



TOWN OF DURHAM
8 NEWMARKET RD
DURHAM, NH 03824-2898
603/868-8064
www.ci.durham.nh.us

NOTICE OF DECISION

Project Name: Mill Plaza Redevelopment
Project description: Mixed-use redevelopment of existing shopping center to include a total of 80,250 square feet of commercial (retail/office) floor area, 258 residential beds, and 372 parking spaces (288 surface spaces and 84 garage spaces).
Address: 7 Mill Road
Map and Lot: Tax Map 5, Lot 1-1
Zoning: Central Business District
Wetland Conservation Overlay District
Shoreland Conservation Overlay District
Applicant: Colonial Durham Associates, c/o Sean McCauley, Agent
Engineer/Designer: Joseph Persechino, Tighe & Bond
Site Planner: Emily Innes, Harriman
Landscape Architect: Howard Snyder, Harriman
Architect: Sharon Ames, Harriman
Date of decision: May 25, 2022

SUMMARY

The proposed Mill Plaza Redevelopment project required the granting of four Conditional Use Permits and Site Plan Approval by the Durham Planning Board. As described in detail herein, the Planning Board took the following actions on these applications:

- **GRANTED** a Conditional Use Permit to permit certain uses within the upland buffer of the Wetland Conservation Overlay District;
- **GRANTED** a Conditional Use Permit to permit certain uses within the Shoreland Conservation Overlay District;
- **GRANTED** a Conditional Use Permit to permit a drive through facility accessory to a financial institution in the Central Business District;

- **DID NOT APPROVE** a Conditional Use Permit for “Mixed Use with residential” and Mixed Use with parking” in the Central Business District;

and

- **DENIED** Site Plan Approval for the proposed site plan.

A. PROCEDURAL HISTORY

1. This project is the subject of an “Agreement to File Joint Motion to Stay Proceedings in Colonial Durham Associates, LP v. Town of Durham” dated December 14, 2015 (“the Settlement Agreement”) which in part defines the local land use regulations applicable to the project.
 - (a) The Settlement Agreement provides that if Colonial Durham Associates submitted a “Revised Application” for Design Review, conforming to certain itemized design considerations, by January 31, 2016, then the application would be considered to be a revision to a Design Review Application that had been submitted on September 12, 2014, which would have the effect of vesting the application to the zoning ordinance and site plan regulations in effect on September 12, 2014.
 - (b) Colonial Durham Associates submitted a Revised Application for Design Review on January 20, 2016.
 - (c) The Planning Board voted to close the design review process on June 14, 2017. Under State law (RSA 676:12, VI), the project would retain its vesting to the September 2014 land use regulations if the applicant submitted a formal application for site plan approval within 12 months of the close of the design review process, or by June 14, 2018.
 - (d) The determination as to whether the Revised Application conforms to the requirements of the Settlement Agreement is a matter for the Town Council rather than the Planning Board. Nonetheless, the Planning Board proceeded with its review of the Design Review application and subsequent applications for Site Plan Review and Conditional Use Permits using the September 2014 local land use regulations in place of any more current regulations.
2. Colonial Durham Associates submitted the applications, supporting documents, and plans for the project to the Planning Department on May 23, 2018.
3. The Planning Board accepted the applications as complete on June 13, 2018.

4. The applications requested five specific approvals by the Planning Board:
- (a) Conditional Use Permit pursuant to Section 175-53 of the Durham Zoning Ordinance to permit two “Mixed Use with residential” buildings in the Central Business district.
 - (b) Conditional Use Permit pursuant to Section 175-53 of the Durham Zoning Ordinance to permit a “Drive through facility accessory to a financial institution” in the Central Business district.
 - (c) Conditional Use Permit pursuant to Section 175-61 of the Durham Zoning Ordinance for construction of access ways, utilities, and accessory structures in the Wetland Conservation Overlay District.
 - (d) Conditional Use Permit pursuant to Section 175-72 of the Durham Zoning Ordinance for construction of access ways and utilities (storm water management facilities) within the Shoreland Protection Overlay District.
 - (e) Site plan approval pursuant to the Durham Planning Board’s Site Plan Regulations.

In accordance with the Settlement Agreement (see paragraph 1 above) the Zoning Ordinance and Site Plan Regulations that were referenced in the applications, and that were used by the Board in its review and deliberations, are those that were in effect on September 12, 2014.

5. Notice of the initial public hearing on June 27, 2018 was published on June 16, 2018 in the Foster’s Daily Democrat newspaper. After the hearing was postponed to a date uncertain (see below), a public hearing notice for the November 13, 2019 meeting was published on November 2, 2019. Abutters notices for these hearings were mailed on June 14, 2018 and October 31, 2019, respectively.
6. The initial public hearing on the applications was held on June 27, 2018. At the request of the applicant, the public hearing was postponed twice, first from June 27 to November 14, 2018; and then from November 14, 2018, to a date uncertain. The project was re-noticed for November 13, 2019, and subsequent sessions of the public hearing took place on the following dates:

November 13, 2019	May 27, 2020	October 14, 2020	May 19, 2021
March 27, 2019	June 10, 2020	November 18, 2020	June 23, 2021
January 22, 2020	June 17, 2020	December 16, 2020	August 25, 2021
February 12, 2020	June 24, 2020	January 27, 2021	October 27, 2021
March 11, 2020	July 22, 2020	February 24, 2021	December 8, 2021
April 15, 2020	August 26, 2020	March 24, 2021	January 12, 2022
May 13, 2020	September 23, 2020	April 28, 2021	February 9, 2022

The Planning Board also held a site walk on December 16, 2020.

