

— POINTS TO CONSIDER (“CHECKLIST” OR “AID”); LINKS TO DOCUMENTS —

February 9, 2022

Planning Board
8 Newmarket Road
Durham, NH 03824

RE: 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....CBD. Map 5, Lot 1-1.

Greetings,

I thought it might be helpful to provide the Planning Board with a consolidated set of resources and points to consider when evaluating the merits of the CDA proposal. This list is neither comprehensive nor exhaustive, and please accept my apologies for errors, incomplete thoughts, or confusion. Some comments may lie outside the purview of the Board, but I hope they will prompt other considerations. And then there are inspirations:

- “While working in construction we would often say “Good enough for who it’s for.”
The redevelopment of Mill Plaza is “for” Plaza tenants AND community residents who patronize the Plaza. It is also “for” today’s generation of residents AND tomorrow’s. (anonymous website poster)
- “You can’t always get what you want, But if you try sometimes you just might find, You just might find You get what you need, oh yeah.” (the Rolling Stones, with a nod to former Board Chair Peter Wolfe)

Sections in this document include:

- Town website resources
- Big picture questions
- Basic facts
- Legal constraints
- Waivers and exemptions
- Legal and general considerations when drafting Conditions of Approval
- Discretion under CUP: “Also consider...”
- Monitoring and enforcing Conditions of Approval
- Issues to consider, in alphabetical order (bulk of document)
 - List with no detail
 - List with detail
 - Some topics are cross-referenced to facilitate user-friendliness.

Abbreviations that may have been used in this document:

- | | |
|------------------------------------|------------------------------------|
| – CDA = Colonial Durham Associates | – SA = Settlement Agreement |
| – COA = Condition of Approval | – SPR = site plan regulations |
| – CUP = Conditional Use (Permit) | – T&B = Tighe & Bond |
| – NOD = Notice of Decision | – ZBA = Zoning Board of Adjustment |
| – PB = Planning Board | – ZO = zoning ordinance |

Town website resources

- [Main page for Mill Plaza Redevelopment Site Plan & CUP](#) with links to:
 - [Site Plan Regulations that Pertain to Mill Plaza Development](#)
 - [Zoning Ordinance that Pertains to the Mill Plaza Development](#)
 - [Citizen Comments on Mill Plaza Development Site Plan & CUP Application](#)
 - [2015 Settlement Agreement between the Town of Durham and Colonial Durham Associates](#)
 - Planner reviews/reports
 - Special-focus reviews, e.g., stormwater, traffic, fiscal impact
- Current Town of Durham Planning Documents
 - [Site Plan Regulations, revised April 14, 2019](#)
 - [Zoning Ordinance, revised May 2, 2021](#)
- Minutes of meetings for formal review, i.e., June 13, 2018 onward
 - [Planning Board](#)
 - [Conservation Commission](#) (10/26/20; 11/20/20; 11/23/21; 12/9/21; 1/04/21; 1/24/22)
 - [Technical Review Group](#), aka, “TRG” (4/17/18; 6/19/18; 1/5/19; 1/14/20; 3/16/21; 10/12/21)
- Notices of Decision for other large student housing projects (posted on the Planning Board’s “Completed Applications” web page), particularly:
 - [Madbury Commons \(21 Madbury Road\)](#), date of approval February 12, 2014
 - [Orion \(23–35 Main Street\)](#), date of approval January 29, 2014
- Other documents for previous large student housing projects (also posted under “Completed Applications;” particularly for [Madbury Commons](#) and [Orion](#))
 - traffic studies (including [pedestrian traffic study for Madbury Commons](#))
 - construction management plans
 - property management/security management plans, e.g., for [Madbury Commons](#)

Big picture questions

1. How will the development serve the community over its life, i.e., long-term?
2. Does the development reflect goals of our Master Plan, e.g., is it appropriately sited? (Is the location of the housing appropriate relative to residential neighborhoods ?)
3. How will the development extend the function and character of downtown? Connect with it? Provide services typical of a small, New England college town’s downtown?
4. Would the development also be resilient to impacts of lower UNH future enrollment and on-campus housing capacity? Would it be attractive, both short-term and long-term, to the targeted student tenant demographic?
5. Does this development incorporate (or anticipate) pandemic-related changes in how we will live, work, and play in the future? What is under the purview of the Board?
 - e.g., public or other shared spaces (common rooms? elevators?)
 - transportation (private motor vehicle use, walking, and biking all have increased under the pandemic; public transportation use has declined; electric vehicles are on the rise)?

6. Does the proposal adequately address environmental, energy, climate change issues both as we have already experienced them and as it may be possible to foresee for the future life of the project?
7. Are there externalities that might or will be caused by the project, e.g., impacts on immediately adjacent pedestrian safety, vehicular traffic, sewer, water...?
 - If so, would the Planning Board wish to require limited measures—also called “exactions” (which must be “roughly proportional” to the impact of the project)?
 - See zoning ordinance, Conditional Use Permits, section 175-21: “Further Conditions may be placed on the Conditional Use Permit by the Planning Board to ensure that the Conditional Use will have a positive economic, fiscal, public safety, environmental, aesthetic, and social impact on the town.”
8. Will the management company be invested in the Durham community?
 - memos from former Chief Dave Kurz (including [Letter from Police Chief Dave Kurz](#) (June 25, 2018) and [Letter from Police Chief 11-7-19](#))

“...It is my contention that owners must be involved with the building complex, the community and desirous of being responsive to the surrounding neighborhood. The management company that is invested, literally and figuratively into the Durham community, is the most critical component for a well-managed and mutually successful property that will prove to be successful....

What information is missing?

What questions have been asked but not answered by the applicant?

- Areas to be cleared along Church Hill: Change to green space, amount of material to be removed
 - Comparison of green space in plan to existing [Councilor Welsh said a big change with this plan was that a lot of the forested area in the southeastern [sic] corner of the site where there was a hillside would be cut into pretty dramatically. He asked how much green space was there now compared to what was proposed. Attorney Pollack said that information could be provided. Asked how much material would be removed from this area in terms of cubic yards, Attorney Pollack said he could get a rough approximation of this. (Planning Board [minutes, June 27, 2018](#), echoed by resident in person and by letter [Robert Russell 4-23-20](#))]
- Architectural design:
 - Experience in designing student housing
 - Compliance with highly detailed, complex Architectural Design Regulations, including compatibility
- Drive-through facility: Is an exit at the SE corner of Building C necessary?
- Landscaping
 - Graphic showing midday shade provided by proposed trees 10 years from now. (Bubar, 6/17/20))
 - Details on trees to be planted on main site (not “restoration plan”) [Landscape architect Howard Snyder: “...There should be plenty of photos of growth habits, in brief, not on all the species. please do, and I'll be sure to get them forwarded to you tomorrow as well.” (verbatim, [DCAT recording Planning Board, June 17, 2020](#))]

- Site appropriateness for proposed species, e.g., tolerance for salt, pollution, heat island conditions; adequacy of soil volume
- Mill Road strip: Ownership of, and thus, responsibility for screening and landscaping
- Specifications for tree boxes and/or planters (for the proposed 24 Freeman maples)
- Parking: Number and location of leased spaces — numerous queries from Board, public, Planner
 - 35) Assigned parking spaces. How many spaces are leased to students presently and what are the general terms of those leases? The Planning Board and members of the public have asked this question several times but the board has yet to receive an answer from the applicant. [[Planner's Review 10-26-16](#)]
 - “How much of the parking shown on the plan, or which spaces shown on the plan, are required by Hannaford?” (Rick Taintor) Joe Persechino responds: “Well, that’s a sticky question. So, all of them, yeah, all of them are required by Hannaford. We went through umpteen number of concepts and revisions. and site plan modifications”. (TRG meeting, January 14, 2020, verbatim)
 - [Nancy] Lambert said she had never seen a list of the number of parking spaces currently on the site, how many were rented, how many the plan proposed, and how many would be rented with that plan. She said the parking issue had been unclear in the presentations. [February 12, 2020 PB meeting]
- Site layout: How much closer will Buildings B & C be to Chesley Drive path and College Brook than existing buildings?

Additional information helpful to the Board—Site walk

- [December 16, 2021 notes](#), with a few photographs
- Did the site walk enable Planning Board members to evaluate the context and the parameters of the development proposal?

Basic facts

Site, physical factors

- Location, context—*built environment*
 - abutters and neighborhoods: Main Street; Church Hill; Historic District; residential neighborhoods (Faculty, Chesley, Brookside Commons), UNH dorms
 - will any of the above be obscured by the development (sight lines, viewscapes, horizons)
 - impacts of uses and structures (see Conditional Use Permit criteria)
- Location, context—*natural environment, unique natural features*
 - Church Hill: wooded hillside, including area of the hillside on which the NE corner of Building C would be located
 - College Brook: tributary of the Oyster River
 - Oyster River Corridor: about 1/3 of the site (eastern portion) lies within this designated-river protective area (Oyster River Local Advisory Committee to weigh in on NHDES AOT permit)
- Key measurements, per site plan: check final site plan
 - lot size: 449,341 square feet (nearly 10 acres)
 - buildings: What are the dimensions? Has anyone asked for this information? Does it matter?
 - ⇒ existing Hannaford/Rite Aid: L x W x H
 - ⇒ Building B proposed: L x W x H ??

⇒ Building C proposed: L x W x H ??

How will the site change or remain the same as a result of the project

- buildings
 - Building A: footprint and basic height remain the same, i.e., 1 story; will get a facade to match Hannaford corporate design
 - Building B: 4 stories; 1st floor commercial; 2nd, 3rd, and 4th stories residential
 - Building C: 3 stories; 1st floor covered garage and retail; 2nd and 3rd floors residential
- access to and from the site (vehicular, pedestrian, bicyclist)
 - path from Main Street along the Grange changes from sloped ramp to series of stairs
- circulation on site (vehicular, pedestrian, bicyclist)
 - 10-foot-wide medians current providing some pedestrian use will be replaced with vegetated 6-foot-wide medians with no pedestrian access
 - flush-to-pavement bike lane, i.e., paint-designated, remains
- topographical and geographical
 - tree removal, grading/removal of hillside, building up of slopes, addition of retaining walls, proximity to College Brook, driveway access)
- impervious surface: compare to existing
 - final site plan: See notes on the plan
 - effective impervious cover / effective impervious area (EIA)
 - ⇒ definitions per site plan regs: (a) Effective impervious area: The total impervious surface areas less the area of disconnected impervious cover (areas where runoff is captured and infiltrated or otherwise treated). (b) Disconnected Impervious Cover: The sum of the proposed areas of impervious cover and pavement that receive runoff and, by means of implementing BMPs and LID (low impact development) strategies, is designed to capture and filtrate the precipitation from a 1-inch 24-hour rain event.
- stormwater management systems, overview: 3 areas
 - engineered stormwater management systems replace decades-old unmanaged runoff direct to College Brook
 - small area on western edge of Plaza, via catch basin by the Mill Road bridge at Plaza entrance
 - majority of the site, via underground detention area: all the pavement area that now flows into the brook (does it include the building roofs?)
 - building roofs and area up by Orion—runoff goes into a catch basin and then into the gravel wetland, then the treated outflow to College Brook

Legal authority and constraints

- Site Plan Regulations that Pertain to Mill Plaza Development (as posted online)
 - Current Site Plan Regulations include community-valued changes
 - Board may require some of those as appropriate as Conditions of Approval
 - See comparisons
- Zoning Ordinance that Pertains to the Mill Plaza Development (as posted online)
- Conditional Use Permits
 - Four (4) CUP applications by Colonial Durham Associate:
 1. Conservation: Wetland

- 2. Conservation: Shoreland
- 3. Residential use: Mixed-use with residential
- 4. Drive-through
- super-majority: “At least five (5) members must vote in favor of the issuance of a Conditional Use Permit for an application to be approved.” (ZO: 175-22. Procedures.)
- additional substantive conditions may be imposed:
 - “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.” [Rick Taintor, Planning Consultant’s Review, Planning Board Meeting, February 24, 2021]
- Nonconforming use, grandfathered status
 - What, if anything, on the site is legally established nonconforming (potentially “grandfathered” or vested)? For example, CDA claims paved encroachment into the 75-foot setback is grandfathered, but legally, the burden of proof is on the applicant and CDA has provided none.
 - What may the Planning Board require of legal nonconforming uses? See Site Plan Regulations, Part III. Section 1.1.4 Legally established nonconforming site conditions are considered “grandfathered” until such time as site plan review is required due to proposed changes to a property...
 - See [Memo from Planner Regarding Grandfathering 6-8-20](#); excerpt:
 - ⇒ In reviewing a site plan, the Planning Board has three options with respect to a legally established nonconforming site condition: (1) the Board may require the nonconforming site condition to be brought into compliance with current land use (zoning and site plan) regulations, (2) the Board may require that the extent of nonconformity be reduced, or (3) the Board may require that the nonconformity be mitigated. Because these are the only actions allowed by the Regulations, the Board may not simply let a nonconforming site condition remain without reduction or mitigation.”
 - see [Email from Contract Planner, Rich Taintor 10-23-20](#) to Walter Rous, Conservation Commission (copying then-Conservation Commission Chair and Town Council Representative Sally Needell)
 - see [Letter from Attorney Mark Puffer 8-24-21](#)

Waivers and exemptions

- Waivers approved August 25, 2021 for Site Plan Regulations:
 - Section 5.8.9 Foundation Planting Strip
 - Sec. 5.8.11 – Parking lots shall be broken up into smaller parking areas with landscaping features and bioretention systems *[Note: No discussion was held on this second waiver, nor was the section of the Site Plan Regulations identified.]*
- Parking reduction = exemptions
 - See Site Plan Regulations, Part III., Section 10.2 Shared Parking and Reduction in Parking Spaces
 - Parking impact fee for spaces exempted, if relevant; currently \$1,500 per parking space
 - Observation: The Board may ask the applicant if exemptions are desired. If both the Board and applicant agree on a desired number of parking spaces lower than required by the Settlement Agreement, the Agreement may be revisited, per Town Administrator Todd Selig

Legal and general considerations when drafting Conditions of Approval.....

- Keep in mind (advice from attorneys in documents that I sent to the Board as general resources, i.e., not specific to Mill Plaza and not posted on the project page)
 - “Representations by applicant are not binding unless clearly made a condition of approval” and “Conditions must reasonably relate to ensuring compliance with relevant criteria.”
[*The Workings of a Planning Board*, NHMA webinar by Michael A. Klass, Principal Planner, Office of Strategic Initiatives; Stephen Buckley, Legal Services Counsel; Natch Greyes, Municipal Services Counsel, March 23, 2021]
 - “Making Defensible & Enforceable Land Use Board Decisions,” Attorney Daniel Crean, Crean Law Office, Pembroke, NH, 2014 Lakes Region Planning Commission Municipal Law Lecture
- Precedent and subsequent conditions considerations
 - “In *Sklar Realty, Inc. v. Merrimack and Agway, Inc.*, 125 N.H. 321 (1984), the New Hampshire Supreme Court discussed planning board procedures when conditions are set as part of approval of an application. While implications for a board of adjustment are not clear, it is worth summarizing the major points made in the case. The court distinguished between “conditions precedent” that must be fulfilled before approval is final and “conditions subsequent” that deal with issues in effect after development has occurred such as hours of operation, control of traffic, noise levels, and emissions.” [[The Zoning Board of Adjustment in New Hampshire: Handbook for Local Officials](#), NH Office of Strategic Initiatives, 2020]
 - “Whether a condition is a ‘condition precedent’ or a ‘condition subsequent’ also impacts when those who are unhappy with a decision may appeal that determination. With a Zoning Board of Adjustment, the time for appeal is relatively clear, in that a person must file a Motion for Rehearing within 30 days of a decision, and an appeal with the Superior Court within 30 days of the denial of a Motion for Rehearing. These time limits are strictly construed by the Courts. See RSA 677:2, and *Bosonetto v. Richmond*, 163 N.H. 736 (2012).” [[Attaching ‘Conditions’ to Approvals in Land Use Boards](#),” by Paul Sanderson, *Town & City*, November/December 2013]
- Precedent conditions
 - “Conditions precedent contemplate additional action on the part of the town and, thus, cannot constitute final approval.” [“Conditions of Approval: How to Draft Language That Is Both Clear and Defensible.” Paul G. Sanderson, Esq., Staff Attorney, NHMA, 2013 Municipal Law Lecture Series]
 - The Court has defined it this way. A “condition precedent” is some action that has to be taken by the applicant in order to remove an impediment to “final approval”. These are the things that need to be done before the town will take the additional step of granting “final approval”. A “condition subsequent” defines an action or behavior that binds the applicant, but does not need to be accomplished before “final approval” is granted. *Property Portfolio Group, LLC v. Derry*, 154 N.H. 610 (2006).
[[Conditions of Approval: How to Draft Language That Is Both Clear and Defensible.](#)” Paul G. Sanderson, Esq., Staff Attorney, NHMA, 2013 Municipal Law Lecture Series] [also in [Attaching ‘Conditions’ to Approvals in Land Use Boards](#),” by Paul Sanderson, *Town & City Magazine*, November/December 2013]
 - “For a valid, final approval under the statute, there are no unfulfilled conditions precedent.” [125 N.H. 321 (1984) *Sklar Realty, Inc. V. Town of Merrimack and Agway, Inc.* Supreme Court of New Hampshire. July 31, 1984.]
[[Making Defensible & Enforceable Land Use Board Decisions](#),” Attorney Daniel Crean, Crean Law Office, Pembroke, NH, 2014 Lakes Region Planning Commission Municipal Law Lecture]
- Subsequent conditions
 - Consult with Rick Taintor about types of conditions that he believes might appropriately fall into this category

- Who will review site plan notes against the Conditions of Approval?
- Discussion with Town Attorney Laura Spector-Morgan, Planning Board, May 27, 2015; [minutes](#); [DCAT recording](#):

MEMBERS PRESENT: Peter Wolfe, Chair; Andrew Corrow, Vice Chair; David Williams, Secretary; Bill McGowan ; Lorne Parnell; Councilor Julian Smith, Council Representative to the Planning Board; Linda Tatarczuch, alternate; Barbara Dill, alternate; alternate Wayne Lewis; Councilor Kitty Marple, alternate Council Representative to the Planning Board MEMBERS ABSENT Richard Kelley

[recording marker about 00:18:41]

Linda Tatarczuch [Board member]: Excuse me in the way I phrase this, but you made a comment about the developers wanting to be good neighbors.

