



TOWN OF DURHAM
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Town Planner's Recommendation
Wednesday, June 24, 2015

- XI. **Public Hearing - River's Edge Apartments – Merging of 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.
- I recommend approval as stated at the bottom. The Planning Board will need to review the criteria for the conditional use. An affirmative vote of 5 is needed to approve the conditional use.

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 no longer permitted. *On May 19, 2014, the Town amended the zoning ordinance to prohibit residence, multi-unit in the ORLI (and MUDOR) district.* 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.
- 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. *At Andrew's request, we included a copy of this amendment in the packet.*
- 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.
- 11) Staff reviews. I shared this application with the staff and there were no comments, other than Tom Johnson, who was comfortable with the application, but suggested including the note about the 5th bedroom, below.

*** The applicant has expressed a potential interest to Tom Johnson in adding a 5th bedroom to one or more dwelling units in the future. A variance would be needed for that since the ordinance limits units to 4 bedrooms. The Planning Board could write the terms of this

approval now to cover such a possibility (Otherwise, the applicant would need to return to the Planning Board also). Does the board wish to do that?

Draft

NOTICE OF DECISION

Project Name: River's Edge Apartment
Project Description: Amendment to approved site plan and conditional use to expand a nonconforming use (residence, multi-unit) by merging dwelling units.
Address: 277 Main Street
Applicant: Ralph Pavone, c/o Rivers Edge LLC
Map and Lot: Map 9, Lot 8-2
Zoning: Office Research/Light Industry District
Date of approval: **June 24, 2015**

The Planning Board approved the application as submitted, including the amendment and conditional use, with the following terms and conditions:

- 1) The two pairs of 2-bedroom dwelling units (102/104 and 110/112) may be combined into two 4-bedroom dwelling units. This approval applies only to these specific units.
- 2) Prior to issuance of a building permit for these units, the applicant will need to demonstrate to the Building Official that the habitable floor area requirements per the Zoning Ordinance are met.
- 3) The Zoning Ordinance permits a maximum of 4 bedrooms in a dwelling unit. A variance (and likely another review by the Planning Board) would be needed should the applicant wish to incorporate more than 4 bedrooms into any unit.
- 4) All of the requirements specified for conditional uses in the Zoning Ordinance shall apply. This approval shall terminate if the authorized use has not begun by June 24, 2016 or as may be extended by the Planning Board.
- 5) The Planning Board has reviewed the applicant's statement and the criteria for a conditional use and determined that the criteria are met.