



TOWN OF DURHAM  
8 NEWMARKET ROAD  
DURHAM, NH 03824  
Tel: 603/868-5571  
Fax: 603/868-1858

August 4, 2015

Mr. Andrew Corrow  
Chair, Durham Planning Board  
139 Durham Point Road  
Durham, NH 03824

Dear Andrew:

At the Town Council meeting on Monday evening, August 3, 2015, the Council reviewed proposed changes introduced by Councilors Jay Gooze and Jim Lawson to Chapter 175 "Zoning", Section 175-53 "Use Standards" to the Table of Land Uses such that "Mixed Use With Residential (office/retail down, multiunit residential up)" is changed from Conditional Use to Not Permitted in the Professional Office and Churchill Districts.

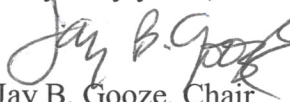
The Council voted to refer the new Council-initiated zoning changes discussed above to the Durham Planning Board for its review and study in accordance with Section 175-14(B) of the Durham Zoning Ordinance.

Attached for your information is a draft ordinance which incorporates the proposed amendments to Section 175-53 of the Zoning Ordinance. Also attached is the August 3<sup>rd</sup> communication provided to the Town Council explaining the rationale for these changes.

The Durham Town Council requests this item be placed on a future Planning Board agenda and that the Planning Board provide its recommendations to the Town Council upon completing its appropriate review and study.

Please do not hesitate to contact me should you have further questions in regard to this matter.

Very truly yours,

  
Jay B. Gooze, Chair  
Durham Town Council

Attachments

C: Michael Behrendt, Director of Planning & Community Development

DATE: August 3, 2015

## COUNCIL COMMUNICATION

**INITIATED BY:** Jay Gooze and Jim Lawson, Town Councilors

**AGENDA ITEM:** DISCUSSION AND POSSIBLE ACTION TO REFER TO THE PLANNING BOARD A COUNCIL-INITIATED ORDINANCE TO AMEND CHAPTER 175 "ZONING", SECTION 175-53 "USE STANDARDS" TO THE TABLE OF LAND USES SUCH THAT "MIXED USE WITH RESIDENTIAL (OFFICE/RETAIL DOWN, MULTIUNIT RESIDENTIAL UP)" IS CHANGED FROM CONDITIONAL USE TO NOT PERMITTED IN THE PROFESSIONAL OFFICE AND CHURCH HILL DISTRICTS

**CC PREPARED BY:** Jay Gooze and Jim Lawson

**PRESENTED BY:** Jay Gooze and Jim Lawson

**AGENDA DESCRIPTION:**

This agenda item is to discuss and consider referring a Town Council-initiated zoning amendment to the Planning Board. The amendment will change the Land Use of "Mixed Use with Residential (office/retail down, multiunit residential up)" from a Conditional Use to a Not Permitted Use in the Professional Office and Church Hill Districts.

Section 175-14 (B) of the Durham Zoning Ordinance provides for amendments to the Zoning Ordinance to be initiated by the Town Council as follows:

- B. *Amendments Initiated by the Town Council.* 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.

**BACKGROUND**

The purpose of the Professional Office District is to provide an area for the growth of professional services and offices adjacent to the downtown, with the intent to maintain the existing character of the neighborhood and retain open space not used



Privately owned lots in the Professional Office District range in size from 5,200 to 56,550 square feet. The largest lots are well over two acres, and are owned by a charitable trust (Bagdad Woods Apartments) and St. Thomas Moore Church. Privately owned lots in the Church Hill District range in size from 7,878 to 152,460. The largest lot is owned by the Durham Community Church and is over nine acres.

The districts border the Oyster River Middle School and Durham Public Library, and are in proximity to neighborhoods near Woodman Avenue, Cowell Drive, Madbury Road, Bagdad Road, Old Landing Road and Chesely Drive. The primary commercial activity in the districts is student housing with the notable exceptions of the Durham Health Center on Madbury Road, Xemed LLC on Strafford Avenue, and the Three Chimneys Inn on Newmarket Road. A portion of the Church Hill District lies within the Historic Overlay District, and contains numerous contributing structures to the district's National Registration of Historic Places.

