

AGREEMENT TO FILE JOINT MOTION TO STAY PROCEEDINGS IN
COLONIAL DURHAM ASSOCIATES, LP V. TOWN OF DURHAM
DOCKET NOS. 219-2015-CV-00016 and 219-2015-cv-00173

This Agreement is entered into this 14TH day of ~~November~~ DECEMBER, 2015 by and between Colonial Durham Associates, LP, ("Colonial Durham"), and the Town of Durham, NH by and through its Town Administrator (the "Town") (collectively, the "Parties").

WHEREAS, on September 10, 2014, the Town of Durham Planning Board initiated a proposed Zoning change to amend the Table of Dimensional Controls to change the maximum number of occupants in unrelated households in 300 sf of habitable floor area from 1 to 0.5, and schedule a Public Hearing for October 8, 2014.

WHEREAS, on December 1, 2014, the Town of Durham Town Council adopted Ordinance #2014-14, increasing the required habitable square footage per occupant in unrelated household apartments from 300 to 600 square feet (the "Amendment").

WHEREAS, on September 12, 2014 Colonial Durham Associates, LP submitted a design review application proposing redevelopment of the Mill Plaza site, at Tax Map 5, Lot 1-1, Mill Road Plaza in Durham, NH, (the "Design Review Application") which the Town Planner determined was subject to the density standards set forth in the Amendment (the "Administrative Decision").

WHEREAS, Colonial Durham and the Town are both parties to litigation pending before the Strafford Superior Court, docket numbers 219-2015-CV-00016 and 219-2015-CV-00173 (together, the "Appeals");

WHEREAS, the Appeals relate to decisions of the Town, and its departments and land use boards, with respect to the Design Review Application

WHEREAS, pursuant to Section 4.5 of the Town's Charter, the Town Administrator "shall see to the enforcement of the ordinances of the town" and "shall supervise and direct the administration of all of the town departments";

WHEREAS, the Design Review Application has been stayed by the Town's Planning Board, upon request of Colonial Durham, pending the resolution of the Appeals; and

WHEREAS, the Parties agree that in light of the uncertainties of litigation, the redevelopment of the Mill Plaza, in a form substantially similar to that addressed below, could be a reasonable compromise for both the Town and Colonial Durham;

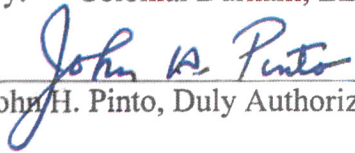
WHEREAS both parties acknowledge they wish to cooperatively resolve this matter in a timely manner within the limits of relevant laws.

NOW THEREFORE, in exchange for good and valuable consideration, the receipt and adequacy of which is hereby expressly acknowledged, the Parties agree to file a joint motion to stay the Appeals, subject to the following conditions:

1. The Town and Town Administrator will forbear from application and enforcement of the Amendment with respect to the pending Design Review application of Colonial Durham Associates, and to redevelopment of Colonial Durham's Mill Plaza, provided that Colonial Durham submits revisions to the Design Review Application that substantially conforms to the following design considerations (the "Revised Application"), as also reflected on the attached non-binding conceptual plan set (Exhibit A):
 - a. The Revised Application will propose construction of not more than 330 residential beds for the entirety of the Mill Plaza site, with a density of not less than 300 SF per occupant.
 - b. To the extent reasonably practicable, and subject to planning review, the Revised Application shall locate the residential beds upon the Mill Plaza Site with the goal of placing as many beds as possible in the buildings proposed to be located in the northern half of the property;
 - c. The Revised Application will provide for a total development of existing and new non-residential commercial space, exclusive of parking, totaling at least 80,000 to 90,000 sq.ft.
 - d. The Revised Application will provide for proposed buildings and vehicular roads outside of the shoreland and wetlands buffers such that variances from town ordinances are not required and the buffers are maintained by the property owner.
 - 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.
 - f. The Revised Application will have increased natural buffer along the southern property line adjacent to the College Brook; such buffer to be maintained by the property owner in perpetuity.
 - g. The proposed center building shall provide for a ground level connector to encourage pedestrian connectivity through the site towards Main Street.
 - h. The proposed development will have dedicated on-site professionally staffed management office and security 24 hours a day, 7 days a week, 365 days a year.
2. The Revised Application shall be submitted to the Durham Planning Board by January 31, 2016. This submission shall be deemed a revision to the Design Review Application, instead of a new application, and the date of first legal notice of the Design Review Application shall remain unchanged from September 26, 2014 for purposes of vesting under RSA 676:12.

