

August 25, 2020

Planning Board  
8 Newmarket Road  
Durham, NH 03824

RE: *Public Hearing on Zoning amendments regarding height, stories, uses, and building configuration in the Central Business District; method for determining building height; drive-through facilities; and related changes.*

Greetings,

First, I imagine that I am not the only resident who wonders at the number of Town Council-initiated zoning amendments that have been introduced over the past decade, as opposed to those proposed by the Planning Board. I also believe that no movement has been made by the Board to initiate a zoning update to coordinate with the last Master Plan update. It seems reasonable to suggest that the Board consider whether this is an appropriate approach to updating our ordinance—in addition to whether this time of limited public input is the right time to introduce zoning changes, period.

What's the rush? What's the unstated goal? Is this about encouraging MORE student housing downtown (as we hear complaints that there has been none for a few years)?

That said, please see below several comments about the current draft proposal.

#### **Minor edits**

*175-42. Central Business District (CB)*

*B. Development Standards in the Central Business District*

*7. Required office/retail uses for a mixed-use with residential building*

Punctuation requires editing: (1) Make consistent with 175-7. Definitions. Either delete the hyphen (mixed use, not mixed-use in 175-42 or add a hyphen in 175-7; please have someone check the entire document; and (2) add a colon at the end of the phrase that introduces the subsections, i.e.,

Required office/retail uses for a mixed-use with residential building COLON

#### **Concerns**

ONE:

I appreciate that consideration of **additional stories** shall be guided by location and specific streetscape. I also appreciate the concept of "building up" infill, but "adverse impact" should be defined.

Assessment should not be subjective. And given that in the last decade, Board members have point-blank stated that aesthetics is not their forte, guidelines should be made explicit. It's not enough to point to the Architectural Regulations; what about the so-called "canyon effect," for example?

175-42. Central Business District (CB) [proposed]

B. Development Standards in the Central Business District [maximum number of stories]

(6) e. The Planning Board must determine that the additional story will not have an adverse impact upon the streetscape, giving particular consideration to scale and mass (See Architectural Regulations for guidance).

At the very least, edit the above to read "...giving particular consideration to scale, mass, **and harmony**. (See Architectural Regulations.)" The word "harmony" explicitly addresses aesthetics that go beyond scale and mass.

TWO: The proposed amendments allows flexibility regarding the location of commercial space beyond a required 50-foot-depth on the first floor. We have seen that flexibility can be a useful tool, e.g., at Madbury Commons.

175-42. Central Business District (CB) [proposed]

B. Development Standards in the Central Business District

7. Required office/retail uses for a mixed-use with residential building

**(7) e. Five-story building:** The entire first floor must be office/retail. Also, one additional floor (any floor) or an area equal to the square footage of the fifth story must be office/retail.

However, I believe this draft requires another look.

What about the following scenario: Fifth floor is set back considerably, perhaps to provide rooftop dining, and consists of a significantly smaller square footage than the lower four floors. Unless I am missing something, then the town would be deprived of office/retail space.

In addition, I wonder whether adequate consideration has been given to the "human" in the term "scale;" many pass through downtown by car and don't give a second thought to what it is like to be a pedestrian on our downtown streets.

The State allows zoning for "solar access," that is, to protect a property owner's ability to use a roof to generate solar energy. I venture to guess that few pedestrians would want to spend much time downtown, during winter months in particular, if building heights left them always in the shade.

THREE: The proposed amendments would reward the incorporation of public space into development plans:

175-42. Central Business District (CB) [proposed]

B. Development Standards in the Central Business District

7. Required office/retail uses for a mixed-use with residential building

**(7)g. Outdoor public use areas.** Outdoor space on the subject property that is dedicated in perpetuity to public use may be used to meet the office/retail square footage requirement on a one-to-one basis provided that: a) the Planning Board determines that the design, location, management, and other aspects of the space will add a significant public amenity to the project; and b) the outdoor space may be used to meet a maximum of 50% of the overall required office/retail square footage.

I am all for encouraging the development of public spaces—whether indoor or outdoor—and would echo those who acknowledge that the current pandemic underscores their value. But the experience of these privately owned public spaces (POPS) may not live up to expectations. In New York City, for example, these spaces “diverge in design intent and quality.... For every palm tree-filled atrium and Crystal Pavilion, there are dozens of bare concrete enclosures and dingy arcades that are mostly used as shortcuts to the next block—if they’re open at all. Others were once-nice spaces that have fallen into serious disrepair.” (See: “The politics of lower Manhattan’s privately owned public spaces”—PDF attached and at <<https://ny.curbed.com/2019/7/25/20707376/new-york-privately-owned-public-space-debate>>)

- (1) What criteria will be used to determine whether a proposal meets the test of “significant public amenity?” (Look at the unattractive, underused patio at 9 Madbury Road.)

Should size, perhaps as a ratio of building footprint, be a criterion? (Look at the skinny strip available for outdoor seating along Madbury Road at Madbury Commons.)

Should function be a criterion?

How much should be left up to the Board’s discretion, and how much should be codified?

Must every space provide “something—seats, plants—to enhance people’s enjoyment of the area (the exact amenities are determined by the size and design of the POPS, among other characteristics)?” It would be great to see installations of public art, whether of a permanent nature, such as fountains or sculpture (bas reliefs on walls?), as well as seating where the public may enjoy viewing it as well as small gatherings. (See above-referenced article.)