Mixed use housing built in Durham's Commercial Core and in proximity to the University is inevitably built with features and characteristics attractive to the student housing market. The reason for this is obvious - student housing is the overwhelming and primary housing market created by student demand seeking quality housing. Student housing supply was limited until recently, but new housing developments have brought the supply into better alignment with demand. (Behrendt, Student Housing Tally, 2014. Master Plan Economic Development Chapter Draft, 2014)

Given the substantial number of new beds, Durham will become saturated with student housing if development occurs at the current pace, and the University's limited enrollment growth will be slow to absorb any excess supply. Saturation will place downward pressure on rents, making student housing a less effective driver of other commercial growth and activity. The town has already responded to this by restricting Multiunit development in the ORLI and MUDOR Districts, and this proposed zoning amendment is the result of ongoing and continuing consideration of where student housing should be targeted given the better alignment of supply and demand that exists.

The Professional Office and Church Hill Districts allows Mixed Use Residential as a Conditional Use; however, no such development has occurred in the last eight years while multiple projects have been completed or undertaken in the Central Business District. The likely reason is the zoning dimensional requirements that restrict the number of dwelling units to significantly less than the Central Business District. As shown in Table 1, the Dwelling Unit Density in the Central Business District is two and a half times greater than in the Profession Office District.

Table 1. Comparison of Dimensional Requirements

Zoning	District		
	Central Business	Professional Office	Church Hill
Minimum Lot Area per Dwelling Unit	1,200	3,000	4,200
Dwelling Units (Apartments) Per Acre Of Land	36	14	10
Minimum Lot Sized For Multiunit	5,000	10,000	5,000

Although the net effect of current Dimensional Requirements is to discourage Mixed Use Residential development in the Professional Office and Church Hill Districts, they may become an attractive alternative depending on land availability in the Central Business District. This Ordinance change would assure that this type of development does not occur in an area directly impacting residential neighborhoods.

This zoning amendment is expected to achieve the following:

1. Make Mixed Use Residential an unpermitted use in the Professional Office and Churchill Districts.
2. Target economic activity associated with any new Mixed Used Residential Development into other more appropriate districts, such as the Central Business District.
3. Eliminate the potential problems that would occur if large Mixed Use Residential Development occurred in the Professional Office and Churchill Districts with their proximity to family neighborhoods, the Oyster River Middle School and Durham Public Library.

**LEGAL AUTHORITY:**

RSA 674:16, RSA 675:2, and 175-14 of the Durham Zoning Ordinance

**LEGAL OPINION:**

N/A

**FINANCIAL DETAILS:**

N/A



## **ORDINANCE #2015-XX OF DURHAM, NEW HAMPSHIRE**

**A COUNCIL-INITIATED ORDINANCE AMENDING CHAPTER 175 “ZONING”, SECTION 175-53 “USE STANDARDS” “TABLE OF LAND USES”, OF THE DURHAM TOWN CODE TO CHANGE “MIXED USE WITH RESIDENTIAL (OFFICE/RETAIL DOWN, MULTIUNIT RESIDENTIAL UP)” FROM CONDITIONAL USE TO NOT PERMITTED IN THE PROFESSIONAL OFFICE AND CHURCH HILL DISTRICTS**

**WHEREAS**, the purpose of the Professional Office District is to provide an area for the growth of professional services and offices adjacent to the downtown, with the intent to maintain the existing character of the neighborhood and retain open space not used for parking; and

**WHEREAS**, the purpose of the Church Hill District is to preserve and enhance the historic character of this area by allowing for multiple land uses including professional offices, limited retail uses, and apartments; and

**WHEREAS**, the privately owned lots in these districts range from 5,200 to 152,460 square feet and the current primary commercial activity in the district is student housing; and

**WHEREAS**, Mixed Use housing built in Durham’s Commercial Core and in proximity to the University are typically built with features and characteristics attractive to the student housing market; and

**WHEREAS**, the supply of student housing has become better alignment with demand. (Behrendt, Student Housing Tally, 2014. Master Plan Economic Development Chapter Draft, 2014; and

**WHEREAS**, this zoning amendment is expected to achieve the following:

1. Make Mixed Use Residential an unpermitted use in the Professional Office and Church Hill Districts.
2. Target economic activity associated with any new Mixed Used Residential Development into other more appropriate districts, such as the Central Business District.
3. Eliminate the potential problems that would occur if large Mixed Use Residential Development occurred in districts with its proximity to family neighborhoods, the Oyster River Middle School and Durham Public Library; 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*"; and

**WHEREAS**, on August 3, 2015 the Durham Town Council voted to refer the proposed Zoning Ordinance amendment to the Durham Planning Board for its review and study; and

