

Crucial Conditional-Use Zoning Variables: *Buffers, Distance, Scale, Hours of Activity, and Type of Tenants*

August 19, 2021

**Adapted from Public Comment, May 19, 2021
Planning Board Public Hearing on the Mill Plaza CUP**

The Mill Plaza is owned by NYC-based Colonial Durham Associates (CDA)

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***The Mill Plaza has always been a peaceful, quiet buffer
between downtown “student action” & the Faculty Neighborhood,
especially after 9pm.***

11:23pm, Fri, Oct 2, 2020 [YouTube](#) (20 secs)

1:39am, Sun, Oct 25, 2020 (after-midnight on Sat) [YouTube](#) (47 secs)



UNH Blackout Twitter*

Newly Freed from Parental Supervision

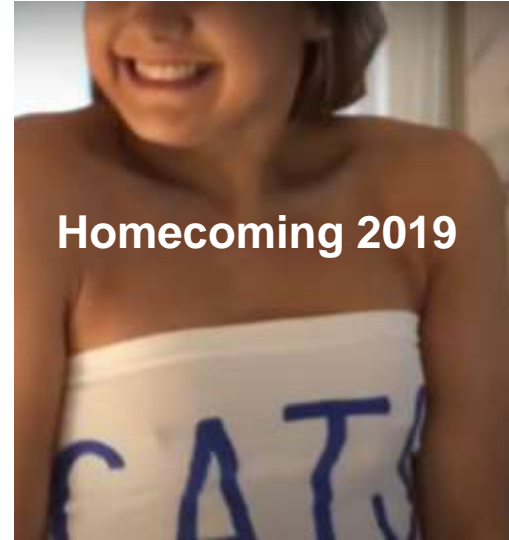
Most UNH students – *for the first time in their lives* – are not under direct observation of their parents, other family members, & long-term neighbors. With this new freedom, many “experiment” with variations from social norms.



Homecoming 2016



Cooling off at Red Tower, June 2021



Homecoming 2019

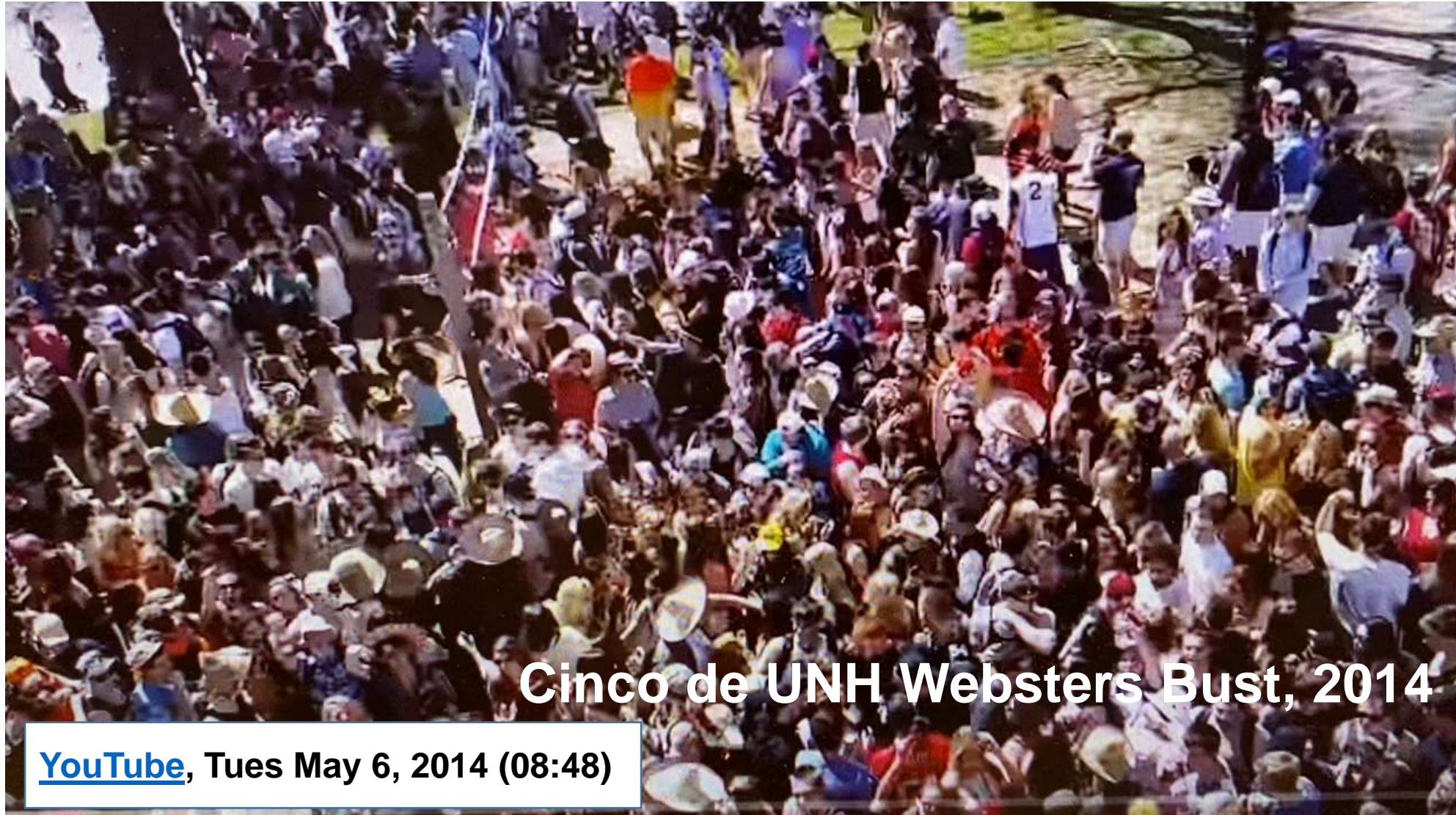


Homecoming 2016

Students know that most of their resulting behavior will not have a permanent impact on their reputations as adults – because **their adult lives are generally to be lived elsewhere.**

*UNH Blackout Twitter Account deactivated after [media publicity](#) in 2013. But see [UNH Barstool](#) on Instagram.

