

ORDINANCE #2016-XX OF DURHAM, NEW HAMPSHIRE

A TOWN COUNCIL-INITIATED ZONING AMENDMENT TO CHANGE MIXED USE WITH RESIDENTIAL (OFFICE/RETAIL DOWN, MULTIUNIT UP) FROM CONDITIONAL USE TO NOT PERMITTED IN THE CENTRAL BUSINESS DISTRICT; AND TO ADD A NEW DEFINITION AND STANDARDS FOR MIXED USE WITH ELDERLY HOUSING AS A CONDITIONAL USE IN THE CENTRAL BUSINESS DISTRICT

WHEREAS, the Durham Central Business District has experienced significant Mixed Use with Residential redevelopment providing student housing since zoning was changed in 2008; and

WHEREAS, this redevelopment achieved many of the anticipated goals by increasing the supply of quality student housing and commercial space; and

WHEREAS, the Durham Planning Department tracks the supply of student housing in Durham; and

WHEREAS, the demand for Student House can be reasonably estimated from publically available enrolment and residential data from the University of New Hampshire; and

WHEREAS, the supply of student housing is adequate for the demand; and

WHEREAS, an oversupply of student housing can have negative consequences when the enrollment projections of the University of New Hampshire do not indicate increasing demand sufficient to absorb an oversupply; and

WHEREAS, the community and Town Council desire greater diversity of living, retail, entertainment and business in Durham's downtown; 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 October 17, 2016 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 _____, 2016 the Planning Board held a duly posted Public Hearing on the proposed ordinance; and

WHEREAS, on _____, 2016 the Durham Town Council conducted a First Reading on Ordinance #2016-XX; and

WHEREAS, on _____, 2016 the Durham Town Council held a duly posted Public Hearing on Ordinance #2016-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 #2016-XX, a Council-initiated Ordinance, that amends sections within Chapter 175 "Zoning", including 175-7 "Definitions", 175-41:F "Development Standards in the Central Business District" and 175-53 "Use Standards" as indicated below. Wording to be deleted is annotated with **strikeout** type. New wording is annotated with underscoring.

175-7. Definitions.

A. As used in this chapter, the following terms shall have the meanings indicated:

MIXED USE WITH RESIDENTIAL (OFFICE/RETAIL DOWN, MULTIUNIT RESIDENTIAL UP) – A building in which the first floor is used for office or retail or similar non-residential uses and the upper floor(s) is used, in whole or in part, for multiunit residential use.

MIXED USE WITH ELDERLY HOUSING (OFFICE/RETAIL DOWN, MULTIUNIT ELDERLY HOUSING UP) – A building in which the first floor is used for office or retail or similar non-residential uses and the upper floor(s) is used, in whole or in part, for multiunit Elderly Housing.

MIXED USE WITH PARKING (PARKING AND OFFICE/RETAIL) – A building in which the first floor or ground floor is used for parking and the upper floor(s) is used for office or retail or similar non-residential uses.

MIXED USE WITH PARKING (PARKING AND OFFICE) – A building in which the first floor or ground floor is used for parking and the upper floor(s) is used for office or similar non-residential uses.

175-41. Central Business District (CB)

A. Purpose of the Central Business District

The purpose of the Central Business District is to maintain the mixed-used, pedestrian-oriented character of the downtown area while accommodating new development, redevelopment, and enlargement of existing buildings in a manner that maintains and enhances the small town character of the downtown. Downtown Durham should be an attractive and vibrant community and commercial center where desirable residential, retail, office, and other nonresidential growth can occur in a clean, safe, pedestrian-friendly environment. The Central Business District is intended to accommodate a range of uses in a manner that encourages fuller utilization of the limited area of Downtown through denser building construction and modified parking requirements. Mixed use development in which the upper floors are used for residential purposes is encouraged.

B. Permitted Uses in the Central Business District

Any use shown as a Permitted Use in the Central Business District in the Table of Land Uses in Section 175-53 shall be permitted in this district.

