

Durham's Mill Road Plaza, 1967-2022

The Plaza has been owned since 1993 by NYC-Based Colonial Durham Associates (CDA)

INCOMPLETE DRAFT // Joshua Meyrowitz
to be refined & resubmitted if the Public Hearing remains open

See also: [Mill Plaza History, 1967-2018 by Joshua Meyrowitz](#), 325 pages [HIST]

Spring 1967—Developers propose 2-bay car repair & gas station at Main St & Mill Rd

Nashua-based developers Tamposi, Nash, and Lehoullier (who held an option to buy the Osgood Farm at the heart of Durham) hoped to build a two-bay automotive repair shop and gas station on the corner of Main Street and Mill Road. After they were turned down for a building permit by the Durham Selectmen in May 1967, they appealed to the Zoning Board of Adjustment (ZBA). The site plan proposed a “Colonial style” building approximately where the Osgood Farm barn stood, “directly behind the home of Miss Isabel Smart.” The service station would have about 175 feet of frontage on Mill Road, with an entry road near College Brook reaching a depth of 135 feet “into open land.” Two gas pumps “with their 10,000 gallon underground tanks,” would be placed near the entry road along College Brook. There would be a rotating Texaco advertisement sign near the sidewalk. Lehoullier’s June 12, 1967, letter to the ZBA stated: **“It is our feeling that such use under such proposed conditions and in such a beautifully designed building will neither be detrimental nor injurious to the neighborhood.”** (*Portsmouth Herald*, July 10, 1967, p. 9, emphasis added.) The proposed “beautifully designed” Texaco “Colonial” service station is pictured below.



A public hearing on the ZBA appeal on Friday, July 14, 1967, drew almost 150 people and it had to be moved from the court room to the high school gym. Per the *Portsmouth Herald*, “The crowd seemed appreciative of the painstaking procedure followed by the Z.B.A. chairman, Richard Ringrose. He spent 37 minutes reading all of the correspondence in an effort ‘to give you the history of the case,’ according to Ringrose. The correspondence included a number of letters from citizens, one from the Durham Business and Professional Men’s Association, and a

petition with 115 names, all in opposition to the proposal. Lehoullier was the only one to speak in favor of the service station.”

Although a service station was not permitted in the Class A Business zone, the developers argued that a car service station was reasonable as part of a larger commercial development plan for the Osgood farm. Indeed, schematic plans for developing the full property, which Lehoullier brought for

inspection, showed proposals for two seven-story apartment buildings with 54 units, in addition to “two professional buildings; a bank; grocery; dry cleaning, hardware; snacks, mercantile; a restaurant; three independent houses; three parking lots.”

Maryanna Hatch, secretary for the Planning Board, then read a statement from the Board strongly opposing the proposed service station “for the reasons stated in most of the letters received by the Board.” Also, “the traffic hazard would be increased and the aesthetics of the town center injured.” After Mrs. Hatch’s statement was acknowledged with applause, “Lehoullier consulted with Ringrose, then announced the withdrawal of the request,” saying “Due to the extremely strong and well-organized opposition to this request of ours, we withdraw our request for this exception.”

The *Portsmouth Herald*, which reported on the ZBA hearing on Monday, July 17, 1967, p. 7 (the above quotes are drawn from that article), added: “This was the second time recently that out-of-town developers have withdrawn their requests. Last November a Concord concern, which sought to build a hot dog restaurant on Church Hill, withdrew on the day of the public hearing. The hearing was held nevertheless, to satisfy the law; but no one appeared to defend having such an establishment.”

October 1967—Wilfred & Olivia Osgood sell 10-acre “Osgood Farm” in the downtown core

On October 13, 1967, the Osgoods transfer what would become the Mill Plaza to the HANBRO (Hannaford Brothers Company), which on the same day transferred it to Samuel A. Tamposi, Gerald Q. Nash, and Edward N. Lehoullier of Nashua, NH, “for the purpose of permitting the construction thereon of a proposed supermarket building, and the leasing of the same to Hannaford Bros. Co., all at the price, and upon such terms and conditions as shall, to such officer or officers hereby so authorized, appear most appropriate and in the best interests of this corporation.” The deeds can be seen [here](#). [This is the history behind Hannaford’s powerful lease.] New Hampshire developers Sam Tamposi and Ed Lehoullier (based in Nashua) started the process of developing the 9.7-acre site into what would become the Mill Plaza.

According to many members of the public who attended Planning Board meetings at the time, Durham residents were encouraged to support the development, not only for the expanded shopping opportunities in town, but also with the promise that the site would provide additional parking for Main Street business customers. That parking-for-Main-Street-businesses promise was never fulfilled, as warning signs on the lot indicate now. (And that abandoned promise suggests the need to get all spoken developer promises in writing!)



Mr. Lehoullier expressed interest “in discussing a joint project with the Town of Durham in acquiring the Grange Hall property as a possible access” (PB minutes, Oct 19, 1967), but that never happened.

May 16, 1968—Planning Board: Re-purchase of Osgood property for Town center suggested

“Osgood Property [owned by Tamposi & Lehoullier] – Owen Durgin led the discussion and suggested repurchase by the town for development into a site for a 3-story building to accommodate a town hall, businesses and apartments. One person saw this as a creative idea and many expressed concern over the current appearance of the property, inquiring whether there is any time limit on how long it

may be allowed to remain undeveloped. Those in attendance were informed that the Planning Board has before it absolutely no plan from the developers.” Initial development plans were delayed because the New England Telephone Company decided to locate on the UNH campus rather than on the proposed plaza site. (Planning Board meeting minutes)

June 10, 1968—Planning Board letter to Lehoullier emphasizes landscaping expectations

“We are especially interested in your landscaping plan for this area, 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.” (Advance copy of letter quoted in June 4, 1968, Planning Board meeting minutes.)

Oct 11, 1968—Facing threat, Plaza developer agrees to stop non-permitted construction

A joint meeting of the Board of Selectmen, the Planning Board, and the Building Inspector was held to confront the Plaza developers over their having started construction without having submitted a final site plan or received Town approval. “When Edward Lehoullier of Nashua left he had promised to send complete construction drawings, a site plan, and cost estimates for the construction, which has been going on in the center of town. In return he asked to be sent copies of the sign ordinance, zoning ordinance, a list of the requirements which need to be fulfilled by his firm, before construction can be continued. Lehoullier indicated that construction would be stopped, negating need for the town to take legal action, which had been contemplated last week.” (*Portsmouth Herald*, October 14, 1968, p. 6; no meeting minutes are to be found at Town Hall.)

Oct 28, 1968—Mill Plaza developers submit a final plot plan with promised landscaping

The final plot plan, per letter by Edward N. Lehoullier to the Planning Board, 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. See pp. 80-82 [here](#). [These promises have yet to be kept.]

Jan 1969—“[Comprehensive Plan](#)” emphasizes conservation & family-focused businesses

“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]....**” (Emphasis added.)

1969—Mill Road Plaza opens with a single building

The first building (smaller than the current Building #1) contains five businesses, including a grocery store, a pharmacy, and a hardware store. [The parking lot was about half of the size of the current 2022 lot.]

Jan 26, 1973—Hannaford Bros. submits [Site Review App](#) for expansion of supermarket

“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.”

Feb 21, 1973—ConCom urges reversal of Brook damage *prior* to more construction

“The Durham Mill Pond has been filling in with soil rapidly in recent years. The bulldozing and paving in the initial phase of construction on the Tamposi 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.” (Emphasis added.) (I could find no record of any action on the Conservation Commission’s concerns and requests.)

April 2, 1973: Planning Board “Findings of Fact” regarding Mill Plaza deficiencies

“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.” See minutes, pp. 74-76 [here](#), emphasis added.

March 1974—Voters reject Onassis Oil refinery on Great Bay & approve Chesley path

At the annual Durham Town Meeting in March 1974, a large majority of Durham voters rejected a rezoning proposal to allow for “industry” in a rural zone, specifically as it related to a 400,000 barrels per day Aristotle Onassis oil refinery on Great Bay that would have covered 3,000 acres of Durham. Voters met for 30 hours over four days on this and other Town issues. See [summary](#). During the same March 1974 Durham Town Meeting, Durham voters also overwhelmingly rejected a proposal to extend Chesley Drive as a vehicular road through the Mill Plaza to Mill Road. Instead, Town residents voted to approve an amended proposal to extend Chesley Drive only as a foot and bicycle path. [*Public Occurrences*, March 15, 1974.]

May 1974—Planning Board approves addition to Shop ‘n Save Supermarket in Plaza

I could find no evidence that the Feb 1973 advice of the Conservation Commission was followed, nor any evidence of any Town entity assuring that the developer commitments were adhered to.

March 4, 1975—Durham Tree Warden: Plaza landscaping “woefully & shockingly inadequate”

“[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.” See full [Routley letter](#). Prof. Routley resigned as Tree Warden a few days later.

May 18, 1977—Planning Board sets [Conditions of Approval](#) for Mill Plaza expansion

Excerpt: **“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.”

[Emphasis added.] *Regarding landscaping:* **“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....” [Emphasis added.] *Regarding lighting:* “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.**” [Emphasis added.] **[None of these conditions were ever met.** See glare from rear building

through 7 Chesley Dr window, April 16, 2020.]

Aug & Sept 1977—ZBA considers variance to add 56 parking spots in Plaza RA Zone

“The flak factor ran high at a hearing Wednesday [August 31, 1977] for a zoning variance to allow parking in a residential zone along the edge of the Mill Road shopping plaza.... To meet parking requirements, the developers asked for a variance to allow parking along a sliver of land which is already paved next to College Brook in the RA zone.” The alternative was “to pave a section of the hill behind the proposed building site.... The sliver of land in question, [residents] said, acts as a buffer for Faculty Road homeowners.... The Tamposi and Lehoullier property is the only parcel left with most of it in the BA zone and the sliver in the RA zone.” (*Portsmouth Herald*, Sept 1, 1977, p. 23.)

Per the ZBA meeting minutes, **the Plaza’s engineer, Mr. Robert McAuliffe, said that the alternative parking location (on the hill behind Building II, which was on the property and in the BA zone), “would require additional drains and would increase runoff.”** Thus, the **“petitioner proposes to leave the hill in its natural state.”** The ZBA’s Public Hearing on the variance request was reconvened on September 14, 1977. At that meeting the variance request was unanimously denied. “In considering the petition, the Board recognizes that to grant the variance would introduce a commercial use into an RA district....” ZBA Minutes for the August 31 and September 14, 1977, meetings can be read [here](#).

1978—Durham’s [Comprehensive Plan Update](#) – public engagement is central

Safeguard Ecology / Limit Student Housing & Encourage Elderly Housing / All-age Bike Paths / Create Central Community Space / Expand Commercial Offerings for Year-Round Residents
“Monitor setback and construction operations near streams, wetlands.” “Since student housing needs could change,... avoid becoming overly committed to forms of housing not also adaptable to other occupants.” “Find centrally located space for community and cultural activities.” “The hope is that the CBD [Central Business District] will serve Durham residents better by offering an appropriate range of frequently used items and services.” “Continue tradition of wide participation.”

1983—NYC-based Colonial Durham Associates (CDA) buys Mill Plaza buildings (not yet land)
Developers Sam Tamposi and Ed Lehoullier sell the two buildings and other improvements (but not the land) to John Pinto, an investment banker and owner of Colonia Durham Associates, based in Manhattan, NY. (*Registry of Deeds indicates sales price of about \$2,000,000, or about \$5.6 million in 2022 dollars.*)

1987—After 255 years of Selectmen & Town Meetings, Durham voted YES for a [Charter change to a Council and Town Administrator form of government.](#)

1989—[Durham’s Master Plan Update](#): Separate student housing from family housing
Student Housing Built Should be West of Campus & Away from Residential Neighborhoods
“Although the 1989 Plan is an update of the previous two efforts, it was developed following an entirely new process and is organized in a new format. The process of preparation included a thorough data collection effort, analysis of the data, development of alternatives and formulation of goals and recommendations.” The scientifically collected survey data indicated that: “Respondents in the survey were mixed about the need for more student housing.... The key to success of this type of student housing development would be its location.... **The development of new student housing would be best directed to the west of the main campus in complexes specifically designed to house students. This would permit student housing to be separated from town resident housing so that lifestyles don’t directly conflict.**” (Emphasis added.) (Note: Mill Plaza is directly east of Campus, and abuts Durham’s largest single-family neighborhood.) “Protect environmentally sensitive areas in the town, including...stream banks.”

1993—Colonial Durham Associates buys the Mill Plaza property
Tamposi and Lehoullier sold the Mill Plaza **land** to John Pinto of Colonial Durham Associates, NYC. (The buildings had been sold to Mr. Pinto ten years prior.)

1995—[Community Development Plan](#) – Plaza/Main St connection needed
Plans for a Needed Redevelopment of Mill Plaza Must Grow Organically from the Community
“Successful community development is *organic and locally based*.... [Stemming from] strong and active citizen participation.... The solutions...must make sense for the community.... which community members have chosen and have ownership in. Create a plan for an identifiable physical center for the community (e.g., a Town common).... [I]deas that...link the Plaza with Main Street should be pursued vigorously.” Architect Walter Rous submitted one such link plan. No suggestions for housing in the Plaza are made.

2000 [Master Plan](#): Protect downtown greenways & wetland buffers in Plaza & beyond

"Create an urban service area greenway system that is based upon the major streams and rivers within the core.... **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....** Chesley Drive should specifically be **excluded** from evaluation as an option for improved [vehicular] access to Mill Plaza. 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." (Emphasis added.)

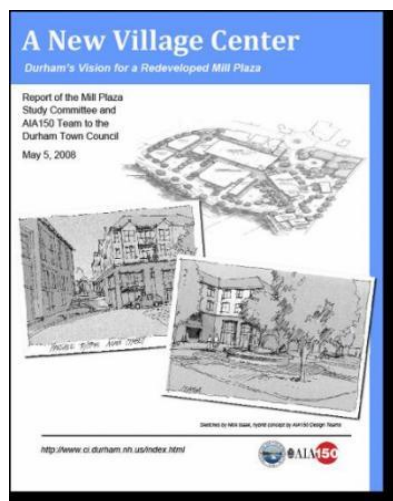
2001—[Todd Selig](#) assumes the position of [Administrator](#) of the Town of Durham

Sept 2002—Mill Plaza bulldozes Southeastern rear hillside buffer without a permit

The Plaza manager, Dave Garvey, threatens residents with arrest for taking pictures of the bulldozing, which he claims is permitted by a 1970s site plan. The Town issues a stop-work order. CDA's retroactive application for the September bulldozing is denied in October. (The hillside has not been restored as of early-2022, and increased downstream flooding, silting, and erosion continues unabated.)

2006—CDA Durham should "[Develop Its Vision for the Future](#)"; Mill Plaza Study Cmte Formed

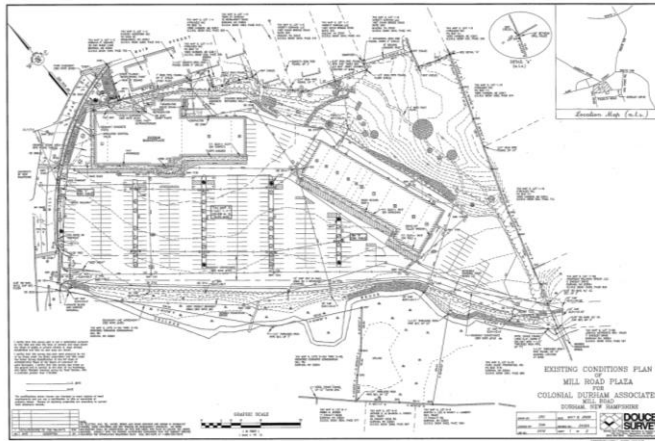
2008—[Mill Plaza Study Committee Report](#) Calls for a "Durham Village Center"



A major 18-month collaborative effort of stakeholders and the American Institute of Architects urges: "A redeveloped Plaza property should serve as a 'Village Center' that stands as an example for future downtown development and provides residents a 'sense of place.'" Develop "year-round community space – indoor and outdoor areas where people linger to meet and talk to their friends, shop, and enjoy all of the seasons." A Plaza of enhanced commercial and aesthetic value would feature "an expanded grocery store, retail shops, offices" and "gathering space (such as a village green...), with any housing "distant from current residential neighborhoods." College Brook should be protected and restored. Create "a brookside park for walking, biking, and other activities" with "curves and other features to appear more natural." The process wins the "Plan of the Year Award" from the NH Planners

Association. But CDA walks away from this major effort at its conclusion.

2008—Doucet Survey of Mill Plaza shows “Existing Condiions”



May 2009—Mill Plaza again tries to expand parking in the rear Wetland Buffer

Falsely claiming need for more customer spots at rear, the Mill Plaza again tries to add parking where it had, without any authorization, bulldozed the hillside buffer with the neighborhood in 2002. Among the many opposing resident letters and comments, over 300 Durham residents from 70 different streets throughout the Town sign a petition ([text](#)) to protect the College Brook Greenway from further incursion. After *six months of meetings*, the Planning Board issues a “[Notice of Denial](#)” based in part on the Town Attorney’s (Walter Mitchell’s) ruling that the Plaza site has long been out of compliance due to an unlicensed side business of renting parking spots, which “must cease.” Additionally, the Plaza had not reversed the 2002 damage, and was trying to encroach further into the wetland buffer with the neighborhood. (As of early 2022, the area is not restored and rental parking has increased.) See details [here](#).

2011-2013—Durham approves the addition of almost 2,000 new student beds in town

The “bed-boom” results from 2008 zoning shifts to encourage more ground-floor commercial space below upper floors of cash-cow student housing. (In April 2020, Planner Behrendt writes to PB in [Student Housing – New Projects Since 2008](#), posted at [Other Planning Information](#), that more than 2,430 new “occupants in student housing” were added since 2008).

2013—Planning Board & Council vote to make CBD “mixed use” subject to “Conditional Use”

Broad concerns among residents about the changing character of downtown and about potential student housing glut lead Council and Planning Board to make CBD housing by [Conditional Use](#) (CU) only, with limits including: *“The external impacts of the proposed use on abutting properties and the neighborhood shall be no greater than the impacts of adjacent existing uses or other uses permitted in the zone. This shall include, but not be limited to, traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare.”* Any CU permits are to result in a “positive economic, fiscal, public safety, environmental, aesthetic, and social impact on the town” with, per the Ordinance, public input and the objectives of the Master Plan being key factors in determining a match with Conditional-Use criteria. On Nov 13, Planner Michael Behrendt indicates that making Mixed-Use allowed by Conditional Use “would allow the Planning Board a fair amount of judgment in terms of allowing student housing as part of mixed-use applications” ([minutes](#), p. 7). And, as acting PB Chair Richard Kelley said at the same meeting: “the conditional use process allowed the Planning Board to provide more influence and authority in regard to an application” (p. 8). **[NOTE: This Zoning**

change predated any indication of the subsequent CDA plans for Plaza redevelopment. Moreover, applying Conditional-Use Zoning to the CBD played no role in the legal tensions that began a year later or in the Dec 2015 Settlement, under which all regular Zoning, other than density per unrelated occupant – including Conditional-Use Zoning – is to apply.]

Sept 4, 2014—CDA previews Plaza plan for Planner, Econ. Dev. Dir. & Town Admin

CDA representatives met with Town Planner Michael Behrendt, Administrator Todd Selig, and Economic Development Coordinator Mary Ellen Humphrey to discuss Plaza redevelopment plans. Per a subsequent CDA lawsuit against Durham, Town officials “had strongly encouraged” CDA to “engage in public disclosure, conceptual consultations, and charrette-style planning discussions.” As CDA’s lawsuit later summarized: “At the September 4th Meeting, Petitioner’s [CDA’s] representatives disclosed the proposed plan for the Mill Plaza, which then mixed 120 residential apartments with substantial retail and commercial redevelopment, among other environmental and aesthetic enhancement and features. The residential apartment were not proposed with any age, family or other tenant restrictions, but were likely to appeal to young adults, university students, and unrelated households, such as young unmarried couples” [[Summons](#), pp. 5-7].

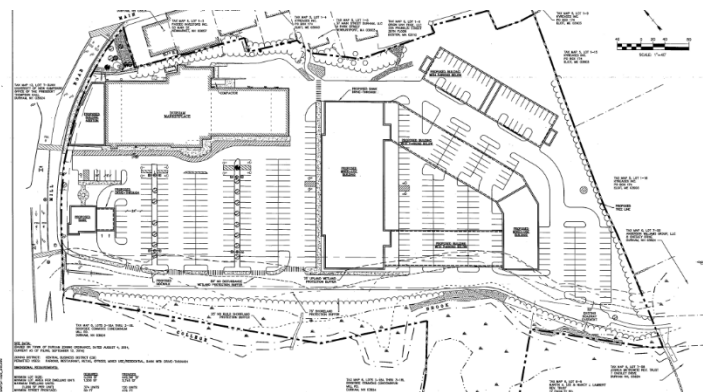
Sept 8, 2014—Town Admin Informs Council of CDA student-housing plan, despite glut

Per the meeting [minutes](#) (pp. 20-21), Todd Selig “noted that the Mill Plaza owner was asked if he was aware of the housing analysis that indicated that Durham appeared to be at capacity in terms of student housing. He said the owner said Mill Plaza had a good location for the student housing so perhaps beds elsewhere might not be filled.... He said Mr. Behrendt told the Mill Plaza people that the community would likely look negatively on this much additional housing, and encouraged them to look at the housing studies that had been done.” (See [video](#), 11:29-11:47pm.)

Sept 10, 2014—PB proposes 600sf per unrelated occupants for downtown apartments

A proposed change at 10:36pm during “Other Business” ([minutes](#), p. 19, [video](#)) would double minimum square-footage per unrelated occupant. [With its final approval by the Council later in 2014, the 600sf ordinance became effective as of the September proposal date. But since the proposal was initiated after CDA had alerted Town officials to Plaza redevelopment plans, the Town Planner’s decision to make it applicable to CDA site plans leads first to a local ZBA appeal, which is denied, and then to a CDA Superior Court lawsuit against Durham.]

Sept 12, 2014—Mill Plaza Submits [Redevelopment Plan #1](#), based on 300sf per person



The plan shows a new 4-story building wedged between the Bakery Café and Mill Road, taking away the only shade area. The grocery/pharmacy building is unchanged; the rear building is to be torn down. Buildings/roads/parking infringe on wetland setback. Space for 480 “beds,” which CDA claims are “market-rate” apartments, not necessarily for students. [Planner’s Rev 10-8-14](#) & [Planner’s Rev 10-22-14](#).

Sept 17, 2014—Master Plan Advisory Cmte (MPAC) to PB: Need for downtown Senior housing

“Aging of baby boomers...to result in a doubling of the senior population by 2030.... Seniors choose to age in place – only 3% of NH seniors move annually to other states.... Downsizing seniors are searching for housing in downtown areas and want close proximity to these vital services.” The MPAC warns of a looming “New Hampshire ‘silver tsunami.’” ([minutes](#); [video](#))

Oct 8, 2014, Public Hearing at PB on proposed change in habitable floor area per resident

Two people spoke in opposition of the Zoning change: Ashlee Iber Amenti, Executive Director of the Workforce Housing Coalition of the Greater Seacoast, and Lucy Gardner, Durham Point Road. Beth Olshansky, Annmarie Harris, Peter Andersen, and Joshua Meyrowitz, all spoke in favor of the Amendment. The themes covered included the coming “demographic bubble” in housing needs for seniors who wanted to downsize and be downtown; UNH’s enrollment trends suggested no need for additional student housing, particularly now that almost 2,400 new student beds has already been built in town since 2008; and the wisdom of having a variety of apartment sizes in town (with many small apartments already recently built).

The longest comment was by James Lawson of Deer Meadow Road, who gave a verbatim statement, reproduced in full in the minutes, urging the passing of the habitable space amendment. Short excerpt: “RSA 672...allows municipalities to use zoning to meet the demands of an evolving and growing community with regulations intended to enhance public health, safety and general welfare. Durham is a community of 7,000 permanent residents and we have finite resources, including our police and fire services, that are delivered at a very high cost compared to other communities. The core area of the downtown places a disproportionate demand on these services. For example, nearly 40% of emergency fire and rescue calls in Durham (off the UNH Campus) during 2011 were to the downtown areas with housing attractive to only students. Nearly 50% of non-emergency calls were to this area. Durham police arrests are 5-10 times greater when UNH is in session compared to January and June when the UNH is out of session. Data collected and distributed by the town planner clearly shows that the supply of student housing is aligned with demand, and now is the time to align our zoning so that multiunit housing addresses a broader market with less impact to our public safety and other services. This amendment starts that process. I urge you to move forward with it.”

The Amendment passed by a vote of 6-2. ([Minutes](#); see 00:9:35 to 00:57:23 in [video](#). The Zoning Ordinance approved at this meeting is posted [here](#).) On Dec 14, 2014, the Town Council adopted the Ordinance. 9-0. It was effective retroactive to the date it was first proposed: Sept10, 2014.

Oct 22, 2014 – 154 residents submit 5 key features for a Mill Plaza plan they could support

1. Community Space, 2. Real “mixed use” (mixed commercial activity, flexible civic space, and housing for families, workers, seniors, low-income residents, etc.); 3) Connectivity to Main St and enhanced pedestrian and bike paths along the brook with linkages to residential neighborhoods and UNH; 4) De-emphasized parking lot; 5) a protected and enhanced College Brook.

