



**TOWN OF DURHAM**  
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- X. ***Public Hearing - 74 Main Street – Amendment.*** Amendment to approved site plan and conditional use for construction of a 4-story mixed-use building with office, retail/restaurant, and residential units. Changes to building footprint, upper floor plans, and drainage plan and minor site changes. 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.

➤ I recommend approval as stated in the draft Notice of Decision below.

The Planning Board will need to vote again on the conditional use and on the amended site plan. The conditional use is for the mixed-use building and for the building to exceed 30 feet. It is appropriate to vote for the conditional use since it was supported last time and there is no significant adverse impact from the changes. Again, the board should review only the changes from the prior approved site plan and not revisit other elements unless there is a substantial reason to do so.

The Notice of Decision from October 26, 2022 has been modified in response to this amendment.

Town staff have stated their acceptance of the changes. Rich Reine, Public Works Director, told me he may have some minor comments for me shortly. If so, I will convey them to the board.

A waiver will be needed from providing the full number of bicycle spaces. 14 spaces were shown in the earlier design. 8 spaces are shown now.

***\*DRAFT\****

### **NOTICE OF DECISION**

|                             |   |
|-----------------------------|---|
| <b>Project Name:</b>        | <b>74 Main Street Mixed-Use Project</b>   |
| <b>Action Taken:</b>        | <b>APPROVAL</b>   |
| <b>Project Description:</b> | Site plan for 4-story mixed use building with residential and nonresidential uses; conditional use for mixed-use building and height exceeding 30 feet. |
| <b>Amendment:</b>           | This approval includes an amendment from the prior approval of October 26, 2022. This amendment was submitted for changes to                            |

the building footprint, changes to the upper stories, changes to the drainage plan, and other minor site changes.

**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:** April 26, 2023

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[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. Also, see ***Conditions Specified by Public Works***, below, as some conditions may involve documentation or activity required prior to certification of the plans.

Please note. If all of the precedent conditions are not met within one year to the day of the board’s approval - by April 26, 2024 (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 April 26, 2023 may be made except for the specific required modifications that follow.* Note that some precedent conditions may involve requirements applicable after the plans are certified.

### **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. Show the curbing for the curbed island in the rear as sloped curbing.
- 2) Parking. Identify the one parking space on site being for the exclusive 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) Adjacent lot. Revise Sheet C102 to show existing conditions on the adjacent Town and Campus lot.
- 5) Floor plans. Finalize floor plans for residential units.
- 6) Easements. Show all easements on the plans to the extent possible and include a note briefly describing the easement.
- 7) Porous pavement. Show porous pavement signs at appropriate locations reading as follows, or equivalent: “Pervious Interlocking Concrete Pavers. Use of sand shall be minimized. Annual vacuuming is required. Seal coating, tractor trailers/heavy load vehicles, and handling of hazardous waste are prohibited.”
- 8) Transformer. Meet Town Planner on site to investigate where buffering may be placed next to the transformer and show on the plans.
- 9) Correct the reference to the Town of Newmarket in Demolition Note #9 on Sheet C101.
- 10) On Sheet C104, verify location of the geothermal well that appears to be near the sewer line to determine that adequate separation is obtained.
- 11) General Note #1 on C-106 – Expand note to include 11 ft width (or greater if determined by Public Works to have been impacted by the project). Also insert (in accordance with Durham Public Works design and construction standards).
- 12) General Note #3 on C-106 – Delete reference to “grind” and replace with “reclaim”.
- 13) The horizontal layout of the building and the temporary shoring must be provided on an existing plan sheet or on a new plan sheet.
- 14) Provide additional grading information on Sheet C103 as discussed with the Planning Board on October 26.

#### Notes on Plans

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

- 15) “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.”
- 16) “Snow removal. Snow will be removed from the site following significant snow events when there is not space on the site for storage.”
- 17) 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. However, for on-site improvements only, 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:

- 18) 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).
- 19) Add to note that construction vehicles leaving the site may also exit on Main Street to the west, then to Route 4 or Route 155A.
- 20) Construction sequencing of demolition and activity within Main St. and Ballard Park shall be detailed by the Owner/Contractor and presented to DPW for review and approval. The intent is to minimize the amount of disruption to the sidewalk and public parking during construction until the area is reclaimed.
- 21) Lights and electrical note – shoring shown right through electrical line. Ensure lights work during construction. Show location of electrical service for streetlights on plan. Ensure decommission protects existing circuit to continue to provide lighting outside of the construction zone.
- 22) Expanding on General Note #2 on C101, all town owned items to be removed such as lights, parking kiosk etc. shall be (palletized, wrapped, shipped) and stored at DPW 100 Stone Quarry Drive.
- 23) Show the location of the existing sewer line on the plan.

### **Other Precedent conditions**

- 24) The current plan indicates shoring, and footings are located within the town right of way. \*\*\* Please note review and approval of this configuration and permanent encroachment will be required prior to commencement of construction. This may include an easement granted by the Town in accordance with Town established procedures.

