

**— REBUTTALS REQUIRED: “EXISTING CONDITION”; “NOT JUST FOR STUDENTS”
“IT WILL DRAW STUDENTS OUT OF THE NEIGHBORHOODS”; “THE JURY SHALL DISREGARD...” —**

February 9, 2022

Planning Board
8 Newmarket Road
Durham, NH 03824

Re: Mill Plaza Redevelopment. 7 Mill Road. Continued review of application for site plan and conditional use for mixed-use redevelopment project, drive-through facility for bank, and activity within the wetland and shoreland overlay districts. Colonial Durham Associates, property owner...CBD, Map 5, Lot 1-1.

Dear Members of the Board,

“Existing condition,” Chair Paul Rasmussen said at the Planning Board on December 8, 2021.

Former Town Council Chair Jay Gooze had just spoken during the public hearing. He had provided details of Durham’s years of history with groups of inebriated young people as they disturbed nearby families, some living under professional property management. He noted his concern for the future of the Faculty Neighborhood if the Mill Plaza development does not provide mitigation for this type of behavior. (See [Jay Gooze 2-8-22](#).)

The above comment by the Chair and other Board comments, made immediately after Jay Gooze spoke, did not make it into the minutes.

By State statute, requirements for official minutes are minimal. Our minutes takers provide much more than that, but they must also use their judgment about the level of detail and discretion whether to include what could reflect badly on the speaker.

That is why reading minutes is not equivalent to watching the recording of a meeting. Members miss a lot that may be key to voting, and members approving minutes are willing to accept gaps if they have already heard what was said—even if it was weeks or months ago.

They also miss statements that may be misleading or may otherwise require rebuttal, such as in examples provided below.

Draw students out of the neighborhood?

Chair Rasmussen’s final comment to Jay Gooze on December 8, transcribed verbatim:

So, I’m not sure I’m catching your point, because the examples you provide are situations where you have people who are living in, say, your neighborhood, who are going someplace where there’s a big party going on late at night. And, from what I’ve seen so far, that’s not what this application’s providing. What they’re providing are more residences, which would cause places like Young Drive to empty out, and, actually, by being there is going to reduce the traffic coming from Faculty Neighborhood, in.

That strikes me as wishful thinking. **We have no data** on whether the previously-build student housing projects has drawn students from neighborhood rentals, let alone how many if they did, and from where—**and thus nothing on which to base such a prediction.**

Jay Gooze’s experiences and concerns have been echoed throughout the years by many other residents, including these below ([June 18, 2008 Planning Board minutes](#)):

REGULAR MEMBERS PRESENT: Chair Bill McGowan; Secretary Susan Fuller; Richard Ozenich; Steve Roberts; Richard Kelley; Councilor Julian Smith

ALTERNATES PRESENT: Kevin Gardner; Wayne Lewis

MEMBERS ABSENT: Vice Chair Lorne Parnell

Bill Hall, 1 Smith Park Lane, said he was concerned that this public hearing covered three proposed Zoning changes in one hearing. He also noted that he had lived in what was now the Church Hill District for 60 years, and he described the damage done to this area by students over the years.

He said the students and residents there had nothing in common, and shouldn’t be living near each other....

Existing condition, therefore disregard?

As noted above, Chair Rasmussen commented: “Existing condition” after Jay Gooze urged the Planning Board on December 8 to consider how to mitigate the proximity—and accessibility—of the development to the Faculty Neighborhood.

The dramatic change of use for the Mill Plaza means that its impacts will NOT be just “existing condition.” In particular, the Faculty Neighborhood will most likely experience **an incremental impact of behavior such as that noted by Jay Gooze, because hundreds of young people will be brought immediately adjacent to the family neighborhood if they live at the Plaza via the proposed change of use from purely commercial to “mixed-use with residential.”**

It is likely that most, if not all, tenants will be students, as Paul Rasmussen acknowledged to Beth Olshansky during the December 8 public hearing.

[Approved minutes](#): Chair Rasmussen explained that the word “student” was removed as Mr. Kelley had raised the point that the documents were not consistent; they will rent to anyone but **the bulk of people living there will be students.**

Residents did not paper the Planning Board in opposition to the Orion or Madbury Commons “multi-use with residential” projects as they have done for this application. Why? The huge difference is that **those are not located next to family neighborhoods. This one is.**

Students, or college student-age young people, may not be the typical residential demographic for multi-use residences in non-college towns in New Hampshire and elsewhere. That “use” therefore must be considered in light of the differences in location.

