill Plaza design team had provided with a previous conceptual plan, but said none of the elements in it had turned up in the current plans being presented. He also said that in May of 2016, a group of community members were presented with a design for the site that included moving Hannaford, but then that design did not come forward.

Mr. Meyrowitz described some of the details of plans that did come forward after that, which seemed to violate town regulations and common sense. He said this plan had some good elements, including preserving some greenspace, permeable pavement, buffering College Brook, and moving Rite Aid and in its place proposing student housing. But he said the Hannaford building was being left in place, with everything built around it, as if it was an ancient burial ground.

He said with this plan, there would be no option to have a real, full-sized supermarket in the future, and he

noted that most residents had now abandoned Hannaford, which had created a vacuum in the center of Town. He said the continued focus on students resulted in a lack of businesses for adults. He said the Mill Plaza owners had gotten Rite Aid to move, and said they should now be pushed to get Hannaford to move, so the housing for the project would be where it was supposed to be [per the Settlement], at the northern end of the property.

Mr. Meyrowitz spoke about the conditional use criteria, and said putting student housing in as proposed would make worse what the criteria were supposed to prevent, such as traffic noise, lighting impacts, a decrease in property values, etc. He said it seemed that any court would uphold a decision by the Planning Board that the project couldn't meet the conditional use criteria.

He said the University had lowered its enrollment standards, and said faculty were complaining about the quality of current students. He said this was happening because enrollment was going down, and said in the coming years there was the prospect of Durham having empty [student] housing. He said Mill Plaza could do fine because of its location, but said this would mean there would be vacancies in other student housing developments. He noted that with conditional use applications, the Planning Board could look at the economic impact of a proposal. He suggested that if there was something at the back of the plaza that quieted down at night, such as senior or workforce housing, a medical building, or a boutique hotel, neighborhood opposition would evaporate.

Mr. Meyrowitz said while the residents and boards didn't have the right to tell the Mill Plaza owners how to spend their money, they should be able to say what they wanted in return for variances granted. He suggested that people should ask for a real supermarket, a bakery, a hardware store, more greenspace, etc. He said they needed to hear from Hannaford, in order to get all of the pieces in place.

Kay Morgan, 16 Valentine Hill Road, said it was horrifying that there would be 330 students living close by. She noted that she lived next door to a house that had previously had 3 or more loud students in it, and now was owned by a family. She said the number of students living downtown had already been expanded by about 1000 [actually more than 2,000], and said the Town was still learning how to accommodate them whenever there was a major event that caused students to flood out into the street. She noted the increase in Town services that was needed in order to respond to this activity.

She said it was a must to include as much greenspace as possible into the redevelopment, stating that there really wasn't any downtown right now. She also said there should be a reduction in the height of some of the buildings. She spoke about businesses she'd like to see there, and noted that these days she tried to avoid going downtown because of the traffic, etc. She said it would be better if there was more walkability downtown, and spoke about the importance of having a walkable pathway through the Plaza as part of any project [including the path through the woods from Faculty Road to the Chesley Marsh and into the Plaza.] She said she didn't think that having the students living there would make Mill Plaza a more walkable, child-friendly space.

Robin Mower, Faculty Road, noted the detailed email she'd sent to the Planning Board. She said what was proposed seemed attractive. But she said each time she looked at the revised site plan, the famous line from Elizabeth Barrett Browning's sonnet came to mind: "How can I count the ways?" As in, "How many things are wrong with this proposal?" Ms. Mower read some key points from her letter:

- 1) She noted comments made by others on the wetland setback issues and impacts on Great Bay.
- 2) She said this plan, as others before it, flouted the Town's most basic land use regulations:
 - a) Site plan regulation standards, including Architectural Design (relative to building heights), Landscaping and Screening, and Natural Resources.

b) Zoning ordinance, including building height, location of commercial uses, wetland setbacks, and Conditional Use criteria, among them: External impacts; Preservation of natural, cultural, historic, and scenic resources; Impact on property values.

3) She noted the \$64,000 question: The first Conditional Use criterion listed addresses site suitability: "The site is suitable for the proposed use." So, is the use appropriate to the site?

a) She said many uses were proposed for this site, and said one must look at each. She said none was guaranteed to the applicant, either by the regulations or by the settlement agreement.

b) She said Mill Plaza was the largest underdeveloped commercially-zoned parcel in the downtown, and said redevelopment could provide currently needed and anticipated commercial space if the Town pushed on its side of the settlement agreement terms.

Ms. Mower said according to Mary Ellen Humphrey, Durham's Director of Economic Development, demand for downtown commercial space had exceeded the current supply, indicating an immediate, let alone future need for more commercial space. She said this proved wrong the predictions of developers of the Orion and Madbury Commons projects, where she believed the Town had "caved" on commercial space requirements. **She said as resident Annmarie Harris had stated in the past, commercial development would be of benefit to the community, and should take precedence over the housing component of this project.** [Emphasis added.]

She said a pivotal use for the applicant was multi-unit housing, which would no doubt be inhabited by students. She said the proposed multi-unit housing was a "threshold item," a term used by a previous Planning Board member. She said if one included Mill Road to the Oyster River, the Faculty Neighborhood had approximately 200 households. She said if one allowed for 3 members per household, which was probably high, **this proposal of 330 beds (which excluded likely overnight visitors and other guests) would add more than half the number of residents currently living in the Faculty Neighborhood.** She said unfortunately, the applicant did not include a site plan that showed the abutters' homes on Chesley Drive and Faculty Road, thus narrowing, if not obscuring, this critical perspective for those reviewing the plan. [Emphasis added.]

Ms. Mower noted the comments made by Councilor Jim Lawson at the December 14, 2016 public hearing on a previous redevelopment design for Mill Plaza. She said the Minutes read as follows: Councilor Lawson said he was convinced that Mill Plaza could be redeveloped in a way that could be approved by the Planning Board and that could be supported by the neighborhood. He considered whether from a Zoning perspective, Chesley Drive, Brookside Commons and the Faculty development were abutters or the neighborhood. He said he thought they clearly met the criterion of a neighborhood, which meant that there were significantly more criteria that an application would have to meet, concerning how a development would impact the neighborhood. He said this was going to be very challenging with the current design, and he spoke further on this. He said even if variances were granted, the Planning Board would still have to look at the Conditional use criteria.

She asked why one would want to add student housing to the neighborhood, when Town resources had been put toward limiting it. She also said it had been said time after time that student housing was a driver for revitalizing the downtown, and said the Town should get something significant in return for allowing that use.

4) Hannaford building and site – She noted that Lorne Parnell had suggested at the February 10, 2016 Planning Board meeting that perhaps Hannaford could be moved temporarily, a 3 or 4-story building could then be built on its current site and then Hannaford could be moved back in. She said it wasn't clear that this idea had seriously been on the table, and said if the Hannaford building wasn't renovated or replaced as part of the redevelopment, the question was when that would happen. She said the building was likely to degrade, to the detriment of the entire project and the Town.

She said until Durham Marketplace was taken over by Hannaford, the supermarket provided a valuable service

to the community and an opportunity for social encounters. She said if the building degraded, even the students Hannaford now relied upon for its profits might go elsewhere. She also said it might be sold as soon as the redeveloped Plaza was up and running, so the property owner would not have to pay the piper.

Ms. Mower said it was possible that Hannaford would consider Mr. Parnell's suggestion if the applicant were to sweeten the pot, but she said they didn't know any details of the discussions between Colonial Durham and Hannaford. She said it was the applicant's right to maintain privacy on those discussions, but said doing so did not help move this proposal forward.

5) What's right up against the residential areas?

a) Loading dock – She said if the Board thought a wall would block the noise, they should think again, because expanses of asphalt bounced noise rather than deadening it. She also said there had to be an opening somewhere; it's facing homeowners! She said Rite Aid deliveries were not infrequent and might occur at 5am, and include 18-wheelers. She said this would be right behind her house, but noted that this wasn't shown on the site plan.

b) Gathering and partying areas contiguous to the Orion student housing and to the neighborhoods. She noted that there would be decks on some of the buildings. She said neighbors now experienced large daytime parties in the backyards of student housing on the south side of Main Street in addition to late night and special event partying. She said Davis Court had become a magnet for outdoor partying, and said both neighbors and Town emergency service departments had been paying the price. She questioned contemplating including raised courtyards and contiguous gathering areas that would invite large groups of partiers, and bring them closer to a residential neighborhood.

She asked if property management, responsible for whatever happened outdoors on the entire 11-acre parcel, would be on site 24/7, and have authority to “move people along” at 2:00 and 3:00 am. She said what happened outdoors to date had not been subject to 24/7 residential property management, and said a recent meeting about Davis Court did not lead her to believe that other landlords would be amenable to taking responsibility for their tenants' behavior outdoors. She said the real question was what made anyone think gathering areas must be provided at downtown student housing properties in the first place? [Emphasis added.]

Drive-thru for Rite Aid. Ms. Mower said drive-thrus experienced a large number of challenges, including extended wait time for customers beyond what it would take to park and walk into the pharmacy and therefore extended idling time. She said the Union of Concerned Scientists noted that “idling for longer than 10 seconds consumes more fuel and produces more global warming pollution than stopping and restarting” She said a drive-thru would not be good for the community, which had supported sustainability and environmentally-friendly initiatives for years. She said the safety of pedestrians in the vicinity might be compromised. She suggested that instead there could be a walk-up window with a couple of 15-minute parking spaces.

Ms. Mower noted that the requirements for a formal submission were listed in Part II of the site plan regulations, and she also noted that the Planning Board could request additional documents from an applicant. She urged the Board to request that the Town Attorney review the formal site plans and provide a written legal opinion that the plans met the Settlement Agreement and that the Planning Board could proceed. She noted a precedent application, the Stonemark application for 99 Madbury Road, which was approved by the Planning Board, appealed to the Zoning Board, and then went to Superior Court, which overruled the Planning Board's approval. She said the Planning Board, Zoning Board, and members of the public spent months on the Stonemark application, and said this resulted in legal costs for the residents as well as the applicant.

She said the Planning Board would need to see a scale model of the plans for Mill Plaza, including human-size figures, the UNH dorms along Mill Road, Brookside Commons, the buildings along the south side of Main Street, and the homes on Faculty Road. She also said the location plan must show abutting homeowner

properties on Chesley Drive and Faculty Road. She said the neighbors had asked for this before but somehow never received it. She said a related aerial view would complement the scale model. She also said residents had asked for but never received an overlay of the proposed plan onto the existing site plan. She said it too should show abutting homeowner properties on Chesley Drive and Faculty Road. She said she'd like to see a plan with realistic landscaping renditions, not mature trees that none of them would see in their lifetimes.

She noted a letter submitted in February 2016 by John Parry, on trees for the site, and the area to be excavated near Main Street. [The full February 8, 2016, John Parry letter can be read at: www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/e-mail_from_j._parry.txt]

Ms. Mower said many residents hoped that all of the points that had been made would be addressed in the applicant's formal submission.

A more detailed June 14, 2017, letter to the Planning Board on Site Plan #6 from Robin Mower is posted here: https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/20170614_mower_re_mill_plaza.pdf

Shane Malavenda, Faculty Road, said he was a direct abutter. He said since the settlement agreement, the criteria had been to maximize the housing and minimize the retail. He also noted the settlement agreement criterion regarding location of the housing, and said that criterion had been challenged because Hannaford couldn't be relocated. He said this was a self-imposed hardship because the developer's tenant was involved, and he suggested that if the housing couldn't be concentrated to the north, some other criteria from the settlement agreement should change, including the number of beds allowed.

He said the current design resulted in a congested plan, with buildings that didn't necessarily meet the Zoning Ordinance requirements. He said if some of the residential buildings on the east side were relocated to the Hannaford site, this would be more palatable to the neighborhood. He said if the current plan went forward, it would change the dynamics of the neighborhood.

Matt Komonchak, Thompson Lane, said he lived close enough to the Plaza to hear the noise at Orion on Main St. He said the Planning Board was in difficult situation, given the settlement agreement. He said the Town was not protected by the settlement agreement and would have to live with a project here for the next 50 years. He said the Town should therefore seek outside legal counsel and negotiate with the developer outside the lousy current settlement agreement.

He said this felt like groundhog day, because they continued to see a project of massive scale that was incompatible with maintaining a decent quality of life in nearby neighborhoods. He said it was obvious to many that the project was destined to fail without Hannaford's cooperation, given the proposed scale and the limited space in the Plaza. He spoke about the Mill Plaza Study Committee process and the report and plans that came out of it, which were not reflected in the current plan. He said this current plan violated the Zoning Ordinance and the conditional use criteria as well as the settlement agreement. [Emphasis added.]

He noted the condition in the settlement agreement that the residential units would be located on the north side of the Plaza, but said 3 large residential buildings were proposed [on the south side] close to the family neighborhoods. He also questioned the proposed heights and architecture of the buildings. He said the proposal would install an entire neighborhood of students adjacent to a family neighborhood, and said the activities of these students would result in negative impacts on the neighborhood that would violate the conditional use criteria. He said there would be noise pollution, increased traffic, parking problems, more litter and other visual blight, degradation of College Brook, and a diminished quality of life and property values.

Mr. Komonchak said Administrator Selig's meetings behind closed doors with the developer were not the proper way to proceed, and said the current proposal showed that this didn't yield positive results. He said he

hoped that future discussion of the project would take place in public, and said Durham residents deserved more transparency.

He noted that the developer was handed a generous settlement and had failed to take advantage of it. He said the Planning Board didn't have to seriously consider a proposal that failed legally on so many fronts, ignoring the Zoning Ordinance, conditional use criteria, settlement agreement terms and the extensive community input. He asked the Board to revisit the options, and seek an agreement that considered Durham's long-term interests.

Susan Richman Cowell Drive, said it was getting harder to get out of Cowell Drive with her car every day. She said traffic seemed to get more snarled all the time downtown, and said adding another 300 residents would make that even harder. She provided details on this, and said she could envision scenes where fire trucks couldn't get through. She said the entire project had one bottleneck for people to get in and out of. She recommended that the Planning Board speak with the Fire Department about the impacts of this project on traffic.

Mark McPeak, Mill Road, said he was an immediate abutter, and echoed many of the concerns that had been expressed. He spoke about how Building E and the drive thru there would result in an increase in traffic, etc. and he also questioned how to buffer noise impacts from the loading dock. He noted that there were 520 ft between Building E and Faculty Road, and asked the Planning Board to consider the impact of this conditional use on his neighborhood, which was quite a bit less than 520 ft away from Building E.

Deborah Hirsch Mayer, Garden Lane, first read a letter from **Eva Lizer, 14 Croghan Lane**, which spoke in detail about the need for a good supermarket at Mill Plaza that had good product availability, including items for those with special dietary needs. Ms. Hirsch Mayer first noted that she was disappointed to see the hours and selection at Hannaford now. She then said she'd been a member of the Mill Plaza Study Committee, and said those involved on the committee had felt good about the plan that was developed [by MPSC]. She said it now seemed like that plan had been thrown away. She said she hoped the owner could come up with a better plan than the one that was presented tonight.

The Eva Lizer open letter "To Anyone Who Can Help Durham Get a Real Supermarket," is posted here: <https://www.dropbox.com/s/id4eioef14o0b84/To%20Anyone%20Who%20Can%20Help%20Durham%20Get%20a%20Real%20Supermarket.pdf?dl=0>

John Mince, Faculty Road, said he was an immediate abutter and lived close to proposed Building E. He said if both Rite Aid and Hannaford were being moved, he'd buy the champagne. He said there had been a colorful presentation this evening, but said it was important to remember that the trees wouldn't look like that way for a long time. [He added the presentation had used a very wide angle lens, stretching out the space portrayed.] He also said he wished the Fire Department had stayed for the presentation, and said he agreed with a previous comment that the one way in and one way out access to the Plaza was dangerous. He also noted that if someone stepped outside of Bella's and was speaking, he could hear every word, and said Building E was 3 times closer to him than Bella's was. He said he hoped there would be a plan that included moving Hannaford.

Bill Hall, Smith Park Lane, said right now there was a 17,000-sf grocery store in Durham, and said a grocery store couldn't be run with less than 30,000 sf without making some people unhappy. He spoke in detail on this. He also said [grocery stores] needed to use 53 ft trailers and said the design for the loading dock appeared to be workable. He said it wouldn't bother anyone on the other side of the site. Mr. Hall noted that there was a 50 ft Town right of way for the utility line that centered on the manholes on the south side of the property. He said it would make sense to mark this on the plan. He also said College Brook was now a lot cleaner than it used to be, and he provided some history on this.

Chair Rasmussen asked Planning Board members for their comments on the most recent conceptual design for Mill Plaza.

Councilor Lawson said since this was a preliminary design, there couldn't be the expectation of getting answers to some questions. He said he saw some positive changes in some aspects of the concept that had been presented this evening. He also noted that the developers understood that what was proposed was a conditional use, and also understood that some variances would be needed. He said some of the variances needed were because the owner was trying to accommodate the neighborhood.

He noted for some members of the public who had spoken tonight that the Planning Board understood how to evaluate a conditional use application. He also said he believed that the design presented tonight did meet the settlement agreement, and said he'd be happy to discuss this in the context of being a Town Councilor. He also said the Council needed to review the proposal at this point with the Town Attorney.

Councilor Lawson said the Planning Board had barely scratched the surface, and said if the applicant decided to bring forward a formal application, there would be various studies/analyses provided. He said a lot of the answers to valid concerns expressed about the proposal wouldn't be known until the Board got the fiscal impact analysis and the results of these various other studies. He said if the applicant wanted to submit the various formal applications for the project, he encouraged them to do so.

Mr. Corrow said he concurred with Councilor Lawson. He said the design was quite good given the constraints, and said **the Board wouldn't get into conditional use issues until it got the formal application and the various studies that would come with it.** He recommended closing the preliminary design review process. [Emphasis added.]

Ms. Dill said she was disturbed about a few things, and first asked what the difference was between the existing and proposed edge of pavement. Ms. Innes said the proposed sidewalk was at the edge of pavement, and as one got closer to Chesley Drive, it started to move away from the edge of pavement, which created a potential area for more greenspace. She spoke further on this, and said it would be an expanded buffer at the Chesley Drive end. She explained that when they hard-lined the design, at the very entrance there would be no room for buffer.

Mr. Cecil said the advice so far was to keep the entrance where it was because of many factors. Ms. Innes noted some topography issues as one got further into the site that would need to be taken into consideration in regard to a possible sidewalk.

Ms. Dill spoke about the fact that getting in and out of Mill Plaza was already difficult. She said another thing that had bothered her was the difference in height between the existing, unmovable Hannaford and the new 4-story building proposed next to it. She suggested that if it was 3 stories and was similar to Building E, it might be more graceful. Ms. Innes explained that there would be a 2-story façade on the new building. Ms. Dill noted the Hannaford in Dover on Route 108, which had what appeared to be a false second floor, and also had a big gable at one end.

There was discussion. Mr. Cecil said the team was committed to creating an improved façade, but said they had to work with Hannaford and get their buy-in with it. Ms. Innes said the façade transitioned the stories, and also said including the façade on all 4 sides would help hide the mechanicals.

Mr. Morneault noted that he'd spent time going through Minutes of past meetings, and meeting with Mr. Behrendt in order to get up to speed on the various plans for the redevelopment of Mill Plaza. He said what had been presented tonight was a positive move, and also said a lot of the concerns the Planning Board probably shared with members of the public couldn't be addressed until there was a formal application. He recommended closing the design review process.

Chair Rasmussen said he had nothing to add beyond what other Board members had said.

Councilor Welsh noted that the 330 maximum number of beds was negotiated as part of the settlement agreement, and said this made it difficult to put those beds in and also meet all of the conditional use criteria and Zoning and other requirements. But he said if the applicants thought this could be done, they should go ahead and submit a formal application. He said he didn't think it made sense to go over and over things at the design review level.

Mr. Brown said he agreed that there was an improved plan, and said the traffic and safety issues among other things would be fleshed out with the next steps. **He spoke about the possibility that the residential units that were proposed might not just be for students, and might be for seniors, etc.** He asked whether with this plan, any residential parking would be provided on the site. [Emphasis added.]

Mr. McCauley said that at past meetings, there was a request by the Planning Board and neighbors of Mill Plaza to remove residential parking from the site, and said this plan did that. Mr. Brown asked what the options would be for people living there who owned a car. Mr. McCauley provided some details on this and there was further discussion. Mr. Brown said he agreed that the design review process should be closed.

[At 02:58:40 in the video: Mr. Brown asked "So, what will be the (parking) options for people who live there... and...will own a car?" Mr. McCauley answered: "In speaking with neighbors who are operating buildings similar to what we're doing, [they] work out arrangements with the University for...West End lot, and most of them [the residents], because they're on the [UNH connector] loop, and they live across from the school, they really don't use their cars, except to come and go." Note that at the December 14, 2016, Planning Board meeting, this exchange occurred, per the minutes, as quoted from earlier: "Councilor Bennett said at the last design review session, a question came up about who would rent the property, and the Mill Plaza group said it would be adults, meaning people over 21. He asked if that was true, and Attorney Pollack said that would be the target audience." Unless those over 21 adults living in the Plaza were UNH students, however, they would not be eligible to purchase the "storage" parking permits mentioned or get much benefit from walking to UNH.]¹⁷

Attorney Pollack said they were ready to close the design review process. He said they had tried to accommodate as much feedback as possible, and were ready to move on to the next step. He said the feedback had been valuable.

Mr. Parnell said he thought the Planning Board had spent enough time on the design review process.

Lorne Parnell MOVED to close the Public Hearing. Andy Corrow SECONDED the motion and it PASSED unanimously 7-0.

Councilor Lawson MOVED to close the Preliminary Design Review for the proposed redevelopment of the 10-acre Mill Plaza site. The project proposed by Colonial Durham Associates LLC involves demolition of the rear commercial building; construction of new mixed-use buildings; new garage parking spaces; residential space for 330 occupants; new public spaces; and other site changes. The property is located at 7 Mill Road, Map 5, Lot 1-1 in the Central Business District. Lorne Parnell SECONDED the motion and it PASSED unanimously 7-0.

Note that four and half months after this meeting (on November 29, 2017), CDA Attorney Ari Pollack would tell the Planning Board that this June 14, 2017, Planning Board meeting (just outlined above):

included discussion of two variances that the Design Review concept would require in order for us to

¹⁷ UNH does indeed sell a limited number (about 70) of "storage" parking permits for those UNH students living off campus but within a mile of the campus, where students can keep their cars in the West Edge or Mast Road lots. The permits, which currently cost \$600 a year, cannot be used to park in the regular commuter-permit parking lots on campus during regular class hours. These "storage" permits sell out so quickly by word-of-mouth, says UNH Parking Manager Jeff Parsons, that the permits are not advertised on the UNH Transportation site. It's possible, however, that the number of these "storage" spaces will increase in the coming years, if the Department of Motor Vehicle training area in the West Edge lot is moved to another location.

submit a formal application that could be considered complete by this Board. The first of those variances related to our request to relocate Rite Aid with the benefit of a prescription window drive-through, something that of course they don't have in their present location, and as the site is today configured. Rite Aid, as an existing Plaza tenant, made it clear that a prescription drive through would be a critical component for any agreement on their behalf to relocate to another part of the site, and become a moving part of the redevelopment.

Contrary to what Attorney Pollack claimed in this November 2017 statement, however, there was no discussion of the necessity of the variances for the Rite Aid move at the June 14, 2017, meeting, as described above. Attorney Pollack's November 2017 statement, though a bit meandering, was more specific about the drive-through link to Rite Aid's move than any CDA statement at the June 2017 Planning Board or at August 2017 ZBA hearings (the latter is described further below), where Mr. Pollack's clear description might have made a difference for the attending members of the public and the members of the Planning Board and ZBA. But even in the above quote from November 2017, Attorney Pollack fell short of saying very directly that Rite Aid would *definitely* have moved if the drive-through variance were granted and that it was certain ahead of time that, without the variance, Rite Aid would definitely not move. In short, the dozens of residents speaking against a drive-thru along College Brook and close to Brookside Commons were not aware that they were speaking against Rite Aid moving to a new location on the site.

The full minutes for the June 14, 2017, Planning Board meeting can be read here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/47371/061417.pdf

A video of the June 14, 2017, Public Hearing on CDA site plan #6 can be viewed here:

<https://dcat22.viebit.com/player.php?hash=IQWBgbxRVcVq#>

FINAL APPLICATION SUBMISSION DEADLINE: With the design review closed on June 14, 2017, CDA had one year (to June 14, 2018) to submit a final application. Yet, to move forward with the specific plan (#6) presented on June 14, 2017, CDA would need to apply for and be granted two variances, one for a drive-thru pharmacy (because drive-thrus in Durham are permitted only for financial institutions) and one for more floors of housing than are permitted by Durham zoning.

PUBLIC REACTION TO CLOSING OF DESIGN REVIEW: The outcome of the June 14, 2017, Planning Board meeting caught the attention of a broad range of Town residents in a manner that three years of earlier meetings had not. Yes, the months of non-public "planning" (between Todd Selig and CDA) led to an improved plan. Yet, there were concerns about the limited time that the public had to assess the very different plan (which was submitted just three business days before the Public Hearing without the usual mass email notice from the Town Planner), combined with the fact that the Planning Board then closed the design review after just that one meeting on it, with not much time for Board members to process the new plan or to process the input of those residents who wrote and spoke about it at that very meeting. All those things conveyed to many residents the sense that a "fix was in," and that their views over many years were being discounted.¹⁸ Adding to the sense of "illegitimacy" among many residents was the fact that Administrator Todd Selig, operating outside the normal planning process, had seemingly "endorsed" the new plan (in an email to the Town Council about a "good plan to move forward" and in his introducing the plan to the Planning Board on June 14, 2017) before it was assessed by the Board or residents. The general public reaction may explain why an unusually large number of residents attended the Zoning Board of Adjustment Public Hearing in August, and also why residents were energized regarding the increasingly disappointing offerings of the Durham Hannaford.

¹⁸ Yet, a close review of the meeting video and minutes – as detailed above – reveals some subtler reactions among Planning Board members than the headline "Plan #6 Accepted, Design Review Closed" suggests. Planning Board members also expressed frustrations with aspects of the plan and some agreement with residents, but combined those with the sense that if, after so many years of hearing the same concerns, CDA had come only this far in the direction that residents and the Board had long been pushing for, then it was time to end the long "preliminary review" and see what happened when a final application was submitted and subjected to further scrutiny, site-plan regulations, conditional-use assessments, and so forth.

For many residents, the biggest problem with the June 2017 design (much-improved as it was from the earlier plans) was that it left the Town with an inadequate grocery store in the oldest one-story Plaza building, with no place for an expanded grocery store for the foreseeable future (the proposed new Plaza buildings filled up all possible grocery-relocation spots in the Plaza). Thus, the major “draw” for residents to their downtown core – a grocery store where one bought food but also ran into neighbors – would be lost. Moreover, leaving Hannaford as a one-story building meant that the limited space in the Plaza (particularly the section near Main Street) was being very inefficiently used, and new student housing would be pushed toward the adjacent neighborhood. These concerns led to a Town-wide effort to urge Hannaford to move to a different spot on the site, something that Sean McCauley, CDA’s project manager, said he had been trying unsuccessfully to accomplish.

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Resident Petition to Hannaford Supermarkets

July 2017—**Durham Residents Petition Hannaford to move to another spot in Plaza so that any student housing could be located on the North end of the Plaza, per the Settlement, and in better match to Conditional Use criteria (less negative impact on the adjacent neighborhood).** The Hannaford building (also housing the Bakery Café) sits on the Northern tip of the Plaza. Residents continued to sign on as the petition was printed and mailed (and emailed) to Hannaford. The delivered cover page noted over 360 signatures which were collected in a very short time, representing 230 households and estimated 675 or more mouths to feed.

As described in a typical resident “cover email” urging signing of the petition: *“Note that this petition is NOT in opposition to the Plaza owners and NOT in opposition to Town officials, but in favor of encouraging Hannaford to move from its current run-down location and to enhance the chances for a better redevelopment of the Plaza for all involved. We need as many Durham households as possible to be listed. And we need to get the petition to Hannaford before the redevelopment plan that leaves Hannaford in place moves further through the planning process.”*

The full petition text with the names of those who had signed by the mailing date can be read here:
https://www.ci.durham.nh.us/sites/default/files/fileattachments/town_administration/page/52711/durham_residents_petition_to_hannaford_july_25_2017.pdf

The petition was sent to Hannaford’s President (Mike Vail), Manager of Real Estate Development (Tyler Sterling), and External Communications Manager (Eric Blom). Town residents continued to “sign” the petition digitally as it was being printed and mailed, with 410 total signers (not all of whose names appear on the mailed petition, linked above) collected in July 2017.

August 3, 2017, 1 pm—Durham Hannaford Petition Delivery to Local Store

Seventeen Durham residents hand-delivered the petition to the local, Durham Hannaford. Although alerted in advance to the symbolic presentation, the Durham store manager refused to receive the petition. But the local media were present. A 372-word condensation of the 666-word petition was read before the news media cameras:

To the Managers of Hannaford Supermarkets:

“We... want you to know that our Mill Plaza grocery store has traditionally been the center of community life here in Durham.... We looked forward to running into friends, neighbors, and community members at the market to catch up on the latest news in town. Indeed, the experience of shopping for groceries at the Mill Plaza was so much more than just buying food. It was part of the very fabric of our Durham community.

When we heard...that Hannaford was taking over management of our market, we looked forward to the wider selection of Hannaford’s quality products available in other Hannaford stores.... Soon we realized that, with the

widened aisles, the overall stock had been dramatically reduced, and many of our families' favorites had been replaced by an abundance of processed foods that appeal to college students.

The dramatic change in the store's contents and the store's culture has greatly disappointed many residents. Sadly, the vast majority of our friends, neighbors, and community members no longer go to the Mill Plaza for their main shopping needs. Many now drive to Lee to shop at Market Basket.... During the summer and other UNH breaks, those of us who still stop in to pick up an item or two observe aisle after aisle without customers during what was once the busiest shopping times of the day.... Hannaford's shift...away from its traditional customer base of year-round Durham families is a great loss not only to our community, but also to Hannaford and to the Plaza as a whole....

We...would love to return to a newer, larger, and fully stocked Hannaford grocery store that serves the broader community.... We urge [Hannaford] to accept the offer of the owners of the plaza to build a new, updated, and larger store in the Mill Plaza as part of the proposed plaza redevelopment. This would restore the Durham market as the heart of our community.... If this opportunity to move to a full-service grocery store is not taken now, other structures will soon fill the space currently available in the Plaza. We fear Hannaford will miss this opportunity – for decades to come – to recapture Durham's sizable customer base of year-round shoppers. Respectfully submitted,

News Media Coverage of the Petition to Hannaford

[Note that the quoted comments from Hannaford's "Communication Manager" (that sales at the Durham store were not strong enough to warrant a larger store) were not responsive to the thrust of the petition, which was that most full-time Durham residents had abandoned the store because of its limited offerings and, to paraphrase, "rebuild the store, and we will come back."]

