



PLANNING DEPARTMENT

Town of Durham

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Planning Consultant's Review

Planning Board Meeting – Wednesday, May 11, 2022

- X. **Mill Plaza Redevelopment.** 7 Mill Road. Continued review of application for site plan and conditional use for mixed use redevelopment project, drive-through facility for bank, 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 (1) act on motions to deny the conditional use permits for the mixed-use development and site plan approval; (2) approve the draft findings included with this report; and (3) continue the matter to the May 25 meeting for final action.

Please note the following:

- 1) On April 13, 2022, the Planning Board continued its deliberations on the proposed redevelopment project and took the following actions:
 - (a) The Board voted 4-3 on a motion to grant the conditional use permit to allow a Mixed-Use with Residential development. However, the zoning ordinance requires that a conditional use permit receive five affirmative votes, and therefore the motion to grant the CUP failed.
 - (b) The Board voted to approve the conditional use permit to allow a Drive-Up Facility accessory to a financial use.

The Board then continued its deliberations on the application for site plan approval to its May 11 meeting.

- 2) Attached to this report are my drafts of the Board's findings for three of the four conditional use permits that are required for the proposed project: WCOD, SPOD, and Drive-Through Facility. Each decision follows the same format as the templates that I provided, with the addition of bulleted "considerations" to support the findings. I drafted these points based on my notes from the March 9 and April 13 meetings. Please review them carefully and be prepared to suggest any wording changes or additions.

The draft WCOD and SPOD findings also include three proposed conditions of approval, which are identical between the two decisions. Two of these conditions (traffic safety improvements and a water quality analysis program) were discussed at the March 9 meeting and seemed to be supported by all members of the Board. The third proposed condition (tying the conditional use permit to the December 1 site plan) is intended to ensure that no significant plan changes can be made without the Board's review and approval.

I had previously proposed one additional condition for the WCOD and SPOD conditional use permits that would have tied the approvals to the current property owner. The applicant's attorney subsequently contacted me to strenuously object to this proposed condition. Given the fact that the required conditional use permit for mixed-use development failed to pass, I see no point in discussing or debating this objection and have therefore removed it from each document.

I request that the Board vote to approve the three sets of findings for the conditional use permits that have been approved:

- Approval of CUP for Wetlands Conservation Overlay District
 - Approval of CUP for Shoreland Protection Overlay District
 - Approval of CUP for Drive-Through Facility
- 3) The fourth conditional use permit required for the proposed redevelopment project is to allow the principal use of "Mixed Use with residential (office/retail down, multiunit residential up)." The motion to grant this permit failed to gain the required five affirmative votes for approval at the April 13 meeting. As I reported in my April 26 email, Town Attorney Laura Spector-Morgan has recommended that the Board act as follows on May 11:
- (a) Following the failure of the motion on the mixed-use CUP, the Planning Board should vote on a motion to deny the application. This motion will likely also fail, but the purpose of the negative motion is to allow the members who voted against the original motion to state their reasons for opposing it. State law requires the Board to state the grounds for disapproval of any application submitted to it.
 - (b) The same members who voted on the motion to approve the CUP should also vote on the motion to deny. Having the three members who opposed the motion to approve be the proponents of the corresponding motion to deny will give each of them an opportunity to include their reasons for denial in the motion.

Accordingly, I have attached a draft notice of decision with findings for a motion to deny the application for this conditional use permit. As with the draft findings for the motions to approve, this document includes reasons for denial. According to my notes from the April 13 meeting, all three members who voted against the CUP motion cited (either explicitly or by implication) CUP criteria #2 (external impacts), #3 (character of site development), and #4 (character of buildings and structures), so the draft findings

focuses on those three standards. One member also referenced #5 (preservation of natural resources) and that can be added at the meeting if the proposing members agree.

I recommend that members move to deny the application for the conditional use permit, state the reasons for disapproval, and vote on that motion. The stated reasons for disapproval should be as listed in my draft notice, with any additions or changes by the members supporting the motion.

- 4) Following the votes on the four conditional use permits, the Planning Board must also take action on the application for site plan approval. Because the conditional use permit to allow the proposed principal use (mixed use with residential) has not been approved, the application does not comply with the Town's zoning ordinance and site plan approval cannot be granted. As a result, Town Attorney Spector-Morgan recommends that the Board not consider compliance with any other of the site plan regulations, but instead vote to disapprove the site plan because the conditional use permit to allow the proposed use was not granted and therefore the use does not comply with the zoning ordinance.
- 5) After the Board has taken all actions on the various applications for this proposed project, I will draft a Notice of Decision incorporating the five decisions along with all the associated procedural information (dates of meetings and notices, final revision dates of plan sheets, etc.). I suggest that this documentation be presented to the Board for final action at its next meeting on May 25.

Respectfully submitted,

Rick Taintor, AICP
Community Planning Consultant
May 5, 2022

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.

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- 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:

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- 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.

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- 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.

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.

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- 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)).

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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.

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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.

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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.

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.

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 residents on the second and third floor.

APPLICABLE ZONING PROVISIONS

The Zoning Ordinance that was in effect on September 26, 2014, 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.

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

GENERAL STANDARDS FOR CONDITIONAL USES

While a majority of the Planning Board finds 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 conditional use permit is therefore **not approved**. Those voting against the conditional use permit identified the following deficiencies in the application:

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.
 - 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.

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