



MICHAEL BEHRENDT
Director of Planning and
Community Development

Phone: (603) 868-8064
mbehrendt@ci.durham.nh.us
www.ci.durham.nh.us

Town Of Durham
8 Newmarket Road
Durham, NH 03824-2898

MEMORANDUM

TO: Zoning Board of Adjustment

FROM: Michael Behrendt, Director of Planning and Community Development

DATE: April 6, 2015

SUBJ: **Dormitory and Mill Plaza – request for rehearing**

The Zoning Board of Adjustment, on March 10, 2015, upheld my determination that a “dormitory” is not an allowed use in the Central Business Zoning District and thus was not an available use for the proposed Mill Plaza redevelopment. In response to Colonial Durham Associates, LP’s request (dated March 31, 2015) for a rehearing on this ZBA decision, please note the following:

- 1) The applicant seeks to change the proposed residential use for the Mill Plaza project from multi-unit dwelling 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.
- 2) 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).
- 3) ***** 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.”**
- 4) The fact that there is a use (“dormitory”) defined in the Definitions section of the Zoning Ordinance by no means implies, let alone requires, that the use is an allowed use somewhere in the Town. Uses that are not allowed in a community may nonetheless be included in a definitions section for various reasons, below, all of which are legitimate:
 - a. It may be included simply for a frame of reference or for the education of the public in some manner (such as to better illuminate the exact meaning of other similar-type uses which are allowed),
 - b. It might have been an allowed use at one point in the past but is no longer allowed
 - c. It might be contemplated as a possible appropriate use in the future

- d. In this case, dormitories are a common use at the University of New Hampshire, and when the Planning Board conducts a nonbinding site plan review of a UNH project under RSA 674:54, it is helpful to understand the applicable terms.
- 5) Here are a few examples of *other uses* that are included in Durham's Definitions section but are not listed anywhere in the Table of Uses (and are thus not allowed anywhere in the town at this time, unless as an accessory use or through a variance, etc.): airport, commercial; airport, private; animal feedlot; boardinghouse; junkyard; rooming house; trucking and distribution facility.
- 6) The only multi-dwelling type use that is allowed in the Central Business District is "Mixed Use with residential (office/retail down, multiunit residential up)," which is the applicable use for this proposed project. The table under "Household" in the Definitions section does not include "multiunit residential," but clearly this use refers to "apartment" in the table and not to "dormitory." In the common parlance of planning and development, "multi-unit residential," "multi-unit," "multi-dwelling," "multifamily," and "apartment" are used fairly interchangeably. "Dormitory" is never considered synonymous with those terms as it has a very specific, and different, definition, exactly as stated in Durham's Definitions section.
- 7) This is elucidated as follows:
- a. This specific allowed use - "Mixed Use with residential (office/retail down, multiunit residential up)" - is defined in the Definitions section as: "A *building in which the first floor is used for office or retail or similar non-residential uses and the upper floor(s) is used, in whole or in part, for multiunit residential use.*"
- b. "Residence, multi-unit" (or "multiunit residential") is then defined as: "A *building and accessories thereto principally used, designed or adapted with three (3) or more dwelling units...*"
- c. A "dwelling unit" is defined as: "One (1) or more rooms arranged, designed or used for residential purposes for one (1) household and containing independent sanitary and cooking facilities. The presence of cooking and sanitary facilities conclusively establishes the intent to use for residential purposes."
- d. The definition for "Apartment" then says: "See "dwelling unit."
- e. In contrast, "Dormitory" is defined as: "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.*"
- f. Therefore, the allowed use requires a full, independent living unit, whereas dormitory involves shared facilities, so the separate rooms in a dormitory are NOT dwelling units.
- 8) 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.
- 9) Based on these facts, I believe that the determination that I issued concerning "dormitory" is correct. Therefore, it was appropriate that the Zoning Board of Adjustment upheld this determination.