Laura Spector-Morgan [Town Attorney]: For the most part.

Tatarczuch: For the most part. But we know that there are some developers that develop so that they can very quickly flip the properties that they have put in place and move on to another place and develop, and they have reputations. One part of the question is, Can you ever use the reputation of the developer as part of the criteria in evaluating the project before you as to its validity?

Spector-Morgan: No.

Tatarczuch: That's very unfortunate, because some things look absolutely stunning and are really bells and whistles that have very little behind them. And other things are really wonderful, but if you have had a track record that you can't go to, that is clearly to the disadvantage to the community, I believe. I don't know how we address that in a criteria that we establish.

[recording marker about 00:20:06]

Spector-Morgan *[emphasis added]*: I think the best way you address that is to **make sure that everything that is represented to you as, "We will do this," becomes a formal condition of approval. Now, I will tell you, if someone stands up here and says, "I am going to do this": even if it doesn't become a formal condition of approval, it is an implied condition of approval. However, it is going to be much easier if someone's writing down all these things that they say they're going to do**, and in your Notice of Decision you say your conditions of approval are: all state, local and federal permits, your hours of operation are 7 to 7, and all of these things you said you are going to do. They are going to be formal conditions of approval. So that, then, if they either don't do it because they're bad developers, or they sell the property to someone who may not be as detail oriented as they are, you have a very firm basis to go back and say, "Note 7 says, 'You have to do this,'" and then if they don't do it, we have steps we can take to make them do it.

Discretion under CUP: Also consider

- [Master Plan](#)
- current zoning ordinance and site plan regulations, not just vesting documents
 - Current regulations reflect the community's support for measures that reflect more current knowledge and planning

Monitoring and enforcing conditions of approval [COAs]

Past failures include:

- Tree loss: Madbury Commons, Peak path
- Environmental protections for waterbodies during construction
- recycling for University Edge apartments (? and others?)

Improvements already made:

- “I’ve attached the meeting minutes from the Orion project – we do discuss erosion control items at every meeting however conditions of approval items are not specifically included yet in their agenda or minutes. I’ve asked Fulcrum [contractor?] to include them moving forward.” [email April Talon to Todd Selig and Michael Behrendt, March 26, 2015]
- “The Town Engineer plans to craft a list of specific site conditions/requirements from the conditions of approval and the site plans themselves from specific projects and include these as part of the weekly review meetings on the various construction jobs around town. This should help to keep conditions fresh in people’s minds at appropriate stages in the construction process as conditions are highlighted.”
- PTAP reporting: “I also attached Mike Sievert’s last stormwater pollution prevention plan inspection report. He does these regularly and as required.”

Improvements to consider: Require before and after photographs

- Current or recent aerial image showing the footprint of the construction area and the area that will be disturbed
- Trees and other vegetation to be retained: “Before” and “after” photographs establish current condition and any construction damage, thus facilitating enforcement efforts
 - groups of trees
 - individual trees
 - limit of clearance

Issues to consider, in alphabetical order (may be cross-referenced)

Alcohol sales on site (also see “Property management plan”)

- other Durham developments’ Conditions of Approval / Notices of Decision
 - The following conditions shall be met prior to the Signature of Approval on the Site Plan. These conditions shall be met within six months of the signing of these Findings of Fact and Conditions of Approval by the Chair of the Planning Board. If these conditions are not met within six months, the applicant must come before the Planning Board for review of the conditions:
 - ⇒ A note shall be added to the Site Plan stating that no beer or malt liquor sales will occur in any retail space.
(source: Conditional Use Permit Application submitted by Steven F. Kimball, Auburn, New Hampshire for the building of a 16-unit residential and a 4000 square-foot commercial, mixed-use building on a piece of property. The property involved is shown on Tax Map 2, Lot 6-0, is located at 20 Strafford Avenue and is in the Professional Office Zoning District. August 22, 2007 PB minutes)
- Exemptions to be considered
 - Hannaford and Rite Aid, during normal business hours
 - Restaurants with indoor seating only?

Alteration of Terrain (AOT) Permit from NHDES

- Should the Board review either the application or the NHDES response prior to deliberation?
- Anticipate that the Oyster River Local Advisory Committee (ORLAC) may respond

Arcade in Building C

- Connection to other elements onsite?
- Public access: Will it be attractive to public, i.e., Plaza users who are not residents? (Would it include elements that would make it more or less attractive to specific groups of users?)
- Public restrooms
 - “From a building code standpoint: clean, safe, public bathrooms in downtown areas that have public activities. Although I cannot require that in this project, I do want to make you aware when designing these buildings that those buildings will require designing plumbing for patrons, visitors, and guests. You might want to address that upfront in a way that works for the client and for the code.” [Audrey Cline, April 17, 2018 TRG meeting]

Amenities for Plaza patrons

- Awnings on buildings
 - to help mitigate heat island effect
 - remember waiting in line at Kaleidoscoop on a hot day?
- Benches (to provide rest and opportunities for community building by promoting serendipitous conversations)
 - also, insufficient public seating can mean disabled people/some seniors can't go to these places at all—a disability rights issue
 - wooden (not concrete or metal), preferably with arms (which help the less able-bodied, including elderly)
- Outdoor cafe seating
 - design to protect intended use, e.g., closely-arranged immovable planters edging the area
 - see Rise & Grind at Madbury Commons; Clark’s American Bistro, and Ciao Trattoria
- Public restrooms
 - “From a building code standpoint: clean, safe, public bathrooms in downtown areas that have public activities. Although I cannot require that in this project, I do want to make you aware when designing these buildings that those buildings will require designing plumbing for patrons, visitors, and guests. You might want to address that upfront in a way that works for the client and for the code.” [Audrey Cline, April 17, 2018 TRG mtg.]

Architecture, architectural design (Site Plan Regulations, elevations, renderings)

- see Board [minutes July 22, 2020](#)
 - Building C parking garage wall “smashed up against the walkway”; south view toward
 - retaining wall “overly massive”
 - view of building south side from residential neighborhood
 - question whether outside consultant should review: does it meet the Regulations?
- height, number of stories, style, relative to:
 - onsite, e.g., Building B relative to Building A
 - buildings on abutting sites, e.g., Orion, Historic District structures
 - streetscape (e.g., view of Community Church spire)
- harmony (mass, proportion)
 - onsite, e.g., Buildings B & C relative to Building A
 - offsite: relative to abutting and neighborhood structures

- precedent conditions can be set to allow final details to be worked out; they should require language something like:
 - that buildings shall be built precisely as shown on plans
 - detailed plans with specs shall be provided to the Planning Board and reviewed for compliance with the Architectural Design Regulations (e.g., clapboard and trim materials and dimensions)
 - the architectural plan shall be finalized by the applicant and returned to the Planning Board to be incorporated into the final approval
 - review by the Town Planner or a third party subject-matter expert

Bicyclist issues, bikes

- on-site circulation safety, e.g., path across site from Mill Road to Chesley, used by commuters
- facilities, amenities (parking/storage)—indoor, outdoor
- storage adequate? (“at least 40”)

Buffer for College Brook (see “College Brook,” various entries)

Buffer to residential neighborhood

- 70- to 75-foot buffer to Chesley/Church Hill on late 1970s original site plans
- Settlement Agreement expectation?
 - "Councilor Jim Lawson: “Why did I vote for [the Settlement Agreement] with the Council? It wasn’t for the buffer to the brook. It was increasing the buffer to the residential area on the other side of the brook. If the brook wasn’t there, it, we’d still, that was my reason.” [verbatim, October 12, 2016 Planning Board meeting]
- What is the goal of a buffer “device”/planting strip? Evaluate proposed buffer accordingly.

As is true with a number of other zoning refinements, factual information is badly needed on the visual value of buffer strips. Few studies of their influence on land value or their success in ameliorating what would otherwise be an incompatible juxtaposition of land uses have been made. No one can quarrel with the idea that landscaping improves appearance. The real question is whether in a given situation it can solve a basic incompatibility, or whether its effects are only marginal. [American Society of Planning Officials, “Zoning Buffers: Solution or Panacea?” PAS Report 133, April 1960.]

Clerk of the Works for construction oversight? (Also see: Construction management plan)

- Consultant represents Town’s interests
- Paid for by applicant

College Brook, 75-foot wetland upland buffer strip, aka, “setback”

- [Conservation Commission advisory on WCO and SPO CUPS](#) (letter to Planning Board, dated January 4, 2021)
- Recommendations for Stream Improvements to College Brook 5-25-20 (Received 10-29-20) [Ballestero] (posted online)
- Mill Plaza Redevelopment and Relationship to College Brook 6-21-18 (received 11-12-20) [Ballestero] (posted online)

- Mill Plaza Study 2008: Appendix E. College Brook Report (posted online)

College Brook, litter protection (from “stuff” emanating from Plaza use)

- Plan for reducing/monitoring/cleanup of litter/trash into the buffer and/or brook
 - outreach, partnerships, dedicated employee, schedule?
- Regular monitoring for Plaza-related debris, e.g., shopping carts

College Brook, off-site stream restoration plans, i.e., property not owned by CDA

- Colonial Durham is a stakeholder
 - water knows no property lines
 - negative impacts of Plaza operations, e.g., snow management, on the brook extend the full width of the brook, not just the north side of the brook
- Property on the south side of the brook: WHAT ARE THE CONTRIBUTIONS?
 - Brookside Commons land
 - panhandle owned by CDA
 - wooded area east of the panhandle to the footbridge owned by abutter Lambert-Lee family
- \$25,000 on offer
 - what would this “do?”
 - is it a meaningful amount, or would it just “make us feel good?”
 - is it intended to substitute for other BMPs that should be undertaken by the applicant on its own property?
 - what is the realistic prospect for a planned, coordinated effort among various stakeholders? (none for Brookside Commons; unknown for UNH and Town of Durham)

College Brook, on-site stream restoration plans, i.e., property owned by CDA

- Does it substitute for the applicant’s stormwater management implementation “to the maximum extent possible” per site plan regulations?
- Pollutant removal credit opportunity?
<<https://nerrssciencecollaborative.org/resource/pollutant-removal-credits-buffers>>
- Precedent condition: require detailed plan
 - plan to be reviewed by DPW (and Conservation Commission)?
 - evidence of enforceable commitment for living shoreline/buffer management and habitat restoration
 - plan should include post-construction inspection and monitoring
 - grants available for funding, expertise: this should not be on the Town’s shoulders
 - resource known to Dr. Ballestero: Chesapeake Stormwater Network
<<https://chesapeakestormwater.net>> (2021)
- Outreach opportunity / community education
 - what role should CDA play, if any?
 - explanatory signage? [see April Talon stormwater presentation to the Planning Board March 25, 2020 re Littlehale Pond sign depicting functioning of a bioswale (about 1:41 into DCAT recording)]
- Who will be responsible?
 - for design? implementation? monitoring?

- accountability (to Durham DPW)
- TRG meeting March 16, 2021, Joe Persechino stated that “Colonial Durham” will be responsible and that Tighe & Bond has a wetlands [specialist? staff member].

College Brook, water quality monitoring

- discuss whether appropriate
- Cottages/Capstone: Conditions of Approval, April 27, 2011 precedent condition
 - 17. The biological and chemical properties of the Oyster River shall not be degraded by the stormwater runoff from the development site. The applicant shall work with the Oyster River Watershed Association (ORWA), to pay for water quality monitoring by taking storm samples upstream and downstream before, during, and after construction for a period of five (5) years, a copy of which shall be submitted to the Town Engineer, Conservation Commission and the Director of Planning & Community Development. If the ORWA is no longer able to assist with the monitoring, Capstone Development Corporation (or its successor) shall contract with a qualified third party, as approved by the Director of Planning & Community Development, to take the storm samples. Samples shall include solids, phosphorous, conductivity and nitrogen (total nitrogen and nitrates). If, at the determination of the Town Engineer, degradation has occurred as a result of this development of this site, a mitigation plan shall be established and implemented to resolve degradation issues.

Configuration of apartments

- Benefit to the community if the apartments have the potential to be easily reconfigured, e.g., if none of the interior walls are load bearing

[Mike Sievert, engineer] ...noted that the new Kostis building was designed so that none of the interior walls were load bearing, so a fourth floor apartment could easily be converted. He noted that these units had two floors, and said the fourth floor of the unit could have a dining room, larger living room, office and bathroom, and there could be two bedrooms upstairs with another bathroom. He said the bedrooms were 140-150 sf each. ¶ He said another example of possible conversion was at the Madbury Road building, which had an 801 sf habitable space unit for 4 bedrooms, with no interior load-bearing walls. He said the walls could be taken out to create a large living area with a kitchen/dining room, three bedrooms and a master bathroom.

[minutes, Planning Board, June 26, 2013: public hearing on “Proposal to reduce the maximum number of occupants in an unrelated household in an apartment from 1.5 to 1 per 300 square feet of habitable floor area...”

- See Rick Taintor’s memo “Mill Plaza - number of bedrooms per dwelling unit” posted as [Email from Rick Taintor 9-12-21 \(659 KB\)](#)
- Board may not require a specific configuration, but it may discuss and suggest
- See [Letter from Town Attorney Regarding Unit Size 10-6-21 \(288 KB\)](#)

Connection to Chesley Drive and Faculty Neighborhood

- Is the proposed path ADA-compliant (slope, length)?

Connection to Main Street

- configuration of former path: a set of switchback steps is proposed
 - safety issues?
 - can it be improved to be ADA-accessible and accessible for wheels?

- visibility from Plaza
- attractiveness for users: landscaping, materials

Construction code : See Energy Code

Construction management, blasting and drilling

- ask Tighe & Bond about Orion’s experience with ledge?
- for which nearby properties should the applicant provide pre-blasting surveys?

Construction management, general

- Clerk of the Works for construction oversight?
 - Consultant represents Town interests
 - Paid for by applicant
- parking for construction crews
- phasing
 - estimate total time required, demolition/shovel in ground to doors opening? (helpful to abutters)
 - TRG 4/17/18 comment by Emily Innes: Would need to keep businesses, parking operating; coming back, but would want to build as rapidly and efficiently to keep construction as short as you can.
- require contractors to include in their regular meeting “agendas” any relevant COA
 - “...conditions of approval items are not specifically included yet in their agenda or minutes. I’ve asked Fulcrum [a contractor for Madbury Commons] to include them moving forward.” [email from April Talon to Todd Selig, March 26, 2015]
- road cleaning as necessary during construction
 - “During construction, Madbury Road shall be cleaned as necessary, as determined by the Durham Public Works Director or the Durham Zoning Administrator/Code Enforcement Officer.” [Conditions to be Met Subsequent to the Signature of Approval on the Site Plan; June 20, 2007 PB minutes: V. Continued Deliberation on a Site Plan Application and a Subdivision Application submitted by Cuthartes Private Investments, Boston, Massachusetts, on behalf of Stonemark Management Co. Inc., Stratham, New Hampshire to build a 66-unit, age-restricted condominium development. The property involved is shown on Tax Map 1, Lot 6-8, is located at 97-99 Madbury Road and is in the Residential A Zoning District.]
- weekly meetings with DPW: other, completed projects’ precedent conditions of approval
 - Madbury Commons: j) Weekly meetings. “The applicant/contractor shall hold weekly meetings, or talk by phone as mutually agreed upon, with the Durham Department of Public Works and other appropriate Town staff (as determined by the Durham Department of Public Works) to discuss the construction process and the schedule for the upcoming week. In addition, the applicant/contractor shall be responsible for communicating with appropriate Town staff should issues arise in the interim.”
 - Orion: g) Weekly meetings. “The applicant/contractor shall hold weekly meetings with the Town Engineer and other appropriate Town staff (as determined by the Town Engineer) to discuss the construction process and the schedule for the upcoming week. In addition, the applicant/contractor shall be responsible for communicating with appropriate Town staff should issues arise in the interim.”

