

## **Reminder – 4 key documents on Setback already formally submitted & posted for the legal record**

*To: Durham Planning Board / From: Joshua Meyrowitz, 7 Chesley Drive / 6 October 2021*

As I've said before, I admire your courage and commitment to take on the extraordinarily demanding tasks of the Planning Board. There are *so many* applications and *so many* issues and *so much* material to keep track of. I don't think that I could do it – but that's why I would not volunteer to be on the Board.

I was shaken by how your Aug 25 discussions proceeded with no seeming awareness of, let alone *discussion* of, the substance of what is written in the documents that I and others, and even other *Town boards*, have submitted to you, often based on extensive research and effort. These include the four Mill Plaza documents below, submitted/posted previously for the legal record (at links indicated), and which I handed out in hard copy on Sept 22 (without addressing anything about their contents). These show, that, contrary to your Aug 25 discussion, **the current Mill Plaza site plan does *not* comply with the Zoning.**

Please note that nothing in the text of these documents employs distorting ellipses or manipulative editing. These documents, among many others, clearly lay out the zoning and the case law that I'm told you are individually and collectively obligated to follow, without, "fear or favor," as the phrase goes – without fear of intimidating applicants or other Board members or other officials, and without any favor to them.

### **A) [Conservation Commission Recommendation to the Planning Board](#), Jan 4, 2021 (one page).**

Excerpt: "The Mill Plaza Redevelopment project does not meet Standard 1 of the four required standards for Conditional Uses. Standard 1: There is no alternative location on the parcel that is outside of the WCOD and SPOD that is feasible for the proposed use. The Mill Plaza parcel, with few exceptions... may accommodate the project without construction in the wetland buffer."

### **B) TEN Planning Board Confusions on Jan 27, 2021 over ConCom Recommendations During a "Public Hearing" with Stifled Public Input, [Joshua Meyrowitz 2-23-21](#) (4 pp)**

Excerpt: "This CU WCOD permit criterion would be meaningless if it applied to the proposed *design*, since any applicant could then circumvent the Ordinance simply by designing oversized structures that could not possibly fit on the site without incursions into the wetland buffer (as CDA has done), and then demand a permit by saying that there's no other location to put those oversized structures. See the precedent for rejecting that strategy drawn on by current Conservation Commission, [Mathes Terrace & 15 Madbury Rd Project](#)."

### **C) Legal Settlement is Clear: "The Revised Application will provide for proposed buildings and vehicular roads outside of the shoreland and wetland buffers...." [Joshua Meyrowitz 4-23-21](#) (2 pp)**

Excerpt: "CDA Bait & Switch: In place of the plain meaning of the clause that ~No ZBA variances would be needed or applied for because there would be no encroachment in the wetland setbacks that would lead to requesting such a variance~, Mr. Pollack has substituted the twisted logic of ~**We can violate the clearly stated prohibition on buildings and roads in the setback because we don't believe that we need to apply for a variance in order to violate the setbacks.**~"

### **D) [Letter from Attorney Mark Puffer 8-24-21](#) (6 pp)**

Excerpt: "Such a significant change in type and intensity of use requires that the property to be brought into compliance with current zoning. The wetland buffer must be met.... CDA may technically be 'eligible' for a Conditional Use permit, but you must not grant them one if they plan to violate the Settlement and the Wetland Setback Zoning. A Planning Board cannot waive Zoning requirements."