



**TOWN OF DURHAM**  
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**Town Planner's Project Review**  
**Wednesday, June 8, 2016**

- XI. **2 Brook Way – Café and Performing Arts Center**. Design Review (preliminary) application for the development of a café inside an existing student apartment building and an outdoor performance area. Paul Berton, Fall Line Properties, LLC, property owner; Mike Sievert, MJS Engineering, engineer. Professional Office District. Map 2, Lot 9-4.
- I recommend that the board discuss the project and offer any preliminary comments to the applicant. The public hearing is set for June 22.

Please note the following:

**Process**

- 1) **Design review**. This is a preliminary review. After the public hearing the Planning Board can decide if it is worth continuing the design review. The board or the applicant can close the design review at any time. Again, the purpose of the design review is to raise any significant concerns and, if possible, address them to the extent that the general plan seems workable. Once the design review is closed the applicant will fully engineer the plan and submit a formal application at his leisure. The application meets the new submission requirements in the Site Plan Regulations for design review projects.
- 2) **Technical Review Group**. The project was presented to the TRG on May 31. I will send notes of the meeting to the Planning Board shortly.
- 3) **Site walk**. It would be helpful to schedule a site walk as part of the design review. Would this be best scheduled before or after the public hearing?

**Site**

- 4) **Site**. The property is located at the corner of Garrison Avenue and Brook Way, just to the east of Stoke Hall.
- 5) **Location**. The Police Chief noted at the TRG meeting that this seems to be a good location for this kind of use. According to the applicant, the nearest non-student residence is the president's house at UNH on Main Street.

- 6) Existing apartment. The existing building houses 6 residential units with 4 bedrooms each.
- 7) Natural Resources. Pettee Brook goes to the site but then underground. The Shoreland Overlay District requires a setback of 25 feet from the brook for structures but the proposed structures lie beyond that. The property is not in a flood zone.

### **Zoning**

- 8) Use. The closest use in the Table of Uses is theater, which is permitted by right in the Professional Office District, and defined in the ordinance as “A building or part of a building devoted to showing motion pictures or dramatic, musical, or live performances.” *It appears that this would not be allowed since the space is outside.* There is no category for a café in the Table of Uses. It would need to be determined if the café should be treated as an accessory use to a theater or a separate use. The closest principle use in the Table of Uses appears to be *restaurant* which is not permitted in the district.
- 9) Setbacks. The stage probably does not comply as it is likely considered a “structure” and does not meet the 15 foot side setback.

### **Access**

- 10) Road Access. Brook Way is a University road (I will confirm this). It appears that the deed would cover this expanded use but this should be confirmed.
- 11) Parking. We will need to determine if the existing parking on site is sufficient to cover the new use. A theater requires 1 space per 4 seats or 40 square feet of gross floor area used for assembly purposes, whichever is greater. However, this is based on an indoor theater so the Zoning Administrator would need to make a determination.
- 12) Pedestrian Access. A circulation plan and plan for egress is probably needed.
- 13) Accessibility. Accessibility for handicapped persons will need to be clarified. The applicant says there are 55 spaces on site. A few seem to extend over the property line. The applicant says they have exclusive use of these spaces. A number of spaces are accessed directly from Brook Way.
- 14) Loading. How will trucks serving the project access the site?

### **Utilities**

- 15) Burying utilities. There are existing overhead lines on the property. It will need to be determined if they may remain overhead, per the Site Plan Regulations.
- 16) Trash. How will trash be handled?

- 17) Water/Sewer. The site is served by Town water and sewer.
- 18) Fence. There is an existing 4 foot high aluminum fence. Part of it, including the location for the gate, is on Town property. This will probably need to be moved to the subject lot.
- 19) Drainage. Permeable pavers are proposed for the seating area.

### **Operations**

- 20) Seating. We will need details later exactly how the seating will be handled.
- 21) Hours of operation. This will need to be determined. The applicant suggested at the TRG meeting closing at 11:00 pm on Thursday, Friday, and Saturday, and closing at 10:00 pm the other nights. The applicant said the site would be open during the day.
- 22) Alcohol. The applicant told the TRG he would envision serving beer and wine only.
- 23) Tent. The applicant said he would likely use a tent for part of the year.
- 24) Types of performances. There should be discussion about the kinds of activities and performances that are envisioned.
- 25) Capacity. How many people could the site accommodate?

### **Other Issues**

- 26) Café. The applicant notes that the café as shown on the plans would actually be an indoor, not an outdoor, café.
- 27) UNH. UNH was notified of the project, as an abutter, and will have an opportunity to comment if there are any concerns.
- 28) Other information. *Is there other information, studies, or analyses that would be useful for the Planning Board to have when reviewing this project.*
- 29) Other issues. *Are there any other particular issues that should be discussed?*

### **Noise**

- 30) Sound. The applicant proposes to include amplification. A proposed ten-foot high wall is shown behind the stage. The applicant says that the Bose Company is performing a sound analysis, and this will be provided later. (See excerpts from the noise ordinance below.)

(over)

31) Noise ordinance. Here are excerpts from the ordinance:

**85-4. Noise restricted.**

In accordance with the concepts set forth below, it shall be unlawful for any person to make, continue or cause to be made or continued any excessive, unnecessarily loud noise or any noise which either annoys, disturbs, injures or is likely to endanger the comfort, repose, health, peace or safety of others within the town limits. For the purpose of this section, persons shall include the owner, tenant, or other person in control of a private residence who permits or allows guests to engage in loud or unreasonable noises that can be heard in a public or other private place or who fail to take the necessary steps and precautions to prevent guests or other persons on the property from engaging in conduct that creates loud and unreasonable noises including, but not limited to the operation, playing, or using of any audio equipment, sound amplifier or other device which reproduces or amplifies sound.

**85-5. Specific prohibitions.**

Prohibited noise/time restrictions.

1. Between 10:00 p.m. and 6:00 a.m., created by loading, unloading, opening, closing or otherwise handling boxes, crates, containers, building materials, trash cans, dumpsters or similar objects.
- ...3. Between 10:00 p.m. and 7:00 a.m. engaging in conduct that creates loud and unreasonable noises including, but not limited to the operation, playing, or using of any audio equipment, sound amplifier or other device which reproduces or amplifies sound.
4. Evidence of a specific complaint or complainant is not necessary to establish a violation of this ordinance.

**85-6. Exemptions.**

The following uses and activities shall be exempt from noise level regulations:

- E. Any other noise resulting from activities of a temporary duration permitted by law and for which a license or permit therefor has been granted by the town.
- H. Parades and public gatherings for which the Council has issued a permit.