- 25) Further expanding General Note #1 on C104, the existing sewer lines between sewer manhole (SMH) 2257A and SMH 2257 and SMH 2298 shall both be lined prior to installation of the shoring columns. Design, specifications, sequencing, bypassing and lining process shall be submitted to DPW as precedent condition or a minimum of three-weeks prior to commencement of work for review and approval. The contractor shall coordinate an inspection of the lined pipe sections 1) after lining, 2) after installation of the shoring system, and 3) after completion of the project. Furthermore, consistent with Note #2 on sheet C-104, the monitoring plan shall be provided to DPW for review and approval, two weeks prior to commencement of construction.
- 26) Regarding cost estimate, confirm that the sewer relining linear footage is for the entire length of relining of the sewer.
- 27) Regarding cost estimate, reinstall streetlight should be Unit 2.
- 28) The applicant shall submit a Long-Term operations and Maintenance Plan for all drainage structures, the permeable paver system, all treatment, and conveyance systems. Records of the maintenance of the stormwater system shall be submitted to Durham Public Works to the attention of the Town Engineer at 100 Stone Quarry Drive Durham NH 03824 by December 15th of each year. The LTO&M Plan shall include at a minimum: a. Responsible party for continuing LTO&M. b. Annual maintenance cost for the plan. c. The person(s)/entity responsible for financing maintenance and emergency repairs. d. A plan outlining location of and access points to all BMPs proposed. The plan shall also depict/describe the woody and herbaceous vegetative stabilization utilized within the stormwater design. e. A chart outlining the type of and frequency of maintenance work required for all stormwater BMPs proposed on site, including any landscaping required.
- 29) Erosion Controls – In addition to General Note 2 and 3 found on Sheet C-103, the applicant shall provide a detailed sediment and erosion control plan to Durham Public Works in accordance with the requirements of Durham Site Plan Regulations Section 7.2 a minimum of 2 weeks prior to commencement of construction for review and approval. Additionally, per Section 7.2.2 of the Site Plan Regulations, appropriate erosion and sediment control measures shall be installed and reviewed and approved by the Department of Public Works prior to any soil disturbance, unless other approaches are approved by the Department of Public Works.
- 30) Tax status. The applicant shall speak with Jim Rice, Town Assessor, to discuss the tax status of the nonresidential portions of the building.
- 31) Recycling. The applicant shall submit a recycling plan to be approved by Public Works.
- 32) Construction easement. Obtain temporary easement/license from the Town of Durham if needed.

- 33) 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).
- 34) Overhang on building. Clarify with staff whether any additional approval from the Town is needed for the canopy extending over the Town property at the front of the building.
- 35) Town Permits. The Durham Utility Connection and Driveway Permits must be obtained.
- 36) 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.
- 37) Electric service approval. Obtain written confirmation from Eversource Energy that the plans for electric service to and on the site are acceptable.
- 38) Construction Guarantee. The applicant shall post an acceptable surety in an amount to be approved by the Town Engineer (See surety estimate provided). 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 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.
- 39) 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.
- 40) 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 specified by Durham Public Works. Note some items must be completed prior to the start of construction**

- 41) Geothermal wells. Additional detail is required for the review of the geothermal wells including required offsets from property lines and/or utilities. Provide detail of all non-ministerial permits related to geothermal well installation. Provide detailed drawings and specifications for geothermal wells including any required underground injection control permitting (UIC), well design, and discharges (if any). Show geothermal well installation in the construction management plan schedule. Any discharge into the Town's drainage system shall comply with the requirements of the Town's Drainage Connection Policy. These details must be provided at least two weeks prior to any construction for the wells.
- 42) Further expanding General Note #3 on C104, the contractor shall provide a contingency plan should there be a break in the sewer line or water line due to the installation of the shoring or any construction activity from the project. The contingency plan shall include a traffic management plan and a plan for bypass pumping. The contingency plan shall be submitted to Durham Public Works for review and approval a minimum of three weeks prior to the commencement of construction.
- 43) Applicant shall complete Land Use Development Tracking Form, most recently revised version, utilizing the online Pollution Tracking and Accounting Pilot Project (PTAPP) portal. <https://www.unh.edu/unhsc/ptapp>
- 44) A general schedule has been provided on page 3 of the CMP. The Town has agreed to provide laydown areas, access areas and staging areas as shown on sheet C105, C106. **The developer agrees, it is understood that the offsite impacts on Town property will not extend past 18 months from the start of construction, unless otherwise approved in writing by the Administrator. Failure to complete offsite reconstruction by this date shall result in liquidated damages of \$500 per day.** (The staff will establish the date for the start of construction after the preconstruction meeting is held.)
- 45) Further expanding General Note #12 on C105, maintenance of the pedestrian access and stairs shall also be maintained by the contractor (at all times to ensure safe pedestrian passage, including winter conditions).
- 46) Due to the condition of SMH 2257 and the impact on this infrastructure during shoring installation, the contractor shall replace or line the structure. The detailed design of this replacement or relining, if approved shall be submitted by the developer to the Town for review and approval a minimum of two weeks prior to the commencement of construction, following an inspection of the manhole to be completed by Durham Public Works and the applicants engineer.
- 47) The contractor shall ensure that the sleeves for water and sewer being installed under the permeable paver are of sufficient size for the current and projected future redevelopment needs of the abutting property at 72 Main St.
- 48) Installation of the new section of water main in front of 74 Main St. shall be coordinated with the Durham Public Works Water Division. The sequencing of this work shall be submitted to DPW for review and approval a minimum of two weeks prior to the