Yes, gatherings like this would be unlikely at Mill Plaza because they would probably be prevented or stopped by on-site management and/or police.



Cinco de UNH Websters Bust, 2014

[YouTube](#), Tues May 6, 2014 (08:48)

Yes, on-site management probably could prevent/stop such celebrations in Plaza.



UNH Cinco De Drinko (Official Music Video), 2014 (04:18)

Therefore, let's NOT focus on extreme UNH student “partying”
– Homecomings, “Cinco de Drinko” celebrations, sporting event “riots,” etc. –



which police & on-site management *would* likely prevent or tamp down...

Let's look instead at the *typical* weekend behavior of even *small groups* of students in the “***MadCom-to-Main***” corridor from 10:30pm to 2:00am



This typical behavior is mostly fine “in its place” – and generally not interfered with by Durham Police & on-site management – *because* it is distant from family homes, is not in Durham’s only shopping plaza, does not routinely generate citizen calls to police – *and is part of a functional “coexistence” between students & authorities.*

In Durham – as in other college towns – Police/Student interaction entails a delicate balance of tolerance & enforcement.



Stills from: [UNH Cinco De Drinko \(Official Video\), 2014](#)

Consider Durham's "Quiet Time" (10pm to 7am)
Is Noise Ordinance enforced where students routinely gather in Town?

Code of the Town of Durham, NH: CHAPTER 85: NOISE

85-5. Specific prohibitions: A. Prohibited noise/time restrictions

3. Between 10:00 p.m. and 7:00 a.m. engaging in conduct that creates loud and unreasonable noises including, but not limited to the operation, playing, or using of any audio equipment, sound amplifier or other device which reproduces or amplifies sound.

— Noise Ordinance - Town of Durham, NH

Let's look at some recent short videos of typical student behavior in downtown Durham well *after* the noise ordinance kicks in:

- 10:46 pm – Main Street
- 11:47 pm – Madbury Commons
- 11:49 pm – Madbury Commons (“March to Main”)
- 11:56 pm – Garrison Avenue
- 12:15 am – Mill Rd at Faculty Rd
- 12:48 am – MadCom to Main St walk/singing
- 12:52 am – Stoke Hall, Garrison Ave
- 1:02 am – Main Street
- 1:04 am – Main Street
- 1:27 am – Main Street
- 1:37 am – Main Street
- 1:44 am – Main Street

And note that 2020-2021 was an unusually subdued “pandemic year,” with fewer students in Durham and social distancing encouraged.

10:46pm, Sat, Aug 29, 2020

[YouTube](#) (11 secs)

It's 46 mins after start of 10pm to 7am quiet time – but it's NOT quiet.
Yet the police drive by with no intervention.



[YouTube](#) (27 secs)

11:47pm, Madbury Commons, Sat, Sept 26, 2020

**Loud behavior, close to midnight, that on-site management ignores,
– which is okay, because there are no nearby families to complain.**

Yet, if it were in Mill Plaza, it would disturb adjacent family homes.



← **11:49pm, Madbury Commons,**
“The March to Main,” Sat, Sept
26, 2020. *Main St gets liveliest*
from 11:30pm to 1:30am – but it’s
distant from family homes.

See also: “[CDA’s Trafficking Fantasies](#),” 5-14-21

11:56pm Garrison Ave,
Sat, Sept 26, 2020 →

This video catches only the tail
end of extended shrieking
outburst. (Police – even if
summoned for such shouting –
would not arrive in time. But, in
this location, it’s not within
earshot of family homes.)

[YouTube](#)
(11 secs)



[YouTube](#) (19 secs)

[YouTube](#) 39 secs

12:15am, Mill Rd at Faculty Rd
(edge of Faculty Neighborhood)
Sun, Oct 4, 2020

Student falling down drunk in middle of Mill Rd, scuffle between female & male student, car traffic has to stop because the students are blocking the travel lane.



A night-time photograph of a street intersection. In the foreground, a concrete sidewalk curves from the bottom left towards the center. A black utility pole stands on the sidewalk, with a white rectangular sign attached to it. The sign has some text and a red section at the bottom. The street is paved with asphalt and has white painted crosswalk lines. In the distance, a car with its headlights on is approaching the intersection. The background shows some buildings and trees, with streetlights illuminating the scene.