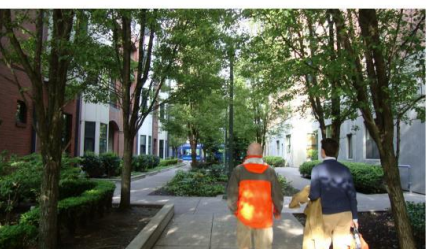
Jan 8, 2015—Plaza Submits [Redevelopment Plan #2, 300sf per Occupant](#)



Proposed “Durham Village Center” would have cars entering plaza along the rear of new 3-story building largely in wetland buffer, blocking lanes of access to, and view of, the unchanged grocery/pharmacy. A building extension is wedged between Bakery Café and Mill Rd (a 4-story, 36-40 room, boutique hotel with valet parking!). 442 “beds”; number of parking spaces halved. [Planner's Rev 4-8-15](#) & [Planner's Rev 6-24-15](#) (review later tabled during appeals).

Jan 14, 2015—CDA wows residents with “inspiration” images

CDA Architect Lisa DeStefano promises there will not be pavement closer to College Brook than exists now (42:31). She notes that the proposed 4-story buildings are “really 3-story buildings with a fourth floor tucked under the roof” (43:13). Saying “now some of the fun,” she impresses residents with “Inspiration” photos & images that will drive design of the plan (samples below). ([Mins](#); [Video](#).)



But virtually no features like these have appeared in any actually submitted CDA plans.

January, March, April 2015—ZBA denies various Plaza appeals

ZBA denies Plaza appeal to be allowed to build “dormitories” (at 100sf/occupant); ZBA denies use of “gross sf” (e.g., closets, hallways, etc.) vs. “habitable space” as per-occupant space; ZBA denies [appeal](#) for relief from 600sf per occupant ordinance, but tables CDA’s request to build more stories of student housing than permitted (including 4-story, housing-only building.) (See HIST, pp. 96-112 for details. Note that the Town changed all the video links since that document was compiled.)

April 2015—Colonial Durham [Files Suit](#) vs. Durham over 600sf/Occupant vs. 300sf/Occupant

June 24, 2015—[Notice of Tabling of Mill Plaza Review](#)

Excerpt: “1) The public hearing is closed. 2) The applicant may submit a request that the application be brought back to the Planning Board to continue the design review at any time up to 30 days after the exhaustion of all appeals by the applicant (including appeals to the ZBA or court). If the applicant has not made such a request by this deadline or if the application is not otherwise extended by the Planning Board, then the design review application will automatically end/be closed 30 days after the exhaustion of all appeals by the applicant (including appeals to the ZBA or court).”

Sept 2015—Hannaford “Opening”: Aisles widened, stock reduced, ice cream stand closed

Initial excitement over Hannaford’s promised expansion of organic and other fine foods fades when residents see that, with the widening of the aisles and other changes, the store has dramatically reduced the type of foods that drew full-time Town residents to the Durham Marketplace. A dramatic cycle of decline begins: residents more frequently shop elsewhere, and the store caters less and less to full-time residents, while the shelves of junk food expand. And when the students are away during UNH breaks, the store is almost empty, often with more staff on hand than customers.

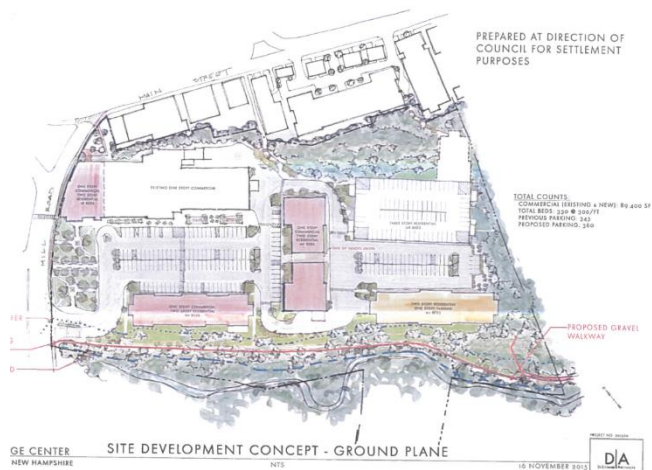
[2015 Master Plan](#) identifies Mill Plaza as high-priority for attractive redevelopment

“Encourage [Plaza] enhancements... through application of the architectural standards, better landscaping in the parking areas and enhancements of the green space and other open space.... Improve the physical and visual linkage of Mill Plaza with Main Street.... Ensure safe, convenient and welcoming crosswalks, sidewalks, alleyways and paths for non-vehicular traffic.”

[2015 Master Plan](#) – Focus Economic Development *Beyond* Student Housing

“[T]here are concerns that the downtown area will become even more student-oriented, and that the larger buildings detract from the town’s traditional small-town feel. **Because the town is reaching a saturation point of student housing, further student housing development could cease to be a strong economic engine for the town.... Durham needs to carefully monitor housing projects to identify options that ensure the quality and attractiveness to broader markets beyond student housing....** [T]he focus for economic development should shift away from the dominance of student housing toward attracting a broader array of new businesses and professionals to the town...diversifying our economic base away from academia....” “[C]arefully monitor housing projects to identify options...to broader markets beyond student housing....”

Dec 14, 2015—A [Legal Settlement](#) between CDA & Durham is reached



The Plaza is allowed to build *up to* 330 beds at only 300sf/occupant. The beds are to be placed mostly on the Northern half of the property (Hannaford is at Northern tip, but CDA/Town officials claim “intent” was toward Main St.) “to the extent practicable.” A 75ft Wetland buffer is to be restored & maintained by CDA. Non-residential commercial space, exclusive of parking, is to be increased to at least 80,000 to 90,000 sf. There is to be a ground-floor connector through Building B to enhance pedestrian travel, as shown on the accompanying “Site Development Concept” diagram, which also shows a **green**

wetland buffer and what appears to be smooth path to Main St. [not the switchback staircase CDA later proposed]. Beyond that, the site plan is to be “subject to normal planning board review,” including analysis of the fiscal-impact on the Town and reviews by the Conservation Commission and Technical Review Group. All zoning ordinances and regulations are to be followed, including Conditional-Use criteria, Site-Plan Regulations, and Architectural Design Standards. A key clause of the Agreement (which seems crystal clear, but subsequently becomes the focus on controversy and disagreement, is 1d) “The Revised [Mill Plaza] 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.”

Jan 20-21, 2016—CDA Plaza Redevelopment [Site Plan #3](#) + [Renderings](#) submitted



4 new buildings, including a proposed 2-story commercial building adjacent to Mill Road that would destroy the one existing green space with its five picnic tables and five mature trees. The oldest building is to be otherwise left as is. Again, the current rear building is to be demolished. Among other new structures proposed, there is a 3-story building blocking the car-access aisles to (and view of) the grocery and pharmacy stores. Two new buildings have garage parking on 1st/2nd floors. [Planner's Rev 1-27-16](#) & [Planner's Rev 2-10-16](#).

January 27, 2016—Town Attorney Summarizes the Settlement for the Planning Board ([video](#))

Paraphrasing the key Settlement clause 1d), Attorney Spector-Morgan says: “All of the buildings and the roads will be outside the shoreland and wetland buffers, so that no variances are required for those.” A key question asked was: “Is the Planning Board under any obligation to waive any requirements under this Settlement Agreement, any existing requirements in our zoning?” Attorney Spector-Morgan replied: “The Planning Board can’t waive zoning requirements.” (Full, unedited Attorney presentation and Q&A [transcript](#).) See also: [Settlement highlights](#).

Jan 27, 2016—CDA promises reduction in impervious area, attention to flooding

Per the [minutes](#): “Mr. Behrendt said he’d been told about flooding east of the site in the Chesley Drive area, which had been aggravated due to some development on the Mill Plaza site...years ago. He asked if as part of the drainage analysis, there was a chance to mitigate some of the runoff issues. Mr. Persechino said there would be a reduction in impervious area with this project, which would reduce runoff. He also said he would look at what Mr. Behrendt had described.” [Per the 3rd party stormwater reviewer CDA misinformed her in 2020 that College Brook does not overflow its banks. See Janet Bernardo, Horsley Witten, CDA Stormwater Plan Reviewer Planning Board Meeting, May 27, 2020, 9:25:30 pm, [video](#). Moreover, all CDA final application plans have had an *increase* in impervious area on the site overall, though the increase is smallest in the site plans before the Board in early 2022. CDA has repeatedly carefully crafted its comments by referring to a reduction in impervious *in the wetland buffer*, rather than on the site overall. See also YouTube Channel, [College Brook Flooding](#).]

Feb 2, 2016—Technical Review Group (TRG) on Hannaford, snow, etc.

Per the [minutes](#): “Mary Ellen Humphrey: She suggested that the Hannaford store be relocated to Building B at the southerly end. Then there could be a new building there with 2 or 3 stories. Sean McCauley said that Hannaford controls their space but they will see.... Audrey Cline: The Hannaford building is key. Every effort should be made to relocate it so the present building can be redeveloped. There are lots of reasons that Hannaford might want to move.... Mike Lynch: Excess snow will need to be removed from the site. You can only take it to NHDES permitted sites. You cannot take it to the Town’s DPW site.”

Feb 10, 2016—Planner’s Review: 3-D Model, Hannaford relocation, snow rules, & more

“Model. Will a three-dimensional model be desired? Robin Mower suggests including ‘representative human figures as well as topography and abutting structures, e.g., Pauly’s Pockets, the Grange, and Orion properties; the College Brook, Chesley Drive.’ It would be helpful to have the items above as part of design review, though a model, if desired, could be submitted as part of the formal review....

Hannaford Building height. Every effort should be made to add at least one story onto the existing Hannaford Building (or better yet to demolish it.... It would be a real lost opportunity if the existing Hannaford Building were to remain and remain as a 1-story building.... This would allow for replacement of the old Hannaford Building with a new multistory structure and provide Hannaford with a new space and better visibility for vehicles entering from Main Street. I think this is a very good idea worth exploring. If the Hannaford Building is demolished a new 3 or 4-story building could be erected, and more apartments could be placed there, away from Faculty Road....

Senior housing. It would be desirable to include some senior (elderly) housing. The upper floors of Building B would seem a natural place for senior housing. We ask that the applicant explore this possibility....

Brook restoration. It would be desirable to restore the brook as appropriate, including the riparian buffer along the brook. Madbury Commons restored the brook adjacent to its project adding significant value to the development. It appears that more than half of the brook is situated on two abutting lots. However, it has been noted that Mill Plaza has deposited large amounts of snow along the brook historically (I forwarded photos sent to me). What responsibility does Mill Plaza have now for restoration of the brook and the adjacent greenway?...

Wetland and shoreland. The precise wetland and brook and buffer locations will need to be delineated by a wetland scientist on the formal plans....

College Brook. As part of the stormwater management plan both the quantity of stormwater and the quality should be evaluated, including potential pollutants, sedimentation, and nutrient loading....

Flooding. Josh Meyrowitz provided a video which I forwarded, showing significant flooding on land just south of Mill Plaza. Mr. Meyrowitz believes this was caused/exacerbated by some changes to the Mill Plaza site in recent years. I would encourage the design engineer to take a look at this situation....

Snow storage. Certainly, handling snow will be a challenge. It should not be stored next to College Brook, since the sand or salt could get into the brook and the snow storage could damage vegetation. Snow cannot be stored (i.e. the 'dumping of snow') within 75 feet of College Brook per the Shoreland Overlay District.... In the past, Mill Plaza has placed a great deal of snow along the brook. Mike Lynch suggested looking into acquiring snow melting equipment. He said there are various technologies including portable and pad mounted equipment. He noted that snow can be dumped off site only at NHDES permitted sites. The snow dump at Durham DPW is for use only by DPW. When snow needs to be removed from the site arrangements should be made for daytime removal so that trucks with back up beepers do not disturb residents....

Bathroom access. Audrey Cline noted, 'Every successful public use area has access to clean safe bathrooms. Durham needs to address this issue.'

May 25, 2016—CDA Submits [Redevelopment Site Plan #4](#)



CDA submits a plan it claims reflects community input, but as reported to the Planning Board by the residents who attended the meeting with CDA, their actual input has been ignored and misrepresented by CDA (see resident letter, [June 8, 2016](#)). Again, the one green area in the Plaza, with picnic tables and mature trees, is to be filled in with a building (2-story commercial). And a massive 5-story structure (4 stories housing over parking) is shown along the southeast, rear buffer, with landscaped party decks aimed into the adjacent neighborhood. Hannaford & Rite Aid are to remain as they are on Northern tip of the site. [Planner's Review 6-8-16](#).

May 31, 2016—TRG Meeting: Show Hannaford Plan?

Per [minutes](#): [Economic Development Director] Mary Ellen [Humphrey] asked if it was important to show Hannaford the prospective plans. She said she got the sense this is not happening. This is important to the town.... [Town Engineer April Talon] asked about brook restoration and said UNH is doing some restoration upstream. Ari Pollack said this would be fine with the developer. April said there has been flooding on Chesley Drive.... [Zoning Administrator] Audrey [Cline] questioned if they can design parking and have 330 beds without needing a variance. Ari Pollack said they didn't need any variances with their prior plan. Michael [Behrendt] and Audrey said that was not necessarily the case at all." [These minutes were not yet posted on the Design Review site as of Jan 2022.]

June 2016—CDA threatens lawsuit if Town officials speak with Hannaford representatives

CDA continues to keep Hannaford out of public meetings on Mill Plaza redevelopment. When Town officials reach out to Hannaford for a meeting about its future plans, CDA threatens to sue. The Town backs down and cancels the meeting. (Hannaford officials tell residents no explanation was given to

them from the Town for the meeting cancellation.)

June 8, 2016—[Planner's Review](#), plan is non-conforming & problematic in other ways

Excerpt: **Two-story addition** [on Mill Rd end of Hannaford building]. I recommend giving consideration to retaining the existing park located where the two-story addition is shown. The park is well established with mature vegetation and a tree canopy. It is desirable to connect Mill Plaza with Main Street and providing continuous open space from Bicentennial Park to the north through this park will facilitate this. Placing an addition here will almost certainly hinder the 3 connection. Also, this addition (at two stories with minimal setback) may crowd the sidewalk especially since there are two lanes of traffic just beyond the sidewalk and no other buildings on Mill Street to either side. Building frontages along the street are desirable but generally such buildings should feel as though they are placed parallel to, alongside the street, rather than perpendicular. A frontage to the south along Mill Road would be desirable but the applicant does not want to close off the view into the plaza.... **Park along Mill Road.** The illustrative plan submitted with the Settlement Agreement shows a formal park along Mill Road, in front of the parking lot. This should be retained. It will form a pleasant connection with the parks to the north, offer attractive open space, and soften the view toward the extensive asphalt of the parking lot.... **Residential Neighborhood.** A key goal is minimizing and mitigating any potential adverse impacts from the multi-unit housing upon the adjacent residential neighborhoods, including houses located to the east and south of the development. This is an important consideration for the conditional use review.... **Senior Housing.** It would be beneficial to try to find an appropriate location to include senior housing as part of the project. If this could be included at the southerly corner of the site near Chesley Drive it would help to buffer the immediately adjacent neighborhoods.... **Number of stories.** The Central Business District provides that mixed use buildings (with nonresidential on the first floor) are a maximum of 3 stories and that buildings with two floors of nonresidential are a maximum of 4 stories. The proposed building contains 5 stories with 4 floors of residential. The proposed number of stories and uses do not conform with this requirement.”

Oct 2016 & Dec 2016—CDA Submits [Redevelopment Site Plan #5](#) & [updated](#) & [updated further](#)



The solo existing shade area near the Bakery Café is (finally) preserved (and to be extended along Mill Rd with a small retail outbuilding added). The oldest building with Hannaford & Rite Aid is still unchanged, and most of the proposed 2 multi-story housing buildings – one with commercial on ground level and 3 floors of residential and one with commercial on ground level and 4 floors of residential (not allowed by Zoning; would require a variance). 330 beds, with no on-site parking for tenants. (Although CDA claims that the desired tenants are those over 21, they contradict

themselves by explaining that parking is not needed since tenants can park in UNH-student storage lots, and walk from their apartments across the street to campus, not a routine destination for non-students) The plan's [cover memo](#) promises that the **center ramp to Main Street “would be transformed into a combination stairway and handicapped-accessible ramp that would allow this path to become fully accessible, improving the current condition.”** [Planner's Review 10-26-](#)

[16](#). [In August 2021, CDA & PB Chair say that an ADA ramp is impossible.] In a stretch of the Zoning language that refers to non-residential as “office/retail down,” the Planner notes that “The former Zoning Administrator determined that garage parking on the first floor meets this requirement, and that determination still applies.”

Oct 26, 2016—Planner’s Review: needed variances, wider Mill Rd park

The Planner’s Review details the non-conforming aspects of the plan and adds: “**Park along Mill Road**. The park should probably be wider. It appears to be about 45 feet wide. The park is much wider in the rendering that is part of the Settlement Agreement.... **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 and Site Plan Regulations. Specific plantings need not be provided now but the areas for landscaping should be shown in the design review phase so that we know there is sufficient space for plantings. 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.... **Senior Housing**. As I mentioned above, we would like to see some senior housing incorporated. The upper floor(s) of the middle building would probably be quite desirable for this purpose.... **Brook buffer**. The Settlement Agreement calls for an increased natural buffer along College Brook. The edge of existing pavement should be shown on the plans. The wetland buffer detail shows setbacks. The wetland setback is 75 feet. This should be labeled. The shoreland setback is 25 feet. The line shown does not seem to correspond to the location of the brook.... **Snow storage**. Where will the snow be stored? It should not be along the College Brook buffer. This should be shown as part of the preliminary plan.”

Nov 14, 2016 Site Walk of Plan #5 includes vistas from Chesley Dr & Faculty Rd ([minutes](#))

This hour and 42-min site walk of a “preliminary design” (significantly longer than the 1-hour and 7-min Dec 2020 site walk of a “formal application” yet to come) included such details as walking “the lines of the center building” and viewing “Specific vistas from the center of Chesley Drive and from the vicinity of 15 and 17 Faculty Drive....” (No such vistas were included in the Dec 2020 site walk.) The site walk led to significant discussion on Dec 14, 2016, as noted next.

Dec 14, 2016 – Rasmussen & Council Rep Lawson on abutting neighborhood ([min](#)) ([video](#))

“Mr. Rasmussen....said at the [Nov 14, 2016] site walk, he walked to the end of Chesley Drive and looked at the view scape of Mill Plaza from there, including the skyline. **He said there was very little vegetative buffer between that neighborhood and the Plaza, so the people living there really did feel like the Plaza was in their backyard. He also said looking at the Plaza from the Faculty Neighborhood, what was proposed would match the Orion ridge lines, but would also be 40% closer to the neighborhood so would be impactful**” (pp. 11-12, emphasis added).

“Councilor Lawson said he was convinced that Mill Plaza could be redeveloped in a way that could be approved by the Planning Board and that could be supported by the neighborhood. **He considered whether from a Zoning perspective, Chesley Drive, Brookside Commons and the Faculty development were abutters or the neighborhood. He said he thought they clearly met the criterion of a neighborhood, which meant that there were significantly more criteria that an application would have to meet, concerning how a development would impact the neighborhood.** He said this was going to be very challenging with the current design, and he spoke

further on this. He said even if variances were granted, the Planning Board would still have to look at the Conditional use criteria” (p. 12, emphasis added).

Feb 2017—Admin. Todd Selig initiates Non-Public negotiations w/ CDA on redevelopment

With public input by hundreds of Town residents running about 98-99% against CDA's proposals #1 to #5, and with lack of enthusiastic support among Planning Board members as well, Town Administrator Todd Selig begins non-public negotiations with the developer with the participation of Architect Patricia Sherman, who had participated in the 2008 Mill Plaza Study Committee. There is no resident participation or direct input. (Every prior resident letter and meeting public comment on the Mill Plaza site plans is detailed in the searchable [Mill Plaza History](#) linked at the bottom of the Mill Plaza CUP Application site.)

March 2017—Councilor Lawson submits [Report to Council on Student Housing Over-Supply](#)

Lawson writes: “There is no doubt that the supply of Unrelated Housing in Durham now exceeds the demand based on anecdotal evidence of apartment vacancies and, more importantly, analyses of Unrelated Housing supply and demand that have been publicly available for several years.” Therefore, argues Lawson, new student housing would likely cause vacancies in other student housing or repurposing for non-student housing (e.g., faculty and graduate-student housing), which generates less rent, lowering assessed value of the properties and thus lowering the Town's tax income. Additionally, faculty and graduate-student housing (more likely to include young children) could lead to increased Oyster River Cooperative School District enrollments and further added tax burden for Town residents.

May 12, 2017—Todd Selig Alerts Town Council: “[The Plaza has a good plan to move forward.](#)”

June 9, 2017—CDA Submits [Redevelopment Site Plan #6](#)

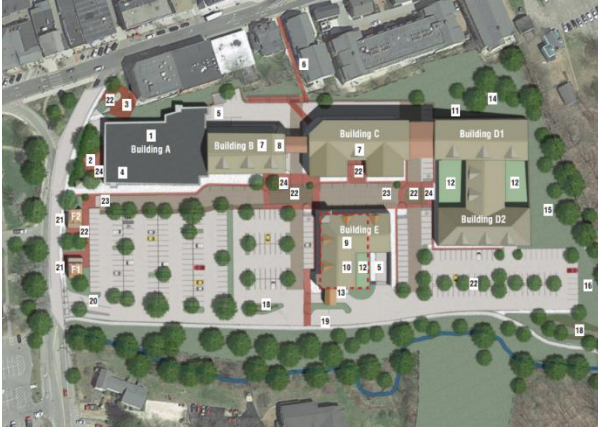
Six months after the public last saw a plan from the Plaza in December 2016, Site Plan #6 is posted on the Town web site late on the Friday before the next week's Planning Board Public Hearing—and without the usual email notice to residents from the Town Planner in what is explained just two days before the public hearing as an email glitch. As Planner Behrendt emailed to Robin Mower, Joshua Meyrowitz, and Todd Selig at 1:14 pm on Monday, June 12, 2017, only two days before the public hearing on a completely new plan: “Yes, I missed numerous residents that I have under my main group list. I just resent the information. Thank you for alerting me to this oversight!” (See fuller email exchange on this “email glitch” [here](#).)

June 14, 2017—Planner's Review

Excerpt: “I saw the plans only on Wednesday in a meeting with the applicant so I am including only basic comments here. The plans will be forwarded to the Technical Review Group on Friday when submitted. **Rite Aid.** The applicant discussed with Rite Aid relocation of the drug store to a new building on site and believes this can be realized. The updated plans show Rite Aid in the new building. This adjustment has allowed for a number of positive changes in the plans, including adding a multi-story, mixed use building where Rite Aid is now located and reducing the highest buildings to 4 stories.... **Administrative meetings.** The applicant postponed the project several times over the past several months to give them time to work on the design and coordinate with Rite Aid about relocating. The applicant met with Todd Selig, Town Administrator, and Mary Ellen Humphrey,

Economic Development Director, on several occasions to discuss potential ways to improve the project. Todd hired architect Patricia Sherman, who worked with the Town on the 2008 Mill Plaza Study, to join these discussions and advise the Town on ways to improve the design. We had a final meeting on Wednesday where the updated plans were submitted. **Note that these were administrative/staff meetings convened by Todd Selig for discussion purposes only.** The updated plans that were developed in the course of those meetings are now presented to the Planning Board and the public for review.” (Emphasis added.)

June 14, 2017—Public Hearing on Mill Plaza Plan #6 ([video](#)) ([minutes](#)) ([CDA PPT](#))



Procedural oddities surrounding site plan #6 continue with the Town Administrator attending the Planning Board meeting (along with the Economic Development Director and an architectural consultant) to introduce and praise the non-public process and the resulting plan. Selig concedes that his speaking to the PB “on behalf of the Town is very unusual: **“I am leading off this presentation, which is very abnormal, but we’ve been over the last six months embarking on a somewhat abnormal process. And so I wanted to just reintroduce this project to the Planning Board.”** Even

with such limited time for the Board and public to assess the new plan, the Board closes the “design review” that night, though with some expressions of doubt about a plan with hundreds of student beds being able to pass Conditional-Use criteria. (More detailed meeting report in [Mill Plaza History](#), pp. 243-254.)

In one good change from earlier plans, Rite Aid would move to a new building near College Brook, which would allow the old Rite Aid to be demolished, with housing above a new retail building at the old Rite Aid spot. Yet this would lead to a 4-story non-compliant building (too many floors of student housing) next to one-story Hannaford, thus requiring a variance. The plan violates the wetland zoning with parking spaces in the buffer. Also, the plan includes a 7-day-a week drive-thru pharmacy near the pedestrian/bike path and College Brook (within view, hearing, and exhaust-smell range of Brookside Commons’ apartments), when drive-thrus are permitted in Durham only for banks.

Contrary to what CDA Attorney Ari Pollack later claims, neither CDA nor Town officials mention at this June 14 meeting that if the drive-thru variance were to be turned down, Rite Aid would not move, thus eliminating the prime good feature of this plan. Also, the impressive [62-slide Harriman PowerPoint](#) does not include any images of the proposed Rite Aid drive-thru. (The PowerPoint also uses “wide-angle” projections to convey spaciousness on what would be a densely packed site, and it distorts distances from abutters by illustrating building distance to the vehicular parts of Chesley Drive, rather than to the College Brook Footbridge and foot/bike path along the Chesley Marsh, and it lists distances to Faculty Rd (the street), rather than to the adjacent Brookside Commons or the rear of Faculty Rd homes. See slide 43.) Moreover, even with this “better” plan, there would be no place for a larger grocery store for the foreseeable future, spurring residents to petition Hannaford.

July 2017—100s of Durham residents [Petition](#) Hannaford to move to new, larger store in Plaza

Hannaford is urged to move to another spot on site for an improved store, which would also mean that any student housing could be located on the North of the Plaza (Hannaford building is at Northern tip), per the 2015 Settlement, and in better match to Conditional Use criteria (less negative impact on adjacent neighborhood with the student housing as close to UNH as possible). Over 360 signatures are collected quickly, representing 230 households and estimated 675 or more mouths to feed, and others continue to sign after the petition is mailed to Hannaford. But neither CDA nor Hannaford give signs of a potential move. [Over time, Hannaford intensifies its beer and chips offerings at the expense of the specialty foods that the Durham Marketplace offered. It also closes its full-service meat and fish counters.]