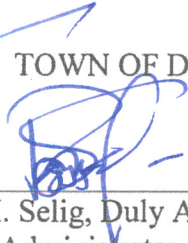
3. The Revised Application shall be pursued by Colonial Durham, and considered by the Planning Board, in good faith and in the usual course, consistent with and subject to the terms of this Agreement (the "Planning Board Review").
4. Within ten days of the execution of this Agreement, the parties shall file a Joint Motion to Stay the Appeals in the form attached hereto as Exhibit B.
5. If the Planning Board Review results in a final non-appealable approval satisfactory to Colonial Durham, then Colonial Durham shall withdraw the Appeals in their entirety with prejudice, subject to the following conditions:
 - a. The final approval must provide for Colonial Durham to proceed with redevelopment of the Mill Plaza site, at Tax Map 5, Lot 1-1, Mill Road Plaza, in a form substantially similar to and consistent with that proposed in the Revised Application, but subject to normal planning board review.
 - b. If the Planning Board Review yields an approval with conditions that have the effect of imposing a stricter density requirement than provided for herein, or if the Planning Board approval imposes conditions that otherwise circumvent or frustrate the force or intent of this Agreement, then Colonial Durham's obligations hereunder shall cease, and Colonial Durham may notify the Superior Court of its election to proceed with the Appeals in full.
 - c. If the Planning Board review results in a denial of the Revised Application for planning reasons wholly separate and distinct from the density requirement addressed by the Administrative Decision, or if the Revised Application is approved, but with non-density, planning-related conditions that materially impair Colonial Durham's ability to proceed with development in a form substantially similar to and consistent with that proposed in the Revised Application, then Colonial Durham may elect to file a planning appeal pursuant to RSA 677:15, but shall still be obligated to withdraw the Appeals with prejudice.
 - d. A "final approval" shall not be deemed to have occurred until any possible appeal(s) from any approval of the Planning Board or appeal(s) challenging the Administrative Decision have concluded, or the time for bringing such appeal(s) has passed with no appeal(s) being filed.
 - e. No building permits shall be issued until the Appeals are withdrawn.
6. This Agreement shall not be used or construed as an admission of liability by any of the Parties.
7. This Agreement does not preclude Colonial Durham from pursuing any appeal or appellate grounds that may otherwise arise under RSA 677:15 during the Planning Board Review of the Revised Application.