Alcohol use is typically higher in this age group, particularly for college students

One can reasonably assume that many Mill Plaza residential tenants will drink—and they will not stay in their rooms. The rate of alcohol use among college students is higher than their non-student peers, as documented below. In addition, in this demographic, “the binge-drinking rate has hovered around 40 percent for two decades and seems to be getting worse.” [“Alcohol’s Influence on Campus.” *The Chronicle of Higher Education*, October 2016.]

Furthermore, [“Alcohol Use in the United States.” National Institute on Alcohol Abuse and Alcoholism, June 2021](#) notes:

Alcohol and Young Adults Ages 18 to 22—Prevalence of Alcohol Use

- Prevalence of Drinking: According to the 2019 NSDUH [National Survey on Drug Use and Health], 47.1 percent of adults ages 18 to 22 drank alcohol in the past month. Within this age group, 52.5 percent of full-time college students ages 18 to 22 and 44.0 percent of other persons of the same age drank alcohol in the past month.
- Prevalence of Binge Drinking: According to the 2019 NSDUH, 29.6 percent of adults ages 18 to 22 reported binge drinking in the past month. Within this age group, 33.0 percent of full-time college students ages 18 to 22 and 27.7 percent of other persons of the same age reported binge drinking in the past month.
- Prevalence of Heavy Alcohol Use: According to the 2019 NSDUH, 7.0 percent of adults ages 18 to 22 reported heavy alcohol use in the past month. 8.2 percent of full-time college students ages 18 to 22 and 6.4 percent of other persons of the same age reported heavy alcohol use in the past month.

Students will be the “bulk” of the tenants (OK, college-age young people)

The current site plan proposes that 62% of the 258 total beds would be in 4-bedroom units. Rick Taintor noted several alternative bedroom configurations that would preserve the total number of beds (thus, not interfering with the Settlement Agreement’s terms regarding residential density). See [Email from Rick Taintor 9-12-21](#).

Town Attorney Laura Spector-Morgan, writing to Rick Taintor, in [Letter from Town Attorney Regarding Unit Size 10-6-21](#), states:

Non-students, particularly young professionals, might very much appreciate occupying an apartment in which each bedroom has its own connected bathroom. Moreover, while a four bedroom unit might be particularly attractive to students, there is nothing per se about such a setup which would necessarily discourage other types of tenants from renting such a dwelling unit.

To many of us, that sounds like a stretch.

I do not recall discussions with the applicant on this topic. Certainly the Planning Board cannot require a reconfiguration, just as it may not attempt to regulate the type of tenant, but I raise this issue because in Durham’s long experience—including today, 4-bedroom units are rented primarily, if not only, to college-age young people. And as Beth Olshansky said at the first public hearing during Design Review, October 22, 2014, if I remember correctly, “Families don’t want to live overlooking a parking lot.”

In addition, Planning Board minutes stretching back to November 18, 2009, include references to the higher rental cost of apartments designed for student tenants:

MEMBERS PRESENT: Chair Lorne Parnell; Vice Chair Susan Fuller; Secretary Stephen Roberts; Richard Kelley; Bill McGowan; Councilor Julian Smith

ALTERNATES PRESENT: Wayne Lewis; Kevin Gardner

MEMBERS ABSENT: Richard Ozenich; Councilor Neil Niman

IV. Acceptance Consideration and Public Hearing on an Application to Amend a Previously Approved Site Plan and Conditional Use Permit submitted by Park Court Properties Inc., Durham, New Hampshire for the

construction of a mixed-use, multi-unit building which would create 42 units. The properties involved are shown on Tax Map 13, Lots 5-0 and 7-0, are located at 262 Mast Road and 260 Mast Road respectively and are in the Multi-Unit Dwelling/Office Research Zoning District.

[Bill Doucet of Doucet Survey] said the apartments were marketed to students, noting that the applicant was in the business of student housing. He also said most non-students would find it cost prohibitive to live there.

On December 8, Attorney Pollack stated that the proposed property management plan is “intended to be an organic document that is evaluated based on the real-time experiences of the property.” Is what you have in hand adequate? Do you believe that the applicant proposed “controlling measures” that are **specific** to this site, this location, relative to a family neighborhood, and this proposed use?

