

August 4, 2017

RE: Mill Plaza Request for Variance from ZO 175-41(F)

Dear Members of the ZBA,

I regret I will not be in attendance at the August 8 Public Hearing for the Mill Plaza, thus I submit my comments in writing regarding Colonial Durham's request for a variance that would permit 3 buildings in the Mill Plaza to be 4 stories tall, yet with only one floor in each being dedicated to retail uses. Below, I also refute some claims made by the Applicant.

- 1) **No decrease in value of surrounding properties would be suffered.** I refute the Applicant's statement that four-story buildings create an appropriate "bridge" between our residential neighborhoods and our downtown. This defies logic since the plan envisions an abrupt change of intensity of use and scale of buildings from a family neighborhood and 2 story Brookside Commons to the south to the proposed 4-story buildings (the tallest buildings allowed in the CBD, and allowed only under specific circumstances). Claims that 3 stories of residential apartments (i.e. student housing) above one story of retail is an "appropriate balance of mixed use" may be true from the perspective of the developer, who is eager to pack in as many apartments as possible, but from the Town's perspective, we have a long history of trying to maintain our small town character or at least an appropriate sense of human scale to our core downtown by maintaining height regulations. Note *175-41 A states: The purpose of the Central Business District is to maintain the mixed-used, pedestrian-oriented character of the downtown area while accommodating new development, redevelopment, and enlargement of existing buildings in a manner that **maintains and enhances the small town character of the downtown.*** To that end, local property owners along Main Street recently voiced their strong and unanimous opinion that, despite the lure of higher profits, they will choose to honor the 3-story height limit along Main Street rather than seek a variance.

We all recognize that the reason an out-of-town developer wants to build 4 stories is to maximize profits. However, for the immediate neighbors,

packing in additional beds beyond what can be built within the limits of our Zoning Ordinance, means more noise at all hours of the night, more public nuisance, and adjacent properties that are less attractive for resale. One need only listen to the many complaints of residents living in our downtown neighborhoods to understand the adding additional beds across 3 buildings by adding a 4<sup>th</sup> floor means more college students packed into a small area. More students mean more noise at all hours of the night, more litter, and more troublesome behaviors. As we have seen with some of our other neighborhoods, this holds the potential to decrease the value of surrounding properties. It may also contribute to Faculty Road and Chelsey Drive transitioning into student rentals should fewer and fewer families wish to submit themselves to the challenges of living near large numbers of students.

- 2) **Granting the variance will not be in conflict with public interest.** As noted above, packing in additional floors of students is contrary to the public interest as it increases noise and the public nuisance. Additionally, a fairly recent inventory of student rentals has shown that Durham has come very close to maxing out in its demand for student housing. Thus packing in more students downtown than our Zoning Ordinance permits makes little sense. It also threatens the viability of the student housing complexes west of campus. This is also against the public interest. While the developer may well state that these apartments are not earmarked for students, we in Durham know that they will become student rentals. Students have often voiced their opinion that they prefer to live close to campus so these apartments will have more appeal than those out of town. We also know that families and seniors would not choose to live in the Mill Plaza parking lot. Even young professionals, who have to get up and go to work in the morning, will not likely choose to live in a building ridden with student behaviors that could keep them up late at night. As our police chief often remarks, "Student and family lifestyles are fundamentally incompatible."
- 3) **No fair and substantial relationship exists between the general purpose of the ordinance provision and the specific application of that provision to that specific property.** In their wisdom, our town fathers have created regulations that help to maintain the orderly and attractive redevelopment of our downtown. Beyond specific height limitations designed to prevent

overdevelopment of a site (i.e. 30 ft in the CB, with 50 ft permitted *only* with PB approval), note that **ZO 175-41 F.7 permits adding a fourth story *only to encourage an additional floor of commercial space*** (i.e. retail/office) within our limited downtown footprint.

***While more commercial space would be of benefit to the Town, adding more residential space at this point in Durham's history will not.*** We already suffer from too many students living downtown. Despite the Applicant's insistence that the residential students are not limited to students, history has demonstrated that in fact students, not families, nor seniors, will choose to live in the Mill Plaza parking lot. The request to increase the amount of residential space is clearly designed to increase the developer's profits and can not reasonably be seen as beneficial to the community or in keeping with the general purpose of the ordinance provision.

- 4) **By granting this variance substantial justice will be done.** Claims of the Applicant that the variance respects the terms of the 2015 Settlement Agreement ignore some of the finer details of the Agreement. First of all, ***the Settlement Agreement allows for up to 330 beds, but does not require 330 beds; The Settlement Agreement requires 80,000-90,000 square feet of existing and new commercial space. Note that the variance request asks for the maximum number of beds permitted while the proposed plan provides the Town with the minimum amount of commercial space. How is that "substantial justice"?***

Also note that the statement that taller buildings will allow for more parking is moot because the Settlement Agreement states clear requirements on parking, which must be met.

- 5) **The use will not be contrary to the spirit and intent of the ordinance.** First of all, our ordinance limits height in order to maintain an appropriate sense of human scale for a small NH downtown. One stated purpose of the Central Business District is to maintain and enhance *the small town character of the downtown*. What the applicant is proposing with their request for three 4-story buildings is to create a very dense urban environment crammed into a relatively small parking lot, which is

sandwiched between family homes and our Main Street that consists of one-to-three story buildings.

Second of all, our ordinance limits the number of residential floors in downtown buildings to avoid the temptation to overdevelop residential units downtown in our University community. ***The option to add a fourth floor to a three-story building was solely designed to increase commercial space in our very limited downtown footprint.*** Thus this request for 3 stories of residential space and *only one floor of commercial* flies in the face of the spirit and intent of 175-41 (F).

In closing, when will Durham stop selling out the soul of our community so out-of-state developers can maximize profits at the expense of our community? I urge members of the ZBA to nix a redevelopment plan that is not appropriate to the Town's visions and goals. As noted by the Applicant, this is a once in a lifetime opportunity. Let's get it right this time by respecting the Town's vision and our regulations. This request for relief from 175-41 (F) does not meet the 5 criteria. As such, I urge you to reject this variance request, thus protecting the Town from the negative impacts of packing too many residential units onto a relatively small parcel that sits immediately adjacent to a family neighborhood.

Respectfully submitted,

Beth Olshansky  
122 Packers Falls Road