

**From:** Sally Tobias <[sally.tobias@me.com](mailto:sally.tobias@me.com)>  
**Sent:** Friday, March 24, 2023 9:30 AM  
**To:** Michael Behrendt <[mbehrendt@ci.durham.nh.us](mailto:mbehrendt@ci.durham.nh.us)>  
**Subject:** Re: Student Housing and family definitions

I think we could also focus on the development purpose and its business plan to find more distinctions. This would be a place where Mimi could provide some input. The most significant difference in these developments is how they market and how they lease. Checking out their websites it is obvious. It might be impossible keeping students from renting any apartments but as long as the building was obviously open to everyone and the leaseholders had some restrictions associated with proof of income etc. it could be controlled naturally. It is worth spending some real time on this before we just say it will not work. Student housing is a major point of community angst and to be quite straightforward the CU process is grueling and only creates more angst. The fact that we allow mixed use with residential leads developers to believe we want it but the reality is we do not want some types of it such as student centered housing. We certainly will need to use the 2 bedroom limits and figure out how to discourage by the bed leasing but I think it can be done better than we do it now. The on the ground situation is that a few parcels on Main st and Mill Plaza will be the only ones where student development would most likely occur. We could take some approach at Mill Plaza that might require an overlay or transitional situation since that is a very sensitive site. We need to really belabor this because it is central to our community's emotional health. The OR districts should be mixed use but we could consider limiting to over 55, over 62 and WorkForce Housing. I hate to put these limits in BUT WFH and affordable over 55 housing is simply coming down to a basic need in our community at large and having some restrictions may help the community accept it. Imagine age restricted with a requirement of some WFH. There is a need of affordable age restricted situations nationwide. Not all older persons are wealthy. We definitely need to sit a talk about it and belaboring the topic is what we need to do 🤔. I suggest a brain storming session there are some thoughts I have but email is not sufficient 😬

***Thank you,***

***Sally Tobias***

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**From Heather Grant**

I like their family definition - but I still think if we do not address Students directly we will have concerned citizens on any further developments. We will also need to address the Student apartments, we had discussed using the "per Bed" rental scheme as an example. I think it is legal to do this, as long as we have a defined area where Student housing applies, I suggest the Professional district. I believe the courts have said that protecting household neighborhoods from noise, etc has been held. It might be nice that instead of trying to figure out this ourselves that legal advice on actually finding something to support us would be helpful. I do agree we need to work on other controls for approval of developments.

Here is another example from Bethlehem PA, where they created an overlay district

*SH Student Housing and Student Home Overlay Zoning District – Because the student population brings vitality and economic stability to both downtowns, this overlay district is being created to address the locations of housing units occupied by multiple college students and related noise, litter, other nuisances, overcrowding, and parking problems. The purpose of this district is fourfold:*

- To recognize that housing of college students often causes different challenges than housing for other persons.*
- To stabilize and protect neighborhoods throughout the City by providing for student housing, while maintaining the supply of housing that is affordable to families.*
- To promote the development of additional on-campus housing by colleges and universities within the Institutional Zoning District.*
- To direct concentrations of housing of college students to locations proximate to a college, and where public transit services are available, to minimize parking shortages and to reduce congestion.”*

ALSO -An example of Off-Campus Student Housing description (OCSH) Off Campus Student Housing are residences of undergraduate university students in campus-adjacent neighborhoods that do not qualify as campus housing (and so do

not fall under university administrative control). Properties can be University Owned

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On Mar 23, 2023, at 1:35 PM, Michael Behrendt <[mbehrendt@ci.durham.nh.us](mailto:mbehrendt@ci.durham.nh.us)> wrote:

To the Planning Board and Housing Task Force,  
I don't want to belabor this point as we can talk more about it during the meetings but this may clarify the issue.

Theoretically we could create a separate use for "student housing" either by defining it through physical features of the building, as I discuss below, such as not including bathrooms in the bedrooms. This would be an odd approach as developer could readily work around it and it would seem to be micromanaging interior layouts.

The other possible approach would rely upon who the future occupants may be. Here is just an example:

*Student housing* – housing/multi-unit residential that includes one or more individuals enrolled full time in an undergraduate college program.

*Multifamily residential/Non-student housing* – housing where there are no individuals enrolled full time in an undergraduate college program OR no more than one individual enrolled full time in an undergraduate college program.

Office Research (OR) is zoned to allow *multifamily residential/non-student housing* by right but it does not allow *student housing*.