Aug 8, 2017—ZBA Rejects CDA variance requests (drive-thru Rx & excess housing levels)

There was extensive public input ([agenda](#); [minutes](#)) on Aug 8. Both variance requests were denied. On Sept 12, 2017 ([agenda](#); [minutes](#)), the deliberations were suspended pending Counsel review. On Oct 10, 2017, the ZBA met with the Town Attorney at 6pm in a non-public meeting. Then the public ZBA deliberations resumed ([agenda](#); [minutes](#)). A CDA appeal for the drive-thru was rejected by the ZBA. An appeal for rehearing on the building heights was granted on the same night. But CDA withdrew its appeal. See [Drive-Thru Variance Request & Request for Rehearing](#); [Building Height Variance Request & Request for Rehearing](#), and [Citizen Comments on Mill Plaza Variance Applications](#). (Videos of these meetings are not available online.)

Nov 8, 2017—CDA applies for “Conceptual Consultation”

Five and a half months after the closing of Design Review, CDA makes the unusual request for a “[Conceptual Consultation](#).” The CDA [application](#) notes “This conceptual consultation is paired with, and part of, a request for extension of the design review vesting clock....”

That the PB would consider, rather than immediately reject, an extension that appears to be a violation of state law, leads one resident to solicit the input of a land-use attorney, who submits [Attorney Mark Puffer letter](#) to Michael Behrendt and the Town Attorney on November 28, 2017. And this extension may be one of the topics that the Board discussed in a non-public “consultation with legal counsel” that started at 6pm on Nov 29. At the start of the Nov 29 public meeting at about 7:09 pm, the PB Chair says “the Board will not be taking action on the extension this evening.” Attorney Puffer’s letter is neither posted nor publicly discussed by the Planning Board, but the extension is ultimately not granted. [When queried in Jan 2022 about why the attorney letter was never publicly disclosed or posted, Planner Behrendt first claims he never received such a letter, but then indicates he remembers it when a copy of the email from the law firm is forwarded to him.]

Nov 29, 2017—CDA [Site Plan #7](#): Housing complex pushed against the Neighborhood



With Plan #7, CDA seems to be following through on an implicit threat to submit a “no-variance-needed *something*” that no one will like if their variances for Plan #6 were turned down (which they were). Plan #7 proposes four student housing buildings right on the site boundary with the neighborhood, leaving the front part of the Plaza, with the oldest one-story building, virtually unchanged. **(Again, in one positive element, what appears to be an ADA-compliant path to Main St is pictured on the plan.)**

On Nov 29, 2017, the Planning Board is surprisingly quiet in the presence of CDA regarding the ways in which Plan #7 seems to violate site-plan regulations, conditional-use criteria, the Settlement, any sound planning logic. Residents who attended the Planning Board meeting (where they were not allowed to speak) were stunned by the brevity of the Planning Board’s “consultation” and its largely uncritical nature. The “consultation” appeared to be over, in barely more than 30 minutes in total (CDA’s presentation and the Board’s questions, and discussion). With the “consultation” over, the applicant and most of the residents left, assuming the discussion of the Plaza was over for that night.

But late in the meeting, in “Other Business,” with almost no one in the room, the Board starts to grapple with ways to improve the plan. Town Planner Michael Behrendt says to the Board: **“You pay me to be your professional planner, and I’d be remiss if I didn’t tell you this: If this ever got built, that would be a terrible thing. I’m telling you that frankly.... If this ever got built, I would be embarrassed. And I would be ashamed that it happened on my watch.”** (Emphasis added.) Also, Planning Board alternate Carden Welsh urgently presses for trying to get a better plan because this “is just horrible.... You got all these vacant parking spots in the back that no one’s using, pretending that it’s helping our commercial development, when it’s not; it’s wasted space and wasted money. You’ve got a big student housing development right where we didn’t want it. And then you have a front Plaza that’s not much better than what it is now.” ([video](#); [minutes](#); [Citizen Comments](#) on Conceptual design.)

Nov 29, 2017—Town Attorney reportedly cautions PB on strict adherence to CU Zoning

A “leak” late in the same meeting may explain the limited critical Board comments to CDA about Plan #7 in terms of violation of Durham’s Conditional Use Permit criteria. From the video (unmentioned in the minutes): Planning Board Chair, Paul Rasmussen: “Michael [Behrendt], I’m going to task you with a small action. Please speak with Ms. Spector, about which of those conditional use things specifically are a potential issue.... She made that comment that we might have overstepped our bounds on some of the conditional use designations.” James Lawson (Council Rep to Planning Board): “This is NOT a conversation to be having. That was between us and an attorney. We do not want to have that conversation here!” (The sense that the Town Attorney advised the Board not to apply Conditional Use criteria strictly led residents ultimately to see legal advice on the application of Conditional Use, which resulted in: [Letter from BCM Environmental and Land Law 6-21-18](#).)

Dec 1, 2017—Selig removes Behrendt from oversight of Plaza project for criticism of Plan #7

Town Administrator Todd Selig sent an email to Planner Michael Behrendt, stating that as a result of comments that Behrendt made about the deficiencies of Plan #7 at the PB and in a newspaper article Selig was formally removing him from oversight of the CDA redevelopment application, silencing him regarding the Plaza, and finding a “contract planner” to help the Planning Board in “moving forward with this project.”

Dec 8, 2017—CDA asks Carden Welsh to recuse himself for criticizing Plan #7

CDA Attorney Ari Pollack writes to Durham Town Attorney: “I am asking that Carden Welsh, Council alternate to the Planning Board, be disqualified from further participation in the Mill Plaza redevelopment application. This disqualification would be comprehensive in that Mr. Welsh would neither sit on the application, deliberate or cast any vote. This request relates to Mr. Welsh’s public comments towards the end of the prior (11/29/17) Planning Board meeting, wherein he referred to the current Mill Plaza preliminary concept as “horrible”, a waste of resources and something the Town would be “stuck with” for the next 50 years.... Mr. Welsh’s comments exposed an innate bias against the plan and an unwillingness to allow the planning process to evolve towards a final application.” See HIST, p. 305. [In May 2018, Mr. Welsh *declines* to recuse himself.]

Dec 2017—[Rick Taintor](#) (former Portsmouth Planner) hired as “Contract Planner”

“The Consultant will provide the Durham Planning Board with professional planning services including but not limited to review of documents and plans, attendance at Planning Board meetings, and preparation of memos and reports. As determined appropriate in consultation with the Town Administrator, the Consultant may meet with representatives of the Mill Plaza development team, representatives of neighbors to the Plaza and other stakeholders; and with Town staff.” Mr. Taintor is to be compensated at \$125/hour, including travel time from Newburyport, MA. Rick Taintor soon discusses a possible zoning amendment to allow CDA more site-design flexibility, but the effort fails.

Jan 2018—UNH terminates contracts for 18 full-time faculty, [citing](#) declining enrollments

Feb 4, 2018: [Boston Globe Reports](#) on Enrollment Challenges for New England Colleges

Feb 22, 2018—“[Outgoing Pres Looks at UNH’s Successes, Challenges](#)”; enrollments to crash

President Mark Huddleston: “Not only is the number of prospective students in our pipeline shrinking, but the number – and variety – of institutions competing for those dwindling few are expanding.” (UNH state funding is lowest in nation.) ([Full speech text.](#))

Feb 25, 2018—[Chronicle of Higher Ed](#): New England Colleges soon to hit “Enrollment Cliff”

“[A] 13-percent drop in the birth rate nationwide that will hit higher education in 2026, according to Nathan D. Grawe, a professor of economics at Carleton College and the author of a new book.... Grawe’s research indicates that Maine, New Hampshire, and Vermont could lose as much as 23 percent of their likely college-goers by 2029. ‘New England is looking at a steady trickle downward for the next five or so years, and then they hit a cliff,’ Grawe says.”

Feb & March 2018—Contract Planner negotiates with CDA about possible loosened zoning

Rick Taintor negotiates with Colonial Durham Associates concerning a possible zoning change that would give CDA more flexibility in its designs. In a March 2, 2018, email to the CDA design team, for example, Taintor noted that since recent zoning amendments have set a strict three-story height limit for most of the Central Business District lots that front on Main Street or Madbury Road, it would become easier to draft an amendment with applicability to the Plaza (which does not front on those streets). The idea was not acted on, however, as explained on pp. 312-313 of *Mill Plaza History*.

April 17, 2018—TRG Group on preview of Mill Plaza Plan #8

Town Engineer April Talon (per [minutes](#)): “College Brook is impaired for chloride. Under the MS4 stormwater program, the Town will do pre-construction and postconstruction water quality testing downstream of this site. Will be looking for significant improvements. UNH has done a restoration project on upstream portions of College Brook. Consider contributing to a downstream extension of this project?” [Videorecordings of TRG meeting began, at residents’ requests, three months later.]

May 3, 2018—Rick Taintor sends [introductory memo](#) to the Planning Board

“I have requested to appear before the Planning Board at its May 9 meeting in order to introduce myself to the Board and to discuss the procedure for accepting and considering the applications of Colonial Durham Associates relating to the proposed redevelopment of Mill Plaza.... I have requested a more detailed listing of items that the applicant intends to submit at each stage and will provide it at the Planning Board meeting if available. Finally, please note that the Site Plan Regulations provide that “the Planning Board may require the applicant to pay for a run on the Durham Traffic Model to determine likely impacts.” The applicant is aware of this provision and is coordinating with the Town and RSG, the engineering firm that maintains the traffic model.” [On Jan 27, 2021, at a “Public Hearing” where the public was not allowed to be heard until after deliberations and voting on traffic issues, the Board voted to undo an interim vote to require a run of the traffic model.]

May 9, 2018—Mill Plaza History book handed out, Welsh declines to recuse, Taintor intro

Per the [minutes](#) (10:51-15:39 in [video](#)): “Joshua Meyrowitz, Chesley Drive, noted that Rick Taintor, the planning consultant who would be working with the Planning Board concerning the Mill Plaza project, had missed a lot of the meetings that had been held over the years in regard to Mill Plaza, including the meetings over the past few years. He noted that there had been a lot of controversy over a potential development there, and said as a researcher and writer, he’d decided to assemble factual highlights from thousands of documents related to Mill Plaza from the 1960’s on. He spoke in some detail about what he’d compiled, and explained that he’d treated it essentially like a trial transcript and had included everything so as not to be appear to be biased. He said doing this changed the story, when one could see the input from residents, and said context and history were important. He said many long-term Durham residents said the decision on the redevelopment of Mill Plaza was as important as the Onassis oil refinery issue was in the 1970’s.” Bound copies of Mill Plaza History, 1967-2018 are handed out for each member of the Board and for Rick Taintor (who arrived later). [A searchable [digital version](#) was later posted on the Mill Plaza review site. The video links in the history stopped working when the Town switched over to a new video system.]

“Councilor Welsh said he’d written something concerning the request that he recuse himself from sitting on the Board for the Mill Plaza redevelopment application. He read the entire letter into the

public record, and then said he hoped that as a resident and a member of the Planning Board, he could help the applicant work toward a solution that was positive for the Town and the applicant over the long term.”

“Mr. Taintor introduced himself and spoke about his professional experience as a planner. He noted that all of this experience had been on behalf of towns and cities. He then spoke about the learning curve involved for him concerning the Town, and also said Mill Plaza would be one of the major projects he’d be working on in the coming months.”

Starting at about two hours into the meeting, Board member Lorne Parnell raised some concerns: “I’m a little surprised this Fiscal Impact Study is going to be given to us on May 23 [2018], when we haven’t yet seen the project itself; there hasn’t been an application yet. How did this study, uh-. **In the past, these studies have been initiated by the Planning Board. The Planning Board had given the terms of reference of what we expected from these studies and then the applicant hired a consultant and produced the study. I think in this particular case, for example, there are some other fiscal impacts, which certainly I would like to see some information on.** Um, but, I, I, to decide at this point what information we want from a fiscal impact study before we’ve even seen the project, I think, is a bit, putting the cart before the horse. I’m just wondering how this happened. How we got into this situation, where we’re getting the fiscal impact study bef-, at the same time we see the project?”

Rick Taintor: “Well, I guess, you certainly could ask for it to be postponed, I guess, if that’s what you wanted to do. The applicant has proposed that they would submit, not on the 23rd, but by-“ **Parnell:** “Proposed to *whom*?” **Taintor:** “Proposed, I guess, to me. I mean it’s the same thing with the, they would, they are also taking about doing the stormwater management plan at the same time, so, a lot-. A Fiscal Impact Study is not, they’re pretty standard, they’re not-.” **Parnell:** “I realize that they are for most projects, but **this is not a standard project. We have issues concerning market, impact on markets, impact on values of properties. These sort of things that will have a part of the fiscal impact study, and whether they’re going to be covering those things or not, I don’t know.**” **Taintor:** “Well, certainly, you could always ask for a supplemental study.” **Parnell:** “Well, we’ll see what happens, when we get it, but.” [See more on the FIA saga here with direct quotes: [Joshua Meyrowitz 1-27-21](#).]

May 2018—CDA Submits [Site Plan #8, colored, & \(Harriman 6-27-18 PPT\)](#)



Somewhat more compliant plan, re: building composition/heights, but with parking and roads in the wetland setback. Proposes densely packed Plaza with student housing near adjacent neighborhood and with minimal areas for pedestrian and bike travel, truck deliveries, snow removal, emergency vehicle access. **No longer clearly shows an ADA-compliant pathway to Main St that was on prior three plans (showing switchback staircase instead on schematic).**

June 13, 2018—Board votes to accept incomplete Plaza application as “complete”

CDA does not come prepared with a detailed presentation on the proposed plan. Planner Taintor notes that the memo provided by CDA indicates seven incomplete items required by the Board, but he nevertheless advises the PB to accept the Mill Plaza application as complete. Board Member Lorne Parnell and Council Rep Carden Welsh argue that such an acceptance violates precedent and does not give the public the information they should have prior to the first Public Hearing in two weeks (June 27). “Mr. Parnell said a major issue in regard to the traffic analysis was pedestrians, and he spoke about the importance of doing a study of current and future pedestrian traffic on the site....” [As detailed in “Traffic Impact: What’s Been Ignored?,” [Joshua Meyrowitz 1-6-22](#), on site surrounding neighborhood paths/streets traffic impact has yet to be done as of early 2022.] An acceptance motion (of the site plan application as complete) is put forward. “Mr. Parnell said he was reluctant to vote yes on the motion, and said it was unusual to accept a project that wasn’t fully described to the Planning Board and the public. He said these were just documents that had been provided, and said there should be a presentation on what the project was about. He said it couldn’t be assumed that everyone was going to be looking through these documents.” Ultimately, the Board accepts the application as complete, by a vote of 7-0. ([Minutes](#); [Video](#))

June 19, 2018—Technical Review Group: increased, but not full required buffer

Per [minutes](#): “Joe Persechino discussed the buffer plan. The development will not be any closer to the brook than at present. Open space will be added in several areas, including islands in the parking lot. The plan shows a reduction in impervious surface in the buffers of about a quarter of an acre.”

June 21, 2018—[BCM Environmental Law letter](#) on behalf of residents

Attorney Amy Manzelli, writing on behalf of several dozen Durham residents, notes that the CDA application was “accepted as ‘complete’ by the Planning Board on June 13, 2018 although Board members and the Planner acknowledged it lacked required information by the Board.” Yet, her focus is on the understanding that “the Board was advised by its attorney [Laura Spector-Morgan] to not overstep in its application of the conditional use criteria.” Attorney Manzelli adds: “Moreover, to the extent the advice the Board received implies the conditional permit land use control is a tool that the Board may apply only in limited circumstances, this advice does not comport with New Hampshire law. Rather, RSA 674:21, II provides for the “granting of conditional or special use permits.” Use of this power is valid so long as the municipal legislative body has supplied standards for its use, as the Town of Durham has done with Article VII, Section 175-23, C.2. *In fact, the most significant way the Board is restrained in its application of the conditional use permit criteria is that it must apply them strictly; in other words, the Board cannot waive or ignore any conditional use criteria as applied to a specific applicant.*³ *If an applicant cannot satisfy the strict application of all of the conditional use criteria, the applicant must obtain a variance to be able to proceed with the proposed use.*” (Italics original.)

June 25, 2018—Police Chief Kurz [writes](#) in support but notes challenges

Police Chief Kurz comments favorably about well-managed student housing: “The management company that is invested, literally and figuratively into the Durham community, is the most critical component for a well-managed and mutually successful property that will prove successful.” But in a final comment, he adds: “**The continuous addition of students living in the downtown area,**

even with a well-managed oversight, presents challenges for the Durham Police Department.”
(Emphasis added.)

June 25, 2018 – Letter: Hannaford “[does not approve](#)” of Site Plan #8

In a letter to the Planning Board: “Please note that Hannaford does not approve or support this proposed project based on impacts to its business, including but not limited to inadequate parking and a lack of convenient and safe access and circulation.” (This Hannaford objection ultimately leads to four sequential CDA requests for postponement and then a CDA request to return to the Board on Nov 14, 2018.)

June 27, 2018—CDA presents at PB, despite Hannaford Letter

CDA’s attorney Ari Pollack calls Hannaford’s letter a “low blow,” exposing private negotiation issues. Per the [minutes](#), “He said there was continued discussion with Hannaford about the development plans, and said it had been hoped that this could be conducted privately, but said a letter to the Planning Board this week had unfortunately upset that. He said this issue was outside the scope of the application, and said as difficult as it was, he encouraged the Board to tune out the private conversation with Hannaford. He said the applicant’s representatives didn’t want to discuss it this evening.” And no one did. ([video](#))



CDA’s Harriman design team gave a [26-slide presentation](#), which included the image at left. Note how the skilled Harriman team, in that design, worked to downplay the difference in building heights (in keeping with Durham’s [Architectural Design Standards](#)) with a significant façade on Building A (with Bldg C 1 beyond it, Bldg B on right, and Bldg C2 in

background). [As of late 2021, Hannaford has reportedly refused to allow any changes to its façade.]

July 3, 2018—[Todd Selig to PB: A June 18 “non-meeting” of Council on Settlement match](#)

While the public is distracted by the significant first appearance of Hannaford and its “does not approve” letter, this Selig memo is posted, reading in part: “Following that discussion with counsel and after consideration of Mr. Taintor’s memorandum, it appears to the Council that the application does comply with the Settlement Agreement.” This memo disturbs those residents still paying attention during the Hannaford-created lull, as it seems to stretch the facts about the site-plan relative to the Agreement and provides no information about the process of informing the Council of the details, which, as a “non-meeting,” excluded those members of the public most closely following the review process. Moreover, the memo grants significant determinative power (of a site-plan to Settlement match) to a Contract Planner hired to “move the project forward.” The posted memo has 5 pages from Rick Taintor guiding the Council toward the appearance of a “Settlement match,” with only 6 sentences from Todd Selig. In any case, the plan has changed significantly since this memo (see Rick Taintor highly critical comments from 2019, below), and the makeup of the Council has changed as well.

July 6, 2018 Planner's Review (for July 11 PB Meeting) makes no mention of Hannaford letter

Excerpt from Rick Taintor's review: "1) The applicant's team will continue their presentation of the proposed project. It is anticipated that the presentation will include more detail on the proposed landscaping plan and will also address technical site issues such as utilities, lighting, and stormwater/drainage management. 2) While the applicant's presentation on July 11 will focus on specific aspects of the proposed redevelopment project, the public hearing concerns the project in its entirety. Planning Board members and members of the public will be able to address any aspect of the project as advertised, including all application materials submitted and posted on the Town website." [Note that this principle that the public hearing "concerns the project in its entirety...with members of the public...able to address any aspect of the project" is not always recognized by the Board.]

Fri July 6, 2018, 9:18pm CDA email to Taintor & Selig requests postponement to Aug

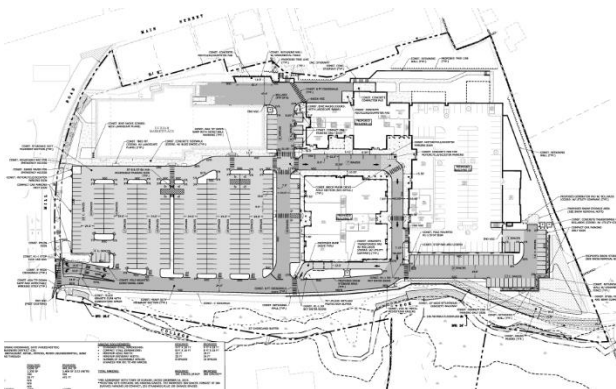
This is followed by 3 additional requests for postponement: to [Sept](#), to [Oct](#), and to [Nov](#), as CDA continues to negotiate in private with Hannaford.

Sept-Nov 2018—Behrendt queries to Town Attorney re: Conditional Use Criteria

Key points from Attorney Laura Spector-Morgan (LSM) input:

- 1) Each and every of the eight criteria must be met to support granting of approval;
- 2) The ordinance provides a "non-exclusive" list of criteria; *any* negative external impact, whether listed in the ordinance or not must be considered. As LSM writes: "The board might also consider other things that are not specified in the ordinance or on the checklist but are relevant given a specific application. We know this from the language 'this includes but is not limited to.'"
- 3) There is to be no "tradeoff" or "balancing" among criteria for an "overall" assessment. As LSM writes: "If the board finds that the traffic impact of the proposed use is greater than existing or permitted uses, it does not matter that the dust impact from the proposed use might be lesser." That is, the application would have to be denied for failure to meet any of the eight criteria.

Oct 4, 2018 – CDA submits "Concept Plan" misleadingly hinting at Hannaford support



Oct 10, 2018—Residents request PB delay until there is a plan to review

Per [Minutes](#) (pp. 2-3) “[Meyrowitz] spoke about the fact that discussions with Hannaford were not yet resolved and asked what the justification was for resuming review of a plan that didn’t yet exist. He spoke further on this, and said he was speaking for many residents who felt the review should be delayed.” Olshansky “said she was puzzled about having a public hearing when there wasn’t a plan.”

Oct 22, 2018, Taintor [memo](#) to PB critiques public input & predicts only minor changes

“For example, it was stated in the public comment period that the Hannaford negotiations have ‘led to a need for a major revision of the plan.’ However, I have had no indication that this is the case, and my sense is that the concerns raised by Hannaford relating to parking and circulation might be addressed by modest plan changes that may not have significant impacts on the key issues of concern to Board members, neighbors and Town residents, such as stormwater, wetlands, traffic and noise impacts. In fact, I anticipate that the Planning Board’s review over the coming months will be much more consequential than the Hannaford negotiations in terms of changes to the site plan.... Finally, deferring further review until the applicant submits a new site plan addressing Hannaford’s concerns will not be more efficient than continuing to review the current plan, but instead will add to the total number of public hearings that the Board holds on this matter. If the concern is to reduce the burden on residents having to review plans and attend hearings, it would be better to continue on the current path rather than to have to restart the process in a month or two with a new site plan.”

Oct 24, 2018 – Resident call for delay of review until Hannaford supports a plan – PB agrees

Starting at 7:09pm, during Public Comments, “Mr. Meyrowitz read a letter he’d written that questioned the Mill Plaza review process, and said if there were going to be changes to the site plan, the Planning Board should be able to have a sense of them before proceeding. He said if the May version of the plans remained as the plan, this should be asserted in advance of the November 14th meeting. He also said unless Colonial Durham Associates provided new clarifying information by November 7th with proposed topics for that meeting, he would like the Board to delay the public hearing until it knew that it had the latest proposed plans.” ([minutes](#)) ([Meyrowitz statement](#)) ([video](#))

In a 23-minute discussion about Rick Taintor’s Oct 22, 2018 memo (added to the agenda at the start of the meeting), and starting at 9:50:47pm, members of the Planning Board agreed that a stronger indication from CDA of Hannaford approval was needed before continuing the review and CDA was asked to watch the resulting discussion. Paraphrasing Board Member statements: I think for us, the Planning Board...to start talking about this project when there are major issues unresolved between Colonial Durham and Hannaford is a waste of time.... If parking and circulation are issues, the solution is to re-arrange buildings, and that would have a major impact on the stormwater runoff.... 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. Clearly changes in landscaping would be involved.... Anything that deals with circulation and traffic flow would affect the creek, and the required increased brook buffer. We need an answer as to “Why should we be continuing now?”... 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. ([Minutes](#), pp. 8-10, [video](#).) See also PB deliberation summary here: [Joshua Meyrowitz 11-14-18](#).

Nov 5, 2018 – Taintor [Memo](#) conveys Oct 24 requests to CDA & responds to CDA complaints

“1) Recommended that they [CDA] view the DCAT recording where the Board discussed the process for reviewing the Mill Plaza project in the context of CDA’s ongoing discussions with Hannaford. 2) Requested that they send a memo to the Planning Board addressing the concerns expressed by board members at the meeting. 3) Advised them to be prepared to discuss this issue on November 14 prior to any other discussion about the project.”

Nov 14, 2018 – [Hannaford lawyer letter](#) urges Board to deny application

The wisdom of Planning Board’s Oct 24, 2018 “pause” vote is revealed three weeks later with the hand-delivery of this letter citing Hannaford’s lease: “CDA may not change the ‘siting and location of buildings, parking, non-retail buildings, access and other facilities’ at the Property without Hannaford’s approval. Hannaford expressly does not approve the Proposed Construction.... CDA does not have the authority to proceed with the Proposed Construction, and doing so will violate multiple contractual provisions in the Lease.... [W]e urge the Planning Board not to expend the time and cost to consider and approve an Application which will ultimately be futile.” This letter also vindicated the concerns of members of the public and Planning Board members who correctly anticipated that Hannaford’s objections, as previewed in a June 25, 2018 letter that Rick Taintor did not even mention in his July Planner’s Review, would lead to much more than minor tweaks in the site plan.