C. Conditional Uses in the Central Business District

Any use shown as a Conditional Use in the Central Business District in the Table of Land Uses in Section 175-53 shall be permitted in this district only if a Conditional Use Permit is granted by the Planning Board in accordance with Article VII.

D. Prohibited Uses in the Central Business District

Any use that is not listed as a Permitted Use or a Conditional Use in the Central Business District in the Table of Land Uses in Section 175-53 is prohibited in this district.

E. Dimensional Standards in the Central Business District

All buildings and structures shall be erected, structurally altered, enlarged, or moved and all land in the Central Business District shall be used in accordance with the dimensional standards for the Central Business District as shown in the Table of Dimensional Requirements in Section 175-54.

F. Development Standards in the Central Business District

In addition to the dimensional standards, development in the Central Business District shall conform to the following additional requirements:

1. Parking – No new parking shall be located on the portion of the lot between the front wall of the principal building and the front property line. This restriction

shall apply to the full width of the lot. For corner lots, this restriction shall apply to all frontages abutting a public street.

2. **Building Setback** – Along the westerly side of Madbury Road from Main Street to Pettee Brook Lane, the front wall of the principal building shall be located no closer than fifteen (15) feet to, and no farther than twenty (20) feet from, the front property line. Along the westerly side of Madbury Road from Pettee Brook Lane to Garrison Avenue, the front wall of the principal building shall be located no closer than twenty (20) feet to, and no farther than thirty (30) feet from, the front property line. For corner lots, this requirement shall apply to all frontages abutting a public street. Up to fifty percent (50%) of the front façade may be recessed beyond the maximum setback distance if the space between the front wall and the front property line is used as pedestrian area in accordance with paragraph 4. below. The expansion or modification of an existing building shall be exempt from this requirement if the Planning Board finds that conformance with this requirement would not be consistent with the character of the existing building.
3. **Pedestrian Area** – The area directly in front of the front wall of the building and extending to the front property line shall be maintained as a pedestrian area and shall be improved with appropriate amenities to link the building with the sidewalk and to encourage pedestrian and/or customer use of this space. For corner lots, this provision shall apply only to the frontage on the street with a greater amount of pedestrian traffic.
4. **Front Entrance** – The front wall of the principal building shall contain a “front” door providing access to the building for tenants, customers, or other users of the building. If the front wall of the building is located behind the front property line, a paved sidewalk or other appropriate pedestrian way shall be provided from the sidewalk to the front door. This provision shall not be interpreted to prevent the creation of other entrances to the building. For corner lots, this provision shall apply only to the frontage on the street with a greater amount of pedestrian traffic.
5. **Storage and Service Areas** – All storage and service areas and facilities including dumpsters shall be located to the side or rear of the principal building and shall not be visible from a public street. Dumpsters and storage areas shall be screened or landscaped in accordance with the provisions of Article XXII and Chapter 118, Article 3, Section 10 of the Solid Waste Ordinance.
6. **Minimum Building Height** – All new principal buildings or additions to existing principal buildings that increase the building footprint by more than twenty percent (20%), shall have a minimum of two usable stories or a height equivalent of two stories above adjacent grade at the front wall of the building.
7. **Maximum Height of Mixed-Use Buildings** – The height of a new or redeveloped mixed use building that provides both residential and nonresidential space shall be a maximum of three (3) stories notwithstanding other height limitations. The first floor shall be nonresidential. However, if the building contains nonresidential uses on the first floor and one additional story of nonresidential, the maximum permitted height shall be four (4) stories. If the proposal is for a four (4) story building, the first floor shall be nonresidential and the remaining

three floors shall consist of two residential or Elderly Housing and one nonresidential. However, see Sections 8 and 9 below for limitations to this provision.

