



PLANNING DEPARTMENT

Town of Durham

8 Newmarket Road

Durham, NH 03824-2898

Phone (603) 868-8064

www.ci.durham.nh.us

Planning Consultant's Review

Planning Board Meeting – Wednesday, February 24, 2021

VIII. ***Public Hearing - Mill Plaza Redevelopment***, 7 Mill Road. Continued review of application for site plan and conditional use for mixed use redevelopment project and activity within the wetland and shoreland overlay districts. Colonial Durham Associates, property owner. Sean McCauley, agent. Joe Persechino, Tighe & Bond, engineer. Emily Innes and Sharon Ames, Harriman, project designer. Ari Pollack, attorney. (Rick Taintor is serving as the Town's Contract Planner.) Central Business District. Map 5, Lot 1-1.

- I recommend that the Board reopen the public hearing and vote to continue it to a date in March, to be determined by the Board.

Please note the following:

- 1) On January 27, 2021, the Planning Board opened the continued public hearing on the revised Site Plan for the Mill Plaza redevelopment project. The following items were addressed:
 - Finalized the selection of the brick type – “Old Port Blend Narrow Flushed Range”
 - Reviewed the Conservation Commission's recommendations not to grant the requested conditional use permits for uses in the WCOD and SPOD districts
 - Received a presentation by Thomas Ballestero regarding recommendations for stream improvements outlined in his May 2020 report to Colonial Durham Associates
 - Received a commitment from CDA to make a \$25,000 contribution for participation in shared brook/buffer improvement measures
 - Voted to reaffirm the Board's previous vote to require a peer review of the applicant's traffic impact analysis, and voted to rescind the Board's June 2018 and June 2020 votes to require a run of the Town's traffic model
 - Voted not to require peer review of applicant's fiscal impact analysis

Following public comment, the Board voted to continue the hearing to February 24.

- 2) Revised plans: On February 1, the applicant submitted a revised set of plans dated 1/20/21. 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
 - New 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

These changes to the site and grading plans are carried through to the landscaping and electrical plans, but they are not called out on those plans. Also, there appear to be changes to the architectural plans, most likely in accordance with discussions during October through December regarding windows, materials, colors, etc.

- 3) Comments on revised plans: On February 16 I met with DPW Director Richard Reine and Town Engineer April Talon to review the 1/20/21 revised plan set and to go over a number of questions and comments that I had regarding the plans. As a result of that meeting, I have refined my comments and have included them in this report, starting on page 5. I will share this list with the applicant's representatives before the meeting.
- 4) Traffic analysis peer review: In accordance with the Board's action regarding traffic analysis, I requested RSG to provide a revised scope of work and proposed fee for a peer review of the applicant's traffic impact analysis. In my request I highlighted two issues that were not covered previously: the proposed upgrade and potential relocation of the Mill Road crosswalk, and concerns about traffic diversion through the Faculty Road neighborhood. RSG provided a revised proposal which I shared with DPW Director Reine and then forwarded to the applicant's representatives. On February 16 the applicant indicated acceptance of RSG's proposal; however, the payment for the peer review has not yet been submitted. Therefore, I have not given RSG a notice to proceed and the peer review will not be completed in time for the February 24 as was the intent.
- 5) Conditions of approval: On February 3 the applicant's attorney submitted a list of proposed conditions of approval. I have also been developing my own list of potential conditions.

In thinking about what kinds of conditions to include in approvals of any of the applications, the Board should note that there are several layers of potential conditions, based on the point in the permitting process at which the conditions must be completed as well as the particular approval being requested.

In terms of the permitting process, the Board's final action will include precedent conditions and subsequent conditions. Precedent conditions must be completed before

the Town Planner certifies the plans and before any building permit is issued or any significant site work is initiated. Examples of precedent conditions include, but are not limited to, the following:

- Minor plan modifications (such as the addition of notes or details)
 - I strongly recommend that any significant plan changes be presented to the Board prior to final action, and not be left to be addressed administratively by inclusion in precedent conditions. This is essential in order to have a clear record of the Board's intentions and actions.
- NHDES approval of the Alteration of Terrain Permit, along with Planning Board approval of any significant changes stipulated by NHDES
- Execution of utility easements to the Town
- Finalization and Town approval of the applicant's Construction Management Plan
- Finalization and Town approval of the applicant's Property and Security Management Plan
- Submission and Town approval of the applicant's Blasting Plan
- Completion of the Pre-Blast Condition Survey
- Submission of construction materials for approval by the Town
- Approval of all utility connection permits
- Provision of construction, maintenance and landscaping guarantees in forms and amounts acceptable to the Town
- Submission of final approved drawings
- Payment of any required Parking Impact Fee
- Execution of an agreement to pay for independent site work inspection services (if required by the Town)