Nov 14, 2018 – PB unanimously delays review until CDA/Hannaford agreement reached

“Lorne Parnell MOVED to continue the Public Hearing to a date following an agreement being reached between Colonial Durham and Hannaford. Jim Bubar SECONDED the motion and it PASSED unanimously 7-0.” ([Minutes](#), [video](#))

Nov 2018 to Oct 2019 – Mill Plaza review halted for over 11 months

Oct 2019 – Navitas suspends its contract with UNH

At its peak, UNH Navitas recruited 200-250 international students a year (from China, India, etc.), with about 1,000 enrolled in 2015. By 2019, Navitas admissions had dropped to 60 students and then to zero by 2020 and 2021, per UNH Institutional Research data.

Oct 2019 – CDA & Toomerfs submit inter-related plans

In Oct 2019, Joe Persechino of Tighe & Bond, on behalf of CDA, submitted a “Letter of Intent” regarding Mill Plaza Site Plan #9, which was explicitly linked to a large parking mound (to be created with thousands of cubic yards of fill) on the adjacent steeply sloped Church Hill Woods property that had been submitted for design review five days earlier. Indeed, the submitted CDA Oct 2019 and [Jan 2020 Site Plan](#) pictured the proposed lot *and* a pedestrian ramp between the two sites. *The coordination is explicitly indicated in both applications:*

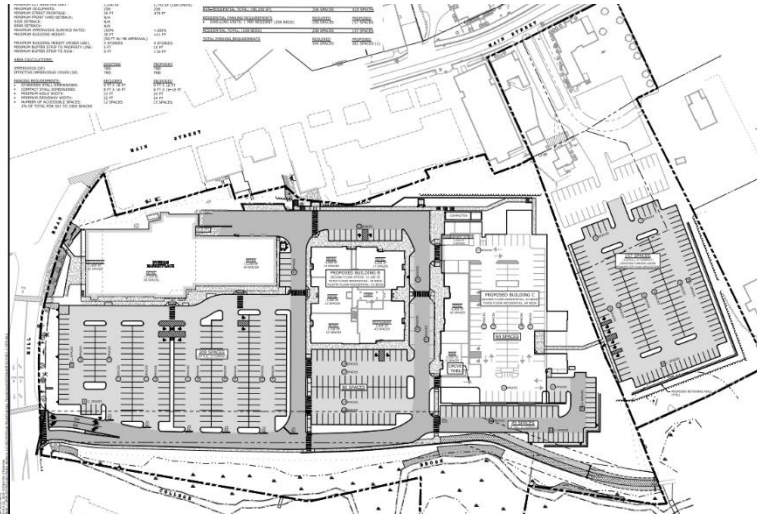
Oct 23, 2019 – Toomerfs Design Review Application for parking on Church Hill

[Toomerfs application](#) – “The options for parking lot development also lends the opportunity for

combined use of the parking lot with the adjacent proposed development on the Colonial Durham Associates lot....”

Oct 28, 2019 – CDA Submits “in coordination with...Toomerfs” [Plan #9](#)

[CDA Letter of Intent](#) – “In coordination with...the direct easterly abutter, Toomerfs, LLC, Colonial Durham Associates, LP (CDA) is preparing to move forward with its tabled planning application for redevelopment of the Mill Plaza.”



Oct 30, 2019—PB Seeks legal opinion on whether submissions create a “new plan”

At this Workshop, the PB votes unanimously to seek a legal opinion on whether the plans submitted (bridging 2 parcels & 2 zoning districts), and explicitly linked conceptually and physically should be reviewed as new or old plan.

Nov 4, 2019 [Hannaford Letter](#) approval conditioned on Church Hill parking

“Hannaford conceptually approves this concept plan subject to further review of

technical materials and site plan and modifications that are not currently available and 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. All loading, parking and other activities related to the residential building would be serviced by the New Parking Area.”

Nov 5, 2019—TRG Meeting on Mill Plaza and Church Hill Woods

Per [minutes](#): “Police Chief Kurz: Why do you need all the parking?” “Contract Planner Taintor: Question about requirement for ADA accessibility on the walkway along the north side of the site.... The new conceptual plan eliminates the street/pedestrian pathway that was between buildings ‘B’ and ‘C1’ in the previous plan. Consider breaking building ‘B’ into two buildings or otherwise preserve the street? Response from applicant: You can walk around either side of building ‘B’, or possibly through it (depending on what type of tenant occupies the first floor space).” ([video](#)) The TRG meeting continues with a discussion of Church Hill Woods parking plan.

Nov 7, 2019—[Planner’s Review](#) for Nov 13 Public Hearing summarizes changes

“•The 2018 plan included two buildings (designated as C1 and C2) that were joined into what would look like a single L-shaped building wrapping around the third proposed building (designated as B). In the new plan, building C1 has been eliminated and building B has been shifted northward. •The 2018 plan proposed a continuous street and pedestrian route through the site, extending from the front of the Hannaford building across the front of building C1, and then wrapping around building B. In the new plan, that street and pedestrian route are eliminated as a result of removing building C1 and shifting building B to the north. •The reconfiguration of the proposed buildings results in a reduction in

overall building coverage and an increase in the total area of parking spaces. Compared to the 2018 plan, the new plan increases the total number of on-site parking spaces from 363 to 424 (+61, or 17%), and the number of on-site surface spaces from 263 to 340 (+77, or 29%). This increase in the proposed on-site parking supply is accompanied by a reduction in potential parking demand due to a 22% decrease in the number of proposed beds (from 330 to 258). •In order to compensate (in part) for the reduction in building footprints, building B is now proposed to be four stories tall rather than three stories.”

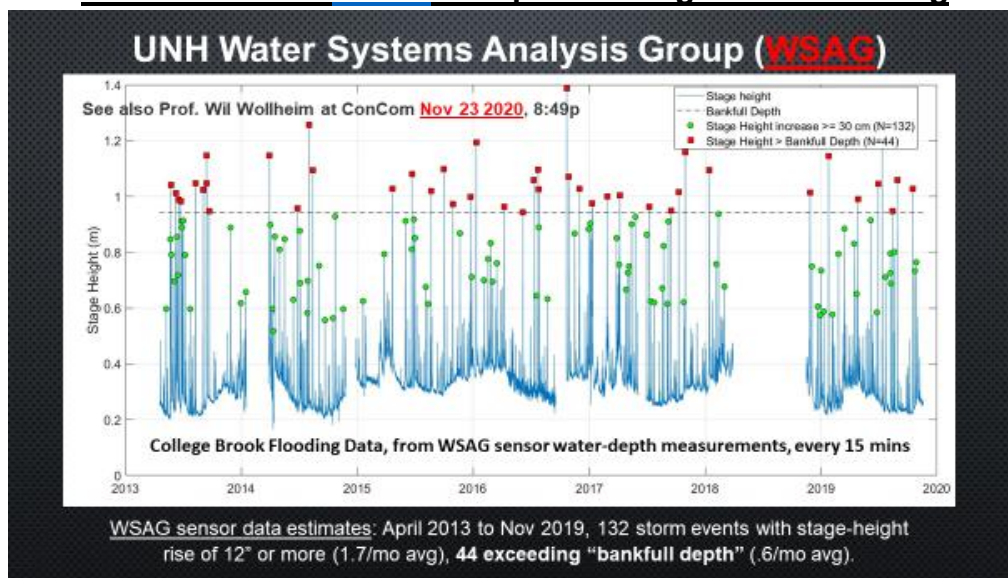
Nov 12, 2019 – Town Attorney Letter: It’s the same Mill Plaza application

Town Attorney Laura Spector-Morgan responds with respect to the physical and conceptual interconnections between the Mill Plaza site plan and Toomerfs parking plans, writing in part: “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.” She cites a court case that ruled “[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.” Residents find this an odd precedent to cite, since the Oct 2019 Plaza site plan was modified in response to Hannaford’s objections, not the Planning Board’s or abutters’ objections. Indeed, some of the changes, such as the loss of the “streetscape” were in the opposite direction of what the PB and Contract Planner Taintor wanted. Residents, in consulting with an attorney, also learn that the case cited by the Town Attorney not only has no substantive bearing on the topic at hand (as just noted), but is also a so-called 3JX case, that has no precedential value and is supposed to be identified as such when referenced. (See Jan 22, 2020 Attorney Puffer letter below.) This Town Attorney letter was not posted on the Mill Plaza CUP site until residents complained about its absence in early 2020.

Nov 13, 2019—PB Makes no Mention of Town Attorney Letter

Residents implicitly and explicitly challenged the Town Attorney’s May 12 letter, but Board Members did not mention the letter or the underlying argument, and they had no vote on the issue. CDA’s Ari Pollack mentioned the letter in passing, asking that it be “read into the record.”) It took multiple requests from residents to get the Nov 12 letter posted, among other related letters from her.

Nov 2019—UNH WSAG: Frequent College Brook flooding



Nov 14, 2019 – PB Member Bubar memo repeats his 2018 concern on CDA parking in WCOD

“Last evening, I repeated my comments from a year ago, namely that they (CDA) continue to present plans with parking in the WCOD. The response from the Tighe & Bond representative was that those were existing parking spots, implying they are “grandfathered” or otherwise not subject to review. I maintain that couldn’t be further from the facts of our ordinances and Site Plan Regulations....” [It’s likely that this letter did not receive the attention it deserved because the Contract Planner and PB were operating at the time under false understanding of the Zoning applicable to the Plaza, as [Peter Wolfe 6-14-21](#) and [Robin Mower 6-14-21](#) attempted to correct in June 2021, without much success, in that the [Peter Wolfe 10-18-21](#) repeat correction was dismissed as false by the Planning Board chair at an Oct 20, 2021 Workshop. It was not until Contract Planner Taintor set the record straight in comments at the Oct 2, 2021 Planning Board meeting that this important fact of the WCOD zoning was confirmed.]

Jan 2, 2020—Plaza [Building Floor Plans](#) submitted

Although subject to change, these plans show that over 60% of the proposed tenants would be in 4-bedroom, 4-bath apartments. [These, as Planner Taintor has noted tend to function as dormitory-style units. See his [9-12-21 memo](#) and PB Hearing comments on Oct 27 that cities with universities have found that units with many bedrooms tended to be more like dormitories and act more like dormitories than smaller units, with some attempts to ban 4- and 5-bedroom units.]

Jan 2, 2020—[Site Plans #9](#) still show both Plaza & Church Hill lot (with pedestrian links)

The plans also show the roadway, sidewalk, parking spaces and landscape islands in the wetland setback. See also [Buffer Impact Plan January 2020](#) and [Site Context 1-2-20](#).

Jan 2, 2020 [Rendered Perspective](#) distorts height of Bldg C Retaining Wall



Pretty “renderings” submitted by CDA (here and later) raise questions among the public, such as why a woman walking past a retaining wall proposed to be 13ft tall, appears to be taller than the wall. CDA’s designer Emily Innes later justifies this: “The wall is further away from the path than people think” ([Aug 8, 2020](#),

11:23a), yet, as of early 2022, the PB has yet to request images that accurately convey human scale.

Jan 8, 2020—Design Review for Toomerfs parking closes with negative feedback

On January 8, 2020, the Preliminary Design review (documents [here](#)) for the Church Hill parking lot (which Hannaford requires for its approval of Mill Plaza site-plan) ended very badly for the applicants, with the Board giving them the most negative assessment residents could remember for a preliminary design review, as seen in the [minutes](#). Key excerpt: “[T]he Board decided to provide comments at this point on the proposal. Mr. Kelley said he thought there was a high bar to be raised because this was a conditional use that was proposed. He said a strong case had been made in the comments this

evening in regard to this. Chair Rasmussen said he concurred, and said traffic was a major concern for him so a traffic study would be critical. He said there were permitted uses that would fit the property better, but noted that the owners were free to pursue what they wished. Councilor Welsh said he concurred, and said it would be pretty tough to address all of the conditional use criteria, especially 1,2, 3 and 5. He said it would be hard to engineer around all of the issues.” ([Video](#))

The PB chair dismisses as irrelevant to the agenda a comment during the Public Hearing by citizen Matt Komonchak (at 9:32:39), questioning how the Board can ignore the connection between the Toomerfs proposal and the Mill Plaza proposal (and critiquing the Town Attorney’s Nov 13 “no connection” letter, above). Yet, as Komonchak refers to, **CDA’s Attorney Ari Pollack is sitting at the back of the room** (see, for, example, 10:13:10 in the video, at Tim Murphy defends the proposal), attending closely to the review of the proposed parking lot on Church Hill that Hannaford says is required for its approval of the Mill Plaza plan. **Indeed, Hannaford’s real-estate representative, Mary Gamage, is also sitting in at the hearing for the Toomerfs’ woods-to-parking-lot proposal.**



Jan 14, 2020 TRG Group—Revised Plaza plan “less advantageous” to Town

At about 10:33 am in the TRG meeting ([video](#) and [minutes](#)), Contract Planner Rick Taintor, clearly upset by the latest plan, says (precise transcript):

“I like the old plan a lot better. I would call this a dumbing down of what you had before. And I don’t really see it as an improvement.... You’re constrained by Settlement Agreement and by the stupid lease with Hannaford. So you’re trying to squeeze a lot into one corner of the site.... I would take exception to when you say...this is an extension of the downtown. I don’t think it is at all. It’s two buildings in a parking lot.... It’s a marginal improvement from a 1960s shopping center, a strip mall kind of thing, just taller buildings. I don’t know how you do it, but I don’t think you are there yet, in terms of a design.”

The TRG minutes have a sanitized version of those concerns: “The revised plan is less advantageous to the Town than the previous plan in terms of placemaking and pedestrian circulation. The key concern is the elimination of an internal street with landscaping due to the shifting of Building “B”, which moves a primary walking route from tree-lined sidewalks to a wide building corridor. This change also results in reduced visibility for several storefronts, so the new commercial spaces will likely be more oriented to serve the residential uses on site rather than the general public. TRG members and the applicant’s representatives discussed various approaches to improve the plan but no solution was identified that would meet the needs of the applicant.” Also noted: “The design of the enclosed pedestrian path through Building “B” is important, as is its availability on a 24/7 basis.” However, the applicant later clarified that the “arcade” in Building B would be open only during business hours, something that appears to violate the Settlement’s requirement (and diagram) for a ground floor connector. On Jan 27, 2021 Rick Taintor confirmed by email: “They’ve indicated that the passage will be open during the business hours of the first-floor businesses, not 24/7.”

Jan 16, 2020 [Updated Site Plan Renderings](#) still show pedestrian links to Toomerfs parking



Jan 16, 2020—[Planner's Review](#) (for Jan 22): “explicit connection” Toomerfs & CDA projects

“The revised site plan shows a proposed parking lot on the adjacent parcel owned by Peter Murphy (Toomerfs LLC) with a pedestrian-only connection to the Mill Plaza site. This off-site parking lot is technically not part of Colonial Durham’s application for site plan approval, and is instead the subject of a separate application for design review that is also on the agenda for this meeting. Nevertheless, there is an explicit connection between the two projects, which is spelled out in two ways. First, the site plan claims 581 parking spaces, including 424 on-site places to serve commercial uses and 157 off-site spaces to serve residential uses. The site plan states that ‘157 of the surface parking spaces are proposed to be leased from the adjacent parcels....’ Second, the letter from Hannaford Supermarkets to the Planning Board dated November 4, 2019, states that their approval is contingent on: ‘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....’ Regarding the unsatisfying TRG meeting, Taintor adds: “A concern was expressed about the degradation of the pedestrian circulation, streetscape and sense of place. TRG members and the applicant’s representatives discussed various approaches to improve the plan but no solution was identified that would meet the needs of the applicant.”

Jan 22, 2020—Resident-Hired Attorney Puffer: New Plaza plan not vested under Settlement

The assertion that the Mill Plaza plan and Church Hill parking plan were “independent of each other” was challenged by attorney Mark Puffer at the January 22, 2020 PB hearing. Representing scores of Durham residents, included direct Plaza abutters and residents from every street in the Faculty Neighborhood, as well as many citizens in other parts of Town, “[Attorney Puffer] said what was proposed was a different plan than was the case at the time of the settlement agreement. He said this plan was different because of the demands made by Hannaford. He noted the Hebron case cited in Attorney Spector’s letter and spoke about why it didn’t apply to this situation, including the fact that the issue in that case was a narrow one. He spoke in some detail on this. He also said the Hebron case wasn’t an actual published decision of the Supreme Court, and was a 3JX decision, for matters that were relatively straightforward. He said it had no precedential value, and spoke further about this.” ([minutes video](#), starting at 8:29:19pm.)

Jan 24, 2020—Town Attorney [defends](#) her Nov 2020 letter and opinion

Addressing Rick Taintor, Michael Behrendt, and Todd Selig, Attorney Laura Spector-Morgan writes, “Hello gentlemen. I’ve reviewed the supreme court rules re: citations to 3JX decisions, and I have spoken with both Ari Pollack and Mark Puffer. None of that has changed my original opinion—that the latest iteration of the Mill Plaza application is not a new application which is subject to current zoning. Let me explain:

First, 3JX decisions are decisions made by a panel of 3 supreme court justices. Those [sic] they have no precedential value, the supreme court rule does provide that they ‘may, nevertheless, be cited or referenced in pleadings or rulings in any court in this state.’ These decisions are not worthless—they provide guidance on how a majority of justices would rule on a particular issue. Therefore, there is nothing inappropriate about my citation to Limited Editions Properties, Inc. v. Town of Hebron.

Atty. Puffer explained that he believes this is a new application because Mill Plaza is specifically including the leased spaces on the abutting lot as part of its application. As I opined earlier, it is true that Mill Plaza is including these leased spaces on its application. However, these spaces are required neither to satisfy the town's regulations nor the settlement agreement; they are necessary to satisfy another tenant on the property. The town could approve the application without the leased spaces, and Hannaford could appeal that (though I suspect it would lose). For this reason, I continue to believe that this is not a new application. I do not recommend that the approval of either plan be contingent on approval of the other because each is approvable on its own....”

Attorney Spector-Morgan does not address the even more fundamental problem that the 3JX case she cited has no substantive bearing on the CDA plan, which was altered and expanded with a link to the Church Hill Woods proposal because of Hannaford’s objections and demands and not because of anything requested or desired by the PB or abutters.

Feb 2, 2020 – [Letter from Attorney Mark Puffer](#) on behalf of residents

Expanding on his Jan 22 oral comments, Puffer writes: “Hannaford has made it clear in its November 4, 2019, letter and in a November 13, 2019 comment before your Board, that its approval of the current Mill Plaza proposal is contingent on a large parking lot on the adjacent Church Hill property, a parking lot that would be available for residents of the new housing that is proposed for the Mill Plaza site. Indeed, on November 13, 2019, Hannaford representative Mary Gamage told you that “the adjacent parking lot” is “the essential ingredient” for Hannaford's approval. Given this context, it seems clear that the latest CDA proposal is no longer grandfathered under the 2015 agreement. The latest proposal is for a fundamentally different project, a new project that for the first time encompasses a parcel beyond the Plaza site that has long been the subject of your review. The added parking lot parcel is in a different zoning district and under different ownership. This leads my clients to ask a crucial question: Why is the current Plaza plan even moving forward now? Who even knows whether the Church Hill project will ever come to be? And yet, that parking lot is a critical element of the current Mill Plaza site plan. A great deal of time, effort, and money is being spent by many parties (including my clients' and other Durham residents' tax money) to proceed with a substantially different plan. You ought to be requiring CDA to re-submit its proposal as a new plan. Moreover, if the new submission continues to rely on an ‘essential’ parking lot on Church Hill, the

review of that new CDA submission should be delayed until the proposed parking lot on Church Hill is fully reviewed.”

Feb 6, 2020—[Planner’s Review](#) (for Feb 12) on degraded Brook, landscaping gaps

Excerpt: “Related to stormwater management, College Brook is somewhat degraded, including bank erosion, as it runs along and across the Mill Plaza property. While the proposed site plan mitigates the impacts of runoff from the Plaza parking lot (by closing several direct outfalls from the parking lot and providing a closed stormwater collection and treatment system), it may be appropriate for the Board and the applicant to consider funding for a remediation plan for College Brook along the lines of the University’s 2000 ‘Ravine Master Plan,’ and for the Plaza to participate in implementation of such plan’s recommendations.

“In this regard, the applicant’s cover letter for the conditional use permit application for Mixed-Use with Residential refers to a ‘discussed joint venture between the Applicant, the University, and the Town [which] offers the opportunity to further enhance and protect College Brook and is another means of enhancing the amenities of the development site while buffering surrounding neighborhoods’ (letter submitted May 21, 2018, revised and re-submitted January 2, 2020, page 4). In addition, the applicant’s cover letter for the shoreland/wetland buffer conditional use permit applications states that ‘Applicant has retained a qualified consultant to suggest additional means of restoring and protecting the College Brook waterway, all of which can be done in partnership with the Town, the University and/or interested abutters’ (letter submitted May 21, 2018, revised and re-submitted January 2, 2020, page 2). These statements could be incorporated in specific conditions of the conditional use permits and site plan approval.

“With respect to landscaping, I have identified several aspects of the site plan that do not comply with Development Standards set forth in Part III of the Site Plan Regulations (references are to the regulations dated September 17, 2014, to which the application is vested):...” He goes into detail.

Feb 7, 2020—Town Attorney [responds](#) in 77 words to Attorney Puffer letter

In a one-paragraph email addressed to Rick Taintor (cc’d to a few others, including Todd Selig, Ari Pollack, and Mary Gamage of Hannaford), Attorney Spector-Morgan writes: “All: I’ve reviewed this. It doesn’t change my mind. If you would like a multi page letter from me expanding on my earlier opinion, I’m happy to give it, but at the end of the day, Mark and I just disagree. He focuses on the parking lot being a condition of Hannaford’s approval. I’m sure it is. But that doesn’t make the two applications inextricably connected for town purposes, because it’s not required for town approval. Laura” [Since no one shared this email with the Planning Board, the members were unaware of it on Feb 12, when Ari Pollack read it aloud to the Board to reinforce his position. And it was not initially posted either.]

Feb 10, 2020—Former Councilor who helped negotiate Settlement [weighs in](#)

Commenting on the coordinated Mill Plaza and Church Hill proposals, Firoze Katrak writes: “It is obvious to me that the current Plaza proposal, which needs the Toomerfs parking to overcome the veto power of Hannaford, is not conforming at least to the spirit of the settlement agreement. This Plaza proposal is diametrically opposing the spirit of the settlement agreement because it does not even try to contain the impacts on site, but rather spreads the impacts far beyond the Plaza into even

more familyresidential neighborhoods. This is an affront to the spirit of the settlement agreement. Whether it is legal or not, is up for the lawyers to help you decide.

Feb 12, 2020—Attorney Ari Pollack letter [letter response](#) to Mark Puffer’s Feb 5 letter

Excerpt: “The Mill Plaza redevelopment and the Church Hill Property proposal are two entirely separate and independent applications.... [T]he *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.” The 7-page letter goes on to claim (contrary to Rick Taintor’s assessment and general observation) that the revised plan has a more “pedestrian-friendly layout.” A footnote to the letter even claims that a Building C second-floor walkway directly to/from the Toomerfs’ parking lot does not indicate any linkage of the two proposals, but would be “a courtesy to Mill Plaza tenants, Church Hill Property lessees, and Durham pedestrians generally” (as if pedestrians, in general, would have access to a secured door to a floor of student apartments).

Feb 12, 2020—Board members unaware of Town Attorney Feb 7 Response

There is a discussion (starting 9:02pm, but returned to at 10:58 pm, [video](#), [minutes](#)) of how to respond to Attorney Puffer’s meeting comment and letter, something encouraged by residents. The discussion is hampered by the Board not yet having read Attorney Pollack’s letter (received that day) and not even being aware of the Town Attorney’s Feb 7 short response, which leads to some criticism from Board members and requests for making all the correspondence public (“My mistake,” says Rick Taintor about not sharing the Town Attorney’s email with an offer for her to elaborate further.). Board Member Richard Kelley makes a suggestion “to ask our attorney to elaborate on an email that was a couple of paragraphs, at best [actually just one paragraph], that we haven’t seen, that is in response to a letter [by Attorney Puffer] that runs 5 or 6 pages [actually 7 pages].” Board Member Lorne Parnell says: “I would take a slightly different view than Richard is taking, I think. We have a Town employee, Laura is our Town Attorney, and I think based on that I am prepared to take her advice. And I presume, I’m willing to take her advice on issues like this. Because I’m assuming she can defend this decision that I’m making, if it goes to court, which could happen. Then she’s responsible for defending us. I’m not going to second guess a legal decision that an attorney who is retained by the Town is making. I am going to assume that she is making a reasonable legally based decision, and I’m willing to accept it. That’s her job and that’s what we’re trained to do.” Chair Rasmussen affirms that that is what the PB is trained to do.

Feb 12, 2020—CDA dodges & weaves on landscaping, little time left for public input

In what feels like a carefully scripted routine ([video](#), 9:53:40 to 10:45:33:12 pm), CDA’s Ari Pollack and Joe Persechino attempt to dodge all the landscaping requirement identified in Rick Taintor’s Planner’s Review for this meeting: why the current site plan does not “comply with Development Standards set forth in Part III of the Site Plan Regulations;” why required tree distribution to “provide optimal canopy coverage and shading” is not in the CDA plan; why landscaped island end caps are not the required “same dimensions as the adjoining parking spaces” (e.g., Persechino: “We don’t meet that because, for example, they narrow down”); why the 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); why the site plan does not comply with required “minimum 4 foot wide foundation planting strip between the building and any parking lot;” and why the parking areas are not broken up into areas of no more than 40 spaces, as required (e.g., Persechino: “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.”) ICDA invites “input” from the PB on forced-choice options between two forms of non-compliance. CDA’s friendly, playful presentation is accompanied by Planning Board banter and laughter. But Rick Taintor makes a valiant effort to hold them to his memo’s concerns. (For a precise transcript of Pollack and Persechino Feb 12 statements, in historical context, see pp. 7-10 here: [Joshua Meyrowitz 3-5-20](#).) The public was not given a chance to speak until 10:50pm, after many members of the public had gone home. The Board promised more public input on March 11.