A project is approved and built as *multifamily residential/non-student housing*. The Town then needs to police the occupancy of this building in perpetuity to ensure that none of the dwelling units have an undergraduate student (or no more than one undergraduate student).

Alternatively, we could simply include a provision in zoning or another Town ordinance stating that no undergraduate student, or no more than one

undergraduate student may occupy a dwelling unit except in the ### zoning district(s).

Would this be legal? Would this be good public policy? Has any other town in New Hampshire done this?

Most Town zoning districts do not allow more than 3 unrelated occupants in a dwelling unit. This would be a significant step beyond that.

**Michael Behrendt**

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**From:** Nick Taylor <[Director@seacoastwhc.org](mailto:Director@seacoastwhc.org)>

**Sent:** Wednesday, March 22, 2023 5:41 PM

**To:** Michael Behrendt <[mbehrendt@ci.durham.nh.us](mailto:mbehrendt@ci.durham.nh.us)>

**Subject:** Re: Student Housing and family definitions

Hi Michael,

For your and the community's consideration, HUD prohibits undergraduate students from the Section 8 program and from living in LIHTC developments since undergraduate students aren't a protected class of people. I've included the definitions that HUD/IRS use and citations at the end of this email. They are slightly different.

I also looked through Durham's zoning definitions. I believe there are some existing housing related definitions that already are defined by who is living in the housing and then are prohibited in certain districts – which is essentially what we are looking to do here. The best example is fraternity/sorority housing, but it also includes boarding house, caretaker apartment, nursing home, rooming house, and senior care facility. The definitions are below.

**BOARDING HOUSE** – An owner-occupied residential building principally used, designed or adapted to provide living accommodations for not more than ten (10)

occupants and having common cooking and dining facilities. See “Rooming House.”

**CARETAKER APARTMENT** – A dwelling unit that is incorporated into, and is accessory to, a nonresidential use and is occupied by an owner or an employee of the business occupying the principal use and having a gross floor area of less than two thousand (2,000) square feet.

**FRATERNITY/SORORITY HOUSE** – A building used to provide lodging facilities for the exclusive use of the bonafide members of a fraternity or sorority.

**NURSING HOME** – A facility licensed by the State of New Hampshire as a nursing home and that provides intermediate and/or skilled nursing care to individuals, who by reason of advanced age, chronic illness, or infirmity, are unable to care for themselves.

**ROOMING HOUSE** – An owner-occupied building principally used, designed or adapted to provide living accommodations for not more than ten (10) occupants and without individual or owner-provided cooking and dining facilities. See “Boarding House.”

**SENIOR CARE FACILITY** – Housing principally used, designed, or adapted for use by citizens fifty-five (55) years of age and older who are not capable of living independently and who require assistance in activities of daily living. Residents of a senior care facility receive a package of services to meet their needs. A senior care facility may be contained in a single building or group of buildings and may include assisted living, memory care, and/or nursing home facilities. A “life care community” or other retirement community that provides a continuum of care including both independent living units and units for residents that require assistance, is considered to be a senior care facility

**Section 8:** Page 160 of the HUD eligibility handbook  
<https://www.hud.gov/sites/documents/43503HSGH.PDF>

Section 8 assistance shall not be provided to any individual who:

- a. Is enrolled as either a part-time or full-time student at an institution of higher education for the purpose of obtaining a degree, certificate, or other program leading to a recognized educational credential; \*and\*
- b. Is under the age of 24; \*and\*
- c. Is not married; \*and\*
- d. Is not a veteran of the United States Military; \*and\*
- e. Does not have a dependent child; \*and\*
- f. Is not a person with disabilities, as such term is defined in 3(b)(3)(E) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(3)(E)) and was not receiving section 8 assistance as of November 30, 2005. (See Definition E in Figure 3-6); \*and\*
- g. Is not living with his or her parents who are receiving Section 8 assistance; and
- h. Is not individually eligible to receive Section 8 assistance \*or\* has parents (the parents individually or jointly) who are not income eligible to receive Section 8 assistance. (See paragraph 3-33 for verifying parents eligibility.)

