

**From:** James Bubar [<mailto:james@bubar.org>]  
**Sent:** Thursday, September 12, 2019 11:21 AM  
**To:** Michael Behrendt  
**Subject:** Bed and Breakfast ordinance

Michael,

My experience living in Indiana and Wisconsin, which both have a significantly broader ethnic, cultural, and economic makeup than Durham, all had implemented zoning requirements that developers must include lower income housing as part of any housing development. These housing types were not segregated within the development but dispersed throughout and were generally small duplexes, 4-ways and in some cases 8-ways, townhouses or condominiums. The desire was to create an integrated neighborhood.

If we proceed with workforce housing or other lower cost types of housing, entrepreneurs will quickly figure out the economics favor a short-time rental scenario. This situation has caused uproars in Barcelona, Paris, Lisbon, Laconia and other tourist popular cities thereby forcing those serving the tourist market (aka low paid employees) to move out of town as affordable rentals dry up.

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Do you believe that capital should follow the return or are you basically a socialist?

Attached are my comments on the proposed Bed and Breakfast Ordinance. Please share with the Planning Board.

James A Bubar

**Proposed Amendments**  
**Durham Zoning Ordinance**  
**Bed and Breakfast Establishments**  
Initiated by Town Council – July 15, 2019

*Proposed additions to the present ordinance are shown like this.*

~~*Proposed deletions from the present ordinance are shown like this.*~~

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**ARTICLE II - DEFINITIONS**

**175-7. Definitions.**

➤ *Make the following changes.*

BED AND BREAKFAST – *An accessory use to an* ~~An~~ owner-occupied single-family residence containing, in addition to living accommodations for the owner and the owner’s family, not more than ~~three~~ *four (4)* individual sleeping rooms, ~~without cooking facilities,~~ for the purpose of providing to the general public, for compensation, *lodging and bathroom facilities, with or without breakfast, for at least (3 to 7) days and no more than thirty (28 to 35, a multiple of 7) consecutive days.* ~~lodging, bathroom facilities and breakfasts to overnight patrons only and for no longer than two (2) consecutive weeks.~~ *A bed and breakfast is not considered a home occupation.*

A minimum stay would discourage the one-and-done party rental (like for the home game on reunion weekend) and capping at some multiple of 7 days would make it easier for the owner. Minimum stay requirements are common on HomeAway, VRBO & AirB&B. You would still see one-and-done rentals but at least they would be paying for 3 days or more.

I would also consider an annual cap on number of rental days, for example, no more that 183 days a year may be rented.

Not sure if you intentionally omitted the house swap situations, although the Ordinance is labeled Bed and Breakfast, it appears that this is more of a short-term stay Ordinance.

I would add here, or somewhere more appropriate, that the Homeowner is solely responsible for all summons issued for noise, trash, neighboring property damage, private parking violations, etc. Perhaps this could be crafted into 175-109 Item 5 which requires the property owner to be on premises while the property is rented.

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**ARTICLE VIII – VARIANCES AND SPECIAL EXCEPTIONS**

**175-26. Special Exceptions.**

➤ *Make the following changes.*

A. **Criteria for the Granting of Special Exceptions.** The Zoning Board of Adjustment is authorized to grant a special exception in accordance with RSA 674:33 IV, as amended. The board shall grant a special exception if and only if it finds that all of the following general criteria, along with additional specific criteria for particular uses and activities given elsewhere, are met. ~~For the purposes of this chapter, the~~ The following are ~~established as~~ conditions ~~upon the granting~~ of all "special exceptions," ~~subject to such further conditions as may be defined elsewhere herein as to the uses concerned.~~

1. That the use will not be detrimental to the character or enjoyment of the neighborhood by reason of undue variation from the kind and nature of other uses in the vicinity or by reason of obvious and adverse violation of the character or appearance of the neighborhood.
2. That the use will not be injurious or noxious and thus detrimental to the neighborhood by reason of any of the causes stated in Part B. Zoning Districts (See Table of Contents) of this chapter.
3. That the use will not be contrary to the public health, safety or welfare by reason of undue traffic congestion or hazards, undue risk to life or property, unsanitary or unhealthful emissions or waste disposal, excessive noise, or ~~similar~~ comparable adverse causes, impacts, or conditions.