Feb 12, 2020—Planner Taintor tells PB to ignore the Settlement

In another key exchange on Feb 12, Rich Taintor urges the PB to ignore the Settlement in its deliberations, while Board Members Richard Kelley and Lorne Parnell object. 10:32:06pm ([video](#)) ([minutes](#)).

Board Member Richard Kelley: “I’ve got a question. I was looking at the Settlement Agreement. 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’?*”

Attorney Ari Pollack: “We are, if you consider that there is an existing encroachment; we’re improving upon the existing encroachment conditions.”

RK: “So, it’s *your* understanding of the Settlement Agreement that you are meeting 1d?”

AP: “Correct. And I think that has been looked at from time to time, as we’ve had these various versions. And that element of the plan set has not changed.”....

RK: ... “I guess I have to give it some more thought, Mr. Pollack. But it doesn’t sit easy with me that the words I read there are in conflict with what’s being done on your plan.”...

Rick Taintor: “May I speak to that? The Board should remember that the Settlement Agreement is within the Town Council. And the Site Plan review is the Planning Board’s responsibility. And, while the Settlement Agreement is important, the Planning Board still needs to look at this, look at the Site Plan review regulations. You’re not really bound, the Planning Board is not bound to say ‘Does this agree with the Settlement Agreement?’ That’s an issue that will be determined once you’ve gone through this process and the Town Council *determines* whether the Settlement Agreement has been met. But your responsibility is really to look at this from the point of view of the Zoning Ordinance and the Site-Plan review regulations, which is not supposed to be basically making your decisions based on the Settlement Agreement.”...

RK: “I apologize, I know it’s getting late and we all want to go home. While we have this pulled out, and I know, I’m, should we not be looking at this? Should our review not have our eyes on the

Settlement Agreement? Is that what is being suggested?”

RT: “Yes, that’s literally what I’m suggesting. You should be looking at this based on the Zoning Ordinance and the Site Plan review regulations.”

RK: “I got to disagree, and let me tell you why, because when we look at 1f [reads it] ‘*The Revised Application will have increased natural buffer along the southern property line adjacent to the College Brook; such buffer to be maintained by the property owner in perpetuity.*’ If we didn’t look at this you didn’t increase that buffer, enhance that buffer, we wouldn’t have known! I find it hard that we’re *not* looking at this. Is it just me?”

Lorne Parnell: “I’m with you, Richard. I agree, I think all those things have to be considered by us because all those conditions were imposed on the Planning Board when this application was put to us.... Those are all parts of what we’ve been reviewing. And I think to, to Richard’s point, to ignore the Settlement or to not apply the terms of the Settlement agreement is not correct.”

[See also March 11 entry on Todd Selig’s email to the PB confirming the role of the Planning Board in the Settlement Paragraph One.]

March 5, 2020—Comments from April Talon, Town Engineer, on Brook, snow, stormwater

Excerpt: “College Brook is on the NH 303d list and is impaired for Chloride, Nitrogen, and has a TMDL for Bacteria. How does the owner intend to manage snow removal? Snow shall be removed from the site, as needed, and shall not be pushed against College Brook, trees or other vegetation.”

March 5, 2020—Planner’s Review (for March 11)

“On February 12, 2020, the Planning Board opened the continued public hearing on the revised Site Plan for the Mill Plaza redevelopment project. The applicant’s presentation addressed stormwater management, utilities and landscaping. The public hearing included some comment on the site plan, but the hearing had to be curtailed due to the late hour. Accordingly, the March 11 hearing will provide more opportunity for residents to comment on the aspects of the plan presented at the February meeting.... As noted in my review submitted for the February 12 meeting, the current proposed site plan is out of compliance with a number of site plan standards concerning landscaping, and would therefore require waivers from the Planning Board before the site plan could be approved. During the meeting it was suggested that these standards are “discretionary,” but in fact most of the ones that I had cited (including those in sections 5.8.5, 5.8.6, 5.8.9, 5.8.10 and 5.8.11) are mandatory unless waived by the Board in accordance with the procedures and specific required findings as set forth in Part I, Article 5 of the Regulations.”

March 10, 2020—Former Councilor Katrak says Selig Misleading Planning Board

At 5:11pm, Todd Selig sent an email to PB Chair Paul Rasmussen and Contract Planner Rick Taintor, **Subject: Planning Board role relative to Colonial Durham application | 12/14/15 settlement agreement.** Excerpt: “It has come to my attention that there have recently been questions raised from members of the Planning Board and the public concerning the role of the Planning Board’s review relative to the Colonial Durham application for redevelopment of the Mill Plaza in light of the settlement agreement dated December 14, 2015. As such, I am writing to provide clarification and

direction so the Planning Board may proceed with its review. This clarification and direction is reflective of guidance I have received from the Town's attorney and in my formal role as a party to the agreement itself as Town Administrator under Section 4.5 of the Town's Charter. The Planning Board's role is to review the application submitted by Colonial Durham in front of it. If there is a claim that the plan violates the settlement agreement, that is something for the Town Council and the Town Administrator to determine. The Planning Board has no jurisdiction over the settlement agreement. Similarly, the Town Council has no jurisdiction over the Planning Board's review of the application. Other than the narrow points contained in the settlement agreement, the Council and the Town Administrator intended the applicant to have to go through the normal Planning Board process. I will note definitively that the northern half of the property referenced in the settlement agreement in section 1 b was intended to reflect the half of the property that generally parallels Main Street, not magnetic north." [See full email as sent, in "**Settling the 'Planning Board Role' Regarding the 2015 Legal Settlement**, [Joshua Meyrowitz 3-19-21](#).]

Former Town Councilor Firoze Katrak, who saw the Selig email, forcefully refuted Selig's claim about the understanding at the Council regarding the PB role in the Settlement, and he replied at 7:29 pm: "Hi Todd, Planning Board Members, Town Council, Todd your email to the Planning Board Chair is deceptive, and you continue to dodge the heart of the issue I have raised. You have explained your opinion as you see the situation today. My question is not what you believe today. My point is that you need to acknowledge what the then TC was told at the time it passed the SA [Settlement Agreement]. We were told the PB would use the SA in its normal review process. You continue to ignore that matter. Why? Is it because you now want to encourage the PB to ignore the SA? If so, that would be an unethical bait and switch tactic on your part. I hope that is not the case. The reason why this is important is that the SA has many elements beyond density and positioning (North side) issues. As you know the SA also includes issues for wet lands buffer, WCOD, privacy barrier for adjoining neighbors, onsite security, etc. Unless the PB considers all such relevant factors from the SA, it will not be doing what the then TC assumed PB would be doing in its review process. There should be plenty of historic records to either prove me wrong, or to confirm what I have said. By avoiding my request, you continue to dodge the heart of the issue and you continue to mislead the PB. I am disappointed, I expect better from you. It is not too late for you to still set the record straight: that the PB should include the SA as one element in its tool kit when it reviews this application." [See full text, as sent, in: [Joshua Meyrowitz 3-19-21](#).] This exchange leads to Selig's different guidance to the PB the next day, as detailed below.

March 11, 2020—Todd Selig's [email](#) to PB confirms the Board's role in Settlement

Pressed by former Town Councilor Firoze Katrak to communicate accurately to the PB about the Council's discussion about the Board's role in aspects of the Settlement, Todd Selig finally concedes the following in an email to Rick Taintor and Paul Rasmussen and others at 1:35pm: "[W]hat the Council/Town Administrator overtly envisioned was that other than the narrow points in the settlement, we wanted the applicant to have to go through the normal Planning Board process. Does this mean that the settlement agreement is not an extremely important tool for the Planning Board to review and carefully consider? Absolutely not. There are numerous elements that the applicant and the Planning Board (in the course of its review) should endeavor to ensure are in place such that the application is in conformance with the settlement agreement. Determination of compliance with the settlement agreement ultimately lies with the Council/Town Administrator, however, as described

above. **Does this mean that there are aspects of the settlement agreement that directly call out the Planning Board's review? It absolutely does. Some of the provisions in Paragraph 1 do just that.**" (Emphasis added.) Thus, this email confirms the position of Richard Kelley & Lorne Parnell in the disagreement with Rick Taintor on Feb 12, 2020. [Nevertheless, at the PB meeting that night, no one on the PB acknowledges receipt of this email, which they might not have yet read, and members of the PB continue to state the PB has no role in the Settlement up through the Jan 12, 2022 Planning Board meeting.

March 11, 2020—PB rebuffs residents' requests for PB to vote on whether new or old plan

Residents question why the required Public Hearing sign on Mill Rd has not been displayed, why the PB has not asked for details on the amount of the vegetated hillside to be removed and other aspects of the plan. Rick Taintor claims that everyone in Town knows about the hearings [which is unlikely to be true, and legally irrelevant]. Chair Rasmussen claims that the PB has asked for hillside details. [But on June 5, 2020, in response to queries, Rick Taintor wrote to Joshua Meyrowitz: "as of yet the Board has not called on the applicant to provide any of the requested additional information. I do not know if the members feel that they have enough information, or if they are waiting until they've gone through the review once and will ask for more details to be provided with the next complete plan revision."]

March 12, 2020—Former Councilor Katrak [email](#): Taintor misleads Board

"It was disappointing and very concerning to see last night's (March 11) PB meeting because Mr Taintor continued to mislead the Board in regard to the SA. He continued to harp on his false opinion (encouraging the Board to almost ignore the SA), and he presented a myopic view of Todd's email to me by disregarding Todd's main overarching message.... I hope the PB now understands that it should not ignore the SA; and that it will use its provisions as one tool during its review of the MP application. It might be worthwhile to ask if Mr Taintor should be removed/replaced from the ongoing MP review process because he is biased against the residents of the town. I will leave that for the 'Town' to decide. I have hope that the PB will protect the Town's residents, in spite of Mr Taintor's unwarranted and biased aggression."

March 25, 2020—Board votes for third-party stormwater review

The Board voted to engage a third-party stormwater reviewer (Horsley Witten).

April 2&3, 2020—CDA Submits [Landscaping Plans](#), [Waiver Request](#), & [Memo](#)

CDA requests waiver from a [Site Plan Regulation](#): "5.8.9 Foundation Planting Strip. There shall be a minimum 4 foot wide foundation planting strip between the building and any parking lot or driveway situated on the front or side of the building."

April 2, 2020—Fougere [Fiscal Impact Analysis \(FIA\)](#) submitted

This submitted fiscal impact analysis is limited to increased post-redevelopment value of the Plaza property, something that would be expected with any redevelopment, with a net gain in Durham tax revenue after added expenses for police, fire, etc. But that is not the *overall* fiscal impact study that Attorneys for residents argue is required nor is it what was discussed as the scope on June 13, 2018, when the application was accepted as complete (see June 13, 2018 [Minutes](#) & [Video](#)).

Additionally, as multiple residents write in about [but are offered no opportunity to speak about at any Planning Board hearing through Jan 2022], the Fougere report is sloppy in other ways: It confuses “net” with “gross”; inflates UNH enrollment numbers and trends (“over 15,000,” p. 3, when UNH Institutional Research shows that UNH enrollments had been over 15,000 for only two out the prior 28 years, and have been falling); there is no mention of widely acknowledged upcoming UNH “enrollment cliff” from 2025 onward; there is no mention of impact on lifestyles & property values of single-family homes that would be in the shadow & echo of massive multi-story structures with student housing; none of the described analyses are forward-looking; significant data in presented charts are undiscussed or misrepresented in accompanying text; the report has key omissions and glosses over data that would be unfavorable to CDA; the report is much less detailed/thorough than prior FIAs provided to Durham’s Planning Board; the report omits the interface with Durham’s required expenditures per ORCSD funding formula; the report assumes no school-age children in vacancies created elsewhere. See one-page **Summary of Critiques of CDA’s Mill Plaza Fiscal-Impact Analysis (FIA)** [Joshua Meyrowitz 1-22-21 #1](#), with links to source resident and attorney letters.

April 9, 2020—Planner’s Review (for April 15)

Taintor describes a conference call with CDA representatives in which they outlined draft changes to the site plan in response to Taintor’s earlier description of non-compliant landscaping. He also notes: “On March 11, 2020, the Planning Board opened the continued public hearing on the revised Site Plan for the Mill Plaza redevelopment project. The bulk of the hearing was taken up by continued public comment on (1) the landscaping plan and (2) stormwater management, including impacts on College Brook’s water quality and flooding. The public hearing was continued to April 15 to consider the applicant’s traffic impact study.... On March 18 CDA’s attorney Ari Pollack notified me that discussions with Hannaford regarding the traffic study remained unresolved and that therefore CDA would not be able to present the traffic analysis at the April 15 hearing. Instead, CDA proposed to use that hearing to present the fiscal impact analysis and proposed revisions to the site plan to address the landscape issues.”

Taintor adds a note of concern about the submitted Fiscal Impact Analysis: “In Table 8, page 14, the report compares the post-development gross tax revenue of \$1,012,858 (from Table 4, page 9) to the estimated marginal service cost increase (i.e., the net service cost) of \$96,036, resulting in a net positive impact of \$916,822. However, this gross tax revenue figure includes the existing revenue from Mill Plaza of \$224,419 (Table 4, bottom line). I believe that the analysis should compare marginal costs to marginal revenues, and therefore should use the net tax revenue of \$788,439 ($=\$1,012,858 - \$224,419$), resulting in a yearly positive impact of \$692,403. As noted, with this correction the analysis still produces a positive estimated fiscal impact.

The applicant has also submitted revised landscaping plans intended to address compliance with four sections of the Site Plan Regulations, and a request for modification of three standards in the Regulations: (1) the 6-foot minimum width of landscaped areas in several locations; (2) the requirement for a 4-foot-wide planting strip between a building foundation and an adjacent parking lot or driveway, or between a sidewalk and a parking lot or driveway; and (3) the 40-space maximum for any section of a parking area....

April 10, 2020—Covid Protocol: emails to be read aloud at PB hearings

Official email from Michael Behrendt, Friday, April 10, 2020 4:48 PM with agenda for April 15, 2020 meeting attached: “Our policy has been to not read emails aloud at the meetings due to time constraints.... **However, for the foreseeable future, in part to encourage email rather than physical attendance [because of Covid-19], I will read all emails which pertain to Planning Board business aloud at the meeting.**” This led a number of residents to submit short emails on the CDA Fiscal Impact Study (none of which were ever read aloud).

April 15, 2020—PB considers modification to promised reading email aloud

Joshua Meyrowitz: “Thank you so much.... I’ll just make a quick comment about the opening discussion about the reading of emails. I appreciated all the reasoning that everybody presented. **But, since Michael Behrendt had sent out an official Town notice stating this change of policy last week, and it was echoed in other official Durham communications. And since I see on the web site a bunch of people jumped in to give very short emails, with this in mind.... I think that you are obligated to at least do that brief reading from the shorter emails, for at least *tonight*, and then have the discussion about what would make the most sense going forward....**”

Chair Paul Rasmussen: “You’re correct; that last point was on me. I forgot.... Yes, and I’ll care of that [reading of the resident emails] immediately.”

[However, Rick Taintor was asked to read just **one** of the many citizen emails submitted, because the FIA discussion was expected to take place later during the same April 15 meeting. But then, with the applicants’ long landscaping presentation and the landscaping discussion consuming a lot time, the FIA discussion was moved to April 29. On April 29, a technical failure led to the cancelation of the meeting, and the FIA discussion was moved to May 13, 2020. ([video](#)) ([minutes](#)) ([agenda](#) Item 12: “Public Hearing – Mill Plaza Redevelopment.”

April 23, 2020—[Planner’s Review](#) (for April 29)

Excerpt “Residents have submitted letters and emails with comments on the fiscal impact analysis, including questions regarding its scope, methodology and data accuracy. I have shared all such correspondence with Mark Fougere, the applicant’s fiscal impact consultant. I anticipate that Mr. Fougere will address many of these concerns in his presentation of the report.... In order to grant a conditional use permit, the Board must find that “The proposed use will not have a negative fiscal impact on the Town unless the Planning Board determines that there are other positive community impacts that off-set the negative fiscal aspects of the proposed use.” [Zoning Ordinance, Sec. 175-23.C.8] If necessary, the Board may commission an independent fiscal impact analysis at the applicant’s expense.”

April 29, 2020—Economic Development Director Soutter “responds” to FIA comments

Instead of responding to the specifics in residents’ letters, Soutter simply claims no negative impact of homes in proximity of Plaza plan. “When investments are made to a building, or a group of buildings, it either has no effect on value or increases value. Value, to a certain degree, is a personal opinion.” Student housing will not lead to a “circus environment” because professional management and the “highly capable and respected” Durham Police Department. “Additional housing means more competition in the housing market. Competition is a good thing.” She adds: “Even if there are a few less students in the coming years, there will remain a need for quality housing.”

April 29, 2020—Technical failure leads to meeting cancellation

May 1, 2020—Former Councilor Katrak [condemns](#) Soutter letter & gets attacked

Former Councilor Katrak writes to the Town Council, PB Chair Rasmussen, Planning Admin Asst Karen Edwards, Todd Selig, Rick Taintor, Christine Soutter, and Michael Behrendt. Excerpt: "I need to bring your attention to the outrageous letter/email dated April 29th from Christine Soutter to Mr Taintor (for the Planning Board). We know her job is to promote and assist development around town. So, I guess one could appreciate her 'Rah, Rah' efforts to promote any/all development, including the MP. But this letter/email from her, as the Town's Economic Development Director, to the PB? She has absolutely no professional competence to provide testimony on financial impact and related issues. Her saying "I simply need to respond to some comments and make few of my own ..." is not a legitimate excuse for her to then utter abject nonsense that she then spews in her five bulleted points. Not only is she wrong in many/most points, she also displays her ignorance of Town's history, and she also insults town residents with her comments (e.g. about student behavior, Policing, etc.)...."

Michael Behrendt responded, in part, "I find his email below to be way off base and grossly unfair and inaccurate." Todd Selig responded: "Michael Behrendt has provided some thoughtful feedback for you and the group you had chosen to include...."

Katrak replies: "Let us consider only one example from Christine's letter, her first (presumably her most important?) point. Quote: "When investments are made to a building, or a group of buildings, it either has no effect on value or increases value. Value to a certain degree is personal opinion." She can believe what she wants, but is this what the EDC and the Town believe? If so. there would be no need for anyone to get any approval for any project from the PB or submit economic impact analysis, because her statement implies that every building investment is automatically justified and self-approveable by that statement. Wow, what a deep concept! Of course we hope that her statement cannot be the EDC's position, nor the Town's position. If it is, then the residents and I need to be educated about this new thought, and the zoning code thrown in a dust heap? Also, instead of reviewing her letter only in isolation, let us consider a portion of the historic big picture of what has been going on with the MP review process, in spite of huge, well intended, heroic efforts by the PB over many years. As is expected, the developer has a well resourced team of attorney, architect, and numerous other "experts" (some good, some quite obviously biased, etc.). Who is the staff/team for town residents?... [O]ne staff member (i.e. Michael) who tried valiantly to represent the interests of the residents without being biased, he got "fired" from the project by the Administrator. Then the hired contract Planner (Taintor) has clearly shown he is not capable of, or interested in being unbiased or in protecting the interests for residents by properly interpreting the SA, the zoning code, CU etc (e.g. his shocking comment to PB to "ignore" the SA during PB review of project). I am glad that wrong advice by Taintor then got corrected (i.e. PB does have the SA as a tool during its review), although as you know it was through many unfortunately heated emails.... But then, do we think the residents have a prayer to get a reasonable design for the MP project under such circumstances where a series of staff actively pushes for the development without regard to its design limitations and without regard for valid interests of the residents who are severely constrained on what they can afford to hire as experts? That is the big picture context for my email reaction to Christine's letter. It may be the proverbial straw that broke the camels back - her letter is too much, too blatant and too one sided

(plus incompetent in my opinion). And the town residents deserve some kindness and some better treatment from the Town staff.”

It takes several requests over several days from Mr. Katrak to get this email exchange posted among Mill Plaza Citizen Comments.

May 1, 2020—[Friday Updates](#) reports rosy UNH enrollment/off-campus housing projections

“**Assessing....** The student housing market is still strong; it has not dried up at all. Jim talked with UNH. UNH is grappling with the number of students living in one unit. The trend for new projects was to include 3-6 bedrooms per unit but due to coronavirus lots of parents won’t want their kids with so many students. Todd wondered aloud if UNH pares down from a 4 to 2 person suite where will those students go? Probably to the private market. Even if Durham experienced declining enrollment, if students go to the private market, UNH would not see vacancies on campus, and in-town rentals would see additional demand. Jim said UNH lost about 200 students last year but they are making up with transfer students and in other ways, so overall enrollment is not declining.”

May 4, 2020—Horsley Witten [First Peer Review](#) is submitted

The reviewer makes a number of recommendations for changes and further documentation, and after months of CDA speaking about a decrease in impervious areas on the site, she notes: “The Applicant has proposed an increase in impervious area of approximately 17,415 square feet (sf). Per the Alteration of Terrain Regulations and the NHSWM, HW recommends that the Applicant include calculations to verify that an adequate groundwater recharge volume (GRv) and water quality volume/flow (WQV/WQF) treatment will be provided to compensate for the loss of pervious cover.” See also: [Applicant Response to Stormwater Review 5-20-20](#) & [Supporting Documentation 5-20-20](#).

May 20, 2020—CDA [Updated Site Plan](#) & [Landscaping Plan](#)

May 13, 2020—CDA encourages PB to vote against independent FIA (with no public input)

At the start, Rick Taintor made an effort to remind the Board about the letter-reading promise, but he was not invited by the Chair to read them, and the so-called “Public” Hearing on the FIA then proceeds with the applicant allowed to distract the Board with a promised “appraisal” on impact on adjacent property values (which is *not* a Fiscal Impact Study) sway a narrow vote to defeat a Motion for an independent FIA – and no member of the public – not by letter, not by oral comment, was allowed to participate.

A key argument in favor of an independent FIA was nevertheless made during the discussion, but the non-voting Alternate Council Rep to the Planning Board. **Jim Lawson:** “My point to the Planning Board is that this Fiscal Impact Study looks at the best-case scenario, and the problem is that between the best case and the worst case there are too many variables and too many things that we can debate. So I would encourage the Planning Board to go and take a look at what is the worst-case scenario. And if the worst-case scenario, which is a scenario where really two things happen: One is increased vacancy rates and decreased valuation of other properties, which can be easily calculated and we increase the number of students in the Oyster River School District, what is the result?... And how do I go back to citizens of Town and say ‘Wait a minute. I was expecting that type of benefit.’ And shouldn’t we be taking a more realistic approach...?”

Rasmussen: “I’m deciding vote? I think premature, want to see the rest of the CDA real-estate analysis. ‘NO,’ but we may want to revisit this.” **Parnell:** We haven’t allowed any public comments, no choice but to come back to it!” **Rasmussen:** “Agreed, we will do that. We’ll continue on with this Wed May 27.... We are going to continue that to our next meeting. So we will be continuing our discussion of fiscal impact and allow the public to speak.”

[But in subsequent months, the PB kept confusing the FIA with the later-submitted June 2020 White Appraisal, and barely allowed the public to weigh in on the FIA issue, with no public input permitted when the PB again voted against an independent FIA eight months later on January 27, 2021.]

May 13, 2020 ([video](#)) ([minutes](#)) ([agenda](#) Item 11: “Public Hearing – Mill Plaza Redevelopment”). See more detailed transcripts here: [Joshua Meyrowitz 1-27-21](#) and these on-page summaries: **Summary of Critiques of CDA’s Mill Plaza Fiscal-Impact Analysis (FIA)** [Joshua Meyrowitz 1-22-21 #1](#) and **Critique Summary of CDA’s White Appraisal “Opinion Letter”** [Joshua Meyrowitz 1-22-21 #2](#).

May 19, 2020—Soutter & Tobias discuss EDC letter to PB encouraging development

Perhaps in response to Firoze Katrak’s May 1, 2020, questioning who Christine Soutter represented in her April 29, 2020, email to the PB in support of Mill Plaza, Christine Soutter suggests a letter from the full committee to the Planning in support of CDA’s general plan. **Christine Soutter:** “So Mill Plaza is still trying to get their development through, and they are not going to give up. They have invested a lot. I was speaking to Sean McCauley yesterday, and he asked if the EDC, or someone from the EDC, or the EDC as a whole be willing to speak in favor of development for the Town and why development is good for the Town. And why we need it. So I said I would certainly bring that up and ask if anybody would be willing to stand up and say we need development in Durham and this is why.” This leads to a Soutter presentation of the theory that taking open land (such as in the pending Gerrish Drive proposal) and turning it into housing will be an economic boon to the Town, as would Mill Plaza changes. Town expenditures, she says, are just going to keep going up, and we have to have some way to pay for them. People only come out to attack development, she said.

There is then discussion of how it would be “awkward” for EDC member Sally Tobias (also Council Rep to the Planning Board) to sign a letter about issues pending before the Planning Board, such as Mill Plaza. Thus, the letter idea evolved to a letter advocating for development in general. Al Howland indicated he would draft something focusing on need for “good development.” See ITEM 6: 1:05:00 to 1:11:50 ([video](#)). [In reporting on the EDC meeting at the next PB meeting, Sally Tobias made no mention of this discussion. In Feb 2022, Al Howland confirmed that he did not draft that letter, but “did work on zoning changes for the downtown and the purchase of 66 Main Street. Hopefully they help lead to some thoughtful development that end the extreme seasonal slowdowns that plague local businesses.”]

