

March 5, 2020

To: Rick Taintor & Durham Planning Board

From: Joshua Meyrowitz, 7 Chesley Drive, Durham

Re: "Laughable" Landscaping at the Heart of Durham

Dear Rick Taintor & Members of the Planning Board,

I write in appreciation of your good-faith efforts to press Colonial Durham Associates to adhere to site-plan regulations in the Mill Plaza for landscaping, wetland setbacks, College Brook buffer, and so on. At the same time, however, I need to share with you my very uneasy feeling during the Feb 12, 2020 meeting that *"I've seen this movie many times before – and so far it has not had a happy ending."* As detailed in the appended history outline, good-faith PB efforts over 50+ years to get the Plaza owners to do minimal landscaping never materialized beyond dead trees in a field of asphalt running along a degraded College Brook. And it seems to me that CDA is actively trying to get away with it again, with (unbelievably!) even *less* landscaping than exists now in the parking area in front of Hannaford. I urge you to use your authority more forcefully in order for any redevelopment plan to yield a beautifully landscaped downtown core.

At the Feb 12, 2020 meeting, CDA kept emphasizing the Planning Board's "discretion" with regard to CDA's hope for explicit or implicit waivers. I want to urge you to embrace the "discretion" you actually have, not only to require CDA to adhere to the site-plan regulations, but to go beyond them, in keeping with the Board's authority (especially with a Conditional Use application) to impose STRICTER conditions for a positive outcome, as noted in this excerpt from the Conditional Use Zoning Article (emphasis added):

175-21. Conditional Use Permits.

The purpose and intent of a Conditional Use permit is to allow certain uses that are not normally permitted under conventional zoning provisions.... **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....**

D. **Conditions of Approval.** Conditional Use Permit approvals shall be subject to appropriate conditions where such conditions are shown to be necessary **to further the objectives of this ordinance and the Master Plan**, or which would otherwise allow the general conditions of this article to be satisfied. Conditions of approval shall be stated in writing in the issuance of a permit. The conditions shall, if applicable, include, but are not limited to, the following:

1. **Front, side, and rear setbacks in excess of the minimum requirements of this Ordinance.**
2. **Screening of the premises from the street or adjacent property in excess of any minimum requirements of this Ordinance.**
3. **Landscaping in excess of any minimum requirements of this Ordinance.**
4. Modification of the exterior features of buildings or other structures.
5. Limitations on the size of buildings and other structures more stringent than the minimum or maximum requirements of this Ordinance.
6. Footprint or lot coverage less than the allowed maximum of this Ordinance.

To quote Ari Pollack's Feb 12, 2020 letter, the *"Planning Board's* approval of the Mill Plaza Redevelopment plans is not dependent on Colonial Durham acquiring Hannaford's consent to all aspects of the project.... Colonial Durham will work to find a suitable compromise with Hannaford – just as it has done regarding other redevelopment hurdles in the past. So long as the Mill Plaza redevelopment plans continue to conform to Town zoning and site plan requirements, the proposal can – and should be reviewed and approved by the Planning Board." Approval is certainly not assured from Durham residents' perspective, given gross mismatch with Conditional Use criteria, yet the *reverse* is surely true: If the Mill Plaza landscaping plans continue NOT to conform to Town zoning and site-plan requirements, they should be summarily rejected by the Planning Board.

I hope you will review the appended outline of past Planning Board efforts and use that as a guide to a more forceful effort to finally bring the prime downtown Durham site into basic compliance—and beyond.

The Sad History of Durham's Official Stipulations for Mill Road Plaza LANDSCAPING & BROOK PROTECTION¹

OR "How Come Almost Nothing 'Required' of Mill Plaza by the Planning Board Ever Came to Be?"

The "points of agreement concerning [Mill Plaza] site review": **"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."**

[June 4 1968, Planning Board, H3.]

"We are especially interested in your landscaping plan for this area [Mill Road Plaza], 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."