Seacoast Online—Durham residents petition Hannaford (03:44 video of petition presentation)
<http://www.seacoastonline.com/article/20170803/VIDEO/308039996>

Foster's Daily Democrat—Residents urge upgrades to Hannaford store
By Casey Conley cconley@fosters.com, Updated Aug 3, 2017 at 6:06 PM
<http://www.fosters.com/news/20170803/residents-urge-upgrades-to-hannaford-store>

NH1—Residents in Durham petition Hannaford, claiming store caters to UNH students, not community
<http://www.nh1.com/news/residents-in-durham-petition-hannaford-claiming-store-caters-to-unh-students-not-community/>

Union Leader—Durham residents petition local Hannaford, claiming it caters to UNH students By KIMBERLEY HAAS, Union Leader Correspondent, August 04, 2017 12:43AM
<http://www.unionleader.com/business/Durham-residents-petition-local-Hannaford-claiming-it-caters-to-UNH-students-08042017>

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August 8, 2017—Zoning Board of Adjustment: Two Mill Plaza Redevelopment Variance Requested

PUBLIC HEARING on a petition submitted by Gallagher, Callahan & Gartrell PC, Concord, New Hampshire on behalf of Colonial Durham Associates, New York, for an APPLICATION FOR VARIANCE from Article XII, Section 175-53(A)(5) of the Durham Zoning Ordinance to permit the development of a drive-thru facility accessory to a pharmacy. The property involved is shown on Tax Map 5, Lot 1-1, is located at 5 & 7 Mill Road, and is in the Central Business Zoning District. [DENIED]

PUBLIC HEARING on a petition submitted by Gallagher, Callahan & Gartrell PC, Concord, New Hampshire on behalf of Colonial Durham Associates, New York, for an APPLICATION FOR VARIANCE from Article XII, Section 175-41(F)(7) of the Durham Zoning Ordinance to permit the development of three, 4-floor buildings wherein Buildings B, C & D1 will contain one floor of non-residential space with three upper floors of residential

units. The property involved is shown on Tax Map 5, Lot 1-1, is located at 5 & 7 Mill Road, and is in the Central Business Zoning District. [DENIED]

Colonial Durham Associates applied for two variances related to the June 2017 Site Plan (#6):

Variance Request One: Drive-Thru Pharmacy Application

The Plaza requested a variance from the Zoning Ordinance that allows drive-thrus only for financial institutions. The variance application is here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/page/52541/variance_app_for_drive-thru.pdf

Variance Request Two: More Floors of Housing than Are Allowed

The following application is for a variance to build three four-story buildings containing only one floor of non-residential space and three floors of residential units. (Durham zoning allows for three-story buildings with two floors of residential over commercial, or four-story buildings if two of the floors are non-residential.)

https://www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/page/52551/variance_app_for_4_floor_buildings.pdf

Resident Letters on the CDA Variance Requests in Advance of the Public Hearing

A number of resident letters were submitted to the ZBA before the August 8, 2017, hearing:

On August 4, 2017, **Beth Olshansky, 122 Packers Falls Rd**, wrote that she was unable to attend the ZBA meeting and was thus submitting her comments in advance regarding the variance for “3 buildings in the Mill Plaza to be 4 stories tall, yet with only one floor in each being dedicated to retail uses.” She wrote “to refute some claims made by the Applicant.”

- 1) **No decrease in value of surrounding properties would be suffered.** *I refute the Applicant’s statement that four-story buildings create an appropriate “bridge” between our residential neighborhoods and our downtown. This defies logic since the plan envisions an abrupt change of intensity of use and scale of buildings from a family neighborhood and 2 story Brookside Commons to the south to the proposed 4-story buildings (the tallest buildings allowed in the CBD, and allowed only under specific circumstances). Claims that 3 stories of residential apartments (i.e. student housing) above one story of retail is an “appropriate balance of mixed use” may be true from the perspective of the developer, who is eager to pack in as many apartments as possible, but from the Town’s perspective, we have a long history of trying to maintain our small town character or at least an appropriate sense of human scale to our core downtown by maintaining height regulations. Note 175-41 A states: The purpose of the Central Business District is to maintain the mixed-used, pedestrian-oriented character of the downtown area while accommodating new development, redevelopment, and enlargement of existing buildings in a manner that **maintains and enhances the small town character of the downtown.** To that end, local property owners along Main Street recently voiced their strong and unanimous opinion that, despite the lure of higher profits, they will choose to honor the 3-story height limit along Main Street rather than seek a variance.*

We all recognize that the reason an out-of-town developer wants to build 4 stories is to maximize profits. However, for the immediate neighbors, packing in additional beds beyond what can be built within the limits of our Zoning Ordinance, means more noise at all hours of the night, more public nuisance, and adjacent properties that are less attractive for resale. One need only listen to the many complaints of residents living in our downtown neighborhoods to understand that adding additional beds across 3 buildings by adding a 4th floor means more college students packed into a small area. More students mean more noise at all hours of the night, more litter, and more troublesome behaviors. As we have seen with some of our other neighborhoods, this holds the potential to decrease the value

of surrounding properties. It may also contribute to Faculty Road and Chelsey Drive transitioning into student rentals should fewer and fewer families wish to submit themselves to the challenges of living near large numbers of students.

- 2) **Granting the variance will not be in conflict with public interest.** As noted above, packing in additional floors of students is contrary to the public interest as it increases noise and the public nuisance. Additionally, a fairly recent inventory of student rentals has shown that Durham has come very close to maxing out in its demand for student housing. Thus packing in more students downtown than our Zoning Ordinance permits makes little sense. It also threatens the viability of the student housing complexes west of campus. This is also against the public interest. While the developer may well state that these apartments are not earmarked for students, we in Durham know that they will become student rentals. Students have often voiced their opinion that they prefer to live close to campus so these apartments will have more appeal than those out of town. We also know that families and seniors would not choose to live in the Mill Plaza parking lot. Even young professionals, who have to get up and go to work in the morning, will not likely choose to live in a building ridden with student behaviors that could keep them up late at night. As our police chief often remarks, "Student and family lifestyles are fundamentally incompatible."
- 3) **No fair and substantial relationship exists between the general purpose of the ordinance provision and the specific application of that provision to that specific property.** In their wisdom, our town fathers have created regulations that help to maintain the orderly and attractive redevelopment of our downtown. Beyond specific height limitations designed to prevent overdevelopment of a site (i.e. 30 ft in the CB, with 50 ft permitted only with PB approval), note that **ZO 175-41 F.7 permits adding a fourth story only to encourage an additional floor of commercial space** (i.e. retail/office) within our limited downtown footprint.

While more commercial space would be of benefit to the Town, adding more residential space at this point in Durham's history will not. We already suffer from too many students living downtown. Despite the Applicant's insistence that the residential students are not limited to students, history has demonstrated that in fact students, not families, nor seniors, will choose to live in the Mill Plaza parking lot. The request to increase the amount of residential space is clearly designed to increase the developer's profits and can not reasonably be seen as beneficial to the community or in keeping with the general purpose of the ordinance provision.

- 4) **By granting this variance substantial justice will be done.** Claims of the Applicant that the variance respects the terms of the 2015 Settlement Agreement ignore some of the finer details of the Agreement. First of all, **the Settlement Agreement allows for up to 330 beds, but does not require 330 beds; The Settlement Agreement requires 80,000-90,000 square feet of existing and new commercial space. Note that the variance request asks for the maximum number of beds permitted while the proposed plan provides the Town with the minimum amount of commercial space. How is that "substantial justice"?**

Also note that the statement that taller buildings will allow for more parking is moot because the Settlement Agreement states clear requirements on parking, which must be met.

- 5) **The use will not be contrary to the spirit and intent of the ordinance.** First of all, our ordinance limits height in order to maintain an appropriate sense of human scale for a small NH downtown. One stated purpose of the Central Business District is to maintain and enhance the small town character of the downtown. What the applicant is proposing with their request for three 4-story buildings is to create a very dense urban environment crammed into a relatively small parking lot, which is sandwiched between family homes and our Main Street that consists of one-to-three story buildings.

*Second of all, our ordinance limits the number of residential floors in downtown buildings to avoid the temptation to overdevelop residential units downtown in our University community. **The option to add a fourth floor to a three-story building was solely designed to increase commercial space in our very limited downtown footprint.** Thus this request for 3 stories of residential space and only one floor of commercial flies in the face of the spirit and intent of 175-41 (F).*

In closing, when will Durham stop selling out the soul of our community so out-of-state developers can maximize profits at the expense of our community? I urge members of the ZBA to nix a redevelopment plan that is not appropriate to the Town's visions and goals. As noted by the Applicant, this is a once in a lifetime opportunity. Let's get it right this time by respecting the Town's vision and our regulations. This request for relief from 175-41 (F) does not meet the 5 criteria. As such, I urge you to reject this variance request, thus protecting the Town from the negative impacts of packing too many residential units onto a relatively small parcel that sits immediately adjacent to a family neighborhood.

The August 4, 2017, Olshansky letter (with the bolding above in the original) is posted here:

www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/page/52961/comments_from_beth_olshansky.pdf

The most detailed letters on the variance applications were submitted by **Robin Mower, Faculty Road**, a direct abutter of the Plaza and former Town Councilor. On August 4, 2017 (dated August 8 because of the hearing date) Mower addressed each of the variance criteria for the drive-through variance request.

Ms. Mower claimed that the drive-through would *not* be in the **PUBLIC INTEREST** because it would be out of sync with the "community values" articulated in numerous Master Plans, Council goals, planning forums, and site-plan regulations: A "vibrant, walkable downtown that promotes a sense of community and environmental sustainability are core community values." Mower quotes from the most recent Master Plan, "Many residents requested a more pedestrian friendly downtown, bike lane networks, better sidewalks, and other transportation alternatives that address traffic calming issues...." And "We hope the town will embrace smart growth principles to bring greater density to the core, forming a cohesive, walkable downtown with improved connectivity and traffic flow, including a comprehensive pedestrian and bicyclist network to connect residential neighborhoods and downtown."

Mower adds that the *proposed location* of the drive-through works against the public interest, because unlike other drive-throughs in the Seacoast of New Hampshire, which "tend to be on arterial roads...or in shopping centers located apart from small downtowns," this proposed drive-through is in the core of what is supposed to be a pedestrian-focused downtown, as well as being adjacent to residences. "Neighborhood residents often walk to the Plaza. A drive-through would require that they negotiate idling fumes and drivers who might be focused on a quick in-and-out and be less aware that the space is shared by pedestrians and bicyclists." Additionally, Mower notes, the operation of pharmacy drive-throughs extends into hours and days that bank drive-throughs are silent.

Mower adds other negatives about this proposed drive-through, including 1) further degradation of the adjacent College Brook, 2) contributions to climate change (she cites the Union of Concerned Scientists: "idling for longer than 10 seconds consumes more fuel and produces more global warming pollution than stopping and restarting"), and loss of community sociability because drive-throughs isolate people from neighbors. She cites a Master Plan on encouraging the sense of "connectedness with other community members."

Regarding the claimed **SUBSTANTIAL JUSTICE** that would result from granting the variance, Ms. Mower counters that the Board of Adjustment handbook and court cases indicate that "Substantial justice requires that the potential benefit to the individual shall not be greater than the potential loss for the general public."

Mower also contests the CDA argument that "the variance respects the 2015 Agreement entered between the

Town of Durham and the Applicant by maintaining and enhancing the community offerings of an anchoring commercial tenant.” Mower notes that “Nowhere in the 2015 Settlement Agreement is there mention of an ‘anchor tenant,’ a ‘primary business’ or synonym, or of the concept of ‘maintaining and enhancing community offerings.” Mower adds:

*Allowing a drive-through facility close to the residential neighborhoods would **intensify the use of the property, alter the character of the neighborhood, injure the rights of others (for example, the right to enjoy one’s own property), and counter the public interest**—all of which may be taken into consideration when evaluating the substantial justice criterion, as noted by attorneys Cordell Johnston and Christopher Boldt in their 2009 Municipal Law Lecture titled “The Five Variance Criteria in the 21st Century.” www.nh.gov/osi/resource-library/zoning/documents/the-five-variance-criteria-in-the-21st-century.pdf (See page 36)*

Regarding **UNNECESSARY HARDSHIP**, Mower counters Attorney Pollack’s arguments that “there was no fair and substantial relationship between the general purpose of the ordinance provision and the specific application of it to the property.” Mower says that such a relationship *does exist*. She adds: “The applicant argues that a drive-through may be ‘a significant factor in Rite Aid’s decision to relocate within and otherwise remain a part of the site.’ However, relocation of the Rite Aid is required only to allow denser building of residential units than the site can otherwise support.” Mower adds: “Additionally, while many so-called pharmacies do now include drive-through facilities, many do not and nonetheless thrive. Profitability of a so-called pharmacy (which is really just a general retail store with small square footage devoted to a pharmacy) primarily depends on other factors: (i) generating sales other than prescription items, and (ii) competition for location. The Rite Aid at the Mill Plaza has a prime location and may not actually need a drive through facility to profit.”

Mower also notes that the “proposed use is not reasonable because: “The Mill Plaza site is centrally located in the community and is already overwhelmed by car-centric uses. Considerable additional traffic is likely to be generated by the proposed dramatic intensification of uses. A drive-through pharmacy will add complexity to traffic both vehicular and pedestrian or bicyclist.” Mower adds: “the applicant likely requests this variance in order to achieve its goal of 330 beds, but the Court ruled in Simplex that ‘reasonable return is not maximum return.’”

Ms. Mower hits on the main weakness in the CDA “hardship” arguments [similar to the weak case in 2015, as noted further above]: “**No special conditions of the property distinguish it from other properties in the area that would prohibit it from being reasonably used in strict conformance with the ordinance.**”

Next, Ms. Mower addresses in detail what she sees as obvious **DIMINUTION OF PROPERTY VALUES** if the variance is granted, given the proximity of the proposed drive-through to residences and the height differential of the Plaza buildings to adjacent homes, and the realistic limits of proposed buffering trees.

Finally, Ms. Mower addresses the variance criterion of consistency with the **SPIRIT AND INTENT OF THE ORDINANCE** (limiting drive-throughs to financial institutions). Ms. Mower argues that the drive-through pharmacy would be contrary to the spirit and intent of the ordinance because the ordinance states that “The purpose of the Central Business District is to maintain the mixed-used, pedestrian oriented character of the downtown area while accommodating new development, redevelopment, and enlargement of existing buildings in a manner that maintains and enhances the small town character of the downtown....” Ms. Mower asks: “How does placing a drive-through pharmacy in the middle of a large shopping plaza “enhance” Durham’s “small town character?”

After the close of her letter, Ms. Mower adds a list of the hours of operation of local pharmacies, as contrasted with the much more limited hours and days of local banks.

The full August 2017 Robin Mower letter on the drive-thru variance request can be read here:

Robin Mower, Faculty Road, also wrote on August 4, 2017 (letter dated August 8 to match Public Hearing day), to oppose the variance for more floors of housing in three proposed buildings than are allowed under the ordinance.¹⁹

Again, Ms. Mower lays out “arguments pertinent to the set of five criteria that must be met for approval.” But first, she argues that the building-height application should more properly be three separate variance requests, one for each of the subject buildings. “The buildings closest to the residential neighborhood require different consideration from those [buildings] closest to commercial or existing multiunit uses.”

Ms. Mower also criticizes the application for not including images of the abutting properties, making it impossible for Board members to evaluate the request properly in terms of impact on neighbors. “Even the application sheet titled, ‘Relation to Neighborhood—Height’ is developer-centric: it shows only the heights of proposed buildings on the site itself and omits entirely the heights of neighboring single-family homes and Brookside Commons.”

Ms. Mower first highlights how the variance request violates the **SPIRIT & INTENT OF THE ORDINANCE**. This is a rare case, argues Mower, where “we know definitively what the framers of the ordinance intended—including a context for its application.” She refers to an attached Town Council Communication, dated July 26, 2010, prepared by former Town Planner Jim Campbell. Ms. Mower describes how “the ordinance was amended at the initiative of the Economic Development Committee to allow developers the flexibility of location of two floors of commercial use within a four-story building.” Mower adds that “Seven years after the adoption of this amendment, our Director of Economic Development [Mary Ellen Humphrey] notes that commercial interests are actively seeking locations in our downtown—but that we have no or little appropriate commercial space available. That is, current demand exceeds supply: we could use more commercial space even today.”

Ms. Mower then addresses how granting the variance would indeed be contrary to the **PUBLIC INTEREST**. She cites the recently adopted Master Plan: “*Over the past few years, there have also been some dramatic changes in downtown Durham as well as beyond the downtown because of a significant amount of private student housing developments. The number of new buildings and the size of some of them have impacted the perception of Durham as a small town community, and residents have expressed concern about the large number of students living in these buildings.*” In contrast, notes Mower, “If the residential use were designated as, and designed/configured for, senior housing or any other non-student occupants, the community would benefit and might support the variance request.”

Ms. Mower then addresses how all the added traffic (delivery trucks to for residents, visitors) and noise will negatively affect the neighborhood and possibly overwhelm the single access/egress point on Mill Road.

Today, there is little evening traffic on site after the offices, stores, and fitness center close. Adding residential uses will generate nighttime traffic where none exists now. Parking spaces could fill with visitors’ cars, as they do at the UNH C-lot opposite the Plaza. The coming and going of these cars and

¹⁹ Ms. Mower refers to the variance as a “height variance” in that there is an extra story of housing in a building that should be limited to one floor commercial and two floors of housing OR four stories if two are non-residential. But note that CDA Attorney, Ari Pollack, claimed that they were not requesting a height variance, but only a change in the mix of residential and non-residential. As Mr. Pollack later described to the Planning Board (on November 29, 2017), the variance was: “relative to the internal composition of floors in our four-story buildings.... The number of stories of the building, four, and the building height, not more than 50’, was not going to change regardless of the variance. It was the internal composition that was the focus of our application.” It was unclear from this statement if Mr. Pollack’s framing suggests that CDA would proceed with compliant, 2-story commercial, 2-story residential buildings if they were turned down for this variance.

motorcycles, including after 1:00 a.m. when the bars on Main Street close, will send noise into the adjacent neighborhoods with or without blaring car radios.

Ms. Mower also refers to the problems that homeowners near the Davis Court student rental property on Madbury Road have been having. Additionally, Durham is still grappling with whether all the additional student housing added in recent years entails needing more crosswalks, emergency response and code enforcement time, etc.

Ms. Mower notes that Durham has a very limited area zoned for commercial use and shifting the required balance of commercial and residential in the Plaza toward the residential depletes the potential commercial space. “Commercial use benefits the community as a whole by providing goods and services without the potential negative impacts of residential use—as envisioned in this specific project, for student tenants, which primarily benefits the developer and property owner.” Ms. Mower adds that within the range of things that the Town and Applicant were to get from the Settlement, the CDA proposal gives the Town the minimum and the applicant the maximum.

Ms. Mower also observes that the site plan places proposed housing adjacent to residences, without any possibility of effective buffering from tall buildings.

Citing a number of specific examples, Ms. Mower describes how an increase in the ratio of students to full-time residents downtown fosters a “downward spiral impact on goods and services for non-student residents.”

Limiting the number of floors of additional student housing, notes Mower, would help to reduce all these negative impacts because of fewer residents.

Continuing, Mower argues that **SUBSTANTIAL JUSTICE** would *not* be done if the variance is granted, because “substantial justice requires that the potential benefit to the individual shall not be greater than the potential loss for the general public.”

Economic impact—It has been clear to residents who have followed the application for redevelopment through the nearly three years of Planning Board meetings that the applicant is trying to cram too much onto the site. The latest iteration of the plan is, as one resident notes, “the least worst” but still falls short of providing a balance of benefit to the property owner and the community in this prominent, key location. While acknowledging that student housing has been an economic driver of development in the past few years, it is likely that we have reached the saturation point. If that is the case, the addition of new student housing will probably be at the cost to existing student housing, including the large complexes built just in the last few years. That would start a cycle of lower reinvestment in those properties, leading to requests for property tax abatements, etc. The net result is that the benefit to the property owner shall certainly be greater than the potential loss for the general public, i.e., Durham taxpayers.

Mower then discusses “Intensification of use” as it undermines the “substantial justice” claim for granting this variance:

*Allowing a third floor of residential use in each of three buildings would greatly intensify the proposed use even over what the ordinance allows (let alone what currently exists), **alter the character of the neighborhood, injure the rights of others (for example, the right to enjoy one’s own property), and the public interest**—all of which may be taken into consideration when evaluating the substantial justice criterion, as noted by attorneys Cordell Johnston and Christopher Boldt in their 2009 Municipal Law Lecture titled “The Five Variance Criteria in the 21st Century.”*

Regarding **UNNECESSARY HARDSHIP**, Ms. Mower again addresses the weak hardship case with a “large and important property” not being a sufficient justification for CDA to “uniquely be provided an advantage over other property owners.” As noted with the Mower’s concerns with the other CDA variance request: “**No special**

conditions of the property distinguish it from other properties in the area that would prohibit it from being reasonably used in strict conformance with the ordinance, and a variance is therefore unnecessary to enable a reasonable use of it....”

Finally, Mower argues against the CDA claim that there would be **NO NEGATIVE IMPACT ON SURROUNDING PROPERTY VALUES**. She also critiques the evidence CDA presents for this, including: “Redevelopment of the Mill Plaza is long overdue.” She says that while residents would agree with that statement, that agreement does not mean that the proposed plan would not hurt surrounding property values.

The applicant also argues that redevelopment would create a “bridge between the downtown commercial core, the University of New Hampshire, College Brook, and surrounding residential areas.” How? A bridge in a development context typically would mean a transition that borrows elements from each side. Just what, exactly, would be borrowed from the residential areas? It certainly wouldn’t be the residential demographic, and it wouldn’t be the commercial uses or three- and four-story building heights. No: allowing this use, particularly abutting the Chesley Drive neighborhood, would slam the neighborhoods right up against incompatible uses.

Mower summarizes what she and other residents have said about the negative impact on property values and lifestyles from greater noise, litter, traffic, trash, noise, etc. (with noise from fourth floor of residences “completely unmitigated by vegetated or other buffers.”

Homeowners’ views from Faculty Road, Chesley Drive, and Brookside Common would be compromised, particularly during the six or seven months when foliage is absent. Where we might see only the tops of three-story buildings, four-story buildings would then tower over even the few 50-year-old elm and oak trees between us. At night, we would see lights from residential uses that would not be on after commercial enterprises close down. This would result in our having negative impacts that other Durham residents would not suffer.

Mower concludes: “Both New Hampshire law and the U.S. Constitution protect the rights of property owners. Please remember that homeowners—not just those with commercial interests—are also property owners.” And she asks the Board to avoid granting variances that “tilt the balance altogether too much to the applicant.”

The full August 2017 Robin Mower letter on the variance request for more floors of residential housing than permitted can be read here:
https://www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/page/52961/20170808a_mower_re_mill_plaza_zba_height.pdf

Regarding a drive-thru pharmacy, **Margaret Celano, 3 Pendexter Rd.**, wrote: On August, 4, 2017,

Colonial Durham is asking for two variances, the second of which is to allow a drive-thru at a Pharmacy.

Durham has prided itself on being a walking town for all ages and levels of fitness, a tradition I would like to see continued. A drive-thru has the potential of creating more car traffic, as well as adding an extra variable to car commotion with the shopping center itself. By granting this variance, all five criteria taken into consideration would be ignored; surrounding property values would decrease because of such close proximity to car noise, added pollution that car idling adds, and the negative aesthetic all that carries with it. Granting this variance would be in opposition to public interest. The townspeople of Durham need a center that respects a more quietly active approach, because UNH needs have crept in and have been satisfied at light speed. Colonial Durham has not had any prior business relationship to warrant its asking for this variance.

The Celano letter on the drive-thru variance request is posted here:
https://www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/page/52961/email_from_margaret_celano_2.txt

Margaret Celano, 3 Pendexter Rd., wrote another letter the same day regarding the building height variance:

Colonial Durham is asking for two variances, the first of which is to build a four-story building with only the first floor to be occupied by commercial enterprises, instead of the first two floors for four-story buildings. Or, the first floor of a three-story building is commercial is also acceptable.

To grant a variance for the four-story, first floor commercial, in my opinion, would make downtown Durham even more top-heavy with UNH student inhabitants than it already is. I think that, by granting this variance, all five criteria taken into consideration would be ignored; surrounding property values would decrease because of such close proximity to four-story buildings. Granting this variance would be in opposition to public interest. The townspeople of Durham need a center that includes their needs first, because UNH needs have crept in and have been satisfied at light speed, compared to those of the townspeople.

The Celano letter on the building height variance is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/page/52961/email_from_margaret_celano.txt

Katie Ellis & Ti Crossman, 26 Coe Drive, wrote on August 5, 2017,

We will be out of town next week, so unable to attend the ZBA meeting on Tuesday evening, 8/8/2017, but I do want to express my opinion to the board regarding the Mill Plaza Development request for variances.

1. Request for Height Variance - I urge the board to DENY this variance request. In 4 story buildings in our downtown, it is appropriate that at least two stories be devoted to business, non-residential space. This zoning regulation is appropriate, and any variance would adversely affect us by allowing even more student housing and not providing more, and needed, business space.

2. Request for pharmacy drive-through - I also urge the board to DENY this variance. We are a small, walkable town. There is no need to devote the space or pollution to a pharmacy drive through. I support the regulation as stated and cannot see any reason why a variance should be granted in this case. Please deny the request.

Thank you for listening and taking such care with our town's future.

The Ellis and Crossman letter is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/page/52961/comments_from_kathryn_ellis_thomas_crossman.txt

Zelda and David Moore, 4 Stevens Way, wrote on August 5:

We urge the Board to deny the requests for 1) a height variance by Colonial Durham Associates for the redevelopment of Mill Plaza, and 2) a Drive-Thru Pharmacy variance for the redevelopment of Mill Plaza. We support the points outlined in the letters to you from Robin Mower and Margaret Celano with respect to these variances. Respectfully,...

The Moore letter is posted here:

www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/page/52961/comments_from_zelda_david_moore.txt

Susan and David Richman, 16 Cowell Drive, wrote on August 6, 2017,

Downtown commercial development will be NEGATIVELY affected if traffic congestion becomes worse! By providing a variance that permits greater residency to proposed buildings, and another variance offering the drive-up option for the pharmacy, we will definitely increase traffic downtown. Currently, there are many times that it is difficult to dodge pedestrians on Main Street, cars moving in and out of parking spots, trucks double-parked to make deliveries. Pettee Brook Lane traffic is often backed up almost to Madbury. It is difficult to find an opening in traffic when trying to exit the Post Office parking lot or Cowell Drive (where we live).

Please check with the Police Department, whether pedestrian and traffic safety will be put at risk by these additional burdens to our roads. Please check with the Fire Department, whether the one tiny exit will provide sufficient road space for access and egress to the Plaza in the event of fire or other emergency.

Finally, placing additional traffic (the drive-up window) next to an ecologically fragile brookside is bound to require expensive environmental remediation later on.

There are no pressing reasons for granting these variances, and considerable reasons weighing against them. Thank you for your consideration.

The Richman letter is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/page/52961/comments_from_david_susan_richman.txt

Jennifer Lee, 18 Faculty Road, wrote on August 7, 2017:

I have reviewed carefully both requests for variances and find that neither meets the criteria for being granted. This is especially true for the impact on property value and for the good of the community. More student housing and a drive-in store would result in traffic congestion in an already congested area. This is clearly against the desire of the town to be one where walking is safe and pleasant. I continue also to be concerned about safety (access for fire and police rescue), snow removal, management of garbage, and general maintenance in the overcrowded and unattractive setting proposed by the developers. Thank you for your attention.

The Jennifer Lee letter is posted here:

www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/page/52961/comments_from_jennifer_lee.txt

Matt De Angelis & Susan Friedrich, 171 Packers Falls Road, wrote the day before the ZBA hearing:

Please deny the request for a height variance by Colonial Durham Associates for the redevelopment of the Mill Plaza. We have read the comments of others, including those by Robin Mower and Peggy Celano. They make points well, and we agree with them, and I won't attempt to try to put it more eloquently. We don't need high-rise monstrosities in town. We don't need more student housing – we are already swollen from it. Thank you for your consideration.

The De Angelis & Friedrich letter is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/page/52961/comments_from_matt_de_angelis_susan_friedrich.txt

On August 7, 2017, **Nancy Webb, 23 Woodridge Road**, wrote briefly:

Do not allow a 4 story residential variance to the Mill Plaza developers. Insist on keeping 2 stories for commercial use. Also, do not allow a drive-through variance for a pharmacy. Keep the drive-through only for banks and credit unions.

The Webb letter is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/page/52961/comments_from_nancy_webb.txt

On the same day, **Bob and Heidi Ely, 177 Durham Point Road**, wrote to “request that you disallow the 2 requests for variances requested by Colonial Durham. The present plans for the Plaza do NOT reflect the desires of the population of this town — and must be rejected.” See their brief note here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/page/52961/comments_from_bob_heidi_ely.txt

Diane and Frank McCann, Oyster River Road, also wrote on August 7, 2017:

Please say no to the requested variances. The traffic situation at the shopping center is already difficult and hard to manage . It has become so difficult to enter the area during the school year that we choose to do our significant shopping at other centers. Additional residences will cause more hardship and is not appropriate .We have sufficient housing for students. The brook is vulnerable and should not be endangered. We have repeatedly asked that these variances be denied and again we say no to both requests.

The McCann letter is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/page/52961/comments_from_diane_mccann.txt

Doris Irwin, 4 Moharinet Way, wrote on August 7, 2017,

I feel strongly that the two variances before the zoning board for the Mill Rd. Plaza should be denied. We certainly do not need more student apartments in the very middle of downtown. Although the addition of a drive thru pharmacy is tempting, the congestion around the plaza area is already a problem. We do not need additional traffic. For those reasons I ask the zoning board to turn down the two variances.

The Irwin letter is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/page/52961/comments_from_doris_irwin.txt

Writing at greater length, also on August 7, was **Mark McPeak, Brookside Commons**, a direct abutter to the Plaza, who would be looking at the proposed drive-thru while sitting on his apartment’s porch:

I am unable to attend the meeting of the ZBA, scheduled for tomorrow. So I’m forwarding this note to express my opposition to the request for a variance to allow a “drive-thru facility accessory to a pharmacy.”

As I understand it, “drive-thru facilities” are currently allowed for financial institutions only.

Allowing a variance for a drive-thru facility “accessory to a pharmacy” in the location indicated in the application for variance would certainly negatively impact the Brookside Commons community, where my wife and I live, and the Faculty Road neighborhood.

Such a drive-thru would increase traffic, light, noise, fumes, and pollution so close to our community, earlier in the day, and later in the evening than bank-related drive-thrus.

Please note that pharmacies in Lee and Newmarket offer drive-thru facilities, within just a few miles of Durham, which are within easy reach for mobility- or health-challenged customers” without reducing the walkability of our town center.

It is interesting to note that these nearby pharmacies, with drive-thru facilities, are in settings which are much more removed from local communities than the Mill Plaza. I attach below two images from Google Maps, showing distances from these pharmacies to the nearest residence. **[The comparison images can be seen in the online posting of this letter; link below.]**

Allowing a “drive-thru facility” as an “enticement” to Rite-Aid may well enhance the financial return on investment for the owners of the Mill Plaza. However, as I understand it, one key purpose of “development standards” (zoning regulations) is to balance the rights of property owners with the long-term interests of the community. In this case, the character of our town center is at stake, and allowing drive-thrus is, for me, a step in the wrong direction. The approval of this variance request will decrease the value of surrounding properties, and will be contrary to the public interest. Thank you for the opportunity to share these thoughts.

The full McPeak letter (with the comparison images of nearby drive-thru pharmacies) is posted here: https://www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/page/52961/comments_from_mark_mcpeak.pdf

Gayle & Robert Hylan 11 Spruce Wood Lane, added their views on August 7, 2017:

We would like to have [our] protest recognized against both variances for the Mill Plaza project - the one for the 4 story buildings and the drive through pharmacy. We agree whole heartedly with Robin Mower's reasons.

We live at 11 Spruce Wood Lane and hate that the flavor of the community will change at Mill Road plaza with what is planned. We already have way too many students downtown. We love having students in town. That is one of the reasons we decided to retire to Durham from Massachusetts, but we didn't want them practically invading all our space!!!

