

Karen Edwards

From: Eric Lund <lund@atlas.sr.unh.edu>
Sent: Thursday, August 19, 2021 7:25 PM
To: Karen Edwards; Rick Taintor
Subject: Comments for Planning Board re: Mill Plaza proposal
Attachments: plaza_cu_20210819.pdf

Dear members of the Planning Board:

I am writing to express my opinion that the revised Mill Road Plaza plans still fail to satisfy several of the conditional use criteria. My reasons are given in the attached PDF document, which should be posted in the public comments section for this application.

I would also like to call the Board's attention to an apparent omission and an oddity in the revised plans submitted on the applicant's behalf on 18 August 2021. The apparent omission is that I do not see where the location of the underground stormwater treatment facility is located under the revised plan; the location of this facility has been an issue in previous iterations of the plan. The oddity concerns traffic circulation in the parking area under proposed building C. As currently drawn, the plan shows two lanes of traffic entering the parking area from the front (west) side of the building, with a third lane entering and the only lane exiting at the southeast corner of the building. If this is not what the engineers intended, the drawings should be corrected.

Sincerely,
Eric J. Lund
31 Faculty Rd.

Conditional use criteria as applied to the proposed Mill Road Plaza redevelopment

Eric J. Lund, 31 Faculty Rd., Duham, NH, USA

August 19, 2021

Abstract

Colonial Durham Associates have proposed a redevelopment of the Mill Road Plaza as a mixed-use development. Approval of the project is subject to conditional use, both because of the mixed-use nature of the development and because portions of the project lie within the wetland conservation overlay district and/or shoreland protection overlay district. This letter summarizes the reasons why, in the author's opinion, the proposed project fails to meet the conditional use criteria.

1 Introduction

Colonial Durham Associates (CDA), owners of the Mill Road Plaza (“the plaza”) located at 5-7 Mill Road, Map 5, Lot 1-1, have proposed a mixed-use redevelopment of the plaza. Several aspects of the project are subject to conditional use (CU) because of (1) the mixed-use nature of the project, (2) the inclusion of a drive-through facility for a bank, and (3) activity within the wetland conservation overlay district (WCOD) and shoreland protection overlay district (SPOD). The WCOD and SPOD result from the proximity of the southern part of the site to College Brook. There are eight general criteria and four criteria specific to WCOD and SPOD activities which must be satisfied in order for the Planning Board to approve CU, and the failure to meet any single criterion is grounds for rejecting the project. In all cases the applicant bears the burden of proof. The purpose of my letter is to express my opinion that CDA has not demonstrated that the proposed project, most

Table 1: General CU criteria

1. Site suitability	No
2. External impacts	No
3. Character of the site development	No
4. Character of the buildings and structures	No
5. Preservation of resources	No
6. Impact on property values	No
7. Public services and facilities	Yes
8. Fiscal impacts	Not proven

Table 2: WCOD- and SPOD-specific criteria

1. Lack of alternative locations	Not proven
2. Minimization of soil disturbance	Not proven
3. Minimization of detrimental impacts	Not proven
4. Restoration	Yes

recently (as of this writing) revised on 18 August 2021, meets all of the CU criteria. I find that only two of the twelve criteria are fully satisfied, and four others could be satisfied with additional documentation. However, the project as currently proposed fails to satisfy six of the general criteria. Table 1 summarizes my opinion regarding the general CU criteria, and Table 2 summarizes my opinion regarding the WCOD- and SPOD-specific criteria. The remainder of this letter specifies the reasons for the conclusions shown in the two tables.

2 General CU Criteria

2.1 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.

The plaza site runs into difficulties with vehicular access (item a). The issue with vehicular access is that the site has a single vehicular access point, from Mill Road just north of College Brook, and no feasible option exists for a second vehicular access point. Although the traffic study shows no difficulties during normal operation of the one access point, it necessarily assumes normal operation of that access point. If for any reason that access point becomes blocked, there is no way for vehicles to access the plaza. Scenarios under which the access point is likely to be blocked include flooding, a vehicle-vehicle collision in the intersection, or a vehicle-pedestrian collision with serious personal injury or death to the pedestrian in one of the crosswalks bordering the intersection. All of these scenarios have occurred during the time I have resided in Durham.

There is also an environmental constraint due to the Oyster River, of which College Brook is a tributary, having protected river status. Although it should be possible to mitigate this constraint, the present proposal does not do so.

2.2 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.

The plaza site, unlike similar developments along and north of Main Street, is directly adjacent to multiple single-family homes along Faculty Road and Chesley Drive, as well as Brookside Commons, an over-55 condominium complex at 13 Mill Road. Thus the impact from this project would be substantially greater on the abutting properties than that of the existing adjacent uses. At present, the plaza is mostly closed after 10 PM, with Domino's Pizza being the only store open past that hour. Many students, especially undergraduates, keep significantly later hours than most non-students, so late-night activity on the site would be substantially increased from present levels. In addition, large numbers of undergraduate students will lead to significantly increased noise levels, especially when the weather is sufficiently warm that windows can be opened (most prospective tenants, being from northern New England where central air conditioning is still rare in residential buildings, would rationally open the windows whenever weather permits even though the buildings would have state-of-the-art HVAC systems). Thus the project fails the "noise" and "hours of operation" impacts specifically listed in this criterion.