[Durham Planning Board letter to Plaza co-owner Edward N. Lehoullier of Nashua, NH. Advance copy of letter quoted in June 4, 1968, Planning Board meeting minutes, H3.]

Town of Durham has to threaten legal action to stop the Plaza owners from starting construction on the site without having submitted a final site plan or received Town approval. Developer agrees at October 11 1968 meeting with Board of Selectmen, Planning Board, and Building Inspector.

[Portsmouth Herald, Oct 14 1968, p. 6; no meeting minutes are to be found in Durham files, H4.]

The final [Mill Plaza] 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.**

[Final developer plot plan, submitted Oct 28 1968, H4. See pp. 80-81 here:

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

"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.**"

[Planning Board letter to developer, November 3 1968, H4. See p. 80 here:

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

"Durham's natural and historic beauties are unusual and worthy of preservation" Additionally, **"The town has an unusual opportunity to develop a series of greenways along the streams [including College Brook] penetrating the village. In addition to their aesthetic and conservation value, these greenways could offer walkways connecting various community facilities."** It's 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 [including College Brook]...**"

[Jan 1969, "Comprehensive Plan," pp. 5, 8, 41, H4-5.]

¹ **Bolding added.** The numbers after an "H" indicate the page number in my searchable 50-year History of the Mill Plaza: www.ci.durham.nh.us/boc_planning/mill-plaza-history-1967-2018-joshua-meyrowitz.

“It is the intent of the developers and owners to put as much emphasis upon landscaping as the aesthetic of the building.... 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.”

[Jan 26 1973, Site Review Application for Expansion of Hannaford Supermarket, H5.]

“The bulldozing and paving in the initial phase of construction on the [Mill Road] 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.... **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.”

[Feb 21 1973 letter from Durham Conservation Commission, H6. This request was apparently not acted upon or enforced. The original letter can be seen at: www.dropbox.com/s/nc49jgdon4ia2t0/Conservation%20Commission%20on%20Plaza%20Feb%201973.pdf?dl=0]

“5. Since 1968 there has been observed an increased incidence of silting in the College Brook between Mill Rd and Mill Pond Rd. 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 Rd to the Plaza buildings, also in the 1968 approved plan, have not been constructed.”

[Planning Board “Findings of Fact, April 2 1973, regarding Mill Plaza non-compliance, H7.]

“[T]he whole landscaping of this [Mill Plaza] 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.”

[March 4 1975 letter from D.G. Routley, Durham's Tree Warden and Professor of Plant Science at UNH to Board of Selectmen. Prof. Routley resigned as Tree Warden a few days later. H9-10. The full letter can be viewed here: www.dropbox.com/s/5aovpfcam73fp1y/Tree%20Warden%20to%20Selectmen%20on%20Plaza%20Landscaping%203-4-75%20.pdf?dl=0.]

Planning Board chair writes 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.”

[April 1975. H10. See: <https://www.dropbox.com/s/o78is7hr5z0xiha/1975%2004-23%20Crombie%20to%20Melvin%20landscaping.pdf?dl=0>. Yet, in May 1975, **the Hannaford project engineer 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: www.dropbox.com/s/o78is7hr5z0xiha/1975%2004-23%20Crombie%20to%20Melvin%20landscaping.pdf?dl=0.]

“Suitably landscaped” space is to be provided for the full 370 parking spaces (but requiring only 277 at first). **“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.... **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....** 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.”**

[Planning Board, May 18 1977, “Conditions of Approval” for Mill Plaza expansion, H12. Full May 1977 Planning Board doc can be seen at: www.dropbox.com/s/evfvvd5lin31wof/May%2018%201977%20Conditions%20of%20Approval%20for%20Parking.pdf?dl=0.]