Construction management, hours of activity (site plan regs Section 3.4)

- consider residential abutters
 - Brookside Commons and Faculty/Chesley residents: Mill Plaza would be the only large construction project abutting residential neighborhood; not akin to Madbury Commons, Orion, Pauly's Pockets, 10 Pettee Brook, i.e., nothing similar in terms of disruption
- blasting and drilling: mobilization start times for blasting
 - current regs: For blasting, chipping of stone, and use of hoe or rock hammers, hours are restricted to 9:00 a.m. to 4:00 p.m. Monday through Friday
 - Mill Plaza regs: no mention of the above activities, yet drilling and any pulverizing of stone or ledge will undoubtedly be loud
- no-work days
 - There shall be no operation on the day of the Memorial Day Parade nor on the day of the Spring UNH Graduation. [[Orion \(23–35 Main Street\)](#)]
- other, completed projects
 - Precedent Condition / Operational Issues—1) Construction activity. Add to the plan notes: “All outside construction activity related to the development of this site is restricted to the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday and 8:00 a.m. to 3:00 p.m. Saturday”.
[Great Bay Kennel Notice of Decision, site plan and CUP application, April 24, 2013; near residences]
 - ⇒ [Planner’s recommendations for the meeting included this note: *Operational Issues – NOT YET REVIEWED – needs to be reviewed (1) Construction activity. Add to the plan notes: “All outside construction activity related to the development of this site is restricted to the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday and 8:00 a.m. to 3:00 p.m. Saturday”. [This is stricter than the provisions in the Noise Ordinance.] [The applicant has agreed to ending Saturday construction by 3:00 p.m. Does the Planning Board think that 8:00 a.m. is the appropriate time for it to begin or should it be later?]*
 - Ms. Tatarczuch noted that there was no mention of no operation on the day of the Memorial Day parade. She said on that day the route trucks would take would be blocked so they couldn’t get out. There was discussion. Councilor Smith said the parade really blocked downtown traffic. Mr. Rubin said they would deal with it. Mr. Kelley said it might be of value to add the day of the parade to this condition and others agreed. [February 12, 2014 Planning Board minutes re Madbury Commons draft Notice of Decision]

Construction management, restoration plan, College Brook

- Notes on plan could include similar to:
 - n) Pettee Brook Invasives. “For those invasive plants appropriate for manual removal the contractor shall carefully excavate smaller stumps, roots and vines using hand tools as needed, while preserving and protecting the root mass of the native trees and shrubs. Larger stumps that are not possible to excavate by hand shall be left, but treated with an appropriate herbicide to kill the plant and prevent resprouting. The contractor shall store, remove and dispose of all parts of invasive species from the site, using commonly accepted practices, so that those plants do not spread via roots, fruit or any other part.” [Madbury Commons]
 - Conditions to be met prior to commencing any site work: Pettee Brook Restoration. A preconstruction conference, as called out in the Brook Restoration Notes #1 and #5 on sheet L1 of the plan set, which calls for flagging trees and shrubs to remain, shall be held with the Landscape Architect, contractor, Durham Tee (sic) Warden, and, if available, Chair of Conservation Commission. [Madbury Commons NOD]

- 75-foot wetland setback: what activities will occur within the WCOD?
 - consider CURRENT site plan regs Section 3.7 Waste Materials, specifically 3.72, “...shall be located as far from the waterbody as possible and at a minimum of 50 feet away (75 feet in the case of a wetland setback area).”
 - “When we looked at the Madbury commons site in August we talked about the 25’ shore land set back. Though there had not been anything built in that strip, there has definitely been significant construction disturbance, including removal of vegetation, grading (2 feet of fill has been added in some spots), storage of equipment & supplies, compaction, etc. I drive by the site occasionally and I feel the issue still needs additional clarification, for this site and for future similar development. Two questions come to mind: (1.) What site disturbance in the setback area is allowed in the current wording of the ordinance? I would think the disturbance we see along the creek bank now would not (or should not) be allowable. (2.) If it is not allowable under the ordinance, did the Planning board approve language that allows the site disturbance occurring there now? [John Parry to Ann Welsh, Conservation Commission, November 9, 2014]
- oversight
 - see letter from the Conservation Commission to Tom Johnson, Director of Zoning, Building Codes & Health, dated January 27, 2012, topic “Construction deficiencies at 9-11 Madbury Road, Tax Map 4, Lot 12-0” | “...the majority of controls required in the Conditions of Approval were not instituted, were not installed properly or in the appropriate sequence, and/or are not monitored or evaluated, in breach of the approved terms and to the detriment of Pettee Brook.”

Crosswalks, location, number

- on site
- Mill Road
 - closest to Main Street
 - at driveway access to/from the Plaza

Development of Regional Impact (DRI) for construction vehicles?

- Would the construction process raise this project to that threshold?
- See April 13, 2021 email from Michael Behrendt to the Board regarding 19 Main Street

Driveway access to/from Mill Road

- crosswalk, pedestrian safety
 - sight line: Is the alignment of the crosswalk with sidewalks north-south sufficiently improved in the proposal?
 - see [Phyllis Heilbronner 2-2-22](#)



<< [Harriman photo of existing conditions, 2016](#),

page 1



<< Glare exiting Mill Plaza, February 28, 2007

- general
 - Site plan regs: “17.1.10 When an existing development does not conform with the standards herein, as part of a new site plan application, the Planning Board may stipulate improvement of existing access points, consolidation of existing access points, closing off of wide open access areas onto a street, increasing or decreasing driveway width, addition of acceleration or deceleration lanes, installation of traffic control devices, installation of curbing, or other measures, as appropriate.”
- median location, shape, size
 - existing median strips are 9 to 10 feet wide
 - current site plan regulations require a minimum of 9 feet width
 - Bagdad Woods 3-story addition (2020): 7 to 8 feet wide
 - ⇒ Mr. Kelley asked how wide the landscaped median strip would be. Ms. Woodburn said it would be 7-8 ft wide, and she provided details on the shrubs that would be planted [PB minutes, July 15, 2020]
 - Mill Plaza site plan regulations require a minimum of 6 feet width
 - consider:
 - ⇒ vehicle overhangs
 - ⇒ impact on vegetation
 - ⇒ pedestrian access and safety
 - parking lot: size of median strips, landscaping
 - ⇒ see applicant’s [“Diagram of Implications of Increasing the Width of the Medians from 6 Feet to 10 Feet” 6-17-20](#)
 - ⇒ Consider alternative of removing some parking spaces
- rain garden, location and maintenance
 - “Can the rain garden be moved away from the driveway, to avoid issues like trash, pedestrian crossing, etc. There is sidewalk or protected path around the rain garden, yet pedestrians may well enter or exit the Plaza through it.” [June 19, 2018 TRG]
 - Who will maintain it for both function and aesthetics? [weeding, trash removal, clipping and pruning vegetation, replacement of vegetation, etc.]
 - Condition of Approval/note on plans?
 - “Replace vegetation whenever percent cover of acceptable vegetation falls below 90 percent or project specific performance requirements are not met; if vegetation suffers for no apparent reason, consult with horticulturist and/or test soil as needed.”
 - [[“Operation and Maintenance of Green Infrastructure Receiving Runoff from Roads and Parking Lots: Technical Memorandum.”](#) Environmental Protection Agency, 2016.]
- turning radius
 - Site plan regulations: “17.1.3 The access management standards herein apply to automobile-oriented thoroughfares. Within the downtown or other pedestrian-oriented areas, the standards

should be appropriately adapted foremost to foster a pedestrian-friendly environment. For example, much smaller turning radii are appropriate in pedestrian-oriented areas.”

Drive-through facility for bank

- why both exit and entrance at SE corner?
- traffic pattern: drive-through exiting headlights will be a potential negative for Faculty Road and Brookside Commons homeowners
 - finished grade level of SE corner of Building C—location of the facility and primary exit—will be at an elevation approximately 6 feet higher than the site is today (43-ish versus 36-ish feet)
 - [see (a) last sheet “Site Sections” of site plan dated January 2, 2020 (b) sheet C-103 of site plan dated March 3, 2021]
 - see Taintor on building heights [sheet A20.2 Exterior Elevations, January 2, 2020]

Easements—[incomplete info here]

- see site plan notes
- sewer line across southern edge of property
- park at intersection of Mill/Main (“Bicentennial Park”)
 - 107) Bicentennial Park. The park that was recently redeveloped by the Town is situated on the Mill Plaza property. The Town has an easement to create this park. The easement retains the right of the property owner to use this land in the future. We would like to talk with the applicant about ways to potentially keep the park open in perpetuity. The applicant may want to provide direct access from the park into the adjacent building. [February 10, 2016—[Planner’s Review of January 2016 Redevelopment Proposal](#) (Site Plan #3)]

Emergency access / fire equipment access

- access to east/rear of Building C: is this a concern?
 - Fire Department access – need access to back of buildings | Need clear widths of 25 feet. [TRG meeting, April 17, 2018]
 - The Fire Department is concerned to ensure adequate access for its equipment, particularly at the corner of building C2 (10-foot radius and proposed streetlight), as well as around building B. Deputy Chief Trull will provide the turning radius for the tower truck so that the applicant can analyze accessibility. [TRG meeting, June 19, 2018]
 - more recent comments from Fire Department?

Energy checklist, energy considerations checklist

- other development Notices of Decision / other development Conditions of Approval
 - Items to be completed prior to issuance of a building permit
 - 12) Energy checklist. The applicant or the applicant’s contractor/architect shall complete the energy checklist and meet with the Building Official and a representative of the Energy Committee. Any items agreed to by the applicant should be included in the building application. Compliance with items on the energy checklist is encouraged but not required (except for items otherwise required). The applicant is encouraged, but not required, to conform with the specifications contained in the January 10, 2017 memorandum from the applicant’s architect Stephen Gibian. [2 Brook Way, 2 Brook Way Applicant: Phi Sigma Sigma Sorority, NOD April 25, 2017]

Energy code (include under “Other Issues” in Notice of Decision?)

- Energy Code. Building construction shall be in compliance with the energy efficient standards of Chapter 38 of the Town of Durham Code of Ordinances. [Great Bay Kennel, 27 and 35 Newmarket Road, Notice of Decision, April 24, 2013]

Energy resources—commercial and residential

- energy efficiency of construction: anything above Code?
- energy generation, e.g., solar panels
 - Site has fantastic southern and western exposure, i.e., good for solar
 - Is the roof structure appropriate for future installation? (construction strength/building code)
 - See Energy Considerations Checklist recommendation: “Solar-ready zone (a section of the roof or building overhang reserved for a future solar photovoltaic or solar thermal system with required internal conduit or plumbing pre-installed)”
- Electric-vehicle charging stations
 - only mentioned in passing at Planning Board
 - see also parking, e.g., electric vehicle (EV) charging stations in the garage of Building C (as well as outdoors by Buildings A and B)

Enrollment, student enrollment: See UNH enrollment, below

Existing trees, vegetation: Cross-references

- Landscaping, trees—existing
- Vegetation, existing natural vegetation

Fences, fencing

- at several locations
 - do we REALLY want to see a chain link fence **anywhere** on the site?
 - fence at SE corner of Building C by bank drive-thru exit: “CONST. RETAINING WALL W/ 42” BLACK VINYL COATED CHAIN LINK FENCE”
- Site plan regs: Section 7.2 Fences and Walls
 - 7.2.2 Chain link fences shall not be used: a) between the primary building and any street; b) within 20 feet of any street; or c) in any location that would be prominently visible from any street. Where chain link fences are used, they shall be covered in a dark green or black vinyl or planted with vines that will grow into the fences.

Fiscal impact analysis, Conditional Use criterion

- Fiscal Impact Analysis – Colonial Durham, prepared by Fougere Planning and Development, dated April, 2, 2020
- [Letter from White Appraisal 6-17-20](#)
- only best-case scenario presented? need more information? [[Planning Board, May 13, 2020](#) minutes:
 - [Councilor Jim Lawson] said this Fiscal Impact study looked at the best-case scenario, and said between the best and worst there were too many variables. He encouraged the Board to look at what was the worst case scenario, and if it included increased vacancy rates and decreases

valuation of other properties, and increased the number of students in the School District, the Board should look at what the result was of this.

- Councilor Lawson said the good news was that from what he'd been looking at in order to make up for the gaps in this fiscal impact report, the worst case scenario looked pretty good, and created housing opportunities that traditionally weren't available in Durham. He said the Board deserved the opportunity to see the spectrum of worst to best, and said it would feel more confident if it saw the worst case and decided it was workable. He said if Mill Plaza could cover the cost of this, he viewed this as a community benefit, especially if the bottom line was that there was still a net positive to the community.

Grading and elevations

- finished grade level of SE corner of Building C will be at approximately 6 feet higher in elevation than the site is today (43-ish versus 36-ish feet) [see (a) last sheet "Site Sections" of site plan dated January 2, 2020 (b) sheet C-103 of site plan dated March 3, 2021; (check December 1, 2012 site plan but I don't believe it has changed)]
- traffic pattern: drive-thru exiting car lights will be a potential negative for Faculty Road homeowners due to this elevation
- see Taintor building heights [sheet A20.2 Exterior Elevations, January 2, 2020]

Green roof, vegetated roof

- access to residential areas?
 - site plan note and/or Condition of Approval should state that there shall be no such access
- expertise of design and maintenance?
- type of green roof: "intensive, or "extensive" (also referred to as "low profile")?
 - There are two general types of green roofs: 1) intensive green roofs with a deep planting media that can support shrubs and trees, often planned for uses such as gardening or rooftop patios; and 2) extensive green roofs designed with lightweight, low-profile materials for stormwater management, water recycling, and/or thermal advantages. [Ohio Environmental Protection Agency, [Rainwater and Land Development, 2.4 Green Roof.](#)]
 - Other resources: "[Types of Green Roofs \(Extensive Vs Intensive Designs\)](#)" and "[Intensive vs Extensive Green Roofs: What's the difference?](#)"
- construction for roof strength
 - should follow guidelines for type of vegetation proposed: e.g, slope of roof, structural support, engineered soil, roof membrane type, type of irrigation, etc.
- fire safety: check with Durham Fire Department? UNH experience?

4.3 Fire Safety—Green roofs, when saturated with water, can retard the spread of fire, but dry plants on a green roof can be a fire hazard....construct fire breaks on the roof— 2-foot (0.6 m) widths of concrete or gravel at 130-foot (40 m) intervals ...install sprinkler irrigation systems and connect them to a fire alarm? [U.S. Environmental Protection Agency. 2008. "Green Roofs." In: [Reducing Urban Heat Islands: Compendium of Strategies. Draft.](#)
- installation cost and maintenance: budgeted? How much is enough?
 - "Although the level of care depends on plant selection, most of the expenses arise in the first years after installation, as the plants establish themselves and mature. For either an intensive or extensive roof, maintenance costs may range from \$0.75 to \$1.50 per square foot. The costs of maintaining an extensive roof decrease after the plants cover the entire roof, whereas maintenance costs will remain more constant for an intensive roof."