Subsequent conditions must be satisfied prior to the issuance of any certificate of occupancy. Examples of subsequent conditions include:

- Recording of the Planning Board's Notice of Decision
- Submission of as-built drawings
- Transfer to the Town of ownership in system utilities (if required by the Town)

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 (see page 13 below) sets forth a non-exclusive list of the types of conditions that might be incorporated into any conditional use approval.

6) Recommended topics for February 24 meeting: The following items should be discussed at the February 24 meeting:

- Conservation Commission recommendations: I understand that the Conservation Commission's chair will attend the meeting to explain and answer questions about

the Commission's recommendation not to grant the requested WCOD and SPOD conditional use permits

- Applicant's presentations:
 - Description of changes in latest revised plan set (dated 1/20/2021)
 - Applicant's proposed conditions of approval (dated 2/3/2021)
 - Applicant's proposed Property Management Plan (dated February 2021)
- Review planner's comments on revised plan set and provide specific input to applicant
- Review required findings for the Planning Board to grant conditional use permits
 - Required findings for all conditional use permits are listed beginning on page 10, and additional required findings for WCOD and SPOD conditional use permits are listed on page 12
 - Note that the Planning Board must be able to make all applicable findings in order to grant a conditional use permit – it is not a case of balancing certain findings or criteria against others.
 - While I understand that the Board reviews a proposal in its entirety, it is important to note that the required findings must be made for each of the four requested conditional use permits: i.e., mixed-use development, bank drive-through, uses in the WCOD, and uses in the SPOD. It may be helpful for Board members to look at each of the required conditional use permits individually and determine if they will satisfy the approval criteria.
- Review additional information required and timeline for submission

7) Updated Schedule for Review and Action.

A revised timeline for Planning Board review of and action on the Mill Plaza applications is appended on page 14. This schedule may have to be further extended depending on the progress made at the February 24 meeting.