The Hylan letter is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/page/52961/comments_from_gayle_robert_hylen.txt

A few hours before the ZBA meeting began, **Jennifer and Andrew Kun, 22 Faculty Rd**, added their voices:

We are long-term Durham residents, and since 2003 we own a house on Faculty Rd. We have followed the Mill Plaza development effort with great interest, and we are writing to request that the ZBA reject both requests for variances submitted by the developers regarding the Mill Plaza. Below is our detailed argument for these requests.

1. Number of residential floors: We would like to see Durham remain a town which provides a balanced environment for all of its different stakeholders, including long-term, full-time residents like my family, as well as students, businesses, and UNH employees. We believe that building a large student housing complex right next to a residential neighborhood, will not help achieve this balance. The large complex, in addition to other similar and recent developments, has the clear potential of turning downtown Durham, which abuts the Faculty Neighborhood, where our property is, into a less-desirable, noisy

location, better known for its party atmosphere than as a great place to raise kids. This would result in both a reduced quality of life for our family, and likely in the reduction in the property value of our home. We ask the ZBA not to allow this to happen, by not allowing a variance in the number of residential floors in any new construction on the plaza.

2. Drive-through pharmacy: Our town can use more areas where residents, students, and of course the customers of downtown businesses can walk, sit, gather to talk, see their kids play. Walkable areas are livable areas. We ask the ZBA not to decrease the walkability of our town by allowing a drive-through pharmacy in the center of town.

We thank the members of the ZBA for considering our request.

The Kun letter is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/page/52961/comments_from_andrew_kun.txt

In sum: Twenty-three residents (in a total of 17 letters) wrote in advance of the Public Hearing in opposition to the variances.

(Note that Beth Olshansky's letter focused only on the building height/composition and that Robin Mower and Margaret Celano each wrote separate letters in critique of each variance request.)

NO advance letters were posted online *in favor* of the variance requests.

The August 8, 2017, Public Hearing

The agenda for the ZBA meeting is here, with Mill Plaza variance requests as 2nd and 3rd items:

www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/meeting/47561/8-8.pdf

The meeting room was packed and standing-room only. But the first item on the agenda (unrelated to the Plaza) took much longer than residents had anticipated. And by the time the Mill Plaza items were finally starting to be addressed (two hours later!), about half of the residents had given up and gone home. Nevertheless, over 20 people spoke at the public hearing or had others read their letters.

Regarding the Plaza, the ZBA first dealt with the application for a drive-thru "accessory to a pharmacy."

From the August 8, 2017, ZBA meeting minutes (with minor corrections), starting on p. 13:

*Attorney Pollack said they were asking for two variances, and said both related to the most recent development concept presented to the Planning Board in June 2017. He noted that the design process for Mill Plaza had taken several years, and he spoke about how during this process, there had been litigation and then a settlement agreement between the applicant and the Town. **He said they were before the ZBA now for two fairly minor variance requests.** He said he'd provide a quick overview of them, and then details of the design concept would be presented in order to provide context for the variances. [Emphasis added.]*

Attorney Pollack first spoke about the variance application to allow a drive-thru for Rite Aid. He noted that the revised design for the project showed relocation of existing tenant Rite Aid to a more centrally located footprint on the site. He explained that Rite Aid's present business model included providing drive thrus as part of their businesses, especially for customers with mobility issues. He noted that the Table of Uses only allowed drive thrus in conjunction with banks

He said that concerning the second variance application, the design showed multiple new buildings, with a mix of residential and commercial uses. He said the 3 proposed buildings with 4 stories would be located along the northern portion of the property, and said the ground floors of these buildings were proposed to be

nonresidential. He said the vast majority of nonresidential space would be dedicated for commercial tenants, and said only a small portion of the ground floor of one of the buildings would be nonresidential parking. He noted that this nonresidential parking had been allowed elsewhere in Durham, and also pointed out that the owner wasn't asking for relief concerning building height, and was just asking for relief concerning the composition of the floors.

Attorney Pollack said the Board would hear a lot about student housing, existing tenants, Hannaford, snow storage, etc. but said these issues didn't have a lot to do with the two variance requests. He noted that the building permit application had been denied so the applicant was here to seek relief, and said if the variances were obtained, a formal site plan application would be submitted to the Planning Board.

Architect Emily Innes explained that the variance requests were before the ZBA because the design for the project depended on the granting of these variances. She described the existing site including the current location of Rite Aid, and then described the proposed plan with the various buildings and other features on the site. She said Rite Aid had agreed to move, which hadn't been agreed to last year, and said their move made it possible to address some of residents' concerns about the height of buildings closer to the neighborhood in previous designs.

She said moving Rite Aid allowed the creation of a new building next to Hannaford and the placing of residential space on the top of the building, closer to Main Street instead of closer to the neighborhoods. She noted that Rite Aid had asked the applicant to seek a variance to allow the drive-thru.

Ms. Innes said with the 2nd variance, the applicant was requesting to have a different arrangement of uses on the floor of some of the proposed buildings, and she noted that the applicant was not requesting a height variance. She said buildings B, C and D1 would all have 4 floors, with 3 residential floors and 1 nonresidential ground floor. She said buildings D2 and E would each have 3 floors, and said building A, the Hannaford building would have one floor.

She said as noted in the variance request, it was proposed that buildings B, C, and D1 would have a 4th floor with residential space. She said these 4th floors would back up against the Main Street boundary, as far away as they could get from the neighborhoods on Faculty Road and Chesley Drive.

Ms. Innes showed on the plan the proposed nonresidential space on the first floors, which would be for commercial uses and surface parking. She said there had been discussion about building E possibly having office space on the 2nd floor. Attorney Pollack noted that the team had been encouraged that Economic Development Director Mary Ellen Humphrey had spoken about second floor office space opportunities in Durham and the need for this kind of space. He said the current plan had evolved beyond earlier design concepts that hadn't included this feature, because the applicant was trying to be responsive to market demand in the community.

Drive Thru Variance 175-53 A 5

Attorney Pollack said no decrease in the value of surrounding properties would be suffered in granting this variance because redevelopment of Mill Plaza was long overdue. He said what was there today was a detraction, with no elements of modern planning there. He said the community would benefit from redevelopment of the property, and noted that the Mill Plaza Study Committee Report had recognized in its final report that the site held "tremendous potential for improvement, economically, socially and environmentally."

He said the requested variance would enable Mill Plaza to relocate the existing Rite Aid in a way that better organized the overall site for development, traffic flow, pedestrian safety and connectivity, etc. He said it also allowed the applicant to put the apartments to the north part of the site to the greatest extent possible, away from the neighborhoods and toward Main Street, which was consistent with the settlement agreement as well

as common sense in terms of trying to relieve impacts on residents to the south of the site. He said the current site offered very little in terms of screening, mitigation landscaping, etc., and said their inclusion in the proposed project would protect against devaluation of the value of abutting properties.

Attorney Pollack said granting the variance would not be contrary to the public interest because pharmacy drive-thru facilities had long since become a key component of modern operations. He said there were residents who would benefit from that convenience especially those with mobility and health challenges.

Concerning the Hardship criterion, he said it appeared that drive-thrus were limited in Durham because the Town didn't want fast-food restaurants and the drive-thrus associated with them. He said banks were allowed to have drive-thrus, and said he believed a pharmacy was closer to a bank than it was to a fast food restaurant. He said there was therefore no fair and substantial relationship between the general purpose of the ordinance provision and the specific application of that provision to the property. He said what was being asked for would be a compliment to Rite Aid, which was willing to make a substantial investment, to relocate, and to be an anchor tenant in a new building. He said the drive-thru was a significant factor in their decision to relocate.

Attorney Pollack said the proposed use was reasonable because the Mill Plaza site was one of the largest and most important redevelopment sites in downtown Durham, as recognized by the Mill Plaza Study Committee in its report, and the settlement agreement. He said a pharmacy use was an advantage to the community, so was reasonable. He also said it was an enticement for Rite Aid to participate in the project.

He said owing to special conditions of the property that distinguished it from other properties in the area, the property could not be reasonably used in strict conformance with the ordinance. He said drive-thru facilities were a common component of modern pharmacies. He also said a key element of the settlement agreement was delivering a certain minimum of commercial square footage. He said Rite Aid would be a key component of the anchoring of commercial uses in a redeveloped Plaza. He said while they were already there on the site what was proposed would involve a significant commitment on Rite Aid's part to a long-term occupation of the site.

Attorney Pollack said substantial justice would be done in granting the variance. He referenced the settlement agreement, and the fact that Rite Aid would be an anchoring commercial tenant. He said the applicant desired as part of the settlement agreement to offer a commercial presence of full service tenants.

He said the use would not be contrary to the spirit and intent of the ordinance. He said if drive-thrus were allowed for banks, it wasn't a stretch to allow a drive thru for a pharmacy so someone could pick up his medication. He said pharmacy transactions probably took the same amount of time as bank transactions, and had similar queuing up of cars at different times of the day, and different days of the week.

4th floor Residential Variance Section 175- 41 F 7

Attorney Pollack said no decrease in value of surrounding properties would be suffered in granting the variance. He said buildings B, C, and D1 would be 4 floor buildings either way, and said what was proposed would get the apartments as far away from the southern part of the site and the neighborhoods there as possible. He said the applicants were asking for this relief to honor the settlement agreement, and get those apartments as far north as they could. He said the vast majority of apartments in the development would be on the north line.

He said granting the variance would not be contrary to the public interest because mixed use development with upper floor housing was recognized as a conditional use in the Central Business district. He said there were other projects of this nature in the district. He said the ordinance had preamble language talking about "[m]ixed use redevelopment in which the upper floors are used for residential purposes is encouraged." He said the residential use was an anchoring presence for the project, and allowed the developer to offer commercial opportunities, to take a chance on things like 2nd floor office space, and to create a larger tax base than what

existed today. He said that was certainly the intent of making mixed use development opportunities available.

Concerning the hardship criterion, Attorney Pollack said no fair and substantial relationship existed between the general purpose of the ordinance provision and the specific application of that provision to the property. He said one could read this provision as applying to a single building project with multiple floors. He said a 3 to 1 ratio might not be what one was looking for, for one building. But he said this project incorporated 7 buildings, 3 of which were entirely commercial and the rest were mixed use buildings.

He said what was proposed more than met the intent of the Ordinance, and said the use was quite reasonable, noting that it met the settlement agreement as well. He said the proposed use was reasonable because the opportunity was unique, given the large property that was close to the downtown, and that had walkability and gathering space potential. He also said it was reasonable because mixed use was allowed by conditional use.

Attorney Pollack said by granting the variance substantial justice would be done. He said the settlement agreement put the vast majority of the housing units on the northerly half of the site, allowing them to cluster the buildings, do some buffering for conservation areas close to the brook, modernize the landscaping and stormwater management, and provide flexibility in design. He noted the iterations to date that finally evolved into this current plan.

He said the use would not be contrary to the spirit and intent of the ordinance, which encouraged mixed use development and might very well apply, in the strict sense, to a one building redevelopment proposal. He said given that this was a multi-building proposal similar to other projects that had requested this relief, and that the applicant was achieving things over a set of buildings, the proposal was quite consistent with the spirit and intent of the ordinance.

Mr. Warnock asked if the number of beds would increase with this most recent design. Attorney Pollack said 330 beds was the maximum number allowed in the settlement agreement, so this variance was just talking about where the beds would go on the site.

Ms. Lawson asked what the alternative was if the beds weren't concentrated at the northern side of the property. Attorney Pollack said at least one, and perhaps two buildings would be located closer to the residential neighborhood below building D1 and across from Hannaford. He noted that there had been strong public opposition to this approach. He said there were 330 beds in both design approaches.

Mr. Wolfe said he thought this plan was much better than the earlier ones. He said that having said that, Attorney Pollack had overlooked discussing the special conditions of the property that distinguished it from others in the area and created a hardship. [Emphasis added.]

[Attorney Wolfe indicated at greater length that the ZBA has to evaluate applications, not on the basis of how nice the design looked, but based on the five variance criteria. And, yet, in both CDA variance applications, the applicant ignored the key argument that the property is different from other properties in a specific way that would create a hardship if they had to follow the Town's ordinances. Note that this was same "hardship stumbling block" that Attorney Pollack faced in the March 2015 ZBA hearings, summarized above, and that he did not seem to strengthen his argument on the hardship issue over the intervening 2.5 years since the 2015 denials and tabling. Instead of describing a hardship, Attorney Pollack again outlined the "opportunities" of the site, as he continued to do in response to this query by Mr. Wolfe.]

Attorney Pollack said the property was different because of its size and its proximity to the downtown, and he also said it offered the community a unique economic development opportunity. He said the size of the property allowed for open space, parking, pedestrian areas, enhanced commercial space, etc.

[Watch 02:30:00 to 02:31:35 for more on what Attorney Pollack said about the unique possibilities/opportunities of the site, though saying nothing about the hardship, emerging from the unique aspects of the property, if the

specific ordinances from which he was requesting relief were followed. As the Town Planner wrote regarding the 2015 variance requests: “The desire of the applicant to build the way he wishes, regardless of the community’s ordinance requirements, is simply not a sufficient reason for the granting of the requested variances by the Zoning Board of Adjustment.”]

Mr. Wolfe said [in attempted paraphrase of the argument presented by Attorney Pollack] Mill Plaza couldn’t be redeveloped unless there was the ability to have 4 story buildings with some sort of apartments with 330 beds, [“Is that what I’m hearing you say?”]²⁰

Chair Toye said he believed the applicants were here because they’d been pushed by the community to develop this type of project.

Mr. Wolfe said he was still trying to understand the special conditions of the property that meant a [hardship] variance was needed.

Attorney Pollack said the applicants needed help with not having to put the beds on the southern part of the site, and said that was the uniqueness.

Mr. Wolfe said he understood that the applicant needed 330 beds to make the project economically viable. He asked if any research had been done on whether 330 students and their activities would impact the value of the homes in the neighborhood.

Attorney Pollack said he thought the impacts could be mitigated through the planning process, and said the challenge for the applicants and their team would be to mitigate impacts from traffic, noise, snow storage, etc. in order to get a conditional use permit.

Mr. Wolfe noted that the drive-thru was allowed by conditional use for banks, but not by right. Attorney Pollack said he didn’t think there would be an issue if a drive-thru was proposed for a bank, but said a variance was needed for a pharmacy drive-thru. He also said the pharmacy use as part of the redevelopment of Mill Plaza required getting a conditional use permit.

Mr. Wolfe said he was on the Planning Board when the requirement of 2 floors of nonresidential space and 2 floors of residential space for a 4-story building in the Central Business District was enacted. He said this Zoning change was made in order to encourage more economic activity downtown, including offices, which would be lost with the applicant’s proposal. Attorney Pollack said the Town was gaining both with the development proposal.

Ms. Lawson said if this variance for the 4 story buildings was allowed now, a question was what would stop the property owner 5-10 years from now from building new buildings on the southerly side of the property.

Attorney Pollack said in order for this to happen, the owner would have to come back to the Planning Board for a site plan amendment, and said the same conditional use criteria would be applied then as were being applied now. He also said that if the owner was going to alter the use relying upon the variance, it was possible that the use would have to be abandoned.

Chair Toye opened the public hearing.

Harry Tobias, Madbury Road, said he was a member of the Energy Committee, and noted that the carbon released from idling cars could be offset by adding solar panels to the buildings in the proposed development. He also spoke about technological advances to reduce emissions from idling cars that would be in most cars

²⁰ Note that the posted minutes of the meeting do not make it clear that Mr. Wolfe was paraphrasing Attorney Pollack’s argument, in order to have the ZBA evaluate the argument, which Mr. Wolfe found weak in relationship to a “hardship” claim; Mr. Wolfe is not stating his own views in that paraphrase of CDA’s argument.

by 2020. In addition, he referenced a study that indicated that businesses with drive thru facilities had lower emissions than businesses where people parked their cars and walked into to the buildings.

Mr. Tobias also said he thought granting the variance for a drive-thru would serve the public interest in that it would help people with medical issues. He noted that he was a disabled veteran who experienced pain issues, and said he'd gladly use a drive-thru especially in the winter when there was a greater chance of falling. He also said drive-thrus were easier for families with small kids. He said he didn't think the traffic from using Rite Aid would increase and said there would just be more convenience.

He said he felt that Rite Aid as the only pharmacy in Durham was a special condition, and said the ability to get prescriptions easily for those with medical issues should be taken into account. He spoke further on this and concerning his belief that allowing the drive-thru met the spirit and intent of the Ordinance.

Mr. Tobias said he believed that having an updated Mill Plaza wasn't a loss to the public, and he spoke about the increase in the tax base that would result. He said the relocation of Rite Aid, as well as excavation of Church Hill was needed to put residential units more to the north as requested by the people of Durham. He also quoted from the Master Plan concerning the relevance of this design approach.

Diane McCann, Oyster River Road, read a letter from **Catherine Meeking, 3 Foss Farm Road**, into the public record. [She was at the meeting earlier but had to leave.] Ms. Meeking's letter [read at 02:44:44 in the video] asked the Board to think about how the [height and] drive thru would affect the quality of life of abutters and their property values.

Ms. McCann also spoke for herself, and noted the trend to have delivery of medications by mail. She said she therefore didn't agree that having a drive-thru would assist with the quality of people's lives. She also expressed concern about traffic patterns that would exist in a redeveloped Plaza that included the drive-thru. In addition, she said she didn't agree with the idea of devoting 3 floors to student housing, and said it seemed that this would add more fuel to the fire in terms of student behavior issues.

Susan Richman, Cowell Drive, questioned how the traffic flow would work with the proposed project, including the drive thru [plan shows how to enter it, she said, but not how to exit it], and said she was concerned that businesses would be strangled by additional traffic in Mill Plaza.

Peter Andersen, Chesley Drive, said according to the settlement agreement, the student housing should be at the northern end of the property, but he said the biggest amount was actually proposed on the southeast portion of the property. He spoke about perhaps asking for 3 stories of housing if it could be put over Hannaford, but said what was being requested was contrary to the Ordinance, and was a fundamentally flawed design, including the number of proposed parking spaces and the number of students proposed.

He said if the owner focused on the need for some senior housing, the abutters wouldn't mind the project so much. He noted that seniors had more disposable income, and would do more to support shops at Mill Plaza than students would. He encouraged the ZBA to vote against the variance allowing 3 stories of residential space in the proposed 4 floor buildings.

Mark McPeak, Mill Road, said he lived close to the proposed drive thru [and showed where his house is on the plan diagram, directly opposite the drive thru]. He said the Town's decision to not allow drive thrus in the CBD seemed wise, and helped retain the walkable character of the town. He noted a survey he'd done of seniors in Durham as part of the Future Land Use Committee outreach for the Planning Board, which indicated that people already felt that walkability in the Town had been compromised.

He said there were drive thru pharmacies in easy reach of Durham for those who required this service, and said they were located much further away from residences than this proposed drive thru would be, which mitigated the effects of noise, fumes, lights, and other impacts on residents. He also said pharmacy drive thrus

operated more like those for fast food restaurants than like those for banks because of their hours of operation. He asked that the ZBA not approve this variance.

Mr. McPeak said he agreed that redevelopment of Mill Plaza was long overdue, but said the variance requested concerning residential space in the proposed 4-story buildings reflected the unbalanced nature of the current design proposal. He spoke in some detail on this, and said enforcing the integrity of the Zoning Ordinance would help balance the legitimate financial interests of the owner with the long term interests of the Town by helping to retain the character of the Central Business District. He said he hoped the Board would deny the variance request.

Eric Lund, Faculty Road, read a letter from **Andrew Kun, Faculty Road**, which asked that the ZBA reject both variance requests. The letter said the Kuns were long-term Durham residents, who had followed the Mill Plaza development effort with great interest, and it asked that the ZBA reject both requests for variances.

They said concerning the variance on the number of residential floors that they would like to see Durham remain a town that provided a balanced environment for all of its different stakeholders. They said building a large student housing complex right next to a residential neighborhood would not help achieve this balance, and said it in addition to other similar and recent developments had the clear potential of turning downtown Durham into a less-desirable, noisy location, better known for its party atmosphere than as a great place to raise kids. They said this would result in both a reduced quality of life, for their family, and the likely reduction in the property value of their home.

Concerning the drive-thru pharmacy variance, the Kuns said Durham could use more areas where residents, students, and customers of downtown businesses could walk, sit, gather to talk, and see their kids play. They asked the ZBA not to decrease the walkability of their town by allowing a drive-thru pharmacy in the center of it.

Mr. Lundt said he could hear students celebrating on Main Street after sporting events, and said if the housing was concentrated toward the easterly side of the site, this would create more noise problems for residents of Chelsey Drive and the eastern part of Faculty Road. He said this could result in a reduction in property values. He said he didn't see that the drive thru variance met the hardship criterion when people increasingly shopped online. He said he agreed with the Kuns that having a drive thru was contrary to the interest of having a walkable path along College Brook, and urged the ZBA to deny the variances.

Kai Forcey-Rodriguez, Thompson Lane, said he had many concerns about the project as a UNH student, having lived in Durham for the past twenty years, and having the luxury of living in a very walkable town. He said one of his biggest concerns was that a lot of middle schoolers, high school students and other people living in the Faculty Neighborhood followed the dirt path along College Brook and the bridge, and then walked into the Plaza and up past Bella's Restaurant. He said he didn't see that the path was in this plan. He said he remembered the drive thru for the bank, which caused traffic congestion and conflicts with pedestrians, and he spoke in some detail on this. He said he thought another drive thru would heavily conflict with pedestrian traffic. He said another concern was that with businesses in the Plaza open until 9 pm, and people coming and going, living in the new residential areas could be unattractive.

Gwendolyn Howard, Bayview Road, read a portion of a statement from **Beth Olshansky, Packers Falls Road**, into the public record.

Ms. Howard also spoke for herself, and noted that the applicant claimed that the proposed changes would enhance the Plaza, including creating a village center. She questioned this, and said the proposal would only increase the amount of commercial space by 20,000 sf while increasing the residential space by 157,000 sf. She said that wasn't a village center she would plan to hang out in. She said that regarding the drive thru, she remembered when McDonalds wanted to come to Durham many years ago, and the residents decided a drive thru wasn't good for Durham. She said a question was what would be proposed next if a drive-thru was

allowed for Rite Aid, and said making an exception could put the ZBA in the position of having to make an exception for others.

Diana Carroll, 54 Canney Road, said granting the 3 floors of residential space was definitely against “the spirit and intent of the ordinance,” and noted that this provision was set up to balance nonresidential and residential space. She said the settlement agreement said there could be up to 330 beds in a redeveloped Mill Plaza, but said it didn’t guarantee this. She said if the site didn’t accommodate this number of beds, there was nothing the Town could do [to allow it]. She said the developer must stay within the Ordinance, and do the best he could with the design.

She said it was a shame that if this variance was granted, they would lose out on all of the retail and commercial space. She said if there was anything that Mill Plaza could use, it was retail and other commercial space. She said this would be good for property values because people would be able to walk to these businesses. She noted that walkability was the most sellable item for real estate these days, and said ending up with students concentrated to this degree in a small space could bring property values down. She spoke further on this, and said the Ordinance was very clear. She said it would be terrible to set it aside.

Joshua Meyrowitz, 7 Chesley Drive, said they all wanted a nicely redeveloped plaza, and said there was a talented design team. But he said while this was as a better plan, there were some remaining problems with it. He said most drive thrus weren’t close to a brook, residences, and paths that pedestrians and bicyclists used through the plaza, and said what was proposed was an unusually bad place for it. He noted, among other things, that people could drive to other pharmacies that had drive-thrus.

[He expressed concern that there was only one variance request for three different buildings, when there were different issues for each, and he said he would not be against the old Rite Aid building being replaced with a four-story structure.] He said he would like to see the Hannaford building replaced as well as the Rite Aid building [also with a four-story structure], but said instead some of the housing had been pushed toward the neighborhood. He noted that Hannaford was located at the northern tip of the Plaza and the entrance to the neighborhoods was at the southern tip, and said a very unconventional description of north, the top of the paper, was being used. He said adding housing near the neighborhood would decrease property values, and he spoke further on this.

Mr. Meyrowitz said the Mill Plaza owners said a hardship that pushed them to put housing there was the fact that Hannaford refused to move. But he said the applicant had kept Hannaford out of discussions about the redevelopment plans, and he provided details on this. He noted that some residents had recently contacted Hannaford directly, and he provided details on the company’s perceptions of their Durham store and location [they thought the store was on the Southern end of the Plaza]. He also spoke about what the residents had told Hannaford about the store and the site.

He said over 360 residents asked Hannaford to consider moving to a new building on the site, which would allow the housing to be where it was supposed to be according to the settlement agreement. He said there was a lot of circular reasoning going on with these variance applications, and he spoke further on this. He said he didn’t think the applicant had made the case that he couldn’t match the zoning and still give the Town something everyone would love.

Gail Kelley, 11 Gerrish Drive, said some of the issues brought up tonight had been sort of addressed by the developer. But she questioned how many professionals would seek office space near student housing and how much of this space might go empty. She also asked what would prevent the owner from then turning this office space into student housing. She said the plan didn’t seem well thought out. She said she liked the idea of this site being a gathering space for the community, but said she didn’t see any proposed space for gathering in the plan. She said there was a need for redevelopment of Mill Plaza, and said it would be wonderful to see College Brook highlighted and enjoyed. She said packing more student housing in on the site wasn’t the way to go.

Annmarie Harris, Oyster River Road, said she lived in the Faculty Neighborhood, and said she'd requested at each iteration of the design review the inclusion in diagrams of the houses along Faculty Road, She said this still hadn't been provided. Ms. Harris also read the rest of **Ms. Olshansky's** letter into the public record, and said she concurred with it.

Diane Zirkle, Brookside Commons, questioned how the drive-thru would work [how get out?], and also said as someone who lived near where the drive-thru would be located, there would be idling cars there seven days a week, all day long. She said the noise, and exhaust wouldn't be fair to the people who lived nearby [and asked if the Rite Aid building could be turned around for the drive-thru to be away from College Brook].

Karen Crowley, 48 Mill Pond Road, said she walked [through the Plaza] to work at UNH and had 4 children who walked to the Middle School and High School. She said her main concerns were the traffic pattern for the drive thru, and what the pedestrian pattern would be on the site compared to what it was now. She also said being able to put two stories of residential on a new building where Hannaford presently would mean that the variance to allow 3 floors of residential space in other buildings probably wouldn't be needed. In addition, she said there seemed to have been a lot more green space in previous plans. She encouraged the ZBA to deny the variances.

Mr. Wolfe noted that the ZBA would be looking at 5 criteria and whether they were met, and would make their decisions based on this. He said a lot of what was being discussed by the public would be taken up by the Planning Board, and wouldn't be reflected in the ZBA's decision making.

Robin Mower, Faculty Road, noted the letters she had provided to the ZBA [see excerpts and links further above], and said she wouldn't read them. She noted that none of the site plans provided to the Planning Board or ZBA had ever shown her house or neighbors' houses on Faculty Road, and asked how the Board could evaluate the impact on these properties if they didn't know exactly where they were. She also said the plan that showed height relative to the neighborhood only showed heights for those on the Mill Plaza site.

She said it seemed unfair that the public came to the hearing expecting to address each variance application separately, but each person was only given five minutes to speak about both of them together, when with the previous application, members of the public were given much more time to speak. She suggested that the hearing could have been continued to a future meeting instead. She said if the applicant was arguing that the ordinance provision concerning floors didn't seem quite fair for a large parcel, maybe there should be an application for each of the 3 buildings for which a variance was being requested.

Ms. Mower said that concerning the drive thru, a key issue concerning the public interest was its location. She said it was proposed for the center of the downtown, right next to a water body that had already been impaired by the Mill Plaza site, and also said it would be right next to residences. She asked how this fit with the Master Plan, Town Council goals, special planning forums, and the site plan regulations. She said a vibrant, walkable downtown that promoted a sense of community and environmental sustainability were core community values.

She said the hours of operation for a pharmacy were beyond those of a bank drive thru. She also said she believed that a drive thru wasn't necessary to the profitability of a pharmacy, and noted that many other products and services were sold at pharmacies these days. She said the profitability of Rite Aid was irrelevant to the reasonable use of the property, and said it could be another tenant instead.

Ms. Mower said there was virtually no buffering of noise, etc., from the Plaza, especially when the leaves were gone. She also said providing southern exposure for solar arrays on new buildings would mean there couldn't be trees. She said any trees planted as part of the redevelopment wouldn't mature during their lifetimes, and said there was no way to adequately mitigate the impacts of noise, glare from the drive thru.

Concerning the variance for 3 floors of residential space, Ms. Mower said it was clear that the intent of the

ordinance regarding the use of the 4 stories was intended to allow for some flexibility of location of uses within a single building. She said it seemed that if they were going to talk about flexibility for all of the buildings on the site, there should be separate variance requests for each of the proposed 4 story buildings. She noted the volume discussed in the previous application this evening, and the discussion that there could be reasonable use of the property with less volume. She suggested that there could be reasonable use of the Mill Plaza property, which had been used successfully for decades, if fewer residential units were allowed. She said the impact of additional residential floors was significant, and said these impacts would be mitigated if there were fewer residential floors, and not the 4th floor in particular.

Nancy Lambert 17 Faculty Road, said she was an abutter, and said she supported the positions in the more technical letters written by Robin Mower, Beth Olshansky and Shane Malavenda. She said she realized the proposed drive-thru wasn't in keeping with the vision of a walkable community. She described the problems it would cause, and said among other things, it wouldn't allow for easy community building and would be harmful from an environmental perspective. She said when people got out of cars, they walked and interacted with their neighbors, and said drive thrus should be in commercial strips that catered to vehicular traffic not in the community core. She said they shouldn't unintentionally undermine the character of the Town with a drive thru where it didn't belong.

Ms. Lambert said this project was about more than the abutters' property values. She said she hoped that in considering values, the Board would consider the livability of her house, and how livable it and other houses on Faculty Road would be if there were 330 students essentially living in dormitories next to them.

Shane Malavenda 15 Faculty Road, said he was a direct abutter, and said he would assume that the spirit of the ordinance provision concerning having 2 stories of commercial space and 2 stories of residential space was to keep buildings in the scale of the community, and to have the added benefit of commercial space. He also said he assumed it was to prevent over-concentration of residential space in certain areas.

He said the proposal of having 3 stories of residential space in the 4 story buildings would create a concentration of residential space in an area that was now only commercial. He also said the residential space would be distributed evenly among the buildings. He said he worried how surrounding property values would be impacted, and said the buildings were a lot closer than they looked. He said when the leaves weren't on the trees, the single-story buildings at the Plaza could be seen very clearly.

Mr. Malavenda said loss of privacy and noise were concerns with increased residents in the area, and said a question was whether this would drive down property values and cause people in the neighborhood to move, and at what point there would be a domino effect in the neighborhood.

Heidi Ely, Durham Point Road, said with the redevelopment of the Plaza as proposed, there would only be students living there nine months of the year, and said it would be a dead Mill Plaza in the summer. She spoke in some detail on this, and said there would be a different feeling there especially in the summer when younger school kids wouldn't be passing through. She said she thought that the more commercial space there was in the Plaza, the livelier it would be.

Deborah Hirsch Mayer, 19 Garden Lane, said she agreed with the comments presented by residents addressing the variance criteria, and said they were valid reasons to reject the variance applications. She noted that she was on the Mill Plaza Study Committee, and said the hopes and dreams that their work had created had devolved into a never-ending struggle to protect the town and neighborhood from increased noise, over density, risks for children, and possible devaluation of their properties. She said the Mill Plaza study came up with proposals, but said these had been lost in the dust.

