

Re: DBP

Dear Members of the Durham Planning Board,

I support the *notion* of an Eldercare Facility at the Durham Business Park. A true Eldercare Facility. It could be a good fit for the Business Park if done correctly. That said, I have 3 main concerns with the proposal before you:

- 1) How does this proposal meet the definition of Eldercare Facility?
- 2) Is the proposed density appropriate to this location?
- 3) Does this proposal meet the DBP guidelines?

### **How does this proposal meet the definition of Eldercare Facility?**

Under the definitions section of our Zoning Ordinance, it states (bolded for emphasis):

ELDERCARE FACILITY – Housing **principally used**, designed, or adapted **for use by elderly citizens, fifty-five (55) years of age and older that are not capable of living independently and that that require assistance in activities of daily living (ADL’s)**, and complying with the design requirements of the Architectural Barrier Free Design Code for the State of New Hampshire. **Residents of an eldercare facility shall receive a package of services to meet their needs.** An “eldercare facility” may be contained in a single building or group of buildings and may include assisted living facilities 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, shall be considered to be an eldercare facility.

Note: the term “activities of daily living” (ADL) or “basic activities of daily living” (BADL) has a very specific definition in the world of Eldercare:

According to Wikipedia, ADL is a term used in the healthcare profession. It is used often in reference to the elderly or people with disabilities. ADL consist of self-care tasks such as:

- **Bathing and showering** (washing the body)
- **Dressing**
- **Self-feeding** (not including chewing or swallowing)
- **Functional mobility** (moving from one place to another while performing activities)
- **Personal hygiene and grooming** (including brushing/combing/styling hair)  
Toilet hygiene (completing the act of urinating/defecating)

In his application, Mr. Chinburg states: “Under the coordination of the site director, residents of the community will have access to services including, but not limited to: educational seminars, food deliver services, transportation, guest speakers, recreational opportunities, exercise instruction, home helpers, cleaning services, health system services, etc.” Looking at this list of services, it looks to me that Mr. Chinburg is imagining a facility of mostly able-bodied over 55’s or persons without serious medical needs. There is little in the application that would lead one to believe he is considering the magnitude of nursing/medical care required to help residents with ADLs. If this is the case, it does not

meet the definition of services required by our own definition, nor does it meet the definition of a “life care community” which is noted in the application.

According to our ZO, a life care community provides a continuum of care, from independent living to intense medical care.

Here is a definition from a medical dictionary: **life care community** - a living arrangement for older adults that provides several levels of care within one facility or complex. As the resident requires more health supervision, he or she moves from areas that are more independent to those where care is provided under the supervision of a registered nurse. Called also **continuing care community**.

A similar accepted definition by AARP for CCRC is: **Part independent living, part assisted living and part skilled nursing home, CCRCs offer a tiered approach to the aging process, accommodating residents’ changing needs.**

When Mr. Chinburg met with the TRG on January 6, he stated that he would not be hiring an eldercare facility company to manage the facility but would be managing it himself. This puts into question whether he truly intends to offer the level of services required to meet the definition of basic “ADLs” and “life care community.”

**Will this be a licensed or accredited facility?** I would hope this would be a facility Durham could be not only proud of but also feel it was a safe place to send our elders or to move into ourselves. Please see line to CARF for information on accreditation: <http://www.carf.org/home/>

At the current time, I do not believe Mr. Chinburg’s application suggests his project meets the definition of Eldercare Facility.

### **Is the proposed density appropriate to this location?**

Clearly the drafters of our Table of Dimensional Requirements never envisioned a residential/commercial use such as this coming to the Durham **Business Park**. If they had, they would have filled in minimum lot size per **dwelling unit**. Why then is Eldercare Facility permitted in this district? I believe that years ago, an Eldercare Facility was envisioned as a large building or cluster of multi-unit buildings more like a Nursing Home facility (which is also permitted as CU in the DBP).