Respectfully submitted,

Rick Taintor, AICP
Community Planning Consultant
February 18, 2021

Attachments: Comments on 1/20/21 Revised Plan Set

Structural Soil for Tree Plantings in Parking Lot Islands: Detail & Plan View

Required Findings – All Conditional Use Permits

Required Findings – WCOD and SPOD Conditional Use Permits

Conditions of Approval – All Conditional Use Permits

Updated Theoretical Timeline

COMMENTS ON 1/20/21 REVISED PLAN SET

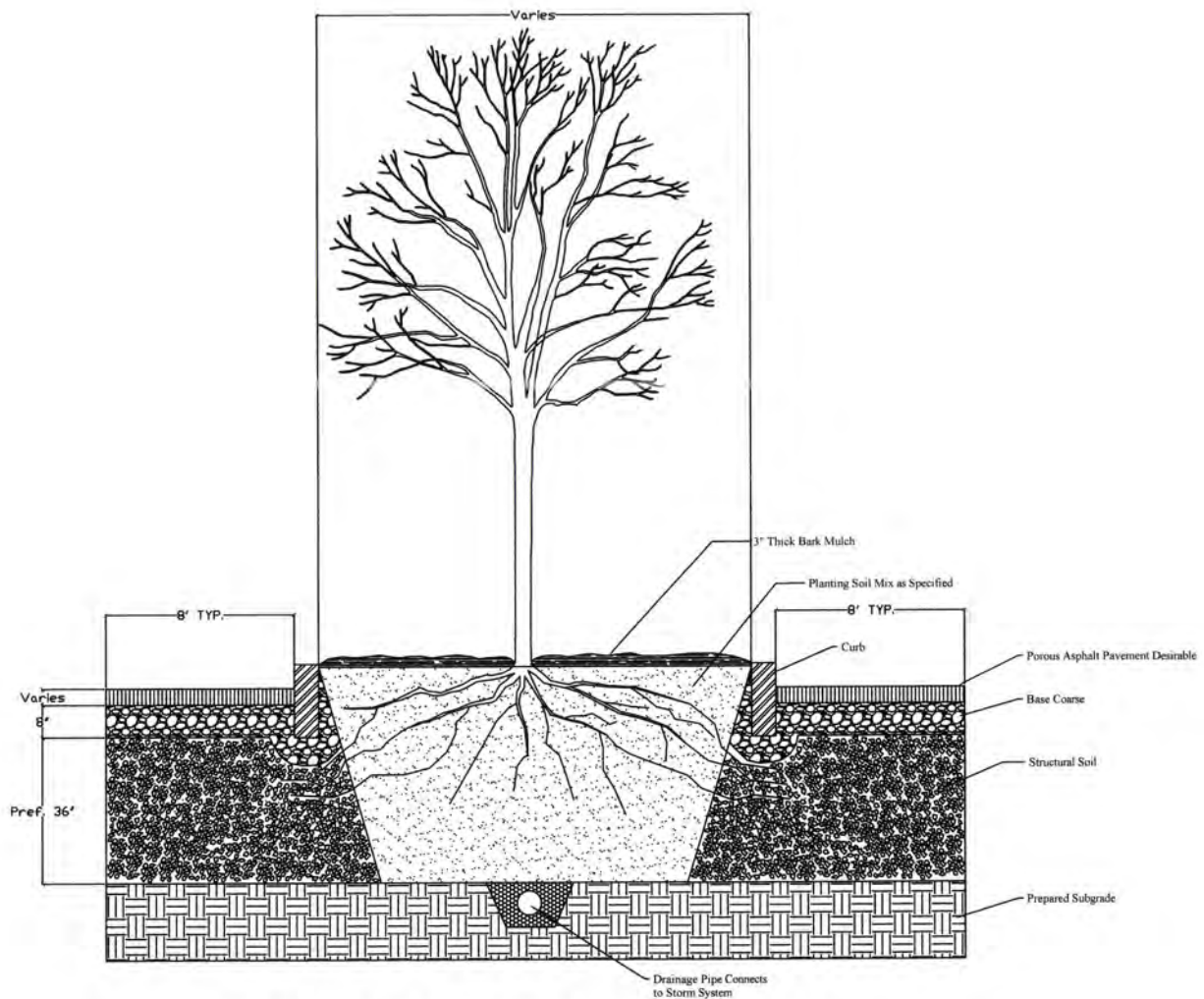
Sheet(s)	Comments
C-102	Signs in parking area medians and end islands – what are these? Are they to restrict parking to Hannaford customers?
C-102, L2.1, ES10.1	<p>Check possible conflicts between signs and light poles (C-102 and ES10.1) with landscaping (L2.1) – note height of proposed plantings</p> <ul style="list-style-type: none"> - Note height of proposed plantings (e.g., Mountain laurel – 3’-9’ tall) - Provide detail of parking sign showing height
C-102	<p>Transition from multi use “walkway” to driveway is not safe for cyclists – requires a sharp turn through the accessible ramp and then another sharp turn into the driveway. Two options:</p> <ul style="list-style-type: none"> - Provide a better transition at the curve by change the sloped granite curb to a flatter ramp or - Widen the “sidewalk” so that the multi-use path continues to Mill Road
C-102	Interior bike storage area needs details: rack type & layout, capacity
C-102	<p>Pedestrian walkway along Hannaford/Rite Aid frontage: need to demonstrate continuous 5-foot wide (min.) path, unobstructed by ramps, columns, planters, cart storage, etc.</p> <ul style="list-style-type: none"> - A cart storage management plan may be required to prevent shopping carts from blocking the pedestrian way
C-102	Building B internal path – show design
C-102, L4.1	Building C, north entrance (next to garage entrance): does the door swing reduce the sidewalk width to less than 4 feet?
C-101, C-102, C-103, L2.0	Proposed limit of work should extend down the bank toward the brook to include buffer restoration/improvement measures
NEW	<p>Add a Buffer Improvement Plan showing proposed buffer improvement measures, including (but not necessarily limited to) those measures recommended in the Ballesterio report:</p> <ul style="list-style-type: none"> - Removal of invasives (Ballesterio p. 3) - Repair drainage features (Ballesterio p. 4) - Lay back slope or use reinforced earth (Ballesterio p. 6) - Remove rip rap (Ballesterio p.7) <ul style="list-style-type: none"> o Note: this conflicts with “boulders to remain” on C-101 - Items that may require coordination with Rivers Edge <ul style="list-style-type: none"> o Removal of pedestrian bridge (Ballesterio p. 5) o Step pool system (Ballesterio p. 8)