She said Durham had a certain character, and said the Zoning Ordinance was created to reflect that. She said while the ZBA's job was to apply the variance criteria, she would like the Board to think about why the ordinance provisions under discussion existed and what it meant to grant variances to them. She said the more

that variances were granted, the more they changed the fundamental character of the town.

***Mystery Female Voice from among the residents...** asked the Board if they would want this development in their backyard. She also said there was no other route for kids to get to the Middle School and High School. She said it would be like walking through a fraternity property, and she asked the Board if they would like it if their children had to do this.*

SUMMARY OF RESIDENT INPUT ON CDA VARIANCE REQUESTS

At August 8, 2017, ZBA Public Hearing on Two CDA Variance Requests

One resident spoke in favor of the drive-thru, while 33 people wrote and/or spoke against that variance (though a few people suggested that they might support a drive-thru in another location that was *not* near the foot/bike path along College Brook and directly opposite Brookside Commons residences).

No one spoke *in favor* of added stories of student beds beyond what the Town ordinances permitted (except in the sense that some residents suggested that there should have been separate variance requests for each non-compliant building and that they would support such a variance for a building that was the furthest from the adjacent neighborhood, that is, where Rite Aid/Hannaford are now; and one resident endorsed excavating near Church Hill, but without specifying the number of floors of housing to be put there)

All 37 residents who wrote and/or spoke about the request for added floors of housing in three buildings were opposed to the variance, as written.

The Board opened the floor back to the CDA team:

Attorney Pollack said they were there to talk about two items, the drive thru and the composition of floors in the proposed 4 story buildings. He said the comments from many who spoke had a lot to do with the popularity of the redevelopment proposal, and were more relevant to the planning process [that is, at the Planning Board, not to the ZBA variance considerations]. He said the applicant was asking for something reasonable here, and said it couldn't be argued that the pharmacy drive thru or the composition of 1 of 4 floors were reasons to object to the redevelopment proposal. He said concerns about student housing, traffic, parking, etc. were not relevant to the zoning questions before the Board.

He said that regarding the comments relative to the spirit and intent of the ordinance and not deviating from it, if that was case, the ZBA would be out of business. He said the essence of a variance was to grant relief from express language that in certain circumstances as applied didn't make sense. He said there was already a drive thru at Mill Plaza, although the tenant had gone out of business, and said it conformed with the ordinance. He said in all of the time he'd worked on the Mill Plaza applications, he hadn't heard any concern about that drive thru.

Attorney Pollack said there was also discussion that there should be less than 330 beds. He said the reality was that their original proposal that came to the Planning Board had over 440 beds, and said it was the settlement agreement that brought the number down to a cap of 330. He spoke against the notion that the applicant should be doing fewer beds and not putting them on the 4th floor of buildings when they were already more than 100 beds below where the conversation began. He noted that a variance wasn't needed for 330 beds, but was needed in order to be able to put them where they were proposed. He said there would be 330 beds if some of them were put at the southern portion of the site, and he noted that that design was very unpopular with the public. He said the applicant was looking to propose a redevelopment of the site in a different and better form, and said it just didn't work without the residential component. He noted the comment made that the development would be a stark contrast to what was there now. He said what was there now was a commercial center, which was a transition between the residential zone and the commercial corridor on Main Street.

Attorney Pollack said that regarding the variance for floor composition, this approach had been used by other mixed developments in Town, which he said he believed had generally been viewed as successful and attractive. He said the applicant was looking for the same opportunity, as they moved forward to the Planning Board.

*Mr. Wolfe said he was still having a problem with the hardship issue. He noted an article in Town and Country from the NH Municipal Association, which said that in order to establish that there was hardship, an applicant first had to demonstrate special conditions of the property that distinguished it from other properties in the area. He said it also said **the property must be different in a meaningful way from other properties in the area, and must be burdened more severely by the zoning restriction.** He said he wasn't grasping how the hardship was being explained for the two variance requests. [Emphasis added.]*

Attorney Pollack said one was an economic analysis in that they needed this mix of uses in order to have a successful project, and needed these beds somewhere on the site. He said the community had expressed the need, and the Town Council had underscored the need to have it on the northerly portion of the site. He said regarding the commercial integrity of the site that there was a successful tenant that wanted to be more successful, and had stated that a drive-thru was part of their modern configuration, and made it a happier and more economically viable tenant.

He said the site itself was large and the largest redevelopment opportunity in Durham, and was close to Main Street. He said this made the property unique relative to other properties. He said the reason Rite Aid was willing to move was because they would have a drive thru,²¹ and said this related to economic hardship of the site. He asked if anyone was aware of another privately owned property that had received this level of public attention, including a public commission to look at its future some years back. He said this too related to the

²¹ Take note that Attorney Pollack's statement here – "the reason that Rite Aid was willing to move was because they would have a drive thru" – is the closest that the public and Town boards had heard to that point that Rite Aid's move was contingent on a drive-thru variance, and it came *after* all the public comments/letters about the June 2017, plan and the August 8, 2017, variance requests were made/sent. As detailed earlier, a drive-thru was not even mentioned in Todd Selig's May 2017 announcement to the Council (and to selected residents) about a "good plan" involving Rite Aid moving. And, as also described above regarding the June 14, 2017, Planning Board meeting, neither Todd Selig nor members of the CDA team mentioned the necessity of a drive-thru for the overall plan (#6) to move forward.

For example, at no time did CDA say to the Planning Board, Zoning Board, or the public anything direct such as: "If the drive-thru variance is not granted, the Rite Aid move will not happen, and the June 2017 Plan (#6) will be moot." Neither did CDA assure anyone that if the drive-thru variance were granted, Rite Aid would *definitely* relocate (since once the variance was approved, it could theoretically have been applied to a Rite Aid drive-thru accessory at its original location, after taking over the Bella's spot). Per the ZBA August 8, 2017, hearing meeting Minutes, Attorney Pollack presented the case in the following vague phrases: the drive-thru would be "a compliment to Rite Aid," a "factor" in the relocation decision, "an enticement for Rite Aid to participate in the project," etc. Similarly, Emily Innes at the same ZBA hearing said: "Rite Aid had asked the applicant to seek a variance to allow the drive thru." In further examples, Attorney Pollack made vague statements such as "drive-thru facilities were a common component of modern pharmacies." He added that "a key element of the settlement agreement was delivering a certain minimum of commercial square footage," and that "Rite Aid would be a key component of the anchoring of commercial uses in a redeveloped Plaza." He added that although Rite Aid was "already there on the site what was proposed would involve a significant commitment on Rite Aid's part to a long-term occupation of the site." Later, after the public spoke, Attorney Pollack added more vague phrases: "a drive-thru was part of their modern configuration, and made it a happier and more economically viable tenant." Again, there was no direct mention of what members of the public were later told they should have known: that the Rite Aid move would be voided if the drive-thru variance were denied.

Also, since CDA had previously claimed that Rite Aid had a very long-term lease, this reference to enticement to "long-term occupation" in the Plaza was an odd framing of the issue. Moreover, all these statements seemed to bear no direct connection to the "hardship" criterion of a "special condition of the property that distinguished it from other properties in the area," and thus supporting the idea that "the property could not be reasonably used in strict conformance with the ordinance." It is not surprising, therefore, that no residents who spoke against the drive-thru, for all the reasons outlined above – including its odd location directly opposite abutters' homes and along a foot/bike path next to a Brook badly in need of restoration – saw themselves as speaking against Rite Aid's relocation and the moving of student housing to the old Rite Aid spot.

uniqueness of the property.

Mike Hoffman MOVED to close the Public Hearing. Micah Warnock SECONDED the motion and it PASSED unanimously 5-0.

By the time the Board closed the Public Hearing to have their internal discussion it was close to 11 pm, and the Board was clearly tired from the two hours of the hearing on the two CDA variance applications (which followed the prior two hours on the unrelated first item on that night's ZBA agenda).

The Board attempted to discuss systematically each of the two CDA variance requests in terms of each of the five variance criteria (no decrease in value of surrounding properties, that the variance was in the public interest, that there was some unique characteristic of the subject property that created a hardship if compliance with the ordinance were required, that substantial justice would be served by granting the variance, and the variance would be in keeping with the spirit and intent of the ordinance).

Yet, as the Board members themselves admitted, they were having some difficulty keeping to the proposed sequential structure. Also, the members were having a difficult time gaining consensus on each of the criteria for each of the variances. And they even struggled with the definitions of each criterion and the ZBA's role in the process.

As a result, there was a somewhat meandering and disjointed conversation as the Board members attempted to make the most thoughtful and reasonable assessment on challenging issues and questions such as the following:

<> Had surrounding property owners sufficiently documented that a decrease in their property values would result from the variances? Did there have to be specific monetary assessments of declining property values, or would the detailed and consistent "testimony" in letters and meeting comments about degradation of the adjacent neighborhood lifestyle suffice? Board members disagreed.

<> If all CDA redevelopment plans would likely include the maximum of beds allowed by the Settlement ("up to 330"), was it the job of the Board to support the variance for including more housing in concentrated locations so as to facilitate better management and control of the tenants? Or was the goal of the Board to protect the ordinance as written, regardless of the alternative plans that might evolve (and also regardless of whether Board members approved of the ordinance)? After all, the Settlement was not supposed to override other zoning requirements, and if those ordinances limited the number of possible "beds," so be it. Yet, what might be the eventual practical outcome (what got built) of sticking to the ordinance? Again, there was disagreement among the Board members as to what their responsibilities were in relation to such weighty concerns.

<> If the current proposal was much better than earlier proposals, was that justification for granting the variances to support and reward such an enhancement? (That reasoning, for example, might encourage a strategy for developers: submit a series of horrible plans and then submit a better, but still non-compliant plan, and justify variances for an imperfect new plan on the basis of it being an improvement over their own earlier horrible plans.) Similarly, if the proposed non-compliant plan evolved partly from residents' complaints about the location of housing in the earlier plans (too close to College Brook, too close to the neighborhood, blocking the view of and access to Hannaford and Rite Aid), did that mean that residents no longer had any right to protest the "somewhat better" but still non-compliant plan that addressed only some of the specific concerns about an earlier, "worse" plan?

<> If the property was "unique" in many ways (large, ripe for redevelopment, the subject of an 18-month community study effort), did that fit the variance criterion for "hardship"? Or was it required that the property be unique in terms of a limit specifically related to the variance request, and thus, as stated earlier "burdened

more severely by the zoning restriction”?²²

Ultimately, the Board gained general consensus around the idea that a drive-through was not in “the public interest” and particularly not in the “spirit and intent of the ordinance” for a walkable downtown, and the Board voted 5-0 against the drive-through variance.

Micah Wornack MOVED that the Zoning Board of Adjustment deny a petition submitted by Gallagher, Callahan & Gartrell PC, Concord, New Hampshire on behalf of Colonial Durham Associates, New York, for an APPLICATION FOR VARIANCE from Article XII, Section 175-53(A)(5) of the Durham Zoning Ordinance to permit the development of a drive-thru facility accessory to a pharmacy. Mike Hoffman SECONDED motion and it PASSED unanimously 5-0.

There was even more difference in opinion regarding the second variance request, as sampled in these excerpts:

Chair Toye said the settlement agreement had been heavily discussed in Town, and said the applicant decided that the preferred configuration was having the housing concentrated in an area away from the residential neighborhood and closer to the commercial corridor. He said from a property management standpoint it made sense to have more residents concentrated like that, and said a project like this was conducive to having on-site property management and security. He also said moving the buildings further away from the neighborhoods was a benefit, and said he therefore thought there would be no decrease in the value of surrounding properties in granting this variance....

Mr. Hoffman said he believed that the intent of the ordinance was to encourage mixed use downtown, to not have an over-concentration of housing, to support economical rental space for some businesses and to build some customer base for the retail businesses. He said this would help create a vibrant community in Durham year-round.

Mr. Wolfe provided background on the Zoning change when he was on the Planning Board to allow 2 floors of residential space and 2 floors of commercial space in a 4-story building. He said the purpose of doing this was to develop more office space and other commercial space in order to increase economic development in the Town. He said that was a problem he had with the variance application....

Mr. Hoffman said he was looking at the variance and whether it was contrary to the public interest. He said he was looking at the purpose of the ordinance provision to allow 2 stories of residential and 2 stories of commercial in a 4 story building, which was to encourage economic development. He said it could create reasonably priced office space....

Chair Toye said if a 4-story building was going to be permitted, what was proposed was a good place for it. He said he could say the public interest criterion was met. Some other Board members agreed...

Mr. Wolfe said the ZBA’s function was to honor the Zoning Ordinance, and said while this was probably the best plan and he liked how it was set up, and he didn’t like the 2 and 2 requirement the ZBA’s job was to

²² The latter is what is supposed to be the hardship variance criterion. Again, see Cordell Johnston, “New Law Defines ‘Unnecessary Hardship,’” *New Hampshire Town and City, September 2009*, “To establish unnecessary hardship, the applicant in every case will first have to demonstrate that there are ‘special conditions of the property that distinguish it from other properties in the area.’ **The property must be different, in a meaningful way, from other properties in the area, and must be burdened more severely by the zoning restriction.** Second, the applicant must establish that, because of the special conditions of the property, ‘no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.’ Finally, the applicant will have to demonstrate that because of the special conditions of the property, the proposed use is reasonable. The reasonableness of the use will depend, to a large extent, on how the proposed use would affect the surrounding area.” <https://www.nhmunicipal.org/TownAndCity/Article/181> [Emphasis added.]

uphold the Ordinance....

Chair Toye said he thought the hardship was being imposed by the community, and that the applicant was trying to put together a project that incorporated the concerns of the community. He said that was their hardship....

Mr. Warnock said the effort of concentrating the housing was performing a justice. There was discussion....

Mr. Hoffman said he believed it was contrary to the spirit and intent of the ordinance, which was to provide for low-cost commercial space in the downtown in order to encourage a mix of uses....

Mr. Wolfe said the ZBA was here to honor the spirit and intent of the ordinance, which was to have 2 floors of commercial space in a 4-story building. Mr. Warnock said the purpose of consolidating the housing was to appease the worries of the Faculty Neighborhood.

Mr. Hoffman spoke about the fact that the settlement agreement was separate from the Zoning Ordinance, and said the ZBA was protecting the Ordinance and property owners' rights.

Chair Toye said Mr. Hoffman was bringing up a very good argument, and asked if perhaps the Board should get an opinion from the Town attorney. Mr. Hoffman said the Board could make its decision and the applicant could appeal it. There was further discussion.

Mike Hoffman MOVED that the Zoning Board of Adjustment deny a petition submitted by Gallagher, Callahan & Gartrell PC, Concord, New Hampshire on behalf of Colonial Durham Associates, New York, for an APPLICATION FOR VARIANCE from Article XII, Section 175-41(F)(7) of the Durham Zoning Ordinance to permit the development of three, 4-floor buildings wherein Buildings B, C & D1 will contain one floor of non-residential space with three upper floors of residential units. Peter Wolfe SECONDED the motion and it PASSED 4-1, with Micah Warnock voting against it.

It was close to midnight by the time the Zoning Board meeting concluded.

The minutes for the August 8, 2017, ZBA hearing can be read here, with the Plaza variances beginning on p. 13 of 32 pages:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/meeting/47561/080817.pdf

The videos of the August 8, 2017 ZBA hearing on two CDA variances can be seen here (in two parts):

<https://dcat22.viebit.com/player.php?hash=afniULR5qrh1#>

<https://dcat22.viebit.com/player.php?hash=CIW7KQuZqXxQ>

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August 2017—Mill Plaza Continues Its Unlicensed Parking-Space Rental Business

UNH Transportation Services lists: "Off Campus (Private) Parking"

<https://www.unh.edu/transportation/campus-private-parking>

"Certain area businesses sometimes provide parking spaces for sale on their private lots. These businesses are not affiliated with the University, and the terms, conditions, and availability of parking there are independent of UNH. Availability and pricing are subject to change without the knowledge of UTS."

The listings include this information:

Mill Road Plaza, Mill Road, Durham

\$600/semester, \$1100/year, \$250/summer, 30 spaces, (603) 868-7000

Note that there are actually about 100 rental spaces in the Plaza – from what any observer can count in the winter of cars parked for days, covered in snow. Over the years, Plaza representatives have sometimes denied that the Plaza rents any parking space, or said there were just a “small number” of rented parking spaces, or said that they did not know how many spaces were rented. When asked about why some spots were delineated with yellow paint rather than white paint, Plaza representatives have sometimes claimed that the Plaza ran out of white paint. Yet, some shoppers have found “boots” on their cars after shopping at the Plaza when they’ve parked in the “wrong spaces.”

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August 30, 2017—Concord Monitor: Higher Education Spending in New Hampshire Lowest in Nation

UNH’s struggle to keep its enrollment levels up over the coming decades (with shrinking college-age population) is made worse by its extremely low state funding.

“Higher education spending in New Hampshire is the lowest in the nation and continues to lag behind pre-recession levels, leading the state’s schools to rely far more on student tuition than on public support, according to a recent study by the Center for Budget and Policy Priorities in Washington, D.C.... The Granite State has long held dubious distinctions of its own in higher education funding: In fiscal year 2015, New Hampshire provided the lowest amount in higher education money per capita in the country, the association found. And New Hampshire’s graduating class of 2015 had the highest average student debt of any state, according to research from the Institute for College Access and Success.”

<http://www.concordmonitor.com/New-Hampshire-higher-education-funding-levels-report-12177709>

[See February 4, 2018, *Boston Globe* article, excerpted further below for a clearer link between funding levels and potential to maintain enrollments in the facing of declining number of college-age students.]

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September 12, 2017—Zoning Board of Adjustment: CDA Requests for Rehearings

REQUEST FOR REHEARING on an August 8, 2017 denial of a petition... to permit the development of a drive-thru facility accessory to a pharmacy... [suspended pending the Board’s consultation with Town Attorney]

REQUEST FOR REHEARING on an August 8, 2017 denial of a petition... to permit the development of three, 4-floor buildings wherein Buildings B, C & D1 will contain one floor of non-residential space with three upper floors of residential units.... [suspended pending consultation with Town Attorney]

From the ZBA September 12, 2017, meeting minutes:

Chair Sterndale noted the letter that came by email. He said it raised a host of questions, which he said weren’t quite as difficult, but said he wanted to be sure that the Board’s justification was clearly laid out and recorded. He said they needed to make sure that they were very deliberate in their thinking, and in the recording of their thinking. He said it was a good idea to let their counsel review their actions. Mr. Toye agreed.

Tom Toye MOVED to suspend the decision of August 8, 2017 to deny the petition submitted by Gallagher, Callahan & Gartrell PC, Concord, New Hampshire on behalf of Colonial Durham Associates, New York, for an APPLICATION FOR VARIANCE from Article XII, Section 175-53(A)(5) of the Durham Zoning Ordinance to permit the development of a drive-thru facility accessory to a pharmacy;

and to suspend the decision of an August 8, 2017 denial of a petition submitted by Gallagher, Callahan & Gartrell PC, Concord, New Hampshire on behalf of Colonial Durham Associates, New York, for an APPLICATION FOR VARIANCE from Article XII, Section 175-41(F)(7) of the Durham Zoning Ordinance to permit the development of three, 4-floor buildings wherein Buildings B, C & D1 will contain one floor of nonresidential space with three upper floors of residential units, pending further consideration.

Micah Warnock SECONDED the motion and it PASSED unanimously 4-0.

The ZBA minutes for the September 12, 2017, meeting can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/zoning_board_of_adjustment/meeting/47571/091217.pdf

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October 10, 2017—Zoning Board of Adjustment Resumes Consideration of CDA Rehearings Requests

REQUEST FOR REHEARING on an August 8, 2017 denial of a petition submitted by Gallagher, Callahan & Gartrell PC, Concord, New Hampshire on behalf of Colonial Durham Associates, Durham, New Hampshire, for an APPLICATION FOR VARIANCE from Article XII, Section 175-53(A)(5) of the Durham Zoning Ordinance to permit the development of a drive-thru facility accessory to a pharmacy. The property involved is shown on Tax Map 5, Lot 1-1, is located at 5 & 7 Mill Road, and is in the Central Business Zoning District. ... [consultation with Town Attorney held before the meeting] [DENIED]

REQUEST FOR REHEARING on an August 8, 2017 denial of a petition submitted by Gallagher, Callahan & Gartrell PC, Concord, New Hampshire on behalf of Colonial Durham Associates, Durham, New Hampshire, for an APPLICATION FOR VARIANCE from Article XII, Section 175-41(F)(7) of the Durham Zoning Ordinance to permit the development of three, 4-floor buildings wherein Buildings B, C & D1 will contain one floor of non-residential space with three upper floors of residential units. The property involved is shown on Tax Map 5, Lot 1-1, is located at 5 & 7 Mill Road, and is in the Central Business Zoning District. [consultation with Town Attorney held before the meeting] [GRANTED; rehearing scheduled for November 14, 2017]

Note that this October 10, 2017, ZBA meeting did not hold a Public Hearing on the CDA rehearing requests. Additionally, no new resident letters had been posted since the original August 2017 ZBA meeting. The only added input since the August 2017 ZBA hearing was from the Town Attorney, Laura Spector-Morgan.

First the Zoning Board addressed: REQUEST FOR REHEARING on an August 8, 2017 denial of a petition... to permit the development of a drive-thru facility accessory to a pharmacy

From the ZBA's October 10, 2017, meeting minutes on the drive-thru variance rehearing request:

Chair Starkey said Mr. Warnock would be a voting member for this agenda item.

Mr. Warnock said based on the information provided, he didn't see a substantial difference, and said he thought the Board's vote should stand.

Mr. Sterndale said the record was clear, and said there was no evidence to make him believe there was something missing. He recommended denying the request for rehearing.

Chair Starkey said he wasn't at the meeting, but had reviewed the Minutes and said he didn't see any information that indicated the Board had erred in its decision. Mr. Hoffman and Ms. Lawson agreed.

Chris Sterndale MOVED to deny a Request for Rehearing on an August 8, 2017 denial of a petition submitted by Gallagher, Callahan & Gartrell PC, Concord, New Hampshire on behalf of Colonial Durham Associates, Durham, New Hampshire, for an APPLICATION FOR VARIANCE from Article XII, Section 175-53(A)(5) of the Durham Zoning Ordinance to permit the development of a drive-thru facility accessory to a pharmacy. The property involved is shown on Tax Map 5, Lot 1-1, is located at 5 & 7 Mill Road, and is in the Central Business Zoning District. Micah Warnock SECONDED the motion and it PASSED unanimously 5-0.

Then the Board dealt with the REQUEST FOR REHEARING on an August 8, 2017 denial of a petition... to permit the development of three, 4-floor buildings wherein Buildings B, C & D1 will contain one floor of non-

residential space with three upper floors of residential units...

Chair Starkey said Mr. Wolfe would be a voting member for this agenda item.

Ms. Lawson said she thought the Board perhaps might want to rehear the application, in order to understand further some points that the applicant was making.

Mr. Hoffman said he agreed. He said with the information received, it would be prudent to allow a rehearing.

Chair Starkey said he wasn't at the meeting where this application was heard, but had reviewed the Minutes. He said based on this, he believed there was a reason to rehear the application, specifically regarding the unique features of the property and how this was gone over at the meeting.

Mr. Sterndale and Mr. Wolfe agreed.

Mike Hoffman MOVED to approve a Request for Rehearing on an August 8, 2017 denial of a petition submitted by Gallagher, Callahan & Gartrell PC, Concord, New Hampshire on behalf of Colonial Durham Associates, Durham, New Hampshire, for an APPLICATION FOR VARIANCE from Article XII, Section 175-41(F)(7) of the Durham Zoning Ordinance to permit the development of three, 4-floor buildings wherein Buildings B, C & D1 will contain one floor of non-residential space with three upper floors of residential units. The property involved is shown on Tax Map 5, Lot 1- 1, is located at 5 & 7 Mill Road, and is in the Central Business Zoning District. Peter Wolfe SECONDED the motion and it PASSED unanimously 5-0.

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November 2017—Durham Hannaford store removes fish and meat service counters

The cycle of decline of the Durham Hannaford reached a new low, with the disappearance of the fish and meat counters. These were, for many residents, close to the last reason to shop at the local grocery store, given the shrinking of its offerings since Hannaford took over in 2015, as described above (and in the July 2017 petition).

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November 14, 2017—Zoning Board of Adjustment CDA Building Height/Composition Re-Hearing

[REQUEST FOR REHEARING on an August 8, 2017 denial of a petition...to permit the development of three, 4-floor buildings wherein Buildings B, C & D1 will contain one floor of non-residential space with three upper floors of residential units. \[WITHDRAWN BY APPLICANT\]](#)

C. THE APPLICANT HAS REQUESTED THAT THIS APPLICATION BE WITHDRAWN AND THE REHEARING CANCELLED. PUBLIC REHEARING on an August 8, 2017, Zoning Board denial of a petition submitted by Gallagher, Callahan & Gartrell PC, Concord, New Hampshire on behalf of Colonial Durham Associates, Durham, New Hampshire, for an APPLICATION FOR VARIANCE from Article XII, Section 175-41(F)(7) of the Durham Zoning Ordinance to permit the development of three, 4- floor buildings wherein Buildings B, C & D1 will contain one floor of non-residential space with three upper floors of residential units. The property involved is shown on Tax Map 5, Lot 1-1, is located at 5 & 7 Mill Road, and is in the Central Business Zoning District.

CDA's withdrawal from the re-hearing on the building height/composition led to optimism among residents that a better redevelopment plan might be coming, particularly one that entailed Hannaford moving to a larger store on the site. That move would have facilitated demolishing the oldest building on the site (the Hannaford/Rite Aid building), moving most of the housing to the Northern tip of the Plaza in 3- or 4-story buildings (with housing over retail/commercial) in keeping with the Settlement on housing location and more consistent with Conditional Use criteria to keep added noise, trash, odors, lighting, traffic, and hours of activity as far from the adjacent neighborhood as the site allowed.

Residents' hopes were dashed, however, when CDA submitted a new site plan that was the crudest to date, as described below.

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CDA REDEVELOPMENT SITE PLAN #7 (November 2017)

The one-page diagram for Site Plan #7 is posted here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/new_mill_plaza_conceptual_site_plan.pdf

Note that the diagram was dated February 2017 but was not submitted to the Planning Board by CDA, nor seen by the public, until November 2017, after the August 2017 ZBA rulings that initially turned down both variance requests (and after the October ZBA denial of a rehearing for the drive-thru pharmacy and the October 2017 approval of a rehearing for the variance for more stories of housing than is permitted in mixed-use buildings, which was followed by CDA's withdrawal of that appeal despite the rehearing approval).

Note also the absence of a N/S marker on Site Plan #7, and that student housing is *not* on Northern half of property as it was to be per the December 2015 legal Settlement. (The Bakery Café at the Hannaford Building in on the Northern tip of the Plaza.) Additionally, not only is there no setback for the designated wetlands on lot 7-59 (owned by Peter Andersen), but Building F appears to be built *onto* Peter Andersen's wetland property and lined up with the wooden bridge over the brook, which, as noted in the 2008 and 2015 Doucet surveys and Tax Map #5, is wholly on lot 7-58 (owned by Joshua Meyrowitz). The boundaries of the Andersen and the Meyrowitz lots with the Plaza lot, as noted on Tax Map #5, are aligned. (This oddity in the diagram, however, may be the result of a drawing error in terms of the location of the wooden bridge over College Brook.)

SUMMARY OF PLAN #7 FEATURES:

This plan submitted in November 2017 left both Hannaford and Rite Aid where they were as single-story stores in the oldest and most run-down building at the Northern tip of the Plaza. The rear building was to be demolished. From the submitted diagram, at least, the plan also seemed to allow those two anchor stores to expand into the Works Bakery Café and Bella's, respectively. (Recall that the June 2017 plan, site plan #6, involved moving Rite Aid, but not Hannaford, with a new 4-story building of student housing above stores where Rite Aid now sits, adjacent to the one-story Hannaford with an added height façade.)

The November 2017 Site Plan #7 also proposed a building in the middle of the plaza facing Mill Road with two stories of student housing over two commercial stories.

Most ominously, the plan also proposed to add *four* buildings of student housing at the Southern rear of the plaza. Each building would have two stories of student housing. (Three of these would have ground-level parking and one would have ground-level commercial space.)

Again, this November 2017 plan #7 seemed to violate the intent of the December 2015 legal Settlement regarding preferred location of any housing (which was to be on the Northern end where Hannaford and Rite Aid now operate). Additionally, **by proposing a dense student housing complex of four buildings up against the adjoining residential properties and near the pedestrian entrance to Faculty Neighborhood, the plan appeared to be in blatant violation of Conditional Use criteria for housing in the Plaza.** By Town regulations, housing in the Plaza is not supposed to add any additional noise, light, odor, trash, longer hours of operation, or other disturbances beyond current uses of the site. (See links to full conditional use criteria on page one of this document.) This plan (as with all prior plans to date) also precluded Hannaford opening a better, community-oriented store elsewhere on the site, which has been a major public concern throughout the process. All possible locations for a new grocery store would be filled with other buildings for the foreseeable future.

GROUND-LEVEL PARKING “VESTED” BUT NO LONGER ALLOWED: The November 2017 plan would have violated current zoning regulations by counting ground-level parking in a three-story structure as “commercial” – but this proposed use is vested (grandfathered) under old rules. Therefore, CDA did not want to call this a “new” plan and re-set the clock, or this plan would not be allowed. Yet, the plan was so different from the evolving plans in the preliminary design review that was closed on June 14, 2017, that CDA argued that it needed more time to finish it. (Of course, if the Plaza submitted a different and better plan, without the ground-level parking, almost all residents would be happy to let them re-set the clock and take as much time as they need to refine the plan – ideally in collaboration with residents, who would likely then support needed variances and any other adjustments to the Settlement.)

November 14, 2017—Planner’s Note on “Mill Plaza—Conceptual Plan & Extension/Continuation

As Town Planner Michael Behrendt explained below in an email to “interest parties,” the presentation of the new plan for Planning Board consultation would not be “noticed” and there would be no public hearing on it. The public could attend the Planning Board meeting (if they heard about it), but they would be unlikely to be able to speak. (And, in fact, the public was not permitted to speak.)

To interested parties,

The Planning Board’s design review (preliminary review) of the Mill Plaza project was closed on June 14, 2017. Mill Plaza then applied for two variances that were needed under that plan – for a drive through for the pharmacy and for the height/configuration of uses in the buildings. The Zoning Board of Adjustment denied those two variances. Mill Plaza requested a rehearing and the ZBA approved a rehearing only on the height/configuration of uses which was to be heard this evening. Mill Plaza then withdrew that request (so this item will not be discussed tonight).

Mill Plaza has now submitted a conceptual consultation application for a revised site plan that they believe does not require any variances. See the attached application and plan. This is presented for discussion only with the Planning Board on November 29. I concur that the attached plan would not require those two specific variances (though I cannot say whether other variances might be needed since this is just a conceptual plan and I have not conducted a zoning review of this proposal). Note that a first floor parking garage meets the requirement for first floor “nonresidential” as the prior Zoning Administrator determined that parking met this requirement (Whether or not we agree with that finding, it is the determination that applies for this project; we have since amended the Zoning Ordinance so that parking does not count as nonresidential).

This plan will be presented to the Planning Board on November 29. There are no notices nor public hearings involved in a conceptual application so it will be up to the Planning Board whether they wish to accept public input at the meeting. Citizens are welcome to submit email/written comments though if they like which will be forwarded to the board.