12:48am, MadCom walk to Main, Sat, Oct 24, 2020

[YouTube](#), 43 secs

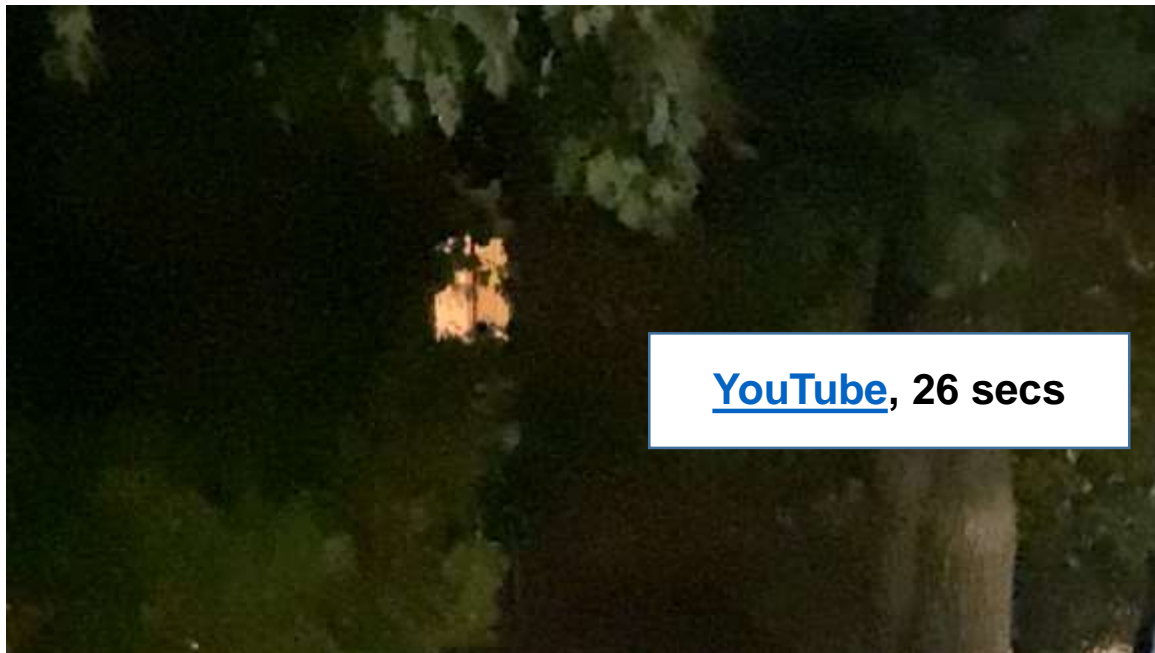
Small groups of females (as in this video), as well as males, can produce BIG NOISE with singing/shouting heard from 150+ feet away – almost three hours into “quiet time. But it’s not happening next to family homes.

12:47am to 12:52am, Stoke Hall, Garrison Ave, Sun, Oct 11, 2020

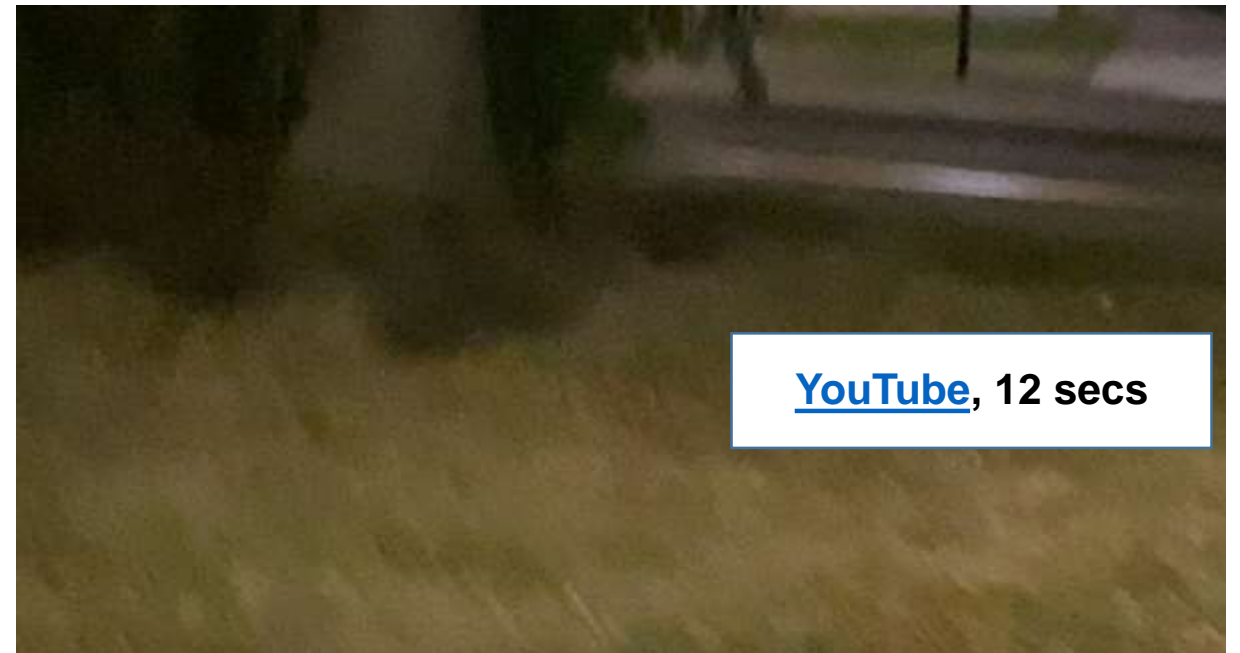
A group of 10 or so students could be heard – loudly! – from hundreds of feet away