7. The Planning Board referred issues about architectural design, including exterior colors and materials, to a subcommittee, the members of which were appointed by the Town Administrator in consultation with the Chair of the Planning Board. The Minor Architectural Subcommittee met on October 6, October 23 and November 12, 2020, and its recommendations were presented to the Planning Board on November 18, 2020.
8. The Conditional Use Permits for construction in the WCO and SPO districts require the Planning Board to make findings with the advice of the Durham Conservation Commission. The Conservation Commission met to discuss the project on October 26, November 23, December 9 and December 28, 2020; and January 4, 2021. The Commission voted on its recommendations to the Planning Board on January 4, 2021.

As a result of plan changes that were made after the Commission's January 2021 meeting and recommendations, the Commission met on January 24, 2022 to review the revised plan set. At that meeting the Commission voted to reaffirm its January 2021 recommendations to the Planning Board.

9. The Planning Board engaged independent consultants to conduct third-party peer reviews of the applicant's stormwater management plans and traffic impact reports. The Board also received and considered comments submitted by expert professionals concerning wetland buffer restoration, real estate appraisal, and the impacts of student housing on residential neighborhoods.
10. The applicant revised and updated the plans and other documentation pursuant to comments from the Planning Board, the Conservation Commission, the Technical Review Group, the Traffic Safety Advisory Committee, Town staff, the Board's consulting planner and peer review consultants, and members of the public. Plan revisions were also made in response to comments from a major existing tenant on the property.
11. The Planning Board reviewed the applications in accordance with state law, the Durham Zoning Ordinance, the Durham Planning Board's Site Plan Regulations (including the Architectural Standards contained therein), and other applicable law.
12. Throughout its deliberations, the Planning Board was mindful of the statements of the applicants and their representatives, and the comments of the general public, as made at the public hearing.
13. The Planning Board closed the public hearing on February 9, 2022 and began deliberations on March 9, 2022. The deliberations continued at the Board's meetings on April 13, May 11 and May 25, 2022. The Board took a series of votes on the applications at its March 9, April 13 and May 11 meetings; and approved a final Notice of Decision with findings at its meeting on May 25, 2022.
14. Substantial records are maintained of the process and documentation submitted in the Planning Department. A record of documentation and a timeline of the project would be prepared as needed.

B. PLANS AND DOCUMENTS

This application consists of plans, drawings, documents and other submittals, which were revised and updated during the course of Planning Board review. The latest versions of such plans, drawings, documents and submittals are listed below and are hereby incorporated into this decision.

Submittals	Date (latest revision)
Cover Letter	1-2-2020
Site Plan Review Application	1-2-2020
Site Plan Review Checklist	1-2-2020
Deed Easements	1-2-2020
Conditional Uses – Wetland and Shoreland Impacts	
Conditional Use Application for Wetland Conservation Overlay District	1-2-2020
Conditional Use Application for Shoreland Protection Overlay District	1-2-2020
Conditional Use Narrative for Shoreland and Wetland Buffer Impacts	1-2-2020
Recommendations for Stream Improvements to College Brook	5-25-2020 (submitted 10-29-2020)
Mill Plaza Redevelopment and Relationship to College Brook	6-21-2018 (submitted 11-12-2020)
Conditional Uses – Mixed Use and Drive-Through	
Conditional Use Application for Mixed Use	1-2-2020
Conditional Use Narrative for Mixed Use	1-2-2020
Conditional Use Application for Drive-Through Facility Accessory to a Financial Institution	1-2-2020
Conditional Use Narrative for Drive-Through Facility Accessory to a Financial Institution	1-2-2020
Site Plans	
Cover Sheet	12-1-2021
G-101 Notes and Legend Sheet	1-2-2020
C-101 Existing Conditions and Demolition Plan	3-10-2021
C-102 Site Plans	12-1-2021
C-103 Grading, Drainage and Erosion Control Plan	12-1-2021
C-104 Utilities Plan	12-1-2021
C-105 Conceptual Utility Easement Plan	12-1-2021
C-501 Erosion Control Notes and Detail Sheet	10-8-2021
C-502 Detail Sheet	5-20-2020
C-503 Detail Sheet	12-1-2021
C-504 Detail Sheet	3-10-2021
C-505 Detail Sheet	1-2-2020
C-506 Detail Sheet	10-8-2021
C-507 Detail Sheet	10-8-2021
C-508 Detail Sheet	12-1-2021

Submittals	Date (latest revision)
C-601 Truck Turning Plan	10-8-2021
C-602 Fire Truck Turning Plan	12-1-2021
C-701 Buffer Coverage Plan	10-8-2021
C-702 Restoration Plan	12-1-2021
L2.0 Landscape Overall Plan	12-1-2021
L2.1 Planting Plan	12-1-2021
L2.2 Planting Plan	12-1-2021
L2.3 Planting Plan	12-1-2021
L2.4 Roof Planting Plans	12-1-2021
L3.0 Planting Details	12-1-2021
L3.1 Planting Details	12-1-2021
L3.2 Planting Details	12-1-2021
L4.0 Hardscape Overall Plan	12-1-2021
L4.1 Hardscape Plan	12-1-2021
L4.2 Hardscape Plan	12-1-2021
A20.1 Exterior Elevations	12-1-2021
A20.2 Exterior Elevations	12-1-2021
A20.3 Renderings	12-1-2021
A20.4 Exterior Elevations	12-1-2021
A20.5 Retail Elevations	12-1-2021
A30.1 Site Sections	10-8-2021
A40.1 Rendered Perspective	12-1-2021
A40.2 Rendered Perspective	10-8-2021
ES10.1 Electrical Site Lighting Plan	10-8-2021
ES20.1 Electrical Site Plan	10-8-2021
Landscaping	
Request for Waiver – Landscape Requirements	4-2-2020
Memorandum from Applicant – Landscape Waiver Request	4-3-2020
Diagram of Proposed Shade Trees in Parking Area	6-16-2020
Diagram of Implications of Increasing the Width of the Medians from 6 Feet to 10 Feet	6-17-2020
Architectural Design	
Conceptual Building Floor Plans	1-2-2020
Presentation of Mill Plaza Redevelopment Design Evolution	7-22-2020
Presentation of Mill Plaza Architectural Design	7-22-2020
Applicant Presentation to Planning Board – Architecture and Exterior Colors	11-18-2020
Stormwater Management	
Stormwater Management Report	1-2-2020
Applicant Response to Stormwater Peer Review	5-20-2020
Supporting Documentation for Applicant Response	5-20-2020
Updated Stormwater Management Plan	10-8-2021
Applicant Response to Stormwater Peer Review	12-1-2021