COLONIAL DURHAM ASSOCIATES, LP
By: Colonial Durham, LLC, Its General Partner

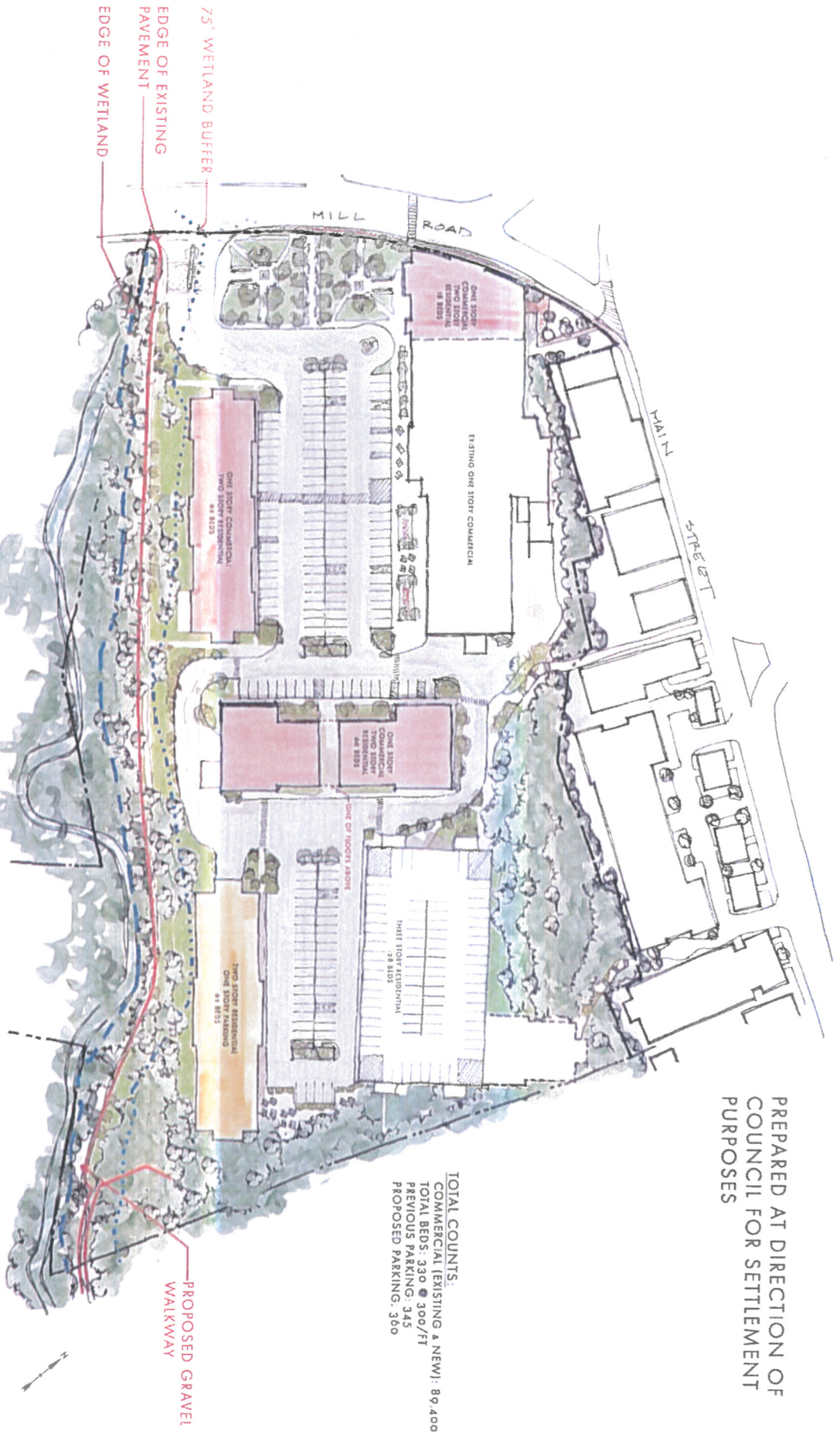


John H. Pinto, Duly Authorized Manager

TOWN OF DURHAM, NH



Todd I. Selig, Duly Authorized
Town Administrator



PREPARED AT DIRECTION OF
COUNCIL FOR SETTLEMENT
PURPOSES

TOTAL COUNTS:
COMMERCIAL (EXISTING & NEW): 89,400 SF
TOTAL BEDS: 330 @ 300/FT
PREVIOUS PARKING: 345
PROPOSED PARKING: 360

DURHAM VILLAGE CENTER
MILL ROAD, DURHAM, NEW HAMPSHIRE

SITE DEVELOPMENT CONCEPT - GROUND PLANE

NTS

16 NOVEMBER 2015



DURHAM VILLAGE CENTER
MILL ROAD, DURHAM, NEW HAMPSHIRE

SITE DEVELOPMENT CONCEPT - ROOF PLANE

NTS

16 NOVEMBER 2015



TOTAL COUNTS:
COMMERCIAL (EXISTING & NEW) 89,400 SF
TOTAL BEDS: 330 @ 300/FT
PREVIOUS PARKING: 345
PROPOSED PARKING: 360

PREPARED AT DIRECTION OF
COUNCIL FOR SETTLEMENT
PURPOSES

[EXHIBIT B]

STATE OF NEW HAMPSHIRE

STRAFFORD, SS
COURT

SUPERIOR

COLONIAL DURHAM ASSOCIATES, LP

v.

TOWN OF DURHAM

Docket No. 219-2015-CV-00116
Consolidated with
Docket No. 219-2015-CV-00173

JOINT MOTION TO STAY PROCEEDINGS

NOW COME, Colonial Durham Associates, LP and the Town of Durham, NH, and file this Joint Motion to Stay Proceedings and say:

1. The parties have recently conferred regarding the redevelopment of the Mill Plaza property and the claims at issue in the pending appeals.
2. As a result of those discussions, the Town and Colonial Durham desire to stay these proceedings to enable time for submission of a revised design review application and corresponding planning board review. This stay shall include an extension of time to file an objection to the pending motion for summary judgment until 30 days after this case is placed back on the active docket.
3. Depending on the outcome of that design review process, the pending claims and defenses in the appeals before the Court may become moot. Accordingly, in the interest of economy, and to facilitate time for the contemplated planning board review to occur, the parties hereby move to stay the proceedings for a period of one year, after which time the matter shall be restored to the active docket.

4. In the event that such planning board review concludes prior to the expiration of the proposed one year period, one or both parties shall promptly notify the court as to whether further proceeding need be scheduled or if the matter is to be withdrawn.

WHEREFORE, Colonial Durham Associates, LP and the Town of Durham, NH request that this Honorable Court:

- A. Enter an order consistent with the above requested relief, staying these consolidated appeals and cancelling the trial now scheduled for January 14, 2016; and
- B. Grant such further relief as may be just.

Respectfully Submitted