



TOWN OF DURHAM
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Town Planner's Recommendation
Wednesday, September 28, 2022

IX. ***Public Hearing - 74 Main Street – Mixed-Use Building.*** Site plan and conditional use application for demolition of current wood frame building and construction of a 4-story mixed-use building with nonresidential uses, 12 residential units, and 5 parking spaces. Doug Clark and Jerry Pucillo of Foundation for Civic Leadership/Democracy House, applicants. Mike Sievert, Horizons Engineering. Jason Cohen and Tim Digan, Bergmeyer Architects. Map 106, Lot 59. Central Business Zone. *Extended* to November 30.

➤ I recommend that the board discuss the preliminary Notice of Decision that I prepared below and continue the review to October 12. The application is not ready for final action as the design engineer is still preparing some documents for review by Public Works.

****This is a very rough draft.*** I will refine it for October 12.

The design engineer will submit more information on the following items shortly:

- Regarding the condition of the sewer line beneath the truck access area.
- Any issues with other utilities
- Details of shoring
- Information regarding closing parts of Pettee Brook Lane
- Parking for workers
- A timeframe for construction
- A detailed restoration plan for the Town's parking lot on Pettee Brook Lane, Pettee Brook Lane, and Main Street where construction activity will occur.

We need the okay from the Public Works Department. No concerns have been raised at this point by other Town departments.

Three waivers are needed:

- 1) From the school impact fee of \$1,812 per unit. It is unlikely that any school age children will be living in these units.
- 2) From the requirement to provide on site parking in accordance with Section 175-113. A parking impact fee of \$1,500 will be paid in lieu for the number of spaces that would be required unless the applicant secures long-term spaces off site that are approved by the Planning Board.

- 3) From the requirement to visually buffer the driving/parking area from Pettee Brook Lane.

I recommend approval for the three waivers.

I recommend the first waiver be granted pursuant to this allowance:

The waiver is granted upon a finding that strict conformity would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of these regulations.

I recommend that the second two waivers be granted pursuant to this allowance:

These waivers are granted upon a finding that specific circumstances relative to the subdivision or the conditions of the land in the subdivision indicate that the waiver will properly carry out the spirit and intent of these regulations.

I will get information from the applicant to determine the parking impact fee. The fee is \$1,500 for each space as required in the Site Plan Regulations. None will be provided on site (except for one space to serve the Town and Campus property). The requirement is 2 spaces per dwelling unit, 1 per employee for the office space, and 1 per 100 square feet of seating area plus 1 per employee for the restaurant. It has to be paid prior to the certificate of occupancy.

Preliminary Draft
NOTICE OF DECISION

Project Name: 74 Main Street Mixed-Use Project
Action Taken: APPROVAL
Project Description: Site plan for 4-story mixed use building with residential and nonresidential uses; conditional use for mixed-use building and height exceeding 30 feet
Property Owner: Clark Properties, LLC
Applicant: Doug Clark and Jerry Pucillo of Foundation for Civic Leadership/Democracy House
Engineer: Mike Sievert, Horizons Engineering
Map and Lot: Map 106, Lot 59
Zoning: Central Business District
Date of approval: ****TENTATIVELY OCTOBER 12, 2022*

[Office use only. Date certified: _____; CO signed off _____;
As-built's received? _____; All surety returned: _____]

“Applicant,” herein refers to the applicant and his/her/their/its agents, successors and assigns.

PRECEDENT CONDITIONS

All of the conditions below must be met by the applicant prior to the plans being certified by the Town Planner. Certification of the plans is required prior to issuance of a building permit or performing any significant site work. Once these precedent conditions are met and the plans are certified the approval is considered final.

Please note. If all of the precedent conditions are not met within one year to the day of the board's approval - by October 12, 2023 (or as extended) - the Planning Board's approval will be considered to have lapsed. Extension(s) may be granted by the Planning Board for reasonable cause. It is the sole responsibility of the applicant (or his/her agent) to ensure that the precedent conditions are met by this deadline. See RSA 674:39 on vesting. No changes to the plans that were reviewed and approved by the Planning Board on October 12, 2022 may be made except for the specific required modifications that follow.

Plan Modifications.