- (2) What regulations and enforcement will guide design, installation, and maintenance “in perpetuity?”
- (3) How is *significant* public space to be accommodated when the setbacks are minimal in the Central Business District?

The reality is that the setback is so minimal that the benefit accrues primarily to the property owner. (Again, see the very small outdoor café area at Madbury Commons.) One option is that to benefit from this flexibility, a building must be constructed with a courtyard open to the street.

It is critical that *public* mean *public*, and not simply to the benefit of residential or commercial tenants of the property.

175-42. Central Business District (CB) [current]

B. Development Standards in the Central Business District

1. Building Setback – Along the westerly side of Madbury Road from Main Street to Pettee Brook Lane, the front wall of the principal building shall be located no closer than fifteen (15) feet to, and no farther than twenty (20) feet from, the front property line. Along the westerly side of Madbury Road from Pettee Brook Lane to Garrison Avenue, the front wall of the principal building shall be located no closer than twenty (20) feet to, and no farther than thirty (30) feet from, the front property line. For corner lots, this requirement shall apply to all frontages abutting a public street. Up to fifty percent (50%) of the front façade may be recessed beyond the maximum setback distance if the space between the front wall and the front property line is used as pedestrian area in accordance with paragraph 4. below. The expansion or modification of an existing building shall be exempt from this requirement if the Planning Board finds that conformance with this requirement would not be consistent with the character of the existing building.

- (4) Is a public space that is seasonal, e.g., for outdoor dining just a few months of the year, a good tradeoff for year-round commercial space? Should only “partial credit” be given, perhaps a ratio to be determined by the Board and incorporated into the ordinance?

FOUR: **Drive-through facilities** permitted either by right or by Conditional Use in certain zones and/or circumstances.

ARTICLE XII.1–USE AND DIMENSIONAL STANDARDS

Section 175-53. Table of Land Uses.

Drive through facility serving prepared food or beverages: Permitted by right in Courthouse district.

Any drive through facility other than one serving prepared food or beverages: Permitted by right in Central Business District, Professional Office, Courthouse, and Office Research/Light Industry districts.

Minor points:

- (1) Please make spelling of “drive through” consistent throughout the zoning ordinance, i.e., with or without a hyphen.
- (2) Add a definition; it may seem obvious, but it is a term used in the ordinance and should be defined.

Facts to consider:

- (1) Durham is a small town. I repeat: a small town—with a **very** small downtown and a **very** small year-round population.
- (2) Courthouse district is both small and already challenged by long lines during rush hour.

- (3) Drive through operations cause (often long) lines of idling car. Just look at the new Starbucks on Route 108 in Stratham, or the drive through coffee takeout place in Newmarket. These increase local greenhouse emissions. (No, the preponderance of cars on the road for some time to come are NOT equipped with “stop if not moving” capability.)
- (4) Human nature gravitates toward convenience.
- (5) Drive through operations reduce social capital by severing the impromptu social connections made through physical encounters.
- (6) Pharmacy, food, and other retail drive through options are just minutes away in nearby towns.

Concerns regarding those facts:

- (1) What other town this size has a drive through in its walkable downtown? WHERE do you envision the addition of a drive through except at Mill Plaza—where the Zoning Board already denied a variance request for a non-financial drive through?
- (2) Where is there room in Coe’s Corner for a food-related drive through? Do we really want to add to rush-hour back-ups?
- (3) We already have traffic congestion. This would add to it.
- (4) What may start off as an option providing essential goods, such as drug prescriptions for those unable to pick them up or to rely on friends or family to do so, will expand to nonessential goods.
- (5) I know someone with significant physical constraints who is opposed to this amendment who would be a beneficiary; she notes that the pandemic has proven that we do not need a drive through in downtown Durham.
- (6) Master Plans, including the Energy chapter of the Master Plan adopted in 2015, call for supporting the walkability of our downtown. The Vision section of the Future Land User chapter, adopted in 2018, opens with the following: “In 2025 and beyond, Durham is a balanced community that has successfully maintained traditional neighborhoods, natural resources, rural character, and time-honored heritage, while fostering a vibrant downtown, achieving energy sustainability, and managing necessary change.” What part of “vibrant downtown” is addressed by allowing drive through businesses? What part of “achieving energy sustainability” is achieved by allowing drive through businesses?
- (7) Town Council goals for years have listed energy resources and, more recently, climate change as guidelines for decision-making.
- (8) At what point does society stop trading off long-term environmental and social values for convenience, often conveniences that previous generations got along fine without?

**We should do all we can to strengthen social capital, not create additional ways that isolate us from each other.**

Basically, I think it's time to pull back and look at the bigger picture—which is what our Master Planning process has done (but that we seem to forget):

- How do we want our small town to look and function as we move through a very uncertain future (including potential limited resources, such as fossil fuels)?
- How much do we want to cede to the increasingly engulfing entity that is UNH?
- How can we retain distinct features that benefit the year-round residents of Durham and reflect the values that drew them to live in Durham?

I vigorously oppose the proposed drive through amendment on the basis that it detracts from what I believe contributes to the unique character, vitality, and social capital of Durham.

Sincerely yours,

Robin