[U.S. Environmental Protection Agency. 2008. "Green Roofs." In: [Reducing Urban Heat Islands: Compendium of Strategies. Draft.](#)]

- phosphorous runoff from green roofs: a concern?
 - if so, require phosphorus-adsorptive media in Conditions of Approval?
 - from Contech Engineered Solutions, the manufacturer of the Jellyfish stormwater management system:
 - “...the effectiveness for removal of pollutants such as dissolved metals and dissolved phosphorus is much less certain. In fact, several recent high-profile monitoring studies by credible researchers and agencies in the United States and Canada (Washington State University, University of Waterloo, North Carolina State University, Wisconsin Department of Natural Resources and others) have demonstrated considerable leaching of these dissolved pollutants from bioretention and green roofs, particularly in systems where compost comprises a substantial portion of the soil mix.”...“multiple studies have been conducted on bioretention and green roof systems that incorporate phosphorus-adsorptive engineered media as an amendment to the soil mix, or as a downstream polishing filter. These monitoring studies have demonstrated exceptional capture of dissolved phosphorus when soil is amended with as little as 5% phosphorus-adsorptive media.”
 - [[“Phosphorus Leaching from Bioretention and Green Roofs: The ‘Dirty Little Secret.’”](#) by Joel Garbon, June 09, 2014]

Heat island effect: mitigation options (also see Landscaping; Parking and Pavement)

- Reduce amount of impervious surfaces, e.g., pavement
- Choose materials and colors that increase the albedo of surfaces to reduce heat risk (Albedo is the degree to which a surface reflects solar energy.)
 - [See National Integrated Heat Health Information System recording of webinar on [“Investigate Options 2 - Structural & Physical Infrastructure”](#)]
- Increase amount of shade
 - Deciduous trees with large canopies
 - Awnings on buildings

Hours of operation (noise, lights both stationary and vehicular)

- zoning grants authority to limit
 - Conditional Use permit approvals, 175-23. Approval Criteria, D. Conditions of Approval: “...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....The conditions shall, if applicable, include, but are not limited to, the following:
 - 7. Limitations on the number of occupants and methods and times of operation.”
- see relevant history
 - related to noise integral to the operation of the business and to abutting residential uses
 - may address noise related to a change of use
- bars and restaurants are of particular concern
 - proximity to Main Street bars and to off-site sales of alcohol
 - impact on abutters
 - “new” restaurant are not automatically subject to Planning Board site plan review: see [Beth Olshansky 12-28-21](#), which includes Michael Behrendt’s comments
 - see reference list of current business hours of operation in [Robin Mower 2-3-22 #2](#)

- require that any outdoor seating/standing/service areas be closed at hours compatible with abutting family neighborhood
 - see: [Robin Mower 2-3-22 #2](#) and [Beth Olshansky 1-18-22](#)
- pizza and other takeout food, onsite or offsite
 - What kinds of businesses will be at the Plaza, with what operating hours?
 - How will that affect onsite traffic—pizza delivery cars coming and going, patrons from offsite picking up orders, patrons leaving after bars close
- deliveries, delivery trucks
 - expanses of asphalt bounce noise rather than deadening it
 - early morning deliveries, e.g., Rite Aid deliveries are not infrequent; they might occur at 5am, and include 18-wheelers
 - restaurants may have early-morning deliveries and trash collection
- garbage collection, recycling, sanitation
 - “Mr. Kelley said he would like to see a condition of approval that trash trucks didn’t arrive until after 7 am, and Mr. Ozenich said that was reasonable.” [deliberation on Application for Conditional Use Permit submitted by 50 Newmarket Road, Planning Board April 14, 2010]

Impervious surface calculation

- stormwater management areas should not be included (check with April Talon)

Landscaping, trees: general (also see buffers along College Brook and Church Hill)

- discussions at Planning Board include but not limited to:
 - June 10, 2020 ([DCAT; minutes](#))
 - June 17, 2020 ([DCAT; minutes](#)); meeting with CDA landscape architect Howard Snyder
- Richard Kelley, June 10, 2020
 - “Oh, but Mr. Chairman, could I just offer, I mean, the applicant has asked for feedback in regards to landscaping. I’d like to throw this on the table. We heard from the public, and I feel much the same way. We’ve seen the stormwater report, and I think we’re making dramatic improvements to the stormwater, and while I think we’re certainly making improvements to the landscaping that exists there today, I’ve said this before and, applicants, “Dazzle us!” See if we can go back to the drawing board and do something remarkable up here. That’s certainly a degree of measure more than what we’re seeing here. **And I do recognize what I’m asking, and that would be a reduction of building footprint, parking, in order to get green space.** But I’m going to throw that out there and ask the applicant to look at that and report back next week whether it can be done or not. Thank you.” [Planning Board, verbatim transcript]
- Paul Rasmussen, Planning Board Chair, August 25, 2021
 - “If this were, you know, we’ve passed several plans this year where we permit certain work within a wetland zone, alright. This now qualifies, in my mind anyway, for the type of work that our current zoning, not just the 2014 zoning, but our current zoning, would permit under a Conditional Use request, and that satisfies me. I am, I recognize that it’s coming at a cost of some of the additional landscaping. I would ask that, in the full set, careful selection is taken with regards to the trees, that they are ones that are not only climate-, but also microclimate-suitable with regards to parking lot and paved areas. They need to be hardy with regards to that type of use, which is not, you know, a subset of the trees we would normally ask for in town. So, yeah, that’s where I am.” [[Planning Board, August 25, 2021](#), verbatim transcript]
- Mill Road strip between parking pavement and Town sidewalk
 - width: is it sufficient? does it meet any site plan regulations

- CDA owns
- proposes landscaping only a portion; plan includes shrubs and perennials but no trees
- parking lot interior landscaping
 - are there enough shade trees? (one per planting island?)
 - end caps, southern toward College Brook
 - end caps, elsewhere
 - medians: size, location
 - see:
 - ⇒ February 12, 2020 minutes
 - ⇒ [Diagram of Implications of Increasing the Width of the Medians from 6 Feet to 10 Feet 6-17-20](#)
 - “Significant tree plantings throughout a parking lot or along a street site help mitigate local air quality issues. Trees help settle out particulate matter, reduce low-level ozone, and help mitigate the urban heat island effect.” [numerous sources, including page 24 of [“San Mateo County Sustainable Green Streets and Parking Lots Guidebook”](#)]
- Portsmouth: examples, i.e., DPW’s [“Urban Forestry / Parks and Greenery”](#)
 - [City of Portsmouth Tree Planting Requirements](#) (1 page); overview reads “The base of the City of Portsmouth Tree Planting Requirements is the ANSI A300 Part 6 Standard Practices for Planting and Transplanting. ANSI A300 Part 6 lays out terms and basic standards as set forth by industry but it is NOT the “end all” for the City of Portsmouth. The following are the City of Portsmouth, NH Tree Planting Requirements that are in addition to or that go beyond the ANSI A300 Part 6”
 - [City of Portsmouth Tree Protection Plan](#)
 - [Tree Planting Detail](#)
- southern edge along College Brook
 - site plan proposes no change from current
 - no trees proposed to be planted on plaza-owned land along College Brook [RMM: SEE “Diagram of Proposed Shade Trees in Parking Area 6-16-20]
 - opportunities for improvement include: invasive removal, planting of native species shrubs (e.g., winterberry? see north of Dover’s DMV traffic circle) and trees or grasses

Landscaping: damage, guarantee, warranty re landscaping

- warranty: current (vs Mill Plaza 2-year warranty)
- damage, defined in the June 16, 2014 zoning ordinance
 - “175-7. Definitions.
 - C. The following definitions apply to landscaping and buffering provisions including the provisions of the Wetlands Conservation Overlay and Shoreland Protection Overlay Districts:
 - DAMAGE – Includes any intentional or negligent act which will cause vegetation to decline and die within a period of five (5) years, including but not limited to such damage inflicted upon the root system by the operation of heavy machinery, the change of the natural grade above the root system or around the trunk of a tree and damages from injury or from fire inflicted on vegetation which results in or permits infection or pest infestation.”
- snow removal and landscaping damage
 - 3/10/21 site plan note, sheet C-102: “Snow storage and removal operations shall avoid damaging landscaping to the extent feasible. Landscaping that has been damaged shall be

replaced.”

WHEN? Specify, e.g., “immediately,” “in the first following spring”

Landscaping, fertilizer

- Fertilizer: Notes on Plan
 - Low phosphorus/slow release nitrogen fertilizers for landscape stock shall be used. [Conditions of Approval, Peak/Lodges NOD 11/28/12]
 - Fertilizer. “Only low phosphorus/slow release nitrogen fertilizers for landscaping materials may be used.” [Orion [Notice of Decision, January 29, 2014](#)]
 - update as needed for current State and Town regulations; and further updating shall be made
 - rationale: Adjacent to College Brook

Landscaping, general maintenance

- other Notices of Decision, notes on plan
 - Orion [Notice of Decision, January 29, 2014](#)

Landscaping, screening, buffering: general

- see Site Plan regulations

Landscaping, screening, buffering: southern edge of property

- no landscaping or screening onsite proposed
- applicant relies on “Restoration Plan”
- no discussion has been held regarding either of the above; verbatim excerpts from
 - Innes: You are correct. This discussion was going to happen in the future. We were focusing, again, on the landscaping plans. Joe Persechino has been...I should stop and go back and say: Our limit of work as landscape architects was above the brook, because the brook and the stormwater was closely related. Joe has been the lead on that piece and I invite him to update you on where we are with that. [June 17, 2020]
- time required to create the vegetated screening
 - “Probably will be 15 – 20 years to get the kind of buffer we all envision. That is why it is so important to protect the existing trees that are there to start with – it takes a long time to replace them. That is one weakness I see with the existing review process – developers often don’t show the existing trees in their plans, so we are not aware of what will be lost.” [John Parry, private email, November 10, 2014]

Landscaping: stormwater treatment areas

- Requirement: “All stormwater treatment areas shall be planted with native plantings appropriate for the site conditions: grasses, shrubs and/or other native plants in sufficient numbers and density to prevent soil erosion and to promote proper treatment of the proposed runoff.” [Site Plan Regulations, Stormwater Management Standards (misnumbered)]
- Note: Non-native plantings may be more functionally appropriate in some situations. Has anyone checked these?

Landscaping, trees—existing

- See Site Plan Regulations

- Citizen comments from John Parry (see below) and [Robin Mower 2-1-22](#)
- Require photographs of trees—both close up and in context—before start and after completion of construction
- Construction management plan shall/must include:
 - Location of all individual trees (or groups of trees) over 16 inches in diameter (DBH)
 - Identification of vegetated areas and individual trees to be kept and protected
 - Designation of Tree Protection Zone (TPZ) and/or Critical Root Zone (CRZ) for each tree to be retained, i.e., not just a “general” measure
 - Note about how the above will be protected, to be signed off by the Tree Warden
 - Note about inspection of the site for protection of the above.
- requirements for the Tree Protection Zone (TPZ)
 - shall be determined by the Tree Warden and/or qualified designee
 - see Durham Site Plan Regs
 - see John Parry correspondence with the Planning Board
 - “Tolerance to construction impact can vary greatly according to site characteristics such as soil depth, individual tree characteristics such as rooting habit, prevailing weather conditions such as drought, and the degree of construction impact....A minimum TPZ for a tree can be determined by using the following rule: Measure the diameter (in inches) of a tree trunk at a point 4.5 feet above ground, known as the diameter at breast height (DBH). Define a circle around the tree with a diameter in feet equal to the number of inches of the trunk’s DBH. For example, a red oak with a diameter of 10 inches would have a TPZ 10 feet in diameter.... For especially valuable, large, old, historic, or landmark trees, the TPZ should extend at least to the dripline, preferably beyond, and should be established by an experienced arborist or horticulturist.” [[“A Guide to Preserving Trees in Development Projects,”](#) PennState Extension, College of Agricultural Sciences, September 12, 2017]
 - TPZ shall be protected by fencing that is not easily moved or destroyed by construction activities
 - [“A better method [than plastic construction fencing], often specified by municipalities, is the installation of chain-link wire-mesh, or wooden fence. The fencing should ideally be 4 to 6 feet (1.2 to 1.8 m tall and solidly anchored into the ground.... Contracts should include specifications for the type of barrier and installation methods to be used.”—“Managing Trees During Construction, 2nd edition,” International Society of Arboriculture.”]

Landscaping, trees—maintenance and guarantee, general

- John Parry in private email, 2015: “Some contractors will interpret a two year guarantee to mean, if it is dead after two years it will be replaced. It would be wise to revise the wording to say **‘materials that die or are in poor condition during the 2 year warranty period will be replaced’**.... Several of the trees planted along the Peak Path died because they never got watered over the year. A problem with this is that the tree may still be alive at the end of the warranty, but is not as large and healthy as it should be.”
- [Put another way: just because something looks OK today doesn’t mean it will thrive, that we can do better, but that it will take attention, dedicated expertise, and funding.]
- mulch:
 - Conditions of Approval should be specific
 - For example: “Mulch shall be placed in a 3’ radius ring, 2–3” deep with mulch kept at least 2” from stem. ‘Volcano’ mulching is poor practice as it holds moisture against the stem, providing

habitat for pests and disease.” [WV Division of Forestry, Urban & Community Forestry, 2nd Ed. (June 2020), <https://wvforestry.com/pdf/Parking_Lot_Trees_-_2020.pdf>]

- UNH’s “Planning, Design and Construction Guidelines,” Exterior Improvements, [329300 Plants](#)
 - “Maintain plantings by pruning, cultivating, watering, weeding, fertilizing, mulching, restoring planting saucers, resetting to proper grades or vertical position, and performing other operations as required to establish healthy, viable plantings. Spray or treat as required to keep trees and shrubs free of insects and disease.
- Historic note re maintenance responsibility
 - Maintenance of existing trees within the Plaza parking lot was to have been the responsibility of the Town of Durham, per Planning Board document dated May 12, 1977 [“The Town will maintain the planting throughout the development in the future.”]

Landscaping, trees—watering

- watering plan
- watering: tree bags (“the industry standard”)
 - UNH policies are being updated, including for best practices, per UNH planner Steve Pesci in May 5, 2021 private email
 - retired UNH Campus Architect Doug Bencks added: “The particular section about plants and trees is being updated right now, but here’s what it says right now about watering. As you can see we are not specific about how they provide their watering, but **the industry standard these days is the tree bags.**”
 - UNH current policy:
 1. Watering shall be performed twice within the first 24 hours after plants have been installed, and at least twice a week **during June-September, or at least once a week during October-November and April-May** until the provisional acceptance by the UNH Grounds and Events Department. Watering shall be performed beyond the root ball in order to encourage root development past the planting hole. The UNH Manager of Grounds and Events shall be notified in writing as to the date the UNH Grounds and Events is expected to begin maintenance of the completed Project.” [emphasis original] [UNH’s “Planning, Design and Construction Guidelines,” Exterior Improvements, [329300 Plants](#)]

Landscaping, trees—planting procedures

- See Sheets L-2.1 to L-2.3 for species and notes on each species
- Size of trees: What will be the mature size, and when? (measurements do not necessarily reflect that)
- Wire cage around root ball
- Portsmouth’s “[Standard Detail of Tree Planting](#)” (as of March 2019)
 - Text shown on the diagram [also here](#)

Landscaping: existing trees—protection during construction

- Madbury Commons: large, mature tree on Madbury Road was inadequately protected, damaged during construction, and subsequently removed
- unlike Durham, neither Stratham nor Concord limits the timeframe encompassing tree damage by construction activities for which an applicant is responsible for tree replacement. Both towns require that the applicant replace any trees proposed to be retained that are damaged or destroyed by construction activities; who enforces this?

- John Parry presentation to the Planning Board on March 22, 2017 (excerpted from minutes)
 - Look at how to protect trees during construction....compaction during construction impacted nearby trees. ...a simple approach to provide tree protection was to save the critical rooting area....for every inch of tree diameter, a circle 1.5 feet in radius. ...at least 60% of this saved area needed to be protected in order to save a tree, and said once the circle was identified, a chain link fence could be used around the tree.
 - ⇒ Note: Peak Path’s site plan May 20, 2020, sheet C-508 detail, says: “install protective fencing at edge of curb and walk, and a minimum of 6’ from tree all other sides (when possible) fencing may be plastic SNOW FENCE OR CHAIN LINK (4’ HIGH MIN.)
 - ⇒ RMM: see example from Cornell professor presentation: CHAIN LINK not plastic (which is bendable)
- John Parry email to me, 2/10/19: “Most important to protect a critical root zone, based on the size of the tree and root system. The current site regs . mention protecting the tree roots, but do not give and specs for this. On the current construction at Riverwoods, trees in the buffer zone along Rt. 4 appear to have construction activities occurring well into the standard critical root zone.”“
- Mill Plaza site plan regulations
 - 5.10.: Pedestrian, vehicular, and other traffic shall be kept away from trees to avoid soil compaction. Vehicles and equipment may not be parked, and materials may not be stockpiled under the canopy nor in close proximity to trees during construction.
 - RMM: PLEASE CONSIDER REQUIRING LANGUAGE IMPROVEMENT: 1st sentence, replace TREES with *TREE CANOPIES* and 2nd sentence, define PROXIMITY in consultation with DPW Director/Durham Tree Warden Rich Reine and/or John Parry

Leases, residential tenants

- “Mr. Kelley said that with Conditional Use applications dealing with a multi-unit building, the Planning Board had in the past required a property management and maintenance plan. He said they would like to see that for this application, *as well as a copy of the rental agreement that would be used.* He also noted that while the application indicated there would be a management office on site, a question was whether there would be a property manager.” [acceptance consideration, 9-11 Madbury Road, April 28, 2010 PB minutes]
- see Golden Goose’s Davis Court lease
- “There was discussion that the Board could only include requirements concerning a rental agreement with a conditional use application, which this application was not.” [minutes of April 23, 2008 Public Hearing on a Site Plan Application submitted by Henderson Properties, Durham, New Hampshire to build a mixed-use structure with 14 apartments on the upper two floors and office/retail space on the first floor. The property involved is shown on Tax Map 4, Lot 1-0, is located at 1 Madbury Road and is in the Central Business Zoning District.]
- see parking terms
- Cinco de Mayo Announcement (Golden Goose, May 1, 2018)

Lighting, light trespass

- onsite: glare from commercial to residential apartments
- offsite: glare from the site to abutting residences (an issue in the 1970s, despite Planning Board review, rising to a petition to the Selectmen)
- Dark Sky measures
- Site plan regs:
 - 6.3.11 Timing of lights. The Planning Board may stipulate that all unnecessary lighting (i.e., lighting not used for security) be turned off outside of business hours. Use of timers, sensors, and other energy saving devices is strongly encouraged.