Sheet(s)	Comments
C-101, C-102	Proposed limit of work should encompass proposed changes to Mill Road crosswalk
NEW	Add details for Mill Road crosswalk upgrade (and relocation, if applicable) <ul style="list-style-type: none"> - Include barriers to guide pedestrians if deemed appropriate
C-102	Confirm that Building C entrances on north and east sides do not need ADA accessible routes
C-103	Grading at new retaining wall (parallel to east boundary) <ul style="list-style-type: none"> - Wall is below existing grade (= adjacent grade to east) north of elev 53, and above existing grade south of elev 53. - Therefore, north of 53 the retaining wall faces west and south of 53 it faces east. - Also, south of about elev 52 the retaining wall appears to be above the adjacent stone wall. Will resulting drainage pattern impact the stone wall?
C-103, C-102	Address public safety issues at all walls greater than 42” high: <ul style="list-style-type: none"> - North of Building C, vinyl coated fence is on top of ledge cut – should it wrap around to the top of retaining wall (about 10 feet high)? - East of Building C, parallel to stone wall – wall is about 9 feet high at its north end (facing Building C), and about 6 feet high near PCB-28 (facing 19-21 Main St) - East of Building C, next to transformers – wall is about 6 feet high
C-103	Clarify proposed grading and wall height at top of bank (south of Buildings B and C).
C-103	Change proposed 18” HDPE crossing site entrance and entering Town ROW (i.e., between PDMH-8 and PDMH-9) to RCP
C-103	Confirm condition of existing 24” RCP drain line from PDMH-9 to outfall; replace with new 24” RCP if warranted
C-104	New water line across the site <ul style="list-style-type: none"> - Confirm with DPW whether entire line should be 12” (rather than reducing to 8’ for last section near Chesley Drive) - Confirm ownership of the line crossing the site (as distinct from service lines)
C-503	“Ornamental metal fence” detail – does this apply to the fence above the ledge cut, north of Building C? If not, provide detail of that fence.
C-507	“Retaining wall” detail <ul style="list-style-type: none"> - A structural plan for each wall will be required prior to the issuance of a building permit