Submittals	Date (latest revision)
Traffic and Circulation	
Mill Road Plaza Pedestrian Crossing Analysis	11-19-2020
Applicant Response to Traffic Peer Review	4-19-2021
Traffic Impact and Access Study	4-19-2021
Fiscal and Economic Impacts	
Fiscal Impact Analysis	4-2-2020
Letter from White Appraisal	6-17-2020
Email from Sean McCauley – Fiscal and Economic Impact	6-25-2020
Letter from White Appraisal	1-11-2022
Additional Documents	
Site Context	1-2-2020
Energy Considerations Checklist	1-2-2020
Cover Letter for New Site Plan	8-18-2021
Proposed Mill Plaza Property Management Plan	12-1-2021
Preliminary Construction Management Plan	12-1-2021

C. NONCONFORMING SITE CONDITIONS

1. The existing Building A (Hannaford/Rite-Aid) does not have the foundation planting strip between the front of the building and the parking lot as required by the Site Plan Regulations (Part III, Section 5.8.9). The Regulations provide that the Planning Board may require that legally established nonconforming site conditions such as this be brought into compliance as part of site plan review, or may require that the nonconforming condition be reduced in extent or mitigated (Part III, Section 1.1.4).
2. The existing site layout includes at least two conditions were never permitted by the Durham Planning Board or other Town land use boards, and therefore are not legally established nonconforming conditions:
 - (a) The southerly extent of paved parking and vehicular circulation is closer to College Brook than shown on any approved site plan.
 - (b) In 2002 an area of hillside was removed to extend the parking lot at the rear of the site.

As a result, the existing conditions in these areas are not exempt from compliance with current land use regulations. If the applicant's requested conditional use permits and proposed site plan were approved, such approvals would supersede the nonconforming conditions. However, unless such approvals are granted, these conditions represent violations of Durham's land use regulations.

D. FINDINGS AND ACTIONS – CONDITIONAL USES

The Planning Board voted to make the following findings as required by the Durham Zoning Ordinance for the respective conditional uses.

1. Wetland Conservation Overlay District

At its meeting on March 9, 2022, the Board voted to find that the proposed uses within the Wetlands Conservation Overlay District met all the required standards for granting a conditional use permit in the WCOD and therefore voted to **grant** the conditional use permit with conditions. The Board's findings and conditions are incorporated in this Notice as **Attachment A**.

2. Shoreland Protection Overlay District

At its meeting on March 9, 2022, the Board voted to find that the proposed uses within the Shoreland Protection Overlay District and the 25-foot shoreland setback met all the required standards for granting a conditional use permit in the SPOD and therefore voted to **grant** the conditional use permit. The Board's findings and conditions are incorporated in this Notice as **Attachment B**.

3. Drive-Through Facility Accessory to a Financial Institution

At its meeting on April 13, 2022, the Board voted to find that the proposed drive-through facility accessory to a financial institution met all the required standards for granting a conditional use permit and therefore voted to **grant** the conditional use permit with no conditions. The Board's findings are incorporated in this Notice as **Attachment C**.

4. Mixed Use with Residential

At its meeting on April 13, 2022, the Board voted 4 to 3 to find that the proposed "mixed-use with residential" use met all the required standards for granting the conditional use permit. However, the motion **failed to pass** because the Durham Zoning Ordinance requires five affirmative votes to grant a conditional use permit.

Because New Hampshire law requires that a Planning Board's denial of an application state the reasons for the denial, at its meeting on May 11, 2022, the Board considered a motion to deny the application stating the reasons therefor. That motion **failed to pass** on a 3 to 4 vote.

Because neither motion passed, the conditional use permit is **not approved**. The findings in the motion to deny the application are incorporated in this Notice as **Attachment D**.

E. FINDINGS AND ACTION – SITE PLAN REVIEW

The failure of the conditional use permit for mixed-use development means that the site plan proposes a use that is not permitted. Accordingly, at its meeting on May 11, 2022, the Board voted 7 to 0 to **deny** the application for site plan approval because the proposed site plan did not comply with the use requirements for the Central Business zoning district. The Board's findings are incorporated in this Notice as **Attachment E**.

ATTACHMENTS

- A. Planning Board Findings for Conditional Use Permit – Wetlands Conservation Overlay District (WCOD)
- B. Planning Board Findings for Conditional Use Permit – Shoreland Protection Overlay District (SPOD)
- C. Planning Board Findings for Conditional Use Permit – Drive-Through Facility Accessory to a Financial Institution
- D. Planning Board Findings for Conditional Use Permit – Mixed Use with Residential and Parking
- E. Planning Board Findings for Site Plan Review

**NOTICE OF DECISION – MILL PLAZA REDEVELOPMENT
ATTACHMENT A**

PLANNING BOARD FINDINGS FOR CONDITIONAL USE PERMIT

WETLANDS CONSERVATION OVERLAY DISTRICT (WCOD)

The proposed Mill Plaza Redevelopment project involves uses and activities within a Wetland Conservation Overlay District (WCOD), specifically the 75-foot upland buffer strip adjacent to a wetland associated with College Brook. These uses and activities include the following:

- Modifications to the site entrance from Mill Road;
- Modifications to the primary internal access way along the southwesterly edge of the property, including areas of excavation and fill to recontour the access way and accommodate stormwater flow;
- Construction of a curbed, raised pedestrian walkway between Mill Road and the rear of the site, and a multiuse path continuing to Chesley Drive;
- Installation of lighting fixtures and underground conduit for electrical services; and
- Construction of stormwater facilities including catch basins, manholes, pipes, an underground detention facility, a gravel wetland, and a new outfall into College Brook.