Litter, debris [also see property maintenance, below]

- private property abuts environmentally sensitive College Brook and neighborhoods; winds carry litter; crows and seagulls carry litter and food, e.g., bits of bagels, onto neighboring properties
- thus, require regular litter maintenance and monitoring for items in the brook that derive from the parking lot, e.g., takeout containers (pizza boxes, plates, beverage containers, single use plastic bags), shopping carts, bicycles, milk crates
- increase frequency and weekend collection service
[Litter Practices Recommendations, San Mateo Countywide Water Pollution Prevention Program, 2016 [The San Mateo Countywide Water Pollution Prevention Program (the public outreach arm of which is Flows To Bay), was established in 1990 to reduce the pollution carried by stormwater into local creeks, the San Francisco Bay, and the Pacific Ocean] <<https://www.flowstobay.org/wp-content/uploads/2020/04/Franchise-Agreement-Litter-Practices-Recommendations-Jan-2016.pdf>>
 - A. Service Days - The days of the week that services are offered for collection, processing, transfer and disposal as well as services open to the public or others at facilities. **Offering Saturday and Sunday collection services can be an important way to reduce overloading of containers over the weekend** – especially for restaurants and other similar businesses that are busiest during those times.
 - B. Container Management - Procedures for managing and reducing the occurrence of over-full collection containers. These include identifying, reporting, tagging, collecting, charging, educating, training, mapping, assessing and prioritizing.
 - D. Public Litter Containers - Strategic placement, selection, mapping, servicing of public trash containers and effects of scavenging.

Location of buildings

Location of residential versus commercial uses within buildings, floors, stories

- Planning Consultant's Review for Planning Board Meeting, February 12, 2020, page 4:
 - 6) As a result of eliminating the back portion of Building C (i.e., "Building C1" on the May 2018 plan), the revised site plan adds a story to Building B, moving the four-story portion of the proposed development closer to the Faculty Road neighborhood. As the applicant has noted, the maximum allowed height for a mixed-use building in the Central Business District is 3 stories unless the building contains 2 stories of nonresidential uses, in which case the building can be 4 stories high. The applicant has stated that it is important to place the second-floor nonresidential space in Building B to be as visible as possible, and therefore Building C could not be 4 stories high.

However, the Zoning Ordinance provides additional flexibility in certain cases. Under the June 2014 version of the Ordinance, to which the application is vested, the Planning Board may adjust the nonresidential use requirement by conditional use permit where it determines that the strict application of the requirement is not practical, an alternative arrangement of uses will serve the intent of the requirement, and the amount of nonresidential floor area is at least as much as would otherwise be required (Sec. 175-41.F.7).

Thus, the location of nonresidential uses can be unlinked from building heights within the development if the Board determines that this would be advantageous to the community. For example, it would be possible for the rear portion of Building C to be 4 stories high, including 3 floors of residential uses over the nonresidential ground floor, with Building B containing two floors of nonresidential uses and one residential floor.

Thus, the location of nonresidential uses can be unlinked from building heights within the development if the Board determines that this would be advantageous to the community. For example, it would be possible for the rear portion of Building C to be 4 stories high, including 3 floors of residential uses over the nonresidential ground floor, with Building B containing two floors of nonresidential uses and one residential floor.

Mill Road strip between parking pavement and Town sidewalk

- width?
- CDA owns but proposes landscaping only a portion
- Plan includes shrubs and perennials but no trees

Noise mitigation measures

- Engineer Shane Malavenda, then an abutter at 15 Faculty Road, reminded the Planning Board that higher buildings impacted noise transmission (October 26, 2016).
- “B. Prohibited Noise/Time Restrictions. (2) Between 10:00 p.m. and 7:00 a.m. created by: /.../Engaging in conduct that creates loud and unreasonable noises including, but not limited to the operation, playing, or using of any audio equipment, sound amplifier or other device which reproduces or amplifies sound.” [Conway, NH, noise ordinance, adopted 4/13/21]

Occupancy, residential occupancy

- [Settlement Agreement](#) regulates residential density
- basic: Adherence to Zoning Ordinance section 175-56. General Dimensional Standards, i.e., Minimum habitable floor area per occupant in unrelated household
- beds per building: October 8, 2021 Sheet C-102
 - Building B:
 - ⇒ 3rd floor: 45 beds
 - ⇒ 4th floor: 45 beds
 - ⇒ total: 90 beds
 - Building C:
 - ⇒ 2nd floor: 84 beds
 - ⇒ 3rd floor: 84 beds
 - ⇒ total: 168 beds

- number of residents—not beds—should be specified in the Conditions of Approval; include limitations (see NOD for Orion and Madbury Commons)
 - community concern is that “beds” may allow for significantly more “occupants”
 - Madbury Commons (February 12, 2014: Other terms and conditions): “11) 525 Residents. This project is approved with a maximum of 126 dwelling units per Zoning Ordinance and 525 residential tenants. No additional residential tenants may be accommodated on this parcel without specific new approval from the Planning Board.”
 - Orion (January 29, 2014: Other terms and conditions): “12) Dwelling units/beds. This project is approved with a maximum of 179 bedrooms and 197 residents. No additional bedrooms nor residents may be established/allowed on this parcel without specific new approval from the Planning Board. This specification is made pursuant to the Planning Board’s detailed review of the project and a determination that the number of bedrooms/residents approved is the maximum appropriate for the parcel.”
 - issue has been long-discussed, e.g., Capstone/Cottages development. April 27, 2011 Planning Board Minutes read: “Mr. Kelley said Attorney Hogan had raised a good point, that somewhere in the conditions of approval, it should say that there were 619 people residing at the development. He said perhaps this should go in condition #5. Councilor Smith asked what happened if someone was married, and Mr. Campbell said the applicant had said the married couple would have to rent two of the beds. Mr. Wolfe suggested that the Conditional Use Permit heading should say 619 beds/residents, and others agreed.”

Oyster River Corridor (a Designated River Corridor, NH Rivers Management and Protection Program)

- December 2, 2020: Oyster River Local Advisory Committee (ORLAC) wrote to Rick Taintor, requesting guidance about when to comment on the project, noting that typically ORLAC comments on NHDES Alteration of Terrain applications and jurisdictional wetland matters, but adding, “If Durham has some specific request for comment or wishes us to focus on any particular aspect, that would be very good to know.”
- January 2, 2021: Rick Taintor updated ORLAC, including on the Conservation Commission’s findings re the WCO CUP application and noting that neither the Commission nor the Planning Board had asked for specific comment.
- May 5, 2021: ORLAC sent Rick Taintor its “list of items that can guide our review of a project.”

parking, amount, users, and location

- student residents will bring cars, even if they live downtown: Where will they park?
- Condition of Approval:
 - “Parking and Leases. The apartment leases shall state that for apartment tenants there is no overnight parking on any adjacent streets nor on Town property.” (Notice of Decision, Orion 25-25 Main Street, 1/29/14]
- “Zero parking for residents: We found that doesn’t work very well with Orion. They have zero parking for residents, and we quite frequently have the quick ‘dash and grab’ parking, where they end up parking for an hour. We get called for a fire alarm or medical call, and our access... I would recommend taking that into consideration when you’re drafting your plans for final submittal, e.g., for grabbing forgotten items. Also for moving-in days. If we have an idea there is going to be a significant rush on property,

moving trucks, we can help with planning on how to make that happen while balancing the requirements of fire and life safety codes...” [John Powers, Fire Department, TRG meeting for Mill Plaza, October 18, 2016]

- “While this may be true with respect to the subject site, the Board should scrutinize how many students will likely have vehicles and where they will be parked. If off-site parking is not dispersed throughout the town, then there is the potential for traffic impacts to occur where offsite parking may be concentrated at one or two locations.” [Peer Review of Traffic Study for Orion Student Housing by Stephen G. Pernaw, December 31, 2013]
- parking by students as far away as Foss Farm neighborhood, out Mill Road
- “...The University remains committed to promoting a walking campus, limiting parking capacity expansion, and enhancing transportation options (intercity rail, cycling infrastructure, car-sharing) that reduce the need for private vehicle use and parking. Working collaboratively with UNH, Durham should ensure that its policies reinforce this commitment and do not work at cross-purposes or serve to undermine it.” [Energy chapter of the Master plan, adopted 11/18/15]

Parking, number of spaces and location—part 1

- see Site Plan Regulations: Section 10.1 Required Parking
 - required number of commercial spaces: 338, per site plan
 - exemptions allowed (sometimes called waivers but not technically so)
- site location should be taken into consideration: center of town, large number of pedestrian patrons
- Colonial Durham proposal
 - 372 spaces for commercial uses: 288 surface (59 compact, 229 standard) plus 84 garage spaces
 - no spaces proposed for residential uses (per Hannaford wishes)
 - exemption of 224 parking spaces
- Settlement Agreement on parking
 - “e. Proposed on-site parking shall be increased from the existing 345 spaces to a number acceptable to the planning board based on the zoning ordinance and site plan regulations.
 - site plan states that “PARKING ON SITE SHALL BE INCREASED BEYOND THE 345 SPACES THAT CURRENTLY EXIST”

Parking, number of spaces and location—part 2

- Hannaford does not need as many spaces as CDA appears willing to fight for
 - residents have testified numerous times about availability of parking and emptiness of the lot, among them [Robin Mower 4-23-21](#), [Beth Olshansky 10-7-21](#), and Robin Mower [1-6-22](#), let alone during public hearings for earlier Colonial Durham Associate applications
 - Board member Richard Kelley has also commented on parking availability
 - as many as 150 spaces—nearly half the existing 345 spaces—are occupied at any given time by cars displaying rental parking permits. Put another way: Nearly half of the existing parking spaces have been leased to rental permit holders.
 - 18 spaces along Mill Road are nearly always full with rental-permit cars. Put another way: The strip of spaces along Mill Road—“a prime location for Hannaford customers,” as Colonial Durham claims—is, to the contrary, almost always filled with permit holders, not Hannaford customers.

- other spaces close to Hannaford and Rite Aid are also often occupied by rental permit owners as are spaces closest to College Brook
- avoid excess parking
 - *Site Plan regs: Section 10.2 Shared Parking and Reduction in Parking Spaces—General Provisions Regarding Required Parking Spaces*
 - 7. While the subsection above provides the minimum number of on-site parking spaces, there shall not be created an excessive amount of parking either, in order to avoid unnecessary development and unsightly expanses of pavement. The Planning Board may limit the total amount of on-site parking spaces where it determines that an excessive amount is proposed, including, in unusual cases, stipulating a total amount less than what is specified in the subsection above.
 - “A store forced by law to build parking spaces in excess of its market need by parking minimum subsidizes the driving patrons of the store at the expense of patrons arriving by other means.” [reader comment on “One Woman’s Quest to Design Parking Lots People Don’t Hate,” by Amy Crawford, CityLab, Aug 5, 2014. <<http://www.citylab.com/commute/2014/08/one-womans-quest-to-design-parking-lots-people-dont-hate/375472/>>]
- applicant has never answered the question: How many spaces does Hannaford require? Hannaford’s “need” or “wish”: Should the Board consider that?
- Hannaford requires Mill Plaza control off off-site residential parking
 - see [Letter from Hannaford Supermarkets 8-10-20](#)
 - see [Beth Olshansky 8-26-20](#)
- designated spaces may be appropriate

Parking, number of spaces and location—part 3

- risk of parking spillover onto residential streets or downtown business parking: how to manage?
- lease terms and other communication that discourages renters from bringing cars
 - per bed/individual versus traditional (per unit) lease: can the Planning Board require per bed leases to help enforce parking terms?
 - (University Downtown Apartments offer both options, but no parking is associated with either Jenkins Court or 9 Madbury Road locations)
 - **Madbury Commons:** (1) Parking and Leases. The apartment leases shall state that for apartment tenants there is no overnight parking on site, and no overnight parking on any adjacent streets nor on Town property.
 - [Notice of Decision, February 12, 2014: Other terms and conditions, #31] (2) “What are the parking options? Because Madbury Commons is right next to the University and Downtown, there’s no need for a car for day-to-day use. There is no on-property parking for residents. We have a limited amount of parking spaces available within a 2-5 minute walk or quick shuttle ride on a first-come first-serve basis for an additional fee.” [[FAQ, 2021](#)]
 - Parking and Leases. The apartment leases shall state that for apartment tenants there is no overnight parking on any adjacent streets nor on Town property.” [Orion student housing Notice of Decision, January 29, 2014: Other terms and conditions, #30]
 - Leases. The leases which were previously approved by the Planning Board when the original conditional use permit was granted provide that each apartment is entitled to two parking spaces. The landlord shall issues stickers with each lease, and each apartment shall receive no more than 2 stickers. This would allow for parking for only the 96 spaces that exist (48 units x 2 stickers per unit). [River’s Edge, Final Conditions of Approval]
 - additional consideration, per below retired Police Chief Dave Kurz memos

- previous student housing projects: far from downtown
 - River’s Edge Apartments:

Attorney Schulte also said for several reasons, the applicant was asking that even though there could potentially be 114 residents, the Board could require less parking than 114 spaces. He said the Ordinance required one space per resident, but also allowed this to vary. He noted that the Bryant development nearby was allowed to have less parking, and also pointed out that the applicant provided bus service, and also provided room on the property for bikes. He said the 96 parking spaces had always been more than adequate. ¶ He said one space per resident therefore didn’t make sense. He said Chief Kurz was willing to allow 96 spaces for 114 residents as long as there was the restriction that there could be no more than 2 spaces per apartment. He said this was in the lease, and said that would continue. [Minutes Planning Board for January 9, 2013]
- former Police Chief Dave Kurz to Town Planner Michael Behrendt, specifically related to the Mill Plaza proposal [emphasis added]:
 - “The location of this complex and the philosophy of the management group should discourage renters from having automobiles **through a definitive statement via lease agreements.** ...the proximity to the UNH campus should serve as encouragement that renters do not require automobiles.” [October 11, 2016]
 - ...While this location has opportunity for renter parking, it should be limited and it is my opinion that the available spaces should be designed for the use of the commercial entities within the Mill Plaza. While several spaces may be available for handicap renters, the proximity to the UNH campus should serve as encouragement that renters do not require automobiles. Additionally, Durham and UNH have worked diligently to offer alternative traffic options such as our relationship with “ZipCar” where spaces in the downtown have been committed to this ride-sharing strategy. Additionally the robust UNH bus transportation system is extremely effective enabling easy access to Dover, Newington Mall and Portsmouth. The Amtrak Downeaster Train provides easy access to Brunswick, Maine and Boston. All these options offer ample transportation for any student attending UNH. [November 6, 2019]
- can a “park once” option be worked out so that Plaza patrons who also wish to do a quick errand on Main Street could park at the Plaza, e.g., 15-minute spaces?
 -

Parking, permits; permit parking; leased parking

- no permit parking in the future: include in Conditions of Approval
 - “Attorney Pollack said spaces would not be constructed to be rented to individuals and entities that were not business tenants.” (e.g., Planning Board minutes [June 27, 2018](#))
 - Parking permits. The applicant will not sell, lease, convey or otherwise provide parking permits for the parking spaces located on this site except to the property’s commercial non-residential tenants, security officers and building management. [Madbury Commons (17–21 Madbury Road) Notice of Decision, February 12, 2014 <<]

Parking and Transportation Demand Management: bigger picture

- ...a national model for improving mobility and access, reducing congestion and air pollution, and increasing safety by promoting walking, bicycling, public transit, and other sustainable modes.
 - coordination with UNH effort to minimize cars on campus [What is the town of Durham without the University of New Hampshire? What is UNH without its supporting Durham community?]
- UNH coordination: Lower demand for buses creates vicious cycle

- Even in 2018, Steve Pesci of UNH said that the massive housing in Durham has pulled so many students out of Dover and Newmarket that UNH they had to cut back on bus runs.
- December 3, 2020 UNH-Durham Transportation Policy Committee Campus Planning Benchmark Report [benchmark_2020.pdf], Key Points:
- • Total permits down 17% over the recent decade with combined commuter population down 25%, primarily due to a 33% decline in student commuter permits. (as more students move into Durham)
- • All parking permit categories have declined over the past five years – most in double digits. The past year was just an amplification of recent year trends.
- • The only demand area is for in-town (off-campus resident) storage parking – which is not a PTDM [Parking and Transportation Demand Management] goal give higher land use demands.

