

From: Joshua Meyrowitz <prof.joshua.meyrowitz@gmail.com>

Sent: Monday, August 7, 2023 8:15 PM

To: Joshua Meyrowitz <Prof.Joshua.Meyrowitz@gmail.com>

Subject: Select Neighbors: Scorpions Bar & Grill pursues permission to maintain its outdoor patio

Dear Neighbors within the “Soundscape” of Mill Plaza,

Although I have no personal concern about the pending application by Scorpions Bar & Grill to maintain its outdoor eating and drinking area, I am writing as a courtesy to those of you who may live within general earshot of the lively spot that abuts the path from Mill Plaza up toward the Post Office. Our Town Planner, Michael Behrendt, has followed the technical rules by limiting formal notifications to direct abutters. But sound travels in unpredictable pathways and without regard to lot boundaries.

The outdoor area in question has been operating for about three years with recorded music, eating, drinking, and lively chatter. I have not found that to be problematic.

As detailed further below, my video documentation of the downtown soundscape (as presented in PowerPoints to the Planning Board and Town Council), indicated that the Scorpions noise was (rather surprisingly!) barely audible in the Plaza at night (where one could hear the crickets through the overall silence!). I see (and hear) Scorpions as part of an expected exuberant college-town Main Street to Madbury Commons corridor.

In contrast, a prime focus of my scores of interventions at the Planning Board was to emphasize that the downtown noise until 1:30 or 2:00 am on weekends would *not* be acceptable (and would violate conditional-use zoning for housing in the Plaza) if hundreds of “student beds” moved *into* the housing-free Plaza adjacent to senior condos and family housing.

Tue 7pm & Thurs 10am reviews: The application for a variance will be heard at the ZBA tomorrow night, August 8, as the third application of three on the agenda. The ZBA agenda should be posted by Tuesday morning at: https://www.ci.durham.nh.us/meetings?field_microsite_tid_1=901. The meeting is in-person, but with Zoom options (see P.S.).

Then there will be a “minor site review” on-location at 10am on August 10 (which is open to the public). As noted in the Aug 4 [Friday Updates](#): The committee will meet in the rear

grass area behind the white building located to the left of Scorpions at 39-41 Main St. The proposal is to have tables set up outside to serve food and drink from Scorpions Bar and Grill and Village Pizza.

You can see the variance application for the ZBA here: [Main Street, # 39-41 - Variance Application](https://www.ci.durham.nh.us/boc_zoning/variance-application-main-street-39-41) [current link: https://www.ci.durham.nh.us/boc_zoning/variance-application-main-street-39-41]. Write to Town Planner Michael Behrendt with any questions or comments at mbehrendt@ci.durham.nh.us.

Why permission is needed to continue the existing use: The owners of Scorpions, Graham Camire and Frank Silva, were informed by the NH Liquor Commission that they needed zoning approval from the Town to serve liquor in the outdoor seating area. When Graham and Frank contacted Planner Behrendt and Zoning Officer Audrey Cline, they ran into the glitch that the outdoor area used by the restaurant they own is actually part of the student housing building next door. They own that building also, but under a different LLC.

As Planner Behrendt summarizes: Town staff determined that use of the outdoor area as seating for Scorpions is not allowed under zoning because it is an “accessory use” to a restaurant/bar and **accessory uses have to be located on the same lot as the principal use**. Graham and Frank could combine the two lots to meet the zoning requirement, but the lots are owned as different LLCs, complicating that action, and the two lots likely have more value as separate lots.

The ZBA can grant a variance if at least the following criteria are met:

- (A) The variance will not be contrary to the public interest;*
- (B) The spirit of the ordinance is observed;*
- (C) Substantial justice is done;*
- (D) The values of surrounding properties are not diminished; and*
- (E) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.*

See more details here in the application form [here](#).

I can't speak to the overall variance criteria, but my public presentations indicate why I am NOT concerned about Scorpions adding significant noise to the Mill Plaza soundscape. Check out the meeting video: **“Officially Unknown’ Durham: What is now – and what**

soon could be,” [11-15-21](#), Durham Town Council, 7:29:14-7:34:10 pm + Q&A (PPT title slide seen in room, but not over cable TV).

Or check out: [Refined version of Council presentation submitted to Planning Board: “Downtown Durham Soundscape: Mill Plaza vs. Main Street & Beyond. Are the noise differences really only Subtle and Subjective?”](#) [Joshua Meyrowitz 12-30-21](#) (PPT, 20 slides, with hot links to sources and short YouTube videos)

Take note in particular these two videos shot just three minutes apart:

Mill Plaza Sat Sept 11 2021 11:40pm (00:28)

<https://www.youtube.com/watch?v=ydW8rJzKDXk>

Up Plaza Path toward Main St, Sat Sept 11 2021, 11:43 pm (00:29)

<https://youtu.be/x3rPyOzmwEs>

As Town Council Chair Kitty Marple noted after seeing my presentation on Nov 15, 2021, 7:34 pm: “It’s interesting how the music from that outdoor venue right up the hill, you can’t hear it in the Plaza. I’m fascinated by that.”

My PowerPoint continues with videos of other noisy downtown locations, interspersed with videos in the whisper-quiet Plaza until after midnight. This presentation was cited by the member of the Planning Board who cast the key denial vote, saying that she did not realize how quiet the Plaza was at night and that she could not vote to damage that peacefulness for the seniors and families who live next to the Plaza.

As I described in my June 2023 "Dear Faculty Neighborhood Neighbor" update, we need to remain vigilant about potential upcoming Mill Plaza redevelopment plans by the new owners (Torrington Properties) that might bring late-night noise *into* the Plaza. My own view is that accepting the Scorpions noise *beyond* the Plaza gives us a stronger foundation for protecting the peace inside the Plaza in the long run.

Best, Joshua Meyrowitz
7 Chesley Drive
Durham, NH 03824

P.S. Town Meetings: *In-room meetings continue, with public seating now up to at least 24 chairs and OPTIONAL masking. For video or phone input to upcoming Town meetings,*

use [Zoom links](#). (Also on DCAT Ch22, & [Livestream & On-Demand](#).) I recommend that everyone subscribe to the Town's [Friday Updates](#) ("official," but informative) and to Town Planner Michael Behrendt's email list, by request to him at: mbehrendt@ci.durham.nh.us. Public Works newsletters (recycling schedule, etc.) are [here](#). Parks & Recs [info](#). **If you'd like to help me with these occasional Neighbor Updates, let me know!** Please identify me as a "safe sender" in your email program (so that my updates do not go to spam!) And please share my updates with any Durham residents who might not yet be on my email list.

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Sample "Community Action," pp. 23-31 [HERE](#) or [HERE](#)

Sample "Instructional Materials" [HERE](#)

Sample Meyrowitz Music [HERE](#)

Venmo: @Joshua-Meyrowitz

NOTE: I rarely check "Messenger," Facebook, WhatsApp, Telegram