The Planning Board finds that each of the above uses and activities require conditional use approval under Section 175-61 of the Zoning Ordinance that was in effect on September 26, 2014.

WCOD SPECIFIC CRITERIA

For each of the above uses of land within the WCOD, the Planning Board finds that all of the following standards **have** been met:

1. There **is no** alternative location on the parcel that is outside of the WCOD that is reasonably practical for the proposed use;
2. The amount of soil disturbance **will** be the minimum necessary for the construction and operation of the facilities as determined by the Planning Board;
3. The location, design, construction, and maintenance of the facilities **will** minimize any detrimental impact on the wetland and mitigation activities **will** be undertaken to counterbalance any adverse impacts; and
4. Restoration activities **will** leave the site, as nearly as possible, in its existing condition and grade at the time of application for the Conditional Use Permit.

In making these findings, the Board takes the following considerations into account:

- The proposed scale of the shopping center and other components of the mixed-use redevelopment of the site requires a certain area to be used for vehicular circulation and parking, as well as facilities for stormwater management; and such accommodations require that development of the site extend into the upland buffer.

- The site driveway entrance should not be moved because the existing location is the safest in terms of sight lines and distance from Main Street.
- The access drive along the southerly side of the parking area should not curve away from the wetland for reasons of safety and efficiency. Electrical and stormwater infrastructure should follow the location of the access way.
- Soil disturbance is necessary in order to reduce the amount of paved area and expand the amount of vegetated area within the buffer, and to regrade portions of the stream bank to control erosion.
- In its existing condition, the upland buffer strip is severely degraded. The proposed site plan will expand the vegetated area within the buffer, and the proposed restoration activities in the upland buffer strip (including some regrading) will improve the condition of the buffer over its existing condition. Thus, while the restoration activities will not literally leave the site “in its existing condition and grade,” these activities will meet the intent of the ordinance by improving upon the existing conditions.

WCOD PERFORMANCE STANDARDS

The Planning Board finds that all buildings and structures **will** be erected, altered, enlarged or moved and all land within the WCO District **will** be used in accordance with the performance standards set forth in Section 175-65 of the Zoning Ordinance, including providing a naturally vegetated buffer strip (175-65(A)) and using best management practices for sedimentation and erosion control (175-65(B)).

In making this finding, the Board takes the following considerations into account:

- The proposed project includes buffer restoration activities within 50 feet of the wetland edge. These activities, while violating the letter of the prohibition in Section 175-65(A) against any soil disturbance within 50 feet of the wetland, will be environmentally beneficial and clearly meet the spirit of the ordinance.
- The proposed project also includes soil disturbances within the 50-foot no-disturbance area for alterations of the driveway entrance and for construction of a vehicular access way, sidewalk, walkway and stormwater management facilities. However, these activities will all take place within existing developed areas of the site and do not create new disturbances of natural areas. Therefore, the Board finds that they do not violate the intent of Section 175-65(A).
- The project’s provision for sedimentation and erosion control will be reviewed as part of the State’s Alteration of Terrain Permit process, providing further oversight and protection of the wetland.

GENERAL STANDARDS FOR CONDITIONAL USES

The Planning Board finds that the application to allow each of the proposed structures and uses of land within the WCOD **conforms** to all of the conditional use permit criteria listed in section 175-23(C) of the Zoning ordinance, as follows:

1. Site suitability: The site **is** suitable for the proposed uses of land within the WCOD. This includes:
 - a. **Adequate** vehicular and pedestrian access for the intended uses.
 - The Board noted a continuing concern about pedestrian safety at the site driveway on Mill Road and suggests that it may be appropriate to install a raised crosswalk across the driveway.
 - b. The **availability** of adequate public services to serve the intended uses including emergency services, pedestrian facilities, schools, and other municipal services.
 - c. The **presence** of environmental constraints (floodplain, steep slope, etc.) and development of a plan to substantially mitigate the impacts of those constraints.
 - The buffer restoration plan included in the proposed site plan will substantially mitigate the impacts of constraints including a steep bank from the development site down to the College Brook floodplain.
 - The stormwater management and treatment components of the proposed site plan will reduce existing impacts on the brook and wetlands.
 - d. The **availability** of appropriate utilities to serve the intended uses including water, sewage disposal, stormwater disposal, electricity, and similar utilities.
2. External impacts: The external impacts on abutting properties and the neighborhood of the proposed structures and uses of land within the WCOD – including but not limited to traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare – **will be no greater** than the impacts of adjacent existing uses or other uses permitted in the zone.
 - The major potential impact from structures and uses of land within the WCOD would be light from traffic on the access drive, which the Board believes will be adequately controlled by conditions on the site plan relating to buffering.

In addition, the location, nature, design, and height of the structures and appurtenances, their scale with reference to their surroundings, and the nature and intensity of the proposed uses, **will not** have an adverse effect on the surrounding environment nor discourage the appropriate and orderly development and use of land and buildings in the neighborhood.

3. Character of the site development: The layout and design of the proposed structures and uses of land within the WCOD **will** be compatible with the established character of the neighborhood and **will** mitigate any external impacts of the use on the neighborhood. This includes, but is not limited to, the amount, location, and screening of off-street parking; the treatment of yards and setbacks; the buffering of adjacent properties; and provisions for vehicular and pedestrian access to and within the site.
4. Character of the structures: The design of new structures within the WCOD **will** be compatible with the established character of the neighborhood. This includes, but is not limited to, the scale, height, and massing of the structures; and the materials and colors proposed to be used.
5. Preservation of natural, cultural, historic, and scenic resources: The proposed uses of land within the WCOD **will** preserve **and restore** identified natural, cultural, historic, and scenic resources on the site and **will not** degrade such identified resources on abutting properties. These resources include, but are not limited to, identified wetlands, floodplains, significant wildlife

habitat, stone walls, mature tree lines, cemeteries, graveyards, designated historic buildings or sites, scenic views, and viewsheds.

