



## PLANNING DEPARTMENT

### Town of Durham

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### *Planning Consultant's Review*

#### **Planning Board Meeting – Wednesday, March 24, 2021**

- X. ***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 February 24, 2021, the Planning Board opened the continued public hearing on the revised Site Plan for the Mill Plaza redevelopment project. 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

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

- 2) Revised plans: On March 11, the applicant submitted a revised set of plans dated 3/10/21. Key changes from the January 2021 plans include the following:
  - 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. [all updated plan sheets]
  - Added proposed upgrades to the Mill Road crosswalk near Hannaford. [C-102]
  - Revised the front of Building A (Hannaford/Rite Aid) to show the locations of columns and overhangs in order to demonstrate a continuous 5-foot pedestrian pathway and to be consistent with proposed architecture. [C-102]

- Shifted the site driveway away from the Brook, increasing the vegetated buffer by various amounts up to 10 feet. This was accomplished by a corresponding reduction in the areas of the landscaped islands separating the driveway from the parking spaces in front of Hannaford/Rite Aid. [This is reflected on all plan sheets but is indicated most clearly on C-701 (Buffer Coverage Plan).]
- At the southeast corner of the site, eliminated 10 parking spaces, reduced the horizontal extent of the retaining wall, and shifted the 10' walkway away from the Brook. [C-102, C-103, L2.0, L2.3 and other sheets]
- Reconfigured the underground detention basin to compensate for the changed configuration of the parking area next to the gravel wetland. [C-103 and detail on C-507]
- At the easterly side of site, added a break between the retaining walls, indicating where the walls will meet the proposed grade. [C-102, C-103]
- Called out the types of fences (ornamental vs. chain link) proposed at each retaining wall. [C-102]
- At the westerly end of the 10' walkway, changed the sloped granite curb to flush granite curb and ramp in order to better accommodate cyclists. [C-102]
- At the site entrance from Mill Road, changed HDPE and PVC pipes to RCP as requested by the Department of Public Works. [C-103]
- Added a new Conceptual Utility Easement Plan (C-105) showing proposed easements to the Town for (a) the water line from Mill Road to Chesley Drive and (b) the drainage line from Mill Road to College Brook. [Note: As a result of discussion with TRG, this plan will be updated to show a newly-defined sewer easement to the Town for the College Brook Interceptor.]
- Added a detail for the chain link fence to be used on certain retaining walls. [C-503]
- Added a new [buffer] Restoration Plan (C-702).
- Revised the detail for "Deciduous Tree Planting: Center Parking Island" to show engineered soil with 8" overexcavation. [Note: As a result of discussion with TRG, a specification for engineered soil will be added to the plans.]

Note that the Hardscape plans (L4.0, L4.1, L4.2) have not been updated since 1/20/21 and do not agree with the updated plans in several respects, particularly (a) in the area between Building C and the boundary with 19-21 Main Street, and (b) along the front of Building A.

Similarly, the Electrical Site Plan (ES20.1) does not reflect the new configuration of the driveway, the parking lot end islands, or the parking area next to the gravel wetland.

- 3) Technical Review Group review: The TRG met with the applicant on March 16 to review the 3/10/21 revised plan set. Issues discussed with the applicant included:
- Mill Road crosswalk:
    - Location and stopping sight distance.
    - Add electrical service to plans.
  - Details of walls and handrails at stairs leading to pathway to Main Street.
  - Water line from Mill Road to Chesley Drive:
    - DPW will determine whether this line should be 12" all the way, rather than changing to 8" in the middle of the site.
    - Town ownership of water line vs. easement.
  - Separate vs. combined fire and domestic services to Buildings B and C.
  - Fire Dept would like another hydrant near northeast corner of Building B.
  - Sewer:
    - DPW believes that the sewer service to Building A should be replaced as part of the project. Applicant will contact Hannaford.
  - Parking area at southeast corner – extend vertical granite curb to the end.
  - Buffer improvement plan – confirm whether herbicides can be used in the upland buffer.
  - Engineered soils in median planting islands – provide specification and confirm that it is equal to structural soils spec.
- 4) Traffic analysis peer review: RSG, the Town's traffic peer review consultant for this project, will submit the peer review report by Friday, March 19. If it does not arrive in time for the packet I will email it separately. Our consultant will attend next week's meeting to present the findings.
- 5) Recommended topics for March 24 meeting: The following items should be discussed at the 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
- 6) Findings and conditions of approval: Attached again for your reference are the findings that the Board must make in order to grant a conditional use permit, and a list of the types of conditions that the Board may attach to a conditional use approval. I do not expect that you will have time to start going through these at the March 24 meeting, but I think it useful to keep these in the foreground as you get closer to acting on the applications.

- Required findings for all conditional use permits are listed beginning on page 5. These apply to all four of the requested conditional use permits, i.e., mixed-use development, bank drive-through, uses in the WCOD, and uses in the SPOD.
- Additional required findings for the WCOD and SPOD conditional use permits are listed on page 7.
- A non-exclusive list of the types of conditions that might be incorporated into any of the requested conditional use approvals is presented on page 8.

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 9. This schedule may have to be further extended depending on the progress made at the March 24 meeting.

Respectfully submitted,

Rick Taintor, AICP  
Community Planning Consultant  
March 18, 2021

Attachments: Required Findings – All Conditional Use Permits  
Required Findings – WCOD and SPOD Conditional Use Permits  
Conditions of Approval – All Conditional Use Permits  
Updated Theoretical Timeline

**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:

<b>WCOD</b> <b>Zoning Ordinance, 175-61B</b>	<b>SPOD</b> <b>Zoning Ordinance, 175-72B</b>
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

### April 14 – CDA submits revised and additional documentation

- Revised hardscape plans (L4.0, L4.1, L4.2) corresponding to 3/10/21 site plan set
- Additional revisions based on March 16 TRG meeting, March 24 Planning Board meeting, and/or further discussions with DPW concerning outstanding questions relating to utilities.
- Final waiver requests

### April 28 (or special meeting) – Planning Board

- Final presentations and discussion
- **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
- Direct planner to prepare draft Notice of Decision

### May 26 (or special meeting) – Planning Board

- Review draft Notice of Decision
- Final actions on 4 conditional use permits and application for site plan approval

### June 16 (or special meeting) – Planning Board

- Review and approve final Notice of Decision