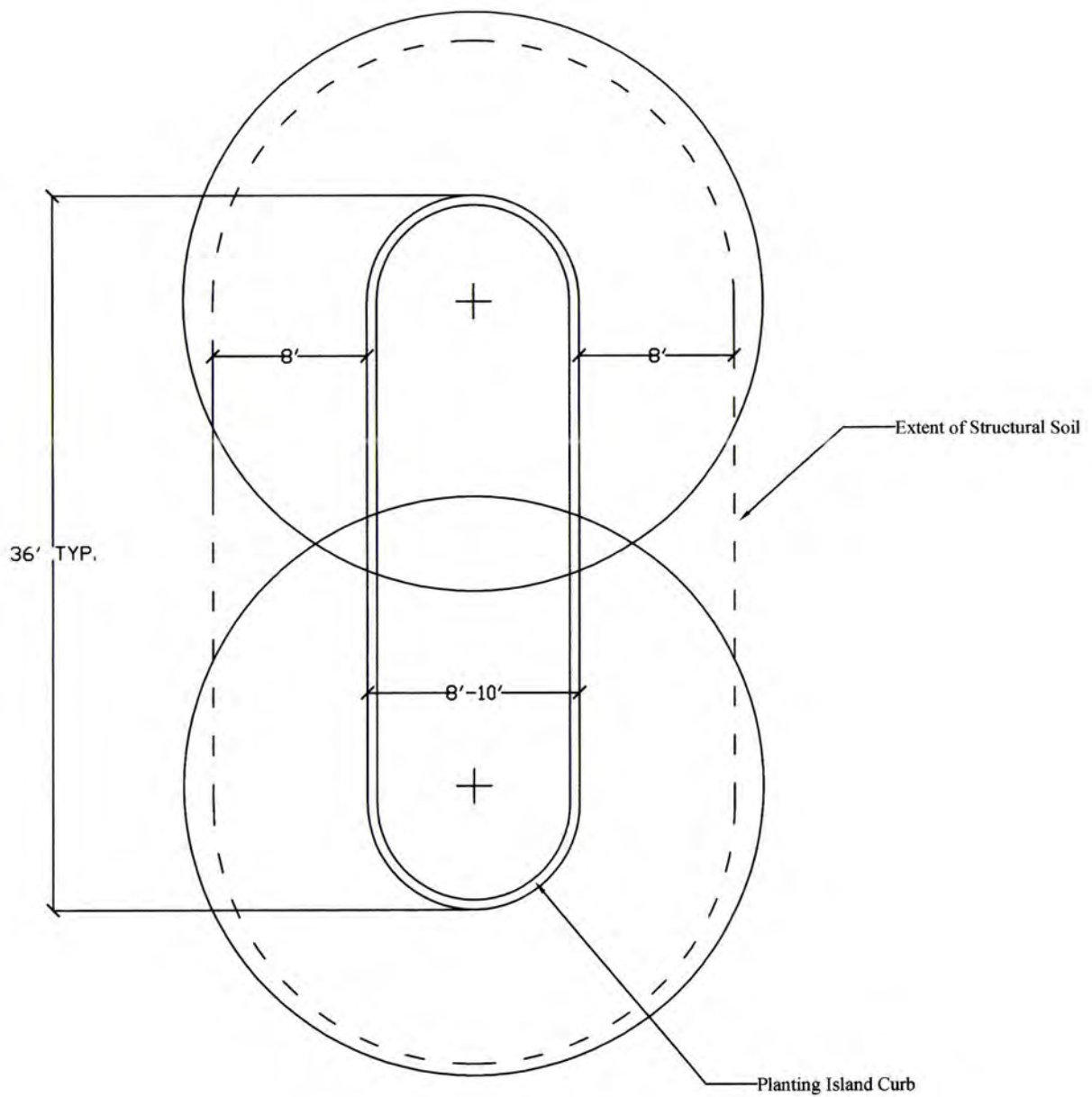
Sheet(s)	Comments
	<ul style="list-style-type: none"> - Should the outlet from the 4" perf. drain at the base of the retaining wall be shown on C-103?
L2.0	"Existing vegetation to remain" in buffer area – no invasives removal or other buffer restoration/improvement?
L2.0	Limit of work line indicates no plan for buffer improvement or regrading
L2.1	Center island "3/L3.0" doesn't make sense – should be "4/L3.0"?
L3.0	<p>Detail 4 does not propose using structural soil, which was discussed in meetings as a way to ensure better tree health. With islands being only 6 feet wide, a better planting design is needed.</p> <ul style="list-style-type: none"> - Information on the use of structural soil is available at the website of Cornell University's Urban Horticulture Institute. See http://www.hort.cornell.edu/uhi/outreach/csc/graphics.html. - Attached to this list (page 8) are a plan view and detail for planting islands, from the Cornell website. It is recommended to overexcavate the tree pits and use structural soil under the parking spaces as shown in these figures (8' outside the curb).
L2.1	Trees in the 6-foot planting islands are less than 3 feet from parking spaces and vulnerable to damage from vehicles, particularly pickup trucks (a Ford F-150 XL has a 38" front overhand and 49" rear overhang). Recommend adding bollards or other protection for trees.
L2.1	Empty square in first parking aisle – is something missing, or should the square be deleted?
L2.2	River birch tree adjacent to PCB-28 – too close?
L4.0, L4.1	Path on the east side of building C doesn't match the site plan – shows old connection to 19-21 Main St parking lot (sheets still have original 1/2/20 date)
NEW	<p>Add an Easement Plan, including:</p> <ul style="list-style-type: none"> - New easement for street drainage into brook - New easement for water line crossing the site from Mill Road to Chesley Drive - Existing easement for College Brook sewer interceptor (check to make sure that existing easement is in the correct location, and revise if necessary to conform to actual location of the interceptor)

STRUCTURAL SOIL FOR TREE PLANTINGS IN PARKING LOT ISLANDS DETAIL AND PLAN VIEW

Source: Cornell University, Urban Horticulture Institute
<http://www.hort.cornell.edu/uhi/outreach/csc/graphics.html>



BARE ROOT TREE IN TYPICAL PARKING LOT ISLAND



PLAN VIEW OF PLANTING ISLAND

REQUIRED FINDINGS – ALL CONDITIONAL USE PERMITS
Zoning Ordinance, 175-23C

A conditional use permit shall be granted only if the Planning Board determines that the proposal conforms to all of the following conditional use permit criteria (except for specific criteria that are deemed by the Planning Board to be not pertinent to the application):