- The areas of the site within the WCOD consist primarily of pavement and impaired stream buffer. There are no identified cultural, historic or scenic resources within the WCOD portion of the site. The proposed activities will enhance the natural resource (College Brook and the buffer) by removing pavement, adding vegetation to the buffer and treating stormwater runoff before it is discharged into the brook.
6. Impact on property values: The proposed uses of land within the WCOD **will not** cause or contribute to a significant decline in property values of adjacent properties.
 7. Availability of public services and facilities: Adequate and lawful facilities or arrangements for sewage disposal, solid waste disposal, water supply, utilities, drainage, and other necessary public and private services, **are** approved or assured, to the end that the use **will** be capable of proper operation. In addition, these services **will not** cause excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police protection, fire protection, and schools.
 8. Fiscal impacts: The proposed uses of land within the WCOD **will not** have a negative fiscal impact on the Town.

CONDITIONS OF APPROVAL

The Planning Board finds that the following conditions are necessary to further the objectives of the Zoning Ordinance and the Master Plan, or would otherwise allow the above specific and general approval criteria to be satisfied:

1. The Board refers the proposed redevelopment project to the Traffic Safety Committee for identification of additional safety improvements at the driveway entrance, which should be implemented prior to occupancy of the proposed new buildings.
2. A water quality sampling and analysis plan shall be developed and implemented by the property owner. The plan shall include collection and analysis of water samples at three locations: (1) the outflow from the Mill Road culvert, including the contributions from the Town's system; (2) the outflow from the project's stormwater system at the southeast corner of the site; and (3) the southeast property line where College Brook leaves the property. Dates and times of sampling shall be coordinated with the Town Engineer.
3. This approval applies to the specific site plan as revised on December 1, 2021. Any change in the plan that is determined by the Town Planner to be significant in respect to activities within the 75-foot upland buffer shall require a new hearing and approval by the Planning Board.

**NOTICE OF DECISION – MILL PLAZA REDEVELOPMENT
ATTACHMENT B**

PLANNING BOARD FINDINGS FOR CONDITIONAL USE PERMIT

SHORELAND PROTECTION OVERLAY DISTRICT (SPOD)

The Planning Board finds that the proposed project involves uses and activities within a Shoreland Protection Overlay District (SPOD), specifically the land on the site within 75 feet of College Brook (per section 175-70 of the Zoning Ordinance), including the following:

- Modifications to the site entrance from Mill Road;
- Modifications to the primary internal access way along the southwesterly edge of the property, including areas of excavation and fill to recontour the access way and accommodate stormwater flow;
- Construction of a curbed, raised pedestrian walkway between Mill Road and the rear of the site, and a multiuse path continuing to Chesley Drive;
- Installation of lighting facilities and underground conduit for electrical services; and
- Construction of stormwater facilities including catch basins, manholes, pipes, an underground detention facility, a gravel wetland, and a new outfall into College Brook.

The Planning Board finds that each of the above uses and activities require conditional use approval under Section 175-72 of the Zoning Ordinance that was in effect on September 26, 2014.

In addition, the Planning Board finds that the project involves uses and activities within the 25-foot shoreland setback from College Brook (per section 175-74(A)(3)), including the following:

- Modifications to the site entrance from Mill Road;
- Modifications to an existing stormwater outfall at the westerly corner of the site, adjacent to the culvert carrying College Brook under Mill Road;
- Installation of lighting facilities and underground conduit for electrical services;
- Construction of a new stormwater outlet at the easterly corner of the site; and
- Bank stabilization and buffer restoration activities.

The Board finds that these uses within the shoreland setback **are** set back the maximum practical distance from the reference line of College Brook and therefore **are** permissible. In making this finding, the Board takes the following considerations into account:

- The Board determined that the existing driveway is in the most practical location because relocation away from the brook would require more extensive site work within the buffer zone and would also result in reduction of parking spaces, with adverse impacts to the development program.

- Relocating the stormwater outlet out of the 25-foot shoreland setback would not eliminate site modifications within the setback because of the need to create a longer channel between the outlet and the brook.
- The stream bank and the steep slope from the development site down to the brook are largely within the 25-foot setback and therefore bank stabilization and buffer restoration activities must take place within the setback.

SPOD SPECIFIC CRITERIA

For each of the above uses of land within the SPOD, the Planning Board finds that all of the following standards **have** been met:

1. There **is no** alternative location on the parcel that is outside of the SPOD that is reasonably practical for the proposed use;
2. The amount of soil disturbance **will** be the minimum necessary for the construction and operation of the facilities as determined by the Planning Board;
3. The location, design, construction, and maintenance of the facilities **will** minimize any detrimental impact on the adjacent shoreland and waterbody as well as downstream waterbodies, and mitigation activities **will** be undertaken to counterbalance any adverse impacts; and
4. Restoration activities **will** leave the site, as nearly as possible, in its pre-existing condition and grade at the time of application for the Conditional Use Permit.

In making these findings, the Board takes the following considerations into account:

- The proposed scale of the shopping center and other components of the mixed-use redevelopment of the site requires a certain area to be used for vehicular circulation and parking, as well as facilities for stormwater management; and such accommodations require that development of the site extend into the Shoreland Protection Overlay District (SPO).
- Soil disturbance is necessary in order to reduce the amount of paved area and expand the amount of vegetated area within the SPO, and to regrade portions of the stream bank to control erosion.
- In its existing condition, the SPO is severely degraded, consisting of pavement and impaired vegetated buffer. The proposed activities within the SPO include removal of pavement, plantings, bank stabilization and restoration of the vegetated buffer. The proposed site plan will expand the vegetated area within the SPO, and the proposed restoration activities in the SPO (including some regrading) will improve the condition of the SPO over its existing condition. Thus, while the restoration activities will not literally leave the site “in its existing condition and grade,” these activities will meet the intent of the ordinance by improving upon the existing conditions.