Parking, underground garage and parking lot:

- SEE ALSO “parking lot design and management.docm”

Parking, environmental measures for both surface and covered parking

- PARKSMART measures

“[Smarter, Better Parking Structures](#): Let Parksmart lead the way.” Canadian Facility Management & Design, December 9, 2020:

“...Even though parking structures enable the use of passenger vehicles, considered one of the evils contributing to our current environmental condition, they remain a necessity,” he says. “As such, they need to be designed to minimize their own carbon footprint while encouraging users to do the same.”

...offering things like site-generated renewable power systems, ample space for car share programs, and preferential spaces for carpooling and alternative fuel vehicles. In addition, it means traffic control systems to help minimize driving and queuing time, bike-friendly amenities, and easy access to public transportation.

- ...parking lot pollution prevention and maintenance program. Scientists like to call these best management practices. All this means is you specify which products can be used for the clean up and how to make sure no oil goes down the drain or is transferred into the garbage.” [“... [Measures to target oil pollution in parking lots](#).” Real Estate Management Industry News, May 13, 2015]
 - oil, grease, antifreeze, heavy metals from leaking and deteriorating cars and trucks, and brake pad and tire wear [numerous sources, including page 23 of “[San Mateo County Sustainable Green Streets and Parking Lots Guidebook](#)”
 - frequency of cleaning the parking lot?
- “Parking garages can also be as environmentally harmful as the cars housed in them. Vehicles leak gas, oil and transmission fluid. They also shed brake dust and bring in de-icing chemicals. Rain washes these caustic contaminants into drainage systems. Additionally, cars and trucks driving through garages concentrate vehicle emissions.” [Marcus, Jerry. “[Creating a context for sustainable parking](#): Land use planning and facility design can mitigate the inevitability of automobiles.” Real Estate Management News, November 30, 2014 <>]

Parking, energy issues: efficiency, future of car use

- electric vehicle charging stations, EV charging
 - install as part of construction

- ⇒ cheaper (range MAY run \$500 to \$1200)
- ⇒ ensures that location is appropriate (e.g., distance of “pump” to vehicle)
- locations
 - ⇒ within the garage; at least 3 stations
 - ⇒ outdoors by Buildings A and B
- minutes of April 2, 2019 meeting of Energy Committee: “Mill Plaza included 3 charging stations in its plans a year ago. Right now it’s been tabled, but it will likely come back and the PB would push for charging stations.”
- at the least, incorporate poles in the parking lot to facilitate electric vehicle charging stations: “[Bill Walker, c/o Housing Initiatives of New England Corporation, property owner]...said it would be very easy to establish two charging stations in a particular location in the future. Mr. Kelley said the applicant would be better served by including electric piping/conduits now to facilitate future charging stations in the parking lot.” [PB minutes, July 15, 2020]
- EV charging plan? Or free with proof of residency, or similar?
- measures designed to reduce energy use, various
 - ride sharing spaces, e.g., Zipcar, Lyft, or Uber (preferably sheltered, perhaps in the garage)
 - [draft Climate Change Adaptation of the Master Plan notes: “Durham introduced ZipCar, a car sharing service open to community and campus members, in the fall of 2009. As of 2020 over 1,900 members have joined from Durham, logging over 56,000 hours, and traveling more than 425,000 miles.”]
 - compact car parking space designations (included on current site plan)
 - programs to incentivize commercial ride sharing use and private carpooling

Parking, non-vehicular

- bicycles
 - for commercial patrons
 - for residential tenants
 - Planner’s Review 2-24-21 states: “4. C-102: Interior bike storage area needs details: rack type & layout, capacity. “Applicant’s Response to Planning Consultant’s Review dated February 24th, 2021 notes “The interior bike storage will provide storage for a minimum of 40 bicycles.”
- scooters, mopeds (sometimes referred to as micro-mobility vehicles; currently UNH language as well)
 - Town registration/permitting
 - Madbury Commons provides inside moped parking as of June 2021 [Facebook page: Madbury Commons: June 1, 2021 at 8:35 AM—Do you have a moped and need somewhere to park it? We have parking passes for mopeds available now!]
 - Orion two-wheel corral is sometimes nearly overflowing
- universities on non-vehicular parking
 - UNH decided to “proactively respond to the reality that this is a ‘vehicle choice’ that is being made by increasing numbers of students” [2013 private email from Campus Planner Steve Pesci]
 - management/enforcement, e.g., University of Wisconsin-Madison’s policy “to manage the use of mopeds on campus.” Relevant excerpts include:
 - ⇒ Prohibiting mopeds from parking at bicycle racks.
 - ⇒ Issuing warnings and citations to moped drivers who violated the rules.

- ⇒ Changing construction guidelines to include moped parking areas as part of all new capital construction projects.
- ⇒ [source: for above: Capp, Patrick J. (director of transportation services, facilities planning and management, at the University of Wisconsin-Madison) “Managing Moped Parking.” International Parking & Mobility Institute blog. <<https://www.parking.org/2016/01/15/tpp-2013-04-managing-moped-parking/>>
- Mobility hubs
 - [“a streetside parking solution that incorporates micro-mobility vehicle parking racks and substantial steel barriers to create a protected parking location that will accommodate many different vehicle types, including bicycles, scooters, e-bicycles, bike share, and scooter share.” “...The Mobility Hub provides optimal parking for scooters and bicycles, including bike share and scooter share programs.” (rack/stand vendor Sportworks)] [growth in use: “...one third of Germans ‘believe there will be a reduction of car traffic around inner cities in a post-pandemic world and favor the use of micromobility vehicles such as e-scooters.” <<https://usa.streetsblog.org/2020/06/17/four-signs-this-might-be-micromobilitys-big-moment/>>]
- Parking, shared rides, “Zipcar” [also see: “measures designed to reduce energy use, various”]
 - usage data from other college towns
 - “...a strong interest in Zipcar amongst students without cars on campus and a significant majority of non-owners do get rides, especially to off campus locations. When Williams students drive, it tends to be to off campus locations, especially restaurants and shops located away from the campus. Indeed, approximately 90% of respondents said that they drove off-campus to restaurants and other locations, while 70% of students said that they used the car to get to Williams from their home.” [“1Cars on Campus: Reducing Unnecessary Car Use on Williams College Campus.” (2007) <<https://web.williams.edu/wp-etc/ces/campus-cars.pdf>>]

Parking Management Plan, December 2021

- Enforcement?
- License plate readers (LPRs) proposed under property management plan
 - see [Joshua Meyrowitz 2-7-22](#)
 - Are LPRs legal in New Hampshire?
 - Is this something the Planning Board should address as a privacy concern for all Plaza patrons? (Note Sally Tobias “creepy” comment on October 27, 2021)
 - disincentive for patronizing the Plaza businesses?
- Vehicle parking
 - “Owner and/or its managers will work to ensure that all tenants have access to offsite parking or can utilize available public parking.” << PUBLIC parking? Where?
 - “The parking lot will close when the last merchant closes its store for the business day.” <<What about restaurants? Will the site be monitored for cars not affiliated with restaurants?
 - What will be the impact on nearby neighborhoods?
 - “Moped Parking: A concrete Moped Pad will be constructed near the residential buildings. This Moped Pad will be used for customers visiting the businesses onsite....” <<How will this pad not be used by residential tenants? Confusing language
 - “Off-Site Parking: Tenants of The Residence at Mill Plaza will have access to public parking and to off-street satellite parking lots that are a short walk or shuttle bus ride away. Owner and/or its managers will incorporate this option into the leasing program.” << What will this do to availability for customers of downtown businesses? Or visitors to UNH events? Residents

will not be thrilled to see more cars parked along their streets, or, worse, coming and going in the wee hours of the morning.

Pavement, nontraditional alternatives

- porous pavement?
 - Where is it feasible on the site? Could it be used in specific areas?
 - If used, add plan notes, e.g, “n) Porous pavement. Show porous pavement sign(s) at appropriate locations, which shall read as follows, or equivalent: ‘Porous asphalt pavement for stormwater management. Semi-annual vacuuming is required. The following are prohibited: winter sanding, seal coating, tractor trailers/heavy load vehicles, and handling of hazardous waste.’” [February 12, 2014 Planning Board re Madbury Commons draft Notice of Decision— Plan modifications.]
- porous pavers?

Pedestrian issues, general: circulation, access, safety, attractiveness

- Access to and from site
 - Entrances from Mill Road
 - Path to Chesley Drive
 - Path to Main Street along Grange: steps vs. ramp
 - ⇒ impact on people who are wheel-dependent
 - ⇒ disruption of bike connection to Main Street and the Oyster River schools [see letter from middle-school student from Faculty Neighborhood [Hannah Bogle 2-9-22](#)]
 - ⇒ if any change is made, must it be ADA-compliant, or are other ADA-compliant access points sufficient?
 - ⇒ could another design work? [see [Letter from Isaak Design Regarding ADA Compliant Pathway 10-21-21](#)]
- Path to Chesley Drive / footpath to Faculty Road
 - Entrance to Building C at SE corner (“back door”) is VERY close to Chesley / footpath
- On site: Is it both safe AND attractive (to actively encourage walking)?
 - safety, e.g., pedestrian refuge islands
 - (“Where medians are provided at intersections as refuge, they should be wide enough to accommodate groups of pedestrians, wheelchair users, bicyclists and people pushing strollers.” see Institute of Transportation Engineers, “Designing Walkable Urban Thoroughfares: A Context Sensitive Approach” 2010)
 - dedicated pedestrian features (protected from skateboarders and two-plus-wheeled vehicles)
 - attractiveness, including amenities benches, on hillside near the path by the Grange, outside shops; sheltered walkways between buildings
 - sidewalks: awnings would protect pedestrians from weather and reduce need for de-icing / use of salt
- Off-site impacts on:
 - Main Street/downtown: particularly at peak times (UNH class change times; large UNH events, Thursday evenings after 11pm)
 - abutting family neighborhood

Pedestrian movement and safety: pedestrian traffic study needed?

- Does the traffic study adequately cover concerns?

- Planning Board, September 23, 2020, minutes:
 - ...Chair Rasmussen said the location of the parking was important, in terms of whether there would be pedestrian or Uber trips to get to their cars....
 - ...Ms. Grant said she was concerned about the pedestrian component, including crossing Mill Road. Mr. McCauley agreed. He said the consultant had spoken about including lighting at the crossing to get drivers' attention.
 - Mr. Taintor said this was suggested by Ms. Talon in May of 2018. He said the report was very thin on any analysis of pedestrian movement and safety, and said he'd like to see more depth on this issue. He provided details on this, and said it might be good for someone with "complete streets" experience to add to the study. Mr. McCauley said he'd discuss this with the team.

Property maintenance, grounds: e.g., sweeping, trash and recycling, collection, litter

- street sweeping: "(1) Enhanced Street/Pavement Cleaning Program: The permittee may earn a phosphorus or a nitrogen reduction credit for conducting an enhanced cleaning program of impervious surfaces. [\[MS4 2017 NH Small MS4 General Permit Appendix F Attachment 2, page 4\]](#)
 - in this case, "permittee" means the Town of Durham
- recycling
 - consider new site plan regs, Section 3.7 Waste Materials, specifically section 3.7.3:

"Applicants are encouraged to recycle materials generated during construction either for reuse by the applicant or for collection for recycling by third parties. Applicants are encouraged to coordinate with the Durham Department of Public Works for advice on what materials can be recycled in the local area, and for a list of firms accepting recyclables."
- trash / garbage: more containers? more frequent pickups?
 - "Offering Saturday and Sunday collection services can be an important way to reduce overloading of containers over the weekend..." [Litter Practices Recommendations, San Mateo Countywide Water Pollution Prevention Program, 2016]
 - "Trash and refuse containers: If you go behind building 2 [on the Plaza], right now, what is supposed to be a clear fire lane, half of it is filled with waste. If you have a lot of spillover inside a building [also a concern]; may need more frequent pickups. May be construction requirements [to mitigate that]...We're looking at a site plan then we see construction; whether or not the building is sprinklered; tradeoffs in the amount of access...

[John Powers, Durham Fire Department, TRG meeting for Mill Plaza, October 18, 2016]

Restaurant, cafe Building B: outdoor seating

- Closest to abutting residential neighborhood
- Separation of patio/sidewalk area: 16 to 22 feet from building to parking
- Appears to be a continuation and enlargement of the sidewalk, with a curb but not raised further
- Four 4x6-foot planters but no further buffer from parking ("dining in parking lot"?)
- Madbury Commons provides buffer to public way for outdoor cafe area:
 - Landscape architect Robbi Woodburn spoke next in some detail about the landscaping plan.... Madbury Road streetscape - 15-22 ft width of the sidewalk, proposed to have Town standard wide sidewalk along outside edge of space, so will be a public way moving down Madbury Road. Moving in from the curb are areas for tree planters, fairly wide and long to give the trees the best conditions possible. This will provide a buffer between the public way and the building. Also will be areas between the buffer and the building for outdoor commercial space, for tables for coffee shops, etc. Plantings against the building should be in planters so there is flexibility,

to accommodate the particular uses that go in there. Paving pattern will provide scale, interest [minutes, Planning Board, November 13, 2013]

Property management plan / security management

- References to [Proposed Property Management Plan 12-1-21](#) unless otherwise noted
- Alcohol on premises (also see “Alcohol sales on site”)
 - No drinking of alcoholic beverages outside anywhere on the site.
 - *Madbury Commons Community Rules and Regulations (8/1/17)*: Consumption of alcohol must be in compliance with all federal, state, and local laws. No alcohol containers are permitted on the Premises, which are larger than one gallon. Consumption of alcohol is prohibited in all common amenities and interior hallways. **Kegs are not permitted anywhere on the premises.** Keg cooling devices are also prohibited....
- Conditions of approval, other downtown student housing projects
 - “It is understood that professional management of the site is critical and the Town of Durham expects that the ownership/management will be highly diligent in overseeing and suppressing any activity on the part of residential tenants or their visitors or any other parties on site which would be unreasonably disturbing to any of the residents or neighbors of the project, including loud parties, especially late at night, and other unruly and disturbing behavior. Owner/ Manager agrees to cooperate with the Town of Durham to ensure all appropriate measures are being followed to suppress unruly or noisy behavior.” [NOD Madbury Commons]
 - “A Property and Security Management Plan shall be submitted to include, but not limited to, the following: 24 hour/7 day a week primary contact person to resolve security or other issues in a timely and appropriate manner; a secondary contact person in case the primary contact person is not available; all contact information updated with the Police Department, Fire Department, and Code Enforcement Department on an as-needed basis; and night time security for the site from Thursday night through Saturday night from 9 PM - 2AM. If problems persist on the property, as determined by the Police Chief, full time security will be needed 7 days a week from 8 PM - 6 AM until the problems are rectified. The plan shall be approved by the Town Planner with the advice and consultation of the Police, Fire, and Code Enforcement Departments and can be reviewed, modified, and updated by the owner with the approval of the above departments. “ [NOD 9 Madbury Road/corner of Pettee]
- Inspections of units
 - *Madbury Commons Community Rules and Regulations (8/1/17)*: Units may be inspected with reasonable notice by Landlord or Durham Town official with or without cause. Durham Town Officials may randomly inspect any residential units annually. Inspections shall be randomly selected by the Durham Building Official/Health Officer (DHO) and may be scheduled with notice that is adequate under the circumstances.
- Litter Policing:
 - “As an ongoing daily operating procedure, owner’s personnel will police the entire site every morning for litter on the property.”
 - what about College Brook: banks, obvious debris from the Plaza, e.g., shopping carts, takeout containers from Plaza vendors
- ask for police department review and consultation with the
 - Golden Goose and neighborhood complaints: list of what GG would do to mitigate (including lease screening; gatherings; radios)
- move-in policy
 - July 10, 2015 memo from former Police Chief Dave Kurz to Town Administrator Todd Selig: individual apartment complexes

