

Please send this form with Plot Plan and List of Abutters to the Town of Durham, 15 Newmarket Rd., Durham, NH 03824, Attn: Zoning Board of Adjustment.

RECEIVED  
Town of Durham  
FEB 10 2015

**Appeal for Applicant**

Planning, Assessing  
and Zoning  
Strafford, SS

State of New Hampshire

To: Zoning Board of Adjustment, Town of Durham NH 03824

Name of Applicant: Colonial Durham Associates, LP; by Colonial Durham, LLC, John Pinto, Manager

c/o Gallagher, Callahan & Gartrell, PC

Address: 214 N. Main Street, Concord, NH 03302 Phone # (603) 228-1181

Email: pollack@gcglaw.com

Owner of Property Concerned: Same

(If same as above, write "Same")

Address: Same

(If same as above, write "Same")

Location of Property: 5 & 7 Mill Road, Tax Map 05, Lot Number 1-1

(Street & Number, Subdivision and Lot number)

Description of Property (Give Tax Map number, length of frontage, side and rear lines and other pertinent descriptive information) \_\_\_\_\_

The property is in the Central Business District at 5 & 7 Mill Road, Tax Map 05, Lot #1-1. It is approximately 10 acres with access from Mill Road. The property abuts the University of NH, commercial structures on Main Street, and residential areas on its southern and eastern boundaries. College Brook runs the length of the southern boundary. The property has a commercial strip mall on site with asphalt parking on the remaining acreage. The property has a substantial change in grade running generally from Main Street towards College Brook.

**Fill in Section 1, 2, 3 or 4 below as appropriate. Do not fill in more than one section. This application is not acceptable unless all required statements have been made. Additional information may be supplied on separate sheets if the space provided is inadequate.**

**SECTION 1: APPEAL FROM AN ADMINISTRATIVE DECISION**

Appeal must be filed no later than 30 days from the date of the original decision.

Relating to the interpretation and enforcement of the provision of the Zoning Ordinance.

Decision of the enforcement officer to be reviewed: \_\_\_\_\_  
Number \_\_\_\_\_ Date \_\_\_\_\_

Article \_\_\_\_\_ Section \_\_\_\_\_ of the Zoning Ordinance in question.  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION 2: APPLICATION FOR SPECIAL EXCEPTION**

\*\*Any Special Exceptions granted shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such variance shall expire within 6 months after the resolution of a planning application filed in reliance upon the variance.\*\*

Description of proposed use showing justification for a Special Exception as specified in the Zoning Ordinance Article \_\_\_\_\_ Section \_\_\_\_\_

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**SECTION 3: APPLICATION FOR EQUITABLE WAIVER**

The undersigned hereby requests an Equitable Waiver of Dimensional Requirements as provided in RSA 674:33-A of the New Hampshire Planning and Land Use Regulations.

Please give a brief description of the situation: \_\_\_\_\_

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**SECTION 4: APPLICATION FOR A VARIANCE**

**STANDARD OF REVIEW:** Prior to seeking a variance, the property owner must have been DENIED a building permit by the Building Inspector or approval by the Planning Board.

\*\*Any Variances granted shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such variance shall expire within 6 months after the resolution of a planning application filed in reliance upon the variance.\*\*

A Variance is requested from Article \_\_\_\_\_ Section \_\_\_\_\_ of the Zoning Ordinance to permit \_\_\_\_\_

See attached pages for a description of each of three (3) variances requested (A-C)

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The New Hampshire Legislature has declared that each of the following conditions must be found in order for a variance to be legally granted. Please answer the following questions in support of the variance request either on this form or on a separate sheet of paper.

1. No decrease in value of surrounding properties would be suffered because:

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2. Granting the variance would not be contrary to the public interest because:

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Current law requires the existence of unnecessary hardship for the granting of any variance, whether that is for a use not allowed in a particular zone or a deviation from a dimensional requirement.