8. Maximum Height of Mixed-Use Buildings, Section of Main Street - No building in the Central Business District on any lot with frontage along either side of Main Street, from and including Tax Map 2, Lot 14-4 to the easterly boundary of the district, shall exceed three (3) stories. This provision specifically includes the following properties: Tax Map 2, Lot 14-4; Tax Map 4, Lot 7-0; Tax Map 4, Lot 6-0; Tax Map 4, Lot 5-0; Tax Map 4, Lot 4-0; Tax Map 4, Lot 3-0; Tax Map 4, Lot 2-0; Tax Map 4, Lot 1-0; Tax Map 5, Lot 1-0; Tax Map 5, Lot 1-2; Tax Map 5, Lot 1-3; Tax Map 5, Lot 1-17; Tax Map 5, Lot 1-4; Tax Map 5, Lot 1-5; Tax Map 5, Lot 1-6; Tax Map 5, Lot 1-7; and Tax Map 5, Lot 1-8.
9. Maximum Height of Mixed-Use Buildings, Madbury Road – No building in the Central Business District on any lot with frontage along Madbury Road shall exceed three (3) stories. This provision specifically includes the following properties: Tax Map 2, Lot 12-0; Tax Map 2, Lot 12-2; Tax Map 2, Lot 12-3; Tax Map 2, Lot 12-4; Tax Map 2, 12-5; Tax Map 4, Lot 1-0; Tax Map 4, Lot 11-0; Tax Map 4, Lot 12-0; Tax Map 4, Lot 13-0UNH; and Tax Map 4, Lot 14-0.
10. Treatment of the Front Façade – The front wall of the principal building shall be designed to include windows appropriate to the proposed use. On the first floor, not less than twenty (20) percent of the surface area of the front wall shall be windows. On upper floors, not less than ten (10) percent of the surface area shall be windows.
11. Conditional use for nonresidential use. The requirement for nonresidential use, specified in subsection “7. Maximum Height of Mixed-Use Buildings,” above, may be adjusted by conditional use where the Planning Board determines that:
 - a) devoting the entire floor(s) to nonresidential uses is not practical;
 - b) there is a reasonable alternative arrangement that will serve the intent of this requirement;
 - and c) the amount of square footage of the nonresidential use under this alternative arrangement is at least as much as would otherwise be required.

G. Performance Standards Applicable to the Central Business District

Uses within the Central Business District shall conform to all applicable standards of this Ordinance, including but not limited to:

1. Article XX. Performance Standards
2. Article XXI. Off-Street Parking and Loading
3. Article XXII. Landscaping
4. Article XXIII. Signs and Utility Structures

H. Coordination with Overlay District Provisions

1. Areas within the Central Business District may be located within the Personal Wireless Service Facilities Overlay (PWSFO) District. The installation of all Personal Wireless Service Facilities within the PWSFO District shall comply with the

- standards and requirements of that district in addition to the provisions of the Central Business District.
2. Areas within the Central Business District may be located within the Historic Overlay District (HO). All uses of land within the HO District shall comply with the standards and requirements of that district in addition to the provisions of the Central Business District.
 3. When a land use is subject to requirements of one or more overlay districts, the requirements of the underlying zoning district and all of the overlay district(s) shall apply and any conflict between such regulations shall be resolved by applying the most restrictive regulation.

175-53. Use Standards

A. **Table of Uses.** Table 175-53, Table of Land Uses shows the uses that are allowed in the various zoning districts.

TABLE OF LAND USES

The following Table of Uses identifies allowed uses of land, buildings, or structures in all zoning districts. There is a definition in 175-7 for each of the uses listed in the table. Permitted Uses are indicated by a “P” in the appropriate column. Uses permitted only with the issuance of a Conditional Use permit are indicated by a “CU”. Uses not permitted in that district are marked with an “X”. Uses indicated with a CUA are Conditional Uses that are allowed only as an adaptive reuse of an existing building. Any use that is not listed as a Permitted Use or a Conditional Use is prohibited in the district. The following uses are specifically prohibited in all zoning districts:

1. All Terrain Vehicle/Off Highway Recreational Vehicle Facility
2. Airport, private
3. Airport, commercial
4. Heliport
5. Drive-through facilities other than as an accessory to a financial institution as set forth in the table below
6. Junkyard
7. Cemetery
8. Warehouse, mini-storage

All projects involving the construction or enlargement of a building or structure that will be used for a nonresidential use or a multi-unit residence or that will create two (2) or more dwelling units (not including accessory apartments and accessory dwelling units) or that involve the erection of a personal wireless service facility are subject to review and approval by the Planning Board in accordance with the provisions of the Site Plan Review Regulations of the Town of Durham, New Hampshire. A nonresidential use includes any use listed below as a Rural Use, an Institutional Use, a Recreational Use, a Utility and Transportation Use, or a Commercial and Industry Use.

