

June 21, 2016

Mr. Michael Behrendt
8 Newmarket Road
Durham, NH 03824

*RE: Mei Wei Restaurant – Proposed Expansion. The owner of Mei Wei Restaurant, located in the rear building of the Mill Plaza, is considering expanding into the adjacent space recently vacated by New Hampshire Federal Credit Union. The proposed use would be for **restaurant expansion, a bar, dancing, and a private karaoke room**. This prospective plan is presented to the Planning Board for determination whether it should be reviewed administratively or as a site plan. En Qing Lin, proprietor of Mei Wei. Map 5, Lot 1-1. Central Business District.*

Dear Michael:

The 30 undersigned residents of the Faculty Development neighborhood have read your project review for the proposed expansion of the Mei Wei Restaurant at the Mill Plaza and have looked at the floor plans for the project.

We understand that the Planning Board will discuss process on Wednesday night, June 22, and that no public hearing is currently scheduled, but we wish to advise you—and through you, the Planning Board—of our concerns.

First, we would like to state that we wish the applicant continued success. Many of us patronize Mei Wei and appreciate its service to the community. We also note that were these proposed new uses located away from a residential neighborhood, they might well be welcome additions.

That said, our overarching concern is that the proposal appears to include a significant change of use—not simply an accessory to a permitted use—adjacent to residential homes. You suggest otherwise to the Board, and thus you also argue against holding a public hearing.

The addition of a late-night bar, dance floor, and karaoke area change the use for a large portion of the proposed overall footprint from providing *dining*, to providing *destination-driven entertainment*.

We believe that the proposal should be subject to site plan review and request that a public hearing be held.

The proposed use would:

- 1) constitute a “significant change of use” to one not permitted in our zoning ordinance; and
- 2) generate noise impacts on the Faculty Development neighborhood.

Furthermore, we believe that the zoning ordinance should be amended to address these and similar “entertainment” uses.

SIGNIFICANT CHANGE OF USE

Planner's Review

Your Planner's Review (comment #7) cites the zoning definition of "development"—which, along with the definition of "redevelopment" is the only ordinance term that includes "significant change in use"—as a threshold for site plan review.

We believe that, *counter* to your argument in comment #8, the proposed use *would* constitute a "significant change in use": The proposed use is *not* "fairly similar in character and potential impacts to historical uses in the larger center" and there *could* be "anticipated likely meaningful impacts upon the public." According to these criteria, there would be a "significant change in use."

The site is adjacent to a residential neighborhood. Durham is a college town. Here, any enterprise that promotes the use of alcohol and socializing, particularly late into the night, e.g., until 1:00 a.m., is likely to lead to impacts *off site* that are detrimental to nearby residents' ability to enjoy the peace and quiet of their own homes.

We are mindful of the recent observation made by Councilor Lawson (about 2:20 into the June 8, 2016 Planning Board meeting after the public hearing for the Mill Plaza redevelopment proposal):

"When you listen to some of the comments that have been made, they highlight an issue where I think that the Faculty neighborhood will meet the zoning definition of part of the neighborhood that's impacted by this, not just the adjacent properties, but the definition of the neighborhood."

Zoning ordinance

The term "significant change of use" is not defined in the zoning ordinance, so one must refer to the Table of Uses. As you also note in your Planner's Review (comment #10), "The closest listed use in the Table of Uses is 'restaurant.' There is no bar, tavern, dance hall, karaoke bar, or night club listed. Thus, I will review this with Audrey Cline to clarify whether the proposed activity is considered a restaurant or accessory to the restaurant."

We call your attention to the following excerpt from the introduction to zoning ordinance Section 175-53. Use Standards":

.../ Any use that is not listed as a Permitted Use or a Conditional Use is prohibited in the district.

...and to the following:

B. General use regulations - *The following additional standards apply to the specific uses listed below:*

/.../ 5. Combination of uses. Any combination of uses contemplated as a single enterprise may be established in only those districts in which all such uses are permitted. Any establishment having combination of uses must meet all the requirements of each use as outlined by the Durham Zoning Ordinance. In the case of conflicting duly adopted rules, regulations or ordinances, the more restrictive shall apply.

This significant change in use prompts us to ask for the opportunity for the community to speak to the Planning Board and to ask that the Board address the specific issues listed below.