May 22, 2020—Attorney Puffer letter on CU criteria and missing fiscal-impact data

Puffer notes that with respect to DZO, §175–23 (C)(8), “Clearly, the focus in the Article is on the impact on the Town as a whole.... The submitted FIA fails to make any attempt to analyze or estimate the effect of CDA’s project on the Town as a whole (e.g., the effect of adding 258 student housing beds on existing public or private student housing, or upon the property values and lifestyles of the

abutting residential neighborhood). Moreover, it does not address these impacts under anything other than a 'best case' scenario, and that only for the immediate future.... Nevertheless, Mr. Fougere's approach is wrong from the perspective of what the Durham Planning Board needs to assess the proposed project. Mr. Fougere should not be ignoring the Town-wide fiscal impact of the proposed project. He should not be focusing solely on the net effect of the project on Town government. Moreover, Mr. Fougere's analogy to Madbury Commons is off the mark, given that Madbury Commons was not a Conditional Use project, but was permitted as a matter of right."

May 26, 2020—CDA's Attorney [responds](#) to Attorney Puffer

In support of this counter-argument, Attorney Ari Pollack cites Rich Taintor's April 23, 2020 Planner's Review and Christine Soutter's April 29, 2020 memo. And he adds, in part: "Attorney Puffer incorrectly criticizes Mr. Fougere's FIA for its reference to Madbury Commons, a similar Durham project which Attorney Puffer states was not dependent upon a conditional use approval but was instead 'permitted as a matter of right'. This is simply wrong. Madbury Commons is a comparable mixed-use project in the same Central Business District that required the same Section 175-23(C) conditional use approval for its proposed commercial/residential mixed-use development." [See Puffer letter, May 27, 2020.]

May 26, 2020—Horsley Witten submits Second [Stormwater Peer Review](#)

"The Applicant has proposed **an increase in impervious area of approximately 17,415 square feet (sf)**. Per the Alteration of Terrain Regulations and the NHSWM, HW recommends that the Applicant include calculations to verify that an adequate groundwater recharge volume (GRv) and water quality volume/flow (WQV/WQF) treatment will be provided to compensate for the loss of pervious cover.... The entire parcel is 449,328 sf. The existing site has 275,725 sf of impervious surface (61% of total site) and the proposed site has 293,140 sf of impervious area (65% of total site).... **The Applicant has clarified that College Brook flows to Mill Pond and stated that there are no restrictions that would cause the Brook to backup creating a flooding issue downstream. No further comment....**The Applicant has noted that there will not be large volumes of snow storage onsite." [The applicant has, in fact, long been informed of frequent College Brook Flooding.]

May 26, 2020—Planner's Review (for May 27), no public input yet on FIA

Excerpt: "On May 13, 2020, the Planning Board opened the continued public hearing on the revised Site Plan for the Mill Plaza redevelopment project. The applicant's consultant, Mark Fougere, presented the fiscal impact analysis that he had prepared for the project. While there was discussion by the members of the Planning Board, there was not enough time in the meeting for resident comments on the fiscal impact study, and therefore that matter was continued to the May 27 meeting.... On May 4, 2020, the Horsley Witten Group (HW), the Town's peer review consultant, submitted a letter report summarizing their initial review of the site plans and the stormwater management plan dated January 2, 2020. A video conference call was held on May 13 with Janet Bernardo of HW, Joseph Persechino of Tighe & Bond, and Emily Innes of Harriman, to discuss the initial peer review and clarify some questions. Tighe & Bond submitted responses to HW's peer review letter, along with additional documentation, in the evening of May 21. HW's second peer review letter was then submitted today, May 26. These documents have all been distributed to the Planning Board members and are (or will soon be) posted on the project web page. HW's second peer review letter finds that Tighe & Bond has addressed the issues and questions raised in the initial

peer review and states that HW has no further comments on the stormwater management plan. Following the continued discussion of the fiscal impact study, the Board will hear presentations about the stormwater management plan from the applicant's engineer. Janet Bernardo of HW will be available to answer any questions that Board members may have concerning her review."

May 27, 2020—Attorney Puffer responds to Ari Pollack's May 26 letter

Excerpt: "Mr. Fougere's reference to Madbury Commons as a comparable mixed-use residential project was indeed misplaced, as I accurately noted. Attorney Pollock incorrectly describes Madbury Commons as 'a comparable mixed-use project in the same Central Business District that required the same Section 175-23 (C) Conditional Use approval for its proposed commercial/residential mixed-use development.' **However, since the initial Madbury Commons application was accepted as complete on September 25, 2013, 49 days prior to the first public hearing on the conditional use Zoning amendment (on November 13, 2013), the mixed-use residential component of Madbury Commons was permitted as a matter of right.** (Conditional Use criteria were applicable to Madbury Commons only in regard to encroachment into the Shoreland Protection Overlay District and the Wetland Protection Overlay District. It was only those specific and limited encroachments that needed to meet the Conditional Use criteria. The overall project itself was not subject to the Conditional Use criteria that Colonial Durham must meet.)" (Emphasis added.)

[After this fundamental correction of Ari Pollack's false claims, Pollack is not seen at meetings or heard from by letter until 2021. Yet, when he returns to PB hearings, he again restates the false claim that Madbury Commons was subject to the same mixed-use with residential Conditional Use criteria that apply to Mill Plaza. See, for example, August 25, 2021, at about 8:15 pm. No one on the Planning Board corrects him.]

May 27, 2020—PB hears from Horsley Witten stormwater reviewer ([video](#))

Rick Taintor opens the hearing by acknowledging the many FIA-related letters received, but he is not invited to summarize or read from any of them (contrary to April 13 promise by the PB Chair). Taintor also mentions receipt of the May 27 Attorney Puffer letter, summarized above, regarding the FIA, but he notes that it has not yet been posted. The focus of the hearing is on stormwater review. Thus although four residents are given time to comment briefly on the limits of the Fougere Fiscal-Impact Analysis (FIA), and to request "revisiting" the truncated May 13 vote against commissioning an independent FIA (with applicant influence, but no public input), Board members decline the Chair's invitation to comment on the public comments. The Board turns to stormwater reviewer.

Janet Bernardo, Horsley Witten: "We asked [CDA] about potential flooding.... the volume is being increased a small amount. So that always is something that we realize 'okay, let's make sure that there's not going to be so much volume that if it was a bathtub...and you keep adding volume, it would eventually go over the top.' But...when we talked about it, they [CDA] were able to explain how College Brook...continuously flows to Mill Pond, so there's no real restrictions such as if it was a bathtub with a small outlet or something that would restrict it...." **Joshua Meyrowitz** query during May 27, 2020, Public Hearing: ~Rick Taintor could answer if he forwarded any of the College Brook flooding pictures and videos I sent him in early 2020 to anyone involved in the stormwater review for Mill Plaza.~ **Rick Taintor:** "I do remember getting it.... **I did not forward it to anyone.**" (9:38:35pm)

June 4, 2020—[Planner's Review \(for June 10\)](#)

Excerpt: "On May 20, along with their response to the stormwater peer review, Colonial Durham's consultants submitted revised site and landscape plans, which will be the topic of discussion at the June 10 meeting. The landscape plans have been changed to reduce the extent of nonconformance with the site plan regulations. Sheet L00.7 of the revised landscape plans identifies the two areas of parking islands that will be nonconforming to the 6-foot minimum width requirement. In reviewing the revised site and landscape plans I noted some discrepancies which I have conveyed to the CDA team [details follow]."

June 8, 2020—Planner's Memo on "Grandfathering"

Excerpt: "In reviewing a site plan, the Planning Board has three options with respect to a legally established nonconforming site condition: (1) the Board may require the nonconforming site condition to be brought into compliance with current land use (zoning and site plan) regulations, (2) the Board may require that the extent of nonconformity be reduced, or (3) the Board may require that the nonconformity be mitigated. Because these are the only actions allowed by the Regulations, the Board may not simply let a nonconforming site condition remain without reduction or mitigation. It should also be noted that Section 1.1.4 does not cover any site condition that did not conform to a land use regulation that applied at the time that the condition was established, nor does it apply to a site condition that does not conform to the most recent approved site plan." For details on non-compliance with what was required under earlier site-plan approvals, see: "**Mill Plaza: As Long-Required vs. As Has Been – and As Still Could Be,**" [Joshua Meyrowitz 6-18-20](#).

June 10, 2020—Board member asks for reduction of scale ([video](#))

Richard Kelley: "Mr. Chairman, could I just offer, I mean, the applicant has asked for feedback in regards to landscaping, and I'd like to throw this on the table. We heard from the public, and I feel much the same way. And the, we've seen the stormwater report, and I think we're making dramatic improvements to the stormwater, and while I think we're certainly making improvements to the landscaping that exists there today, I've said this before to applicants: 'You know, dazzle us!' See if we can go back to the drawing board and do something remarkable out here. And that's a little, that's certainly a degree of measure more than what we're seeing here. And I do recognize what I'm asking, and that would be a reduction of building footprint, parking, in order to get greenspace. But I'm going to throw that out there and ask the applicant and report back next week whether that can be done or not. Thank you." [There has been no sign of any response to this request as of early 2022, and the request goes unmentioned in the summary of the meeting in the June 12 Planner's Review. Residents' hopes that the issue of scale would be addressed by PB-created Architectural committee were dashed when Todd Selig and PB Chair Rasmussen privately renamed the committee the "Minor Architectural Design and Color Committee."]

June 12, 2020—[Planner's Review \(for June 17 Hearing\)](#)

Excerpt: "On June 10, 2020, the Planning Board opened the continued public hearing on the revised Site Plan for the Mill Plaza redevelopment project. The applicant's consultant, Emily Innes, presented revisions to the proposed landscape plan and discussed the waivers and other discretionary approvals that are being requested. After public comment on the landscape plan and stormwater impacts, the Board discussed the requested waivers from the foundation planting strip requirements and the minimum width of landscaped areas. Board members also discussed replacing the smaller

ornamental trees in the landscape plan with larger shade trees in order to provide more environmental benefit, and finding ways to provide larger planting areas to promote long-term tree health. The Board voted to continue the hearing to a special meeting on June 17 to continue discussion of the requested waivers, and to hear a presentation from the applicant on the real estate analysis that the applicant indicated would be available no later than the morning of June 12.... As of 9:50 this morning I have not received Colonial Durham Associates' real estate report. Therefore, I assume that this matter will not be presented at the June 17 meeting, but will instead be deferred to the June 24 meeting."

June 17, 2020—Can the PB ask for changes or just vote up or down?

Per the [minutes](#): "**Nancy Lambert, Faculty Road**, said she was an abutter. She said she was confused about the process. She said the landscaping was being discussed in pretty specific detail, and asked if this meant the proposed layout for the project had been accepted. She said it seemed that there were some problems with the location and size of the buildings. She also said the applicant wouldn't need waivers if the buildings were smaller, so it wasn't clear why the Town should be expected to grant waivers if the site had been overbuilt." **Chair Rasmussen [transcript]**: "Very little about the site plan is currently set in stone, since we're still discussing it and it hasn't been approved. As we move forward, you know, we are focusing on different areas such as stormwater which we've done upfront. And right now we are addressing the landscaping which is gonna have a huge determination on how the traffic flows and where the buildings end up being situated. We're haven't accepted where the buildings are, we're discussing how to fine tune, better way of saying it." **Board Member Lorne Parnell**: "But I'd say, we have a site plan in front of us. This is what has been presented to us for our consideration, and I don't think that until we get all the information in about this project and we view of it, which includes the landscaping and where the building are located and everything else. It's all one, uh. This is what is presented to us and this is what we are to analyze. It's not really our position to say why don't you move this or do that, until we get to the end and say 'this is good' or 'this is not good.'" ([video](#)) (minutes)

June 17, 2002—Letter from White Appraisal 6-17-20

The White Appraisal is designed to "investigate if the proposed mixed-use development for Mill Plaza would cause or contribute to 'a significant decline in property values of adjacent properties'" (p. 1). As numerous residents point out: White's expertise is in appraising commercial properties, not residential homes, which may be why he refers to the Mill Plaza as the "subject property" rather than the targeted "adjacent properties." He provides sales data for only TWO neighborhood homes (from before current site plan submitted), and he ignores standard "paired sales" comparison (similar homes next to student housing & those far from it). He also falsely refers to "UNH's stated desire to reduce on-campus student housing" (p. 8).

Other problems residents mention: the report looks out toward one neighborhood street *from* Plaza, vs. at Plaza (now & proposed) from neighborhood; it claims to have studied "surrounding neighborhoods," but does not display knowledge of the Faculty Neighborhood; it shows a misleading picture of leafed trees as "Faculty Rd residence" (from spot where, w/o leaves, 7 homes are visible); it provides no pictures or narrative of views *from* Faculty Rd, Chesley Dr, Brookside Commons, etc.; has no mention of potential impact on cherished neighborhood wooded path & College Brook footbridge; it displays no awareness of research on how buffers/boundaries define & create a sense

of “neighborhood” and the research on the importance of separation in college towns between family homes & college-student life; it ignores impact of added traffic/noise/trash/hours from 258 residents on site that now quiets down at night; it claims student voices are soft, ignoring easily witnessed patterns of student shouting/screaming in Town; it ludicrously claims that HVAC systems will limit 258 college students opening their windows; it falsely claims that Durham’s low major crime rate means that UNH students are quiet at night; it ignores impact of tall buildings (light, noise, shadows) hundreds of feet closer to homes than Main St housing; it falsely mentions “extensive” landscape buffers for site plan (which has structures close to site boundaries); it ignores planned destruction of the one significant landscape buffer now on site (1.1-acre urban forest hillside near Main St); it displays ignorance even of the current Plaza (mistakenly referring to long-gone Bella’s Restaurant & the Durham Marketplace as still there); it claims a new façade & sloped roof would transform an old “below-average” grocery to “very good” condition; real-estate agents cited say he lied to them re: task & client; he also uses unverifiable anonymous sources; he claims to represent the thinking of two home-buying families, without ever contacting them; he absurdly claims Durham, as “progressive” community, would welcome rowdy students next to their homes; he claims there would be no noisy gathering spaces for Plaza tenants (ignoring the 95-foot deep Bldg C parking deck and the whole Plaza site itself), and he misleadingly cites police statistics, when most disturbances from student nightlife are not reported to police. Moreover, the report claims, almost comically, that the CDA plan is better than some things that would be even worse: “such as a sexually orientated business, a commercial building with toxic materials that could be an explosion hazard, a medical marijuana distribution facility or a nightclub or bar that would obviously be undesirable uses for a nearby single family residence” (p. 7). Yet, research on the likely tenant demographic (college-student) indicates that documents extensive experimentation with sex, drugs, alcohol, loud music, etc. (w/o limited business hours of cited alternatives).

See also [Memo from Assessor, Jim Rice 8-19-20](#) in support of the White letter (excerpted further below), [Matthew Meskill Evaluation of White Appraisal letter 12-2-21](#), which is very critical of the White report, the response to Meskill in [Letter from White Appraisal 1-11-22](#), and response to response in [Eric Lund 2-2-22](#).

June 16-17, 2020—shade tree plan & trade-offs in widening medians to what is in Plaza now

June 19, 2020—Planner’s Review (for June 24)

Excerpt: “The sole topic to be addressed at the June 24 meeting is the applicant’s real estate analysis. As discussed in previous meetings, after the applicant’s consultant has presented the real estate analysis the Board may decide to commission an independent study of fiscal, real estate and/or economic impacts.”

June 24, 2020—White Appraisal presentation & response

Brian White summarizes his report, residents critique it, the Board discusses commissioning a more “neutral” review. [But is dissuaded from that the PB Chair and Assessor Jim Rice in his Aug 19 memo, quoted from further below. (video, minutes). See also “CDA’s White Appraisal: Quotes, Questions, & Corrections, [Joshua Meyrowitz 7-2-20](#) (PPT: 45 slides). the one-page “Critique Summary of CDA’s White Appraisal ‘Opinion Letter,’” [Joshua Meyrowitz 1-22-21 #2](#), and the

sources listed under the summary of the White Appraisal above (June 17, 2020).

June 25, 2020—Sean McCauley Email objects to Peer reviews of FIA & Appraisal

Excerpt in email addressed to Rick Taintor & members of the PB, cc'd to Karen Edwards and Craig Stevens: "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. The professional reputations of the consultants are unblemished, and we believe that the reports are reflective of the requirements of the Conditional Use Permits Sec. 175-23 C. 6 and 8. Please note, that section 8 (fiscal impact) does allow the planning board to receive an independent analysis, but section 6 (property values) does not." [See July 1 Attorney Puffer response.]

June 22, 2020—Horsley Witten Supplemental Stormwater Comments

HW now acknowledge downstream flooding, but sticks with the original "all is okay" conclusion. Excerpt: "HW understands that there is a flooding concern downgradient of this development. The water flowing in College Brook results from many sources and therefore a comprehensive watershed study would be needed to identify measures to reduce the down gradient flooding problems. It is HW's opinion that this proposed development will not exacerbate any downstream flooding."

July 1, 2020—Attorney Puffer responds to McCauley June 25 email

Excerpt: "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.).... 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."

July 16, 2020—Planner's Review (for July 22)

Excerpt: "The Board discussed whether to engage a consultant for an independent study of fiscal, economic, and/or real estate market impacts. It was agreed that the Chair would consult with Town staff, including Assessor Jim Rice, as to the appropriate scope of such a study, and would report back to the Board for further discussion and decision. However, due to vacation schedules that consultation has not yet taken place.... At its June 17 meeting the Board voted to request an independent peer review of the applicant's traffic study, and scheduled the traffic study presentation for the July 22 meeting so that the applicant's report and the peer reviewer's comments could be discussed in the same meeting. However, the applicant is still not ready to release the traffic study, and has therefore requested that the July 22 meeting be used instead for presentation of the

proposed architectural designs.... Because the Town's architectural design standards for the Central Business District are extensive and detailed, the Board may wish to consider engaging an independent design Planning Consultant's Review – Mill Plaza Redevelopment Page 2 of 2 professional to evaluate the proposed architectural designs for the Mill Plaza project and report back to the Board at a future meeting." The report continues with a list of remaining review items and a tentative schedule.

July 22, 2020—CDA on history of redevelopment designs (minutes)

CDA offers a [Presentation of Mill Plaza Redevelopment Design Evolution, 7-22-20](#) with a short history of the Mill Plaza and the evolution of redevelopment plans. The presentation has some helpful history and visuals, with overlays of some designs over other designs. (Interestingly, the presentation documents with overlaid lines that the Concept Plan attached to the Settlement agreement has no buildings or parking in the Wetland buffer; see slide 15.) But the presentation also skips over many key issues, such as not mentioning the Hannaford objection to the 2018 plan (slide 24) that led to a year stoppage. The slide presentation skips from that 2018 plan to "2020 Update to Submission," with no transition or explanation. Also presented is [Presentation of Mill Plaza Architectural Design 7-22-20](#). Slide #13 of the latter obscure the mass and height of the Bldg C retaining wall by plunging it in shadows. This visual technique however, does not mute concerns: "Mr. Parnell said he agreed with what others had said regarding the south view of Building C, including the wall. He said it wasn't appropriate for that particular view that residents on Faculty Road would be looking at. He said something had to be done to solve the view of the underground garage" (minutes, p. 14).

Several residents responded with concerns about the mismatch with Durham's Architectural Design Standards. Also, as with some other meetings, the PB Chair and members displayed confusion between the submitted Fiscal Impact Analysis (FIA) and the White Appraisal. At one point, in response to a resident query about the FIA, "Chair Rasmussen said Mr. Rice had said the economic impact analysis was unnecessary" (minutes, p. 11), when Rice had actually commented only on the Appraisal.

One exchange (or absence of exchange) distressed many residents with respect to treatment of their questions:

Resident Bob Russell: "When [Sharon Ames of Harriman] she stated the credentials of her architectural firm, she mentioned that they did commercial and residential housing. There was no mention of student housing. Has that firm designed any student housing anywhere in the State of New Hampshire? *[6 seconds of silence]* Could she answer that please; that's important, because that's what they're designing here."

Planning Board Chair PR: Um *[then 5 secs silence]*; **Architect Sharon Ames:** "Do you wish that I answer?" **PB Chair Rasmussen:** "No, I don't see a need to answer that." **Bob Russell:** "Well what are they designing there?... So they're designing student housing, It's that simple. I don't see why the board doesn't ask that question. It's a very simple question to ask of the people who are presenting this thing." *[No response]*

Prof. Russell continues with several other unanswered questions, adding, "Again, the Board

is not going to respond to anything we ask.” On the implications of such non-responses, see [Robin Mower 7-31-20](#).

July 31, 2020—First [Traffic Impact & Access Study](#) submitted

For links to *all* of the 707 pages of submitted Traffic Impact studies, hearing videos, and summaries of third-party review testimony through December 2021 – as well as what traffic aspects have yet to be studied as of early 2022, see “‘Traffic Impact’: What’s Been Ignored?” [Joshua Meyrowitz 1-6-22](#)

Saturday, Aug 8, 2020—Zoom Community Meeting

Not part of the “review process,” but this one-hour 42-min event is available for re-viewing [here](#). Part of it consisted of a presentation also shown at the Planning Board.

Aug 10, 2020—[Letter from Hannaford Supermarkets](#)

Hannaford again reinforces the linkage between the Mill Plaza site plan and the Church Hill parking plan. Excerpt: “Hannaford has reviewed the Traffic Study and is not in disagreement with the findings; however, of note is the fact that it does not address matters associated with the Adjacent Parking Lot Project. Hannaford’s position continues to be that the Mill Plaza Project will not have adequate parking to support the proposed redevelopment unless at least 157 parking spaces from the Adjacent Parking Lot Project are dedicated to the Mill Plaza Project.... Our understanding from the applicant is that they are continuing to work on an acceptable parking lot management plan and once that is available, Hannaford will be able to determine whether it can support the project design.... The parking lot management plan will not involve utilization of a guard station at the entrance from Mill Street. It is our understanding that a component of this plan will be modern parking lot surveillance equipment.”

Aug 19, 2020—Town Assessor Rice [advises](#) PB not to commission independent “appraisal”

Excerpt: “I concur with Mr. White’s findings that there would be no significant diminution of value to neighboring single family residential properties provided that the project is well designed, pedestrian friendly and the housing component of the project is well managed. Recent studies have shown that a mixed-use project like the proposed Mill Plaza could have the opposite effect of increased property values once the project has been completed. This is primarily because the neighborhood is within walking distance to downtown amenities such as grocery stores, retail shops, restaurants, offices, public transportation (train to Boston) and the University of New Hampshire campus.” (See data-researcher Dr. Eric Lund’s critique of this data-free Rice letter [Eric Lund 2-2-22](#)).

Aug 20, 2020—[Planner’s Review](#) (for Aug 26 Hearing)

Excerpt: “At the July meeting several Board members requested the design team to clearly address how the proposed design is consistent with the detailed guidance in the Town’s Architectural Design Standards. It is expected that this will be presented at the August 26 meeting.... As suggested last month, the Board may decide to engage an independent design professional to evaluate the proposed architectural designs for the Mill Plaza project and report back to the Board at a future meeting.” The reports continues with some concerns about the scope of the traffic impact analysis and lists items still to be addressed.

Aug 26, 2020—CDA presentation runs to 11pm, no time for public response

The PB allows the Plaza owners (CDA) to fill the Public Hearing time until 11pm with a 66-slide [Applicant Presentation to Planning Board 8-26-20](#), leaving no time for ANY public comments before the meeting ended. (However, the last few slides of the presentation finally respond to some of the residents' long-expressed questions about measurements and distances.)

Sept 9, 2020—Town of Durham Facebook PR for Mill Plaza generates criticism

“ZOOM SESSION WITH COLONIAL DURHAM ARCHITECTURAL TEAM FOR PUBLIC INPUT ON MILL PLAZA REDEVELOPMENT PROPOSAL (Color Palettes) – September 12 @ 2 PM.” In one response on the Durham page: “If our town leadership would like my feedback: let's not build dorms in the heart of our downtown. There are plenty of excellent places for that. The heart of downtown is not it. So, let's not talk about colors. Let's talk about how best to use the very heart of our community. Dorms are not it. Also I am disappointed that this public space is used to invite people to a promotional event for a for-profit outfit. Please don't do that. Or at the very least make it clear that this is not an event that is in any way supported by the town. As it stands the announcement seems like it is supported by the town and specifically by the Planning Board. I'm sure this is not the case, since that would be a conflict of interest.”

Then, on the [Faculty Neighborhood Facebook](#) group site a comment read: “Our input is requested on COLOR PALETTES for the proposed student housing complex in our Mill Plaza, where we once connected with one another with ice cream at Kaleidascoop, dinners with friends and family at Bella's, workouts at Wildcat Fitness and where many neighborhood kids make their way through to the middle school and high school. Color palettes.” With one response to that post being: “Seems like ‘Before I vomit on you, would you like to pick out the brand of paper towels for clean up?’”

Saturday, Sept 12, 2020—“Community Meeting “

This 54-min session invites residents' input on the very narrow topic of “color palettes.” See [Video](#) of the session and the core [presentation](#).