The attached plan shows:

- * Maintaining the Hannaford [and Rite Aid] Building as now exists*
- * Demolishing the rear building*
- * Adding Building B with 2 floors of commercial and 2 floors of residential*
- * Adding Building D with 1 floor of commercial and 2 floors of residential*
- * Adding Buildings C, E, and F with first floor garage parking and 2 floors of residential*
- * There would be 330 residential beds*

Mill Plaza has also requested an extension/continuation of the 12 month timeframe to submit a formal application after the close of design review (extending/continuing from June 2018 to November 2018). I am clarifying this process with the Town Attorney.

[Sent by email to the Planner’s distribution list on November 14, 2017]

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Confusion over how a “Preliminary Consultation” for a plan that CDA was requesting would be seen as a continuation of a closed Design Review

HAVING IT BOTH WAYS?: As noted in a few of the November 2017 resident letters to the Planning Board, quoted below, it was not clear how the site regulations applicable to the Mill Plaza²³ afforded the type of “preliminary consultation” that the Plaza was requesting (no notice to abutters, no Public Hearing) while also having it considered as a continuation to a “Design Review” that had officially “closed” on June 14, 2017.

Although the new plan bore no resemblance to what the Planning Board considered when it closed the preliminary design review (after nearly three years of meetings) on June 14, 2017, CDA was claiming that the new plan should be considered a part of that same review process. (Otherwise, they would have to start over again and meet zoning regulations that were by then in place.) In an attempt to have it both ways, however, CDA was simultaneously requesting an “extension of the design review clock” that requires a completed proposal submission within 12 months of the closing of the preliminary design review. (With a very different plan, they apparently had a lot more work to do.) However, as noted, in the Robin Mower letter below, such an extension appears to be in violation of State law.

Resident Letters to Planning Board about Nov 29, 2017, “Conceptual Consultation”

On November 20, 2017, **Joshua Meyrowitz, 7 Chesley Drive**, wrote to the Town Planner and Planning Board:

Frankly, this new plan is so atrocious that I'm not sure residents will think that they need to prod the Planning Board much to take note of its obvious problems. So the PB may not get much advance mail. I think most residents will think that the Planning Board would dismiss this sadly back-stepping plan as a flagrant violation of Conditional Use criteria for housing in the Plaza and wildly out of step with the December 2015 Settlement regarding where housing should be concentrated. Also, it's a real stretch to argue that this very different plan is part of the same design review process that was closed on June 14, 2017. (And if it really were simply the outgrowth of the same process, the applicant's would not need any extension on finalizing the plan. That's a bit of trying to have it "both ways.") All this, I would think, would be obvious to the Planning Board without any letters from the public. But we'll see.

This is a sad moment in the 37-months of work on the redevelopment of the Plaza. If we could just get back to the type of “workshop” meeting we had between CDA and residents in the library in May 2016, where there was strong resident support for one of the CDA plans (though that plan was never formally put before the Planning Board), I think we could hammer out a good plan that met everyone's desires (including CDA's) with public-supported variances to get us a positive overall plan. If the public gets something resembling the “Durham Village Center” that CDA has been promising – and not just a

²³ The Site Plan Review Process (Part II of Site Regulations Applicable to Mill Plaza) are posted here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/19061/part_ii_-_site_regs_-_mill_plaza_project.pdf

Section 1.1 Preliminary Conceptual Consultation Phase:

1.1.1 The applicant may request a meeting with the Board to discuss a proposal in conceptual form and in general terms. Such preapplication consultation shall be informal and directed toward: a) reviewing the basic concepts of the proposal, b) reviewing the proposal with regard to the Master Plan and Zoning Ordinance, c) explaining the local regulations that may apply to the proposal, and, d) guiding the applicant relative to state and local requirements.

Such consultation shall not bind either the applicant or the Board, and statements made by the Board members shall not be the basis for disqualifying those members or invalidating any action taken. The Board and the applicant may discuss proposals in conceptual form only and in general terms such as the desirability of types of development and proposals under the Town's Master Plan.

student housing complex – we could all move together into a better future!

I'm trying to remain hopeful.

The full Joshua Meyrowitz email is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/54139/comments_from_joshua_meyrowitz.txt

On November 20, **Diane Chen, 12 Oyster River Rd.** wrote to the Planning Board:

I have lived on Oyster River Road in Durham for five years. Prior to my relocation, I worked for commercial real estate developers in Massachusetts. Thus, I am generally in favor of redevelopment, and have experience with the nuances of developing property while adhering to a community's ordinances and what is in the public interest and doing so within the spirit of the law.

It was with grave concern that I read the most recent Durham Friday Updates and reviewed the new proposal submitted by Colonial Durham Associates (CDA). Aside from the fact that the proposal flies in the face of the 2015 lawsuit settlement (which states that any student housing should be placed in the northern half of the Plaza, where Hannaford and Rite Aid now sit), the proposal clearly violates the Conditional Use provisions for any housing in the Plaza.

I live near several houses occupied by students. The increased noise and activity of just a few students (which already disrupts my peaceful enjoyment of my property) cannot be compared to the increased noise/lights/activity of several hundred new student residents on the border of our Neighborhood. I'm not speaking about parties but rather the normal coming/going of several hundred new student residents at the edge of the Faculty Neighborhood. Such a housing complex will of course, negatively impact our house values, our lifestyles and enjoyment of our properties.

Without Hannaford, as an anchor store, being an active participant in the redevelopment process (which hasn't visibly occurred to this point), there will continue to be a slipshod attempt by CDA to do the least possible effort and to not abide by the spirit of the Settlement and Conditional Use criteria. The developers I worked for would clearly understand that such a proposal would be rejected by a Planning Board upon violation of Conditional Use criteria and that such a rejection would be supported in Court in light of the clarity of the Conditional Use criteria in our ordinances.

Again, I want to be clear that I am in favor of redeveloping this tired and inefficient property. I sincerely hope this current proposal is scrapped in favor of asking Hannaford to move to a different location on the site and building the student housing on the northern part of the property where Hannaford and Rite Aid now sit.

The Diane Chen letter is posted here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/54139/comments_from_diane_chen.txt

Phyllis Heilbronner, 51 Mill Pond Rd., wrote briefly to Michael Behrendt on November 21, 2017, concerned about university activities pushing further into "Durham's core."

If I am not able to attend, would you be willing to submit my message to the Planning Board in opposition to the inclusion of more student housing at the newly proposed location? I feel as a town resident that the encroachment of more student housing in a plaza with many other needs is excessive and pushes too much of the UNH campus into Durham's core... I'd welcome your help in helping me voice my hope for the submission of a more community-oriented plan.

See:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/54139/email_from_phyllis_heil_bronner.txt

On November 26, 2017, **Beth Olshansky, 122 Packers Falls Rd.**, wrote with her concerns regarding “Colonial Durham’s Latest Request”:

As a citizen who has been following Planning Board procedures for the last 17 years and have closely following the Mill Plaza Redevelopment Project proposal/submission process over the last several years, I remain perplexed and troubled by this latest CDA request. On their Request for Pre-Application Review, they have marked an X by Conceptual Consultation. Note that there are only two choices (Conceptual Consultation or Design Review) and the applicant is asked to choose one. Yet in the NOTE at the bottom of the application, the applicant indicates that this application is “paired with, and part of, a request for an extension of the design review vesting clock.” They also note that “this submission shall be considered a part of the Mill Plaza Redevelopment design review proceeding last considered by the Planning Board on June 14, 2017.” In essence, they are asking the PB to ignore the fact that the Design Review was CLOSED on June 14, 2017 (at the applicant’s request) and that our regulations (guided by State Law) specify a 12-month vesting period, triggered by the close of the Design Review.

*While CDA does not acknowledge that the design review was formally closed (at their request) and that they are now requesting it to be reopened 5½ months later, that is exactly what they are doing. This is highly irregular. In all my years of observing Planning Board procedure, I do not recall such a request. I also note that the Settlement Agreement states that the Mill Plaza Redevelopment Project will be held to all normal Planning Board procedures. (Note Settlement Agreement item 5.a states: “The final approval must [be]...subject to **normal planning board review.**”) I do not believe that either request (in essence, to reopen a closed Design Review 5½ months later after it was formally closed or to alter the vesting clock) are part of normal Planning Board procedures. One, in fact, could argue that such a request jeopardizes the validity of the Settlement Agreement.*

Beyond that, I find the request troubling for these additional reasons:

If this is a Conceptual Consultation (preliminary) as noted on our Agenda, that implies they are submitting a new plan, which by definition must be general in nature (i.e. “no design or engineering details”). If indeed this is a Conceptual Consultation, then they lose their vesting, which would impact, for one, the parking they are proposing underneath several residential buildings. Our new ZO regulations make clear that this is not permitted. Loss of vesting, in my opinion, would be a good thing.

If this is a Design Review, in which they wish to receive feedback from the PB on “design and engineering details,” then indeed they are requesting REOPENING a CLOSED Design Review. I don’t see anywhere in our Town or State Regulations that permits such a procedure, nor do I see any authority given to the PB to alter the State-regulated 12-month vesting period. Additionally, a Design Review must notice abutters, which did not occur.

In summary, I see the current request by CDA to be highly irregular (i.e. outside of normal PB procedures) and possibly illegal. I hope the Planning Board will carefully consider the issues I raise before agreeing to allow this request to move forward. Given the controversial nature of this proposal, the PB would be wise

to make sure that it fully understands the legal implications and ramifications of whatever decision it makes. I would hope that the PB decision will be well grounded by our Town regulations and State Law.

The Beth Olshansky letter is posted here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/54139/letter_from_beth_olshansky.pdf

On November 27, 2017, **Peggy Celano, 3 Pendexter Rd.**, wrote:

As you can see by my address, I am not a resident of the Faculty Neighborhood, although I have been following, writing, and attending meetings for the shopping plaza redevelopment. In addition to the earnest concerns of abutting neighborhoods, and after reviewing the Durham Town Ordinances, specifically number 175-23, C.1-8. I have tried to reframe these development scenarios every which way, even trying to play the 'devil's advocate,' but, adding 300 plus or minus students into the mix of this plan is not what I have envisioned as the Durham Town Center vision.

Assuming you're familiar with the Ordinance I cited, and aside from the ramifications to abutting neighborhoods, I have contemplated residual effects on the downtown itself, which I think, at the least, should be shared by Durham residents without further student inundation.

The increased busyness of the plaza would not enhance the aesthetic that is our small town (fighting for its life) trying to remain as such. 300 beds would mean at least half that as additional cars on a regular basis. Increased traffic into and out of the plaza would indicate the need for a traffic light at its intersection. Noise levels could escalate, leaving our resident families wondering how students essentially got to take over downtown Durham. Safety concerns arise with the potential of increased traffic. Students would not be classified as slow drivers. The walkability factor would be compromised for student-aged youth as well as the elderly. Arrests, crime, and rowdiness could also accompany student residences. None of these scenarios are not exactly 'new business-inducing.'

I can understand the frustration of both developer and resident; we seem to be at cross purposes for what we see as our top priority. I understand that developers are in business to make money, but this redevelopment plan is the wrong fit for the Durham Town Center designation.

My family moved to Durham in 1976. My husband at the time was the Veterinarian for UNH. Two children went through Oyster River schools, but one graduated from P.E.A. I gained Teacher Certification through UNH and taught middle school for 30 years, along with having coached the Boys' Varsity Tennis Team at Oyster River for 10 years. I returned to UNH for a Masters' degree, and I hold a proud distinction of taking classes at UNH in the last five decades. This is the third house I've owned in Durham, the first at 36 Bagdad Rd. and the second at 63 Newmarket Rd. The only variable in town that has remained the same is our grocery store. One would think that a developer who deeply cared about our town's vision for a town center would at least try to bring some improvement to that situation, as opposed to student infusion. I am invested in what happens to our town.

Thank you for your time and attention,

The Celano letter is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/54139/comments_from_peggy_celano.txt

John Hart, Brookside Commons, also wrote on November 27, 2017, regarding the "Latest Mill Plaza redevelopment concept":

The November 2017 version of redevelopment of the Mill Plaza takes quite a few steps backward from

the plans submitted during design review (which were poorly conceived themselves): Two large blocks of buildings in an ocean of asphalt; no amenities; no buffering of neighborhood or College Brook; etc. It brings housing in closer proximity to the surrounding neighborhood, which would seem to violate the settlement agreement between the town and the developer. It would seem to violate most of the criteria for conditional use permitting.

I have difficulty divining what the developers were thinking with this latest conceptual disaster. I'm baffled and appalled, in roughly equal measure. Finally, this very preliminary conceptual plan would seem to be a return to the design review phase, which was closed months ago.

I continue to hope for a resolution to redevelopment that will be acceptable to the developers, to the town and its citizens, and to the environment. Continuing thanks to the members of the Planning Board for working toward a fifty-year plan that will benefit all.

The Hart letter is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/54139/comments_from_john_hart.txt

On November 27, 2017, **Monica Chiu, 14 Burnham Ave.**, re-sent a letter she and her husband had previously sent in February 2016, since they felt that it applied equally well, if not more so, the November 2017 plan. They highlighted **“these two seminal paragraphs.... as they rehearse the same concerns” they had then as well as with the new plan:**

The proposed placement of student housing on the south end of the property is in violation of the town's conditional use agreement; such housing must be built on the north end of the Plaza. As we experienced during the 2014 Cinco de Mayo celebration (and as occurs often during weekend college parties, beginning on Thursday evenings), many college students cannot control themselves, drunk or not. College-aged men students whistled and catcalled to my then-13-year-old daughter and her friends, some even younger than 13; others threw objects at the school buses, demanding that the UNH President and Oyster River School Board Superintendent work together to alleviate future potential “damage,” including the inconvenience it causes to school bus drivers and their charges, for the 2015 celebration; what a waste of valuable administrators' time and energy. Furthermore, during the usual school week (not one dominated by a Cinco de Mayo-type event), my daughter already had expressed trepidation passing, on foot, one large fraternity on Main Street, in front of which young men (drinking alcohol or not) called out to her group of friends on a regular basis during the warmer spring and early summer months. I reported this to both to the UNH police and Durham police and was told that “nothing could be done” because the men were not committing any crime. If many (even a handful of) students behave as such without consequence to them, then the walk to high school and middle school amid new (most likely) student housing for many children using the path through the woods and the Plaza will be unpleasant indeed. What, too, of increased trash, pollution, traffic, sewage from new, multi-bed housing units, all infringing on the ecosystem of the adjacent woods and creek?

My 90-year-old mother, who relies on a walker for her limited mobility, often strolls to the Plaza when she visits (three to four times annually); if the parking lots become “encased” by buildings, demanding new traffic patterns to accommodate an increased flow of traffic (including the unfortunate possibility of opening up Chesley Drive to cars), she will be hard pressed to feel safe walking to the Plaza in her fragile condition, unable to hear well those cars coming from behind or to keep her balance if suddenly surprised by autos coming along too quickly. I know from my experience driving on campus and around downtown Durham that students on foot expect vehicles to stop for them, sometimes on a dime, while often they themselves are too rushed to stop for pedestrians. And despite recent laws against texting and driving, against using handheld phone devices while behind the wheel, many students and non-students alike still do so, rendering an increase in cars around Durham a hazard for pedestrians, young and old. While private business property owners can claim that these are not issues under their purview or control

(agreed), they certainly cannot nor should not overlook the trajectory of actions implied here and would be expected to take it into consideration as they ponder or revise building plans.

The full resubmitted Chiu and Locke letter (originally from February 6, 2016) is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/54139/letter_from_monica_chiu.pdf

Robin Mower, 11 Faculty Road, wrote on November 27, 2017, primarily addressing potential problems with Colonial Durham's request for an extension for submitting a design review:

Greetings, I suppose one shouldn't be surprised by anything in the ongoing three-year-plus Mill Plaza redevelopment saga, but this latest proposal takes the cake. Or, rather, makes unavoidable the conclusion that Colonial Durham Associates wants to have its cake and eat it, too—in terms of process, but also wants to stick a finger in the eye of the community by way of the “conceptual consultation” plan itself.

It is also clear that CDA is acting as if it is not “subject to normal planning board review.” (Remember, that's a requirement of the December 2015 Settlement Agreement. In living memory, has Design Review for any Durham Planning Board site plan application *ever* been reopened or extended? And how can one *continue* something that has been *terminated*?)

First, State statute establishes the vesting period. As CDA attorney Ari Pollack well knows (being a prime drafter of HB 1508, which *became* the “vesting statute,” RSA 676:12 VI), a key goal of the statute was to *provide clarity* for both developer and municipalities regarding the point at which vesting is in effect.

Yet RSA 676:12 VI provides no discretionary authority whatsoever to waive or extend the 12-month vesting deadline. By contrast, if the State wishes to authorize discretion to planning boards, *it does so explicitly*.

For example, RSA 674:39 allows planning boards to extend a vesting deadline for approved subdivisions under certain conditions. The statute opens with paragraph I allowing vesting... “for a period of 5 years after the date of approval; provided that:”

(a) Active and substantial development or building has begun on the site by the owner or the owner's successor in interest in accordance with the approved subdivision plat within 24 months after the date of approval...

...but later the same statute grants the following discretion:

RSA 674:39 (IV) ...The planning board may, for good cause, extend the 24-month period set forth in subparagraph I(a) [above].

One logical explanation for this deliberate silence is that if Planning Boards throughout the state were allowed the discretion to reopen or extend Design Review, it would wreak havoc.

Second, a planning board may not waive a local regulation that in essence restates the statute. (That would be tantamount to ignoring the statute.) Part I, Section 1.28 of Durham's Site Plan Regulations *applicable to the Mill Plaza project* reads:

In accordance with RSA 676.12, an applicant is subject to the regulations in place as of the date that public notice of the start of the Design Review is published in a local newspaper. Those regulations adhere for up to 12 months following the end of the Design Review only if the applicant then submits a complete, formal application before the expiration of that 12-month period.

...which echoes the relevant portion of RSA 676:12 (VI):

...No proposed subdivision or site plan review or zoning ordinance or amendment thereto shall affect a plat or application which has been the subject of notice by the planning board pursuant to RSA 676:4, I(d) so long as said plat or application was the subject of notice prior to the first legal notice of said change or amendment. The provisions of this paragraph shall also apply to proposals submitted to a planning board for design review pursuant to RSA 676:4, II(b), provided that a formal application is filed with the planning board within 12 months of the end of the design review process.

Third, municipalities may adopt regulations that are stricter but not more lenient than State statutes. While reopening or extending Design Review is explicitly not addressed in our Site Plan Regulations, that action would constitute a greater “leniency.”

Fourth, approval of this request would set troubling precedent for Durham.

On June 14, 2017, Planning Board members stated, one by one, that it was time to close Design Review. Then, according to the videorecording, at approximately 9:58 pm that night, Attorney Pollack stated “we are ready to close Design Review.” The Board subsequently unanimously approved a motion to do so. Design Review was closed. Period.

The applicant may submit a formal plan until June 14, 2018. Vesting then evaporates.

Please deny the applicant’s request to reopen/continue/extend Design Review.

But IF the Board votes to reopen Design Review under some legal rationale that I haven’t identified, then notice to abutters and a public hearing are required—the former by statute and Durham’s Site Plan Regulations, and the latter by our Site Plan Regulations.

The Mower letter is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/54139/letter_from_robin_mower.pdf

Also, on November 27, 2017, **Ellie and Donald Sutherland, 25 Faculty Rd.**, wrote about the continuing disappointment with the sequence of redevelopment plans:

Dear Planning Board members,

We write to express our deep disappointment with the new plan submitted for the redevelopment of the Mill Road Plaza.

This new plan is appalling and flies in the face of what we have strived for as a town with the plaza. This new plan proposes to add four buildings of student housing at the Southern rear of the plaza which violates the intent of the December 2015 legal Settlement regarding preferred location of any housing which was to be on the Northern end. Proposing a dense student housing complex of four buildings up against the adjoining residential properties and near the pedestrian entrance to Faculty Neighborhood is in direct violation of Conditional Use criteria for housing in the Plaza. The plan to include a student housing complex is not compatible with the established character of the plaza and our neighborhood, and will adversely affect our quality of life and property values.

We forwarded letters on October 24, 2016, February 6, 2016 and June 5, 2016 to the Planning Board voicing our concerns and providing suggestions which we’ve attached to this letter.

Sincerely, Ellie and Donald Sutherland

Attachments:

- *October 24, 2016 letter to Durham Planning Board*
- *June 5, 2016 letter to Durham Planning Board*
- *February 6, 2016 letter to Durham Planning Board*

The Sutherland letter with the three previous letters can be found here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/54139/letter_from_ellie_donald_sutherland.pdf

Matthew and Bernadette Komonchak, Thompson Lane, also wrote on November 27, 2017, asking the Planning board to “Carefully scrutinize Colonial Durham Associates’ (“Developer”) request for an extension of its design review vesting period from June 2018 to November 2018.”

This unusual request is made on the heels of several other procedural irregularities that have characterized Developer’s interaction with the Town of Durham’s administration. I know that you are mindful that, at some point, the accumulation of these procedural irregularities threatens to undermine the legitimacy of the planning process as a whole.

As you know all too well, for more than three (3) years, the Town of Durham has engaged in exhaustive public discussions with Developer that demanded and used considerable town resources. Significant administrative, legal and community resources, which could have been deployed to projects that would benefit the town, were instead allocated to Developer.

After indicating a willingness to follow guidance provided by the Mill Plaza Study Group, Developer submitted a series of plans that ignored altogether the Group’s findings.

Developer submitted a series of plans that continually ignored extensive input by Durham residents that was provided at meetings over which you presided.

Developer repeatedly proposed excluding the plaza’s highest value property, which houses anchor tenant, Hannaford, as well as Rite Aid, from the redevelopment project.

Developer also submitted a series of plans that appeared not to comply with the court-approved settlement terms reached between Developer and Town of Durham. It is worth noting that the Developer’s current request to extend its vesting period until November 2018 would require a departure from ‘normal Planning Board procedures’ that the settlement requires.

Developer has submitted a series of plans that threaten abutting family neighborhoods and inconsistent with Conditional Use requirements of the Zoning Regulations.

In late 2016, Durham’s Town Administrator also took the unorthodox step of interrupting an ongoing public process before the Planning Board in order to begin a 6-month long series of negotiations with Developer that took place outside of the public view. Consequently, residents were excluded from the process for nearly the entire first half of 2017 and public exchanges between residents, the Planning Board and Developer were precluded.

In contrast to the Developer’s intransigence, Durham’s town administration bent over backward to accommodate Developer, even taking the unusual step of inviting Developer to participate in Durham’s Land Use Forum on May 13, 2017.

On June 14, 2017, after six months of private talks, the Town Administrator took the unusual step of reintroducing the redevelopment project to the public. He characterized the proceedings to date as

“abnormal” and went on to introduce a consultant who noted the virtues of the latest redevelopment plan and urged citizens to reconsider the plan.

Curiously, on the very same date that the Town Administrator reintroduced the redevelopment project to the public (June 14, 2017), Durham’s Planning Board and Developer moved and agreed, respectively, to close the preliminary design review and the public hearing on the matter.

Now – more than five months later – Developer submits an altogether different new plan, calling for “Conceptual Consultation Only” in its Request for a Pre-Application Review. Conceptual consultation would appear to require Developer to forego its design review vesting clock, yet the developer has also made what would appear to be an extraordinary, and potentially unlawful, request to extend the vesting period.

Since Developer’s paired requests would appear to violate both the settlement and New Hampshire State law. I would encourage you to seek outside counsel regarding their legality and to reject extending the vesting period if appropriate.

The Komonchak letter is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/54139/letter_from_matt_bernadette_komonchak.pdf

On the day of the “Conceptual Consultation, **Nancy Lambert and Martin Lee, 17 Faculty Road**, wrote to the Planning Board:

Thank you for your considerable service to this community. We appreciate the significant time commitment your service on the Planning Board entails and the difficulty of the decisions before you.

As abutters and patrons of the Mill Plaza, we enthusiastically support its re-development. We see the re-development as an opportunity to reinvigorate this critical property, expand commercial opportunities, enhance the attractiveness of the town’s core, and improve stormwater management and significantly reduce the negative impacts of the current plaza on the water quality of College Brook, the Oyster River and Great Bay. We also support increasing the residential density of the downtown area to create a vibrant downtown, protect open space and the rural character of the community, and reduce reliance on cars.

Given these positions, we are discouraged by the most recent re-development plan for the Mill Plaza. While the previous iteration of the plan suggested that Colonial Durham was making some attempt to improve the design, respond to community concerns and adhere to the conditions of the owner’s agreement with the Town, the current proposal communicates frustration with the process, disdain for the community’s interests, and utter disregard for protecting the quality of life in the Faculty Neighborhood. The conditional use criteria state that “external impacts of the proposed use on abutting properties and the neighborhood shall be no greater than the impacts of adjacent existing uses or other uses permitted in the zone.” It is hard to imagine how one can argue that packing hundreds of students on the edge of our neighborhood will not have a greater negative impact in regard to noise, light pollution and litter than what currently exists.

When evaluating the impact of this project on the abutters’ property values, as required by the conditional use permit criteria, we ask that you keep in mind that the value of our home to us is

primarily its livability, not its re-sale value. We love our home and our neighborhood, plan to stay here, and do not want to see our neighborhood succumb to the noise, light pollution and litter that have plagued other neighborhoods adjacent to dense student housing. The housing on this site needs to be on the Main Street and Mill Road edges of the site, not packed next to the homes on Chesley Drive and Faculty Road. The consistent weakness in Colonial Durham's plans is keeping the current building that houses Hannafords. That area of the site would be appropriate for much of the residential housing they want and failure to re-develop this building exacerbates the external impacts of the re-development by pushing what are essentially dorms to the edge of the Faculty Neighborhood.

Thank you for your efforts to protect our neighborhood from any negative impacts of the site re-development.

The Lambert and Lee letter is posted here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/54139/letter_from_nancy_lambert.pdf

On the morning of the "Consultation" day, **John Mince, Faculty Road**, sent his letter (dated Nov. 26, 2017) to the Planning Board,

It is with sadness that I view the latest in the series of plans for the Mill Plaza. This plan does away with all of the advances the team had made along the way.

What was slowly becoming closer and closer to an acceptable plan for renewing and rebuilding the Mill Plaza now seems to be a statement of scorn for the Town Board and the people of Durham.

What possible motive could there be but to wrench us into having to accept the previous, and more acceptable, plan. This current submission is clearly an act of dismissal. A dismissal of our very real concerns. A dismissal of the work we have put into helping the planners come up with a valuable plan that all would accept and enjoy.

My wife and I are abutters at 23 Faculty Road. We would be proximate to any building that goes on and any noise, smells, debris, that will emanate from the Mill Plaza and all its activities. From the looks of this last proposal it seems that the planners are trying to make sure we get the most toxic forms of noise, debris, and odors. If allowed to pass and to eventually be realized at the Mill Plaza, this plan will significantly lower the value of our property on Faculty Road. We have only lived here for seven years. Clearly if we had seen this proposal carried out seven years ago, we wouldn't have given Faculty Road another glance. We would have purchased our home elsewhere.

The last proposal correctly recognized that we need the student housing to be aggregated toward the north end of the plaza. Now we see that in this current proposal, they slid the student housing back down to the southern end. Why? What happened in the intervening period for them to make such a move? We all stood and admired that they placed more students at the site of the current Rite Aid building in the last proposal. We were all for that, and hoped they could find a way to continue this good idea, getting the students moved closer to Main Street and away from the Faculty Road abutters.

Please, as members of the Town Planning Board, kindly do whatever you can to halt this proposal in its tracks. If this is their ploy to get us to accept a previous plan, let's actually talk about that, and see if we can get some of the requests the citizens had actually requested. Things were moving in the right direction with their last plan. I even spoke up at the mike of having a celebration when this was all settled.

We thank you, in advance, for all the work you are doing, and have done, to help this Mill Plaza redevelopment be one that will be appreciated by all the citizens of Durham for the decades that will follow. Whatever happens here, we will all be living with it for a very long time indeed. Let us make sure it is what we all can genuinely envision as satisfying, creative, and effective for our lives here in Durham, a wonderful place to live.

The Mince letter is posted here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/54139/email_from_john_mince.txt

The afternoon of the Planning Board meeting, **Alix Handelsman, 47 Canney Road**, wrote expressing regret about not being able to attend the meeting and registering her “concerns over the latest round of issues with the Mill Road Plaza.” Her brief note can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/54139/email_from_alix_handelsman.txt

Seventeen residents (in 13 letters) wrote with criticisms/concerns about Plan #7 in advance of the November 29, 2017, Planning Board “consultation.”

There were NO posted advanced letters *in favor* of the November 2017 plan.

And, as indicated in the summary and minutes of the meeting, no members of the public were permitted to speak at the November 29, 2017 “Conceptual Consultation” on Mill Plaza Site Plan #7.

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November 29, 2017—Planning Board: “Conceptual Consultation” on Site Plan #7

Mill Plaza Redevelopment. 7 Mill Road. Conceptual consultation (preliminary) for the redevelopment of this 10-acre site (revision of earlier plan) and request for extension/continuation of one-year timeframe for submission of a formal application under RSA 676:12 VI. The project involves demolition of the rear building; construction of five new buildings – one building with 2 floors of commercial and 2 floors of residential, one building with 1 floor of commercial and 2 floors of residential, and three buildings with 1 floor of garage parking and 2 floors of residential (330 residential beds total); and other site changes. Colonial Durham Associates, LP, property owner. Sean McCauley, agent. Joe Persechino, Tighe & Bond, engineer. Steve Cecil and Emily Innes, Harriman, site planner. Ari Pollack, attorney. Central Business District. Map 5, Lot 1-1. Recommended action: Discuss procedure, extension/continuation, and conceptual plan.

PREVIEW: Town Manager Todd Selig removed Planner Michael Behrendt from oversight of the Plaza redevelopment process after Behrendt critiqued the latest proposal (#7) as a “terrible thing” that he would be “embarrassed” and “ashamed” to have built on his watch.

*Video of Nov 29, 2017, PB meeting is posted online. The Plaza presentation begins at **02:31:30**, around 9:30 pm: <https://dcat22.viebit.com/player.php?hash=VOBELayg7Zen#> with Michael Behrendt’s comments on the plan starting at **03:19:40** during “Other Business.”*

The Plaza’s preliminary presentation of its revised plan began at 9:30pm (**02:31:30**) and ended about 16 minutes later at 9:46pm (**02:47:53 on recording**), and the Board finished its direct “consultation” remarkably quickly, just 16 minutes later by around 10:02 pm (**03:01:57 on recording**).

But then, in an unusual and unexpected move, the Board (also with Town Manager Todd Selig brought in) continued to discuss the Plaza – at some length – after the Plaza reps and all the members of the public had left the room. (See **03:05:00** on.)

PLAZA REQUESTS: As previously noted, the Plaza (Colonial Durham Associates, or CDA) was making two

requests: 1) a “preliminary consultation” for a revised design, and 2) an extension beyond June 14, 2018, to submit the formal plans.

PB DELAYS RULING ON REQUESTED EXTENSION: Even after a confidential consultation with Town Lawyer, Laura Spector-Morgan (an attorney with Mitchell Municipal Group, PA in Laconia, NH), from 6-7 pm, the Board declined to rule on the extension at this juncture. A complication with this CDA request, per letters submitted to the Board, is that such an extension after a design review is closed seems to violate State law – something that cannot be overruled by a local Planning Board. (See again resident comments, particularly the one by Robin Mower, at: https://www.ci.durham.nh.us/boc_planning/citizen-comments-mill-plaza-conceptual-consultation-application)

From the November 29, 2017, Planning Board Minutes

Mill Plaza Redevelopment. 7 Mill Road. Conceptual consultation (preliminary) for the redevelopment of this 10-acre site (revision of earlier plan) and request for extension/continuation of one-year timeframe for submission of a formal application under RSA 676:12 VI. The project involves demolition of the rear building; construction of five new buildings – one building with 2 floors of commercial and 2 floors of residential, one building with 1 floor of commercial and 2 floors of residential, and three buildings with 1 floor of garage parking and 2 floors of residential (330 residential beds total); and other site changes. Colonial Durham Associates, LP, property owner. Sean McCauley, agent. Joe Persechino, Tighe & Bond, engineer. Steve Cecil and Emily Innes, Harriman, site planner. Ari Pollack, attorney. Central Business District. Map 5, Lot 1-1.