According to Chief Kurz, the police do not carry sound level meters and the Noise Ordinance does not define noise with a specific dB level threshold. Therefore, a noise complaint is based on the person reporting the complaint which is obviously very controversial and would be quite interesting to see this work out in court.

I would add to the listing on Item 3 above, has enough private parking available, will prohibit unruly guest and not allow partying.

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## ARTICLE XII.1 – USE AND DIMENSIONAL STANDARDS

### 175-53. Table of Uses.

- *Change name in the table from “Bed & Breakfast” to “Bed and Breakfast.” Relocate this use from Section VII in the table to Section III. Residential Uses under “Uses Accessory to a Single Family Residential Use.” Change the allowance for a Bed and Breakfast under each zone as follows:*

Residential Zones:

Rural	<del>P</del> <u>SE</u>
Residence A (RA)	<del>P</del> <u>SE</u>
Residence B (RB)	<del>P</del> <u>SE</u>
Residence C (RC)	<del>P</del> <u>SE</u>

Retail/Commercial Zones:

Central Business (CB)	<del>CUA</del> <u>P</u>
Professional Office (PO)	<del>CUA</del> <u>P</u>
Church Hill (CH)	<del>CUA</del> <u>P</u>
Courthouse (C)	<del>CUA</del> <u>P</u>
Coe's Corner (CC)	<del>CUA</del> <u>P</u>

Research/Industrial Zones:

Office Research - Route 108 (OR)	<del>CUA</del> <u>SE</u>
Mixed Use and Office Research (MUDOR)	<del>CUA</del> <u>SE</u>
Office Research Light Industry (ORLI)	<del>X</del> <u>SE</u>

At a minimum, I would make Church Hill and Coe's Corner (I am an abutter) SE, but I would prefer that all districts be SE to ensure that the operations are inspected by the fire department and are safe to reside in. The required compliance with our Rental Housing Program would imply it will be inspected by the Fire Department, the Ordinance as written, requires upfront and ongoing interdepartmental notification and coordination. The more moving parts the greater the chance of dropping the ball, as with our recent example of a conditional use requirement being ignored/forgotten/whatever for over 10 years.

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**ARTICLE XX – STANDARDS FOR SPECIFIC USES**

**175-109. Compliance Required.** It is my preference that this section be removed, and the non-duplicative items crafted into the Rental Housing Program which, Item 6 below, demands compliance with. However, I have made comments below if it remains as is.

The Rental Housing Program 72-4 Item B requires modification to remove Bed and Breakfast, that would be the best opportunity to revise the whole Program and bring it in line with how it is currently being administered. Apparently not all, if any, fees are being administered as the Program dictates. Ordinances and Programs that are being altered administratively tend to make a mockery of the overall process.

➤ *Add new subsection H. below and reletter existing subsections below H, accordingly.*

**H. Bed and Breakfast. The following terms and conditions apply to a Bed and Breakfast.**

- 1. A bed and breakfast may not be established until a permit to operate a bed and breakfast has been issued by the Zoning Administrator. The property owner shall submit an application to operate a bed and breakfast to the Zoning Administrator who will review the proposal for compliance with all Building, Fire, and Life Safety Codes. Site plan review is not required for a bed and breakfast.**
- 2. Special Exceptions. In those districts (refer to Article XII.1 Use and Dimensional Standards) where a bed and breakfast is allowed by special exception, the property owner shall obtain a special exception prior to issuance of a permit to operate a bed and breakfast. The following specific requirements apply to special exceptions for bed and breakfasts:**

- a. ZBA Hearing. For notification purposes, abutting properties shall include those lots within 300 feet of the subject property.