Regarding the **tree-covered hillside behind Building II, the Plaza’s engineer, Mr. Robert McAuliffe, indicated that the owners hoped to “leave the hill in its natural state because bulldozing it “would require additional drains and would increase runoff.”**

[ZBA Minutes for the Aug 31 and Sept 14, 1977, H16. Meeting minutes here: www.dropbox.com/s/sm1g34lrfnqy0xd/ZBA%20Aug%201977%20Parking%20in%20RA%20Zone.pdf?dl=0. **Note that this is the hillside that is to be blasted away for the 2020 CDA Site Plan.**]

“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..... 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....”

[Durham’s “Comprehensive Plan Update,” 1978, H13. The 122-page 1978 plan update (mostly in outline form) can be read here: www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/17851/comprehensive_plan_update_1978.pdf.]

“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.** 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.**”

[Oct 16 1979, Planning Board work session notes, H15.]

“Your development [Mill Plaza] 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.”

[April 6 1981 Public Works Director letter to Plaza owner about deficient Plaza maintenance, H16.]

The goals and strategies include: **“A Mill Plaza with architecture that more closely resembles that of the existing townscape, along with better landscaped parking areas and open space.”**

[Durham's First Community Development Plan, 1995, H19 See the full 134-page report, with key pages on CDA's Plaza here: www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/9881/community_development_plan_july_1995.pdf]

“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.... 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.... 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.... 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. 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.

[Excerpts, Durham Master Plan 2000, H20-22, a broad town effort. Full Plan here: www.ci.durham.nh.us/planning/master-plan-2000.]

Mill Plaza manager Dave Garvey received a permit to take out a chain link fence and propane tank slab on the hill at rear of the Plaza (gas lines had been installed to the Plaza). But Garvey arranged for **unapproved excavation of the entire rear permeable hillside – almost 9,000 sf – and for paving of new parking spaces (to create 40-spot parking area beyond the second Plaza building for the Plaza's unlicensed parking space rental business). The work near the Chesley Marsh was done without a required DES permit** (a State-level violation), 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. At Public Hearings, residents raised concerns about **additional flooding of private properties and public paths, pollution and sediment runoff into the brook, brook bank erosion downstream from the Plaza, 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.** The Planning Board ruled against the Plaza's parking space expansion, and 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.

[September & October 2002, H23-24] [NOTE: As of March 2020, the bulldozed area has not yet been restored, cars and trucks continue to be parked on the illegally bulldozed area, and the Plaza's unlicensed parking-space rental business continues.]

“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, roof gardens to effectively and more naturally manage storm water.”

[2008 Mill Plaza Study Report, p. 7, H3. The report reflects dozens of public meetings, workshops, and focus groups with the Durham community held over more than a year, with the encouragement of Plaza owner John Pinto to develop a vision for the future of a redeveloped Plaza property. See Full Report Here: <https://www.ci.durham.nh.us/planning/mill-plaza-study-2008>.]

Falsely claiming that it needed more parking spots for Plaza customers, the Mill Plaza again tries to add parking spaces in the Wetland Conservation Overlay District (WCOD) at the rear of the Plaza in 2009, arguing that it could improve on the “pre-existing” degraded condition – a degradation caused by CDA’s 2002 illegally bulldozed buffer with the neighborhood.

[After many meetings, the proposal was denied in Nov 2009 after Town Attorney Walter Mitchell argued that the Planning Board could not consider a proposal for a site that was out of compliance because of the unlicensed Parking Space rental business. H41-52.]

Issue: Mill Plaza is a high-priority site for strategic development and/or 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]

[2015 Master Plan, H117. Full plan here: <https://www.ci.durham.nh.us/planning/master-plan.>]

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 [College Brook] buffer would increase significantly, and he spoke in some detail on this.

[Excerpts from the January 27, 2016, Planning Board Minutes, H129.]

“I am writing to provide comment on the proposed redevelopment for Mill Plaza.... Some specific suggestions/concerns I have related to the natural resources on the site are:... The wetland and shore land setbacks on the property should be honored, and carefully enforced. No construction activity should occur within the setback.... **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.)”