Attorney Pollack said Colonial Durham was before the Planning Board again to discuss the redevelopment of the Mill Plaza site. He said at the suggestion of Mr. Behrendt, they were there for a conceptual consultation, rather than a design review because it didn't require a public hearing. He reviewed the previous design for the project, where the bulk of the buildings were placed on the northerly portion of the site, respected the waterway and reconstructed a portion of the supermarket building where Rite Aid was currently located.

He said the feedback from the Board on the previous design was generally positive, and based on that the design review was closed. He said the design review meeting had included discussion of two variances that the design concept would require in order for Colonial Durham to be able to submit a formal application. He said the first variance request was related to a proposal to relocate Rite Aid, with a drive-thru on another part of the site. He said the second variance request related to the internal composition of floors in the 4 story buildings, to allow 3 floors of residential and one floor of commercial instead of the required 2 floors of commercial and 2 floors of residential. He noted that both variances were denied in August of 2017.

Attorney Pollack said there was a rehearing request subsequent to that, and then some delay in whether to grant the rehearing. He said a rehearing was granted for the floor composition variance, but not for the drive-thru, and said unfortunately both variances were needed in order for the plan presented in June to go forward. He said the plan relied on Rite Aid being willing to relocate.

He said they were before the Board tonight with a different, reasonable concept that left Rite Aid and Hannaford where they were on the site today. He noted the time spent over the past several months with Hannaford and Rite Aid about relocation options, and said the companies had not given any reason yet to indicate that relocation was something they would agree to. [“In fact, with respect to one of those tenants, our team had an in-person meeting as recently as today.”]

Attorney Pollack said there was a request tonight that Mill Plaza LLC be given an extension of the 12-month submission clock that ran from the end of the design review process June 14, 2017. He said because 5 months were spent seeking variances they ultimately didn't get, they were asking for an additional 5 months to continue the conversation with tenants, and to have time to prepare what might be deemed necessary to submit a full application to the Board, including a traffic study, [an environmental study], etc.

Chair Rasmussen said it would be helpful if Attorney Pollack could share some of the efforts made with Hannaford and Rite Aid about possibly relocating on the site. Attorney Pollack said there had been multiple in-person meetings to discuss various relocation options with both tenants.

Councilor Welsh asked if there were basic economic reasons for not wanting to relocate, such as not wanting a shut-down period, or concerns that the relocation wouldn't work. He said it would be good for the community to be able to hear this. Attorney Pollack said his perception was that there were economic reasons involved, and also said the companies didn't want disruptions that they could avoid. He said he didn't want to convey false hope, and said his impression was that all parties were acting in good faith but didn't want to move.

Ms. Innes reviewed details of the latest concept for redeveloping the Mill Plaza site. She said there would still be 80,000 sf of commercial retail/office space and 330 beds, and said there would be 391 parking spaces. She noted that the settlement agreement said there would be a minimum of 345 spaces, and said this current concept included 391 spaces. She said this plan was in compliance with the requirement to have 2 floors of residential space and 2 floors of nonresidential space, and she provided details on how these uses were organized and distributed in each of the buildings.

Councilor Lawson asked if there was any flexibility in the distribution of uses, for example doing a swap between Building B and Building E. Ms. Innes said the proposed distribution retained in part the internal street network from the previous plan, and spoke further on the reasoning behind the proposed distribution.

Councilor Lawson asked if it was anticipated that as much effort would be put into the appearance of the buildings and streetscapes as was put into the previous designs, so that this plan had the same feel. Ms. Innes said absolutely, and noted that tonight it was simply the conceptual plan that was being presented.

Chair Rasmussen asked if Building A was being touched at all with the current design, other than a façade change. Ms. Innes said no, and Attorney Pollack said the intent was that it would be tied into everything else so it would all look like it was part of one development. Ms. Dill asked if Building B could be 3 stories. Attorney Pollack said they would like to do that, but said it was proposed to be 2 stories of commercial and 2 stories of residential in order to avoid needing a variance. He said Buildings C, D and F would be 3 story buildings and wouldn't need a variance.

Ms. Dill asked about the increase in parking that was proposed. Ms. Innes said the reason for this was because of the ground floor level parking for Buildings C, E and F. She said in the previous concept, there was just ground level parking for Building E, and the rest of the buildings had ground floor commercial uses. She noted that it would not be residential parking, even though it was underneath buildings that had residential space.

Ms. Dill asked if it would end up being used for residential parking anyway. Attorney Pollack said the concept was for residential occupants to park off site, and also said there would be onsite management to enforce the parking restrictions.

Mr. Parnell asked if it would be better to put commercial space on the ground floor of Building E instead of parking spaces. Attorney Pollack said they would like to be able to do that, but said to date, the conclusion had been that commercial space that was blocked from being visible from Mill Road wouldn't do well. Chair Rasmussen asked if the extra parking was needed, and suggested that there could be 2-story buildings instead. Ms. Innes said that wouldn't work because of the required residential/commercial ratio and the fact that residential was prohibited on the ground floor.

Mr. Morneault noted the height difference between Building A and proposed surrounding buildings, and asked if the work on the façade could address some of this. Attorney provided some details on this.

Mr. Behrendt asked about the proposed commercial space on the first floor of Building D that was disconnected from the other commercial space on the site. There was discussion. Attorney Pollack said this was a leap of faith, and said they were trying to honor the settlement agreement and deliver commercial space to Durham. Mr. Behrendt said the prior plan was rectilinear in layout, connected the front to the back, was much more walkable, and made the retail at the back viable. He asked if Colonial Durham could work off of that prior plan. Attorney Pollack said it became an exercise of fitting the shapes onto the plan, once the Rite Aid change wasn't there.

Councilor Lawson said given that Colonial Durham couldn't get the variances, the pallet of land was more constrained. He said there would have been a lot of nice things they all would have liked to have seen with the pallet of land, but said that no longer existed. He said it also meant Mill Plaza took more risk with its commercial space.

He noted that there had been a lot of comments that this plan violated conditional use criteria. He said he'd spent a lot of time looking at it, and said while there were some things to be worked on, he believed this was a plan that could navigate conditional use, just like the last plan could have done.

Attorney Pollack said the comment was appreciated, and said right now this was just the beginning of a formal planning process.

There was discussion about whether the conceptual consultation phase would continue. Attorney Pollack said there was really no need for the conceptual consultation phase to continue, and said if Colonial Durham wanted to return, for design review, they would do so. He said he appreciated the Board's feedback.

With that, the "consultation" appeared to be over, in barely more than 30 minutes in total (CDA's presentation and the Board's questions, and discussion). With the "consultation" over, the applicant and essentially all the residents in the room left, assuming the discussion of the Plaza was over for that night.

Residents who attended the Planning Board meeting (where they were not allowed to speak) were stunned by the brevity of the Planning Board's "consultation" and its largely uncritical nature. The Town's "Conditional Use" criteria for housing in the Plaza (no added noise, light, dust, odors, trash, hours of activity to adjacent neighborhood beyond current uses in the Plaza) were not mentioned – except by one Planning Board member who stated at 02:59:50 in the video that there was a way to work around them: "Because there's been some public comments about Conditional Use, and, um, I have spent a lot of time looking at this plan, um, more than any, you know, kinda just site layout, and, um, there's been a lot of comments that this plan, you know, violates Conditional Use. And I just want to say that there are some 'to be dones' and things to work on, but, um, I too believe that this is the plan that can navigate Conditional Use, um, just like the last plan could've. And I don't see anything that is a barrier to being able to work through those issues. So that's my other comment on this."

To the eyes and ears of many residents (in the room, and watching on DCAT), the Planning Board members did not seem to fulfill their obligations under the site-plan regulations (quoted in the footnote above), such as "(a) reviewing the basic concepts of the proposal, b) reviewing the proposal with regard to the Master Plan and Zoning Ordinance, c) explaining the local regulations that may apply to the proposal, and, d) guiding the applicant relative to state and local requirements.") Some of the Planning Board members were essentially silent, which according to court cases entails dereliction of the duty of Planning Board members' to assist the applicant.²⁴

²⁴ From **NH LAND USE AND RELATED STATUTES: "Some Key Issues Arising From Common Law. Duty to Assist Applicant:** *Richmond Company v. City of Concord*, 149 NH 312 (2003) – A planning board has a duty to provide meaningful assistance to an applicant. The board can achieve this by directing the applicant, asking questions and raising concerns throughout the process. Silence, refusal to assist in correcting technical errors and dilatory tactics violate the board's obligation. Boards can, however, maintain a certain level of impartiality during public testimony and hearing process. It is clearly the board's job to give guidance to the applicant about what is wrong with the application."

<https://www.nh.gov/osi/planning/resources/conferences/spring-2017/documents/intro-to-land-use-rsa-handout.pdf>

But then in the “Other Business” section of the November 29, 2017, meeting, the Plaza returned as a topic of discussion. Additionally, a “slip” in that section of the meeting (as detailed below in footnote 27) offered a possible explanation for the subdued questions and criticisms of Plan #7 by Planning Board members.

CDA representatives and the members of the public left as the PB started to discuss meeting schedules. But then in “Other Business,” the Board began to discuss the Plaza again. Site plan #7 was obviously haunting many member of the Board, who were also tired from a very long day (a site review at 3pm, meeting with the Town Lawyer at 6pm, Planning Board meeting that had run for three hours by that point). The Planning Board (with Todd Selig present also) engaged in what appeared to be an anguished discussion of what the possibilities were under the current circumstances to have the best possible redevelopment of the Plaza. There were clear concerns about the weaknesses of the November 2017 plan, as detailed below. There was also discussion about how CDA had made not very convincing cases to the ZBA, which was obligated to follow its procedures and was not fully aware of as much context as the Planning Board has.

The Board members were clearly discouraged from the 37 months of Plaza redevelopment meetings that led to such a poor plan, and struggling to do the right thing for the Town. Among other things, they discussed developing Planned Unit Development (PUD) rules applicable to a specific site, changing the zoning ordinances, and exploring new variance requests.

Continuing from the Planning Board minutes for November 29, 2017 (with additions from the recording):

XIV. Other Business:

...Mr. Behrendt said if the Board wanted more flexibility concerning Mill Plaza, it could look at doing a Zoning amendment. He noted that the Planned Unit Development (PUD) approach was a zoning tool that would allow the Board to write its own rules for a particular site, and said an unusual design could be approved this way [if it were great planning]. He said this would provide the most flexibility. He also said smaller Zoning amendments could be explored.

Councilor Welsh said this plan looked pretty bleak. He said he understood Colonial Durham’s constraints, but said if the Planning Board was stuck with this design [for 50 years], it hadn’t done its job. He said the plan didn’t make sense, with strip development and student housing coddled together, and parking that no one needed. He said something like what Mr. Behrendt had proposed was a good idea.²⁵

²⁵ Since Carden Welsh’s comments at this November 29, 2017, Planning Board meeting led CDA to declare him “innately biased” and to demand his recusal from review of the proposal, it’s worth reviewing Mr. Welsh’s exact words. Starting at 03:06:25 in the video: Carden Welsh – “Michael, this plan looks pretty bleak. I mean, you’ve got unused parking garages in the last two buildings because they don’t think any businesses would be there. They’re not going to let the resident’s park there. Who is going to park there? There is nothing to do there. So, you know, we got to be able to do something better. And it looks like they’re sort of hemmed in by what we have, they can’t even go four stories in one place and two in another. I understand their constraints. So I would be in favor of something we could do to make it more relevant and to, you know, we’re going to be stuck with this (as people have pointed out ad nauseam) for 50 years. If we’re stuck with this for 50 years, I think the Planning Board really hasn’t done its job. Because this just doesn’t seem to make any sense. I mean it’s kind of a strip place and a student development cobbled together in one place with parking that no one needs. It’s bizarre. So I think something like you’re proposing is a good idea.”

Following up on the same theme a few minutes later, Carden Welsh at 03:10:47 added: “What would be the best way to facilitate that [possible zoning change]? [Others speak] No, but I mean if there’s something that the Planning Board that we feel, you know, that would be much better than this, and we could facilitate that with, kind of – I can’t remember what you called it, Michael. [Behrendt: “Planned Unit Development?”] – yeah. Because it seems to me we can do what we want, but then the applicant can stick with this plan or do something else. Should there be some conversations between the applicant and someone to get it rolling in the right direction?” And, after responses, “There just has to be a way to do better than this.” [Jim Lawson: “The way you do better than this was the variance, and...”] Yeah, but, Jim, it is true, you know, that people on the ZBA have five specific criteria they have to look at. And if it doesn’t meet the criteria, they’re not thinking about ‘well, if it’s not this,

Mr. Parnell asked if there was an opportunity to revisit the ZBA. Mr. Behrendt said this could happen if there was an application that was substantially different. There was discussion about the ZBA's role.

Councilor Lawson said the applicant was on the clock, and said doing a design and then going to the ZBA would take 3 months.

Chair Rasmussen said if there was a way for the Board to sort of take back the last design, that would be a better alternative. Mr. Behrendt said Zoning amendments could be done that would allow that. Councilor Lawson said to do something like this, the Planning Board should craft what it wanted, and take it to the Town Council to initiate the Zoning change.

There was discussion about having a conversation with the applicant to get things rolling in the right direction. Councilor Lawson noted that there would be a public hearing if there was a Council initiated Zoning change, and said he thought it would be as tough a process as getting a variance had been. There was further discussion, including about the ZBA process [from 03:12:09-03:13:23].

Councilor Welsh said again that perhaps Mr. Behrendt's idea about creating PUD provisions could work.

Administrator Selig said crafting a PUD was complicated, and noted that once in place could be applied elsewhere beyond Mill Plaza. He said one of the variances that had been sought involved allowing 3 floors of residential above 1 story of nonresidential, and said a question was whether the Board was open to allowing that. He noted that a property on Jenkins Court had been allowed to have nonresidential on the 4th floor instead of the 2nd floor, and said this had been a challenge because of the two residential floors between the 1st and 4th floor, and the elevator in the building.

He also noted the drive-thru issue, and said he thought a drive-thru for a pharmacy was a reasonable use in this day and age. There was discussion. He said he thought it would be challenging to do a PUD quickly, so they were left with possibly making a more straightforward change.

Councilor Welsh said the current plan was horrible, and spoke further on this. He said the student housing development would be where people hadn't wanted it, and said the front part [of the Plaza] wouldn't be much better than what it was now.

Chair Rasmussen said perhaps the parking could be made more usable, with pay spaces that the Town managed.

Councilor Lawson said there was the same amount of commercial space proposed as there was with the previous design, and said much of the space had visibility out toward Mill Road. He said Building D might be attractive for professional offices, and said people going there might park in Building E. He said maybe the first floor of Building C was the parking for employees so there would be more space elsewhere for customers.

then this, not this, then this.' They don't have that ability to do trade-offs as to what's going to replace if this doesn't go through. They don't. They have those criteria that have to work. [Lawson, "The criteria are not black and white."] No! They're very gray, but they're still, you gotta meet the criteria. And you do, and it's hard. It's *made* to be hard, because these are people asking for something that they're not allowed to do. I spent five years on the ZBA, you spent two years. We've all kind of been there and seen it. And they don't have the overview that perhaps the Planning Board does in this project. They're just saying 'hey, you say I'm not allowed to have a drive-thru, and you guys got a drive-thru, so what the hell?' And, you know, it goes from there. So, I think we can be in this do loop forever if we stick with the way we're doing it. So maybe Michael's idea can work."

At 03:16:39, after Administrator Selig's comment that it would be challenging to develop a Planned Unit Development in time, with Selig adding "I think we are left with a more simplistic and straightforward change," Mr. Welsh (after 8 seconds of group silence) said: "But this is just horrible, the plan they're putting forward. It's horrible. You got all these vacant parking spots in the back that no one's using, pretending that it's helping our commercial development, when it's not; it's wasted space and wasted money. You've got a big student housing development right where we didn't want it. And then you have a front Plaza that's not much better than what it is now."

Administrator Selig said it might be beneficial for the offices to have designated parking. Chair Rasmussen said if he worked at an office there, he'd like to have the covered parking. Councilor Lawson said perhaps some of the parking would be available for public parking, as was being done with some retail places in Portsmouth.

Mr. Behrendt said he was paid to be the professional planner for the Town, and said if this project ever got built, it would be a terrible thing. He said he'd be embarrassed and ashamed if it happened on his watch.²⁶

Councilor Lawson asked why it was a terrible design, just because of the buildings in the back that had parking, if Colonial Durham paid attention to the design standards and worked to create the look and feel of the design before this.

Ms. Dill asked Mr. Behrendt specifically what was wrong with the design.

Mr. Behrendt said the back half of the site was residential student housing that was turned at an angle and met the site poorly, and was closer to the neighboring residential area. He said the commercial space would be strange and unviable back there, and would be of low value. He said the first floor parking would either be unused, rented to other business, or would be parking the Town would have to monitor to make sure it wasn't rented to students onsite or offsite. He said the back area would provide no value to the community. He contrasted the current design to the previous design, which he said could be a terrific new development apart from the things people didn't like. He said it was walkable and had a lot of character.

Councilor Lawson said he didn't agree with the assessment of the current plan, and said he agreed with the assessment of the previous plan. But he said the previous plan couldn't happen because of the ZBA decisions. He said he hoped that with this current plan, there were some changes that could be worked on, including going to the ZBA concerning parking on the first floor and preferring that some buildings instead have 2 floors.

There was discussion about the conditional use criteria in relationship to the current plan.²⁷

Administrator Selig said while Mr. Behrendt was an excellent planner, he had expressed his personal opinions. He said it was incumbent on the Planning Board to objectively weigh this and any application, and said he would expect Mr. Behrendt to objectively provide guidance and advice to the Board that wasn't based on his personal opinion. He said the Board had an obligation to fairly represent the Ordinance, the public and the applicant, and to treat them all fairly.

Chair Rasmussen said several people had mentioned that perhaps the way to get a better plan was to make some Zoning changes. He asked if there were some changes that could be done quickly that would allow a better plan to happen. Administrator Selig encouraged the Board to consider this, and noted that any Zoning changes would apply to any application that came forward. He said this would take some real thought.

Ms. Dill noted that there was a responsibility to the public, and said she had this nagging feeling that the public was being thrown under the bus and said she didn't like that feeling. She said there was merit to some extent

²⁶ Exact Behrendt quote: "I think this is a legitimate discussion because this is a public meeting; we'll still open. So I think this is legitimate to be talking about it and valuable. I have to say, though. You know, I don't know whether I'm out of line here or not, but I'm your, you pay me to be your professional planner, and I'd be remiss if I didn't tell you this: If this ever got built, that would be a terrible thing. I'm telling you that frankly. And I don't care if Mill Plaza hears it. If this ever got built, I would be embarrassed. And I would be ashamed that it happened on my watch. I don't [usually] say that. That's how I feel. I would be remiss if I didn't make that known." (From 03:19:40-03:20:20 on video.)

²⁷ Exact exchange on Conditional Use (at 03:23:05): Paul Rasmusson: "Michael, I'm going to task you with a small action. Please speak with Ms. Specter, about which of those conditional use things specifically are a potential issue." Behrendt: "Oh, you mean if this plan if they had to go through the Conditional use review? Rasmusson: "Right. She made that comment that we might have overstepped our bounds on some of the conditional use designations." Lawson: "This is NOT a conversation to be having. That was between us and an attorney. We do not want to have that conversation here!"

to the neighborhood complaints, and said the plan flew in the face of this.

Administrator Selig said the Board was hearing competing interests, in its quasi-judicial role, and he spoke in further detail on this.²⁸

He said the Town had worked in good faith and spent many thousands of dollars on an architectural consultant in order to find a solution, and said the best they could do went to the ZBA, which turned it down. He spoke about the process to come.

Mr. Parnell said there had been projects that came before the Board that had students from top to bottom in a building, and the Board hadn't said each building had to have two stories of nonresidential and two stories of residential. He noted that the buildings at the back of the Orion development had no commercial space, and asked if the Board had missed something that could have been done with Mill Plaza.

Mr. Behrendt said with the Madbury Commons and Orion projects, the Planning Board endorsed the projects at a design review stage, the developers then went off to get their variances with a certain amount of community support, and they were successful. There was further discussion.

Mr. Parnell said the precedent was there to allow buildings without any nonresidential space, and he spoke further on this. He said perhaps the Planning Board had more discretion concerning something like this.

Mr. Behrendt said a PUD would allow a lot flexibility concerning something like this. He also said a simpler ordinance change would be to allow more flexibility through conditional use. He noted that doing this would open up more possibilities for other property owners downtown.

Mr. Parnell asked that Mr. Behrendt confirm the variances received by Madbury Commons and Orion concerning having no nonresidential space in some buildings.

Administrator Selig noted that there was RSA79-E, and said a question was whether it was useful to consider whether if Mill Plaza agreed to put commercial space on the second floor, it could get a tax benefit in return.

Councilor Lawson said something like that was useful to consider, but said the value of the residential space was a long-term, 30 year value, and affected the value of the property, whereas RSA 79-E was for 5 years.

Administrator Selig said he and Economic Development Director Mary Ellen Humphrey had tried hard to convince Colonial Durham that there was strong demand in Durham for office/research type space, but Colonial Durham were skeptical about that. He said if the Town could provide a period of time when taxes didn't have to be paid, that might encourage them to do this. He said there was a difference in terms of long term revenue that could be achieved, but said it was a choice between Colonial Durham not getting a project at all, or one that didn't work as well, it might be worth considering.

The Chair moved for adjournment, and the meeting concluded around 10:40.

The November 29, 2017, Planning Board minutes can be reviewed here:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/54071/112917.pdf

²⁸ Administrator Selig's exact comments (03:27:03–03:28:35): "You are wearing your quasi-judicial hats on the Planning Board. And you're hearing the competing interests coming before you. The members of the public who have been coming and expressing concern about the project, many of whom are residents or friends of residents or people who care about the Faculty Neighborhood in particular, they have been expressing their views strongly. And the applicant, which owns the plaza, is bringing forward their interests strongly. And I think there is a challenge in that the applicant says in order to do this project, we need, x, y, and z and that includes 330 beds of housing. And the public says, 'well, if you would simply have less housing, you could do all these things on the property.' And, it's up to the applicant to tell you what the applicant needs/wants. And it's up to you to listen to the public and the applicant and then make a decision. Either the application meets the ordinance or it doesn't. That's your job. And, you can fairly serve everybody by impartially administering the ordinance and listening carefully to the applicant and the public."

The video of the November 29, 2017, Planning Board meeting can be viewed here:

<https://dcat22.viebit.com/player.php?hash=VOBELayg7Zen>

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November 30, 2017: CDA's Attorney to the Town Attorney regarding the "Other Business" Discussion

From: Ari Pollack <pollack@gcglaw.com>

Date: Thursday, November 30, 2017 at 1:36 PM

To: Laura Spector <laura@mitchellmunigroup.com>

Cc: Sean McCauley <sean@mralp.com>, Todd Selig <tselig@ci.durham.nh.us>

Subject: RE: Mill Plaza - Colonial Durham

Laura-

I reviewed the video of the "Other Business" portion of last night's PB meeting (attached), which commences at 3 hours, 5 minutes. It would be an understatement to say that I have concerns about what transpired during this portion of the public meeting.

Here are few examples of my concerns:

1. Discussion during a public meeting about the applicant and the applicant's proposal after the conceptual consultation had ended and after the applicant departed from Town Hall. It is hard to digest that the PB members were not plainly aware of the applicant's absence, or that it was inappropriate to discuss the merit of the submission without the owner's representatives.
2. Comment by a PB alternate member that the applicant's proposal was "horrible", would waste money and space, and that the Town would be "stuck with it" for 50 years. Then, repeating again that the plan is "just horrible" with unnecessary parking, wasted space and plain errors of fact as to the amount of commercial space proposed.
3. Comment by the same alternate member as to information relative to the ZBA's deliberative process and their rationale for denying the variance applications.
4. Comments by the Planner that the plan, if built, would be a "terrible thing" and that he would be professionally "embarrassed and ashamed" to have been associated with a "poor design" that is "odd" "strange" and "low value". [This coming one day after he apologized to the applicant for making inappropriate and opinionated comments to the press about the same proposal.]
5. Public reprimand by the Town Administrator towards the Planner, in front of the PB members, over personal opinion comments and clearly implying that the Planner may now be compromised in continuing to advise the PB during its review process. This rings of a deprivation of due process and fundamental fairness.
6. Multiple statements about how members preferred the prior concept over the present concept, using derogatory terms to describe the present submission.
7. Repeated references to your privileged attorney-client communications with the PB, and disclosure of portions of your advice regarding renewed zoning applications and "overstepping bounds on" CUP criteria.

I should share that I think Todd Selig was placed in an impossible and extreme situation, being called upon to comment on a discussion that he clearly knew should not have been occurring.

Before I overreact, I realize you had departed from Town Hall as well and were not present. Could I ask you to share your thoughts and suggestions of what transpired and what actions might need to be taken?

Thank you.

-Ari

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December 1, 2017—Town Administrator Removes Town Planner from Oversight of Plaza Project

On Friday, December 1, at 2:55 pm, Todd Selig sent an email to Michael Behrendt, stating that as a result of comments that Michael made at the meeting (and quotes from him published in *Foster's* on Tuesday), that Todd Selig was formally removing him from oversight of the CDA redevelopment application and would be finding a "contract planner" to help the Planning Board in "moving forward" with the project.

Dear Michael,

*Please pass along this exchange to the Planning Board without comment by you and without back and forth with the board. As you and I discussed Wednesday evening, 11/29/17, at approximately 11:30 PM following the close of the Planning Board meeting, by virtue of the comments you made at Wednesday evening's meeting and the recent *Foster's Daily Democrat* newspaper article referenced below, I have formally removed you from oversight relative to the Colonial Durham application concerning the proposed redevelopment of the Mill Plaza site. In addition, I have commenced the process of endeavoring to identify a qualified contract planner who can be engaged to assist the Planning Board moving forward with this project. I shall be in touch with the Planning Board directly in the coming days. Please note, this email is a public document.*

Thank you for your assistance.

*Todd
Todd I. Selig, Administrator
Town of Durham, NH*

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December 8, 2017: Mill Plaza Attorney Requests that Planning Board Alternate Recuse Himself

From: Ari Pollack <pollack@gcglaw.com>
Date: Friday, December 8, 2017 at 11:24 AM
To: Laura Spector <laura@mitchellmunigroup.com>
Cc: Todd Selig <tselig@ci.durham.nh.us>
Subject: Mill Plaza

Laura-

Following up on our telephone conversation, and on behalf of Colonial Durham, I am asking that Carden Welsh, Council alternate to the Planning Board, be disqualified from further participation in the Mill Plaza redevelopment application. This disqualification would be comprehensive in that Mr. Welsh would neither sit on the application, deliberate or cast any vote.

This request relates to Mr. Welsh's public comments towards the end of the prior (11/29/17) Planning Board meeting, wherein he referred to the current Mill Plaza preliminary concept as "horrible", a waste of resources and something the Town would be "stuck with" for the next 50 years. While multiple members offered mixed feedback with more measured and appropriate "let's see what happens"-type comments, Mr. Welsh's comments exposed an innate bias against the plan and an unwillingness to allow the planning process to evolve towards a final application. Put differently, his comments left no hope that his views could ever be reasonably rehabilitated or overcome. In reference to RSA 673:14, had Mr. Welsh been asked to serve on a jury in regard to such substantive matters, a presiding judge would certainly excuse him for cause due to the conviction of his opinions prior to hearing any actual evidence.

Please also accept this e-mail as Colonial Durham acknowledgment that the Town Administrator has removed Michael Behrendt, Town Planner, from involvement with the Mill Plaza project. Please offer any available updates

on the Town's search for a replacement planner.

Lastly, I know that you asked that I direct this communication to Town Staff, but I thought it best to direct it to you as their legal counsel. I have, however, copied Todd Selig at your suggestion.

Thank you.

-Ari

From Friday Updates, December 15, 2017:

In a December 11, 2017 email, Colonial Durham Associates lawyer Ari Pollack asks Councilor Carden Welsh be "disqualified" from the ongoing review of the Mill Plaza redevelopment. He alleges Councilor Welsh's comments regarding the project during the Nov. 29 meeting showed bias.

It is ultimately up to Carden Welsh whether or not to recuse himself. Councilor Welsh is the Town Council alternate to the Planning Board. Councilor Jim Lawson is the primary Council representative to the board. Councilor Welsh is considering the request. See more about the issue of conflicts of interest and bias below. See more at: <http://www.ci.durham.nh.us/fridayupdate/friday-updates-december-15th-2017>²⁹

Foster's Daily Democrat: Mill Plaza Developers Request Welsh Recusal

<http://www.fosters.com/news/20171214/mill-plaza-developers-request-welsh-recusal>

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There was a strong reaction among residents to Michael Behrendt's removal from oversight of Mill Plaza Redevelopment. Some residents understood the move as necessary to protect the Town from further litigation, but many others reacted with concern, as reflected in **Cheryle St. Onge** email to Todd Selig on December 3, 2017.

Dear Todd

I think it is Michael's job to speak out! I hardly think his comments were personal as you, Todd describes them. Durham has worked hard to create a fabulous downtown that is thriving. Why should we accept a weak proposal for an area that so defines it.

I am strongly urging Michael to be reinstated to the redevelopment process.

Best, Cheryle
CHERYLE ST. ONGE
www.cherylestonge.com

Ms. St. Onge wrote a follow-up email the next day, December 4, 2017:

Todd,

It is really important to note that I have heard that some people feel that it is only people in Faculty

²⁹ Note that with respect to a "preliminary consultation" at a Planning Board (though already odd for a "closed" design review and because of discussion after the applicant left the room), Title LXIV - PLANNING AND ZONING, Chapter 676 - ADMINISTRATIVE AND ENFORCEMENT PROCEDURES, Section 676:4 - Board's Procedures on Plats: "Such [preliminary] consultation shall not bind either the applicant or the Board, and statements made by the Board members shall not be the basis for disqualifying those members or invalidating any action taken. The Board and the applicant may discuss proposals in conceptual form only and in general terms such as the desirability of types of development and proposals under the Town's Master Plan." <https://law.justia.com/codes/new-hampshire/2016/title-lxiv/chapter-676/section-676-4/>.

development area that are up in arms about aspects of this design. Not so. We live well beyond the downtown area (Wiswall) and yet all of my neighbors also have strong feeling about keeping the plaza design within the merit of all the good work done of recent years. Such as TMS's apt or Lisa Destefano Architect's housing project or the rework Grange hall. All of those were long processes where the town played a major role in what exactly this end result would be and how it looked. And those projects have, in my mind so revitalized the downtown.

I am sure there is some fatigue here as this has been a long time in coming with many unsuccessful design put forward. But it is exactly now when we need to keep on with the good work.

Best, Cheryle

On December 8, 2017, **Peggy Celano, 3 Pendexter Rd.**, wrote "An open letter to the Town Council, Planning Board, and Todd Selig":

While I am not a resident of the Faculty Rd. neighborhood, I share their concerns about Colonial Durham Associates' plans to redevelop our downtown shopping plaza.