**WHEREAS**, on \_\_\_\_\_, 2015 the Planning Board held a duly posted Public Hearing on the proposed ordinance; and

**WHEREAS**, on \_\_\_\_\_, 2015 the Durham Town Council conducted a First Reading on Ordinance #2015-XX; and

**WHEREAS**, on \_\_\_\_\_, 2015 the Durham Town Council held a duly posted Public Hearing on Ordinance #2015-XX.

**NOW, THEREFORE BE IT RESOLVED** that the Durham Town Council, the governing and legislative body of the Town of Durham, does hereby adopt Ordinance #2015-XX, a Council-initiated Ordinance, and amends Chapter 175 "Zoning", Section 175-53 "Use Standards" "Table of Land Uses" of the Durham Town Code to change "Mixed Use with residential (office/retail down, multiunit residential up)" from Conditional Use to Not Permitted in the Professional Office and Church Hill Districts as **indicated within the attachment accompanying this ordinance**. Wording to be deleted is annotated with ~~strikeout~~ type. New wording is annotated with underscoring.

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, **2015** by a majority vote of the Durham Town Council with \_\_\_\_\_ voting in favor, \_\_\_\_\_ voting against, and \_\_\_\_\_ abstaining.

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

**ATTEST:**

\_\_\_\_\_  
Lorrie Pitt, Town Clerk-Tax Collector



175-53 Use Standards

Table of Land Uses

CATEGORY OF USES	RESIDENTIAL ZONES				RETAIL/COMMERCIAL ZONES				RESEARCH/INDUSTRY ZONES				
	Rural (R)	Residence A (RA)	Residence B (RB)	Residence C (RC)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe's Corner (CC)	Office Research - Route 108 (OR)	Multitunit Dwelling Office Research (MUDOR)	Office Research Light Industry (ORLI)	Durham Business Park (DBP)
<b>VII. COMMERCIAL &amp; INDUSTRY USES</b>													
<b>A. Principal Uses</b>													
Reuse older single-family residence for a low impact nonresidential use in accordance with provisions of Article XX	CUA	X	X	CUA	P	P	P	P	P	P	P	X	X
Bed & breakfast	P	P	P	P	CUA	CUA	CUA	CUA	CUA	CUA	X	X	X
Inn	P	X	X	P	CUA	CUA	CUA	CUA	CUA	CUA	X	X	X
Conference center	X	X	X	X	CU	CU	CU	P	P	X	X	CU	CU
Hotel	X	X	X	X	P	P	P	P	CU	CU	X	CU	CU
Restaurant	X	X	X	X	P	X	P	P	X	X	X	X	X
Restaurant, carry-out	X	X	X	X	P	X	P	P	X	X	X	X	X
Convenience store with gasoline sales	X	X	X	X	X	X	P	P	X	X	X	X	X
Craft shop with accessory production	X	X	X	X	P	X	P	P	X	X	X	X	X
Gallery	P	X	X	P	P	X	P	P	CU	X	X	X	X
Retail store	X	X	X	X	P	X	CU	P	X	X	X	X	X

CATEGORY OF USES	RESIDENTIAL ZONES				RETAIL/COMMERCIAL ZONES				RESEARCH/INDUSTRY ZONES				
	Rural (R)	Residence A (RA)	Residence B (RB)	Residence C (RC)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe's Corner (CC)	Office Research - Route 108 (OR)	Multitunit Dwelling Office Research (MUDOR)	Office Research Light Industry (ORLI)	Durham Business Park (DBP)
Retail store limited	X	X	X	X	P	X	P	P	X	X	X	X	X
Financial institution	X	X	X	X	P	P	CUA	P	X	X	CU	CU	CU
Business services	X	X	X	X	P	P	CUA	P	CU	P	P	P	P
Funeral homes	X	X	X	X	X	P	X	P	CU	X	X	X	X
Medical clinic	X	X	X	X	P	P	CUA	P	CU	P	P	P	P
Cinema	X	X	X	X	P	P	X	CU	X	X	X	X	X
Theater	X	X	X	X	P	P	X	CU	X	X	X	X	X
Personal services	X	X	X	X	P	X	CUA	P	CU	X	X	X	X
Veterinary clinic/grooming	CU	X	X	CU	X	X	X	X	X	CU	CU	CU	CU
Office, business	X	X	X	X	P	P	P	P	P	P	P	P	P
Office, professional	X	X	X	X	P	P	P	P	P	P	P	P	P
Repair services	X	X	X	X	P	X	CUA	P	X	CU	CU	CU	CU
Automotive service station	X	X	X	X	X	X	X	P	X	X	X	X	X
Motor vehicle service facility	X	X	X	X	X	X	X	P	X	X	X	X	X