Sept 17, 2020—Planner's Review (for Sept 23 Hearing)

Excerpt: “An ongoing issue relating to the application review and approval process is the question as to whether Colonial Durham Associates will be able to implement the proposed redevelopment project given the restrictions imposed by its lease with Hannaford. On August 10 Hannaford's Director of Real Estate wrote to the Board stating that Hannaford has “the right ... to approve or veto any proposed changes to the plaza” and that the proposed redevelopment project ‘will not have adequate parking ... unless at least 157 parking spaces from the Adjacent Parking Lot Project are dedicated to the Mill Plaza Project.’ [The “Adjacent Parking Lot Project” refers to the conceptual plan for a surface parking lot on the parcel at 19-21 Main Street, owned by Toomerfs, LLC, which was proposed to have vehicular access from Main Street but only pedestrian connections to Mill Plaza.] The letter also outlines other requirements for Hannaford's approval of the redevelopment project, relating to Colonial Durham Associates' management of the parking lot. As a result of this letter (following a previous letter dated November 4, 2019) several residents have again questioned whether the Board should continue to proceed with review of the project or should instead defer consideration until the two proposed projects can be reviewed and acted upon together.” Taintor adds more details and notes: “As a result, the current applications do not depend on the availability of off-site parking as

long as the Planning Board is satisfied that the parking requirements of the redevelopment project are being met appropriately and any required fees are paid to the Town.” Taintor review the history of the response to Hannaford’s Nov 2018 letter, adding: “Given these uncertainties, it does seem to be an appropriate time for the Planning Board and Colonial Durham Associates to revisit the status of the project and discuss whether another pause is advisable to enable CDA to resolve the parking issue with Hannaford. It would also be helpful to understand the current plans for the adjacent parcel and the likely application and review process.”

Sept 23, 2020—Hannaford [Letter](#) reveals CDA/Hannaford disconnect

This letter, in which Hannaford indicates that it will not approve the project, seems to reflect a misunderstanding of the proposed traffic study, but it nevertheless undermines CDA’s Sean McCauley’s recent claims to the PB that CDA is working “hand in glove” with Hannaford.

Sept 23, 2020—PB votes for Subcommittee instead of architectural consultant

Resident **Catherine Meeking**, Orchard Dr, asks some compelling questions about process of the review that resonated through the town afterward. Excerpt: “And I want to say up front that I want some clarification on the *process* for approving a major project. And I’m not saying this facetiously. I really, really don’t understand the process and would be very appreciative. I imagine there are other residents who would like to hear how it actually works. I am not clear on why we are going through detailed landscaping, architectural colors, etc. when we don’t know if applicant will pass [she mention Hannaford veto threat, Conditional Use violations for student housing next to family homes, etc.] ...My concern is how the process goes; so much discussion about what a project will look like, the decision becomes a almost foregone conclusion. So like Durham residents on a train, and they don’t want to go to the next station, and soon they realize the train is so far along, they say you know we’re going to the next station because it doesn’t make sense to pull it back. Moving forward to such a point that won’t pull it back because too much time and effort has been spent on it. And that’s to me how this project feels.”

Then Ms. Meeking adds: “I wanted...to have an understanding of the role of Durham residents’ inputs, how they’re incorporated into the final decision. There have been some truly impressive letters to the Board – Dennis Meadows, Robin Mower, Josh Meyrowitz, the names go on and on – that have made some really salient points.... Do you make a note of their points and review them at a later date? Because as residents, even though we’re very happy to be heard, we don’t want it to be like, you know, some law that’s passed, right, and then it’s not enforced. So you want to feel that if we have enough concerns for the future of our Town that we put all this considerable time to make these comments, I really hope that they are not forgotten over time.”

After discussing the option of commissioning an architectural consultant, the Board turned to a different idea. The following motion passed 6-1: ***“That the Planning Board authorizes the appointment of a subcommittee from the Planning Board for the purpose of architectural review of the Planning Board Minutes September 23, 2020 Page 14 Mill Plaza plan. The subcommittee can have up to 7 members as determined by the Town Administrator and the Planning Board Chair.*”**

Note this exchange: **James Bubar**: “This is not limited to just color.” **Chair Rasmussen**: “Right, architectural review.” Per the minutes: “Mr. Bubar received confirmation that the discussion on architecture wouldn’t just be limited to colors.”

Yet, as Todd Selig describes in Nov 17 letter below, he and the PB Chair narrowed the committee's name and focus to "minor" architectural review and color issue.

Oct 6, 2020—PB-initiated Architectural Subcommittee is demoted to "Minor"

There were three meeting: [October 6, 2020 Meeting](#), [October 23, 2020 Meeting](#), [November 12, 2020 Meeting](#). There was not attention to the issues of oversized scale because the committee's focus was non-publicly altered to be the "Minor Architectural Design and Color Committee."

Oct 9, 2020—Planner's Review (for Oct 14 Hearing)

Excerpt (with slight distortion): "At the September 23 meeting the Board voted to establish a subcommittee focusing on minor architectural features, including color. The Minor Architectural Subcommittee was appointed by Town Administrator Selig and held its first meeting at 2:00 pm on Tuesday, October 6. Because a number of issues could not be resolved at the time, the subcommittee decided to hold a second meeting on Friday, October 23, starting at 2:30 pm." As noted under Sept 23, the PB did not, in fact, vote to establish a subcommittee focusing on "minor" architectural features. The subcommittee function was demoted by Todd Selig and Paul Rasmussen.

Oct 14, 2020—PB Hearing on Traffic Impact

For consistent omissions on this traffic-study day and others, see: "'Traffic Impact': What's Been Ignored?," [Joshua Meyrowitz 1-6-22](#),

Oct 20, 2020—Buffer Impact Plan & Site Plan in Color

The plan still shows roadway, parking, parking islands, and what appears to be a sliver of a retaining wall in the wetland buffer.

Oct 26, 2020—Planner's Review for the Conservation Commission

A thorough 15-page summary of the issues the Conservation Committee needs to address.

Oct 23, 2020—Applicant's [Presentation](#) for Architectural Subcommittee

Oct 29, 2020—Streamworks [Recommended](#) Brook Improvements

"• Remove invasive species • Remove trash and debris from the stream and floodplain • Repair drainage features on the embankment • Continuous curbing • Remove an unused footbridge • Lay back slope or use reinforced earth at steep slopes • Remove rip rap at toe of slope and replace with a planted coir or soil pillow system • Restore the most upstream portion to a step-pool system." [It is not until March 24, 2021, that CDA, pressed to commit to what it will *actually* do, admits that the last three items, the most significant, are not actually in its plan.]

Nov 12, 2020—Planner's Review (for Nov 18 Hearing)

Describes Oct 14 PB hearing, Minor Architectural Subcommittee meetings, upcoming ConCom site walk and continuing review, and anticipated Mill Plaza review schedule.

Nov 17, 2020—Selig [letter](#) defends demotion of Architectural Design Committee

Responding to concerns about the potential right-to-know violations entailed in the non-public decision to demote the “Architectural Design Committee” voted for by the Planning Board into the “*Minor Architectural Design & Color Committee*” that would not grapple with the issues of scale of the project, Selig writes “It’s important to clarify that Paul Rasmussen and I were the ones who selected the name of the subcommittee as discussed in our subcommittee proceedings. The name added the appropriate direction and boundaries to the role Paul and I believed the Planning Board had intended for the group – the composition of which I would ultimately organize in conjunction with Paul.”

Nov 18, 2020—PB Hearing – CDA fantasy images

[Applicant Presentation 11-18-20](#) causes laughter and horror among some residents as fantasy image of a winter wonderland forest (below) from Chesley Dr perspective (with almost invisible 51-foot tall building C) is shown (image 14), when the current 17-foot tall building is prominently seen through the straggly existing trees at the end of Chesley Dr (see right). As one resident posted on “Durham Residents for Responsible Plaza Development” Facebook page: “Don’t we all need a laugh these days? Well, here is one. From the developer’s presentation at the 11/18/20 Planning Board meeting, this is their depiction of what they say will be the view of the plaza from Chesley Drive. Really?? Not a building in sight! – just an ethereal, endless fantasy garden. This would be funny, if it weren’t so insulting.”



Despite more than a year of sustained criticism from residents of such fantasy images, the PB has yet to censure CDA for them or ask for accurate images. (See “Limited Sight Site Walk,” [Joshua Meyrowitz 2-3-22](#)).

Fri, Nov 20, 2020—Conservation Commission Site Walk

This two-hour site walk views the Plaza and Brookside Commons, Chesley Dr, and Faculty Rd. (much more thorough than the site walk by the PB on Dec 16). ([minutes](#))

Dec 10, 2020—Planner’s Review (for Dec 16 Hearing)

Excerpt “Items expected to be discussed at the December 16 meeting include: § Finalization of brick selection § Discussion of College Brook buffer management and stream improvement §

Consideration of potential improvement to the Mill Road pedestrian crossing If time permits, the Board may also want to discuss and perhaps vote on whether to require one or more independent peer reviews as outlined in #6 below” (Fiscal Impacts, Traffic Impacts, & College Brook Impacts and Restoration). “Approximately 3.4 acres of the Mill Plaza site (north of College Brook) lie within a quarter mile of the Oyster River, which is included in the NHDES Rivers Management and Protection Program. As a result, the Town is required to notify the Oyster River Local Advisory Committee (LAC) about any proposed actions within this 1/4-mile corridor, and the LAC will comment on any proposed DES actions (such as the issuance of an Alteration of Terrain permit). The LAC will also provide input to municipal officials if requested. If the Board would find any general or specific input from the LAC useful, it would be appropriate to discuss the parameters in a meeting and I will then forward the request to the LAC.”

Dec 16, 2020—Site Walk ([minutes](#))

In a very limited site walk (just barely over an hour), the Planning Board ignores the detailed written recommendations from two residents with site-walk experience. The site walk does not even include viewing the Plaza from abutting Brookside Commons, Faculty Rd, and Chesley Dr (as had been done with prior site walks) and barely any of the boundaries on the site are marked. See details of the deficiencies and the call for a full-sighted site walk here: “Limited Sight Site Walk,” [Joshua Meyrowitz 2-3-22](#) for details.

Dec 16, 2020—Public Hearing

Per Planner’s summary (in Jan 23 review): “On December 16, 2020, the Planning Board opened the continued public hearing on the revised Site Plan for the Mill Plaza redevelopment project. The applicant’s engineers presented a potential upgrade of the existing Mill Road crosswalk next to Hannaford and the potential conversion of the plaza’s Mill Road entrance to three-way stop control. The Board discussed these options and received public comment on traffic issues. Board members also continued their discussion of whether to require an independent fiscal impact analysis.”

Jan 4, 2021—[Conservation Commission’s Recommendation to the PB](#)

The Conservation Commission meets five times to form its recommendation to the PB on the Mill Plaza’s CUP application. 1) Oct 26 2020 ([agenda](#), [video](#), [minutes](#), [public comments](#)) 2) Nov 20 2020 Site Walk ([minutes](#), public comment link above) 3) Nov 23 2020 ([agenda](#), [video](#), [minutes](#)) 4) Dec 09 2020, special meeting on Plaza ([agenda](#), [video](#), [mins](#)) 5) Jan 4 2021, special meeting on Plaza ([agenda](#), [video](#), [mins](#)). The Commissions’ one-page recommendation includes the following: “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. The Conservation Commission recommends that the Mill Plaza Redevelopment be re-designed to restore a 75-foot vegetated wetland buffer with no impervious surface....”

Jan 2021—Residents learn that Board’s “packets” no longer routinely contain citizen input

Email from Karen Edwards to Joshua Meyrowitz on Jan 8, 2021: “Due to the large amount of letters we are receiving, I am not copying them for the packets. They will be emailed to the Board and posted on the website.” Residents learn that this violation of the written policy on every agenda has

been going on since at least December 2020. This leads to a heated email exchange between Joshua Meyrowitz & Michael Behrendt, with Behrendt claiming Todd Selig's backing on the new policy and that the old policy was merely an informal one. Yet every PB agenda continues to say: "Correspondence that pertains to current Planning Board matters, except where the public hearing has been closed, will be: a) emailed to the Planning Board; **b) mailed to the board members if received by the Thursday prior to the meeting**; and c) posted on the Town's website." (Emphasis added.) The deviation in policy lasts at least four months (see April 20, 2021 entry, below). That the change in policy was not even announced to the public (and therefore could not even be factored into citizens' strategies for length, form, and timing of their input) is particularly disturbing to many residents.

Jan 19, 2021—Attorney Pollack [letter](#): close the Hearing and take "final action"

CDA's attorney reappears after eight months (see May 27, 2020 entries) to press for closing the Public Hearing and "final action" on March 24, 2021. He also highlights the plan to have Brook restoration consultant Tom Ballestero present on Jan 27, 2021 (with no hint that CDA does not plan to act on the key aspects of Ballestero's suggestions). See Contract Planner's Jan 20 [response](#).

Jan 21, 2021—[Planner's Review](#) (for Jan 27 Hearing)

The Planner lists items that should be discussed at the January 27 meeting (close to direct quotations): Architectural design (Finalize brick selection); Wetlands impacts (Review Conservation Commission recommendations on WCOD/SPOD permits, wetland & shoreland conditional use permit criteria); College Brook (Presentation by Thomas Ballestero regarding recommendations for stream improvements); Discuss specific commitments by CDA regarding implementation of College Brook buffer management / stream improvement plan); Determine whether to require an independent evaluation of wetland/brook impacts and recommendations for mitigation or enhancement; Traffic impacts (reaffirm, amend or rescind June 2018 and June 2020 votes to require peer review of applicant's traffic impact analysis and run of traffic model); Fiscal impacts: Determine whether to require peer review of applicant's fiscal impact analysis. In a key passage, Taintor adds: "The 'Recommendations' report does not identify what entities might be responsible for implementing any of the recommendations. In my January 20 letter to the applicant's attorney I recommended that it would be helpful for CDA to present the specific measures that it proposes to undertake, including an implementation timeline." [CDA stonewalls on specifics for several more months. See March 24, 2021.]

Jan 24, 2021—[Planner's Review](#) on "Fiscal Impact Analysis"

Excerpt: "A one-page document submitted by Joshua Meyrowitz on January 22 ("Summary of Critiques of CDA's Mill Plaza Fiscal-Impact Analysis") provides a concise list of the issues and concerns that residents have raised." But this leads to a detailed citizen [response](#): "I very much appreciate that Rick Taintor's [Planner's Review on Fiscal Impact Analysis 1-27-21](#) cites my January 21, 2021 [one-page summary of critiques of the Fougere FIA](#) as providing '**a concise list of the issues and concerns that residents have raised.**' However, as I have written to Mr. Taintor, I fear that his document on the FIA issue mischaracterizes the **key concern expressed by both residents and Board members** (and even summarized at one point by Mr. Taintor himself on May 13 2020!).... Therefore, I hope that in addition to your reviewing my one-page summary on the FIA, you will review the **excerpts below from your own deliberations**, dating back to May 9, 2018.... I provided 95% of

the following pages to Mr. Taintor prior to his sending you his FIA overview.”

Jan 27, 2021—PB holds Public Hearings with applicant input, but silenced public

The dense Jan 27, 2021 public hearing in fact ran through most of what is listed in the Jan 21 Planner’s Review, above, but in a “Public Hearing” with virtually no public input. See verbatim transcript here [Joshua Meyrowitz 1-21-22](#) of the Planning Board’s initial deliberations on the Conservation Commission’s recommendation, with no ConCom member who supported the recommendation present, yet with CDA Attorney input, and no public input permitted. The applicant definitely refused to consider restoring the wetland buffer. CDA’s offer to make a \$25,000 contribution for shared efforts of Brook/buffer improvements has the uncomfortable feeling of being an incentive for the PB to allow them violate the plain language of WCOD Zoning, the Settlement, and the Conservation Commission recommendation. The Board also voted on Mill Plaza traffic studies and (again) against an independent fiscal impact analysis – with no public input until 11pm, after all the votes had been taken.

Feb 1, 2021—Revised Plans submitted (dated 1-20-21)

The plans continue to show roadway, parking, parking islands, and (seemingly) the edge of a retaining wall in the wetland setback. Per the Feb 24 Planner’s Review: “The key changes from previous plans are on the easterly side of the site, in the areas surrounded by clouds on Sheets C-102 and C-103, and include the following: Between Building C and boundary with 19-21 Main Street: Revisions to proposed grading, new proposed retaining wall parallel to stone wall at property line, proposed retaining wall perpendicular to Building C, with stairs down to parking lot level, revised configuration of pedestrian pathways between Building C and property line South of Building C parking area: Walkway and grass pavers shifted slightly north (away from the brook) to eliminate a narrow grass strip that would likely have posed maintenance issues.”

Feb 3, 2021—Attorney Pollack [letter](#) on proposed Conditions of Approval

Feb 17 & 22, 2021—Proposed Management Plan & Revised Management Plan

Portions of the plan (p. 2) are almost word-for-word the same as the [Management Plan submitted for Madbury Commons in 2014](#) and the “Overview” for each use the same catch phrases (“prevention,” “visibility,” “consistency,” and “communication”). This lends credence to resident arguments the videos shown to the Planning Board of non-monitored and uncontained activity and noise at Madbury Commons after 11:30pm (not a problem because Madbury Commons is not adjacent to family homes) may be what the Mill Plaza will generate. See videos at: “**Crucial Conditional-Use Zoning Variables: Buffers, Distance, Scale, Hours of Activity, and Type of Tenants,**” [Joshua Meyrowitz 8-19-21](#) and “**Downtown Durham Soundscape?**” [Joshua Meyrowitz 12-30-21](#).

Moreover, the plan (p. 8) indicates. “A parking lot monitoring system will track license plates as vehicles enter the parking areas.” This is likely proposed in response to Hannaford’s demands in its Aug 10, 2020 [letter](#): “The parking lot management plan will not involve utilization of a guard station at the entrance from Mill Street. It is our understanding that a component of this plan will be modern parking lot surveillance equipment.”

The PB does not respond to months of resident and attorney ([James Allmendinger 6-16-21](#)) input on NH having the strictest limitations on license-plate scanning technology, even in the hands of police. See [Joshua Meyrowitz 10-1-21](#). See **ADD Joshua Meyrowitz 2-7-22** for what happens after the issue is raised at the Town Council in Sept 2001 and then the Town Attorney intercedes on CDA's behalf. See [Email from Town Attorney 10-4-21 Re: License Plate Readers](#).

Feb 24, 2021—Planner's Review (for Feb 24 Hearing) & Applicant's March 10 Response

The Planner's comments on the revised plan are summarized under Feb 1, 2021, above. The Planner also commented in detail on Conditions of Approval, saying in part: "In addition to the above precedent and subsequent conditions, which primarily relate to the permitting process, the Planning Board has the authority to impose substantive conditions when it grants a conditional use permit. Section 175-23C of the Zoning Ordinance...forth a non-exclusive list of the types of conditions that might be incorporated into any conditional use approval." (This same non-exclusive list is repeated, within relevant context, in [Beth Olshansky 1-18-22](#)).

Feb 24, 2021—Public Hearing

Per the Planner's memo for March 24: "On February 24, 2021, the...following items were discussed: Conservation Commission report (presented by Chair Sally Needell); Proposed uses and activities in the WCOD upland buffer; Relationship of the Planning Board's review of the applications to the Settlement Agreement's requirement for an increased natural buffer; Applicant's proposed Property Management Plan."

Feb 25, 2021—TNH: "Mill Plaza redevelopment proposal faces town criticism"

"Colonial Durham Associates (CDA) faced questions from the Durham Planning Board and several Durham residents for not abiding by a settlement which protects the wetland buffer near the College Brook."

March 10, 2021—Revised Plans

Roadway, parking spaces, landscape islands, and a bit of one retaining wall remain in the wetland buffer. Planner Taintor details the changes in his 3-24-21 Planner's Review, linked to below, including: "Expanded the limit of work to encompass (a) areas of the upland buffer along College Brook where buffer improvement measures are proposed, and (b) the Mill Road crosswalk near Hannaford."

March 11, 2021—Planner's Detailed Memo for March 16 Technical Review Group

March 16, 2021—TRG Group Minutes

March 17, 2021—USNH Board Chair expect major enrollment crash

"Appearing before a sub-committee of the House Education Committee.... [Joe] Morone [Chair USNH

Board of Trustees] said higher education has been a growth business since the GI Bill, but is now contracting.... He said there are three major challenges facing higher education both in New Hampshire and nationally: fewer high school graduates, growing demand for greater financial aid, and greater competition for students with other colleges. He noted the number of students drops off a cliff in a few years and remains in that range for a generation.” [Foster’s](#) [By 2021, UNH’s climbing acceptance rate was 87%, the highest rate in ten years.]

March 17, 2021—Lawn signs for a better Plaza design announced

On Facebook, [Durham Plaza Watch](#) and [Durham Residents for Responsible Plaza Development](#): “Would you like a free yard sign to show your support for a better plaza design? Please fill out this form to let us know....” About 200 lawn signs appeared on lawns all over Durham.



March 18, 2021—Planner’s Review (for March 24 Hearing)

“Recommended topics for March 24 meeting:...Applicant’s presentations (Description of changes in 3/10/21 revised plan set; Other new/changed information if applicable); Peer review of the applicant’s Traffic Impact Study; Review additional information required and timeline going forward.”

March 24, 2021 (PH)—Pressed to commit to buffer details, CDA admits no slope work planned

Per Planner’s review summary: “On March 24, 2021, the Planning Board opened the continued public hearing on the revised Site Plan for the Mill Plaza redevelopment project. Project engineer Joe Persechino described the changes to the proposed site plan incorporated in the revised plan set dated March 10, 2021, and presented the proposed buffer restoration plan. Public comment focused on the number of proposed parking spaces, landscaping within the parking lots, pedestrian connection to Main Street, wetland and shoreland buffer impacts, compliance with the 2014 settlement agreement, and College Brook water quality. Board members discussed possible approaches to reduce the number of parking spaces and expand the upland buffer, concerns about pedestrian safety, and potential inclusion of electric vehicle charging stations.”

Contract Planner Rick Taintor: “Well, just following up on Professor Ballestero’s [Streamworks] recommendations.... the one I think would have probably the most impact on the plan would be p. 6, talking about laying back the slope or using reinforced earth at the steep slopes. – January 27, 2021

STREAMWORKS RECOMMENDATIONS

- Continuous curbing
- Remove trash and debris from stream
- Remove an unused footbridge
- Repair drainage features on the embankment
- Remove invasive species
- Lay back slope or use reinforced earth at steep slopes
- Remove rip rap at toe of slope and replace with a planted coir or soil pillow system
- Restore upstream portion to a step pool system

Only 5 items in blue to be done by CDA

Tighe&Bond

CDA finally admits that laying back slope is NOT something they plan to do.

Joe Persechino,
PB, [March 24, 2021](#), 9:12 pm

A key exchange between Board Member Richard Kelley and CDA Attorney Ari Pollack:

Kelley: “How do you reconcile, then, that ‘The Revised Application will provide for vehicular roads outside of the shoreland and wetland buffers such that variances from town ordinances are not required’?”

CDA Attorney Ari Pollack: “Are you asking why it is we don’t need a variance? I think the answer is because the existing condition provides more coverage [into wetland buffers] than we’re proposing, and we’re bringing the property more nearly conforming, which based on my understanding of prior applications and other questions before this board and other boards has been viewed as eligible for a Conditional Use permit, which is what we have applied for.” Regarding this exchange, see [Joshua Meyrowitz 4-23-21](#) and [Letter from Attorney Mark Puffer 5-14-21](#).

April 7, 2021—Todd Selig releases April 6 Town Attorney Letter

Excerpt: “Several questions have arisen regarding various aspects of the Settlement Agreement.... The first question is whether the Settlement Agreement impacts the planning board's review of the application. The short answer is that it does not as long as the planning board does not attempt to circumvent that agreement. The settlement agreement simply dictates that the zoning provision which requires 600 square feet per resident does not apply to this application. It places no other limits on the planning board, although it does impose some requirements on the applicant. **Those requirements are found in paragraph 1 of the settlement agreement.**” (Emphasis added. See March 11, 2020, Selig letter regarding paragraph 1 as well.)

The Town Attorney continues: “If the application does not satisfy the site plan review regulations or the conditional use requirements, the board is free to deny the application based on those criteria. In such a case, the applicant could appeal the planning board decision to court. This would not reactivate the earlier case the planning board's denial was an attempt to regulate the density.”

She continues: “An allegation has also been made that because the latest iteration of the plan requires a conditional use permit for uses in the WCOD and SPOD that it violates the settlement

agreement provision which requires that the plan shoreland and wetland buffers must be provided "such that variances from town ordinances are not required. A variance is relief granted by the zoning board when a use is not permitted by the zoning ordinance. A conditional use permit is not a variance—it is a use permitted by the ordinance under certain conditions. Therefore, the need for a conditional use permit does not violate the settlement agreement." [On this issue, see Attorney Puffer letters, [Letter from Attorney Mark Puffer 5-14-21](#) and [Letter from Attorney Mark Puffer 8-24-21](#).]

She continues: "A request has been made for the Council to review the latest plan for compliance with the Settlement Agreement. The Council reviewed the plan in 2018 and found it to be compliant. According to Mr. Taintor, no substantive changes pertaining to aspects of the Settlement Agreement have been made since this time; and therefore the plan would still comply with the settlement agreement. Moreover, it is the Town Administrator who is responsible for enforcement of the zoning ordinance. Therefore, he is integral to any determination as to whether the plan is compliant or not."

This last statement is the most disturbing to residents following the review, since the plan has changed dramatically since the early (also questionable) claim that it matched the Settlement. As Planner Taintor said at the Jan 2020 TRG meeting, quoted above: "I like the old plan a lot better. I would call this a dumbing down of what you had before. And I don't really see it as an improvement.... I would take exception to when you say...this is an extension of the downtown. I don't think it is at all. It's two buildings in a parking lot.... It's a marginal improvement from a 1960s shopping center, a strip mall kind of thing, just taller buildings. I don't know how you do it, but I don't think you are there yet, in terms of a design." Moreover, what was lost in the change in plans was the "streetscape" that Taintor claimed (also questionably) in his June 18, 2018 memo to Todd Selig (forwarded in Selig's July 3, 2018 posting) obviated the need for the Settlement required "ground-floor connector" through Building B. Selig appends the full 7-3-18 posting.