The jury shall disregard... or, revised property management plan removes “student”

From time to time, a certain disingenuousness can be heard in the Council Chambers. Verbatim transcript from December 8, 2021 meeting ([DCAT recording](#)):

Ari Pollack: ...On the flip side, we do have the revised property management plan. Again, this was revised at the request of the Board to remove, and, frankly they were not intended in the first place, remove references to students as tenants as opposed to non-student tenants or any tenants, frankly. We’ve tried to be as transparent as possible that we are not going to limit the population to a student population. Is it going to self-regulate? Sure. I’m not gonna sit here and tell you that senior citizens wish to live amongst college undergraduates. However, is there anything in the document that should prohibit that arrangement, or should prohibit a graduate student, or should prohibit somebody who’s working at the university post-graduation, or somebody who works in the community and wishes to have housing in proximity to their employment? Nothing here would be intended to limit that.

Nicely put. But semantics aside, there is a difference between *limiting* and *designing with intent to attract* only (or even primarily)... Not discrimination. Just economics.

Regards,
Robin

Minutes versus the complete record: Two examples

You can read Jay's letter that captures nearly exactly what he said on December 8 plus his subsequent exchange with Paul Rasmussen in [Jay Gooze 2-8-22](#). Similarly, I provide below both the minutes and a transcript of my own statements on December 8.

ONE: Jay Gooze’s December 8, 2021 comments. (approved [minutes](#)):

MEMBERS PRESENT: Paul Rasmussen (Chair), Lorne Parnell (Vice Chair-remote), James Bubar, William McGowan, Heather Grant, Sally Tobias (Council Rep), Chuck Hotchkiss (Alternate Council Rep), Ellie Lonske (Alternate), Nicholas Germain (Alternate-arrived at 7:02 pm)

MEMBERS ABSENT: Richard Kelley and Barbara Dill

ALSO PRESENT: Michael Behrendt, Town Planner

Jay Gooze of 9 Meadow Road asked that when considering CU criteria about the effect on adjacent properties, the Board take into account the history of student behavior, their effect on residents, and how to mitigate those problems. He asked that the Board take into consideration that there will be a group of people on the path from Chesley Drive to the Plaza and asked if anything can be done about it.

TWO: Minutes and verbatim statement by Robin Mower, during the December 8, 2021 public hearing on the Mill Plaza application

[Approved minutes:](#)

Robin Mower asked if residents were not to use their experience of what they have seen when young people wander around at night after bars have closed; she said the proximity of young people to alcohol and faculty neighborhoods is a recipe for disturbance. She hoped the Planning Board would scrutinize the Property Management Plan and try to find a way to mitigate connection to the single-family neighborhoods.

Verbatim statement [[DCAT recording](#)]

I wasn't going to speak to this, but given an opening by Jay Gooze and Josh Meyrowitz, I feel that I need to say something.

First, I'd like to ask: Are we truly not to use our experience—over the 15 years I've lived here—of, what we see when young people wander around after the bars have closed?

In my first year on Town Council in the fall of 2009, I was awakened Thursday, Friday, Saturday nights—I could tell you what time it was. The proximity of young people to alcohol and to single-family neighborhoods is a recipe for disturbance.

I don't think that you can get around that with the type of property management that's being proposed. You're going to have to look very, very closely at what is being proposed for the on-site personnel so that they feel authorized to restrain types of behavior that will be destructive. If these are going to be young people who are employed, they're going to feel a little uncertain about calling it on other young people to calm down, for example.

From what I've read from former police Chief Kurz's reports about responses to rental properties in the downtown area, there's concern about the maintenance of property management. There can be turnover. There can be difficulty in hiring people. So, you've got to somehow address that. It's in the interest of the property owner, that there be good property management. But until they figure that out, it can be the people who live nearby who pay the cost. So I hope you will scrutinize the property management plan.

And I echo what Jay Gooze said: Try to figure out some way to mitigate the impacts of the physical connections to the single-family neighborhood. You can't close your eyes to the fact that there are many, many student rentals in the downtown neighborhoods.

Most of you do not live anywhere near where you are going to hear or experience those impacts, whether it is litter in your gardens or being awakened at night.

You have to face the experiences of the people who have been living through this for the last however many decades. And just because quiet because of Covid, or perhaps even earlier, does not mean you're not going to get a group of people coming in in the academic year who are disruptive.

I will probably put something else in writing, but I can stop now. Thank you.