

— THE “GOOD NEIGHBOR” STANDARD —

September 6, 2021

Planning Board  
8 Newmarket Road  
Durham, NH 03824

*Food Truck at Mill Plaza. Site Plan Review of proposal for a food truck parked at the Mill Plaza property. The truck would be placed in front of The Works. The proposed hours of operation are Thursday, Friday, and Saturday nights from 7:30 p.m. to 1:00 or 2:00 a.m. Ryan Ash, Applicant. Colonial Durham Associates, Owner. Map 5, Lot 1-1. Central Business Zoning District.*

Dear Members of the Board,

First, I applaud the entrepreneurial spirit of the applicants. I also recognize that Durham can be a pretty boring town for young people, and that they do tend to keep considerably different hours from families and so might reasonably wish to eat or party at 1:00 AM while the rest of us snore.

This would be a great idea for another location. Not at the Plaza.

I am grateful to Deputy Chief of Police David Holmstock for outlining the concerns of the police department in his letter dated August 31, 2021, in which he identifies reasons why this is a poor choice of location for a food truck operating late at night on weekends.

The experience of the police must be viewed as a primary argument to deny this application, but I would augment that argument with observations from the abutting neighborhood, many of which you have already heard. Frankly, I was therefore surprised to hear at the August 25th meeting that Michael Behrendt and some members of the Board hesitated whether to bring this application to site plan review.

**Abutting and neighborhood concerns about noise**

Until mid-2018, I lived at 11 Faculty Road. Having been an abutter to the Mill Plaza for 12 years, I can attest to the disturbance to the right of abutters to enjoy their property that this business would create.

The Board has heard numerous comments from abutters concerned about existing problems with late night/overnight noise from people milling around Mill Plaza,

During hearings for the proposed Mei Wei expansion to include karaoke entertainment, 30 Faculty Neighborhood residents signed a letter to the Board expressing concern. It is my understanding that it was out of deference to the neighbors that Mei Wei withdrew the application.

During Mill Plaza’s Design Review hearings, Faculty Road, Chesley Drive, and Brookside Commons neighbors all weighed in about existing—and likely ensuing—noise concerns.

Abutters and nearby neighbors already have to put up with the clang of skateboarders, blaring radios of pizza delivery cars, motorcycles and other loud vehicle noises from the Plaza during the day through the middle of the night. How much more fuel should Durham add to what some residents perceive as the fire?

Please consider these points:

- On weekends, while bars close at 1:00 AM, Domino's Pizza remains open until 3:00 AM. Where do you think patrons and their friends then congregate?
- Is there any vegetated or manmade noise buffer between the hard surfaces of the buildings and open pavement at the Plaza? No.
- Do you think people living in the 55+ condos at Brookside Commons would be delighted by this proposal, whether or not they are willing to speak out?
- Do you think it's possible to leave your bedroom windows open on warm evenings during the UNH school year if you live near the Plaza? Not if you don't wish to hear conversations or yelling on the Plaza site.
- Do you think that every patron of the proposed food truck will be a quiet pedestrian? Not when over 1200 students live far out on the west edge of town and when UNH is a magnet that draws visitors from out of town, including for late night weekend partying. Expect patrons to arrive and depart by vehicle—not necessarily quietly.
- Location and hours of operation: Fry'd operates what's known as a ghost kitchen from 9pm to 1am (or 10pm to 2am, depending on information source) out of the Wildcat Pizza site at 3 Madbury Road, opposite Cowell Drive. That is a more acceptable location for such an operation for obvious reasons, although residents in the adjacent Cowell Drive neighborhood might disagree. Fry'd's website states, "Fry'd LLC seeks to fuel it's customer's late-night activities by providing a dietary inclusive and convenient menu close to home in the later hours of the night." According to Audrey Cline, Fry'd is "an extension of Wildcat Pizza."

### Private property rights

The proposed location and hours of operation for the food truck at Mill Plaza could be seen to infringe upon residential private property rights:

"Property, in the constitutional sense, is not the physical thing itself, but a group of rights which the owner of the thing has with respect to it. *Burrows*, 121 N.H. at 597. The term refers to a person's right to possess, use, enjoy and dispose of a thing and is not limited to the thing itself. *Id.*"

[*Donald G. Hughes & a. v. New Hampshire Division of aeronautics & a.* (2005)]

In closing, I urge the applicants to consider another location for their food truck—for example, the Pettee Brook parking lot, where in 2011 Jack Stone's food cart did operate during similar hours, or near 2 Brook Way, where a food truck was proposed in 2016.

Regards,

*Robin*