

From: **Rick Taintor** <[rtaintor@ci.durham.nh.us](mailto:rtaintor@ci.durham.nh.us)>  
Date: Fri, Oct 23, 2020 at 4:57 PM  
Subject: Re: Mill Plaza/Conservation Commission  
To: walter rous ([walterrous@gmail.com](mailto:walterrous@gmail.com)) <[walterrous@gmail.com](mailto:walterrous@gmail.com)>  
Cc: external forward for sneedell <[sneedelltc@gmail.com](mailto:sneedelltc@gmail.com)>

Hi Walter,

The Conservation Commission is reviewing the proposal under the zoning ordinance rather than site plan review regulations. There isn't a value threshold such as you suggest. Rather, a feature is vested from the application of a zoning ordinance if it legally exists and isn't being changed.

The zoning ordinance isn't completely clear on this, but I would direct you to section 175-30.A: "Any lawful nonconforming building or structure in existence ... may continue unchanged but may not be altered or extended in a way which will result in a new and increased violation." (The ordinance defines "structure" as anything "which is built or constructed with a fixed location on the ground...", and specifically including parking spaces.)

I don't believe that any of the proposed redevelopment within the wetland buffer, including the parking lot, is exempt from compliance with the zoning because (a) new underground utilities and infrastructure are proposed in existing paved areas, and (b) there will be extensive changes in grade throughout — some areas within the wetland buffer are proposed to be raised or lowered by up to at least 3 feet in elevation. As a result, all the items listed on pages 2 and 3 of my report require conditional use approval.

I hope this is helpful. Let me know if you have further questions.

Rick

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