Aside from reduced property values in the Faculty Neighborhood, and based on the issues aired through letters and comments for the past 37 months' of meetings, proposals, variance requests, as well as potential extension requests, I would like to discuss three main points that have influenced my concerns, particularly those that the Planning Board responded to on Wednesday, November 29th's meeting, relative to DCA's preliminary proposal and potential request for a six-month extension in its progression of development as it relates to its plaza plan: the Planning Board's decisions on delay the request for extension; the absence of Conditional Use criteria in the Board's discussion; and the consequence of Town Planner Michael Behrendt's comments in the televised "after meeting's" candid discussion, which was Mr. Selig's decision to replace him this far along in the process.

To address the PB's summation of comments to DCA, "There's been a lot of comments that this plan, you know, violates Conditional Use. And I just want to say that there's some 'to be dones' and things to work on, but I too believe that this is the plan that can navigate Conditional Use just like the last plan could've, and I don't see anything that is a barrier to being able to work through those issues," after which the PB delayed its ruling requested for extension.

Had the PB discussed this plan's impact on Conditional Use, I think the outcome might have shown less encouragement and more neutrality in its two decisions. Conditional Use parameters "prohibits housing in the plaza that would add additional noise, light, trash, odors, hours of activity and so forth to the adjoining neighborhood beyond the current use of the site." How could these parameters not be in direct conflict with the plaza itself, as well as adjacent neighborhoods? 330 student beds in what has been billed as Durham's new town center is anything but that, and for these reasons: the Durham's town center will have to navigate around conditions arising from 330 students in its mix. Traffic will increase and speed will increase (students do not fall into slow driver categories). The town of Durham's mission statement values Durham as a walking community, yet 330 student residents will certainly establish Durham as a car culture. Motorcycles, motor scooters, and engine revving will accompany 330 students, and at late hours. I do predict that, sooner rather than later, Durham will need a traffic light at the plaza's junction with Mill Rd. The plaza will need police enforcement for traffic, possible crimes due to drunkenness on weekends and UNH social-related events like Cinco de Mayo, Homecoming, move-in dates, and UNH graduation, to name a few. The yearly turnover of these students will cause congestion and aesthetic interference to our town center. Elementary, middle, and high school students, along with the elderly population who value walking, will see negative variables when walking through the plaza. Please know that I value all the time and effort all of you contribute to the

betterment of our town. I appreciate the responsibility you assume and the jobs you do so well. Perhaps the lateness of the hour caused an abbreviated discussion, particularly when the ‘after meeting’ discussion ensued.

I appreciated Mr. Behrendt’s candidness, because his comments validated many of us who thought that the latest DCA plan was unpalatable. While I understand Mr. Selig’s televised comments to Mr. Behrendt, his follow-up decision to replace Mr. Behrendt, and Mr. Behrendt’s subsequent apology to Mr. Selig, I can’t help but think that the frustration with DCA’s process had to have been for Mr. Behrendt to have made his comments in the first place. I am thankful that his responsibility to his profession ‘called it as he saw it,’ and that he wasn’t unduly influenced by political correctness. Thank you for your time.

The December 8, 2017, Celano letter can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/54139/letter_from_peg_celano.pdf

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December 22, 2017—Friday Updates – Rick Taintor Hired as Contract Planner for Mill Plaza Review

“Administrator Selig has secured the professional services of Rick Taintor to support the Planning Board as part of the Mill Plaza application review process.” <http://www.ci.durham.nh.us/fridayupdate/friday-updates-december-15th-2017> Taintor was to be paid \$125 an hour, including for travel time from his out-of-state home.

Rick Taintor’s resume and project list can be found here:

https://www.ci.durham.nh.us/boc_planning/mill-plaza-project-contract-planner-rick-taintor

“Former Portsmouth Planner Hired for Durham’s Mill Plaza Review,”

www.seacoastonline.com/news/20171215/former-portsmouth-planner-hired-for-durhams-mill-plaza-review

Per the Services Agreement signed on December 27, 2017: “The Consultant will provide the Durham Planning Board with professional planning services including but not limited to review of documents and plans, attendance at Planning Board meetings, and preparation of memos and reports. As determined appropriate in consultation with the Town Administrator, the Consultant may meet with representatives of the Mill Plaza development team, representatives of neighbors to the Plaza and other stakeholders; and with Town staff.”

The full Professional Services Agreement between Taintor and Durham can be read here:

<https://www.dropbox.com/s/fg92q6jt28ko0un/Rick%20Taintor%20-%20Professional%20Services%20Agreement.pdf?dl=0>

2018

January 2018—UNH Terminates Contracts for 18 Full-Time Faculty Citing Declining Enrollments

Nearly 10% of UNH’s full-time lecturers received letters over winter break, indicating that their contracts were being terminated as of May 18. Declining enrollments were cited as a main reason. Some of the lecturers have been teaching at UNH for decades. See sample articles at the links below.

<http://www.seacoastonline.com/news/20180118/unh-to-cut-18-lecturer-positions-next-year>

www.unionleader.com/education/18-unh-lecturers-received-non-renewal-letters-over-winter-break--20180120

<https://www.boston.com/news/education/2018/01/19/university-of-new-hampshire-to-cut-18-lecturer-positions>

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January 20, 2018—Library Meeting between CDA and Small Group of Residents

Following the November 29, 2017, Planning Board meeting regarding Site Plan #7, some residents began to meet among themselves to explore alternative site plan designs that would be less damaging to Durham’s downtown core and yet could meet Colonial Durham’s general design goals. They came up with a number of suggestions, and specific alternative layouts, based on a set of specific criteria for a positive redevelopment of

the Plaza. After representatives of that ad hoc group met with Todd Selig, a meeting was set up between residents and CDA's Sean McCauley and the Harriman design team (Steve Cecil and Emily Innes). The meeting took place on Saturday, January 20, 2018, at the Durham Public Library, from 10 am to about 12:45 pm. Sean McCauley told the residents that CDA would think about the discussion and get back to the residents in a few days, perhaps scheduling another meeting after they'd thought things through. Yet even after the residents sent more than a half-dozen follow-up emails to Mr. McCauley, no response of any kind was received for months after that meeting. (In mid-April, part of the CDA team and part of the residents' group from the January meeting were in the same space as CDA presented a new site plan to the Technical Review Group.)

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February 4, 2018: Boston Globe Reports on Enrollment Challenges for New England Colleges

***New England Colleges Brace for Enrollment Challenges: Fewer high school graduates after 2025, making quest for diversity even more vital.* By Laura Krantz**

The nation's high school population is becoming increasingly diverse and increasingly unable to afford high tuition prices. Additionally, experts predict a major drop in the number of high school graduates overall after the year 2025 — especially in New England — because people have had fewer babies since the 2008 economic recession. As a result, local colleges will have to work harder to bring students to campus and offer them significantly more financial assistance. And some of them, experts predict, will find this a daunting new calculus, leading to more college mergers and even closures.

“Institutions in places like Massachusetts and New York and Illinois are going to be really challenged to maintain enrollments,” said Joseph Garcia, president of the Western Interstate Commission for Higher Education, whose research on this topic is the industry gold standard. “There are just not going to be enough wealthy, full-paying students to go around.”

College admissions offices know about these new demographics, which are predicted to continue, and many have begun to alter their recruitment strategies so they don't find themselves with a sudden dearth of applicants. They are recruiting in new locations, connecting with students in new ways, and trying to find more money for scholarships and ways to cut tuition prices....

Very well-known schools like Harvard and Yale, with their national appeal and vast resources for recruitment and student aid, are likely to navigate the demographic shifts with ease, but not so those with less name recognition, wealth, and prestige. Many have spent recent years beefing up amenities (fancy athletic centers, gourmet dining halls) to attract students who can pay the sticker price. And many will still be paying down that debt when enrollment of full-tuition students is likely to ebb.

See: “New England College Have One Big Worry: 2025,” <http://www.bostonglobe.com/metro/2018/02/03/new-england-colleges-have-one-big-worry/DWUWVTg36Z2Yz9C8QO9sAM/story.html>

NOTE: UNH will be severely challenged in maintaining enrollment levels because New Hampshire has the lowest higher education funding in the nation. Moreover, UNH has had great difficulty recruiting and retaining minority students. (In Fall 2017, UNH reported that 91% of its students were *non-minority whites*). UNH is thus likely to face extreme enrollment challenges in upcoming years. Eight of the 18 UNH lecturers whose contracts were terminated in 2018 are from the English-as-a-Second Language (ESL) program.

UNH acceptance standards have already dropped precipitously in order to try to keep enrollments up. (In recent years, UNH has accepted 80% of applicants, which, in the experience of many UNH faculty, has been threatening UNH's status as a quality educational institution.)

Given all these factors, UNH is very likely to have fewer students within the next 5 to 10 years and beyond.

UNH's very low minority enrollment statistics from 1990-2017 can be seen here:
www.unh.edu/institutional-research/sites/unh.edu.institutional-research/files/media/ethnicityhistoryfall1990-2017_0.pdf

See also the 2018 "Campus Climate" Task Force Report on UNH's challenges in achieving a "diverse" campus: www.unh.edu/inclusive/sites/default/files/media/CED/Documents/intaskforcereportandrecommendations_apr20187.pdf

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February 22, 2018—"Outgoing President Looks at UNH's Successes, Challenges"

"Not only is the number of prospective students in our pipeline shrinking, but the number – and variety – of institutions competing for those dwindling few are expanding," said Huddleston.

On Tuesday, University of New Hampshire President Mark Huddleston gave his final State of the University address after 11 years at the helm. That speech is a must read for anyone seeking to fill Huddleston's shoes in the coming years. In it he lays out, as expected, the university's accomplishments during his tenure, and there are many.

But more importantly, Huddleston offers an unvarnished look at some of the challenges his successor will face.

The first of these is specifically the changing nature of New Hampshire's demographics and those of New England in general. Much has been written about the graying of New Hampshire and its impact of social services and the job market – high demand for the former and not enough able-bodied workers to satisfy the latter.

But it has also impacted higher education. Ten years ago, there were over 200,000 children in New Hampshire public schools, noted Huddleston. Today there are 180,000, a drop of 10 percent.

By 2025, the U.S. Department of Education projects that enrollment will drop by more than another 20,000. And it will continue dropping, at least through the early 2030s.

The second big challenge is competition. "Not only is the number of prospective students in our pipeline shrinking, but the number – and variety – of institutions competing for those dwindling few are expanding," said Huddleston.

Part of the problem comes from what we would call higher education poaching.

For example, UMass Lowell offers in-state tuition to New Hampshire residents living within a 50-mile radius of Lowell. The University of Maine has begun a "Flagship Match" program, enabling residents of nine different states, including California, New Jersey and New Hampshire, who attend Maine to pay tuition at a rate capped at their own state's in-state rate. And, according to Huddleston, the state system in Vermont is offering in-state tuition to residents of New Hampshire who live in a county that borders Vermont.

Competition also comes from "wildfire-like growth" of non-degree credentialing programs, offered by a range of private and not-for-profit entities. "Why bother going to college when, for much less money and even less time, you can get a certificate in coding or networking or human resources – or so the logic goes," Huddleston said rhetorically.

Another competitor comes from within New Hampshire's own education community – our community colleges.

"They all offer programs closely aligned with the region's workforce needs, with direct links to post-college employment and with tuition for full-time attendance set at less than half of ours," said Huddleston. "Even if New Hampshire doesn't go down the path of many other states and encourage community colleges to award four-year degrees, these institutions are attractive alternatives for many cash-strapped families that might otherwise consider UNH."

Another of UNH's problems is not new. It's money, specifically state funding....

See the full editorial here:

www.seacoastonline.com/news/20180221/editorial-outgoing-president-looks-at-unhs-successes-challenges

See also: <http://www.seacoastonline.com/news/20180220/huddleston-gives-last-state-of-unh-address>

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Feb. 25, 2018—Chronicle of Higher Education: New England Colleges Soon to Hit Enrollment “Cliff”

[T]he financial crisis in 2008 also caused a 13-percent drop in the birth rate nationwide that will hit higher education in 2026, according to Nathan D. Grawe, a professor of economics at Carleton College and [the author of a new book](#), *Demographics and the Demand for Higher Education*. Grawe’s research indicates that Maine, New Hampshire, and Vermont could lose as much as 23 percent of their likely collegegoers by 2029.

“New England is looking at a steady trickle downward for the next five or so years, and then they hit a cliff,” Grawe says.

From “How Maine Became a Laboratory for the future of Public Higher Ed,” by Lee Gardner, *Chronicle of Higher Education*, March 2, 2018, print edition.

www.chronicle.com/article/How-Maine-Became-a-Laboratory/242621

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February & March 2018—Contract Planner Negotiated with CDA about Possible Loosened Zoning

Rick Taintor, the “contract planner” (hired on an hourly bases to replace Town Planner Michael Behrendt in oversight of possible redevelopment of the Mill Plaza), negotiated with Colonial Durham Associates concerning a possible zoning change that would give CDA more flexibility in its designs. (This effort was generally along the lines of what Planning Board alternate Carden Welsh had suggested at the November 29, 2017, meeting.)

In a March 2, 2018, email to the CDA design team, for example, Taintor noted that since recent zoning amendments have set a strict three-story height limit for most of the Central Business District lots that front on Main Street or Madbury Road, it would become easier to draft an amendment with applicability to the Plaza (which does not front on those streets). Taintor continued:

I have proposed to eliminate the requirement for second-floor commercial use in four-story buildings, and to replace that with a requirement that office and/or retail uses comprise at least one-third of the total floor area in a mixed-use development. This is more flexible than the existing provision that requires twice the footprint of a four-story building to be nonresidential, whether provided on the first and second floors of the building or elsewhere on the site.... Only the first floors of buildings on these four major streets would continue to be required to contain office or retail uses..... Obviously, any proposed amendment such as this would have to go through the normal process of review and public hearings by the Planning Board and Town Council. That makes it critical to start the process at the Planning Board as soon as possible. The Planner continued: Finally, as we discussed on 2/1 and 2/20 (as well as in our initial meeting on 12/27), I understand that the relocation of Rite-Aid is off the table and that as a result you will not be returning to the June 2017 plan. However, as I also stressed in our 2/20 phone call, the goal of any zoning amendment should be to move the project closer to the design principles embodied in the December 2016 plan rather than simply to tweak the November 2017 plan.

The December 2016 Plan – Site Plan #5, submitted in October 2016 and enhanced in December 2016 with nine-pages of updated illustrations for Plaza redevelopment site plan #5 – can be seen here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/updated_plans_12-5-16.pdf.

The extensive set of resident letters and public comments on Site Plan #5 can be read in full further above.

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March 21, 2018—Todd Selig Alerts Town Council to Abandonment of Plaza Zoning Change

From: Todd Selig <tselig@ci.durham.nh.us>

Date: Wednesday, March 21, 2018 at 11:39 AM

Subject: consideration of potential zoning amendment for cbd that might impact mill plaza redevelopment

Dear Members of the Council,

Yesterday Rick Taintor, Mary Ellen Humphrey, and I met with the Mill Plaza team regarding their proposed project. After much discussion, Rick, Mary Ellen, and I decided not to ask the Planning Board or Town Council to pursue a zoning amendment concept at this time. The Mill Plaza intends to present only a plan that complies with current zoning. It is possible that there will be changes to the Mill Plaza's last concept plan that take into consideration feedback received from staff and townspeople over the last two to three months. One of the challenging issues that arose was how to craft a zoning change that would be beneficial not only to achieving as good a Mill Plaza plan as possible, but also positive outcomes throughout the entire CBD, while not creating unintended consequences for the district in other areas, and one that would not be perceived negatively by townspeople or create unrealistic expectations during the ongoing review of the Mill Plaza project. We concluded such a solution was unlikely and would only complicate matters, and so it is not being pursued further at this time.

Todd

Todd I. Selig, Administrator

Town of Durham, NH

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CDA REDEVELOPMENT SITE PLAN #8 (April 2018 Preview)

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/54398/20180410_submission_to_town_final.pdf

A version of Plan #8 was submitted in April 2018 as a preview of the “final application.” The existing entrance, the front parking field, and the single-story Hannaford/Rite Aid building are to be left as they are. The current second building is to be demolished. The hillside with mature trees between the Plaza and the Orion project on Main Street is to be blasted away to make room for new structures, and a retaining wall would be built.

The resulting enlarged open space at the rear of the Plaza would be densely packed with three new buildings: Building B, near the center of the Plaza and close to College Brook would have one story of commercial space, including a bank with a drive-thru on the brook-side of the building (bank drive-thrus are permitted in downtown Durham, by conditional use) and two stories of residential above. Building C1, in line with the existing Hannaford building, would have four stories, two commercial (such as retail and offices) and two residential. Building C2 would run the full height of the Plaza (from close to College Brook to the back of Orion housing on Main Street) and would connect at a right-angle with Building C1. It would have two stories of residential over ground-level covered parking. (Ground-level parking no longer satisfies the requirement for one floor of “commercial” or “non-residential” below housing, but the Plaza’s site plans are vested under prior rules, per a Town Administrator decision.)

The site plan diagrams show a small “snow storage” area at the Southeastern boundary of the Plaza and a small “stormwater management area” close to the rear pedestrian entrance to the Plaza from the Chesley Marsh path. Based on prior site plans, the housing is likely to be comprised of 330 student “beds.”

Plan #8, as drawn, comes closer than prior CDA plans in meeting the basics of Durham zoning in terms of building heights and compositions and in terms of wetland and brook setbacks. But the project (per the December 2015 legal Settlement) is still “subject to normal planning board review,” with respect to site-plan

regulations, Conservation Commission review, Technical Review Group assessments, Durham’s Architectural Standards, a fiscal impact analysis, traffic study, emergency access needs, stormwater management, a snow removal plan, and so on. Conditional Use criteria are assessed later in the review process.

Durham’s Site-Plan Regulations for the Mill Plaza have the following stated purposes in Part I (excerpts):

“3. Achieve high-quality site appearance that conserves and protects natural resource systems, helps to reduce infrastructure costs, conserves energy, and provides for a pleasant, walkable environment for the future users and residents; 4. Encourage site design techniques that protect water quality and natural hydrology, prevent increases in the quantity of stormwater runoff, and manage stormwater runoff at the source; 5. Protect abutters against hazards, unsightliness, and nuisances detrimental to property values; ...7. Ensure that pedestrian, bicycle, vehicular circulation, and public transit can be accommodated in a safe manner; 8. Preserve and enhance the historic and cultural character of the community; 9. Encourage attractive, harmonious, and high-quality design that is compatible with the architectural heritage of Durham, New Hampshire, and New England;...and 11. Include such provisions as will tend to create conditions favorable for health, safety, convenience and prosperity.”

The full three-part Site-Plan Regulations Applicable to the Mill Plaza can be reviewed here:
https://www.ci.durham.nh.us/boc_planning/site-plan-regulations-pertain-mill-plaza-development

As detailed earlier, housing in the Plaza is by “Conditional Use” permit, which requires, among many other things, that “The external impacts of the proposed use on abutting properties and the neighborhood shall be no greater than the impacts of adjacent existing uses or other uses permitted in the zone. This shall include, but not be limited to, traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare.”

The Zoning Ordinance’s Conditional Use Permit Criteria can be reviewed here:
https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/21491/article_vii.pdf

As noted there: “Further Conditions may be placed on the Conditional Use Permit by the Planning Board to ensure that the Conditional Use [in this case, housing] will have a positive economic, fiscal, public safety, environmental, aesthetic, and social impact on the town.”

Durham’s 37 pages of Architectural Design Standards can be reviewed here:
https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/20721/architectural_standards_-_adopted_9-9-2015_0.pdf

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April 17, 2018—Technical Review Group (TRG) Review of Mill Plaza Site Plan #8 (preliminary version)

TRG members present: Rick Taintor [Project Planner], Randall Trull [Fire], Mike Lynch [DPW], Rene Kelly [Police], Mary Ellen Humphrey [Economic Development], Barbara Dill [Planning Board], Michael Bradley [Historic District Commission], Audrey Cline [Building Code Enforcement], April Talon [Town Engineer]

Questions were raised (but not fully vetted) regarding the overall “tightness” of the site plan as that related to pedestrian and bike paths (both through the site and up to the existing path to Main Street), truck travel and unloading, snow storage/removal, hydrant locations and emergency vehicle access to all areas, and stormwater management. Questions were also raised about plans for landscaping and public bathrooms. In response to a question regarding whether there would be any (continued, and unlicensed) renting of overnight parking spaces, Harriman Designer Emily Innes replied “Not to my knowledge” and CDA project manager Sean McCauley said “It’s not in the plan.”

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May 3, 2018—Contract Planner Writes to the Planning Board on Plaza Application & Review Process

Rick Taintor, consulting planner to the Mill Plaza Redevelopment Project wrote to the Planning Board:

I have requested to appear before the Planning Board at its May 9 meeting in order to introduce myself to the Board and to discuss the procedure for accepting and considering the applications of Colonial Durham Associates relating to the proposed redevelopment of Mill Plaza.

As you know, design review of the proposed project was concluded on June 14, 2017, and therefore the deadline for Colonial Durham Associates to submit its formal applications is June 14, 2018. In order to meet this deadline, Colonial Durham Associates intends to submit its applications on or before May 23, for acceptance at the June 13 Planning Board meeting.

As has been the practice on other applications, the Planning Board has the option of accepting a site plan as complete subject to the subsequent submittal of additional studies and reports. For a project of the size and complexity of the Mill Plaza redevelopment, it makes sense that the Board would follow this practice, as it is likely that aspects of the proposal will be refined or modified based on the Board's review.

The applicant intends to include the following items in the initial submittal on or before May 23:

- Application forms and checklists for conditional use permit and site plan review
- Complete site plans
- Architectural renderings
- Energy checklist

Additional studies and reports that will be submitted after May 23 but before the June 13 Planning Board meeting include:

- Stormwater management plan

Additional studies and reports that will be submitted after the Planning Board's acceptance of the applications include:

- Traffic impact study
- State Alteration of Terrain (AoT) permit application

I have requested a more detailed listing of items that the applicant intends to submit at each stage and will provide it at the Planning Board meeting if available.

Finally, please note that the Site Plan Regulations provide that "the Planning Board may require the applicant to pay for a run on the Durham Traffic Model to determine likely impacts." The applicant is aware of this provision and is coordinating with the Town and RSG, the engineering firm that maintains the traffic model.

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May 9, 2018—Planning Board: Rick Taintor Introduces Himself & Carden Welsh Declines Recusal

(NOTE: Minutes for this meeting were not yet available for excerpting, as of May 31, 2018)

During Public Comments, **Joshua Meyrowitz, 7 Chesley Drive**, spoke to welcome the contract planner, Rick Taintor, to this *unplanned* phase of Durham's planning process. Mr. Taintor, he said, had "missed a lot of meetings," in both the literal and metaphorical sense. Planning, said Mr. Meyrowitz, is supposed to depend on the history of Master Plans and Zoning Ordinances, how they came about, and the evolution of site plans, with input from all sides. Mr. Meyrowitz described his effort to assemble quotes from documents and hearings and public input regarding the Mill Plaza from 1967 to the present to help Mr. Taintor anticipate what he is likely to

encounter. For the last three-and-a-half years, in particular, Mr. Meyrowitz said he relied largely on the genre of a “trial transcript” to include *all* testimony/comments, clearly set off from his own analyses, in order to create a trustworthy account. He brought copies of his report for the contract planner and every member of the Planning Board. [Mr. Meyrowitz’s comment to the Board can be seen from 10:50 to 15:35 in the video of the meeting: <https://dcat22.viebit.com/player.php?hash=Bb4LQXuXmFXU>]

Toward the end of the meeting, “Contract Planner” Rick Taintor introduced himself to the public and explained the upcoming review process for Colonial Durham Associates’ “final application” for redevelopment of the Plaza.

The Town Council’s representative on the Planning Board, Carden Welsh, also read a four-page letter to respond to CDA’s December 8, 2017, request that he recuse himself from further participation in the review of Mill Plaza redevelopment plans based on his comments about Plan #7 at the November 29, 2017, Planning Board meeting.

Mr. Welsh outlined a number of reasons why he was *declining* to recuse himself. As an introductory comment, he said that there was no question in his mind that he could judge Plaza redevelopment plans fairly and in an unbiased manner and that he certainly did not have a “direct personal or pecuniary interest in the outcome that differs from the interest of other citizens.” He added: “The fact that I, like many others, expressed our concerns regarding the preliminary concept should be taken constructively and help the applicant design an acceptable solution.”

Then Mr. Welsh outlined seven points: **First**, Mr. Welsh quoted from two New Hampshire documents, indicating that statements by planning board members at the preliminary consultation phase “cannot be used to disqualify them during review of the completed application or as the basis for invalidating any future action of the board.” **Second**, Mr. Welsh argued that if board members are disqualified for expressing negative assessments against a project, “it will likely have a chilling effect on future discussions about any project” and perhaps lead to citizens declining to serve on the “necessary quasi-judicial boards.” **Third**, Mr. Welsh claimed that specific statements of his were taken out of context. “It was clear in the meeting that I was working toward a solution that would work, with a discussion of PUDs, and my inviting the town administrator to contribute his ideas as to how we could make this succeed.” **Fourth**, Mr. Welsh said that his comment about being “stuck with” the result for 50 years was an accurate prediction based on the past, though perhaps “live with” would have been a gentler term for that logical observation. **Fifth**, Mr. Welsh indicated that the comments he made at the end of a very long day for Planning Board members were “summary comments” and that he “did not feel it necessary or want to take the time to detail my actual concerns” which he explained were as follows:

- 1) Despite the town’s sincere and specific request, virtually none of the student housing was located in the northern portion of the property, 2) it appeared there was an overuse of parking as a commercial use, presented in the first floor of three large buildings, and the applicant could not reasonably explain who would use the parking. Parking, of course, is no longer even recognized as an acceptable use for these types of mixed use residential projects in the Central Business Zoning District.... 3) a prior plan intermingled the student housing in a creative way that gave the overall project a ‘village-type’ feel, with more walkability and connectivity....

Sixth, Mr. Welsh noted that “it would be naïve to think that there is not a degree of negotiation between the town and the applicant, particularly where the project is a conditional use.... If we are not allowed to show disappointment with a conceptual project proposal, we may not get a better one.” And **Seventh**, Mr. Welsh note that “while it was inappropriate for us to discuss the project once the applicant had left, it was not as if we were attempting to hide our comments; we are all acutely aware that everything we say is televised and available for viewing.”

Mr. Welsh closed by referring to his 27 years of living in Durham and his familiarity with the Plaza in its various evolutionary states, including “of course the venerated Durham Market Place, as well as many other long

forgotten and current tenants,” meaning that “I know the site quite well and can add to the conversation in a very positive fashion.”

Carden Welsh’s full letter regarding his declining to recuse can be read here:

<https://www.dropbox.com/s/u0yvlogo8rb74h/Carden%20Welsh%20letter%20May%208%202018.pdf?dl=0>

A transcript of Mr. Welsh’s comments about Plan #7 from Nov. 29, 2017, can be found in note #25 and here:












www.dropbox.com/s/qznfx8oyip8gdw/TRANSCRIPT%20c%20Carden%20Welsh%2011-29-17.docx?dl=0

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May 21, 2018—CDA Submitted “Final Application” (Plan #8, refined)

The components of the final Site Plan & Conditional Use application for Mixed-Use with Housing are posted here:

https://www.ci.durham.nh.us/boc_planning/mill-plaza-redevelopment-site-plan-cup

-  [Site Plan Review Application](#) (177 KB)
-  [Conditional Use Application for Mixed Use](#) (147 KB)
-  [Letter of Intent for Mixed Use CUP](#) (391 KB)
-  [Conditional Use Application for Shoreland Conservation Overlay District](#) (182 KB)
-  [Conditional Use Application for Wetland Conservation Overlay District](#) (143 KB)
-  [Letter of Intent for Wetland/Shoreland Overlay CUP](#) (185 KB)
-  [Deed Easements](#) (4 MB)
-  [Site Plans](#) (45 MB)
-  [Site Plan Colored](#) (853 KB)
-  [Drainage Report](#) (7 MB)
-  [Energy Considerations Checklist](#) (394 KB)

Two noteworthy qualifiers in the above Conditional Use application document are:

First, the Plaza’s Conditional Use application makes the interesting claim that the “external impacts” of the proposed plan on the neighborhood (in terms of added noise, traffic, hours of activity, trash, light/glare, odors, etc.) should not be compared primarily to the impacts of the “existing uses” on the Plaza site (which currently has no housing of any kind and quiets down at night) but to the types of student housing and activities on the UNH campus and Main Street, seemingly ignoring that the Plaza currently functions as a buffer for the adjoining residential neighborhood from all those negative “impacts” from the campus and Main Street housing density and activity.

Second, the application appears to acknowledge that the proposed plan will indeed reduce adjacent property values, but it emphasizes that the proposed project will not *significantly* reduce property values and that the Plaza will provide an appraiser to assert the absence of *significant* decrease in adjacent property values. See:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/54468/letter-mixed_use.pdf

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June 13, 2018—Planning Board: Review of the Plaza’s Final Application Scheduled to Begin

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2018, continued; 2019; and beyond

?????

“A TALE OF TWO PLAZAS”

(A Durham Resident Perspective)

The above chronology of 50 years of the Mill Road Plaza in Durham could be retitled as *A Tale of Two Plazas*. First, there is the Plaza that the overwhelming majority of Durham residents over the *decades*, inside and outside experts, and environmental and land-use regulations suggest or require. Second there is the Plaza that the original developers and current owner gave Durham and the proposals for a redeveloped Plaza that Colonial Durham Associates has consistently proposed since 2014.

From the 1960s to the present, more than 2,000 Durham residents have participated in some way in the vision for development in town. They have done this through Economic Development Plans, Master Plans, and the intense 18-month Mill Plaza Study Committee collaborative process; through serving on various boards, including the Conservation Commission, the Town Council, and the Planning Board; by attending meetings, making comments at meetings, writing letters, signing petitions, and responding to surveys; and on and on. Overall, a pretty consistent message has emerged over this half century from the citizens and outside experts and zoning amendments of the need for a Town center (a Durham Town Common), where full-time residents meet each other and shop and eat and talk, where there are protected greenways and buffers, a pedestrian focus, a separation of student housing from neighborhoods, and so on (as summarized in every study and plan quoted from above, from 1969 on).

Will the people’s voices (and the experts’ voices, and environmental standards, and Town regulations) be heard in what actually happens or does not happen in our Town center?

As **Jennifer Lee** of 18 Faculty Road wrote to the Planning Board in February 2016 (quoted earlier as well):

I appreciate the difficulties presented by a university town but have noticed in 10 years residence here a tendency to grant many variances or simply to give in to violations by developers of established guidelines or rules as well as the master plan.

As a resident, I'm beginning to feel “Why bother? Why bother participating in town issues when the well-being of the town is not a factor in decisions?”

The full Jennifer Lee letter can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_j._lee.txt

In a similar vein, **Diane Freedman** wrote in June 2016 (as cited earlier):

I do not understand why the Town has not a stronger stance to begin with and more control and vision in working with possible developers for the heart of our Town. The point of a Master Plan and Town Planning Department is to my mind to have control over the situation from the get go.

I sorely wish I could be more complimentary and positive about the redevelopment of our Town to date.... All fondness for the layout, structures, establishments, activities, and circulation of our Town has completely drained out of me and my friends and neighbors, who are so despondent and hopeless about it that they do not even bother to write. They feel no one will listen or do anything in response. Their numbers are legion. This is a very sad state of affairs on so many levels.

The full Diane Freedman letter can be read here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/email_from_diane_freedman_2.txt

In June 2017, as noted earlier, **Robin Mower, Faculty Road**, wrote the following about the three years of meetings, but what she wrote could apply to 50 years of input from the public, as detailed throughout this

chronology.