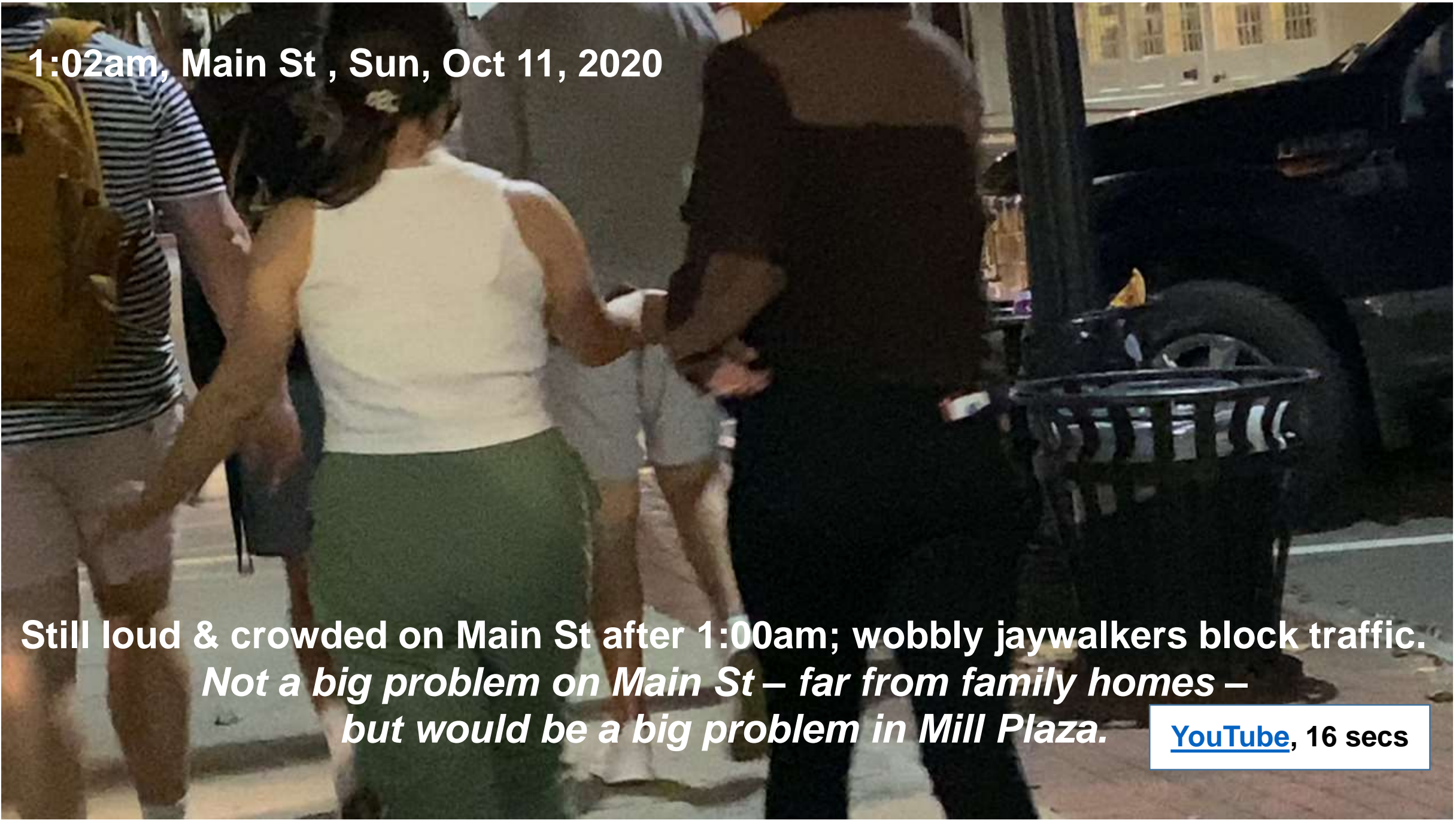
Such noise in the Mill Plaza would undermine Faculty Neighborhood quality of life.



[YouTube](#), 26 secs



[YouTube](#), 12 secs



1:02am, Main St , Sun, Oct 11, 2020

**Still loud & crowded on Main St after 1:00am; wobbly jaywalkers block traffic.
*Not a big problem on Main St – far from family homes –
but would be a big problem in Mill Plaza.***

[YouTube](#), 16 secs

1:04am, Main St, Sun, Nov 8, 2020
(long after midnight on Saturday)

[YouTube](#) (1:35)

Loud rumble, interrupted by shouts; jaywalkers blocking traffic.
Behaviors that Durham Police ignore (& that's okay because of the *location*).
Yet, similar behavior in Mill Plaza, would disrupt adjacent family homes.

[YouTube](#) (59 secs)

1:27am Main St, Sat, Oct 24, 2020



**Flow of jaywalkers, loud music from Uber vehicle, overflowing trash. *Again:* behaviors that Durham Police ignore (& that's okay because of the *location*).
*Yet, similar behavior in Mill Plaza, would disrupt adjacent family homes.***