[Feb 8, 2016—Letter to the Planning Board and Conservation Commission from USDA Urban Forestry Expert John Parry. Full letter here: www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21171/e-mail_from_j._parry.txt]

“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 & Site Plan Regulations.... 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.”

[Planner’s Review, Oct 26 2016, H194.]

Planning Board Meeting // February 12 2020

9:02:10 pm to 11:15:12 pm

<https://durham.vod.castus.tv/vod/?video=3d4132f1-d548-4f2d-a232-698dd61a0783>

A close watch/listen to CDA's friendly, playful presentation – accompanied by Planning Board banter and laughter – suggests that CDA and Planning Board may be repeating the 50-year history outlined above of avoiding compliance to Town Regulations.

Why the current site plan does not “comply with Development Standards set forth in Part III of the Site Plan Regulations,” as outlined by Rick Taintor in his Planner’s Review for Feb 12, 2020.

CDA Project Engineer Joe Persechino (9:55:35): “Here we go. All right, so, as our Planner, Mr. Taintor, has mentioned there are a number of items that we need input from the Planning Board on.... So, to start off, um – also I’d like to just say, we understand that these landscape decisions, or at least we did when we were designing this, are at the discretion and input of the Planning Board. So hopefully, we’ll get some input from you all tonight. And, one last thing, this is an *existing* site for a portion of it. We’re hopefully improving upon the existing condition. And we want you to recognize we’re also in a tight spot, with parking, as we discussed the last couple of meetings, and just the general existing layout in front of the current Hannaford building. We have *some* flexibility there, but we can’t do everything. So, with that, I’ll just go forward with point by point here. And I had some notes to go off of.”

* * *

Why required tree distribution to “provide optimal canopy coverage and shading” is not in plan.

JP (9:57:20): “So, the first comment is related to Section 5.8.4, which requires applicants to distribute trees as evenly as practical. I would say that our landscape architect *did* try to do that, throughout the areas that we had available. So, um, for example, you can see the trees kind of in all of the landscape areas, the new landscape islands and end caps that we added and some of the proposed landscape areas surrounding buildings. Um, this, this *may be* something that we kinda come back to? Some of these other ones are more specific; this is a more general comment. Okay?”

[Note: In fact, the whole site is “available” if one follows Spector-Morgan’s and Pollack’s “ignore Hannaford” dictum and just review by Town site-plan regulations. Also, Joe Persichino’s citation of 5.8.4 regarding tree spacing omits the key phrase “in order to provide optimal canopy coverage and shading.” No such “optimal shading” is even remotely yet proposed.]

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Why landscaped island end caps are not the required “same dimensions as the adjoining parking spaces.” [Summary: “We don’t meet that because, for example, they narrow down.”]

JP: “So Section 5.8.5, parking end caps would have at least one shade tree or ornamental if insufficient root space. I *think* we’ve done a pretty good job of showing one tree per landscaped island end cap? Um. For the most part? So, I think we actually meet that one. Section 5.8.6...” [He tries to move on.]

PB Chair Paul Rasmussen: “Well, uh, *hold on*, um, the other part of that one, I believe, had to deal with the *depth* of the endcap?”

JP: “Oh, oh, yes, thank you. Um, so again, this is discretionary stuff; we did our best to make them as wide as we could with what area we had. Some of those that don’t meet the full width of the adjacent parking space, so if you read the regulations in its entirety it is the intent is that the end caps, *where*

practical, can meet the adjacent parking space width. Our parking spaces are 9 feet. We do not meet *that* everywhere. There are a number of locations, that we are, if, you know, by the run of the law, which is not really law, we don't meet that because, for example, they narrow down. So we've got, you know, um, so, yep."

PR: "The concern here, at least from my viewpoint, is that the ones along the south edge, all right, where you have the road, and everybody coming in off Mill Road, right? You have people who are effectively pulling out into that road, and if there's parking there, then you can't see through the car. You actually would have to pull into the road just to see if there's traffic coming."

