

July 1, 2020

VIA EMAIL ONLY

Durham Planning Board
c/o Rick Taintor, Contract Planner <rtaintor@ci.durham.nh.us>
Town of Durham
8 Newmarket Road
Durham, NH 03824

RE: Colonial Durham Associates' (CDA's) 2019-2020 Conditional-Use Site Plan for Mill Plaza; Letter from Sean McCauley dated June 25, 2020

Dear Chairman Rasmussen and Members of the Planning Board:

This is a brief response to Sean McCauley's letter to you dated June 25, 2020 concerning the above-referenced project. Mr. McCauley writes:

I want to ensure that Colonial Durham Associates' position is clear with regard to any peer review studies the Planning Board seems to believe are necessary relative to fiscal impact and property valuation. For the record, the applicant objects to this additional level of scrutiny put on our submission and, frankly, any level of scrutiny that is beyond the plain language of the conditional use criteria.

To begin with, Mr. McCauley is inaccurate in stating that there is an "additional" level of scrutiny for Colonial Durham's submission. The plain language of the Conditional Use criteria gives the Planning Board broad discretion in what to consider and what studies to require. The fact that Section 8 on fiscal impact explicitly allows the Planning Board to require an independent analysis, but Section 6 on property values does not, does not remove the Planning Board's general authority to require studies when it deems them reasonably necessary to make an informed decision. (See Site Plan Regulations, Sections 3.2 and 5.1.)

In the second paragraph, Mr. McCauley refers to "arbitrary factors" that he suggests the Planning Board must ignore. This is a serious misrepresentation of the Board's authority. The current pandemic is a reality with extraordinary unprecedented implications; and it can be taken into consideration by the Planning Board in terms of the effect of a major project on the Town as a whole. Similarly, the coming "enrollment cliff" for Northeastern colleges from

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2025 onward is an exceedingly well-documented expectation based on hard demographic facts (the shrinking birth rate from 2007 on) and is thus directly implicated in an application for student housing. Moreover, the effect of CDA's proposal on competing student-rental properties within Durham and even neighboring communities is hardly arbitrary. Those are factors that a planning board can and should look at even in the absence of specific language in the ordinance.

Colonial Durham seems to believe that as long as they submit a report saying there will be no adverse effect on adjacent properties or negative fiscal impact on the Town, that's the end of the story for Planning Board review. The abutters and other interested parties certainly have the right to make their case on those points; and the Planning Board does not need to march in lock step with the applicant's bought-and-paid-for studies. The Board's primary responsibility is to safeguard the interests of the Town and its residents.

I have already articulated in detail my objections to the Fiscal Impact Analysis (FIA) by Mark Fougere, dated April 2, 2020, as it falls short of fiscal-impact considerations on the Town overall under Conditional Use criteria. Moreover, we have demonstrated conclusively that Mr. Fougere's use of the FIA on Madbury Commons as support for the narrow scope and methodology of his analysis is faulty, given that Madbury Commons was approved prior to the implementation of Conditional Use criteria for mixed-use residential in the Central Business District. (Please review my previous letters to you dated 5-22-10 and 5-27-20, as posted on the Mill Plaza CUP site.)

Regarding the White Appraisal submitted on 6-17-20, Mr. White's expertise is in appraising commercial properties, not residential homes. This limitation reveals itself in his methods. Contacting other real estate agents for their opinions and the appraiser's own opinion (about issues of "noise," "views," and "use" for neighboring homes) without factual support are inadequate. Additionally, not actually studying the adjacent neighborhood, citing only two homes sales on one street abutting the Plaza, and presenting his assumptions regarding the knowledge and views of those two buyers without even contacting them are hardly marks of high professional standards. The owners of those two homes and of other adjacent homes have clearly articulated problems with Mr. White's assumptions in posted letters and oral comments to the Board.

One of the primary ways that professional appraisers of residential properties look at this question of a project's impact on neighboring property values is by what they refer to as "paired sales." In other words, they look for sales of similar properties that are not next-door

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to student dormitories and compare them to sales of similar properties that are in fact next to student dormitories. That is the way appraisers are supposed to work, not based upon their own or other real estate agents' unsupported opinions. Seriously, would real estate agents rather market a three-bedroom colonial that is next to dormitories for 258 college students, or a three-bedroom colonial that is not? To say that the remainder of Mr. White's speculations are "a stretch" should be obvious to any reader of his "opinion letter."

As I've written to you previously: In the end, you, not the applicant, are going to have to determine the meaning and intent of your Zoning Ordinance, and whether the Conditional Use criteria of Section 175-23 (C) have been met. You will need to determine that *all* of the Conditional Use criteria have been satisfied by a project that adds 258 student-housing beds adjacent to a well-established residential neighborhood and on a property that has always served as a buffer for that neighborhood from large-scale student living. Also, you will need to determine the impact of the almost certain increasing student-housing glut in Durham with the coming significant decline in UNH enrollments (even apart from the pandemic); that is something that will change the makeup of tenants and the assessments of existing student-rental properties.

Once again, on behalf of my clients, I urge you to commission an independent Fiscal Impact Analysis, per your authority under the Conditional Use ordinance. We also request that you follow through on getting a more reliable study of the probable impact on property values in the adjacent neighborhood, as you are in the process of doing.

Finally, please make this letter part of the Planning Board's record in the above matter.

Sincerely,

Mark H. Puffer

MHP:sas

cc: Karen Edwards, Administrative Assistant <kedwards@ci.durham.nh.us>
Ari Pollack, Esquire <pollack@gcglaw.com>
Scott Hogan, Esquire <HoganLaw@comcast.net>