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November 12, 2019

Todd Selig, Town Administrator
Town of Durham
8 Newmarket Road
Durham, NH 03823

Re: Mill Plaza Revised Application

Dear Todd:

You and various members of your staff have asked us to opine on whether the most recently submitted Mill Plaza application should be treated as a new application, or as a continuation of previously submitted applications. This question arises in large part because the owner of the property adjacent to the Mill Plaza property, Peter Murphy, has submitted a separate application to create a parking lot, and his stated intention is to lease spaces in that lot to Mill Plaza under a long term agreement. As I understand it, those leased spaces are not required for Mill Plaza to meet the town's zoning or site plan requirements, but instead are necessary to meet the demand of Hannaford, one of the tenants of Mill Plaza, that there be more parking.

I do not believe that these two applications need to be treated as one application, or that the revised Mill Plaza application should be treated as a new application. The revised Mill Plaza application is for the same (albeit it less intense) use as the previous applications; it is simply laid out differently. This is not a material difference which rises to the level of a new application. See, e.g., Limited Editions Properties, Inc. v. Town of Hebron, 2007-0791 (June 30, 2008) (“[T]he Town cannot discontinue review of a plan that has been revised in response to the planning board's own objections, as well as those of the abutters, under the guise of ‘abandonment’ of the original plan.”)

Meanwhile, Mr. Murphy has been contemplating the separate parking lot application for months, and he is free to lease spaces in that lot to anyone, provided that it complies with the town's regulations. Because Mill Plaza does not require these spaces to comply with zoning or site plan review regulations, the two applications need not be linked, even if Mill Plaza is willing to accept a Condition of Approval that it enter into a long term lease with Mr. Murphy for those parking spaces.

November 12, 2019
Page 2

Please let me know if I can offer any additional assistance. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Laura Spector-Morgan', written over a faint horizontal line.

Laura Spector-Morgan
laura@mitchellmunigroup.com