Make the following modifications to the plans/plan set that were reviewed and approved by the Planning Board (Items do not need to be physically constructed as a precedent condition):

- 1) Plan details. Label new sidewalks on Sheet C103 as being concrete. Add truncated domes where needed. Change the driveway entrance to a conventional tip down. Change vertical to sloped curbing for the median in the rear if requested by Public Works. Correct references in the notes about proposed parking spaces. Show screening for transformer pad. Label shaded strip of land on side lot line adjacent to Town and Campus property as asphalt. Show electric service (underground) to the new building. Confirm the sleeves will be used for the water and sewer lines. Add left turn only sign at exist.
- 2) Parking. Show one parking space on site and identify the space for use by the adjacent property owned by Town and Campus in accordance with the applicant's agreement/easement with Town and Campus. Include appropriate signage reserving the sign for Town and Campus. This space need not be accessible since it is serving a different lot.
- 3) Loading zone. Modify the site plan to include the loading zone to be created in front of the adjacent bank property just before the driveway adjacent to the Town parking lot at 66 Main Street. Show signage in accordance with MUTCD standards for the loading zone with language as specified by the Town. The loading zone shall be designed by the design engineer in accordance with appropriate ITE/AASHTO standards.
- 4) Pavers. Show a sign on the site and a detail stating that the pavers are permeable, use of sand must be minimized, and the area must be vacuumed at least once each year.
- 5) Adjacent lot. Revise Sheet C101 to show existing conditions on the adjacent Town and Campus lot.
- 6) Floor plans. Finalize floor plans for residential units. The access into some units is unclear.

- 7) Gas line. Show the gas line on the plans if the project will connect to natural gas (located in Pettee Brook Lane).
- 8) Easements. Show all easements on the plans to the extent possible and include a note briefly describing the easement.
- 9) Porous pavement. Show porous pavement signs at appropriate locations reading as follows, or equivalent: “Porous asphalt pavement. Use of sand shall be minimized. Semi-annual vacuuming is required. Seal coating, tractor trailers/heavy load vehicles, and handling of hazardous waste are prohibited.”
- 10) Transformer. Show landscaping and/or fencing in front of and on the sides of the electrical transformer to screen it from the street.
- 11) Approval block. Include the approval block on each page of drawings.

Notes on Plans

Add the following notes on the plans/plan set that were reviewed and approved by the Planning Board:

- 12) “Residential units. All residential units are restricted to two bedrooms and occupancy by no more than three unrelated individuals. Residential units are limited to the second and third floors.”
- 13) Driveway maintenance. “The use of sodium-chloride-based materials/salt for winter road maintenance shall be the minimum necessary for roadway safety. Sand may be used in areas not using porous asphalt to reduce the amount of sodium-chloride-based materials/salt used.”
- 14) “Snow removal. Snow will be removed from the site following significant snow events when there is not space on the site for storage.”
- 15) Improvements. “All on-site and off-site improvements shown on the approved site plan shall be properly completed prior to issuance of a certificate of occupancy, unless appropriate surety (sufficient to cover the cost of outstanding items, in accordance with surety standards for the Town of Durham) is placed with the Planning Department.”

Construction Management

Include all of the following information/statements in the Construction Management Plan:

- 16) Provide a detailed construction and sequencing schedule.

- 17) Blasting. Add to note 8 that if blasting is needed the applicant shall develop a plan in coordination with the Town Planner and Fire Department to provide special protection of the adjacent property owned by Town and Campus (only immediately adjacent lot).
- 18) Add note: “Construction vehicles. All construction vehicles are restricted to Route 4, Route 108, Main Street, Mast Road, Concord Road, Pettee Brook Lane, and the one block of Madbury Road between Main Street and Pettee Brook Lane.”
- 19) Shoring plan. Include final shoring plan and details of shoring to be approved by Public Works.

Other Precedent conditions

- 20) Tax status. The applicant shall speak with Jim Rice, Town Assessor, to discuss the tax status of the nonresidential portions of the building.
- 21) Recycling. The applicant shall submit a recycling plan to be approved by Public Works.
- 22) Construction easement. Obtain temporary easement/license from the Town of Durham as shown at the upper right of Sheet C101 if needed.
- 23) Geothermal. If the project will use geothermal the applicant must provide detailed information on the proposed design to the Town.
- 24) Addressing. Coordinate with the Fire Department on the address for the site and addressing for each unit in the building. Use of 76 Main Street rather than 74 Main Street is recommended (but not required).
- 25) Town Permits. The Durham Utility Connection and Driveway Permits must be obtained.
- 26) Utility connection. A utility connect permit application with necessary plans and specifications shall be submitted to DPW for review and approval by the Town in accordance with the Durham Water and Wastewater ordinances.
- 27) Light fixtures. Provide detailed cut sheets on proposed lights demonstrating that no glare will be caused.
- 28) Electric service approval. Obtain written confirmation from Eversource Energy that the plans for electric service to and on the site are acceptable.
- 29) Construction Guarantee. The applicant shall post an acceptable surety in an amount to be approved by the Town Engineer. The purpose of the surety is to ensure: 1) the satisfactory completion, reclamation, and repair of all off-site work related to this project; and 2) the satisfactory completion of water service, sewer service, drainage,

erosion control, and other on-site improvements. The design engineer shall submit to the Town Engineer a detailed accounting of all related costs for determining the amount of the surety. The surety may be released in phases as portions of the secured improvements are finalized. A cash deposit or letter of credit is an acceptable form.