In addition, a change in the occupancy of an existing building is also subject to Site Plan Review by the Planning Board if the change in use is:

1. from one category of nonresidential use to another category of nonresidential use;
2. from a residential use to a nonresidential use;
3. from a nonresidential use to a multiunit residential use; or
4. from a single-family residential use to a multiunit residential or a nonresidential use.

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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)	Multituit Dwelling Office Research (MUDOR)	Office Research Light Industry (ORLI)	Durham Business Park (DBP)
A. Principal Uses													
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	CUA	X	X
Inn	P	X	X	P	CUA	CUA	CUA	CUA	CUA	CUA	CUA	X	X
Conference center	X	X	X	X	CU	P	CU	P	P	CU	X	X	CU
Hotel	X	X	X	X	P	P	CU	P	CU	CU	CU	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	X	P	X	X	X	X	X
Convenience store with gasoline sales	X	X	X	X	X	X	X	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
Retail store limited	X	X	X	X	P	X	P	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)	Multituit Dwelling Office Research (MUDOR)	Office Research Light Industry (ORLI)	Durham Business Park (DBP)
Financial institution	X	X	X	X	P	P	CUA	P	X	X	X	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
Motor vehicle sales and service	X	X	X	X	X	X	X	P	X	X	X	X	X
Automobile/car washing	X	X	X	X	X	X	X	P	X	X	X	X	X

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

1. Occupancy of Residences. No more than three (3) unrelated occupants shall occupy a dwelling unit located in a residence in an R, RA, RB, RC, PO, CH, C or CC District.
2. Junkyards. Junkyards are prohibited in all districts.
3. Untreated wastes. Untreated sewage or household wastes shall not be discharged into any flowing stream or body of water. Owners and users of land not served by town water and sewer shall be required to furnish plans for a satisfactory on-site sewage disposal system with percolation tests that indicate satisfactory drainage before a building permit will be issued, provided that such system satisfies all local and state ordinances, statutes and regulations.
4. Inoperative motor vehicles. The outdoor storage of unregistered or inoperative motor vehicles shall be prohibited in all zones except as follows:
 - a. Not more than one (1) such vehicle may be stored on any lot during any calendar year, for a period not to exceed ninety (90) days except for lots used for permitted motor vehicle related businesses.
 - b. The provisions of state law shall determine the storage period for abandoned, improperly registered or wrecked vehicles by any garage or other persons properly storing the same according to law. (See RSA 236.)
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.
6. Airports and Heliports. Private and commercial airports and heliports shall be prohibited in all Zoning Districts within the Town of Durham, unless otherwise expressly permitted in a Zoning District
7. Number of bedrooms. The maximum number of bedrooms in any dwelling unit in any “Residence, multi-unit”, ~~or~~ “Mixed Use with residential (office/retail down, multi-unit residential up)” or “Mixed Use with Elderly Housing (office/retail down, multi-unit Elderly Housing up)” shall be four.
8. Basement units. No new basement dwelling unit shall be permitted in any “Residence, multi-unit”, ~~or~~ “mixed Use with residential (office/retail down, multi-unit residential up)” or “mixed Use with Elderly Housing (office/retail down, multi-unit Elderly Housing up)” building.

PASSED AND ADOPTED by the Town Council of the Town of Durham, New Hampshire this day of by ____ affirmative votes, ____ negative votes, and ____ abstentions.

Katherine Marple, Chair
Durham Town Council

ATTEST:

Lorrie Pitt, Town Clerk-Tax Collector

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