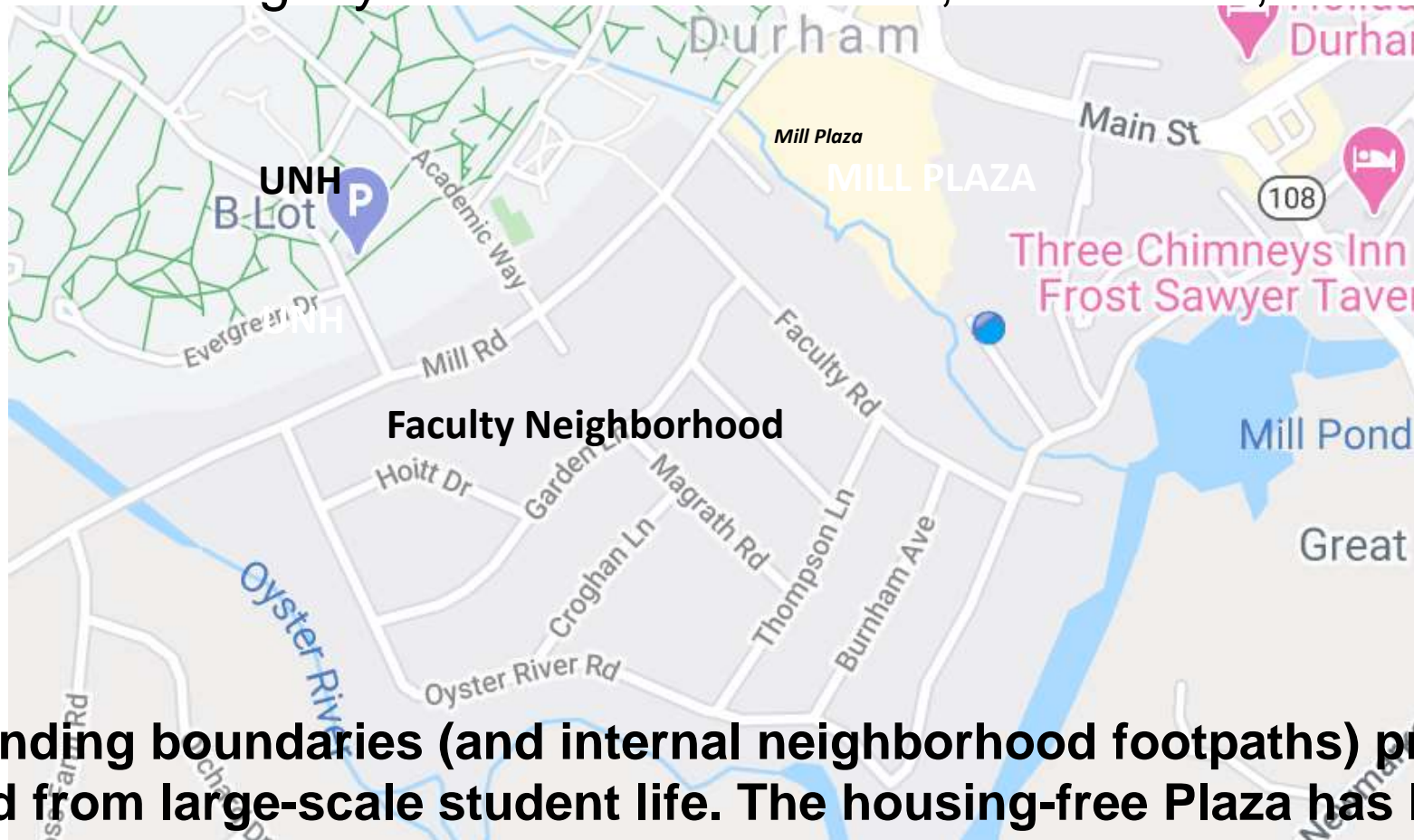
1:37am, Sun, May 23, 2021

[YouTube](#) (1:15)

Most UNH students had already left Durham, yet Main St was lively & loud well after 1:30am. *Similar behavior in Mill Plaza, would obviously disrupt adjacent homes.*

Boundaries Define a “Neighborhood”

The Faculty Neighborhood (*most impacted by any Plaza changes*) is defined by Mill Road, the winding Oyster River & Mill Pond, Church Hill, & ***the Mill Plaza***



These surrounding boundaries (and internal neighborhood footpaths) protect the neighborhood from large-scale student life. The housing-free Plaza has long been a buffer from student noise, traffic, trash, light, fumes, etc. Destroy that buffer, and you undermine the integrity – and very definition – of this “family neighborhood.”

From the Neighborhood Looking to Mill Plaza

Foot/Bike Path, Looking *from* Chesley Dr *to* the Rear of Mill Plaza

Neighborhood foot/bike paths **connect** the Faculty Neighborhood to the downtown commercial zone; but they also **protect** the neighborhood from “student action.”



Looking toward rear of Mill Plaza, with Chesley Marsh on right & College Brook on left.

VIDEO: [Chesley Dr into footpath to Plaza & College Brook Bridge](#), May 31, 2021, 7:09pm (01:06) ***Narrated***

From Mill Plaza to the Neighborhood

Same Foot/Bike Path, Looking *from* Rear of Mill Plaza *toward* Chesley Dr

If 258 new student residents & guests sleep & party in Plaza apartments, these paths would no doubt become hangout & play spots, as well as pickup/drop-off passageways.



Looking toward Chesley Dr; Marsh on left & College Brook (& bridge) to right.
VIDEO: [Mill Plaza into Chesley Path & College Brook Bridge](#), June 3 2021 5:48pm (02:14) ***Narrated***

College Brook Footbridge



Proposed new Building C would be 150 feet closer to this footbridge. Colonial Durham says it won't allow 258 new tenants to bring their cars into the Plaza. **Thus, it would be very likely that this bridge & the neighborhood paths would become popular & noisy & trash-filled play spaces and routes for student pick-up & drop-off.**



Outlined = Chesley Marsh Wetland area with wooden College Brook Footbridge at the Neighborhood's "Special Path" (wooded path area with stone walls between Thompson Ln & the footpath into Plaza rear)

28 Faculty Neighborhood Homes in 28 Seconds ([video](#))



Thompson Lane (at Faculty Rd) & Valentine Hill Rd. **VIDEO:** [28 Faculty Neighborhood Homes in 28 secs](#), 4/26/20
(Illustrating a very compact neighborhood with not much privacy & few sound/visual buffers – and very worried about college-student “invasions”; video ends looking toward Faculty Rd & entrance to the “Treasured Path”)



Entrance to Faculty Neighborhood's "Special Path" (Faculty Rd at Thompson Ln)



VIDEO: [Thompson Ln at Faculty Rd into "The Path"](#) (Time Lapse, 8 secs; when the leaves are down), April 19, 2020, 4:45pm. *Note that proposed new Building C (to house many college students) would be 150 feet closer to the footbridge seen at end of the video than is current Building 2.*

CDA restrictions on tenant/guest vehicular access to the Plaza will increase tenant/guests use of Faculty Neighborhood streets and paths.

PROPOSED MILL PLAZA PROPERTY MANAGEMENT PLAN

Colonial Durham Associates
7 Mill Road
Durham, NH 03824

February 2021

“Vehicle Parking: The several hundred onsite vehicle parking spaces will be reserved for the exclusive use of commercial tenants and their customers. **All residential tenant parking will be located offsite, including guests of residential tenants”** (p. 9; bold added)

“The parking lot will be open for the exclusive use of commercial tenants and their customers on weekends. **Residential tenants and their guests are prohibited from parking in the Mill Plaza lot during this time”** (p. 10; bold added)

[Revised Proposed Management Plan 2-22-21](#)

[Note that the license-plate scanning core of this plan is apparently [illegal](#) under NH State Law.]