3(A). Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

a. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

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and

b. the proposed use is a reasonable one because:

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**Or**

3(B). Owing to special conditions of the property that distinguishes it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

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4. By granting the variance substantial justice would be done because:

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5. The use will not be contrary to the spirit and intent of the ordinance because:

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**Colonial Durham Associates, LP  
Durham Mill Road Plaza  
Project #2215291  
Abutters List**

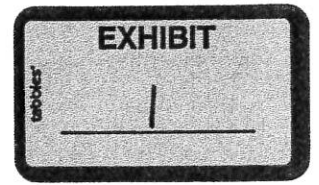
<b>Lot #</b>	<b>Owner</b>
05/1/2	Mary-Kyris, LLC 49 Main Street Durham, NH 03824
05/1/3	Paszec Investors, Inc. 53 Main Street Newmarket, NH 03857
05/1/17	Kyreages, Inc. PO Box 174 Eliot, ME 03903
05/1/4	Kyreages, Inc. PO Box 174 Eliot, ME 03903
05/1/5	37 Main Street Durham, LLC 6 Park Street Newburyport, MA 01950
05/1/6	Orion UNH Edge, LLC 225 Franklin Street, 26 <sup>th</sup> Floor Boston, MA 02110
05/1/9	Kyreages, Inc. PO Box 174 Eliot, ME 03903
05/1/15	Kyreages, Inc. PO Box 174 Eliot, ME 03903
05/1/16	Kyreages, Inc. PO Box 174 Eliot, ME 03903
06/7/59	Andersen Williams Group, LLC 8 Chesley Drive Durham, NH 03824
06/7/58	Joshua Meyrowitz Revocable Trust 7 Chesley Drive Durham, NH 03824
06/6/6	Martin A. Lee Revocable Trust Nancy J. Lambert Revocable Trust 17 Faculty Road Durham, NH 03824

**Colonial Durham Associates, LP  
Durham Mill Road Plaza  
Project #2215291  
Abutters List**

<b>Lot #</b>	<b>Owner</b>
06/6/5	Arthur G. Pierce Revocable Trust Sharon A. Pierce Revocable Trust 5813 Terncrest Lithia, FL 33547
06/6/4	Robin M. Mower 11 Faculty Road Durham, NH 03824
06/3/18/A	Rosemary E. Thomson 13 Mill Road #1 Durham, NH 03824
06/3/18/B	Deborah Penttla 13 Mill Road #2 Durham, NH 03824
06/3/18/C	Robert A. Chesley Allison E. Chesley 13 Mill Road #3 Durham, NH 03824
06/3/18/D	Barry & Denise Smith Revocable Trust 84 Durham Point Road Durham, NH 03824
06/3/18/E	Sherrie Zirkle Holly Zirkle C/O Patricia M. Zirkle 13 Mill Road #5 Durham, NH 03824
06/3/18/F	Willard B. Merrill Revocable Trust 13 Mill Road #6 Durham, NH 03824
06/3/18/G	Steven D. Merrill 13 Mill Road Unit #7 Durham, NH 03824
06/3/18/H	Carol A. Knox 13 Mill Road #8 Durham, NH 03824
06/3/18/I	John L. Hart PO Box 65 Durham, NH 03824

Colonial Durham Associates, LP  
Durham Mill Road Plaza  
Project #2215291  
Abutters List

<b>Lot #</b>	<b>Owner</b>
06/3/18/J	Barbara & Richard C. Siegert Katherine S. Stryck 13 Mill Road #10 Durham, NH 03824
06/3/18/K	Martha R. Smith Revocable Trust 26 Woodbridge Road Durham, NH 03824
06/3/18/L	Mark McPeak Jean McPeak C/O John Hart PO Box 65 Durham, NH 03824
13/7/2UNH	University of New Hampshire Office of the President Thompson Hall Durham, NH 03824
<b>Owner</b>	Colonial Durham Associates, LP By Colonial Durham, LLC 7 Mill Road, Unit L Durham, NH 03824
<b>Engineer</b>	Tighe & Bond, Inc. 177 Corporate Drive Portsmouth, NH 03801



**A. Variance from method of dwelling density calculation; Article II, Section 175-7.A**

A variance is requested from Article II, Section 175-7.A, Table II-1. Dwelling Density by Type, of the Zoning Ordinance to substitute “gross floor area” for “habitable floor area” relating to the density requirement set forth therein, thereby allowing 310 occupants within a total of 185,750 sq. ft. See Site Plan, dated January 14, 2015, prepared by DeStefano Architects (Exhibit 2) (currently before the Durham Planning Board for the purpose of design review).

