

To: Durham Planning Board c/o Karen Edwards
From: Joshua Meyrowitz, 7 Chesley Drive, Durham, NH
Re: No Confirmed Plaza Site Plan Yet to Review
c.c.: Rick Taintor, Michael Behrendt

Dear Planning Board Members,

Thank you for the enormous amount of time and attention you devote to Durham. I write now regarding the latest Colonial Durham Associates (CDA) site-plan submission of 10-28-19.

Last year, on October 24, 2018, Planning Board (PB) members expressed unanimous resolve not to restart the review and Public Hearing on the Plaza's redevelopment site plan the following month unless they had an actual Hannaford-approved plan to consider. As the Board stated at that October meeting, it would be a waste of the Board's and the public's time to resume discussion of a "sort-of" plan that was unlikely to be the actual moving-forward plan. (See sample PB members' comments from that discussion and links to the video and meeting minutes at the end of this letter.)

Yet, instead of responding to the Board's concerns and stipulations for proceeding (including assurance of Hannaford's endorsement), Colonial Durham submitted a one-page diagram from September 2018, as something CDA had *proposed* to Hannaford – conceding that, even after months of negotiations, Hannaford had not endorsed that or any other CDA plan. And although CDA did not meet the Board's conditions for resuming the site-plan review, it still requested re-starting the review process on November 14, 2018, as noted on the PB agenda.

The wisdom of your resolve on October 24, 2018, was further demonstrated when Hannaford hand-delivered a letter on November 14, 2018, stating that, given the terms of Hannaford's long-term lease, CDA did not have the "contractual authority" to build the proposed plan, which Hannaford did not in fact support. And Hannaford asked the PB to deny the application. Hannaford cited concerns about increased traffic, circulation problems, limited parking, added congestion, and increased hazards to those using the Plaza. In closing, Hannaford wrote: "[W]e urge the Planning Board not to expend the time and cost to consider and approve an Application which will ultimately be futile." [See www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/54468/letter_from_lawyer_for_hannafords_11-14-18.pdf for the full Hannaford letter of November 14, 2018.]

Almost exactly a year later, you now find yourselves in a somewhat different, yet functionally very similar situation. In its November 4, 2019, letter (posted on the Planning Board's Mill Plaza site on Wednesday, November 6, 2019), Hannaford has clearly indicated that it does not yet endorse the CDA-submitted plan currently scheduled for presentation and a Public Hearing on Wednesday, November 13, 2019. Hannaford has made its *potential* approval of the latest "concept" contingent on issues not yet resolved, nor even fully known. Those issues include acceptance of a particular form of another, separate Planning Board application by Peter Murphy for a new parking lot on approximately 2 acres of what is now woods adjacent to the rear of the Plaza on Church Hill. That application has not yet been presented or reviewed. Indeed, at the recent Technical Review Group (TRG) meeting on Tuesday, November 5, 2019, the applicant and engineer indicated that the proposal was perhaps in too-early a design phase even to present to the Board on November 13. Three rough options for the proposed parking lot design were presented, discussions with CDA were cited, but no fixed plan nor any final agreement were indicated. (See the link to the TRG video at the end of this letter.)

Moreover, even if some form of the proposed Church Hill parking lot were to be approved, it is not at all clear that the strict conditions Hannaford has stipulated would be in place. (Moreover, Hannaford's

additional demands lie beyond PB authority!) Hannaford has indicated that its approval of the pending CDA concept plan would be subject to “other conditions, including but not limited to: Evidence that the proposed parking directly adjacent to the residential building (the ‘New Parking Area’) will be controlled and made a part of the Durham Plaza through the full available term of the Hannaford lease 12/31/2059, with ongoing full access to the proposed residential building.” That’s a rather long-term commitment from the owner of the Church Hill properties with an unusual fusing of parcels across zones. Other conditions are outlined in the letter as well as the generic declaration that further unspecified “conditions must be acceptable to Hannaford.” [Hannaford’s full Nov. 4, 2019, letter: www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/54468/letter_from_hannaford_11-6-19.pdf.]

Therefore, as with the situation a year ago, the Planning Board once again has only a “sort of” Mill Plaza redevelopment plan before it, a plan that is not yet endorsed by Hannaford, and that would require a *completed review* of a separate application (the proposed Church Hill parking lot) followed by further negotiations among Peter Murphy, CDA, and Hannaford before the Planning Board would have a Plaza site plan that is, in principle, Hannaford-endorsed (subject to further Planning Board review). **Thus, I urge the Planning Board once again to avoid wasting the time and attention of the Board and the public in discussing and debating only a theoretical concept, until the parking lot application is fully reviewed and voted on, so that you may have at that point a potential “moving-forward Plaza plan” to evaluate – or know for certain that you do not.**

After five years of CDA plan submissions and countless hours of public and board-member assessments, the Board should wait for a Hannaford-approved plan before continuing its review.

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Comments (close paraphrases) from Planning Board’s October 24, 2018, discussion:

~I think for us, the Planning Board...to start talking about this project when there are major issues unresolved...is a waste of time.~

~We need something from someone that says, “Here is *the* plan.” We don’t want to go through all the hearings and then, after major changes at the back end, have to do it all again.~

~I don’t think we should proceed without definitive knowledge about what the issues are.~

~The Plaza should not force us to do our work on this thing, when they are not ready. We have to take a step in between before continuing the Public Hearing.~

~We could settle for confirmation that what they present to us is a post-Hannaford agreement, not a pre-Hannaford agreement. We would be very annoyed if they later said that this has all changed now.~

(That 20-minute PB discussion began at approximately 9:50:45 pm, about 02:50:45 into the meeting. <https://durham.vod.castus.tv/vod/?video=fe63cabb-0d04-4486-98d5-87928ebd2e0b&nav=search%2FPlanning%20Board>. See also the 10-24-18 PB minutes at: https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/meeting/54162/102418.pdf.) (Rough ideas for the proposed Church Hill parking lot and the fact of ongoing discussions with CDA were outlined at the November 5, 2019, TRG meeting, starting at 10:32:41 am, about 30:41 minutes into the meeting: <https://durham.vod.castus.tv/vod/?video=e5b9baf3-2fe1-46bd-a6b7-8cccbd74fddb&nav=search%2FTechnical%20Review%20Group>.)