Durham Police officers express concern about upsetting the “Win-Win” delicate balance of tolerance/enforcement that has been achieved in recent years.



The police keep an eye out for serious crimes (fights, drunk driving, etc.), leaving the students mostly free of strict police monitoring/enforcement. There's shouting, loud music, noisy skateboard flipping, sports played on street & sidewalk, verbal abuse of older residents ([video](#)) who stray into “student territory,” and sober & drunk jaywalking that slows & blocks traffic.

There is thus a “lively peace” between police & students. BUT similar student behavior in Mill Plaza & Faculty Neighborhood paths & streets would create a “Lose-Lose” situation, as follows:

If moved INTO Plaza, the same behavior would create a “no-win” situation.



Bad option #1: If on-site Plaza management or police tried to stop typical noisy “student fun” –newly spread into Plaza & neighborhood – it would create serious tensions with students.

Bad option #2: Yet, if authorities allowed what’s typical on Main St to occur in Plaza & neighborhood paths/streets, it would lead to a steady flow of complaints from distressed residents in adjacent family homes, and a decline in the quality of neighborhood life.

With either option, the merger of a student zone with a family zone would lead Durham’s policing budget & crime stats to rise rapidly – even with no fundamental change in student behavior.

The Planning Board has already received extensive resident input on Conditional-Use mismatches with the Mill Plaza site plan

(buffers, distance, hrs of activity, type of tenants, & scale proposed for Mill Plaza)

“[W]e will be able to hear the noise from the **258 new residents who will be living right in our backyard, 24-hours a day**, and the vehicular traffic that will certainly accompany the residences, as well as that created by a 24-hour bank drive-thru.... current businesses in Mill Plaza are not open 24-hours a day and therefore the noise from business activity ends during reasonable business hours. In fact, as we write this letter in the early evening, any noise from the Mill Plaza has all but subsided, which is typical even when the University is in session. There is no logic that would say that that would be the same with largescale dormitories on the southern edge of the Plaza. **The proposed increase in noise pollution, all day every day, surely is not in keeping with the impact of the current Plaza and would therefore violate the Conditional Use criteria....**

[W]e recently went to pick up curbside takeout from the Hop & Grind restaurant located in the Madbury Commons development and, despite the fact that school is not in session due to COVID-19, while waiting in our car there were several college students screaming out of the windows to other college students gathered below, using profanity and typical college student language.... **While we enjoy the activity of downtown Durham's college environment and have no complaints and rather expect this behavior in the right setting, when it is moved into our backyard our children are then exposed to it on a regular basis.** While we chose to live in Durham, near downtown, and near campus, we did not choose to live *on campus*....” – [Ward Family, 15 Faculty Rd, 6-24-20](#)

Additional excerpts from residents' emails to the Planning Board on Conditional-Use issues

“Madbury Commons is a development in the heart of downtown Durham, not placed within the limits of a residential neighborhood. I would ask about the comparisons between Mill Plaza and Madbury Commons: how many residential homes are impacted by both developments? I do not see single family homes lining the borders of Madbury Commons.... **The only people impacted by the students in Madbury Commons are the students of Madbury Commons.**” – [Curran Family, 29 Faculty Rd, 6-23-20](#)

“New student housing in close proximity to the neighborhood will also increase student foot traffic. **We worry about property damage and late-night activities. As a young college professor, I am familiar with the activities of college students these days.** Please feel free to check out UNHBarstool’s Instagram page. We are a young family. We don’t want to deal with picking up after college students.... I have been a part of task forces at USNH universities examining enrollment and retention challenges. These are complex challenges, but declining childbirth rates, high school graduation rates, N.H.’s aging population, poor funding of higher education, and competition with nearby states are leading to declines in UNH enrollment. It will ripple across UNH’s student housing market (on-campus and off-campus). The town should avoid expanding student housing for the considerable future.” – [Mike Brian, 34 Mill Pond Rd, 4-13-21](#)