1. No decrease in value of surrounding properties would be suffered because: Redevelopment of the Mill Plaza property (“Mill Plaza”) is long overdue. As recognized by the Mill Plaza Study Committee, the site is currently underutilized, and “holds tremendous potential for improvement – economically, socially and environmentally.” See Report of the Mill Plaza Study Committee at 11 (the “MPSC Final Report”). The requested variance will enable Mill Plaza to be redeveloped as a bridge between the downtown commercial core, the University of New Hampshire, College Brook, and surrounding residential areas. See MPSC Final Report at 4 (recommending that Mill Plaza be redeveloped to include “mixed uses from retail to office to housing, linkages to Main Street, multiple forms of access (car, bus, pedestrian, bike), public and open space, and connection to College Brook”). These changes will enhance the value of surrounding properties, by replacing the existing underperforming strip mall and expansive asphalt parking with a mixed-use property that may serve as a village center by improving the visual aesthetics of the site, protecting College Brook, and enabling a pedestrian link with downtown Durham and improved commercial, retail and residential opportunities.
2. Granting the variance will not be contrary to the public interest because: Mixed use development is permitted in the Central Business District and under §175-41.A “[m]ixed use redevelopment in which the upper floors are used for residential purposes is encouraged.” Further, a balance of commercial, retail and residential uses is necessary to enable the redevelopment of Mill Plaza as described above and as contemplated within the MPSC Final Report
3. (A)(a). No fair and substantial relationship exists between the general purpose of the ordinance provision and the specific application of that provision to the property because: Redevelopment of Mill Plaza is long overdue, and the requested relief provides the applicant with the necessary flexibility to proceed with a viable residential component of a mixed-use proposal for the site. The Applicant believes that the proposed balance of commercial, retail and residential uses is necessary to make the goal of a redeveloped Mill Plaza economically feasible. Thus, strict adherence to the Ordinance would jeopardize redevelopment, and indefinitely forestall the revitalization of a unique and important property in the heart of Durham.

(A)(b). The proposed use is reasonable because: Limiting the density requirement in Section 175-7.A, Table II-1 to “habitable floor area” jeopardizes the feasibility of the redevelopment proposal by requiring the apartment units to be wildly overbuilt.



OR

(B). Owing to special conditions of the property that distinguishes it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it because: Mill Plaza is a unique and important property, located in the heart of Durham, between commercial, academic, and residential areas. Its dominant size, slope, and proximity to College Brook further distinguish it from other potential redevelopment properties in the area. Accordingly, the requested relief is necessary to enable a comprehensive and unified mixed-use redevelopment of Mill Plaza that respects and advances those surrounding uses and features of the property, while remaining economically viable. Strict conformance with the ordinance would remove the needed flexibility to achieve these goals.

4. By granting the variance substantial justice will be done because:  
The variance allows the redevelopment proposal to move forward within the planning process. Whereas, the ordinance works to block redevelopment without relief.
  
5. The use will not be contrary to the spirit and intent of the ordinance because: The Ordinance recognizes the importance of “enhancing the achievement of the town’s economic development goals”, including the successful redevelopment of underperforming properties with mixed use redevelopment with residential purposes. *See* Ordinance at §175-3 and §175-41.A (specifically providing that “Mixed use redevelopment in which the upper floors are used for residential purposes is encouraged”). The proposed redevelopment is also in keeping with the MPSC Final Report.

**B. Variance from Use Standards; Article XII, Section 175-53.A.VII**

A variance is requested from Article XII, Section 175-53.A.VII., of the Zoning Ordinance to permit a mixed-use development with residential units on all floors of one of the buildings in the redevelopment proposal. See Site Plan.

