

December 28, 2021

Re: Restaurants at Mill Plaza

Dear Members of the Durham Planning Board,

On December 8, I believe the PB was misinformed about what happens when a new restaurant wants to open in the CBD. When the public, myself included, expressed concern about a restaurant serving alcohol moving into the space marked "restaurant" at the future Mill Plaza and maintaining late night hours, the PB was told that they didn't have to worry about that now as a new restaurant would have to come before the PB for site plan review.

After observing PB process for over 20 years and watching restaurants come and go downtown, this didn't ring true based on my observation. I emailed our Town Planner to ask a generic question about the process of a restaurant moving into a space in the CBD.

Here are my questions to Michael Behrendt:

"If a new restaurant was coming to town, under what circumstances, if any, would the owners be required to come before the PB for site plan review? Would this be the same whether they were moving into an existing built out kitchen vs. building out their own kitchen? Has the PB ever limited hours of operation for a restaurant?"

Here is the response from Michael Behrendt on Dec. 13, 2021:

"For an existing commercial building or site (especially a multi-tenant building or site) there is no site review for a new business if the use is established historically in the building or site. Many downtown buildings and Mill Plaza, for example, have a long history with retail uses, office uses, and restaurants, so there is no site plan review for the ordinary turn over in those types of buildings. There is fairly broad discretion in what constitutes a new use. If a proposed new use is related to historical uses and all of the activity will occur inside and there is no reasonable expectation of negative impacts then we will not review the new use. When Mei Wei wanted to have a karaoke bar, essentially a nightclub, that was a different use and one that could have external impacts so we would have reviewed that. The owner withdrew his request first though. The board could set hours only if there is site plan review so without it they would not set hours. I am not aware of the board ever setting hours for a restaurant but they certainly could if there were a good reason to do so as part of an application. I hope that helps."

Thus, I caution the PB about assuming a restaurant at the Mill Plaza will have to come before the PB for site plan approval. **Your opportunity to set hours of operation is NOW.** Given the fact that the proposed restaurant space is very close to the Faculty Neighborhood, that it will likely serve alcohol, given these decisions are market driven, it will be designed to attract many of the 258 students living in Buildings B & C and their friends from the Faculty Neighborhood and beyond, and the potential for loud, boisterous departures from a restaurant after drinking has been well documented, I urge you to impose, as part of your Conditions, strict hours of operation. Please do not overlook the fact that families with school-age children live along Faculty Road. Please do not forget that when Libby's was first proposed, it was billed as a family restaurant. Current reviews on Trip Adviser include:

“Overall, good service and ok food but consider it’s a college town pub.”

“Very much for students. Very popular with students to meet, greet and eat. This is a place for the students to drink and plenty of that! Food is the usual hamburgers, wings etc, nothing unusual or special on the menu.”

“I’ve been here often for lunches, but recently went to Libby’s on UNH reunion weekend for the after party. We got to hear a great band, enjoyed some reasonably priced drinks and had a fun night out. We will definitely be back!”

There have been many concerns expressed by townspeople regarding the negative impact this project will have not only on the abutting neighborhood but also on the downtown as a whole—reasons that could lead one to reject this proposal based on the 8 CU Criteria which should be strictly adhered to. Should the PB approve this project, they should at least use CU tools to ensure there will be no negative impacts—including hours of operation of a restaurant.

Sincerely,

Beth Olshansky
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