Without further information in our ZO, we can turn to the historical information provided in the Master Plan 2000: “The Town should package the Durham Business Park to make it viable for **limited** development under the following scenario: **pursue development of up to 32,000 square feet of office/research space on a portion of the site, and for the remainder of the site, the Town should pursue a combination of selling a conservation easement** and developing recreational ball fields” (8.24). This recommendation is discussed earlier in 8.22 of the MP2000 where it is one of 4 options. The MP 2000 states that the above-stated approach to developing the site is preferred

because it “provides additional tax revenue, protects the natural features of the site, and satisfies some of the recreational needs of the Town.”

One could assume then that historically, the drafters of our ZO would not have chosen to allow a sprawling neighborhood of over 55 housing (and in fact for that reason, they did not allow over elderly housing), nor would they have permitted the extreme density of 4,200 square feet per dwelling unit, which would end up permitting 294.5 dwelling units.

Since dwelling units/residences were not and are not allowed, one needs to consider the implications of including the elderly bonus of doubling density for 2-bedroom units and tripling density for 1-bedroom units. Under the likely earlier vision of Eldercare Facilities, you would assume that most would be one-bedroom units. **With the eldercare bonus for one-bedroom units, that would allow 883 dwelling units at the DBP!** Clearly this is not consistent with development that occurs on 32,000 sq. ft or approximately ¾ of acre and leaves the remainder as open space.

**Even with a mix of half one-bedroom and half two-bedroom units, the total allowed with the elderly bonus using the 4,200 sq. ft. baseline is 736 units!**

Square feet per acre = 43,560
Total # of acres for DBP = 28.4
Total # of square feet for DBP (43,560 x 28.4) = 1,237,104 sq. ft.
Divided by proposed density of 4,200 per dwelling unit = <b>294.5 dwelling units</b>
Add in Elderly Density Bonus by multiplying x 2.5 (estimate based on double the density for 2 bedroom elderly units and triple the density for 1 bedroom units, thus not knowing the exact number proposed of each, I have assumed half of each or 2.5 density bonus or 294.5 x 2.5) = <b>736.25 units permitted.</b>
Triple the density for one-bedroom units = 294.5 x3 = <b>883.5 one-bedroom units</b>

While none of these figures (with or without the elderly bonus) are compatible with the stated recommendation (8.24 MP 2000) of developing ¾ of an acre and leaving the remaining land undeveloped, also consider the following to understand why the 4,200 sq. ft. figure for minimum lot area per dwelling unit is absurd and wrong for Durham Business Park:

1) DBP Guidelines state: These guidelines seek to **promote compatibility between the development of the Park and the rural-residential quality of the riverfront neighborhood.** The view into the site from the bridge on Route 4, the Oyster River, and Johnson’s Creek are of particular importance. The desired outcome is to have the buildings sited to **preserve the significant views.** The 4,200 figure is way too dense to be

compatible with these guidelines.

2) We should not be zoning for a particular proposal or a particular developer. If the Town in its wisdom chooses to make that NA to 4,200 sq. feet, what will be permitted is **736 elderly dwelling units** (or if solely one-bedroom units, **883.5 units**) not 116 units. It is inappropriate to make a determination based on the promise of a certain proposal or developer which may or may not come to fruition. After the determination is made and approved, Eric could realize that he actually does not want to manage an eldercare facility and sell the property to a big national corporation who cares nothing about Durham. Then, with the 4,200 sq. ft determination, Durham will face yet another lawsuit when the new developer decides to max out what is permitted by right.

3) We should have learned from Peak that extreme density along a gateway (and along a particularly scenic stretch of a gateway), is not appropriate and devalues us as a community (our reputation as well as the spirit of our residents and regional neighbors).

4) People move to Durham, *despite our high taxes*, for two main reasons: 1) the fact that we have a long history of valuing and protecting our natural resources as evidenced by our remaining rural character and our scenic gateways and 2) our good schools. (In the 2011 Master Plan Survey, 93% of respondents said that **Durham's attractive natural setting was important** to them. When asked what attributes of Durham are most important or attractive, the two highest scoring responses by far were **Rural Character** and UNH.) Once our lovely gateways are gone, half the reason people are willing to pay high taxes is gone. Our community becomes more like any other community that has traded its rural character and scenic vistas for the promise of reduced taxes. Durham will be a much less attractive place to move to given our high taxes.