- 30) Final drawings. The following complete sets of final approved drawings, including *architectural drawings with all details, floor plans, and construction plans*, shall be submitted for signature (except the electronic version) by the Town Planner: a) one large set of black line drawings (plus a second set if the applicant wants a signed set); b) one set of 11"x17" drawings; plus c) one electronic version by pdf. Each individual sheet in every set of drawings must be stamped and signed by the land surveyor, engineer, or architect responsible for the plans.
- 31) Signature. Signature by the applicant(s) at the bottom acknowledging all terms and conditions of this approval herein.

SUBSEQUENT CONDITIONS AND GENERAL TERMS

All of the conditions below are also attached to this approval. All work shall be completed and all required conditions shall be met prior to issuance of a certificate of occupancy unless otherwise specified or a surety acceptable to the Town is posted.

Conditions to be met prior to commencing site work

- 32) Site work. No significant site work (including any significant clearing of the site) or ground disturbance may be undertaken until:
- a) all of the precedent conditions are met;
 - b) the preconstruction meeting with Town staff has taken place (Contact Michael Behrendt, Town Planner, to arrange for the meeting);
 - c) all appropriate erosion and sedimentation control structures are in place.

Conditions to be met prior to issuance of any certificate of occupancy

- 33) PILOT. In the event that any portions of the building are determined to be exempt from taxes the applicant shall negotiate a mutually acceptable payment in lieu of taxes (PILOT) with the Town of Durham. The applicant is encouraged to bring this discussion and submit all necessary documentation to the Town Assessor as soon as possible. It is understood that, at a minimum, all residential portions of the building will be subject to full taxation.
- 34) Parking fee. The applicant shall pay the parking impact fee under Section 175-112 A. 1. of the zoning ordinance. [*to be determined*]
- 35) Natural gas. If natural gas will be used, provide a letter of approval from Unitil.

- 36) NHDES Sewer Connection Permit. The applicant shall submit a wastewater connection permit application to the New Hampshire Department of Environmental Service Wastewater Engineering Bureau, and submit a copy of the approval to the Planning Department. *[required only if over 5,000 gallons per day or if there is a pump station?]*
- 37) Tenant leases. Submit the proposed lease for residential units to the Town Planner. The applicant is encouraged to include appropriate provisions to discourage illegal and disruptive behavior of tenants.
- 38) Property and Security Management Plan. A property and security management plan for the residential component of the project shall be prepared in consultation with the Police, Fire, and Building Departments. The plan shall include the following:
- a) oversight of the units as appropriate from Thursday night through Saturday night, from 9:00 p.m. to 2:00 a.m. (the following morning);
 - b) contact information for a primary contact person, who can resolve security and other issues and be reached 24 hours a day/7 days a week;
 - c) contact information for a secondary contact person who can address these concerns if the primary contact person is not available;
- 39) As-built drawings. One set of full size, one set of 11" x 17", and one electronic copy of as-built drawings of the building, off-site infrastructure, utilities, drainage structures, other pertinent elements of the site (unless a surety to cover the cost of the as-built drawings is given). The plans shall be stamped and signed by the Engineer or Surveyor.
- 40) Improvements. All on-site and off-site improvements - including the park, parking spaces, and sidewalks shown on Sheet C103 - included in this approval shall be satisfactorily completed prior to issuance of a certificate of occupancy unless an acceptable surety is posted.
- 41) Utility Connection Fees. All water and sewer connection fees must be paid.

Other terms and conditions

- 42) Timeframe. Construction must substantially commence within 36 months of Planning Board approval or the conditional uses will become null and void.
- 43) Stormwater infrastructure. All stormwater management infrastructure shall be designed and installed in accordance with Design Standards of the Durham Site Plan Review Regulations. The infrastructure shall be owned by the property owner and it shall be operated and maintained by the property owner to protect the quality of on-site and off-site water resources.