300 feet is an interesting number, is it from each point in the lot's boundary or from the center of the lot? The lot boundaries could all be over 300 feet from the center of a ~7-acre lot.

I would prefer that we use the NH State definition of abutter as defined in RSA 672.3:

672:3 Abutter. – "Abutter" means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association, as defined in RSA 356-B:3, XXIII. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a manufactured housing park form of ownership as defined in RSA 205-A:1, II, the term "abutter" includes the manufactured housing park owner and the tenants who own manufactured housing which adjoins or is directly across the street or stream from the land under consideration by the local land use board.

Source. 1983, 447:1. 1986, 33:2. 2002, 216:1, eff. July 15, 2002.

Emphasis added.

- b. Expiration. Any approved special exception shall expire if the property is not used pursuant to the special exception for 24 consecutive months.

3. Expiration. If the property is not used as a bed and breakfast for 24 consecutive months the permit to operate the bed and breakfast shall expire (along with the special exception, above).

Item 3 and Item 2 b. appear to be the same, eliminate one of them. If the intent was to distinguish between:

- a) time between the SE being issued and the B&B's 1<sup>st</sup> renter
- b) time since the last B&B rental and

That all seems unnecessary as it could simply be 24 consecutive months of no rentals since the SE was issued.

Given our inability (at the Town level) to follow up on various conditions imposed as Conditional Use and I assume ZBA Variance conditions, as well, which Town Administrative Title will be responsible for this. Regulations with no administrative diligence are a waste of paper.

4. The site where the bed and breakfast is located must be the property owner's primary residence.

Is this necessary given Item 5, below? Effectively all of Durham's homeowners who are Florida residents for tax purposes, if any exist, would be excluded even when they can be on premises.

This seems burdensome and unnecessary.

5. The property owner must be on the premises while the property is rented.
6. The property owner shall register the bed and breakfast with the Durham Rental Housing Program and maintain compliance with the program's requirements.

I would embed this with Item 1 so all application issues are in one place. Or use a 1 a and 1b style item.

7. The property owner shall provide to the Zoning Administrator a copy of their current New Hampshire Meals and Rooms Tax License and proof of payment of the New Hampshire Meals and Rooms Tax on an annual basis.

If we aren't required to do the State's job, then we should not claim that we are or will do it. Same issue with this as with Item 3 above, what Town Administrative Title will manage the follow up?

What purpose does this serve? Do we get a kickback from the State?

8. ~~Vehicular parking and access shall be provided on the site as reasonably determined by the Zoning Administrator.~~ Incompliance with the Parking Ordinance (reference Article).
9. No recreational vehicle, travel trailer, tent, or other temporary shelter may be used on the premises, for lodging, in conjunction with the bed and breakfast.

This would accommodate tents for wedding receptions, food trucks or other trailers on the property and the owner who must be present would be required to temporarily relocate their travel trailer whenever the rooms are rented. This regulation, as written, seems excessive.

10. Signage is restricted to the following:
  - a. One non-illuminated sign not exceeding two square feet. If ground mounted the sign must be set back at least 10 feet from all lot lines and be no taller than three feet. If mounted on the house no part of the sign may be higher than the top of the first floor windows.
  - b. Non-advertising auxiliary signs (such as “No Parking Here” and “Entrance to the Right”) that are non-illuminated and do not exceed one square foot for each sign.
11. Any lighting on site shall be fully shielded to prevent glare onto the road and any neighboring properties.

Overall, I think this would be more usable if it were reorganized in order with the steps that an applicant must follow:

1. Special Exception Required
  - a. Move Item 2 above here.
2. Registrations Required
  - a. Move Item 1 above here
  - b. Move Item 6 above here
3. Other Requirements and Conditions
  - a. Move Item 3 above here
  - b. Move Item 4 above here
  - c. Move Item 5 above here
  - d. Move Item 9 above here
  - e. Move Item 11 above here
4. Compliance
  - a. Move Item 7 above here
  - b. Move Item 8 above here
  - c. Move Item 10 above here