

Town of Durham

ZBA

July 25, 2018

Application for Variance

72-74 Main Street

Property Owner: Town and Campus, Inc., Jesse Gangwer

Applicant: Clark Properties, LLC, Douglas Clark

---

RECEIVED  
Town of Durham  
JUL 27 2018  
Planning, Assessing  
and Zoning

Variances are requested from:

1. Article II, Section 175-7, Mixed Use

Applicant is requesting a variance to allow for mixed use on the 2<sup>nd</sup> floor and residential use on the 4<sup>th</sup> floor. The building will maintain a 50:50 split between commercial and residential, but the building's highest and best use is not served by segregating commercial and residential use by floor.

2. Article XII, Section 175-54. Density

Applicant is requesting a variance for the density requirement of 1,200 sq. ft./residential unit to 900 sq. ft./residential unit, to allow for affordable adult apartments while fully developing this critical gateway to the Central Business District.

3. Article XII, Section 175-54, Frontage

Applicant is requesting a variance for the frontage requirement of the 72 Main Street lot since the building was originally built on Ballard Street, which the town subsequently converted into a parking lot and park. There is currently 29' of frontage on Main Street, and there will be an easement from the Pettee Brook Lane curb cut to allow for deliveries, trash removal and parking behind the Aroma Joe's building, resulting in full access to an additional 70' of frontage along Pettee Brook Lane.

Conditions:

No decrease in the value of surrounding properties would be suffered because:

1. Mixed Use Variance: Per the vision of the B. Dennis Charrette, this property will anchor the "grown up" side of downtown Durham. By integrating an upscale restaurant with luxury apartments filled with professionals, this property will deliver the highest and best use as recommended by the Master Plan and EDC and begin the process of diversifying downtown by catering to the residents (not the students) which will add to the vitality and value of the entire town.

2. Density Variance: Durham village was once a village of adults and families. In-fact this property was once the home of Dr. McGregor. The purpose of this project is to re-colonize a village of adults in what was once known as Durham Village. To be successful, this effort will require a certain amount of scale to build momentum necessary to attract young single professionals, recently married couples, divorcees, and early retirees or empty nesters not ready for one of our many 55+ retirement communities. We are hoping it also emboldens other property owners and developers, such as 66 Main Street, to embrace adult housing so that we can create balance and diversity between the students and permanent residents.
  
3. Frontage Variance: I believe the purpose of this provision is to avoid a “landlocked” situation for a property. Assuming this situation would result in a loss of value for some abutter, this will not be the case for 72 Main Street since they still have full access to Main Street even if it is across a very narrow section of parking lot, that used to be Ballard Street, AND full access to Pettee Brook Lane per the easement that will be put in place as a condition of the sale as outlined in the P&S.

Granting the variance would not be contrary to the public interest because:

1. Mixed Use Variance: This request fully complies with the spirit and intent of the ordinance which is to ensure an equal balance between commercial and residential uses in the CB district.
  
2. Density Variance: The town residents and administration want adult housing in the downtown, they don't want more students. This project will be the first to do just that. Unfortunately, in our desire to curb student housing, we have implemented conditions that also impede the practicality of adult housing. The density requirement is particularly onerous, and in hindsight the town has realized it actually isn't serving the intended purpose. With the 1200 sq. ft/unit rule, apartments in a fully developed project would be too big to be affordable or practical. More, smaller units would allow more adults the opportunity to live in the downtown at affordable rents. BTW ... The current density requirement is currently under review and the recommendation has been to lower it to 900 sq. ft. This project is just a little ahead of that revision becoming finalized.
  
3. Frontage Variance: Although these buildings were originally built on Ballard Street, I think 9 out of 10 residents consider them to be on Main Street and don't even realize that strip of parking lot is the reason 72 Main Street doesn't have 50' of frontage on Main Street. Not only is this not contrary to the public interest, it could be argued that not granting this variance would be contrary to the public interest.

Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

1. Frontage Variance: Given that these buildings were originally built on Ballard Street, and it was the town who bartered with the land owner on a couple of occasions to first control access to Ballard Street, and then convert Ballard Street into a parking lot and park, it seems this is a problem that was entirely created by the town at the expense of the property owner. Worse, the only access to these town owned and metered parking spaces are via an extremely dangerous right of way that bisects the property and is privately owned. This is a hardship created by the town. Given that:
  - a. One could easily argue that the practicality of accessing Main Street is not impaired by the existence of the parking lot.
  - b. The property owner(s) are working hard to overcome this by giving full access of the land locked parcel, 72 Main Street, to Pettee Brook Lane.

Owing to special conditions of the property that distinguishes it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

1. Mixed Use Variance: The footprint that fits into the 74 Main Street lot, requires the use of some second floor space to establish the scale necessary to operate a viable and sustainable upscale restaurant with amenities such as an event space, classroom for the UNH Hospitality program, and grab and go take out storefront. The space required on the second floor is for the restaurant operation would not take up the entire second floor space, and it would be impractical to put it on the recessed fourth floor because of the logistics of moving food and supplies from the downstairs kitchen and storage areas to the fourth floor. It makes the most sense to connect the first overflow needs of the first floor restaurant with a second floor event space overlooking the restaurant lobby and connected with a dumbwaiter, leaving the remaining second floor space for apartments, which would be fully separated with walls and hallways.
2. Density Variance: Without this variance, the redevelopment of 74 Main Street will be limited to 3 floors and 7 residential apartments for adults, limiting the necessary scale to legitimately begin colonizing a village of adults in the downtown and falling short of the vision for this project as outlined in the B. Dennis Charrette.

By granting this variance substantial justice would be done because:

1. Mixed Use Variance: Durham will finally begin implementing the B. Dennis vision for developing a downtown that fills the needs of residents.
2. Density Variance: The spirit and intent of the ordinance is being fulfilled, it is just the detail of segregating spaces by floors that we are asking for a variance for. Without this variance, the restaurant will not be able to fill several of the gaps the town desires to fill especially with the closing of the New England Center and will result in the residents of Durham continuing to be underserved.
3. Frontage Variance: The B. Dennis Charrette suggests this property be subdivided into several small buildings. Granting this variance is at least a good start towards fulfilling this vision and

avoiding the prospects of one lot with one huge building, which is contrary to the recommendations we have been given by experts.

The use will not be contrary to the spirit and intent of the ordinance because:

1. Mixed Use Variance: This is the spirit and intent of the ordinance.
2. Density Variance: The current ordinance was targeting student housing and didn't fully think through the impact it would have on adult housing, which is exactly what we wanted to encourage.
3. Frontage Variance: The ordinance is intended to prevent a land locked situation, and whether you examine this lot by the Main Street side or the Pettee Brook Lane side, there continues to be full access for all intents and purposes on both.