- 44) Energy checklist. The applicant is encouraged to implement the items marked on the energy checklist to the extent feasible.
- 45) Existing house. The existing house shall not be demolished until after the preconstruction meeting is held.
- 46) Pettee Brook lot and Town park. The applicant is granted permission to use the Town's parking lot on Pettee Brook Lane as shown on the construction drawings. In exchange for use of this parking lot the applicant shall remove the parking lot in front of the property, expand the park, and add on street parking spaces and a loading zone all at the applicant's request. There is no fee from the Town for use of the truck access area on Pettee Brook Lane. The applicant shall restore all Town property to its pre-existing condition or better after completion of the work.
- 47) Recording. This notice of decision must be recorded at the Registry of Deeds within 14 days of certification of the plans.
- 48) Roof-mounted utilities. If any utilities are mounted onto the roof they shall be screened from view from the ground with a plan approved by the Town Planner.
- 49) Banner. The banner across Pettee Brook Lane is owned by the Town of Durham and supported by a pole on the subject lot. The Town Administrator has approved removal of the banner.
- 50) Nonresidential users. Portions of the building designated for nonresidential use may be used for any use identified as a Permitted Use in the table of uses under Institutional Uses and Commercial and Industrial Uses without site plan review. However, use as a hotel or light manufacturing would require further site plan review.
- 51) Energy Code. Building construction shall be in compliance with the energy efficient standards of Chapter 38 of the Town of Durham Code of Ordinances.
- 52) Easement. There has been some debate in the course of the site plan review about the exact nature of an easement located along the side lot line. The Town of Durham takes no position regarding the terms of this easement as that is a private matter separate from the scope of the Planning Board's review.
- 53) Water infrastructure. All public water system infrastructure extensions as depicted on the plans shall be designed and installed at the expense of the developer in accordance with Town Water Ordinance Chapter 158, AWWA guidelines and applicable State regulations. Once installed and approved by the Town this infrastructure shall be owned by the Town of Durham (except where otherwise specified) and operated by the UNH/Durham Water System including all water mains, valves, fire hydrants, water meter assemblies (1 per each building), and master meter (prior to water main branch at

entrance), and associated appurtenances. Water service lines and plumbing internal to each structure shall be owned and maintained by the applicant/property owner.

- 54) Wastewater. All public wastewater system infrastructure extensions shall be designed and installed at the expense of the developer in accordance with Town Sewer Ordinance Chapter 106 and applicable State regulations. Once installed and approved by the Town this infrastructure shall be owned and operated by the Town of Durham (except where otherwise specified) including all sewer mains, sewer manholes, and associated appurtenances. Sewer service lines and waste lines internal to each structure shall be owned and maintained by the applicant/property owner.
- 55) Radio coverage. The requirements of the Durham Public Safety Amplification ordinance, Section 68-4 F., regarding installation of a radio repeater system for emergency service, shall be satisfied. Coordinate with the Fire Department during the building application process to determine if this ordinance applies.
- 56) Waste management. The waste management plan shall include single-stream recycling. The property owner's waste management hauler's name, account number, and phone number shall be provided to the Durham Building Official/Health Officer (DHO) so that the DHO can call and order an emergency pick up if necessary. The DHO is authorized to request this service at the applicant's expense should it be deemed necessary. The DHO is authorized to contact the waste management hauler only after first contacting the property owner and allowing the property owner to order a pick up.
- 57) Changes to the approved plans. Changes to the approved plans may be approved as described in the Planning Board's Rules of Procedures, including minor changes which may be approved by the Town Planner.
- 58) Execution. The project must be built and executed exactly as specified in the approved application package unless changes are approved by the Town as provided in this document (See Minor Changes provision herein).
- 59) Conditional uses. Conditional uses were required for a mixed-use building and for the building height to exceed 30 feet. The Planning Board determined that the conditional use criteria were met and the conditional uses were approved.
- 60) Waivers. Waivers were granted for the school impact fee, building parking on site and buffering the parking area from Pettee Brook Lane.

I will refine this section:

Findings of fact. As part of this review and approval the Durham Planning Board finds the following: **A)** The applicant submitted an application, supporting documents, and plans for the project; **B)** The Planning Board accepted the application as complete; **B)** The Planning Board held one or more continuous public hearing(s) on the application; **C)** The applicant revised and updated the plans and other documentation numerous times pursuant to

comments from the Planning Board, public, and Technical Review Group, and other Town boards and committees; **D)** The Planning Board reviewed the application in accordance with state law, the Durham Zoning Ordinance, the Durham Site Plan Regulations, and other applicable law and found that the application meets all requirements (except where waivers or variances may have been granted); **E)** The applicant met with the Building Official and chair of the Energy Committee to discuss their energy checklist. **F)** The building will be sprinklered. The fire code requires accessibility for a truck within 450 feet for a sprinklered building and this requirement is met; **E)** the Planning Board found that the eight criteria for conditional uses outlined in the Zoning Ordinance section 175-23 C. are adequately addressed in the applicant's application for a conditional use; **F)** The Planning Board reviewed the design in accordance with the Architectural Standards contained in the Site Plan Regulations; and **G)** This project is not considered to be a Development of Regional Impact; and **H)** The Planning Board duly approved the application as stated herein, including the conditional uses. Substantial records are maintained of the process and documentation submitted in the Planning Department. A record of documentation and a timeline of the project will be prepared as needed.

Signature(s). As the applicant(s), I/we accept and acknowledge all of the terms and conditions of this approval herein.

Signature of applicant

date

Printed name of applicant

Signature of applicant

date

Printed name of applicant

Signature of Planning Board Chair

date

Printed name of Planning Board Chair