



TOWN OF DURHAM
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Town Planner's Recommendation
Wednesday, June 10, 2015

- XI. **River's Edge Apartments – Amendment and Conditional use to combine apartments.** 277 Main Street. Application regarding an approved site plan for a 48-unit multi-dwelling project with 114 occupants/beds. An amendment to the approval for all two-bedroom units and a conditional use – required to expand a nonconforming use - to consolidate two pairs of two-bedroom dwelling units into two four-bedroom dwelling units. Ralph Pavone c/o Rivers Edge LLC, property owner. Tax Map 9, Lot 8-2. Office Research/Light Industry Zoning District. ***Recommended action:*** Discussion and setting a public hearing for June 24

➤ I recommend the board discuss the project and set a public hearing for June 24

Please note the following:

- 1) **Original approval.** On August 29, 2007, the Planning Board approved a conditional use and a site plan application to build a multi-unit residential structure with 48 2-bedroom units.
- 2) **Amendment.** An amendment to that approval is needed because the site plan approval specified all 2-bedroom units.
- 3) **Conditional use.** A conditional use is needed because this is considered an expansion of a nonconforming use. Multi-unit dwellings were allowed in ORLI by conditional use but they are not longer permitted. The applicant is not proposing an increase in the number of occupants nor the total square footage of the building with this application. However, because he is proposing enlarging several units from 2-bedrooms to 4-bedrooms, that change is considered an intensification or enlargement of the nonconforming use.
- 4) **Nonconforming Uses.** Here is an excerpt from the Zoning Ordinance:
175-28. Nonconforming Uses.
Routine Maintenance. Routine maintenance and repairs of the building or structure housing the nonconforming use as well as those modifications required by applicable health and safety codes shall be permitted by the Zoning Administrator...

Continuation of a Nonconforming Use. Any nonconforming use may be continued, except that if any such nonconforming use is abandoned or desisted or voluntarily or by legal action caused to be discontinued for a period of one (1) year, then any subsequent use of

the building, other structure or use of the land shall be required to be in conformity with the provisions of these regulations.

Enlargement of a Nonconforming Use. *A nonconforming use may be expanded only upon the approval and issuance of a conditional use permit*, within the confines of the lot or parcel of land upon which it was located at the time of the adoption or amendment of these regulations; provided, however, that the land area and/or size of the building or the structure being used for said nonconforming use at the time of the adoption or amendment of these regulations is not increased by more than fifty (50) percent.

- 5) Submitted materials. The following items are included with the application: application for amendment, application for conditional use, a discussion of the 8 criteria, and a proposed 4-bedroom layout. * *Is there any other information or documentation that would be helpful for the board in reviewing this application?*
- 6) Conditional use procedure. A special procedure is required for conditional uses; notification of abutters within 300 feet, a sign must be posted on the property announcing the public hearing, 8 conditional use criteria must be met, and approval requires an affirmative vote of 5 (rather than 4) Planning Board members.
- 7) Earlier amendment. On January 23, 2013, the Planning Board approved an amendment to the project to allow an increase to 114 occupants/beds and to not require any increase in parking.
- 8) Earlier amendment. That amendment stated: “*Specific Units. The unit numbers that contain more than 600 square feet and that can now accommodate up to three occupants/beds are 102, 106, 107, 108, 109, 112, 202, 206, 207, 208, 209, 212, 302, 306, 307, 308, 309, 312 [18 units]*”. The 114 residents was to be composed of 30 units with 2 residents each plus 18 units with 3 residents.
- 9) Unrelated not applicable. The Zoning Ordinance limits dwellings units to no more than 3 unrelated occupants in various districts, but not in the ORLI district.
- 10) Habitable area. Under Household in the definitions section in the Zoning Ordinance, the maximum number of unrelated occupants permitted in a unit is 1.5 per 300 square feet of habitable area or 1 occupant per 200 square feet. If this change is approved, at the building permit stage, the applicant will need to demonstrate that this standard is met with the revised dwelling unit plans.

(over)