1. No decrease in value of surrounding properties would be suffered because: Redevelopment of the Mill Plaza is long overdue. As recognized by the MPSC Final Report, the site is currently underutilized, and “holds tremendous potential for improvement – economically, socially and environmentally.” See MPSC Final Report at 11. The requested variance will enable Mill Plaza to be redeveloped as a bridge between the downtown commercial core, the University of New Hampshire, College Brook, and surrounding residential areas. See MPSC Final Report at 4 (recommending that Mill Plaza be redeveloped to include “mixed uses from retail to office to housing, linkages to Main Street, multiple forms of access (car, bus, pedestrian, bike), public and open space, and connection to College Brook”). These changes will enhance the value of surrounding properties, by replacing the existing underutilized strip mall and expansive asphalt parking with a mixed-use property that may serve as a village center by improving the visual aesthetics of the site, protecting College Brook, and enabling a pedestrian link with downtown Durham and improved commercial, retail and residential opportunities.
2. Granting the variance will not be contrary to the public interest because: Mixed use development is permitted in the Central Business District and under §175-41.A “[m]ixed use redevelopment in which the upper floors are used for residential purposes is encouraged.” Further, a balance of commercial, retail and residential uses is necessary to enable the redevelopment of Mill Plaza as described above. Additionally, the variance will be limited to the internal composition of one interior building, which is a less visible building and thus more appropriate location for residential use. The variance will enable the comprehensive and unified redevelopment of Mill Plaza in a manner that is appropriate given the desire to remain compatible with the diverse uses surrounding the site.
3. (A)(a). No fair and substantial relationship exists between the general purpose of the ordinance provision and the specific application of that provision to the property because: The proposed redevelopment of Mill Plaza incorporates several structures, as is necessary to ensure a comprehensive, unified, and financially sound redevelopment of a large and important property in the heart of Durham. Thus, the redevelopment of the Mill Plaza will bring the property closer towards conformity and the goals of the MPSC Final Report in many ways. Further, the Applicant does not believe that there exists sufficient demand to fill all first-floor space of every structure with commercial tenants. Thus, strict adherence to the Ordinance jeopardizes the feasibility of a long overdue redevelopment. Instead, a variance offers the applicant the flexibility to react to the marketplace and to offer additional commercial opportunities as Durham’s economic revitalization goals progress.

(A)(b). The proposed use is reasonable because: Requiring all first-floor space to be filled with commercial tenants jeopardizes the feasibility of the redevelopment proposal.

OR

(B). Owing to special conditions of the property that distinguishes it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it because: The size of the overall redevelopment site, and the diverse uses surrounding it, warrants two primary areas of use: (1) commercial and retail areas primarily located near Mill Road and Main Street, and (2) residential spaces primarily overlooking College Brook and in the less visible and interior areas of the property. While, as is the case now, commercial tenants are likely to be interested in the Mill Plaza property in its entirety, forcing first-floor commercial users into interior areas will likely cause prolonged vacancies that can jeopardize the vitality of the overall redevelopment.

4. By granting the variance substantial justice will be done because: The variance allows the redevelopment proposal a better likelihood of success, while maintaining the flexibility to add additional nonresidential space that Durham's economic revitalization efforts might produce.
5. The use will not be contrary to the spirit and intent of the ordinance because: The Ordinance recognizes the importance of "enhancing the achievement of the town's economic development goals", including the successful redevelopment of underperforming properties with mixed use redevelopment with residential purposes. See Ordinance at §175-3 and §175-41.A (specifically providing that "Mixed use redevelopment in which the upper floors are used for residential purposes is encouraged").

**C. Variance from Development Standards in the Central Business District; Article XII, Section 175-41.F.7**

A variance is requested from Article XII, Section 175-41.F.7, of the Zoning Ordinance to permit development of four (4) floor buildings wherein some buildings will contain one (1) floor of non-residential spaces with three upper floors of residential units. .