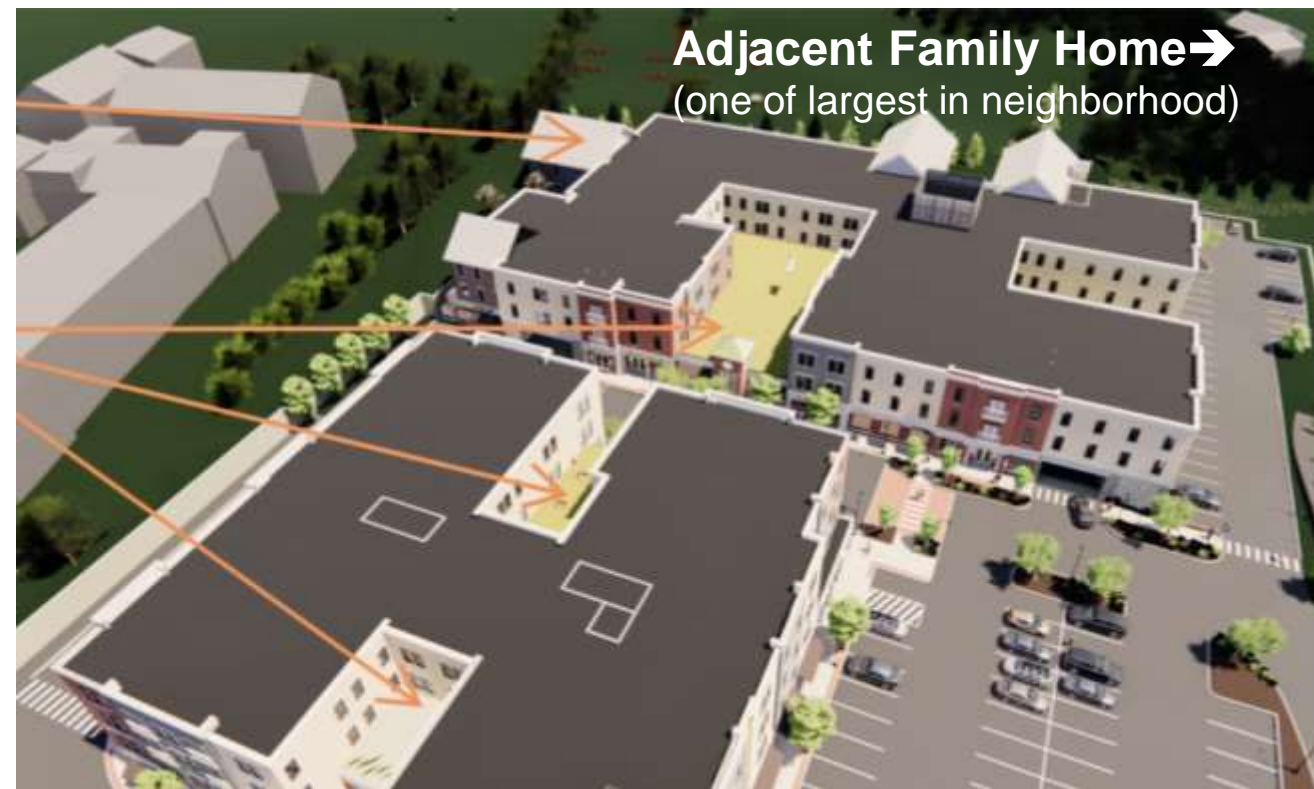
Former UNH Student who is now Faculty Neighborhood resident on how Conditional-Use Criteria are not met in Plaza plan

“I went to school at UNH and about a year ago, after graduation, my family and I decided to purchase a house in the Faculty Neighborhood. I love Durham. When I attended the University, I resided for seven years at both on campus, and off campus facilities. **I can say from personal experience that students find a reason to drink and get very loud every day of the week.** That’s just what happens with college students who live in family neighborhoods and drink.... I have seen students yell and scream while walking by houses. With their inhibitions loosened, I have even seen students urinating on lawns.... When I was told about the planned student housing in Mill Plaza, I was shocked. With my personal experience, I know that adding student housing to the Plaza will have a major negative impact on the Faculty Neighborhood. **Noise level, litter, lights, and excessive traffic will increase tremendously....** I’m sure with all the students, the developer has planned for a bar to be included in the commercial space. If that’s the case, the noise will last until the bar closes.... **my first-hand experiences indicate that the Conditional Use criteria of noise, light, litter, and traffic are not met.**” – [Lea Macheras, 13 Oyster River Rd, 6-15-21](#)

See also: [CDA’s White Appraisal: Quotes, Questions, & Corrections](#) & [One-Page Critique Summary of CDA’s White Appraisal “Opinion Letter”](#)

“Mixed-use” Plaza projects “shall not be incompatible with the established character of the neighborhood...[in] scale, height,..massing.” ([CU Zoning](#))

“This Board must take into account the **vastly different scale** of this proposed redevelopment and its undeniable **24/7 impact** on the Faculty Neighborhood. Nowhere in the Town of Durham does such a large student housing complex immediately border single-family residences.... Nowhere in Durham are single family homes immediately adjacent to three- and four-story dormitories.” – [Ward Family, 15 Faculty Rd, 6-24-20](#)



Adjacent Family Home→
(one of largest in neighborhood)

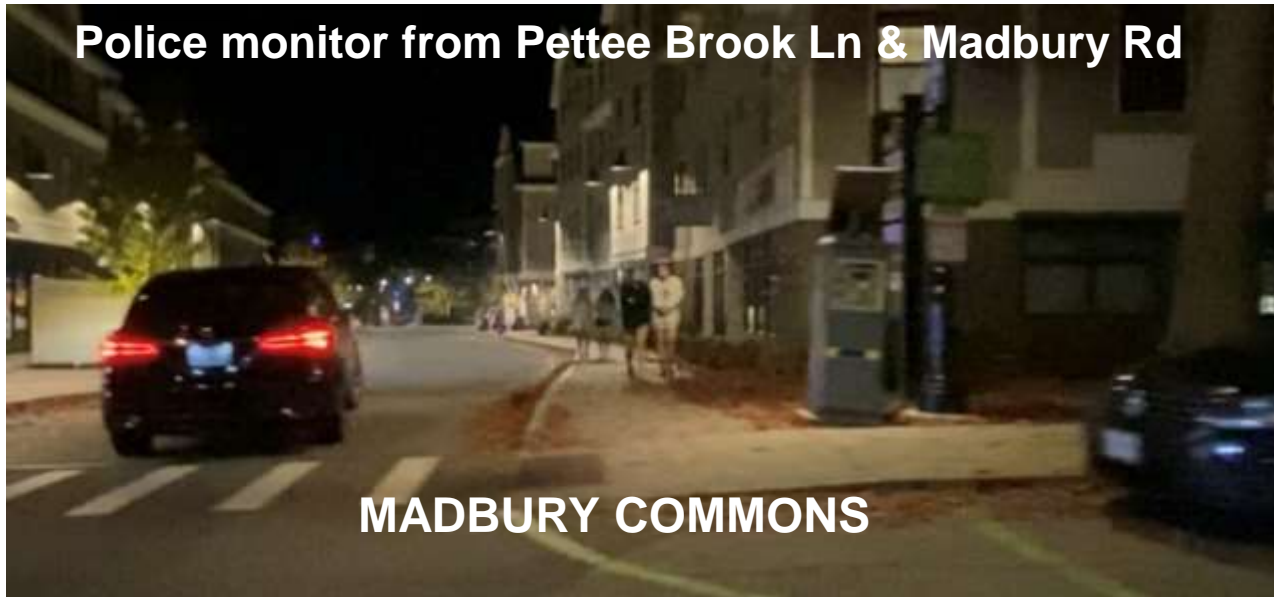


Base images from “[Aug 26 2020 Presentation](#)”