JP: "So, understand. We understand that. So those couple of locations you're discussing are probably.... Maybe this island here and maybe this island here [points to few]. So, granted, this isn't a road; this is an access route."

PR: "It's nice and straight and long and people are coming off of it..."

JP: "So, let me say that, uh, where we could get more sp-, if we had to make those wider, we would lose spaces. We would maybe lose one here and maybe one or so here. That could *potentially* help with that issue. I'm not sure it's gonna, you know, totally resolve that. I, I think, uh..."

* * *

Why site plan violates requirement for landscaped medians for every 4 parking rows (and has LESS landscaping in most of parking lot than current dismal site). "Input" is invited on what is presented by CDA as Planning Board's forced choice, rather than CDA's option to comply fully.

JP (10:07:35): "Yeah, so 5.8.6. No more park-, this is the 'no more than 4 parking rows without a landscape median.' So, this *can* be met. However, I would like to at least explain to you how we got to this point, trying to accommodate prior comments from the Planning Board. Let me zoom in, and I will show you. So, one of the comments that we had been hearing was that an increased vegetative buffer to Mill Rd was desirable. Okay? And the second comment was 'pedestrian connectivity.' Those were the two driving comments for the decision. Um. Pretty much we meet that requirement everywhere else, besides in front of Building A, Hannaford. ***[In front of Building A is most of the parking lot!]***

"To meet this requirement, we can eliminate the pedestrian connection we have in this center island and take out the buffer that we tried to give back to Mill Road and put in these six-foot wide vegetative islands in this location – let me grab my pen – and this location. Wow, I can't draw very straight, and then in this location. Okay, so it splits it up, kinda puts it back to what is there today, and it removes the center, right? That goes away [laughter; friendly group chatter].... So you get the point. Um, we, it could be accommodated, if that is desirable over trying to have pedestrian connectivity from this new pathway that we have along the edge of the access way. And we would take out the landscaped buffer that we tried to increase here by six feet or so. So we'd lose six feet by Mill Road, which we had given back, and we put *into* the parking lot and we would eliminate this sidewalk and we'd put landscape island back. That's how we could get it back. And that would meet that requirement, but it, it's contradictory to comments we had been hearing from the Planning Board. So, I, I think this is one of those we'd like to get some input. And you let us know what you prefer."

PB Member Carden Welsh: "I'd like all of them."

* * *

Why the site plan does not comply with required “minimum 4 foot wide foundation planting strip between the building and any parking lot.”

JP (10:24:55): “Where did we leave off? 5.8.9. Oh! 4-foot planting strip between buildings [and] parking lot driveway. So this is something that, um, in our case kind of seems to be incompatible. So the, the regulation essentially means that there is to be a 4-ft wide strip between the sidewalk and the building. Okay. That doesn’t really work in this pedestrian-friendly type of environment that we are trying to create. It’s not something that you see in a Main Street environment. It’s not something you see on Main Street, Durham. So-o, it was not designed like that. Instead, what’s been designed, um,”

CDA Attorney Ari Pollack: “It’s ‘preferred.’

JP: “Right, yes, the regulation, thank you for clarifying, the regulation is preferred. This is again one of these kinda gray areas left up to the Planning Board’s discretion. Um, so it was decided with outdoor seating along some of the restaurant spaces of area B and some of the other areas that strategically located tree planters would be provided, that’s what’s being provided as part of this plan. Um, and therefore we don’t meet the full four feet everywhere. That’s the background on that.”

[As Rick Taintor then points out, the regulation does not say that the whole requirement is “preferred,” just that a “continuous” version of the required strip is preferred, except where “there are projecting building elements, such as entrances, bays, and utilities.” Non-compliance requires a waiver.]

* * *

Why the parking areas are not broken up into areas of no more than 40 spaces, as required.