1. No decrease in value of surrounding properties would be suffered because: Redevelopment of the Mill Plaza is long overdue. As recognized by the MPSC Final Report, the site is currently underutilized, and “holds tremendous potential for improvement – economically, socially and environmentally.” See MPSC Final Report at 11. The requested variance will enable Mill Plaza to be redeveloped as a bridge between the downtown commercial core, the University of New Hampshire, College Brook, and surrounding residential areas. See MPSC Final Report at 4 (recommending that Mill Plaza be redeveloped to include “mixed uses from retail to office to housing, linkages to Main Street, multiple forms of access (car, bus, pedestrian, bike), public and open space, and connection to College Brook”). These changes will enhance the value of surrounding properties, by replacing the existing underutilized strip mall and expansive asphalt parking with a mixed-use property that may serve as a village center by improving the visual aesthetics of the site, protecting College Brook, and enabling a pedestrian link with downtown Durham and improved commercial, retail and residential opportunities. Further, several mixed-use structures are proposed for the property. Accordingly, the location of three floors of residential space in some buildings, and one all residential building, is an appropriate balance of mixed uses among the several structures.
2. Granting the variance will not be contrary to the public interest because: Mixed use development is permitted in the Central Business District and under §175-41.A “[m]ixed use redevelopment in which the upper floors are used for residential purposes is encouraged.” Further, a balance of commercial, retail and residential uses is necessary to enable the redevelopment of Mill Plaza as described above.
3. (A)(a). No fair and substantial relationship exists between the general purpose of the ordinance provision and the specific application of that provision to the property because: The proposed redevelopment of Mill Plaza incorporates several structures, as is necessary to ensure a comprehensive and unified redevelopment of a large and important property in the heart of Durham. Thus, the redevelopment of Mill Plaza will bring the property closer towards conformity in many ways. Further, the Applicant does not believe that there exists sufficient demand to fill both first and upper floor areas of several structures with commercial uses at this time. Thus, strict adherence to the Ordinance jeopardizes the feasibility of a long overdue redevelopment. Instead, a variance providing for first floor commercial with three floors of residential in several buildings, and one all residential building, will provide the Applicant the flexibility to react to the marketplace and to offer additional commercial opportunities as Durham’s economic revitalization goals progress.

(A)(b). The proposed use is reasonable because: The Mill Plaza site is one of the largest and most important redevelopment sites in downtown Durham as recognized by the MPSC Final Report. Expecting nonresidential users within all first floors and some second floors threatens the economic feasibility of the redevelopment proposal. Instead, allowing an additional residential floor, and the additional residential units, and also one all residential four floor building will help support redevelopment while preserving the flexibility to bring in additional commercial tenants as Durham's economic revitalization takes hold.

OR

(B). Owing to special conditions of the property that distinguishes it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it because: The subject site is one of the largest and most important redevelopment opportunities in downtown Durham as recognized by the MPSC Final Report. Expecting nonresidential space in too much of the floor plan threatens the economic feasibility of the redevelopment proposal.

4. By granting the variance substantial justice will be done because: The variance allows the redevelopment proposal a better likelihood of success, while maintaining the flexibility to add additional nonresidential space that Durham's economic revitalization efforts might produce.
5. The use will not be contrary to the spirit and intent of the ordinance because: The Ordinance recognizes the importance of "enhancing the achievement of the town's economic development goals", including the successful redevelopment of underperforming properties with mixed use redevelopment with residential purposes. See Ordinance at §175-3 and §175-41.A (specifically providing that "Mixed use redevelopment in which the upper floors are used for residential purposes is encouraged").