- parking on move-in and move-out days
- on-site personnel, on-site property managers
 - Note : A large party was held at Orion on a Monday night in late August 2021 that violated COVID restrictions; Orion’s on-site property management was required to be on duty Thursday, Friday, and Saturday nights.
 - staff turnover has been a concern for some other properties, per DPD
 - excerpt from the Proposed Property Management Plan, December 1, 2021: “The amount of personnel on staff may be increased depending on events and activities on and around campus during a particular time period. Owner’s security personnel will work with the Durham Police Department and the UNH Police Department to fulfill any reasonable requests these Departments may require.”
 - Verbatim comments by Attorney Ari Pollack, December 8, 2021 ([DCAT](#)):

In my view, and, again, we can have a conversation about if it’s necessary, but this is intended to be an organic document that is evaluated based on the real-time experiences of the property. We’ll have the infrastructure in place: We’ll have the management office, we’ll have the 24/7 security officer involved. Do we need one? Do we need ten? What training do they need? What population will they encounter? How interactive will they be with the police department? How responsible will the police department be? Again, I think, things that need to evolve on a project-specific basis. But we’ve got the blocks there to put these things in motion when we have the experience to pair with it.
- Parking lot monitoring
 - [Sean McCauley] said the applicant had committed to Hannaford that the parking lot at Mill Plaza would be exclusively for commercial tenants.... He said there would be license plate scanners on the entrance to the property and if a tenant license plate showed up, they would get a warning, then the car would be removed, and the third time the lease would be terminated. He said this would be specified in the lease, tenant manual and operating manual the Town would see prior to final approval. ¶ Mr. McCauley said they were also negotiating with Hannaford about a parking lot management plan that restricted residents from parking on the site. He said they would provide 24 hr. on site management of the property, which would include policing the parking lot once the Plaza was closed. He said there would be no overnight parking. ¶ He said there were currently rental situations, which the Town Administrator weighed in on a few years ago. He said they also allowed people who’d been in restaurants to leave their cars there if they decided they needed to take an Uber home. But he said there would be no rental or overnight parking on the site upon the approval of this project. He said the intent was to enter into long term leasing of parking for residents with other property owners, and said if that happened, there were options to pay the Town a fee in lieu of the parking. [September 23, 2021 Planning Board minutes]
 - Parking will not be available on UNH property, since UNH established policy precludes such for off-campus residents within a mile (or so) of the campus
- recycling policy: not mentioned in the property management plan
 - will tenants be required to recycle? how will that be monitored or enforced?
- roof access
 - who will have access to the roof?
 - *Madbury Commons Community Rules and Regulations (8/1/17)*: Tenants are prohibited from occupying roof unless there is an emergency. Any unauthorized use of basement or roof will result in a fine outlined in Fee Schedule.
- privacy concerns: legally-questionable proposed measures
 - “onsite motion activated video recording system...strategically placed overlooking the parking lots, public spaces, building entrances, courtyard, hallways, corridors, and other areas where

additional oversight is needed to cover all blind spots. All cameras will feed back into the security office of Mill Plaza and to a DVR system.”

- “Parking areas: All parking areas will be monitored by security cameras. A parking lot monitoring system will track license plates as vehicles enter the parking areas. Roving security personnel will also monitor parking areas in person.” [HOURS?]
- Rental agreement / lease
 - “Mr. Kelley said that with Conditional Use applications dealing with a multi-unit building, the Planning Board had in the past required a property management and maintenance plan. He said they would like to see that for this application, **as well as a copy of the rental agreement that would be used.**” [April 28, 2010 PB minutes re 9–11 Madbury Road/Pettee Brook mixed-use CUP]
- Tenant manual
 - Mr. Kelley asked if there was a Tenant Manual available regarding the proposed management plan. Mr. Pollack said they were in the process of interviewing operating partners to oversee the day-to-day management of the project and he would try to get a sample. [August 25, 2021 PB minutes]

Rain garden, driveway—see DRIVEWAY

Rain garden, maintenance

- Can the rain garden be moved away from the driveway, to avoid issues like trash, pedestrian crossing, etc. [June 19, 2018 TRG meeting comment]
- “be aware there will be a lot of cans in there, and someone’s got to climb in there and clean it out, daily” [Audrey Cline, regarding entrance to 19 Main Street, TRG meeting 11/10/20 recording marker about 54:45]

Residents’ comments

...Our current Mill Plaza was created in the mid 1960s as a strip mall and parking lot. The central concern was—can you drive and park close to stores. It was a mistake we have lived with, though understandable given the era. Everything deferred to the automobile then. We now know so much more about creating a livable town center, so there is no excuse for a plan that is essentially buildings and parking spaces.... [resident Tom Newkirk’s email to the Planning Board, October 22, 2014]

Retaining walls

- by Building C toward Church Hill and Main Street
 - (1)
- by Building C and path connecting to Chesley Drive and to the footbridge to Faculty Road
 - (1) fence on top visible to pedestrians on path: decorative or chain link?
 - (2) At the corner nearest to the path, the parking lot next to the top of the wall will be 6 feet higher than existing grade (going from 32 to 38), and the bottom of the wall will be 7 feet lower than existing grade (going from 32 to 25). So while the height of the wall will be 13 feet at that point, the increase in height from current conditions will be 6 feet. ¶ However, there will be an “ornamental metal fence” on top of the wall. No dimensions are given (see detail on sheet C-503). If it is a 3 feet tall fence, then the total visual increase in height from current conditions would be 9 feet. [email Taintor to Meyrowitz, 12/16/20]

Screening, visual buffer

- elements off-site
 - Site Plan regulation 5.9.4
All sites shall incorporate screening measures to prevent the headlights of vehicles from shining on adjoining residential areas.
 - Brookside Commons (south); Chesley Drive neighborhood (east); Faculty neighborhood (south); Grange and Orion residential properties (north); Red Tower
- elements on site:
 - Site Plan regulation 5.9.5
All mechanical installations and equipment, solid waste collection equipment, pump stations, outdoor storage, and similar items shall be screened or softened with landscaping that is appropriate for the location.
 - trash compactor

Snow management: de-icing, “road salt”

- general, throughout site: NHDES Green SnowPro practices
 - include all pedestrian and bicyclist pathways (along southern edge, connection to Chesley Drive)
- NHDES Green SnowPro certified vendor: add as Condition of Approval
 - Snow management shall be contracted only with NHDES Green SnoPro-certified vendors. De-icing materials shall be reported per use to Durham Public Works, to include square feet and pounds used such that it will be possible to calculate usage on the site. DPW shall report data to NHDES for their salt tracking program. [wording per Public Works] [Green SnowPro: “Improve efficiency in salt use, such that the least amount of salt is used to ensure safe conditions on surfaces traveled by pedestrians and vehicles in winter conditions”]
 - “Commercial Salt Applicators certified by NHDES Green SnowPro under RSA 489-C, and property owners or managers who hire them, are granted limited liability protection against damages arising from snow and ice conditions under RSA 508:22”
- DPW’s current practices: “Blizzard Wizard”—is that appropriate for the site?
 - Durham Public Works continues to refine the strategies it employs for the protection of the public and the environment during winter weather emergency responses. ¶ Public Works has put in place a new deicing material known as “Blizzard Wizard,” which is a performance enhanced treated salt that contains a mixture of deicing rock salt and a liquid treatment containing magnesium chloride (MgCL₂) and an organic based performance enhancer (OBPE) in the form of sugar cane molasses. ¶ The material works effectively in temperatures as low as 0 degrees Fahrenheit requiring substantially less material than conventional road salt during extreme cold weather events. ¶ The Blizzard Wizard also acts as an enhanced anti-caking agent and natural corrosion inhibitor. The liquid treatment reduces bounce and scatter during application, which translates into longer lasting targeted treatments as compared to untreated salt. [DPW note in Friday Updates 2/12/21: Environmentally Sensitive Snow Fighting Strategies]
- Sidewalk clearance: include requirement with more precise language than as proposed:
 - “Sanding and salting of pedestrian walkways will occur directly after removal of snow. Special care will be taken with regard to the use of salt and other ice removal products near the College Brook.”

- Storage of materials
 - Town Engineer April Talon: “Due to the proximity of the property to Pettee Brook [sic], all stockpiles, concrete washout areas, chemicals, fertilizers, hazardous materials, etc. shall be located as far from the brook as possible and at a minimum of 50 feet away.” [March 5, 2020 memo to the Planning Board with subject line “Comments from the Dept. of Public Works | Mill Plaza Redevelopment”]
- Landscaping maintenance:
 - More sustainable plantings, for example, require less maintenance.
 - Details must be on site plans/ construction plans; examples:
 - ⇒ 3. General Landscaping Maintenance: All street and parking lot trees and landscaping will be maintained using a “best management practices” system. HUN-N-H?
- Mail and deliveries: “Residential Delivery: All residential mail will be delivered to a common mailroom located in the lobby of Building C. All packages that are delivered by UPS, Fed Ex, USPS, etc., and items too large to fit into a unit’s mailbox, will be kept at the leasing office. The tenant will be notified to pick up the package and will be fully responsible for retrieval of any packages or deliveries in a timely fashion.”
 - **this means traffic**
- on-site:
 - how defined? (only around residential?)
 - see Orion, Madbury Commons, and other Golden Goose property (Robbi Watson’s) for 24/7 management [2018 meeting with neighborhood, Councilors, police, re behavior of tenants; email April 19, 2018 from Mower to Meyrowitz:
 - ⇒ strong lease
 - ⇒ written Rules and Regulations, given to all tenants and their parents [ditto; posted on website]
 - ⇒ escalating fine structure for violations [ditto]
 - ⇒ limit on number of occupants allowed in an apartment at a given time, i.e., 10 (cuts down on size of parties)
 - ⇒ on-site property handyman/grounds maintenance person who may also report concerns to *management*
 - ⇒ Golden Goose provides what they call *concierge service,* which helps to build relationships with tenants, e.g., helps out with lost keys, laundry instructions
 - ⇒ Ken Rubin, Golden Goose, noted: *Inspect what you expect.* That is, monitor behavior.
 - ⇒ We were given a handout, which may be distributed later via email. You can see it then. It notes that several tenants in repeat violation were booted, and Golden Goose alerted another prospective landlord to beware, but that landlord proceeded to lease to the offenders. That was a surprise.
- skateboarding: loud
- games, parties outdoors

Snow management: snow removal, snow storage

- Path to Chesley Drive:
 - Tighe & Bond’s Joe Persechino says that CDA will remove snow **only** on its property (TRG meeting for Mill Plaza 3/16/21)

- Removal of snow from site = standard operating procedure?
 - Town Engineer in presentation to PB on March 25, 2020: “She said a big item was snow removal, because College Brook was impaired for chloride, and said that might require the applicant to truck the snow offsite.” [source: PB minutes]
 - Town Engineer: “Snow shall be removed from the site, as needed, and shall not be pushed against College Brook, trees or other vegetation.” [March 5, 2020 memo to the Planning Board, not posted online]
 - “Snow shall be removed from the site, as needed, and shall not be pushed against trees or other vegetation.” [Madbury Commons Notice of Decision]
 - Audrey Cline, talking about snow removal from the site: When does that happen? In the middle of the night? Big trucks, big beepers. Not the best solution for a residential area. [TRG meeting, February 2, 2016]
- Snow storage locations
 - is there adequate, accessible, appropriate space onsite for snowfalls that would not require removal from site?
 - 12/01/21 Site plan Snow Storage Notes:
 - (1) SNOW SHALL NOT BE STORED ALONG COLLEGE BROOK OR IN THE PROPOSED STORMWATER TREATMENT AREAS, INCLUDING THE GRAVEL WETLAND AND RAIN GARDEN.
 - (2) SNOW THAT CANNOT BE STORED ON SITE SHALL BE REMOVED FROM THE SITE.
 - (3) SNOW STORAGE AND REMOVAL OPERATIONS SHALL AVOID DAMAGING LANDSCAPING TO THE EXTENT FEASIBLE. LANDSCAPING THAT HAS BEEN DAMAGED SHALL BE REPLACED.
 - review current site plan regulations to determine appropriate additions
 - ADD TO NOTES: “...nor in the upland wetland buffer/XX feet setback.”
 - Note: City of Laconia “Snow cannot be stored within 100 feet of any water body.”
<<https://www.laconianh.gov/DocumentCenter/View/3599/Laconia-Builders-Resource-Guide-PDF?bidId=>>
- Snow storage—see site plan regulations, in particular section 9.3.3 *Snow storage areas shall be selected to avoid:*
 - (a) landscaped areas and natural vegetation, especially vegetation that is less hardy and more likely to be harmed by snow storage;
 - (b) drainage ways whose function would be impaired if blocked by snow;
 - (c) areas where spring flooding could result;
 - (d) wetlands, ponds, and streams;
 - (e) locations where vehicular or pedestrian visibility would be impaired;
 - (f) vehicular and pedestrian travel ways;
 - (g) areas where it might present a visual nuisance; and
 - (h) other sensitive locations on the site.
- retaining wall for snow in any area?
 - John Harwood noted that Mr. Jelmsberg’s email also mentioned the need for wording in the conditional approval regarding the proposed snow storage area on the west side of the property. Mr. Harwood noted this was something everyone agreed to and recommended it should be added as a Condition of Approval for the Site Plan, prior to signing of the site plan. Language to be used: “A concrete retaining wall will be constructed along the western portion of the site, designated for snow storage, and stockade fence installed above.” Chair Watt said this would be #11 on the Conditions of Approval for the Site Plan. [August 27, 2003 PB minutes, hotel on Rte 108]

Snow management

- no storage on southern edge of property, specifically no pushing onto vegetation and banks of, nor into, College Brook
- Site plan notes (sheet C-102, May 20, 2020):
 - SNOW STORAGE NOTES:
 - (1) snow shall not be stored along College Brook or in the proposed stormwater treatment areas, including the gravel wetland and rain garden.
 - (2) snow that cannot be stored on site shall be removed from the site.
 - (3) snow storage and removal operations shall avoid damaging landscaping to the extent feasible. landscaping that has been damaged shall be replaced.

Stormwater management, Conditions of Approval

- catch basins
 - cover or grate: require marking “DUMP NO WASTE” (Oyster River Local Advisory Committee checklist, emailed to Rick Taintor on May 5, 2021)
 - frequent catch basin cleaning, frequency TBD per DPW
- require for all stormwater management systems AND include in notes on site plan:
 - installation: independent third-party engineering oversight of the installation process [Also: “Under the 2016 Massachusetts and 2017 New Hampshire Small MS4 General Permit, permittees are required to establish a construction site stormwater runoff program that includes site inspections.” < <https://www4.des.state.nh.us/nh-ms4/?m=202104>>]
 - post-construction inspection: independent, third-party post-construction inspection [“The Planning Board may require an independent, third-party inspection and oversight of the construction of stormwater management facilities and erosion and sediment control and annual maintenance operations, at its discretion. Such independent oversight may be especially important for implementing innovative techniques such as those involving pervious pavement and gravel wetlands.” (Site Plan Regs)]
 - detailed inspection on a regular basis and maintenance plan for all systems, for continued effectiveness and structural integrity, per MS4
 - frequent lot sweeping, frequency TBD per DPW or [who?]
 - monitoring:
 - Example of large retail shopping center in Greenland, NH: “Starting in 2007, a wet weather flow monitoring program was implemented to assess background conditions for Pickering Brook, evaluate stormwater quality runoff from the project site, and determine the resultant water quality of Pickering Brook downstream from Greenland Meadows. The program includes:
 - pre-construction monitoring (phase one),
 - construction activity monitoring (phase two), and
 - 5 years of post-construction monitoring (phase three) [UNH Stormwater Center 2012 Biannual Report]
 - reporting: applicant shall submit yearly operation and maintenance reports to the Town Engineer from a designated agent with appropriate certifications [see Great Bay PTAP, below]
- Great Bay Pollution Tracking and Accounting Project (“PTAP”) reporting
 - Note (as proposed by DPW in October 5, 2021 comments for Gerrish Drive):
 - “Applicant shall complete Land Use Development Tracking Form, most recently revised version, utilizing the online [Pollution Tracking and Accounting Pilot Project \(PTAPP\) portal](#). This program allows the Town of Durham to track changes in land use and account for pollutant load reductions achieved through various non-point source control projects.”
 - require applicant’s engineer to enter the data into the PTAP database; we can simply request this of our (Joe Persechino and Mike familiar with the PTAP program)

<< we have relationships with the engineers so that in the interim, before we write into our Site Plan Regs, this is voluntary but encouraged (conversation with April Talon January 25, 2021; also in private email from Talon dated 1/25/21

- April Talon email to Michael Behrendt dated 1/9/20, subject "Addition to all project Notice of Decisions," forwarded to Mower on 1/24/21
 - (1) We should just include this language in any approval where maintenance of stormwater BMPs is required: "Inspection and maintenance log to be submitted to the Town Engineer at the Durham Public Works Department on an annual basis which shall be submitted to later than December 15th of each year.
 - (2) Also, please add the following to subsequent conditions, this should also be added to every NOD: "Applicant shall complete Land Use Development Tracking Form, most recently revised version, utilizing the online Pollution Tracking and Accounting Pilot Project (PTAPP) portal. <https://www.unh.edu/unhsc/ptapp>"
- "Subsequent Conditions apply after the plan is certified, other items are General Terms. ...Vice-Chair Parnell asked about #85 Land Use Development Tracking Form. Mr. Behrendt said this is new and is requested by Public Works to allow Durham to track changes in land use and account for pollutant load reductions. Mr. Sievert said the project will be entered in the portal and the Town will get notice." [minutes of discussion about Gerrish Drive draft Notice of Decision, October 13, 2021]

Stormwater management, general

- Site Plan regs met?
 - 16.4.2 Stormwater Management for New Development. All proposed stormwater management and treatment systems shall meet the following performance standards:
 - ⇒ 2. LID site planning and design strategies shall be used to the maximum extent practicable in order to reduce the generation of the stormwater runoff volume for both new and redevelopment projects. An applicant must document why LID strategies are not appropriate if not used to manage stormwater.
 - ⇒ 3. All stormwater treatment areas shall be planted with native plantings appropriate for the site conditions: grasses, shrubs and/or other native plants in sufficient numbers and density to prevent soil erosion and to promote proper treatment of the proposed runoff.
 - [definition] Maximum Extent Practicable [also under Stormwater].