SPOD PERFORMANCE STANDARDS

The Planning Board finds that all buildings and structures **will** be erected, altered, enlarged or moved and all land within the SPO District **will** be used in accordance with the performance standards set forth in Section 175-75.1 of the Zoning Ordinance, including providing a natural woodland or naturally vegetated buffer strip (175-75.1(A)) and using best management practices for sedimentation and erosion control (175-75.1(D)).

In making this finding, the Board takes the following considerations into account:

- The proposed project includes buffer restoration activities within 50 feet of the reference line of College Brook. These activities, while violating the letter of the prohibition in Section 175-75.1(A) against any soil disturbance within 50 feet of the Brook, will be environmentally beneficial and clearly meet the spirit of the ordinance.
- The proposed project also includes soil disturbances within the 50-foot no-disturbance area for alterations of the driveway entrance and for construction of a vehicular access way, sidewalk, walkway and stormwater management facilities. However, these activities will all take place within existing developed areas of the site and do not create new disturbances of natural areas. Therefore, the Board finds that they do not violate the intent of Section 175-75.1(A).

GENERAL STANDARDS FOR CONDITIONAL USES

The Planning Board finds that the application to allow each of the proposed structures and uses of land within the SPOD **conforms** to all of the approval criteria listed in section 175-23(C) of the Zoning Ordinance (except for specific criteria that are deemed by the Planning Board to be not pertinent to the application), as follows:

1. Site suitability: The site **is** suitable for the proposed uses of land within the SPOD. This includes:
 - a. **Adequate** vehicular and pedestrian access for the intended uses.
 - The Board noted a continuing concern about pedestrian safety at the site driveway on Mill Road and suggests that it may be appropriate to install a raised crosswalk across the driveway.
 - b. The **availability** of adequate public services to serve the intended uses including emergency services, pedestrian facilities, schools, and other municipal services.
 - c. The **presence** of environmental constraints (floodplain, steep slope, etc.) and development of a plan to substantially mitigate the impacts of those constraints.
 - The buffer restoration plan included in the proposed site plan will substantially mitigate the impacts of constraints including a steep bank from the development site down to the College Brook floodplain.
 - d. The **availability** of appropriate utilities to serve the intended uses including water, sewage disposal, stormwater disposal, electricity, and similar utilities.
2. External impacts: The external impacts on abutting properties and the neighborhood of the proposed structures and uses of land within the SPOD – including but not limited to traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare – **will be no greater** than the impacts of adjacent existing uses or other uses permitted in the zone.

In addition, the location, nature, design, and height of the structures and appurtenances, their scale with reference to their surroundings, and the nature and intensity of the proposed uses, **will not** have an adverse effect on the surrounding environment nor discourage the appropriate and orderly development and use of land and buildings in the neighborhood.

3. Character of the site development: The layout and design of the proposed structures and uses of land within the SPOD **will** be compatible with the established character of the neighborhood and **will** mitigate any external impacts on the neighborhood. This includes, but is not limited to, the amount, location, and screening of off-street parking; the treatment of yards and setbacks; the buffering of adjacent properties; and provisions for vehicular and pedestrian access to and within the site.
4. Character of the structures: The design of new structures within the SPOD **will** be compatible with the established character of the neighborhood. This includes, but is not limited to, the scale, height, and massing of the structures; and the materials and colors proposed to be used.
5. Preservation of natural, cultural, historic, and scenic resources: The proposed uses of land within the SPOD **will** preserve identified natural, cultural, historic, and scenic resources on the site and **will not** degrade such identified resources on abutting properties. Such resources include, but are not limited to, identified wetlands, floodplains, significant wildlife habitat, stone walls, mature tree lines, cemeteries, graveyards, designated historic buildings or sites, scenic views, and viewsheds.
 - The areas of the site within the SPO District consist primarily of pavement and impaired stream buffer. There are no identified cultural, historic or scenic resources within the SPO portion of the site. The proposed activities will enhance the natural resource (College Brook and the buffer) by removing pavement, adding vegetation to the buffer and treating stormwater runoff before it is discharged into the brook.
6. Impact on property values: The proposed uses of land within the SPOD **will not** cause or contribute to a significant decline in property values of adjacent properties.
7. Availability of public services and facilities: Adequate and lawful facilities or arrangements for sewage disposal, solid waste disposal, water supply, utilities, drainage, and other necessary public and private services, **are** approved or assured, to the end that the use **will** be capable of proper operation. In addition, these services **will not** cause excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police protection, fire protection, and schools.
8. Fiscal impacts: The proposed uses of land within the SPOD **will not** have a negative fiscal impact on the Town.
 - The proposed uses of land within the SPOD include removal of pavement, adding plantings, bank stabilization, stormwater treatment, and buffer restoration, all of which should be beneficial to the Town.

CONDITIONS OF APPROVAL

The Planning Board finds that the following conditions are necessary to further the objectives of the Zoning Ordinance and the Master Plan, or would otherwise allow the above specific and general approval criteria to be satisfied:

1. The Board refers the proposed redevelopment project to the Traffic Safety Committee for identification of additional safety improvements at the driveway entrance, which should be implemented prior to occupancy of the proposed new buildings.
2. A water quality sampling and analysis plan shall be developed and implemented by the property owner. The plan shall include collection and analysis of water samples at three locations: (1) the outflow from the Mill Road culvert, including the contributions from the Town's system; (2) the outflow from the project's stormwater system at the southeast corner of the site; and (3) the southeast property line where College Brook leaves the property, Dates and times of sampling shall be coordinated with the Town Engineer.
3. This approval applies to the specific site plan as revised on December 1, 2021. Any change in the plan that is determined by the Town Planner to be significant in respect to activities within the 75-foot SPO District or the 25-foot shoreland setback shall require a new hearing and approval by the Planning Board.