JP (10:28:52): “And the last one, I think, was 5.8.11: Parking sections not exceeding 40 spaces, unless otherwise approved by the Planning Board. Um, so, depends how you define ‘area’; you know, the whole parking lot is broken into large areas. If we were to look at individual areas, certainly, we would not meet that standard strictly in front of Building A, or Building B also has 86 spaces. I think. Mr. Taintor recognized *that* as a location. We would look for some guidance from the Planning Board on that. If we, in front of Building A, for example, if we were to define areas broken up by landscape islands and we eliminated the walk in front of Building A, in particular, and added the other two, that might get us there. Just looking for your input on that.”

AP: “This one’s a little tricky also because Building A is existing. Building A is staying, and there’s a parking field there now. And that’s not to say that we shouldn’t improve upon things where we can. But we are improving upon what arguably would be a non-conforming condition.”

JP: “And we might still, even by adding those islands, may strictly not meet that, by a few spaces here and there. And, again, depending on how you define a ‘parking area,’ I’m not sure landscape islands actually define a parking area. So, I don’t know. I don’t know what the rule is on that. I guess I’d look to Mr. Taintor to maybe provide some guidance on that one. Or the Planning Board themselves. Or just to look at this and understand that we’ve done what we’ve thought is a good parking lot layout.”

AP: “There is a definition section in the landscaping standards, but that term [parking area] is not defined [satisfied look].

JP: “Right.” [gives hapless look/gesture, as in, “so what can we do?”]

* * *

PB Member Richard Kelley: “I was looking at the Settlement. Are we meeting the requirements of 1d?”
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.

AP: “If you consider there is an existing encroachment; we’re improving upon the existing encroachment conditions.” *[Followed by pushback and discussion about Settlement.]*

AP (10:35:15): “And I’ll be quick about it, but since you raised the point. The Settlement agreement talks about ‘substantial conformance’ with the following design considerations. And ‘d’ talks about providing ‘proposed buildings and vehicular roads outside of the buffer such that variances from town ordinances are not required,’ And I believe there was an earlier determination, I don’t recall which planner made it, but that because we were working off of an existing encroachment and an existing condition, uh, provided we were making that encroachment more conforming, less non-conforming, we would not need a variance. And so, again, the idea here is to bring the property closer to conformity, have some substantial respect for these items, and at the same time, as Rick was pointing out, most certainly comply with other portions of the ordinance, the site-plan regulations, ask for waivers when necessary. I think that’s our presentation for tonight.”

* * *

In sum, instead of indicating how compliance to regulations will be achieved, CDA plaintively asks “for input,” argues that all the requirements can be waived at the “discretion” of the Planning Board, claims that not all of the site they own is “available” to them, and describes a “tight situation” with its anchor tenant whose requirements, as CDA Attorney Ari Pollack, himself admits in his recently posted Feb 12, 2020 letter should not be considered by the Planning Board:

“Planning Board’s approval of the Mill Plaza Redevelopment plans is not dependent on Colonial Durham acquiring Hannaford’s consent to all aspects of the project.... Colonial Durham will work to find a suitable compromise with Hannaford – just as it has done regarding other redevelopment hurdles in the past.”

Compliance with site-plan regulations should be, as Ari Pollack confirms, the prime consideration of the Board. Beyond that, as noted in the cover letter to this document, the Planning Board has the right and obligation to impose even *stricter* conditions for a Conditional Use project to yield a “positive economic, fiscal, public safety, environmental, aesthetic, and social impact on the town.”

Please use your actual potent “discretion,” as described by Rick Taintor, to bring the whole Mill Plaza site into full compliance, and beyond. Do not allow the core property in Durham to remain in the still “laughable” state described by Durham’s Tree Warden in 1975 (as noted in above outline history in this document, with link to full letter, and on pp. 9-10 in my digitally searchable 50-year history of Mill Plaza):

“[T]he whole landscaping of this [Mill Plaza] 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.”

Meyrowitz / 6380 / Mill Plaza S Landscaping History / 3/5/2020 4:28 PM