To show that a proposed development has met a standard to the maximum extent practicable, the applicant must demonstrate the following: (1) all reasonable efforts have been made to meet the standard, (2) a complete evaluation of all possible management measures has been performed, and (3) if full compliance cannot be achieved, the highest practicable level of management is being implemented.

Stormwater management system, Jellyfish (manufacturer: Contech)

- nutrient removal per [brochure](#)
- certification by NH state? Not as of this writing

Stormwater system, maintenance, special considerations

- add to notes on site plan and Conditions of Approval
 - "1. The device must be maintained in accordance with the manufacturer's specifications."
[source: Contech, i.e., manufacturer] <http://www.conteches.com/Products/Stormwater-Management/Treatment/Jellyfish-Filter#4244498-technical-info>

- “2. The Applicant must provide evidence of a maintenance contract with a Contech certified/trained maintenance provider. This maintenance contract must extend for a minimum of two years.”
 [source for these two points: Rhode Island Department of Environmental Management, “Alternative Stormwater Technology Certification” dated 11/23/15 <<http://www.dem.ri.gov/programs/benviron/water/permits/swcoord/pdf/jellyfishcert.pdf>>]
- note on site plans, current:
 - “4. Storm Water Retention Basin Maintenance: Storm water management systems and the retention basins will be maintained using “Best Management Practices” and the approved Long-Term Operation and Maintenance Plan. All work will be completed through third party contractors and be supervised by a licensed civil engineer.”
- ...however:
 - “4. Maintenance: The required inspection/maintenance interval for stormwater treatment devices is often dependent on the efficiency of the device and the degree of pollutant loading from a particular drainage basin. Therefore, Ecology does not endorse or recommend a “one size fits all” maintenance cycle for a particular model/size of manufactured filter treatment device.” [source: Washington State Department of Ecology, “[January 2021 General Use Level Designation For Basic \(TSS\) and Phosphorus Treatment for Contech Engineered Solutions Jellyfish® Filter](#)”]
 - Town Engineer April Talon: “All inspection/observation services for all water, wastewater and stormwater management infrastructure installations associated with the development shall be performed by authorized representatives of the Town of Durham as deemed necessary by the Durham Department of Public Works and the Developer shall reimburse the Town for all associated inspection/observation costs.” [March 5, 2020 memo to the Planning Board; not posted at the Mill Plaza website]
 - disposal of the material removed from catch basins and stormwater treatment systems after maintenance: Where does it go? Is it environmentally disposed of?
- maintenance provider: require certification
 - Contech website: Contech has created a network of Certified Maintenance Providers to provide maintenance on stormwater BMP’s.
 - “Most, if not all, underground systems will require to use of OSHA Confined Space certification and specialized equipment just to make entry” [“[How to Select a Stormwater Maintenance Company](#),” by Dean Baddorf, July 08, 2019 [at Contech website]

Traffic, pedestrian: offsite

- are Tighe & Bond’s assumptions appropriate? (Traffic Impact and Access Study, Revised April 19, 2021) See below.
 - see traffic studies/reports for earlier Orion and Madbury Commons downtown student housing projects
 - “Pedestrian Volumes—The 525 students that will occupy Madbury Commons are expected to generate approximately 7,350 pedestrian trips on a daily basis. This estimate is based on four classes per day, a lunch trip, a dinner trip and an evening social trip for each student. Of these, approximately 520 pedestrian trips (arrivals plus departures) are expected to occur during the midday peak hour (12:00 to 1:00 PM) period.” [pedestrian traffic study/pedestrian evaluation for Madbury Commons by Stephen G. Pernaw, January 15, 2014]
 - “Pedestrian Impacts—According to the pedestrian/bicycle count data in the “Peter T. Paul College Traffic Impact Assessment,” the Main Street/Garrison Avenue intersection accommodated 2,220 pedestrians and bicycle trips during the Thursday midday peak hour period in October 2013, after the Paul College building was occupied. This represents an increase over the 1,440 pedestrian/bicycles that were observed in 2012 at that location.

The table below shows that the proposed Madbury Commons project is expected to increase the pedestrian demand by 160 trips or by +7% during the midday peak hour period at this intersection.” [pedestrian traffic study/pedestrian evaluation for Madbury Commons by Stephen G. Pernaw, January 15, 2014]

- are any pedestrian improvements proposed? if so, are they adequate?
 - “Exhibit 2 identifies several improvement project locations where pedestrian mobility and safety can be improved. These projects should be considered regardless of the proposed Madbury Commons project.” [pedestrian traffic study/pedestrian evaluation for Madbury Commons by Stephen G. Pernaw, January 15, 2014]

Traffic, vehicular: circulation on site

- truck access, loading areas

Traffic, off-site impact, e.g., impact on abutting neighborhood

- Site plan regs: “17.4.5 Extra measures should be taken to minimize or eliminate impacts upon residential neighborhoods.”
- Councilor Lawson, 1/24/18 at PB report on recent presentation at the Traffic Safety Committee meeting on the UNH/Town traffic model: ...

Trees, species selection:

- John Parry, urban forester: “Choose larger trees that will provide shade and survive”
 - “There are many small ornamentals on the planting list (80 ornamentals are listed out of 140 trees). Larger trees provide more benefits and better aesthetics. Wherever space allows, or can be created, plant trees that will have a larger size at maturity. ID and plant more species that have a larger mature ht. (35 – 60 feet). Select species that 1) will have a significant mature size (not just short ornamentals), 2) can tolerate the site (parking lots are hotter and dryer than surrounding areas), and 3) add diversity to the Town’s tree population (for example, too many pear trees have been planted in past development).” (June 8, 2020)
 - “Create Space for Large Trees—...Adjust building plans to create space for large trees. Require more space be left for trees, landscape, greenspace and privacy, and create visual, vegetated buffers between properties. Plans for buildings B & C especially don’t seem to show enough space for large trees.” (June 8, 2020)
- site-appropriate (large, hot, parking lot; narrow median strips)
 - prior landscaping plans includes numerous species that are unlikely to thrive
- climate change-appropriate
 - “In cities, climate change can amplify the impacts of existing stressors such as inadequate soils, polluted air, contaminated runoff and mechanical damage from cars and vandals...especially vulnerable to climate change stressors such as heat, drought, extreme winds and pests.” [Performance testing to identify climate-ready trees. E.G. McPherson et al. *Urban Forestry & Urban Greening* 29 (2018.)]

Trees, new: planting, preparation for planting, and maintenance: general, assorted

- DPW Director Rich Reine is Durham’s Tree Warden (ISA Certified Arborist: NE-7337A)
 - Should he be consulted or otherwise engaged, and if so, when and how?
- engineered soil
 - include specs for a specific mix, e.g., X% of loam, X% of sand; the mix makes a difference

- Consider incorporating into Landscaping Notes on site plan at least some of the instructions from Transplanting Guide in “[Recommended Urban Trees: Site Assessment and Tree Selection for Stress Tolerance](#)” from Cornell University’s Urban Horticulture Institute, pages 120-, i.e., “3. Transplanting ball and burlap, container and bare root trees”]
 - EXAMPLE: “b. Removing Rootball Coverings—In general, rootball coverings that will impede root growth should be removed. Not all materials that look like natural burlap (which degrades slowly, but surely) are natural burlap, and may not degrade much, if at all. Depending on what type of burlap was used, you will have to be more or less vigorous in your efforts to remove it before planting.” [Obviously, if it is not biodegradable, it remains in the soil forever.]
 - Topics include: “Transplanting ball and burlap, container and bare root trees” AND “Post-planting maintenance”
- Portsmouth has a visibly successful citywide tree program. Consider adding as a reference the specific instructions listed in the below Portsmouth document
- [City of Portsmouth Tree Planting Requirements](#): “The base of the City of Portsmouth Tree Planting Requirements is the ANSI A300 Part 6 Standard Practices for Planting and Transplanting. ANSI A300 Part 6 lays out terms and basic standards as set forth by industry but it is NOT the “end all” for the City of Portsmouth. The following are the City of Portsmouth, NH Tree Planting Requirements that are in addition to or that go beyond the ANSI A300 Part 6.”
 - ⇒ FOR EXAMPLE:
 - (a) CDA March 10, 2021 landscaping plan notes: “4. PLANT MATERIAL SHALL BARE (sic) THE SAME RELATIONSHIP TO FINISHED GRADE AS TO THE ORIGINAL PLANTING TO DIGGING.”
 - (b) Portsmouth: #3. The root ball of the tree shall be worked so that the root collar of the tree is visible and no girdling roots are present. (AND) #4. The root collar of the tree shall be 2”-3” above grade of planting hole for finished depth.
 - ⇒ FOR EXAMPLE: 2. ALL Wire and Burlap shall be removed from the root ball AND planting hole.

Trees, new: protection after planting

- Reference: International Society of Arboriculture (ISA)
- tree grates— current Site Plan Regulations require expandable design
 - 5.5.5...If tree grates are used they shall be fabricated of a strong, durable material, installed flush with grade, and provide an expandable center opening to allow for continued tree growth.
- tree boxes / tree planters
 - (1) tree pit or box sized to support larger mature trees (or other vegetation), with appropriate planting base, i.e., not compacted soil—extending to provide room for root growth.
 - tree planters (many sources):
 - ⇒ “...a tree planter installed as part of a road reconstruction and sewer improvements. The tree planter combines a tree well and catchbasin with an engineered soil that provides a growing medium and water quality filter. The planter was designed for considerations of low maintenance and winter maintenance in that it can be cleared easily by snow plow and sediment and debris removal is limited to a deep sump and cleaning by vector truck. With the tree planter grate the sidewalk area is usable for pedestrian travel.”
 - [source: Waterstone Engineering, “[Mill Pond Nutrient Control Measures Final Report](#)” (2018)]
 - ⇒ [Green Infrastructure Design Guide](#), San Mateo Countywide Water Pollution Program 2020

- (3) tree openings shall be 5' [OR OTHER DIMENSION: John Parry?] and marked on the site plan
- (4) John Parry email: The current tree planting in that parking lot and on main street are examples of poor or no design that provides adequate rooting space for significant trees.... There is not enough soil volume to support larger healthy trees. Also soil gets too wet or too dry.
- see Parry Comments on Mill Plaza Landscape Plan 6/8/20 and Comments on Mill Plaza Application for a Conditional Use Permit 10/26/20 re:
 - ⇒ root space: "To grow healthy trees, the rooting area needs to have adequate rooting depth and width. Ideally these areas should have a rooting depth of 2 ½ feet or more. The plan calls for adding 1' of soil, but the existing soil underneath may be compacted and undesirable. The existing soil should be tilled to a depth of at least 1 ½ feet and an amended soil added, before 1' of topsoil is added."
- see Parry Comments on Mill Plaza Landscape Plan 6/8/20 and Comments on Mill Plaza Application for a Conditional Use Permit 10/26/20 re:
 - ⇒ "...Planting Specifications: B & B trees often have wire baskets around the soil balls. In planting, remove the wire basket (if present) or at least the top half of the wire basket during planting."
 - ⇒ removing at least half the wire around balled trees* see Portsmouth, i.e. ALL the wire; Cornell???
- watering after planting
 - use Gator Bags or similar water bags for at least two growing seasons [three? USDA Forest Service recommendation? Ask John Parry]

Trees, best practices, various

- retired urban forester John Parry has weighed in numerous times—seemingly in vain—about best practices for protecting existing trees and for planting new trees
- see: [John Parry 2-3-22](#), [John Parry 1-6-22](#), [John Parry 12-15-21](#), [John Parry 12-6-21](#), [John Parry 10-26-20](#), [John Parry 6-8-20](#)

UNH enrollment, student enrollment: Observations/predictions not specific to UNH

- UNH Chief Operating Officer and VP of Administration Christopher Clement email to Durham Town Administrator Todd Selig, September 16, 2021, sent to Planning Board:

From: Chris Clement <Christopher.Clement@unh.edu>
 Date: Thursday, September 16, 2021 at 11:32 AM
 To: Todd Selig <tselig@ci.durham.nh.us>, Jean Richard <jean.richard@unh.edu>
 Subject: UNH Enrollment Projections

Hello Todd,

Regarding undergraduate students, UNH Durham projected enrollment is approximately 10,500 - 10,800 students from fall 2022 through fall 2025. The UNH graduate student population is growing with the goal to increase masters and PhD students to support and strengthen our R1 standing. Housing is a major challenge for our graduate students. There is a big need, and the need is price sensitive. What we hear from our graduate students is: 1/ to live on or close to campus 2/ in accommodations they can afford, particularly if they are on an assistantship. I hope this information is helpful.
- below excerpts from [["Future of Student Housing Demand,"](#) White Paper by Eigen 10 Advisors, LLC, July 2021. National Multifamily Housing Council]
 - "...millennials, now 24- to 40-years-old, are the largest population cohort in the U.S. Comprising 71.2 million people, they were a driving force in university enrollments from 2000 to

2010. As the Millennials are now generally past college age, they are followed by a smaller age cohort (Gen Z) and growth in overall school enrollment rates are slowing. Absent new immigration, the U.S. college-aged population will shrink over the next 15 years. In fact, the college-aged population already began shrinking about 10 years ago.”

- “Table 13: Change in 18- to 24-Year-Olds from 2020 to 2031, by State: New Hampshire [decrease] (23,771) (19.3%)” | Regionally, the West South Central is expected to experience the most growth, with significant downward pressure in the New England states as shown in Table 14....
- Table 14: Change in U.S. Youth Population, by Region: New England (298,573) (21.0%)
- “50% of high school graduates attend a school in their home state and only 11.7% attend school in another state. While those figures vary widely by state,32 nearby demographic growth should certainly be considered along with the school’s educational program quality and business acumen. Some schools are highly adapted to attracting students from broader trade areas and have high application rates that give them some acceptance leeway without impacting quality if applications do decline for a period of time.”

Unit size, number of bedrooms per dwelling unit: Fewer may be more attractive

- Not under purview of Planning Board; however, worth discussion with applicant
- below excerpts from [[“Future of Student Housing Demand,”](#) White Paper by Eigen 10 Advisors, LLC, July 2021. National Multifamily Housing Council] (other sources concur)
 - “Off-campus properties with better bed-bath parity and single occupancy rooms, which are typical in institutional student housing, are already in demand as universities dedensify on-campus housing in the near-term.”
 - “Going forward, particularly in the near-term, private single occupancy student housing units may be more desired. Only 4% of units built in the last decade were double occupancy, despite the cost savings. In addition, we could see smaller units in a 1/1 or 2/2 format that can isolate individuals if necessary. The ability to relocate and quarantine students will become increasingly important as the role of buildings in public health policy gains renewed emphasis and is supported by new technologies.”

Vegetated buffer to College Brook, “increased natural buffer”

- see site plan Sheet C-701 Buffer Coverage
- see site plan Sheet C-702 Restoration Plan

Vegetation, existing natural vegetation

- cross-reference: “Existing trees, vegetation”
- NE corner of site, i.e., hillside abutting Orion and Church Hill
 - Horsley Witten review May 26, 2020 references performance standards for Section 15.4.2 of the Site Plan Regulations for Stormwater Management:
 - “q) Native site vegetation has been retained in the northeast corner of the site.”
 - Query: Check that this is accurate

Wetland Conservation Overlay, WCO

- what activities will occur within this area, e.g., construction of utilities, grading, et al
- what development elements will remain in this area, e.g., stormwater management system, paved areas, etc.?
- does the Board need more—or more easily-understood—information?