**NOTICE OF DECISION – MILL PLAZA REDEVELOPMENT
ATTACHMENT C**

PLANNING BOARD FINDINGS FOR CONDITIONAL USE PERMIT

DRIVE-THROUGH FACILITY ACCESSORY TO A FINANCIAL INSTITUTION

The proposed Mill Plaza Redevelopment project includes a drive-through facility to serve a bank use, comprising both a drive-up window and an automated teller machine (ATM).

APPLICABLE ZONING PROVISION

The Zoning Ordinance that was in effect on September 26, 2014, allowed “Drive through facility accessory to a financial institution” in the Central Business (CB) district by conditional use permit. The Ordinance defined “drive through facility” as “A service facility [...] that is intended to enable the customer to transact business with a person located within a structure or a machine without exiting the motor vehicle.”

The Planning Board finds that the proposed drive through facility, including both a window and an ATM, may be allowed by conditional use permit if the Board finds that the proposal conforms to all required conditional use permit criteria.

GENERAL STANDARDS FOR CONDITIONAL USES

The Planning Board finds that the application to allow an accessory drive-through facility within the Mill Plaza Redevelopment **conforms** to all of the conditional use permit criteria listed in section 175-23(C) of the Zoning Ordinance (except for specific criteria that are deemed by the Planning Board to be not pertinent to the application), as follows::

1. Site suitability: The site **is** suitable for the proposed use. This includes:
 - a. **Adequate** vehicular and pedestrian access for the intended use.
 - b. The **availability** of adequate public services to serve the intended use including emergency services, pedestrian facilities, schools, and other municipal services.
 - c. The **absence** of environmental constraints (floodplain, steep slope, etc.) or development of a plan to substantially mitigate the impacts of those constraints.
 - d. The **availability** of appropriate utilities to serve the intended use including water, sewage disposal, stormwater disposal, electricity, and similar utilities.
2. External impacts: The external impacts of the proposed use on abutting properties and the neighborhood **will be no greater** than the impacts of adjacent existing uses or other uses permitted in the zone. These impacts include but are not limited to traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare.

In addition, the location, nature, design, and height of the structure and its appurtenances, its scale with reference to its surroundings, and the nature and intensity of the use, **will not** have an adverse effect on the surrounding environment and **will not** discourage the appropriate and orderly development and use of land and buildings in the neighborhood.

- Concerns about excessive light trespass from car headlights late at night can be addressed by buffer requirements.
3. Character of the site development: The proposed layout and design of the site **will** be compatible with the established character of the neighborhood and **will** mitigate any external impacts of the use on the neighborhood. This includes, but is not limited to, the relationship of the buildings to the street; the amount, location, and screening of off-street parking; the treatment of yards and setbacks; the buffering of adjacent properties; and provisions for vehicular and pedestrian access to and within the site.
 4. Character of the buildings and structures: The design of the new buildings and structures and the modification of the existing building on the site **will** be compatible with the established character of the neighborhood. This includes, but is not limited to, the scale, height, and massing of the buildings and structures; the roof lines; the architectural treatments of the front elevations; the locations of the principal entrances, and the materials and colors proposed to be used.
 5. Preservation of natural, cultural, historic, and scenic resources: The proposed use of the site, including all related development activities, **will not impact** identified natural, cultural, historic, and scenic resources on the site and **will not** degrade such identified resources on abutting properties.
 6. Impact on property values: The proposed use **will not** cause or contribute to a significant decline in property values of adjacent properties.
 7. Availability of public services and facilities: Adequate and lawful facilities or arrangements for sewage disposal, solid waste disposal, water supply, utilities, drainage, and other necessary public and private services, **are** approved or assured, to the end that the use **will** be capable of proper operation. In addition, these services **will not** cause excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police protection, fire protection, and schools.
 8. Fiscal impacts: The proposed use **will not** have a negative fiscal impact on the Town.

**NOTICE OF DECISION – MILL PLAZA REDEVELOPMENT
ATTACHMENT D**

PLANNING BOARD FINDINGS FOR CONDITIONAL USE PERMIT

MIXED USE WITH RESIDENTIAL AND PARKING

(MOTION TO APPROVE – FAILED TO GAIN NECESSARY 5 VOTES, 4/13/22)

(MOTION TO DENY – FAILED 5/11/22)

CONDITIONAL USE PERMIT NOT APPROVED

The proposed Mill Plaza Redevelopment project includes the construction of a mixed-use building with retail and office uses on the first two floors and multiunit residences on the third and fourth floors, and a second mixed-use building with retail, office and parking uses on the first floor and multiunit residences on the second and third floor.

APPLICABLE ZONING PROVISIONS

The Zoning Ordinance that was in effect on September 26, 2014, which applies to this application, allowed three types of “Mixed Use” development in the Central Business (CB) district by conditional use permit:

Mixed Use with residential (office/retail down, multiunit residential up)

Mixed Use with parking (parking and office/retail)

Mixed Use with parking (parking and office)

The Planning Board finds that the proposed four-story building containing two floors of retail/office and two floors of multiunit residential is “Mixed Use with residential” according to the Ordinance; and that the proposed three-story building with parking and nonresidential on the ground floor and multiunit residential on the upper floors blends the “Mixed Use with residential” use with the two “Mixed Use with parking” uses; and therefore that both buildings are Mixed Use buildings which the Board may allow by conditional use permit if it finds that the proposal conforms to all required conditional use permit criteria.

PLANNING BOARD ACTIONS

While a majority of the Planning Board found that the application to allow two Mixed Use buildings as part of the Mill Plaza Redevelopment project conforms to all of the conditional use permit approval criteria listed in section 175-23(C) of the Zoning Ordinance (except for specific criteria that are deemed by the Planning Board to be not pertinent to the application), the required supermajority did not so find.