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 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. 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, shall 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 proposed layout and design of the site shall not be incompatible with the established character of the neighborhood and shall mitigate any external impacts of the use on the neighborhood. This shall include, but not be limited to, the relationship of the building 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 any new buildings or structures and the modification of existing buildings or structures on the site shall not be incompatible with the established character of the neighborhood. This shall include, but not be limited to, the scale, height, and massing of the building or structure, the roof line, the architectural treatment of the front or street elevation, the location of the principal entrance, and the material 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, shall preserve identified natural, cultural, historic, and scenic resources on the site and shall not degrade such identified resources on abutting properties. This shall include, but not be limited to, identified wetlands,

floodplains, significant wildlife habitat, stonewalls, mature tree lines, cemeteries, graveyards, designated historic buildings or sites, scenic views, and viewsheds.

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 & Facilities: Adequate and lawful facilities or arrangements for sewage disposal, solid waste disposal, water supply, utilities, drainage, and other necessary public or private services, are approved or assured, to the end that the use will be capable of proper operation. In addition, it must be determined that 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 unless the Planning Board determines that there are other positive community impacts that off-set the negative fiscal aspects of the proposed use. The Planning Board's decision shall be based upon an analysis of the fiscal impact of the project on the town. The Planning Board may commission, at the applicant's expense, an independent analysis of the fiscal impact of the project on the town.

**REQUIRED FINDINGS – CONDITIONAL USE PERMITS FOR ACTIVITIES IN
THE WETLAND CONSERVATION OVERLAY DISTRICT (WCOD)
AND SHORELAND PROTECTION OVERLAY DISTRICT (SPOD)**

In order to grant the requested conditional use permits for uses in the WCOD and SPOD, the Planning Board must find that the application complies with the specific criteria for each overlay district. The criteria for both districts are essentially identical, and are as follows:

WCOD Zoning Ordinance, 175-61B	SPOD Zoning Ordinance, 175-72B
1. There is no alternative location on the parcel that is outside of the WCOD that is <u>reasonably practical</u> * for the proposed use;	1. There is no alternative location on the parcel that is outside of the SPOD that is <u>reasonable practical</u> * 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;	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 <u>minimize any detrimental impact on the wetland</u> and mitigation activities will be undertaken to counterbalance any adverse impacts; and	3. The location, design, construction, and maintenance of the facilities will <u>minimize any detrimental impact on the adjacent shoreland and waterbody as well as downstream waterbodies</u> , 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.	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.

*The above criteria are the ones that are set forth in the current zoning ordinance. In the version of the ordinance that was in effect when the Mill Plaza application was vested, the first criterion in each case had a stricter provision, using the word “feasible” rather than the words “reasonably practical”. However, the applicant is entitled to consideration under the more current, more flexible standard.

CONDITIONS OF APPROVAL ALL CONDITIONAL USE PERMITS
Zoning Ordinance, 175-23D

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

1. Front, side, and rear setbacks in excess of the minimum requirements of this Ordinance.
2. Screening of the premises from the street or adjacent property in excess of any minimum requirements of this Ordinance.
3. Landscaping in excess of any minimum requirements of this Ordinance.
4. Modification of the exterior features of buildings or other structures.
5. Limitations on the size of buildings and other structures more stringent than the minimum or maximum requirements of this Ordinance.
6. Footprint or lot coverage less than the allowed maximum of this Ordinance.
7. Limitations on the number of occupants and methods and times of operation.
8. Grading of the premises for proper drainage.
9. Regulation of design of access drives, sidewalks, crosswalks, and other traffic features.
10. Off-street parking and loading spaces in excess of, or less than, the minimum requirements of this Ordinance.
11. Other performance standards as appropriate.

UPDATED THEORETICAL TIMELINE

March 3 – CDA submits revised and additional documentation

- Complete revised plan set
- Signage plan – locations; types; dimensions; elevation drawings with colors & materials; illumination (or request for waiver)
- Final waiver requests

March 3-17 – Staff Reviews

- **Consulting Planner review** of all revised and new documentation
- **Technical Review Committee** review of revised plans
- **DPW review** of proposed amounts of performance and maintenance guarantees

March 24 (or special meeting) – Planning Board

- Presentation and review of complete revised plan set
- Presentation and review of independent peer review of traffic impact analysis
- **Close public hearing**
- Review and act on waiver requests
- Findings and conditions of approval – conditional use permits
- Findings and conditions of approval – site plan review

April 28 (or special meeting) – Planning Board

- Final actions on 4 conditional use permits and application for site plan approval