2.3 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.

The project calls for substantially more parking spaces than required by the already-generous town parking minimums, despite the explicit assurance by CDA's agents that they intend to discontinue their current unpermitted practice of leasing parking spaces to people who are not employees or commercial tenants. At no point have the plans shown adequate screening or buffering of this parking.

The plaza also lies along a route many children living in the Faculty neighborhood use to walk to and from Oyster River Middle School and Oyster

River High School. CDA and their representatives have not guaranteed that this walking route will remain viable after the project is completed.

2.4 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.

The main issue here is the proximity of proposed building C to abutting properties on Chesley Drive, including a substantial retaining wall. This building also includes the proposed bank drive-through and a significant amount of ground floor parking underneath the building. The main factor that makes this building out of scale is the long horizontal distance with only one building entrance on the east (toward Chesley Drive) and west (front entrance) sides. This horizontal scale is significantly larger than any existing example of a building located next to homes and is much larger than average for Durham's central business district.

2.5 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.

To construct Building C as proposed, the hillside in the northeast corner of the site, which is currently forested, would have to be blasted. This blasting would thus fail to preserve the existing "mature tree lines".

2.6 Impact on property values

The proposed use will not cause or contribute to a significant decline in property values of adjacent properties.

The appraisal analysis submitted on behalf of CDA makes no attempt to control for confounding factors in reaching its conclusion that the value of adjacent properties along Faculty Road would not be adversely impacted. In addition, the construction of 258 additional beds of undergraduate student housing would contribute to a glut of this type of housing in Durham, continuing the decline in rents which is documented in the fiscal analysis report submitted on CDA's behalf. This glut will become increasingly severe as the population of traditional college-age students declines during the 2020s. The additional supply is likely to cause downward pressure on rents charged by other properties, some of which are adjacent to the plaza, that cater to this market, and with rental properties, declining rents mean declining values. Note that the ordinance does not specify single family residential properties; it applies to all types of adjacent properties.

2.7 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 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.

CDA have met the burden of proof on this criterion.

2.8 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.

The fiscal analysis report relies on optimistic assumptions about the assessed value of the post-construction plaza and adjacent properties. The overall fiscal impact may well be positive, but CDA has not demonstrated this.

3 WCOD/SPOD CU Criteria

3.1 Lack of alternative locations

There is no alternative location on the parcel that is outside of the [WCOD / SPOD] that is reasonably practical for the proposed use

Some aspects of the proposed project meet this standard, including the vehicle entry point from Mill Road and the need to tie into municipal services, including water and sewer, that are located within the WCOD or SPOD. But many other aspects do not qualify. There is no need to put any portion of the underground stormwater treatment system in the overlay districts, as has been the case with previous iterations of the plan (the location of this system under the revised plans is not apparent to me). The current iteration appears to have removed all parking spaces from the WCOD/SPOD; however, an access driveway is provided within the WCOD/SPOD to access spaces underneath and behind building C. As presently drawn, this driveway appears to be required to handle traffic exiting the parking area underneath building C, as the only egress from that parking area is to the rear of that building; the plans show two lanes entering this parking area on the front side of the building. If the plans are in error with regard to the traffic flow into said parking area, the applicants will need to make a case that the driveway in question needs to exist.

3.2 Minimization of soil disturbance

The amount of soil disturbance will be the minimum necessary for the construction and operation of the facilities as determined by the Planning Board

The concerns I express with the first criterion apply to this criterion as well.

3.3 Minimization of detrimental impacts

The location, design, construction, and maintenance of the facilities will minimize any detrimental impact on the [wetland / adjacent shoreland and waterbody as well as downstream waterbodies], and mitigation activities will be undertaken to counter-balance any adverse impacts

Project engineers Tighe & Bond have a reputation to uphold, so there is every reason to believe that facilities will be designed and constructed in such a way as to minimize detrimental impacts to the on-site wetlands and College Brook. However, CDA's track record does not inspire confidence that facilities will be maintained in such a manner. Their standard practice, up to and including the past winter, has been to plow snow from the parking lot directly into College Brook, creating a detrimental impact as such snow is likely to be contaminated by oils and salt. CDA would need to provide a draft maintenance plan consistent with this standard in order to satisfy this criterion.

3.4 Restoration

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.

The plans that have been presented would satisfy this criterion; however, it is essential to ensure that these restoration plans are carried out.

4 Conclusion

The proposal by CDA does not satisfy six of the general CU criteria. In addition they have not yet met their burden for demonstrating that they satisfy a seventh general CU criterion and three of the four WCOD/SPOD, although they may be able to meet these criteria by submitting additional documentation. Since the proposal must satisfy all criteria, I recommend that the proposal be rejected.