April 13, 2021—ZBA [Determines Church Hill retaining walls=forbidden "structured parking"](#)
Seventy-five minutes after ZBA decision, at 10:34 pm, PB Chair [emails](#) PB with urgent suggestion to change the Zoning Definitions for Structured and Surface Parking. In a followup email the next afternoon, he writes that the existing "definitions fail the 'reasonable person' test and should be immediately reviewed and corrected." That evening, he pushes to establish a subcommittee to work on Zoning changes. This effort is soon halted by Todd Selig because of what Michael Behrendt describes as a "bad look" that the effort is intended to help a particular applicant (Toomerfs), though the bad look extends to the Mill Plaza's "need" for the Toomerfs' parking lot to gain Hannaford's support for the Plaza redevelopment.

April 20, 2021—Edwards "I will be sending hard copies in packets from now on."
See Joshua Meyrowitz 2-8-22 for the full email exchanges about months of variation from written policy regarding citizen input being forwarded in Planning Board Members' weekend packets.

April 22, 2021—[Planner's Review \(for April 28 Hearing\)](#)
"Topics for April 28 meeting: • Chris Granatini of Tighe & Bond will present the applicant's response to the peer review of the Traffic Impact Study. Erica Wygonik of RSG, our traffic peer reviewer, will also be in attendance to answer any questions from the Board. • If time permits, the Board may want to begin discussion of the required findings for the requested conditional use permits, as well as any

suggestions for further plan revisions.”

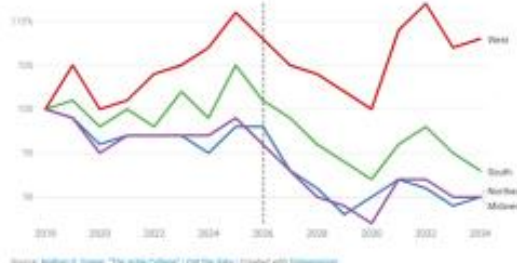
April 27, 2021—USNH Board of Trustees [PPT](#) on Shrinking Enrollment

USNH Enrollment Task Force Images Reveal Crisis for UNH ahead

What The Data Shows: Shrinking Enrollment

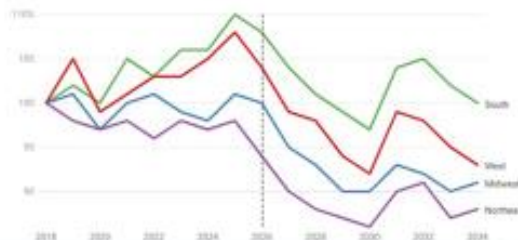
Granite State College Keene Plymouth State University of New Hampshire
University System of New Hampshire

4-Year Regional Colleges



These graphs presented in *The Chronicle of Higher Education* in January 2021 depict the remarkable demographic decline in New England high school students by 2025. This decline will continue to put enormous pressure on higher education.

2-Year Colleges



USNH Enrollment Task Force Images Reveal Crisis for UNH ahead

USNH_Enrollment_Task_Force_Hearing.pdf

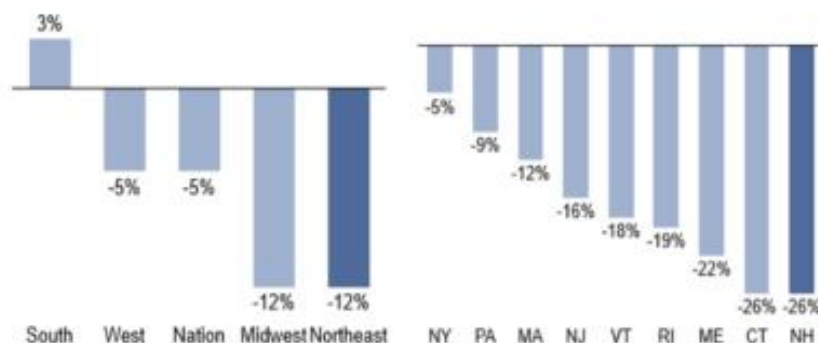
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NH will be especially hard hit

Granite State College Keene Plymouth State University of New Hampshire
University System of New Hampshire

Projected growth / decline by US region and northeast states in high school graduates by 2032, i.e., 15 years out (data from 2017)



April 28, 2021, PB Chair “Educates” public on why public opinion is irrelevant

In response to a comment over Zoom by Dr. Nate Swanson at 10:28pm ([video](#)) about how the more Durham residents find out about the Mill Plaza plan the more horrified they are about it and how the

concerns are much wider than among the dozen or so mostly older citizens who are able to show up on a regular basis, the PB Chair, Paul Rasmussen responded as follows: "...I feel there's a big disconnect between what the public thinks we can do versus what we're allowed to do. So I wonder if a little education is in order. So, we have an application in front of us. At this point, all that matters is the zoning. Um, **public opinion, past studies, the Master Plan are not on the table.** None of that's on the table. We just look at the zoning and the application, the Conditional-Use requirements, that's all we're looking at now. And requests for us to go outside of that are going to fall on deaf ears, because we have to ignore that."

With his microphone cut off, Dr. Swanson holds up a post-it with the words "Conditional Use" on it. And indeed, the [Conditional-Use Zoning article](#) contradicts what Chair Rasmussen said: "The Planning Board shall make findings of fact, based on the evidence presented by the applicant, Town staff, and the **public**," with respect to such things as whether a project has "a positive economic, fiscal, public safety, environmental, aesthetic, and social impact on the town." Indeed, how other than from the public would one judge positive "social impact." Additionally, per the Zoning Article, "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.**" [Several residents wrote letters to correct Chair Rasmussen "education" lesson. See, for example, [Diane Chen 12-2-21](#) & [Kay Morgan 12-3-21](#).]

May 3, 2021—After long news silence, Foster's reports on Mill Plaza

"What will be the fate of Durham's Mill Plaza? After years of debate, decision appears imminent," *Foster's Daily Democrat*, May 3, 2021, pp. 1-2 ([PDF](#)).

May 6, 2021—Rick Taintor on [Oyster River Local Advisory Committee Checklist](#)

The checklist includes: minimizing impervious area, provisions to not increase any existing impairments to receiving waters, adequately address runoff in terms of downstream flooding and habitat protection etc.

May 19, 2021—Dr. Rob Roseen, Waterhouse Engineering, [expert input](#), nitrogen impairment

Excerpt: "The CDA project, while it has many positive elements for stormwater management, has some significant deficiencies for both the lack of buffer restoration as it relates to stormwater management, and for nonconformance with the 75-foot wetland buffer. The plan presented is notable for an obvious missed opportunity for nitrogen reduction through a restored wetland buffer and stream restoration, both of which are important stormwater BMPS. Nitrogen reduction from stormwater and nonpoint sources is an essential requirement for the new EPA Total Nitrogen General Permit to avoid more stringent wastewater limits. The proposed significant changes of an existing non-conforming site require compliance with buffer setbacks.... Finally, it is important to recognize that any CDA project shortcomings for nitrogen controls will be paid for by the Town of Durham in future efforts in fulfillment of nitrogen reduction required under the new Total Nitrogen General Permit. For these reasons, **I believe that the project application is deficient and requires substantial changes for permitting compliance**" (emphasis added). **In the 8 months since receiving this letter, the Planning Board has yet to refer to it**, and when resident Robert Russell cited this and two other letters in a public comment on Aug 25, 2021, the Board allowed CDA Attorney Ari Pollack to attack the comment as useless and a waste of time. (See [Kay Morgan 12-3-21](#).)

May 19, 2021—Nate Swanson delivers a Citizen Petition with over 665 names

7:26:56pm: “I would like to follow up ... [refers to being educated and wants to return the favor ([video](#))

May 14, 2021—Attorney Puffer [letter](#)

Responding in part to Laura Spector-Morgan’s April 6 claims about “the need for a conditional use permit does not violate the settlement agreement,” Puffer writes: “It remains true that the proposed CDA use is eligible for a CU permit, but eligibility on any matter is not equivalent to having a case that merits receiving what is being applied for. CDA eligibility does not in any way mean that CDA can violate the wetland buffer requirements and expect to receive such a permit. CDA may be technically “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.”

May 27, 2021—Foster’s reports on the lawn signs

“Will Durham Mill Plaza redevelopment be approved? Signs show residents’ opposition,” *Foster’s Daily Democrat*, May 27, 2021, pp. 1, 10. ([PDF](#))

June 18, 2021—Selig’s [Friday Updates](#) “Hats off to the Durham Planning Board”

“We sometimes hear complaints from residents that the board is limiting opportunities for public input or making decisions before obtaining public input. Yet, the Durham Planning Board’s treatment of public input is as generous, if not more generous than in most other communities....”

June 25, 2021—Selig’s [Friday Updates](#) Critiques Lawns Signs as “Anti-Student”

Without ever having reported on why residents all over Durham might have displayed lawn signs or why hundreds (later over 1,000) residents had signed a petition in opposition to the Mill Plaza plan, Selig ran a column: “**Sometimes Freedom of Speech Can Have Unintended Consequences – Neighborhood signage conveys negative message to UNH students.**” That led to widespread resident outrage, many letters to Selig, and to “Durham official: citizens signs against Mill Plaza,” *Foster’s Daily Democrat*, June 29, 2021, p. A5. ([PDF](#)) (As is typical, the online and print edition used somewhat different headlines.)

June 27, 2021—[PB Chair Letter](#): applying CU Zoning Student Housing Violates the Law

Excerpt: “For this discussion, I suggest that you familiarize yourselves with RSA 354-A, New Hampshire’s ‘Law Against Discrimination’ and the New Hampshire Municipal Association’s treatment of [Fair Housing in New Hampshire](#). The Conditional Use criteria have us evaluate social impacts, as well as potential noise, odors, and hours of operation. These are meant regarding physical structure or commercial activities. Examples would be placing a gentleman’s club near the middle school, noise caused by a metal manufacturer (sic), or odors from a processing operation. They are not meant to be used against people going about their normal lives.” This letter was not posted on the Mill Plaza site, and the argument presented in it was a surprise to the public when it was repeated by both Chair Rasmussen and Council Rep Sally Tobias on August 25, 2001. Three and a half months after this letter was shared with the Planning Board and five weeks after the argument the letter had a significant impact on the PB sending positive signals to CDA on August 25, 2021, the Town Attorney weighed in on this and other issues in an [Oct 6, 2021 letter](#), noting “It is my understanding that the Fair Housing Act does not protect student housing in its prohibition on discrimination based on age or

familial status.” Nevertheless, the Rasmussen letter was neither rescinded nor corrected, and the significant form of general project guidance to Board Members, the applicant, and the public on August 25 has yet to be corrected as of early February 2022.

June 29, 2021—Foster’s reports on Selig’s attack on the lawn signs, and the reaction

“Selig: Signs against Mill Plaza send negative message to UNH Students,” *Foster’s Daily Democrat*, June 29, 2021, p. A5. ([PDF](#)) (As is typical, the online and print edition used somewhat different headlines.) Link to [excerpt](#) from the June 25 Friday Updates attacking the lawn signs.

Aug 19, 2021—Karen G. Weiss Expert Testimony Re: Student Housing impacts

Based on 15 years of research into college-student nightlife, Prof. Weiss describes the limits of police enforcement once student zones and family zones are mixed: “One can’t call the police every few minutes every night. Moreover, since the police can’t arrive quickly enough to stop what disruption to family life has already happened, most residents who stay in the ‘mixed neighborhoods’ eventually become resigned to living with the student-caused noise and disturbances.” She adds “similar to secondhand smoke and the problems it causes for nonsmokers, secondhand harms from the party subculture have led to a range of harms to non-partying residents, including property damage, noise, litter (e.g., beer bottles, condoms, paper cups), verbal harassment, and a variety of other crimes and violations that can include vandalism, arson, fights and public urination. Together, these ‘nuisance’ behaviors create stress and frustration for families living in these areas, and ultimately reduce the quality of life for entire neighborhoods.” See also: “**Interconnected threads of input on Mill Plaza proposal’s impact on the Neighborhood,**” [Joshua Meyrowitz 12-29-21](#) (Text, two pages)

August 6, 2001—New lawn signs announced on Facebook

On Facebook, [Durham Plaza Watch](#) and [Durham Residents for Responsible Plaza Development](#) announces new lawn signs for a better Plaza and for protecting Church Hill: “Hi friends! We have new (free) yard signs! Why? Because, out-of-town moneyed interests are attempting to force two bad plans on our town. The NYC owners of the plaza want 250+ students beds. Another company that owns a large wooded portion of the Church Hill historic district wants to cut trees, cut into the hill, and build parking for 150+ cars. These proposals don’t meet our zoning regulations. They must be rejected by our town. If you agree, you can place one of these (free) signs in your yard. Sign up [here](#).”



Aug 24, 2021 1,000+ names: [Citizen Petition on Mill Plaza \(Including Comments & Map\) 8-24-21](#)

Aug 25, 2021—PB Chair & Council Rep critique public as biased, ignorant, and deceitful

At 8:12pm, the Council Rep to the PB, Sally Tobias, dismisses concerns about site-plan as “a bit biased and bigoted,” equivalent to ugly, racist bias she witnessed in California. At about 8:17pm, PB Chair Rasmussen reads from the NH Civil Rights Act, adding: “We’re talking, and it is illegal for us to make a decision on *housing* based on the age of who is going to be there. It’s very simple. All right. It’s in the Civil Rights Act and the Fair Housing Act. And the Federal Courts have said – and, even though it’s written toward landlords and owners – the Federal Courts have upheld that Town Municipal Boards, like us, are held to that same standard in terms of the projects we approve and disapprove.... So the talks of, you know, ‘students shouldn’t be there’ [*arms crossed & then out as in “no way” is that acceptable!*] it’s irrelevant to our decision.”

After questions regarding concerns about a separate application for the food truck in the Plaza where the Board was concerned about noise, Rasmussen continued: “It’s apples and oranges in this case, right. In one, you have a commercial establishment, which would be generating the noise and attracting the noise as part of its commercial enterprise. In the other, it’s res-, housing.” Continuing: “But, well, it, it’s, it, when you start to talking about the culture of the person who is living there and whether they are loud, or how they play their music or what they cook and what they smell like, or whatever, that’s protected. You can’t discriminate based on that.” After some resistance regarding evidence of expected noise from student tenants: “Even if there’s evidence, yeah, that becomes a discrimination issue, yes.”

A UNH senior who participates in the Aug 25 meeting explains why he ordered one of the lawn signs and signed the petition. [As he described in a subsequent letter, [Benjamin Domainque 2-3-22](#): “Perhaps I’m ignorant regarding much of Durham’s political culture, but I found that meeting to be an abhorrent attack by some board members on the citizenry of Durham, simply because we were asking for a better, zoning-compliant plan. The plan as it stands now is anti-student and should be rejected.”]

[Email from Rick Taintor 9-12-21](#)

Suggests apartment layouts that would be more conducive to non-student renters.

Sept 16, 2021 – UNH’s Finance VP [Chris Clement](#) offers UNH enrollment projections

“Hello Todd, Regarding undergraduate students, UNH Durham projected enrollment is approximately 10,500 - 10,800 students from fall 2022 through fall 2025. The UNH graduate student population is growing with the goal to increase masters and PhD students to support and strengthen our R1 standing. Housing is a major challenge for our graduate students. There is a big need, and the need is price sensitive. What we hear from our graduate students is: 1/ to live on or close to campus 2/ in accommodations they can afford, particularly if they are on an assistantship. I hope this information is helpful. Regards, Chris”

[Email from Town Attorney 10-4-21 Re: License Plate Readers](#)

“Since Mill Plaza’s LPRs are not mounted to a vehicle, their use of the technology would not violate

[Letter from Town Attorney Regarding Buffers 10-6-21](#)

On March 11, 2020, Todd Selig warned former Councilor Firoze Katrak that “I have reviewed the sealed Town Council non-public minutes from that period and will note that it would be problematic for any person who was present for those discussions to disclose the contents.” He added: “And regardless of what the intent of individual members may have been, what is actually binding is the settlement agreement.” [See March 10 & March 11, 2020 entries above, and full texts of emails at: [Joshua Meyrowitz 3-19-21.](#)] Yet on Oct 6, 2021, the Town Attorney exposed confidential negotiation notes in an apparent effort to support CDA’s site plan, although it has roadways in the WCD, contrary to the plain language of the Settlement. The Town Attorney’s letter also seems to endorse a clear violation of the Town’s WCOD Zoning regarding parking in the wetland buffer, Exposes confidential notes from Settlement negotiations (and violation of Durham’s WCOD setback Zoning to support CDA’s current proposal. See former PB Chair (and attorney) [Peter Wolfe 10-18-21](#) on the extraordinary nature of this intervention on behalf of CDA, as well as the settling of the parking in buffer zoning in prior [Peter Wolfe 6-14-21](#) and [Robin Mower 6-14-21.](#)]

[Letter from Town Attorney Regarding Unit Size 10-6-21](#)

4-bed, 4-bath units are not “student housing.”

[Nov 1, 2021—ConCom Chair objects to Pollack distorting his views](#)

In response to CDA Attorney Ari Pollack repeatedly citing a discussion comment by Jake Kritzer, Kritzer responds: “...Ari Pollack, has been citing comments I made early in the Con Com deliberation on this issue about the ‘fairness’ of including more ambitious environmental restoration as part of the redevelopment.... I want to be very clear on my personal position here. I raised the question of fairness as just that: a question, or topic for discussion. Subsequently, I have resolved that question for myself and conveyed my position quite clearly, including during the meeting when Con Com members joined the Planning Board. My view is that the appropriate environmental requirements for any application depend on the unique attributes of that development. Specifically, I see three major criteria:

- “1. What is possible on a given site in light of its size, lay-out, existing development, adjacent areas, etc.?
- “2. What is the magnitude of the environmental impacts imposed by the project to be mitigated?
- “3. What is the environmental value of the wetlands in question?

“In my opinion, by all three of these criteria, there absolutely can and should be an ambitious environmental restoration as part of this redevelopment: There is space to do that and still allow considerable commercial use (#1), the extent of existing and proposed impacts are significant (#2), and the lower College Brook is an important tributary to the Oyster River and wildlife corridor in an otherwise developed area, not to mention the impacts on adjacent residential areas (#3). "Fairness" is only a meaningful concept here if two applications with similar attributes were asked to work within very different sets of requirements. Given that there is really no application quite like the Mill Plaza redevelopment, there is nothing unfair about what the Con Com advised.

“These personal views have been made more than clear through the course of Con Com deliberations on this issue, including through statements I have made as the process progressed, and especially the fact that I proposed and voted for the Con Com motion.”

Oct 20, 2021—PB Chair critiques public input as not worthy of attention or response

Dec 2, 2021: [Matthew Meskill Evaluation of White Appraisal letter](#)

Excerpt: “There is almost no useful information about the supposedly to-be-appraised neighborhood. Where is an overall description of the neighborhood, its character, its history, its size and the demographics of existing residents, its physical layout, environmental and topographic features, and, most pertinently, how it might be affected by such a change in its functional population if the CDA site plan, including ‘258 beds, were to be built?

“To address its goal, the report ought to have answered such basic questions as: How many households are there in the neighborhood? Approximately how many children and adults live in the neighborhood? What percentage of the current homes are single-unit versus multi-unit? What percentage of the homes are inhabited by families versus groups of college students? Which homes would be most directly impacted by the significantly added noise, light, vehicle and pedestrian traffic, hours of activity, and so on from adding 258 tenants and their guests to the plaza? To what extent would the layout of the site and its adjacency to the neighborhood lead to the new student residents wandering into the family neighborhood on weekend nights? Which homes (given their location and internal size and layout) would be most likely to “flip” into student rentals because of the new residential context from a Mill Plaza student housing complex?

“The White Appraisal effort is further constrained by its limited focus on only two home sales, prior to the proposed redevelopment. Those data points tell us almost nothing about the impact of the proposed redevelopment on property values and reactions of prospective home buyers. White does not engage in the industry-standard practice of providing “paired sales,” that is, comparison of similar homes, some next to student housing and others not next to student housing (either in Durham or in comparable college towns). Of course, even without the specific value differentials, the general answer is not difficult to grasp. As a cited real estate agent in White’s own report indicates with respect to prospective buyers’ responses to a home that would be next to student housing: “for approximately 50% of the potential buyers, this was a deal killer.” Moreover, “it is her personal opinion that the proposed development will negatively impact property values located on Faculty Road.” Yet, these are not factored in to the overall conclusion.

“The White letter advances a number of fanciful claims that do not deserve serious consideration [Meskill details some of them].

“In conclusion, the Brian White “opinion letter”...merely advocates for the CDA redevelopment plan that is on the table, twisting facts and logic to fit that goal. Most significantly, it omits or plays down all the obvious negative impacts from the Conditional Use criteria that White mentions: added traffic, noise, light/glare, and hours of activity on a site that protects the neighborhood from student activity on the campus and Main Street. The Planning Board should discount the White document and commission an independent study, as I understand was originally proposed, but then abandoned.”

[On Jan 1, 2022, Brian White defended his report in a brief [letter](#). Excerpt: “In this evaluation letter Mr. Meskill points out that while he has experience in the loan origination business, it does not appear that he is a licensed real estate appraiser or a review appraiser.... In Mr. Meskill’s admittedly biased evaluation letter he points out several instances where he does not agree with my data, analysis and conclusions. In doing so he does not offer any additional sales data or analysis of such that lead to any conclusions that differ from the value conclusions that Jim Rice and I have reached.” On Feb 2, 2022, data analyst Eric Lund [wrote](#): “Mr. Brian White...dismissed the issues raised by Mr. Matthew Meskill regarding Mr. White’s report on the grounds that Mr. Meskill is not a certified appraiser. As Mr. White should be aware, appraisal reports are typically meant to be evaluated by loan originators such as Mr. Meskill, and loan originators have the discretion to reject appraisal reports that do not meet the loan originator’s standards. Thus one does not need to be a licensed appraiser to find that Mr. White’s previous report is deficient.” Dr. Lund details the data deficiencies.]

Jan 12, 2022—Public Hearing

As Planner Taintor describes (in his Feb 3 Planner’s Review): “During public comment, residents commented on pedestrian circulation (including the elimination of the ramp to Main Street), noise impacts, snow management (and impact on the Brook), landscaping and trees, wetland buffer impacts, and security issues. Several residents requested additional studies and analysis, including a study of pedestrian circulation through the site and input from the Police Chief.” Also requested was a thorough site walk to make up for the deficiencies of the Dec 2020 site walk. And the concerns about tenant circulation extended to all modes of movement (bikes, scooters, skateboards, Uber/Lyft) both *on/through* the site and on and through adjacent neighborhood paths and streets.

Jan 14, 2022—NHDES [sees](#) no plowing violation in inspection on this date

“On January 14th an investigation was conducted to inspect the complaint of snow being pushed/dumped into college brook from Mill Plaza parking lot. Inspection of the site found no current water quality or wetlands violations. The snow had not been pushed or dumped into any State jurisdictional wetlands as of January 14th. RECOMMENDATIONS: The snow removal contractor for the property was contacted, the owner operator is fully aware not to push snow into a wetlands. The description of the operations is to push the snow to the edge of the lot during a storm along with creating in lot piles. At the end of a storm, cleanup of that pushed snow is done with a loader moving the snow away from the area at edge of parking lot, it was noted that it may be a few days after a storm before the snow is removed. There are some piles of snow that remain at the top of the slope at the edge of parking lot, that snow was not in any State violation as seen during site inspection on 01-14-2022.” Note that abutters have no recollection of seeing a “loader” coming to remove the mounds of snow along the Brook in recent decades. In any case, CDA has promised to stop plowing snow toward the Brook.

Jan 26, 2022—ConCom [reaffirms](#) Jan 2021 recommendation, noting some progress

“The Conservation Commission reaffirms our recommendation of January 4, 2021, which is appended. In doing so, we acknowledge that revisions to the plan have moved in the direction of our recommendation, but without reaching the full environmental restoration that we proposed.”

Feb 3, 2022—Planner’s Review (for Feb 9 Hearing)

Excerpt: “A key procedural question before the Board is whether or not to close the public hearing before moving to deliberations. In some previous projects, including Madbury Commons and Orion, the Board kept the hearing open and allowed the applicant to participate in the deliberations and the drafting of the Notice of Decision. Keeping the hearing open would also permit ongoing participation and input from residents, and would allow the Board to request any additional information that members deem necessary or useful to help them evaluate the project.

“Alternatively, if members feel that they have received sufficient information and public input, the Board could close the public hearing at any time and move to deliberations afterward. This would have the effect of closing off any further input from the applicant as well as the public and allow Board members to deliberate, draft conditions, and make decisions without participation by the applicant.

“As your consultant, I believe that it would be more efficient and fairer to all concerned to close the public hearing and begin deliberations. The proposed project has changed very little in the last two years; residents have submitted over 340 letters and emails regarding the project since the application was submitted in June 2018; and the Board as a whole has not identified any additional studies or input that it needs to help it make a decision.” Taintor warns the Board that keeping the Public Hearing open could extend the review into late spring or summer “if the hearing is not closed on the 9th.”

* * *

There are over 350 [Citizen Comments](#) on the Mill Plaza Formal Application Site

All but a handful present strong opposition to the plan. Scores of them are detailed, well-researched, and thoroughly documented.

The early 2022 [Mill Plaza proposal](#) (“Site Plan #9a”), is to add 2 massive multi-story “mixed use” buildings (23-25,000 sf of new commercial space and 258 beds, mostly in 4-bed/4-bath dorm-style units) while leaving the half-century old grocery building as it is, with no place in the Plaza for an enhanced grocery store at a later time.

See 350+ [Citizen Comments](#), 2018-2022 (& 90 from [Design Review](#) +14 [Concept](#), 2014-2017).

Please send comments, suggestions, and corrections to Prof.Joshua.Meyrowitz@gmail.com
39,262 Plaza E History HIGHLIGHTS 1967-2022 02-09-22+