NOISE MANAGEMENT

Many of us have noted the applicant's interest in expanding at a time when Colonial Durham Associates' application to redevelop the entire site is pending. The reason we mention it is relative to the willingness and financial ability of the applicant to invest in adequate soundproofing and other mechanisms to contain the sound associated with dancing and karaoke in what may be a temporary location.

Soundproofing of enclosed spaces may contain noise within, but patrons who have been drinking are apt to continue their partying when they walk out the door in close proximity to the Faculty Development neighborhood. One of us notes,

“Durham now lacks a real dance club, so this could potentially attract large crowds. With large crowds, there could be noisy lines outside of people waiting to get in. Loud bass music is also common at dance clubs. Bass music travels. If the door is frequently being opened, the music will be heard and felt from within our homes.”

As it is, the large expanse of uninterrupted pavement of the Mill Plaza currently allows conversations and music (for example, from patrons of Domino's Pizza and Bella's) to carry across to Faculty Road and Brookside Commons, particularly at night. Please note also that Domino's is open until 3:00 a.m. on weekends and is a destination after the bars close.

We interpret your Planner's Review (comment #6, below) to advise the Planning Board that noise impacts on adjacent residents should not be a concern. **We believe otherwise.**

#6) Nearest residences. Mei Wei is over 400 feet to the nearest single family houses located to the southeast off Chesley Drive and Main Street and to the southwest on Faculty Road, and about 300 feet to the nearest townhouse at Brookside Commons to the southwest. The property is buffered with fairly dense vegetation in those directions.

First, the “fairly dense vegetation” provides only limited visual buffer and very little sound buffer, particularly in the late fall to early spring. And as Chief Kurz often notes, the schedules and lifestyles of students and families are fundamentally incompatible.

Second, the “fairly dense vegetation” exists along only the undeveloped portion of the property that protrudes across the brook toward Faculty Road. A large stretch of the boundary is only sparsely vegetated, and what there is does not provide either visual or aural buffer.

Additional concerns relate to “wanderers.”

Despite the Town’s efforts and the building of private multi-unit residences that some believed would draw student renters out of the neighborhoods, the Faculty Development neighborhood retains several student-only rental properties. These are magnets for party seekers who frequently wander through the neighborhood well into the night. The proposed expansion would be near the wooded footpath to the Faculty Development and the paved path to Chesley Drive.

Groups of people talking on streets where families are sleeping sound loud to residents abed. In addition, after the bars close, some of us have witnessed groups walking up to darkened houses in search of parties, and some have even experienced home intrusions.

ANCILLARY CONCERN ABOUT ZONING ORDINANCE LIMITATION

Several of us have also noted that our zoning ordinance includes another relevant shortcoming: It does not distinguish between restaurant, bar, and dance club.

AUTHORITY OF THE TOWN TO LIMIT IMPACTS

Even if this application meets the criteria for a site plan review, it is unlikely to be subject to Conditional Use criteria in the zoning ordinance. However, *we* are mindful of the “external impacts” and “character of the site development” included in the Conditional Use criteria.

So, should the application be subject to site plan review, we hope that you will remind the Planning Board that it has authority to consider and require measures to mitigate potential adverse impacts of these proposed new uses under the Site Plan Review Regulations, Part III. Development Standards, sections 1.1.1 and 1.1.2.

In closing, we reiterate our request that you advise the Planning Board to hold a public hearing on this application.

Sincerely yours,

Carol and Frank Birch
17 Garden Lane

Eileen Clifford
20 Croghan Lane

Charles Forcey and Julia Rodriguez
12 Thompson Lane

Julie and Thomas Haines
42 Oyster River Road

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John Hart
Brookside Commons, 13 Mill Road

Phyllis Heilbronner
51 Mill Pond Road

Bernadette and Matt Komonchak
1 Thompson Lane

Jennifer and Andrew Kun
22 Faculty Road

Jennifer Lee
18 Faculty Road

Jean and Mark McPeak
Brookside Commons, 13 Mill Road

Shane and Katelyn Malavenda
15 Faculty Road

Deborah Hirsch Mayer
Jack Mayer
19 Garden Lane

John and Rose Mince
23 Faculty Road

Robin Mower
11 Faculty Road

Kate Ruml
7 Thompson Lane

Maura and Michael Slavin
10 Burnham Avenue

Donald and Eleanor Sutherland
25 Faculty Road

Diane and Tim Tregoe
14 Faculty Road