5) Given that 8 out of 9 Town Councilors voted down the proposed amendments last June that would have permitted *just this sort of development and density*, in large part because of lessons learned from Peak and the fact that this is a gateway property, I question the appropriateness of a density determination that would allow for another Peak along a scenic part of our gateway.

6) Finally, I don't know how the PB will reconcile this 4,200 sq. ft. density allowance with the DBP deeded restrictions, which require preservation of significant view sheds. It is simply absurd. (Keep in mind, we are building on a field. This time, we cannot even pretend that we will have the wooded buffer promised by Peak.)

### **Does this proposal meet the DBP guidelines?**

The Durham Business Park Guidelines along with the recommendations in the Master Plan 2000 recognize the scenic value of this parcel. In fact, the DBP Guidelines state:

**“These guidelines seek to promote compatibility between the development of the Park and the rural-residential quality of the riverfront neighborhood. The view into**

the site from the bridge on Route 4, the Oyster River, and Johnson's Creek are of particular importance. The desired outcome is to have the buildings sited to preserve the significant views."

Thus: "Buildings shall be sited to preserve significant views from Route 4 and the Oyster River, vegetation, and existing land forms."

It would seem impossible to reconcile these deeded restrictions with a 4,200 sq. ft. density determination. Also as noted in the MP2000, the drafters of our zoning envisioned a small cluster of development covering no more than 32,000 sq. ft.

## AN ALTERNATIVE THAT MAKES SENSE

1) Recognize that on our zoning map the DPB is in the same "Smart Growth ring" as MUDOR and RB. Just last year, we decided to make MUDOR consistent with that RB density of 40,000 sq. ft per dwelling unit, which would apply should an eldercare facility or elderly housing be proposed. This determination reaffirms the vision for our town that is dense in the center and gets systematically less dense as one moves away from the center. (I do recognize that OR 108 is listed as 4,200 sq. feet per dwelling unit. One could choose to look at that as a figure that is out of compliance with our vision for the rest of the town and choose to change the figure to make it more consistent with the 40,000 sq. ft ring based on lessons learned.) It makes little sense to ignore lessons learned from Peak and use OR108 as the model for an even equally sensitive, more heavily traveled stretch of our gateway.

2) If we determined that the NA for the minimum lot area per dwelling unit for DBP was to be 40,000 sq. feet (consistent with MUDOR and RB **and consistent with the rest of the standards in the DBP as modeled in much of our Table**), that would permit  $43,560 \text{ sq. feet per acre} \times 28.4 \text{ acres} = 1,237,104 \text{ sq. ft.}$  divided by 40,000 = 30.9 units x 2.5 for the presumed elderly bonus = **77 units**. (If solely one-bedroom eldercare units, the maximum would be **92.7 units**.)

This figure provides ample opportunity to build a reasonably sized eldercare facility.

I would suggest we not only align the density with the 40,000 sq. ft. standards that appear in the DBP Table of Dimensional Standards (thus allowing between 77-92 eldercare units) but also that we request that the buildings be clustered around the rear circle rather than sprawling across the entire parcel. This would permit the design to not be in conflict with the DBP Guidelines and more consistent with the historically envisioned cluster of development (Master Plan 2000).

Additionally, there needs to be careful consideration regarding landscaping, not only around the buildings, but along Johnsons Creek so that the view from the Rt.4 bridge is buffered as well as from the Rt.4 roadway and the river.

Finally, we should adhere to the DBP Guidelines recommendations for parking and underground electrical wires.

If done right, I think this could be a lovely facility and one would could well serve the community.

**Final recommendation:** I suggest that before we address the density issue, we determine if this proposal meets the requirement of an Eldercare Facility. It is pointless, if not dangerous, to make a determination on the density until we have determined if this is a viable proposal. As I stated earlier, a premature determination on density could result in legal problems in the future.

Respectfully,

Beth Olshansky