

March 19, 2017

Chair Corrow and Members of the Durham Planning Board,

Thank you for all your efforts. I would like to clarify why Durham needs the proposed zoning change to restrict mixed use residential in downtown.

In essence, unless this proposal to restrict mixed use residential in downtown is accepted as a necessary preventive first step, Durham risks losing its soul, and residents will suffer a steady, unrelenting decline of our downtown to students and decrease in property values throughout the town. Accepting this proposal will preserve our town for all residents as well as for our businesses.

The old saw that *comfortable zones are only created through much discomfort* is now in full view in Durham, as we continue trying to create a thriving downtown through zoning and other changes. A few business owners are up in arms, making false allegations to thwart the will of the residents to limit the increasing number of student beds, and to allow for more diverse businesses.

Around 2008, the town allowed dense, mixed use residential in downtown, to encourage commercial space and improve tax base. Residents took on burdens allowing students to reside in downtown. Various property owners benefitted by developing mixed use residencies. Durham benefitted from commercial space and improved tax base.

Since then, residents have become concerned of the crowding, inconvenience, litter, noise, drunken nuisance, biking and driving challenges, exposing our school children to lewd-rowdiness by university students, property damage by rowdy crowds, trespassing intrusions in residents' gardens/homes, and more serious crimes if we allow further future increases in students living downtown. Residents do not want downtown to be exclusively a dormitory. This is reflected in our updated Master Plan.

Also, the supply of student beds has reached a stage whereby future downtown beds will have negative fiscal impacts on the town.

Given our downtown's small acreage, and because updating land use chapter will take time, the council proposed to restrict mixed use residential downtown as a *preventive* first step to ensure no more students downtown. The intent is to then find ways to encourage developments to make downtown more vibrant as well as safer.

We know that zoning is a blunt instrument. We can only enact allowable restrictions, which force us to restrict more than we otherwise would; that is, we are not allowed to restrict students only, and we are forced to restrict almost all residential. The proposal is a thoughtful, reasonable first step to prevent losing our downtown. It is trying to close the barn door before all the horses bolt.

A few business owners have unfortunately chosen to pursue negative tactics. They and their attorney have made a long list of false claims/objections (shown below in quotations, and followed by our answers to their claims) including:

- “The proposal would punish some business owners who did not develop”. That is not our intent. And, using such words does not help because it could be as easily used by the residents saying we are punishing the residents near downtown if we do not make this proposed change. So, punishment is not intended and not relevant.
- “The business owners’ property value may decrease”. Unfortunately, this does not recognize that the property values of residents’, particularly those living around downtown, are also negatively affected by zoning that allows students living in downtown to continue to increase. Further, the town council and the planning board have to independently consider tradeoffs between how doing or not doing such zoning changes will affect a large number of residents. We are required to look more at the general welfare of the town.
- “This ordinance is two years too late”. Yes, in fact it is probably four years too late! So all the more reason to get it done now.
- “600 sq. feet seems to make more student housing unlikely”. We want to ensure we have no more student housing, and so “unlikely” is not enough because market conditions can change over time.
- “The proposed zoning changes are not necessary or that they are obsolete, or that the problem does not exist; as shown by no new building permits for student housing have been issued”. Saying our proposal is not necessary or is obsolete or that the problem does not exist is wrong. Looking at past building permits is only retrospective – it would be like driving a car by looking only at the rear view mirror, which is wrong. We need to look forward, not backward – and so this proposal is trying to prevent such building permits from being filed in future. The reality is that in future, as market conditions change, it is conceivable that our required density of unrelated people for mixed use residential may not be a constraint. There is no way to know that today. Therefore, looking forward, prospectively, we need to make the proposed zoning change to ensure we do not turn down town exclusively into a dormitory, which would lead to a decline.
- “This is a stick”. It may be; but if so, this issue is a stick that hurts both sides. Please remember this stick also beats up the downtown area residents, and it is time to address their pain now.
- “The proposal is arbitrary and unreasonable restriction” That charge is baseless. This is not an arbitrary proposal. It is a proposal that responds to residents’ needs and their complaints over many years. The restriction is very reasonable in the interest of preserving small town character of downtown and for the town’s general welfare. Thus there is no illegal taking as alleged. We cannot allow saber rattling by their attorney to stop us from doing what is in the best long term interest of our town and our residents.
- “The proposed change is unreasonable, and we should allow mixed use residential for work force or young professional”. We are willing to work with anyone who has good suggestions on how to achieve that objective. But, let’s be clear, we first need this proposed zoning restriction to give better assurance that there will be no more student housing downtown. Our intent is to do this as a first step, and then figure out ways to allow more non-student uses downtown, which will take some time given complexity of the state’s zoning statutes.