5'10" person against 13-ft tall retaining wall is almost invisible

Limits of Police Surveillance/Intervention on Plaza *Private* Property

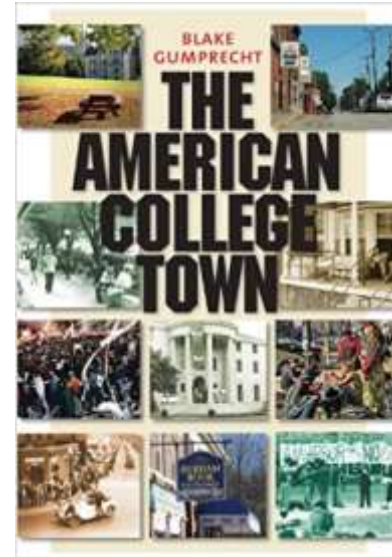
Police officers have expressed concern over not having authority over student drinking & other behaviors in proposed student housing in Plaza – because it's private property!



Student tenant behavior in Plaza would be very difficult to monitor *from* surrounding public property, unlike behavior in *small* gathering areas at Madbury Commons & Main St housing.

Dr. Blake Gumprecht, former UNH Professor of Geography, wrote the first major book to detail the unique characteristics of college towns in the United States, [The American College Town](#), 2008. The book was awarded the American Association of Geographers' J. B. Jackson Prize, the most prestigious book prize in American geography.

As Dr. Gumprecht describes on p. 312, in a key section in his *Town vs. Gown* book chapter, **“Erosion of Single-Family Neighborhoods”**:



[BOOK SUMMARY HERE](#)

“Student behavioral issues cannot be divorced from the geography of housing in college towns.”

As Dr. Gumprecht and other researchers of college towns have documented, **college-town zoning** requires care. *Most Durham residents have long known that, as illustrated in Master Plans.*

Durham's Master Plan on Separating Student & Family Housing

(first Durham Master Plan to be based on “scientific” resident surveys)

“The key to success...of student housing development would be its location.... The development of new student housing would be best directed to the west of the main campus in complexes specifically designed to house students.” [Mill Plaza is directly to the east of UNH.]

“This would permit student housing to be separated from town resident housing so that lifestyles don’t directly conflict.... (3-9).... Encourage the separation of future University-related housing from local resident housing” (6-44). [*Adopted as Master Plan, Nov 3, 1993*](#)

As is obvious (and documented in the extensive research literature on college towns), if the Plaza were to become home and play space (and likely site of a bar) to hundreds of student tenants and their guests, on-site management or police could not possibly respond in time to prevent/stop most late-night disturbances in the Plaza or the neighborhood paths & streets.

The physical & social geography of Durham would be negatively transformed.

Quotes from Town of Durham, NH, 2015 Master Plan

“Support mixed use developments that generate multi-generational interest.” (DH-35)

“Over the past few years, there have also been some dramatic changes in downtown Durham as well as beyond the downtown because of a significant amount of private student housing developments. The number of new buildings and the size of some of them have impacted the perception of Durham as a small town community, and residents have expressed concern about the large number of students living in these buildings....” [fn: **“To address this concern Durham has amended their zoning to allow student housing as a conditional use only, setting the bar higher for developers....”**] (VCC-7)

“The town has traditionally been represented by...two very distinct population groups, students and permanent residents. **The inability to create affordable housing options for seniors and younger, non-student population in the future could have large implications on the future of the community.**” (DH-39)

“[T]o some residents, the strong surge in student housing threatens to disrupt the desired ‘balanced approach between economic development and preservation of the town’s historic New England rural character and natural resources.’... **[T]here are concerns that the downtown area will become even more student-oriented, and that the larger buildings detract from the town’s traditional small-town feel.** Because the town is reaching a saturation point of student housing, further student housing development could cease to be a strong economic engine for the town.... **Durham needs to carefully monitor housing projects to identify options that ensure the quality and attractiveness to broader markets beyond student housing....** [T]he focus for economic development should shift away from the dominance of student housing toward attracting a broader array of new businesses and professionals to the town...diversifying our economic base away from academia....” (ED-15)

“Closely monitor changes in the student rental market and act to prevent the over-development of student housing.” (ED-32)

1:39am Mill Plaza, Sun, Oct 25, 2020
(after-midnight on Saturday)

[YouTube](#), 47 secs

“To address this concern [about large number of students living downtown] Durham has amended their zoning to allow student housing as a conditional use only, setting the bar higher for developers....” – 2015 Master Plan

By enforceable Conditional-Use Zoning: Mill Plaza housing must not add out-of-scale structures or negative effects to the adjoining neighborhood. Negative impacts include: “traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare” (all associated with mass student housing) beyond “impacts of adjacent existing uses or other uses permitted in the zone.” [LINK](#)

For a half-century, the housing-free Plaza and adjacent footpaths have been buffers from student noise, vehicular & pedestrian traffic, trash, etc. on Main Street & beyond.

Damage this crucial buffer and you damage the integrity of Durham’s largest family neighborhood and its quality of life – and you violate the Zoning Ordinance.

Crucial Conditional-Use Zoning Variables: *Buffers, Distance, Scale, Hours of Activity, and Type of Tenants*

August 19, 2021

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