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Town Planner's Review
Wednesday, August 12, 2020

XIII. **Zoning Amendments initiated by Town Council.** Consideration of amendments related to height, stories, uses, and building configuration in the Central Business District; definition of building height; drive-through facilities; and related changes.

➤ I recommend that the Planning Board set a public hearing on the proposed amendments on August 26 or September 9.

The Town Council voted to initiate the subject amendments. The Planning Board has 60 days from the memo from Todd Selig to make its recommendation. This takes us to the September 23 meeting. If the board needs more time it can request an extension from the Town Council.

The proposed amendments, in color, are enclosed. The amendments fall into four categories:

1. Allow an additional story in the Central Business District by conditional use;
2. Change the configuration of uses in a mixed-use building in the Central Business District;
3. Change the method for determining building height; and
4. Change provisions for drive-through facilities

Town Administrator Todd Selig convened an informal working group to explore possible amendments to the Durham Zoning Ordinance to facilitate the creation of high quality development projects in the Central Business District. Members of the working group included Town Council members Al Howland, Jim Lawson, Ken Rotner, and Sally Tobias. Staff members included Town Planner Michael Behrendt, Code Administrator Audrey Cline, Town Assessor Jim Rice, Economic Development Director Christine Soutter, and Mr. Selig. The group met numerous times and developed the amendments that are proposed here.

The working group thought it beneficial to provide for greater flexibility in downtown development while ensuring high-quality design and avoiding adverse impacts. There are four general components of the proposed amendments as follows.

Number of stories in CBD.

The current maximum number of allowed stories in the Central Business District is four except as specified in Sections 175-42. B. 8. and 9. In this area - including all of Madbury Road (The westerly side is zoned CBD) and both sides of Main Street from the Town and Campus/Ciao Italia lot to the east end of the district - the maximum is three stories. This three- story limit on Main Street was adopted in 2013 pursuant to a citizen's petition. The limit on Madbury Road was initiated by the Town Council and adopted later in 2013.

The proposed amendment, in Section 175-42. B.6., would allow one additional story (a fifth or fourth, depending on the area, above) by conditional use provided that it is set back from the street

(over)

by at least ten feet and that the Planning Board determines that it will not have an adverse impact upon the streetscape. These provisions should ensure the additional story will fit in visually.

Configuration of uses in CBD.

The working group took another look at the respective requirements for commercial and residential uses in mixed-use buildings – Section 175-42.B.7. This is clearly a challenging, but important, issue that the Town has revisited continually over the years. The provisions included in subsections a. through f. are aimed at allowing for greater flexibility while more precisely addressing the specific objectives.

Subsection g. will allow for a developer to count outdoor public use areas toward the commercial area requirements for the site. We want to encourage attractive outdoor public amenities, especially on larger sites, and a developer will not have an interest in doing so unless there is a benefit to the project. We also recognize that in some cases meeting the required amount of commercial square footage can be challenging and this is one way to help meet that standard. Nonetheless, use of these areas depends upon a finding by the Planning Board that the space will be a significant public amenity.

Building height definition.

The change is made to Article II – Definitions and Section 175-56 General Dimensional Standards. The current definition is problematic. This issue came to light in the context of the working group's discussions about the number of stories in the Central Business District. A more precise method for measuring building height is needed and accordingly, this method should not be included in the Definitions section so it is relocated to General Dimensional Standards.

Measuring building height is complex when more than a simple box is involved. There may be variation in the underlying grade, the grade may change as part of the project, and there may be different sections of the building with different heights. The biggest shortcoming of the current definition is that the height is measured to the average roof elevation of the overall building. This could be interpreted to allow for measuring different sections (a 30-foot section, a one-story 12-foot section, etc.) with a lower section bringing down the average. It is logical that no section of the building exceed the maximum and this is what the new provision specifies.

In addition, the maximum height allowed in the Central Business District by conditional use would change from 50 feet to 60 feet. This would be allowed in conjunction with the proposal to allow a fifth floor, above, since a four-story building would rarely exceed 50 feet.

Drive-through facilities.

Presently a drive-through facility is allowed only for a bank by conditional use (in five zones). The working group thought that allowance for a drive-through facility should be expanded, albeit carefully, to better accommodate residents with disabilities for whom it is easier to purchase from a drive-up window and to enhance social distancing in situations like the current pandemic.

Drive-through windows for food service potentially have a great traffic impact so these would be allowed only in the automobile-oriented Courthouse zone. Any other drive-through window would be allowed in the five zones where bank windows are now allowed by as a permitted rather than a conditional use.