

September 12, 2018

Planning Board
8 Newmarket Road
Durham, NH 03824

RE: *Public Hearing – Downtown Zoning Amendments*

Greetings,

1. Section 175-112 Central Business District Special Conditions

First, I wholeheartedly support the proposed amendment to allow Planning Board review of an applicant's parking demand and the capacity of municipal parking before granting a parking waiver. It should have been enacted years ago. Focusing on applications in isolation can result in piecemeal, myopic planning decisions. Our parking capacity has changed, making this amendment particularly timely.

2. (a) Section 175-54 Table of Dimensions—minimum lot area per dwelling unit (b) Section 175-56 General Dimensional Standards—minimum habitable floor area per occupant

As for the proposed Central Business District amendments regarding density, I am concerned that the Town Council has initiated new zoning amendments that do not reflect community input from last year's Master Plan forum, nor a study of rental housing capacity on which many zoning decisions have relied, nor the winds of change regarding potential UNH enrollment decline, nor a realistic sense of downtown Durham's commercial and social potential.

In fact, I think there's quite a bit of wishful thinking in the air.

The Council has referred these proposals to the Planning Board for fine tuning. As written—and as understood by at least a few Councilors—the amendments do need close scrutiny.

Councilor Welsh noted at the August 20th Council meeting that the current proposals are predicated on subsidizing a small incremental amount of commercial use with student housing, and that any incremental commercial use might well be oriented toward student interests—which has been our primary experience with recent development. He also argued against allowing 300 square feet per occupant, since it targets student housing.

Councilor Marple underscored the sad physical condition of many of the older downtown commercial buildings, with which we can probably all agree.

I urge you to watch the relevant section of that Council meeting as you consider these proposals.

When the application for Madbury Commons was making its way through the planning process, even I argued at the Economic Development Committee in favor of making the tradeoff of allowing student housing for obtaining more downtown commercial square footage in the hope that we would see businesses of greater interest to a broader demographic than just students.

So while I understand that student housing appears to be Durham's sole development driver to date—and that developments have allowed us to fund such infrastructure improvements as a new

library, town hall, and renovation to the police station, as well as improving the aesthetics of our downtown—at some point one must beware of either putting one’s head in the sand or making a Faustian bargain.

The brunt of the impact of “too many students” would be borne by residents in the downtown neighborhoods. Groups of students still wander the streets to and from neighborhood rentals in wee hours of the night or get lost and even enter family homes in drunken disorientation. The cost to the community as a whole could be greater, e.g., even less willingness to engage with downtown and perhaps even participate in civic engagements.

I do not believe that land use regulations are the answer to our lack of downtown vibrancy. That said, we can try once again to shape our regulations to serve these three goals:

- Stimulate redevelopment of older buildings,
- Minimize impacts of potentially poor behavior by the “first-generation” tenants, and
- Build to attract “second-generation” tenants.

One key change to the proposal would be to limit the number of bedrooms per unit to a maximum of two, as Beth Olshansky has proposed, to appeal to those who have nonstudent lifestyles, e.g., to Millennials and empty-nesters.

I am skeptical about providing the option of 300 square feet per occupant, although I understand that it may provide greater flexibility and incentive to the developer. I look forward to a rigorous Planning Board discussion on this point. It will also be critical that the Planning Board closely evaluate such applications under the Conditional Use criteria.

The timing for the amendments proposed tonight, as strongly implied at the Town Council presentation, would help developers of projects in the wing for 74 Main Street and 60 Main Street. That is no reason to rush through your consideration of the proposed amendments.

As we have learned, pulling on a thread of one section of the zoning ordinance comes with the risk of unraveling another section altogether. At the Technical Review Group meeting on July 17, 2018, during discussions about the proposed redevelopment of 74 Main Street, Audrey Cline cautioned that “there can be unintended consequences to zoning amendments, as they affect other properties...”

The 2008 zoning density amendments that opened the floodgates to student housing downtown dropped into a vacuum: The site plan regulations in place were minimal. We had no architectural design standards. We also had no idea how suddenly the changes would attract out-of-town investors and overwhelm our Town staff and volunteer boards. But we did have wishful thinking, as reasonably expressed by then-Council Chair Neil Niman, quite similar to that expressed by proponents of today’s proposed zoning amendments. But that was then, before any redevelopment occurred, when the implications and levers, financial and social, were quite different.

So I urge the Board to take the time to thoroughly consider the potential consequences of the amendments, regardless of any development pressure. In addition, I urge the Board to consider these proposals in the context of what other land use regulations are in place, or might be proposed, to help ensure the success of reaching the goal.

Additional Conditions of Approval may be attached to specific applications that benefit from these changes, but there may be a way to address specific elements to enhance the prospects of attracting a given tenant demographic. It’s worth exploring whether one could incorporate into our regulations construction details such as soundproofing (including thickness of walls, quality of

windows), counter space, storage, etc., i.e., **elements that conducive to *grown-up* life** among the bars of Main Street.

Also, many questions should be considered, including:

- What would be the impact of these changes on Colonial Durham Associates' plans for the Mill Plaza and the Town's legal position?
- What would be the impact on the apartments in our outskirts? If the occupancy rate falls, will those far-flung apartment really be attractive enough to a prospective landlord to convert them to lower-rent affordable or workforce housing, and to maintain the property—and what will the consequent impact be on our tax base if they are not?
- Why should we encourage more students downtown unless we have strong reason to believe we could better manage their behavior offsite as well as onsite? (Professional on-site management is just that: on-site.) For example, is the Town willing to address the hours of operation for bars and businesses that cater to student late-night/early-morning fun-lovers?
- What is the projected property tax impact per household to a full build-out of this vision—including the cost of community services?
- How would you weigh the nonfinancial impacts of these changes?
- On what evidence are the hopes for a more vibrant downtown deriving from these amendments based?
- Has anyone conducted a survey of tenants in existing apartments in neighboring downtowns to assess desirable features and reasons for choosing to live where they do?
- Administrator Selig notes that ideally we want as many students living downtown as possible from a sustainability perspective. Sounds good, and I'm all for measures to combat climate change. But are we willing to consider the sustainability of family life near downtown? Are we willing to put money and effort into accommodating a larger number of pedestrians?
- The proposal relies on an assumption that there is a lack of incentive to redevelop these commercial properties. The 2008 zoning amendments created significant incentives, which some business owners grabbed. It was not until 2014 that the perceived impediments to redevelopment were enacted. So why should we believe that these amendments will prompt the property owners who didn't jump on the earlier incentives to take action now?
- What might be the events or forces that would trigger a conversion from student occupancy to non-student occupancy? Or a conversion of student behavior, if students continue to be the major tenant demographic?
- When do we rein in our spending to offset the illusion that the only way out of the financial dilemma is more student housing?

3. Suggested additional related zoning amendment:

Please review the amendments for inconsistencies. For example:

(a) Define "apartment"

The word is used in 175-55. *General Use Standards* as a "dwelling type," but it is not defined. Distinguish it from multi-unit residence, or make the terms consistent.

[current definition: (b) RESIDENCE, MULTI-UNIT – A building and accessories thereto principally used, designed or adapted with three (3) or more dwelling units. A multi-unit residence includes "townhouse" style attached dwelling units even if the units are separated by a fire wall.]

In closing, noting some Councilors' willingness to "take a risk" with these amendments, I pass along the advice of a successful stockbroker, father of a college friend: "Only risk that which you can afford to lose."

Regards,

[Robin Mower]