commencement of construction. Any water service interruptions may be required to occur overnight and shall be reviewed and approved by DPW.

**Conditions to be met prior to commencing site work**

- 49) 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**

- 50) 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.
- 51) Parking fee. The applicant shall pay the parking impact fee under Section 175-112 A. 1. of the zoning ordinance. \$1,500 per space that would be required under the Site Plan Regulations. This will be calculated by the Town staff.
- 52) Natural gas. If natural gas will be used, provide a letter of approval from Until
- 53) 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 if over 5,000 gallons per day).
- 54) 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.
- 55) 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;
- 56) 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 consistent with Durham Public Works requirements detailed in Design and Construction Standards, General Provisions, Section 1.2.3 (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.
- 57) 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.
- 58) Utility Connection Fees. All water and sewer connection fees must be paid.

**Other terms and conditions**

- 59) Timeframe. Construction must substantially commence within 36 months of Planning Board approval or the conditional uses will become null and void.
- 60) Stormwater infrastructure. All stormwater management infrastructure shall be designed and installed in accordance with Design Standards of the Durham Site Plan Review Regulations and Durham Public Works Design and Construction Standards. 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.
- 61) Energy checklist. The applicant is encouraged to implement the items marked on the energy checklist to the extent feasible.
- 62) Existing house. The existing house shall not be demolished until after the preconstruction meeting is held. The applicant is encouraged (not required) to use green demolition methods where the material is segregated either on site by a C&D processor or off site, with a report detailing the percentage of materials recycled or reused.
- 63) 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 in accordance with the Design and Construction details and requirements established by Durham Public Works.

- 64) Recording. This notice of decision must be recorded at the Registry of Deeds within 14 days of certification of the plans.
- 65) 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.
- 66) 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.
- 67) 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.
- 68) Energy Code. Building construction shall be in compliance with the energy efficient standards of Chapter 38 of the Town of Durham Code of Ordinances.
- 69) 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.
- 70) The Town has received the Stormwater Management Plan and concludes that based on the stormwater management system design and analysis, the peak flows for the 1 inch, 2-, 10-, 25-, 50- and 100-year storm events are decreased in the post development condition. Furthermore, volume of runoff leaving the site is less in post-development conditions than the pre-development conditions for similar storm events. This is consistent with the requirements of the Town's Site Plan Regulations for Stormwater the Durham Public Works Drainage Standards and Durham Public Works Drainage Connection Policy.
- 71) 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.
- 72) 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.

- 73) 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.
- 74) Waste management. The waste management plan shall include single-stream recycling, dual-stream recycling, or a comparable program. 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.
- 75) 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.
- 76) 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).
- 77) 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. The conditional use approvals remain valid as long as construction substantially begins within three years of this approval.
- 78) Waivers. Waivers were granted for the school impact fee, building parking on site and buffering the parking area from Pettee Brook Lane. However, the applicant shall be required to pay the school impact fee of \$1,812 per dwelling unit for any units where children attend school in the Oyster River School District.

Findings of fact. As part of this review and approval the Durham Planning Board finds the following: **A)** The applicant submitted a design review application that was reviewed by the Planning Board; **B)** The applicant submitted a formal application, supporting documents, and plans for the project; **C)** The Planning Board accepted the application as complete; **D)** The Planning Board held numerous continuous public hearing(s) on the application; **E)** The applicant revised and updated the plans and other documentation several times pursuant to comments from the Planning Board, public, and Technical Review Group, and other Town boards and committees; **F)** 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

have been granted); **G)** The applicant met with the Building Official and chair of the Energy Committee to discuss their energy checklist. **H)** 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; **I)** 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 for the mixed use building and for the height to exceed 30 feet; **J)** The Planning Board reviewed the design in accordance with the Architectural Standards contained in the Site Plan Regulations; and **K)** This project is not considered to be a Development of Regional Impact; **L)** The Planning Board duly approved the application as stated herein, including the conditional uses; and **M)** the Planning Board reviewed the proposed amendments herein, found that they were consistent with all applicable ordinances and regulations, and approved the changes. 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

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Printed name of Planning Board Chair