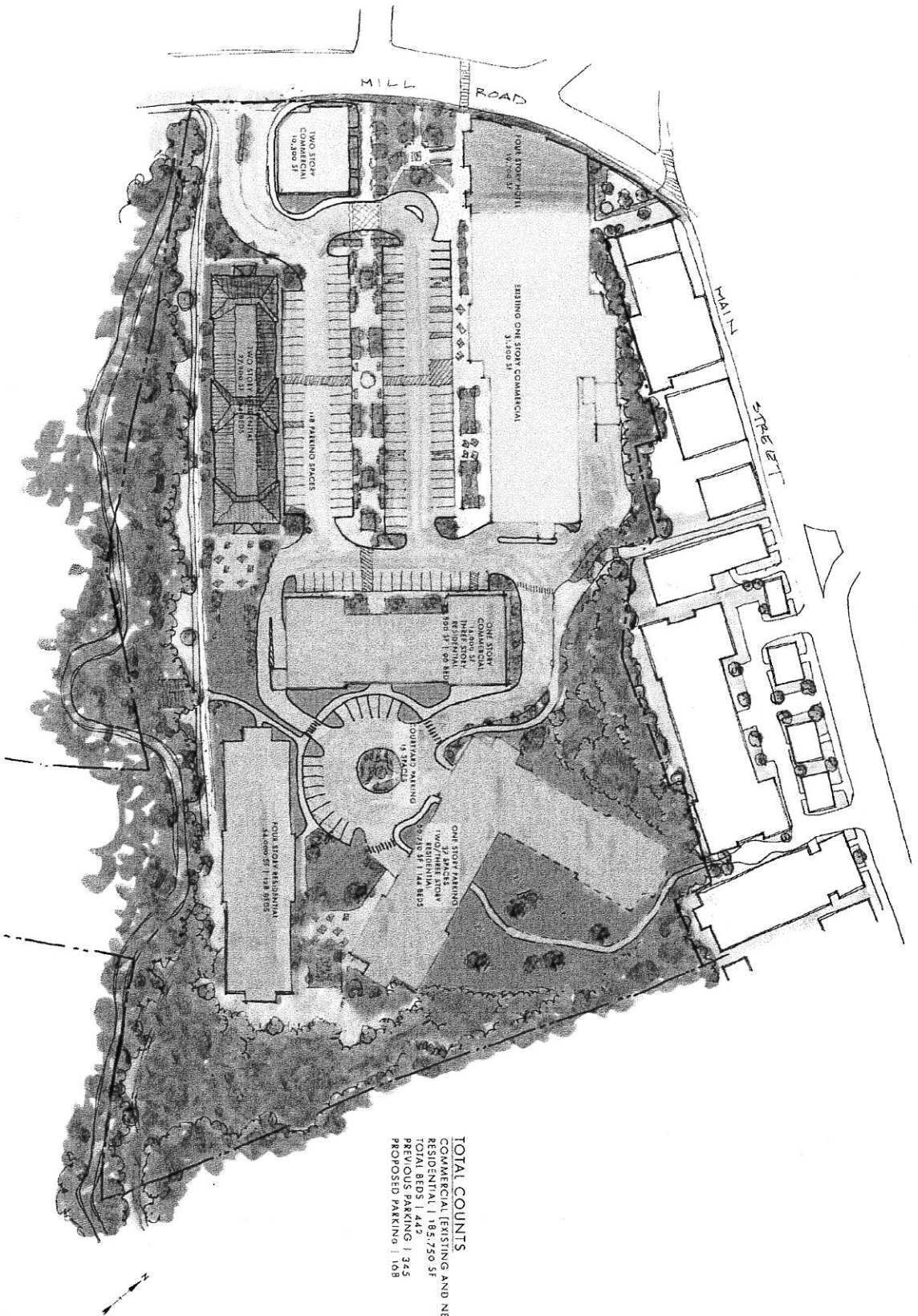




DURHAM VILLAGE CENTER  
MILL ROAD, DURHAM, NEW HAMPSHIRE

FOURTH FLOOR PLAN  
SCALE 1:40

14 JANUARY 2015

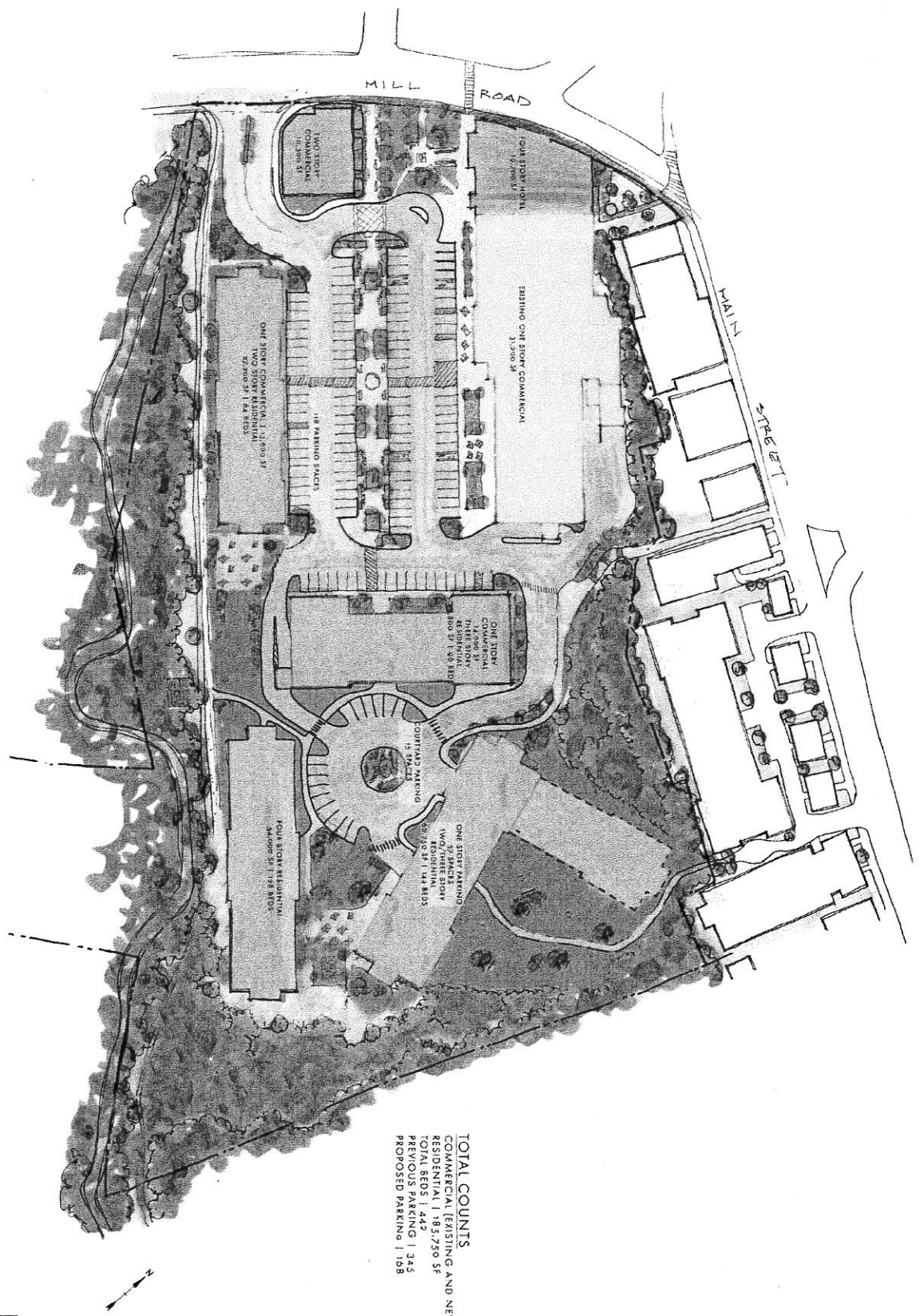


**TOTAL COUNTS**  
 COMMERCIAL (EXISTING AND NEW) | 80,400 SF  
 RESIDENTIAL | 85,750 SF  
 TOTAL GLE PARKING | 444  
 PROPOSED PARKING | 365  
 PROPOSED PARKING | 108