- “The few business owners have been publicly chastised”. Speaking directly to owners in public to explain why we need to protect the broader interests of all residents of our town does not imply any chastising. In fact the owners (as well as residents) have been regularly thanked for participating in the process.
- “Data on policing is questionable, implying there is not a student driven problem in our downtown”. First, we who live in Durham, and particularly those that live near downtown, painfully know the student problems first hand. For these few business owners, most of whom do not live in Durham, to say there is no problem is almost insulting to our residents. Second, Durham has a superb Chief of Police who has trained a very professional as well as very caring police force. Caring – because our police department is sensitive to helping take care of the students who come to Durham. Third, our police issue fewer citations or arrests by doing more of softer guiding of the students who go astray. We should not confuse the kindness of our police as non-existent proof that there are no students’ problems downtown. There is ample evidence of that in our town as we residents know all too well.
- “Business owners pay property taxes”. Yes, but such taxes are not enough to cover the disproportionately large policing costs in downtown. We are trying to negotiate with the university to cover more of such student policing costs, but the outcome of that negotiation is unknowable now. In a worst case scenario in future, we may be forced to consider some sort of surcharges on down town businesses to help with more student policing downtown. That is not a palatable option for anyone.
- “No 55+ person will want to live in downtown”. Well, that is not the major issue, our main purpose is to first stop additional student housing. And while doing that, we are also attempting to help encourage the 55+ market.
- “A poor process has been employed”. That assertion is wrong. We have had a very open, very long, very deliberative process. The council has given numerous extensions to allow for more deliberations. Councilors have worked diligently to provide more information through these deliberations.
- “Durham has a history of changing its mind in zoning”. Yes, but it is driven by complexity of being a university town in which the town residents do not have adequate control of much of the land and related issues. So, there are bound to be changes over time as we learn and adjust to changes made by the university and the markets which are outside our control.
- “There is no plan”. Not true. We have recently updated our Master Plan. That plan clearly spells out our priorities for development. There are also other older plans, such as the B. Dennis effort, etc. that spell out how we want our downtown to look and feel. Further, it is not the town’s duty to develop specific plans for specific private properties – that is the property owners’ responsibility. If these owners had hired a site planner and/or architect to layout their plans, the town would be delighted to work with them.
- These few business owners also say “Planning Board is confused”. Our planning board has tried to be thoughtful and creative by testing various potential changes to the council’s very clear proposal. The planning board’s good, sincere efforts have been maligned by these business owners as confusion.

Thus, all these charges and claims made by these few business owners are baseless. The proposed changes are reasonable, and necessary as a preventive measure to protect the general welfare of our town.

Further, these few business owners claim to be “small” business-owners to elicit our sympathy, but they can afford to hire fancy lawyers! Town residents are the ones who are more deserving of sympathy, as they have few resources to fight these business owners. We cannot allow our sympathies to cloud our judgement – we need to meet the long run needs of all of the town’s residents by doing this zoning change.

The planning board has worked hard on this issue. Some board members may feel conflicted, as they understandably feel for both sides of the debate. It is our collective duty to try to make the best possible tradeoffs we can. If we do not make this change, we will be telling the residents we do not care for their pain and do not care for the long term outlook for our town.

We should all visualize our town’s future if we do not make this proposed change to restrict more students living in our downtown:

- There will be more and larger crowds, more bikes/cars, driving will become more difficult for our aging residents; residents will over time abandon doing any shopping or activities in downtown, even avoid groceries or laundry or drugstore; and, residents will find other places to go to such as Lee Circle, Newmarket, Dover, Stratham.
- Our downtown will degenerate into a student dormitory complex
- The town will become a widely dispersed residential community, spread around a central core of student dormitory complex, and our town will have no social core, and no soul!
- It is also likely that then real estate values may stagnate or decline throughout Durham as it begins to lose its appeal

Is that what we want? No. Therefore, we need to make this zoning change. The credibility of the planning board and the town council is at stake. Residents are looking at us and wondering if we can and will protect the town now. If we do not, then the residents may not have much faith in land use changes to be proposed in the near future as our credibility will have been damaged.

Unless this proposal is accepted, Durham risks losing its soul, and residents will suffer a steady, unrelenting decline of our downtown and decrease in property values throughout the town.

Accepting the proposal, is essential for the future of our town, and it will preserve our town for all residents as well as our businesses. This first step will help us subsequently encourage a more diverse developments of our downtown, which will be safer and more vibrant.

Thanking you.

Sincerely,

Firoze Katrak

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