1) *To Planning Board members who missed previous public hearings: Residents have expended great effort and spent many hours conveying our concerns about previous iterations of this proposal. Many of our concerns remain relevant, but we may not repeat all of them at this particular meeting. So if you haven't done so already, before any future public hearings on this property, please read our comments and the official minutes of the hearings, or watch the DCAT on Demand recordings.*

2) *If you hear the same comments from many of us, it's because we share these concerns, are responding to the same issues that have not been addressed over the past three years, and believe it is important that those points be drummed in and on the record.*

3) *To be blunt, at the heart of this project are property rights and money, both of which create tension. **Colonial Durham Associates has property rights, but so do existing homeowners.** Colonial probably wants to please a group of outside investors, but at what cost to us? Residents want to see an improved Plaza, but they also want to protect their own investments and their quality of life. Isn't it possible that the applicant's financial target could be lowered to still make money, yet plans altered to deliver community benefits?*

See the full text of Robin Mower's June 14, 2017 letter here:

www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/20170614_mower_re_mill_plaza.pdf

As Attorney Christopher L. Boldt has written with respect to documenting impact on property values (specifically in relation to variances): "in considering whether an application will diminish surrounding property values, it is appropriate for ZBAs to consider not only expert testimony from realtors and/or appraisers, but also from residents in the affected neighborhood. Equally as important, Board members may consider their own experience and knowledge of the physical location when analyzing these criteria; but be cautious in relying solely on that experience/knowledge if it contravenes the evidence of professional experts. See, Malachy Glen, 155 N.H. at 107. (See full Boldt article at: www.nh.gov/osi/resource-library/zoning/documents/requirements-for-variance-applications.pdf)

The full scope of a half-century of input from studies, surveys, public comments, Public Hearings, letters, studies, Master Plans, and Economic Development plans can be grasped by reviewing the entries above. And the dramatic increase in student housing "beds" in Town in the last few years needs to be understood in relation to the coming "enrollment cliff" facing New England universities (described in recent articles cited above), with UNH facing even greater challenges than other New England schools. Durham similarly faces a potential cliff in the hanging decisions about what will be in the very center of its physical and psychological downtown core.

All that said, however, there is almost universal interest among Durham residents for a significant redevelopment of the Mill Plaza. And if Colonial Durham Associates would engage in honest collaboration with residents and be open to the concerns that have been repeatedly raised at every meeting (and that reflect the public record for over more than half a century of Town aims and goals for the downtown core), something wonderful is still possible. Constraints of deadlines, fear of loss of "vesting," and threats of lawsuits on all sides could vanish in the face of such collaborative effort.

Compiled by

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Eight Mill Plaza Redevelopment Plans

September 2014 to May 2018

Plans 1-8 pictures: www.dropbox.com/s/k2xgfjdqmr32mkm/8%20Plaza%20Site%20Plans%20%20053018%20-%205c.pdf?dl=00

In 2006, John Pinto of Colonial Durham Associates (CDA) – the New York City based owner of the Mill Plaza – encouraged Durham to “develop its vision for the future.” That led to the 18-month collaborative Mill Plaza Study Committee (MPSC) effort, culminating in the American Institute of Architects’ award-winning 2008 plan for a **Durham Village Center**. The MPSC proposed a Plaza that “provides residents a ‘sense of place,’” with “year-round community space – indoor and outdoor areas where people linger to meet and talk to their friends, shop, and enjoy all of the seasons.” Such a Plaza of enhanced commercial and aesthetic value would feature “an expanded grocery store, retail shops, offices,” with any housing (student, senior, workforce) “distant from current residential neighborhoods.” There would be “a brookside park for walking, biking, and other activities” with “curves and other features to appear more natural.”

Yet, no Mill Plaza redevelopment plan submitted to date by CDA has reflected the Mill Plaza Study Committee’s vision (beyond using the label “Durham Village Center”). All recent plans have proposed a densely populated plaza dominated by 330 student “beds,” no change to the grocery store, and the blasting away of the stormwater-absorbing hillside with mature trees near the Orion Main Street housing.

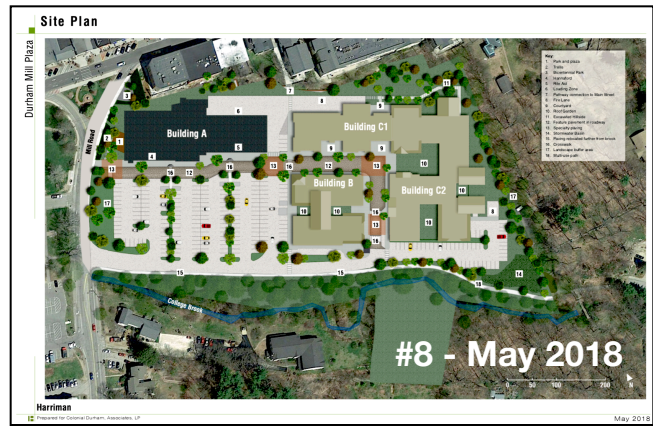
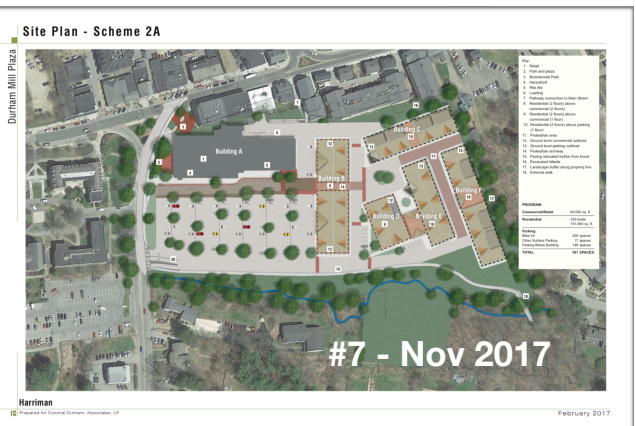
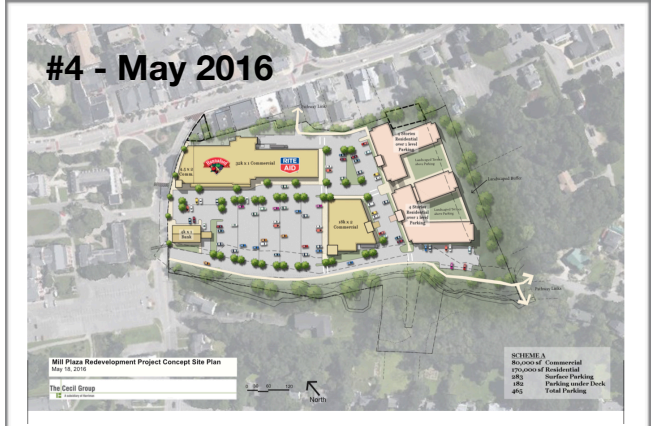
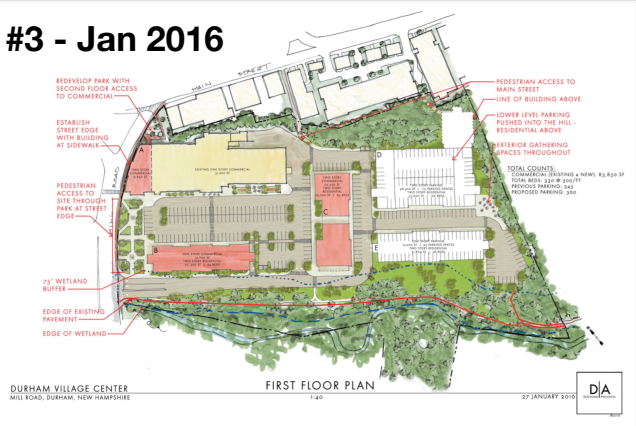
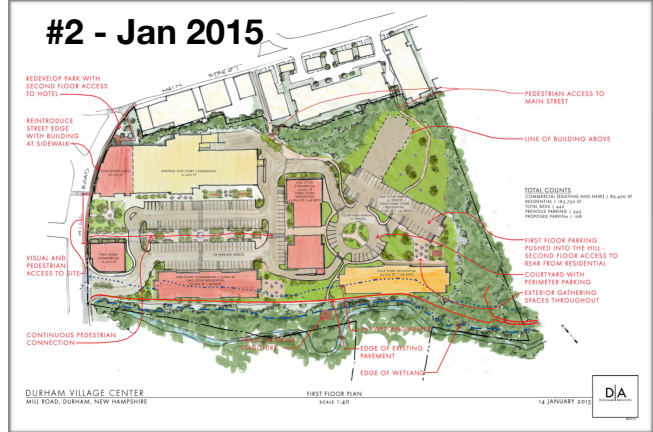
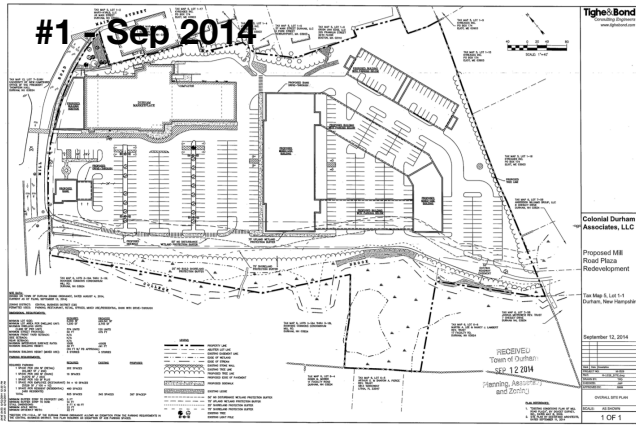
Plans 1, 2, 3, & 4 entailed removal of the only lawn and shade area in the Plaza next to the Bakery Café (by adding a commercial and/or housing building – or a boutique hotel with valet parking), spurning the Master Plan and MPSC goals. Plans 2 & 3 proposed that entry to the Plaza would be along the back of a 3-story building, blocking the view of, and access to, the grocery and pharmacy. Plan #4 had an overly large, non-compliant 5-story building against the rear wetland buffer, with landscaped party decks aimed toward family residences. Plan #5 had housing close to the neighborhood, non-compliant 4-story buildings (with more levels of housing than are permitted), and a non-allowed 5-story building. **Those five plans all seemed designed to wear down the Planning Board and public over nearly three years of long meetings – and to make any subsequent plan look good by comparison (as Plan #6 did).**

Plan #6 (developed by CDA and Administrator Todd Selig outside of the public planning process, with no resident input) was slightly more consistent with the 2015 legal Settlement regarding housing location (to be on the Northern half of the property, where Hannaford now sits) in that some housing would displace Rite Aid. Yet, it had non-compliant height buildings and an unallowed 7-day-a-week drive-thru pharmacy along the brook foot/bike path and directly across from Brookside Commons residences. As with earlier plans, it left the one-story grocery locked in place. After the ZBA denied height and drive-thru variances for Plan #6, a crude Plan #7 proposed four student housing buildings pushed into the rear wetland buffer with the neighborhood, while also leaving the decades-old front part of the Plaza virtually unchanged. When the Town Planner offered a negative professional assessment of Plan #7, he was removed from oversight of Plaza redevelopment by Todd Selig and replaced with a \$125/hour “contract planner.”

Plan #8, the May 2018 “final application,” comes closer than prior plans to meeting basic Durham zoning regarding wetland/brook setbacks and building heights. But the run-down Plaza front would remain as is, and the rear would be a crowded student housing complex adjacent to family homes, with minimal areas for pedestrian/bike travel, truck deliveries, snow removal, or emergency vehicle access.

As with all the prior CDA redevelopment plans, Plan #8 bears no relation to the MPSC recommendations, does not match the Settlement in terms of housing location, and runs counter to “Conditional Use” criteria for Plaza housing (by adding traffic, noise, light, odors, trash, hours of activity, etc. to the adjacent neighborhood and by not having “a positive economic, fiscal, public safety, environmental, aesthetic, and social impact on the town”). The primary feature in all the plans has been a minimally landscaped massive student housing complex at the downtown core (at a time when available student rental units elsewhere in Town already exceed demand), with few new benefits to full-time residents – and, indeed, the loss of the possibility of having an expanded grocery store or a downtown community shopping/gathering place for the foreseeable future. Fifty years of Town planning and resident input are being ignored.

Mill Plaza Redevelopment Plans



Durham's Mill Road Plaza, 1967-2018

Owned for the last few decades by NYC-Based Colonial Durham Associates (CDA)

Late 1960s/Early 1970s—10-Acre Osgood Farm Becomes Mill Road Shopping Plaza with One Small Building

In 1973, the Conservation Commission unsuccessfully urges against approval of 2nd Plaza building unless College Brook damage is reversed. In 1975, the Tree Warden writes: "[T]he whole landscaping...is woefully and shockingly inadequate. It grieves me that...the town, should be forced to accept such a miserable landscaping job.... [L]andscaping is laughable."

1978—Durham's Comprehensive Plan Update

Safeguard Ecology / Limit Student Housing & Encourage Elderly Housing / Build Bike Paths for All Ages / Create Central Community Space / Expand Commercial Offerings for Year-Round Residents / Engage Public

"Monitor setback and construction operations near streams, wetlands." "Since student housing needs could change,... avoid becoming overly committed to forms of housing not also adaptable to other occupants." "Find centrally located space for community and cultural activities." "The hope is that the [Central Business District] will serve Durham residents better by offering an appropriate range of frequently used items and services." "Continue tradition of wide participation."

1989—Durham's Master Plan Update

Any Student Housing Built Should be West of Campus & Away from Residential Neighborhoods

"The development of new student housing would be best directed to the west of the main campus in complexes specifically designed to house students. This would permit student housing to be separated from town resident housing so that lifestyles don't directly conflict." "Protect environmentally sensitive areas in the town, including...stream banks."

1995—Community Development Plan

Plans for a Needed Redevelopment of the Mill Plaza Must Grow Organically from the Community

"Successful community development is *organic and locally based*.... [Stemming from] strong and active citizen participation.... The solutions...must make sense for the community.... which community members have chosen and have ownership in. Create a plan for an identifiable physical center for the community (e.g., a Town common).... [I]deas that...link the Plaza with Main Street should be pursued vigorously." (No suggestions for housing in the Plaza are made.)

2000 Durham Master Plan: Protect Downtown Greenways and Wetland Buffers in the Plaza and Beyond

"Create an urban service area greenway system that is based upon the major streams and rivers within the core.... The loss of buffers through variances/waivers and through illegal activities should be minimized.... Pedestrian access to the Mill Pond may be encouraged with downtown displays of footpaths such as the pedestrian path to the pond from Main Street and Mill Road through the Mill Plaza to the footpath through the woods that connects with Chesley Drive.... Chesley Drive should specifically be **excluded** from evaluation as an option for improved [vehicular] access to Mill Plaza. Create a physical and psychological linkage of the Mill Plaza with Main Street and the rest of downtown Durham.... College Brook should be restored in those areas where it has experienced degradation.... Sightings of rare and endangered species have been recorded in the College Brook greenway and Mill Pond area."

September 2002—Mill Plaza Bulldozes Southeastern Rear Hillside Buffer Without a Permit

The Plaza manager threatens residents with arrest for taking pictures of the bulldozing, which he claims is permitted by a 1970s site plan. The Town issues a stop-work order. CDA's retroactive application for the September bulldozing is denied in October. (The hillside has not been restored as of mid-2018, and increased downstream flooding continues unabated.)

2006—CDA Encourages Town to "Develop Its Vision for the Future" Leading to Mill Plaza Study Committee

2008—Mill Plaza Study Committee Report Calls for a "Durham Village Center"

A major 18-month collaborate effort of stakeholders and the American Institute of Architects urges: "A redeveloped Plaza property should serve as a 'Village Center' that stands as an example for future downtown development and provides residents a 'sense of place.'" Develop "year-round community space – indoor and outdoor areas where people linger to meet and talk to their friends, shop, and enjoy all of the seasons." A Plaza of enhanced commercial and aesthetic value would feature "an expanded grocery store, retail shops, offices" and "gathering space (such as a village green...), with any housing "distant from current residential neighborhoods." College Brook should be protected and restored. Create "a brookside park for walking, biking, and other activities" with "curves and other features to appear more natural."

May 2009—Mill Plaza Again Tries to Expand Parking in the Rear Wetland Buffer

Falsely claiming that it needs more spots for Plaza customers, the Mill Plaza again tries to add parking where it illegally bulldozed the buffer with the neighborhood in 2002. Among the many opposing resident letters and comments, over 300 Durham residents from 70 different streets throughout the Town sign a petition to protect the College Brook Greenway from further incursion. After *six months of meetings*, the Planning Board issues a "Notice of Denial" based on the Town Attorney's ruling that the Plaza site has long been out of compliance due to an unlicensed side business of renting parking spaces. Additionally, the Plaza had not reversed the 2002 damage, and was trying to encroach further into the wetland buffer with the neighborhood. (As of June 2018, the area is not restored and rental parking has increased.)

2011-2013—Durham Approves the Addition of Almost 2,000 New Student Beds in Town

The “bed-boom” results from 2008 zoning shifts to encourage more ground-floor commercial space under housing.

2013—Planning Board & Council Vote to Make New Downtown Housing Subject to “Conditional Use”

Broad concerns about a student housing glut lead Council and Planning Board to make CBD housing by Conditional Use (CU) only, with limits including: *“The external impacts of the proposed use on abutting properties and the neighborhood shall be no greater than the impacts of adjacent existing uses or other uses permitted in the zone. This shall include, but not be limited to, traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare.”* Any CU permits are to result in a *“positive economic, fiscal, public safety, environmental, aesthetic, and social impact on the town.”*

Sept. 8, 2014—Town Administrator Informs Council of CDA Student Housing Plan, Despite Housing Glut

Per the meeting minutes, Todd Selig “noted that the Mill Plaza owner was asked if he was aware of the housing analysis that indicated that Durham appeared to be at capacity in terms of student housing. He said the owner said Mill Plaza had a good location for the student housing so perhaps beds elsewhere might not be filled.”

Sept. 10, 2014—Planning Board Proposes 600sf per Unrelated Occupants for Downtown Apartments

The proposed change would double minimum square-footage per unrelated occupant. (With its final approval by the Council later in 2014, the 600sf ordinance became effective as of the September proposal date.) But since the proposal was initiated after CDA had alerted Town officials to Plaza redevelopment plans, the Town Planner’s decision to make it applicable to CDA site plans leads first to a local ZBA appeal (which is denied) and then to a CDA lawsuit against Durham.

September 12, 2014—Mill Plaza Submits Redevelopment Plan (#1) Based on 300sf per Person

The plan shows a new 4-story building wedged between the Bakery Café and Mill Road taking away the only shade area; the grocery/pharmacy building is unchanged; the rear building is to be torn down. Buildings/pavement infringe on wetland setback. There is space for 480 “beds,” which CDA claims are “market-rate” apartments, not necessarily for students.

September 17, 2014—Master Plan Advisory Committee (MPAC) Outlines Need for Downtown Senior Housing

“Aging of baby boomers...to result in a doubling of the senior population by 2030.... Seniors choose to age in place – only 3% of NH seniors move annually to other states.... Downsizing seniors are searching for housing in downtown areas and want close proximity to these vital services.” The MPAC warns of a looming “New Hampshire ‘silver tsunami.’”

January 2015—Plaza Submits Revised Redevelopment Plan (#2), Also Based on 300sf per Occupant

Proposed “Durham Village Center” would have cars entering plaza along the rear of new 3-story building largely in wetland buffer, blocking lanes of access to, and view of, the unchanged grocery/pharmacy. A building extension is wedged between Bakery Café and Mill Road – a 4-story, 36-40 room, boutique hotel—with valet parking! Number of parking spaces halved.

January, March, April 2015—ZBA Denies Various Plaza Appeals

ZBA denies Plaza appeal to be allowed to build “dormitories” (at 100sf/occupant); ZBA denies use of “gross sf” (e.g., closets, hallways, etc.) vs. “habitable space” as per-occupant space; ZBA denies relief from 600sf per occupant ordinance, but tables CDA’s request to build more stories of student housing than permitted (including 4-story, housing-only building.)

May 2015—Colonial Durham Files Suit vs. Durham over 600sf/Occupant vs. 300sf/Occupant

September 2015—Hannaford Grand Opening: Aisles Widened, Stock Reduced, Ice Cream Stand Dismantled

Initial excitement over Hannaford’s promised expansion of organic and other fine foods fades when residents see that, with the widening of the aisles and other changes, the store has dramatically reduced the type of foods that drew full-time Town residents to the Durham Marketplace. A dramatic cycle of decline begins: residents more frequently shop elsewhere, and the store caters less and less to full-time residents, while the shelves of junk food expand. And when the students are away during UNH breaks, the store is almost empty, often with more staff on hand than customers.

November 2015—Master Plan Identifies Mill Plaza as High-Priority for Attractive Redevelopment

“Encourage [Plaza] enhancements... through application of the architectural standards, better landscaping in the parking areas and enhancements of the green space and other open space.... Improve the physical and visual linkage of Mill Plaza with Main Street.... Ensure safe, convenient and welcoming crosswalks, sidewalks, alleyways and paths for non-vehicular traffic.”

December 2015—A Legal Settlement Between CDA & Durham Is Reached

The Plaza is allowed to build *up to* 330 beds at only 300sf/occupant. The beds are to be placed mostly on the Northern half of the property (Hannaford is at Northern tip) “to the extent practicable.” Increased wetland buffers are to be created/maintained. Non-residential commercial space, exclusive of parking, is to be increased to at least 80,000 to 90,000 s.f. Otherwise, the site plan is to be “subject to normal planning board review,” including a fiscal-impact analysis and reviews by the Conservation Commission and Technical Review Group. All zoning ordinances and regulations are to be followed, including Conditional Use criteria, Site-Plan Regulations, and Architectural Design Standards.

January 2016—CDA Plaza Redevelopment Plan (#3) Submitted

A proposed 2-story commercial building adjacent to Mill Road would destroy the one existing green space with five picnic tables and five mature trees. The oldest building is to be otherwise left as is. Again, the current rear building is to be demolished. Among other new structures proposed, there is a 3-story building blocking the access aisles to (and view of) the grocery and pharmacy stores. Two new buildings have garage parking on first/second floors.

May 2016—CDA Submits Redevelopment Site Plan (#4)

CDA submits a plan it claims reflects community input, but as reported to the Planning Board by the residents who attended the meeting with CDA, their input has been ignored. Again, the one green area in the Plaza with picnic tables and mature trees is to be filled in with a building. And a massive five-story student housing structure is shown along the southern, rear buffer, with landscaped party decks aimed into the adjacent neighborhood. Hannaford & Rite Aid are to remain as they are on Northern tip, despite the Settlement call for housing to be concentrated on Northern half of property.

June 2016—CDA Threatens Lawsuit if Town Officials Speak with Hannaford Representatives

CDA continues to keep Hannaford out of public meetings on Mill Plaza redevelopment, and when Town officials reach out to Hannaford for a meeting about its future plans, CDA threatens to sue. The Town backs down and cancels meeting.

October 2016 & December 2016—CDA Submits Redevelopment Site Plan (#5)

The solo shade area near the Bakery Café is (finally) preserved, but the oldest building with Hannaford & Rite Aid is unchanged, and most of the proposed multi-story housing is close to the adjacent neighborhood. No on-site parking for tenants. (Although CDA claims that the desired tenants are those over 21, they contradict themselves by explaining that tenant parking is not needed since they can park cars in UNH student storage lots, and walk across the street to campus.)

February 2017—After Extensive Public Critiques of Site Plans 1-5 by Hundreds of Town Residents, Todd Selig Initiates Non-Public Negotiations with CDA on Plaza Redevelopment

March 2017—Councilor Jim Lawson Submits a Report to the Council on Student Housing Over-Supply

Lawson writes: "There is no doubt that the supply of Unrelated Housing in Durham now exceeds the demand based on anecdotal evidence of apartment vacancies and, more importantly, analyses of Unrelated Housing supply and demand that have been publicly available for several years." Therefore, argues Lawson, new student housing would likely cause vacancies in other student housing or repurposing for non-student housing (e.g., faculty and graduate-student housing), which generates less rent, lowering assessed value of the properties and thus lowering the Town's tax income. Additionally, faculty and graduate-student housing (more likely to include young children) could lead to increased Oyster River Cooperative School District enrollments and further added tax burden for Town residents.

May 12, 2017—Todd Selig Alerts Town Council: "The Plaza has a good plan to move forward."

June 9, 2017—CDA Submits Redevelopment Site Plan (#6)

Six months after the public last saw a plan from the Plaza in December 2016, Site Plan #6 is posted on the Town web site late on the Friday before the next week's Planning Board Public Hearing—and without the usual email notice to residents from the Town Planner (in what is explained just two days before the public hearing as an "email glitch").

June 14, 2017—Public Hearing on Mill Plaza Plan #6

Procedural oddities surrounding site plan #6 continue with the Town Administrator attending the Planning Board meeting (along with the Economic Development Director and an architectural consultant) to introduce and praise the plan. Even with such limited time for the Board and public to assess the new plan, the Board closes the "design review" that night. In a good change from earlier plans, Rite Aid would move to a new building near College Brook, with housing above retail at the old Rite Aid spot. Yet this would lead to a 4-story non-compliant building next to one-story Hannaford. Most housing is still *not* on Northern half of Plaza. The plan would require a variance to have more stories of student housing than allowed. Also, the plan includes a 7-day-a week drive-thru pharmacy near the pedestrian/bike path and College Brook, when drive-thrus are permitted in Durham only for banks. (Neither CDA nor Town officials mention at the June 14 meeting that if a drive-thru variance were to be turned down, Rite Aid would not move.) Moreover, even with this "better" plan, there would be no place for a larger grocery store for the foreseeable future, spurring residents to petition Hannaford about a move.

July 2017—Hundreds of Durham Residents Petition Hannaford to Move to a New, Larger Store in Plaza

Hannaford is urged to move to another spot on site for an improved store and so that any student housing could be located on the North of the Plaza, per the 2015 Settlement, and in better match to Conditional Use criteria (less negative impact on adjacent neighborhood). Over 360 signatures are collected quickly, representing 230 households and estimated 675 or more mouths to feed. But Colonial Durham continues to report (without any evidence) that Hannaford will not move.

August 2017—ZBA Rejects Variance Requests (Drive-Thru Rx & More Housing Levels than Allowed)

An appeal for the drive-thru is rejected; an appeal on the building heights is granted, but CDA withdraws appeal.

Nov 29, 2017—CDA Submits Site Plan #7: Student Housing Complex Pushed into Buffer with Neighborhood

Plan #7 proposes four student housing buildings on the Southern wetland setback with the neighborhood, leaving the front part of the Plaza, with the oldest one-story building, virtually unchanged. The Planning Board is surprisingly quiet in the presence of the CDA regarding the ways in which Plan #7 violates site-plan regulations, conditional use criteria, and the Settlement. But late in the meeting, after CDA has left, Town Planner Michael Behrendt says to the Board: “You pay me to be your professional planner, and I’d be remiss if I didn’t tell you this: If this ever got built, that would be a terrible thing. I’m telling you that frankly.... If this ever got built, I would be embarrassed. And I would be ashamed that it happened on my watch.” Also, Planning Board alternate Carden Welsh urgently presses for trying to get a better plan because this “is just horrible.... You got all these vacant parking spots in the back that no one’s using, pretending that it’s helping our commercial development, when it’s not; it’s wasted space and wasted money. You’ve got a big student housing development right where we didn’t want it. And then you have a front Plaza that’s not much better than what it is now.”

Nov. 29, 2017—Town Attorney Apparently Cautioned Planning Board on Strict Adherence to Conditional Use

A “leak” late in the same meeting explains the limited critical Board comments to CDA about Plan #7 in terms of violation of Durham’s Conditional Use Permit criteria. From the video (unmentioned in the minutes): Planning Board Chair, Paul Rasmusson: “Michael [Behrendt], I’m going to task you with a small action. Please speak with Ms. Spector, about which of those conditional use things specifically are a potential issue.... She made that comment that we might have overstepped our bounds on some of the conditional use designations.” James Lawson (Council Rep to Planning Board): “This is NOT a conversation to be having. That was between us and an attorney. We do not want to have that conversation here!”

Dec. 1, 2017—Todd Selig Removes Town Planner from Oversight of Plaza Project for Comments on Plan #7

Todd Selig sent an email to Michael Behrendt, stating that as a result of comments that Michael Behrendt made about the deficiencies of Plan #7 that he was formally removing him from oversight of the CDA redevelopment application, silencing him regarding the Plaza, and finding a “contract planner” to help the Planning Board in “moving forward with this project.”

Dec. 8, 2017—CDA Asks Planning Board Alternate Member to Recuse Himself for Criticizing Plan #7

CDA Attorney Ari Pollack writes to Durham Town Attorney: “I am asking that Carden Welsh, Council alternate to the Planning Board, be disqualified from further participation in the Mill Plaza redevelopment application. This disqualification would be comprehensive in that Mr. Welsh would neither sit on the application, deliberate or cast any vote. This request relates to Mr. Welsh’s public comments towards the end of the prior (11/29/17) Planning Board meeting, wherein he referred to the current Mill Plaza preliminary concept as “horrible”, a waste of resources and something the Town would be “stuck with” for the next 50 years.... Mr. Welsh’s comments exposed an innate bias against the plan and an unwillingness to allow the planning process to evolve towards a final application.” (In May 2018, Mr. Welsh *declines* to recuse himself.)

Dec. 2017– Rick Taintor (former Portsmouth Planner) Hired as “Contract Planner” at \$125/Hour

“The Consultant will provide the Durham Planning Board with professional planning services including but not limited to review of documents and plans, attendance at Planning Board meetings, and preparation of memos and reports. As determined appropriate in consultation with the Town Administrator, the Consultant may meet with representatives of the Mill Plaza development team, representatives of neighbors to the Plaza and other stakeholders; and with Town staff.” Rick Taintor soon discusses a possible zoning amendment to allow CDA more site-design flexibility, but the effort fails.

January 2018—UNH terminates Contracts for 18 Full-Time Faculty, Citing Declining Enrollments

Feb. 4, 2018: Boston Globe Reports on Enrollment Challenges for New England Colleges

Feb. 22, 2018—“Outgoing President Looks at UNH’s Successes, Challenges”; Enrollments Headed Down

President Mark Huddleston: “Not only is the number of prospective students in our pipeline shrinking, but the number – and variety – of institutions competing for those dwindling few are expanding.” (UNH state funding is lowest in nation.)

Feb. 25, 2018—Chronicle of Higher Education: New England Colleges Soon to Hit Enrollment “Cliff”

“[A] 13-percent drop in the birth rate nationwide that will hit higher education in 2026, according to Nathan D. Grawe, a professor of economics at Carleton College and the author of a new book.... Grawe’s research indicates that Maine, New Hampshire, and Vermont could lose as much as 23 percent of their likely college-goers by 2029. ‘New England is looking at a steady trickle downward for the next five or so years, and then they hit a cliff,’ Grawe says.”

May 2018—CDA Site Plan #8 Leaves Plaza Front Unchanged, Crowds Rear of Plaza with Student Housing

This plan comes closer than prior plans to meeting basic Durham zoning regarding wetland/brook setbacks and building heights. But it proposes a densely packed Plaza with student housing near the adjacent neighborhood and with minimal areas for pedestrian and bike travel, truck deliveries, snow removal, and emergency vehicle access.

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All CDA plans to date have proposed a crowded Plaza, primarily devoted to student housing. The resulting building mass/scale, noise, trash, odors, traffic, light, and hours of activity would violate Conditional Use by being far “greater than the impacts of adjacent existing uses.” A stormwater-absorbing hillside with mature trees would be destroyed. Vacancies in other town student housing developments would likely increase. In short, there would be major negative impact on lifestyles and property values of the adjacent family neighborhood and negative “economic, fiscal, public safety, environmental, aesthetic, and social impact on the town.”