**LIHTC IRS Handbook:** [https://www.irs.gov/pub/irs-utl/IRC\\_42.pdf](https://www.irs.gov/pub/irs-utl/IRC_42.pdf)

Residential rental units occupied by households composed entirely of full-time students are not considered low-income units unless at least one member of the household meets one of the exceptions under IRC §42(i) (3) (D), which provides that a unit shall not fail to be treated as a low-income unit merely because it is occupied:

by an individual who is:

1. a student receiving assistance under Title IV of the Social Security Act,
2. a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act (as added by the Housing Assistance Tax Act of 2008, and applicable to determinations made after July 30, 2008), or
3. a student enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar federal, state or local laws.

entirely by full-time students if such students are:

4. single parents and their children and such parents are not dependents (as defined in IRC §152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual and such children are not dependents (as so defined) of another individual other than a parent of such children or
5. married and file a joint return. A married couple that is entitled to file a joint tax return, but has not filed one, satisfies the exception.

*A unit is not a low-income unit if it is occupied entirely by full-time students at qualifying educational organizations for five or more months during a calendar year in which the taxable year of the taxpayer begins and who do not meet one of the exceptions identified in IRC §42(i)(3)(D). A unit is also considered nonqualifying if the taxpayer failed to verify the household's student status at the time of move in and on a continuous basis throughout the 15- year compliance period.*

Hope this helps!

Nick

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Nick Taylor

Executive Director

Workforce Housing Coalition of the Greater Seacoast

C: 781-698-8545

**From:** Michael Behrendt <[mbehrendt@ci.durham.nh.us](mailto:mbehrendt@ci.durham.nh.us)>

**Date:** Wednesday, March 22, 2023 at 4:41 PM

**To:**

**Cc:** Todd Selig <[tselig@ci.durham.nh.us](mailto:tselig@ci.durham.nh.us)>, Audrey Cline <[acline@ci.durham.nh.us](mailto:acline@ci.durham.nh.us)>, Jim Rice <[jrice@ci.durham.nh.us](mailto:jrice@ci.durham.nh.us)>

**Subject:** Student Housing and family definitions

To the Planning Board and Housing Task Force,  
There has been some discussion about adding definitions for students and student housing and modifying the definitions for family/household. Heather shared some definitions used in Hanover, NH which appeared to show that they actually zone for student housing. If there were a way to do this, it could be a

good strategy for establishing multi-unit housing for people other than undergraduate students. Unfortunately, I don't think this can work.

I spoke yesterday with Rob Houseman, the Hanover Town Planner. Here are their two definitions, below. He said this comes into play only for student housing on campus, either as dormitories, fraternities, or apartments developed by the college for students. Because Dartmouth is a private entity the Town does have zoning and site plan jurisdiction over the college. They do not use this as a strategy off campus though.

The Institution District is all on the Dartmouth campus. The latter "use" is not designated in any of the Town's zoning districts.

***student residence, Institution district** A building designed for and occupied by students and operated in conjunction with another institutional use, which may include individual living units with social rooms and kitchen facilities for any number of students. This definition applies only to those student residences located within the I district.*

***student residence, residential districts** A building designed for and occupied by students including social rooms and a limited number of kitchens, operated in conjunction with another institutional use, and located in a district in which residential use is permitted*

There would be two challenges with trying to zone for student housing. Any use in the zoning ordinance which is designated for some zones and not others must be very specifically defined. We know what a gas station and a single family house are. But how would we define "student housing" in such a clear and precise manner that the Town could say "student housing as we define it is allowed in this zone and not in that zone" and do so from just an inquiry before anything is built or occupied? We could say student housing involves housing where each bedroom has a bathroom in the bedroom and/or where the common spaces (kitchen, living room, dining room etc) are less than 30% of the square footage of the bedrooms and/or where there are four or more bedrooms. But a developer could get around such limitations pretty readily. I don't think it could be defined as a unit that has one, two, or more undergraduate college students. We would not know that until after the building was erected and



occupied. The second issue is how far we can legally go in creating restrictions for undergraduate students.

I think a more effective approach is to establish rules that help achieve what we want, such as setting a maximum number of unrelated residents and a maximum on the number of bedrooms, in certain zones, or requiring certain things be included in leases and requiring that floor plans be submitted, and including language encouraging an appeal to a broader group of people.

But we might find Hanover's definition of "family" worth looking at though it seems complicated.

Durham's definition:

HOUSEHOLD – A group of occupants of a dwelling unit restricted to the following categories:

1. FAMILY – An individual or two (2) or more persons related within the second degree of kinship by civil law or by marriage or adoption or foster care arrangement living together as a single housekeeping unit, including necessary domestic help such as nurses or servants not to exceed three (3) in number.
2. UNRELATED HOUSEHOLD – Any household not conforming to the definition of a "family," provided that no such household shall have a number of members in excess of the figure provided in Table II-1.

Hanover's definition:

<image001.jpg>

**Michael Behrendt**

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