

# **ORDINANCE #2013-XX OF DURHAM, NEW HAMPSHIRE**

**A COUNCIL- INITIATED AMENDMENT TO CHAPTER 175 “ZONING” OF THE DURHAM TOWN CODE TO:**

- 1) CHANGE MIXED USE RESIDENTIAL IN THE CENTRAL BUSINESS AND CHURCH HILL DISTRICTS FROM PERMITTED TO CONDITIONAL USE;**
- 2) MODESTLY INCREASE THE MINIMUM LOT AREA PER DWELLING UNIT IN THE CENTRAL BUSINESS AND MUDOR DISTRICTS;**
- 3) SET THE MAXIMUM NUMBER OF BEDROOMS PER DWELLING UNIT IN MULTI-UNIT AND MIXED USE RESIDENCES AT FOUR;**
- 4) PROHIBIT NEW BASEMENT DWELLING UNITS IN MULTI-UNIT AND MIXED USE RESIDENCES; AND**
- 5) ALLOW FOR FLEXIBILITY IN THE ARRANGEMENT OF NONRESIDENTIAL USES IN THE CENTRAL BUSINESS DISTRICT BY CONDITIONAL USE**

**WHEREAS**, there has been tremendous growth in the number of beds created for student housing in recent years as a result of changes in the Zoning Ordinance enacted years ago to encourage new growth of student housing; and

**WHEREAS**, the goals of the former zoning changes have been more than met through this recent growth in student housing; and

**WHEREAS**, a report written by James Lawson titled Estimating Off-Campus Student Housing Supply and Demand examines in detail the number of new student housing units created in recent years and the balance between supply and demand and concludes, among other things, that “the supply of beds in the fall of 2014 and 2015 is expected to exceed the need for off-campus housing” and “slowing the pace of student housing redevelopment allows Durham to better assess how the new housing supply is absorbed into the market.”; and

**WHEREAS**, a market where the supply and demand are out of balance can have significantly harmful consequences, including high vacancy rates, deterioration of property, and depressed property values; and

**WHEREAS**, student housing can have substantial impacts (both positive and negative) upon the dense downtown areas and it is appropriate that proposed developments be reviewed under the conditional use criteria in order to minimize adverse impacts; and

**WHEREAS**, given the great amount of student housing constructed and currently proposed in the Central Business District, it is appropriate that the allowed density in terms of minimum lot area per dwelling, be modestly decreased; and

**WHEREAS**, the current allowed density, in terms of minimum lot area per dwelling, of the MUDOR district is significantly higher than that of all other zoning districts (including districts which it resembles in character), except for the Central Business Districts, it is appropriate that the allowed density be modestly decreased; and

**WHEREAS**, it is desirable that buildings which currently house students might in the future be convertible to non-student housing and dwelling units with more than four bedrooms would have limited appeal to that broader market; and

**WHEREAS**, dwelling units with more than four bedrooms might have a greater tendency to foster a party atmosphere, one which would not be conducive to the peace and quiet of surrounding residents; and

**WHEREAS**, the Town desires to promote high quality living environments for its residents and basement units are generally significantly less pleasant and salutary in terms of providing less light, less air, and inferior views and having a greater tendency toward dampness; and

**WHEREAS**, incorporating basement units sometimes involves inharmonious grading and modification of the site and less attractive architectural designs; and

**WHEREAS**, while the Town seeks to incorporate nonresidential uses into development in the Central Business District, in certain situations, such as on a large, deeper, irregular lot with multiple buildings, there may be a better way to provide nonresidential uses than to use the entire first floor; and

**WHEREAS**, the Town Council may initiate Zoning Ordinance amendments in accordance with Section 175-14 (B) of the Durham Zoning Ordinance which states: *“The Town Council may, upon its own initiative, from time to time, consider changes to the Zoning Ordinance, including its overlay districts. All such Council-initiated changes shall be referred to the Planning Board for its review and study. The referral shall be made in writing by the chair of the Town Council. The Planning Board shall, after following the public notice and hearing requirements contained in Subsection D below, submit a recommendation regarding the changes to the Town Council members within sixty (60) days of their referral”*;

**WHEREAS**, the Town Council desires to move forward with the proposed Zoning Ordinance amendments presented below.

**NOW, THEREFORE BE IT RESOLVED** that the Durham Town Council, the governing body of the Town of Durham, New Hampshire does hereby initiate the five (5) ordinance amendments presented below. Wording to be deleted is annotated with ~~strikeout~~ type. New wording is annotated with underscoring.

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**1) Conditional Uses.** In the Table of Uses, Table 175-53, change the designation of use under Section VII. Commercial & Industry Uses as follows:

|   |              |           |
|---|--------------|-----------|
| Mixed Use with residential (office/retail down, multiunit residential up) |              |           |
| Central Business (CB)   | <del>P</del> | <u>CU</u> |
| Church Hill (CH)  | <del>P</del> | <u>CU</u> |

**2) Minimum Lot Area.** In the Table of Dimensional Requirements, Table 175-54, change the minimum lot area per dwelling unit as follows:

|   |                     |                 |
|---|---------------------|-----------------|
| Minimum lot area per dwelling unit      |                     |                 |
| Central Business (CB)                   | <del>900 SF</del>   | <u>1,200 SF</u> |
| Multi-Unit Dwelling/Office Res. (MUDOR) | <del>1,200 SF</del> | <u>1,500 SF</u> |

**3) Maximum number of bedrooms.** Set the maximum number of bedrooms permitted in a multi-unit residential dwelling unit at four by adding the following provision in Section 175-53 Use Standards, Section B. General Use Standards.

7. Number of bedrooms. The maximum number of bedrooms in any dwelling unit in any “Residence, multi-unit” or “Mixed Use with residential (office/retail down, multiunit residential up)” shall be four.

**4) Basement units.** Prohibit any new basement unit in any multi-unit residence by adding the following provision in Section 175-53 Use Standards, Section B. General Use Regulations:

8. Basement units. No new basement dwelling unit shall be permitted in any “Residence, multi-unit” or “Mixed Use with residential (office/retail down, multiunit residential up)” building.

**5) Flexibility for nonresidential in CBD.** Allow for flexibility, for good cause, in the arrangement of required nonresidential uses in mixed use residential buildings in the Central Business District by adding the following provision in Section 175-41 Central Business District, F. Development Standards in the Central Business District:

11. Conditional use for nonresidential use. The requirement for nonresidential use, specified in subsection 7. Maximum Height of Mixed Use Buildings, above, may be adjusted by conditional use where the Planning Board determines that:

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*a) devoting the entire floor(s) to nonresidential uses is not practical; b) there is a superior alternative arrangement that will serve the intent of this requirement (Example: on a large, deep, and irregularly-shaped lot with multiple buildings, it is proposed to situate all nonresidential uses on all of the floors of the building located at the front of the lot along the street. This example should not be construed as necessarily meeting this criterion, but is offered for illustrative purposes only); and c) the amount of square footage of the nonresidential use under this alternative arrangement is at least as much as would otherwise be required.*

**PASSED AND ADOPTED** by the Town Council of the Town of Durham, New Hampshire this \_\_\_\_\_ day of \_\_\_\_\_ by \_\_\_\_\_ affirmative votes, \_\_\_\_\_ negative votes, and \_\_\_\_\_ abstentions.

\_\_\_\_\_  
Jay B. Gooze, Chair  
Durham Town Council

**ATTEST:**

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Lorrie Pitt, Town Clerk-Tax Collector