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Town Of Durham
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MEMORANDUM

TO: Zoning Board of Adjustment

FROM: Michael Behrendt, Director of Planning and Community Development

DATE: March 9, 2015

SUBJ: **Appeal regarding Dormitory**

- 1) Colonial Durham Associates is appealing my administrative decision that a dormitory is not an allowed use in the Central Business Zoning District, which is the zoning designation for the proposed Mill Plaza development.
- 2) The applicant seeks to change the proposed residential use for the Mill Plaza project from multi-unit dwelling (or “multifamily” or “apartment”) to dormitory. The reason for their proposal is that there is a more generous minimum habitable floor area for dormitories than for apartments in the table under Household in the Definitions section of the Zoning Ordinance.
- 3) However, “Dormitory” is not permitted anywhere in the Table of Uses in the Durham Zoning Ordinance and is thus not a permitted use anywhere in the Town of Durham (except on land that is exempt from the Town’s ordinances, i.e. on the campus of the University of New Hampshire).
- 4) ***** Section 175-53 A. of the Zoning Ordinance states explicitly that “Any use that is not listed as Permitted or a Conditional use in the district is prohibited in the district.”**
- 5) “Dormitory” is included in the Definitions section of the ordinance for reference only. It is defined as:

DORMITORY – A building occupied by a resident manager and used, designed and adapted to provide housing for more than ten (10) occupants. Such units are distinguished by separate study and sleeping quarters for each individual or pair of individuals; common social assembly rooms; common toilet facilities; and common cooking and dining facilities, where provided.

- 6) I made this determination in consultation with, and in coordination with, Tom Johnson, Durham Zoning Administrator, in response to a request from Colonial Durham Associates to modify their plan to include dormitories.

Based on these facts, the determination I have issued concerning “dormitory dwelling” is correct. It is appropriate for the Zoning Board of Adjustment to uphold this determination.

- D. PUBLIC HEARING** on a petition submitted by Ari B. Pollack, Gallagher, Callahan & Gartrell, Concord, New Hampshire, on behalf of Colonial Durham Associates, New York, New York, for an **APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION** from a January 8, 2015, administrative decision by Michael Behrendt, Director of Planning & Community Development denying the use of a dormitory dwelling in the Central Business District. The property involved is shown on Tax Map 5, Lot 1-1, Mill Road Plaza; and is in the Central Business Zoning District.