DURHAM VILLAGE CENTER  
MILL ROAD, DURHAM, NEW HAMPSHIRE

SECOND FLOOR PLAN  
SCALE 1:40

14 JANUARY 2015



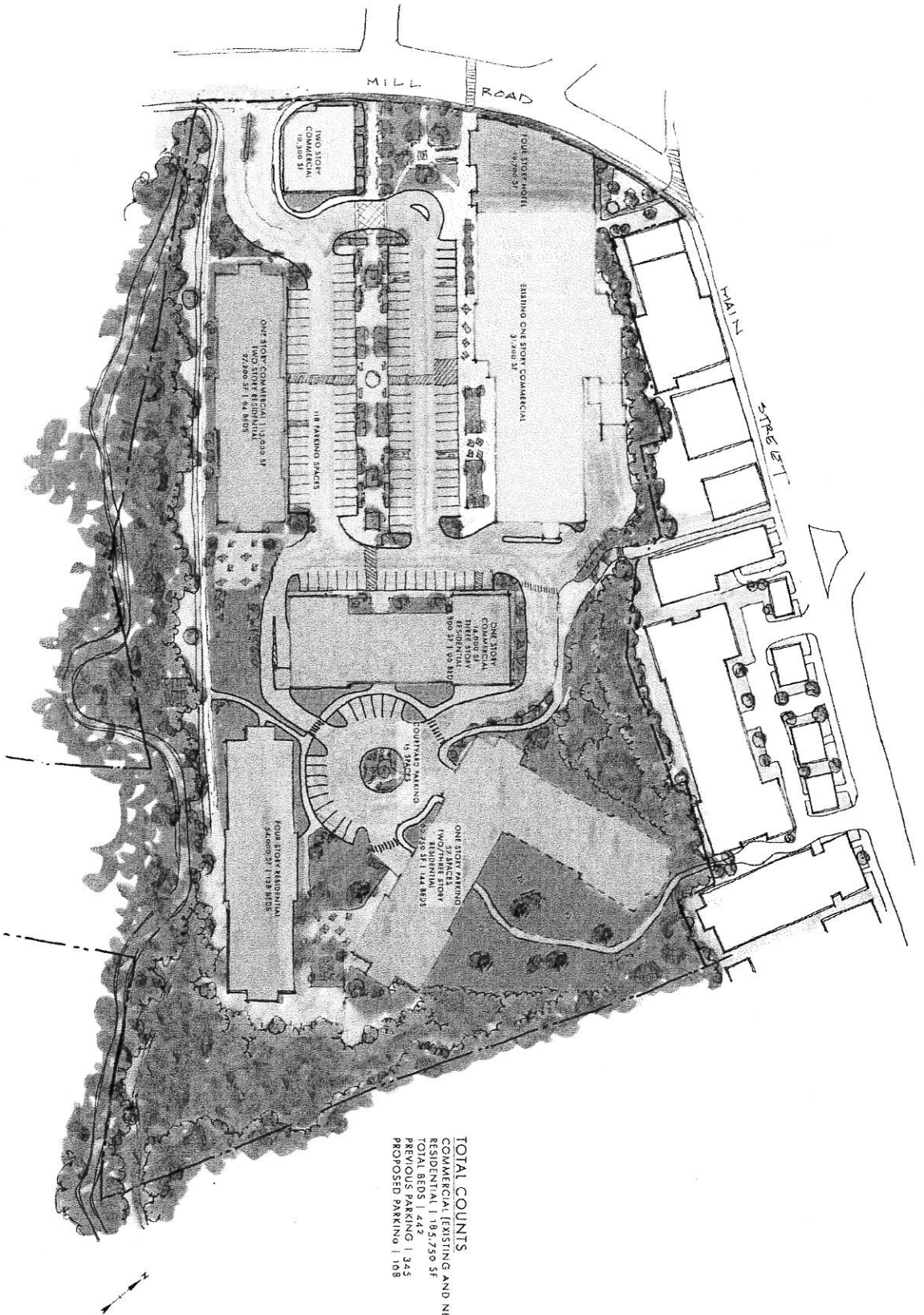
**TOTAL COUNTS**  
 COMMERCIAL (EXISTING AND NEW) | 89,400 SF  
 RESIDENTIAL | 185,750 SF  
 TOTAL BEDS | 442  
 PREVIOUS PARKING | 345  
 PROPOSED PARKING | 108



DURHAM VILLAGE CENTER  
MILL ROAD, DURHAM, NEW HAMPSHIRE

THIRD FLOOR PLAN  
SCALE 1:40

14 JANUARY 2015



**TOTAL COUNTS**  
 COMMERCIAL (EXISTING AND NEW) | 89,400 SF  
 RESIDENTIAL | 185,750 SF  
 TOTAL BEDS | 442  
 PREVIOUS PARKING | 345  
 PROPOSED PARKING | 108

DURHAM VILLAGE CENTER  
MILL ROAD, DURHAM, NEW HAMPSHIRE

SITE PLAN  
SCALE 1:40

14 JANUARY 2015