The Board’s vote on a motion to approve the Conditional Use Permit, on April 13, 2022, was 4 in favor and 3 opposed. A subsequent vote on a motion to deny the Conditional Use Permit, on May 11, 2022, was 3 in favor and 4 opposed. Therefore, both motions failed to pass.

After two failed votes, the Conditional Use Permit is **not approved**.

GENERAL CRITERIA FOR CONDITIONAL USES

The Planning Board members who voted to deny the conditional use permit identified the following deficiencies in the application (paragraph numbers refer to the enumerated criteria in section 175-23(C) of the ordinance):

2. External impacts: The external impacts of the proposed use on abutting properties and the neighborhood **will be greater** than the impacts of adjacent existing uses. These impacts include but are not limited to traffic, noise, hours of operation, and exterior lighting and glare.

In addition, the location, nature, design, and height of the proposed buildings and their appurtenances, their scale with reference to the abutting residential properties, and the nature and intensity of the use, **will** have an adverse effect on the surrounding environment and **will** discourage the appropriate and orderly development and use of land and buildings in the neighborhood.

- The proposed new residential and commercial uses on the site will create noise and light impacts on the abutting properties, including impacts from increased nighttime traffic and outdoor activities.
 - These adverse noise and light impacts will be exacerbated by the location, nature, and height of the proposed new buildings.
 - While similar uses within the Central Business district exist on Main Street and beyond, those uses are more distant from the Faculty neighborhood and Chesley Drive and their external impacts are mitigated by that increased separation. Establishing such uses immediately adjacent to the residential neighborhoods at the proposed scale would have a much greater adverse impact.
3. Character of the site development: The proposed layout and design of the site **will not** be compatible with the established character of the neighborhood and **will not** mitigate any external impacts of the use on the neighborhood. This includes the relationship of the buildings to the street; the amount, location, and screening of off-street parking; the treatment of yards and setbacks; the buffering of adjacent properties; and provisions for vehicular and pedestrian access to and within the site.
 - The proposed redevelopment of Mill Plaza bears no relationship to Mill Road. **Rather than positioning any new building at the back edge of the sidewalk to enhance the Central Business District's pedestrian-oriented character as encouraged by the Durham Architectural Standards, the new buildings are set far back from the street, such that the Plaza will continue to have the character of a suburban shopping center.**
 - The proposed redevelopment is not compatible with the established character of the neighborhood, whether that is defined in relation to the Main Street commercial area, the University campus across Mill Road, or the abutting residential properties. The site design is dominated by large buildings and parking lots. It does not reflect the pedestrian orientation of the adjacent commercial district, and provides inadequate buffering of vehicular uses from the adjacent residential neighborhoods.
 - If approved, the property would set a new standard for neighborhood character because of its size, scale and arrangement of uses on the site.

4. Character of the buildings and structures: The design of the proposed buildings **will not** be compatible with the established character of the neighborhood. This includes the scale, height, and massing of the buildings and structures; and the architectural design, including roof lines.
- The proposed buildings are out of scale with the abutting residential neighborhoods, as well as with the existing building that is proposed to be retained on the site.
 - The proposed buildings are unlike any buildings on Main Street in terms of their design and scale and thus are also incompatible with the nonresidential neighborhood.
5. Preservation of natural, cultural, historic, and scenic resources: The proposed use of the site, including all related development activities, **will not** preserve identified natural resources on the site.
- The proposed use entails the removal of a wooded hillside, steep slope and exposed ledge. Although concerns about these impacts were raised throughout the Board's lengthy review process, the applicant has not modified the redevelopment proposal to reduce the impacts.
 - The proposed use also entails the continued use of areas of the site within the 75-foot upland buffer strip, 75-foot SPO district, and the 25-foot shoreland setback for vehicle circulation and other uses.
 - The removal of the wooded hillside, the impacts to steep grades and exposed ledge, and the continued encroachments into the upland and shoreland buffers all result from the applicant's choice to maximize the building footprint area and associated parking and circulation facilities. These impacts on the site's natural resources are only needed because of the proposal to redevelop the site with the "mixed use with residential" use, which by its nature is more intensive than other uses that are allowed as of right in the district.
 - Although not incorporated in the CUP criteria, Part III of the Site Plan Regulations contains additional provisions providing clear guidance for applicants:
 - Section 8.2.3 requires that "[d]evelopment shall follow the natural contours of the landscape to the extent practicable to minimize grading."
 - Section 8.4 identifies steep slopes and exposed ledge as "resources worthy of protection or special care" which "should be preserved, if practicable"
- The Board finds that a less intensive redevelopment of the site would be "practicable" with less impact on these natural resources.

Accordingly, the Board **does not approve** the application for a conditional use permit.

**NOTICE OF DECISION – MILL PLAZA REDEVELOPMENT
ATTACHMENT E**

PLANNING BOARD FINDINGS FOR SITE PLAN REVIEW

The proposed Mill Plaza Redevelopment project includes the construction of a mixed-use building with retail and office uses on the first two floors and multiunit residences on the third and fourth floors, and a second mixed-use building with retail, office and parking uses on the first floor and multiunit residences on the second and third floor.

The proposed site plan includes four sets of features that require conditional use approval by the Planning Board under the Durham Zoning Ordinance:

1. Specified uses within the Wetland Conservation Overlay District;
2. Specified uses within the Shoreland Protection Overlay District;
3. A drive-through facility accessory to a financial institution in the Central Business District; and
4. Mixed Use with residential and Mixed Use with parking in the Central Business District.

The Planning Board granted the first three conditional use permits, but failed to grant the required conditional use permit for Mixed Use in the Central Business District.

The Site Plan Regulations require that a site plan conform to the Town of Durham Zoning Ordinance (Part III Development Standards, Article 1 General Standards, Section 1.2.1(a). The Planning Board finds that the proposed site plan does not comply with the Zoning Ordinance because it includes a use that is not allowed in the Central Business District without a conditional use permit. As a result, the Board finds that the site plan does not comply with the minimum standards for site plan approval and may not be approved.