

March 11, 2024

Zoning Board of Adjustment
8 Newmarket Road
Durham, NH 03824

RE: *...a petition submitted by Kevin Baum on behalf of MD Shaad Mahmud and Erika Naumann Gaillat, Durham, New Hampshire for [two] APPLICATION[S] FOR VARIANCE from: (1) Article XII.1, Section 175-53, Table of Uses, of the Durham Zoning Ordinance to permit multifamily use and (2) Article XII.1, Section 175-54, Table of Dimensions, of the Durham Zoning Ordinance to permit 9,463 square feet of lot area per dwelling unit where 20,000 square feet is required....The property involved is shown on Tax Map 108, Lot 73-1, is located in Schoolhouse Lane and is in the Courthouse Zoning District.*

Dear Members of the Board,

I write to ask that you deny both of the applicant's petitions. I present arguments below, noting that both petitions fail the required criteria.

1. Granting the variance must not be contrary to the public interest.

The application claims, without evidence, "Single family residential use is not [sic] longer applicable for Schoolhouse Lane, nor is it likely to be in the future given the nearby commercial uses. The use of the Property for multifamily provides a transitional buffer between those uses and Old Landing Road." As decades of experience show, "multifamily"—not a use defined in the zoning ordinance—either starts out as or evolves into UNH student housing.

The argument that student housing already exists within the Courthouse District (also citing Dover Road and Main Street) is not an argument for bringing it closer to residential neighbors. Adding to an existing but incompatible use that has been narrowing the area of transition to a single-family neighborhood is not in the public interest. What would be in the public interest might be housing for young professionals or workforce.

The application notes that the plans would add 9 parking spaces for 4 units, would allow "reasonable rental use near campus [which] promotes non-vehicular travel within Durham," and that "Bicycle/scooter spaces will be provided for tenants." We cannot know whether the tenants of the four units would be undergraduate students, but they could be, and the Zoning Board has no authority set conditions that address this possibility.

Town resources have been mustered over decades to address issues that arise when the fundamentally incompatible lifestyles of families and undergraduate students clash that often occurs when student rental housing is located immediately adjacent to family housing. In addition, the Planning Board and the Housing Task Force are focusing on both workforce housing and what is sometimes called "the missing middle," which is not student housing. Given the scarcity of buildable land—or even of properties to convert for alternative residential uses, it would be unfortunate to encourage more student housing in this part of town.

If the applicants had proposed an **owner-occupied rental structure**, or if they were to have committed to an intention to rent units as workforce housing, then issues of noise and traffic would be less of a concern to the abutters.

2. The proposed use is not contrary to the spirit of the ordinance.

The applicant's attorney focuses on the *general* purpose of the Durham Zoning Ordinance, and not on the *specific governing section for the Courthouse District*.

Section 175-45 (A) Purpose of the Courthouse District notes, "The character of new development should create a smooth visual transition into the Historic District by assuring that the architecture, landscaping, and signage are compatible with the historic buildings in and adjacent to the district."

Thus, I urge the Board to consider the "smooth visual transition" to the historic graveyard, the iconic Three Chimneys and the Tideline Public House. The recent design and renovation of the latter met the approval of the Historic District Commission.

I have yet to see an argument that the proposed new 3-story structure would contribute to the desired smooth visual transition to these existing elements.

4. The values of surrounding properties are not diminished.

The petitioner's project may further the expansion of student rentals toward a single-family neighborhood, one where homeowners—by choice of location, with the Oyster River on one side and a hillside on the other, and by choice to live among other single-family homes—could reasonably have expected a particular, specific quality of life. Homes along Old Landing Road directly have historically been attractive for those features.

Quoting from the expert-testimony (via letter dated February 12, 2024), submitted by licensed real estate broker Valerie R. Shelton:

"...I do believe the proposed development could impact abutting properties in the Old Landing Road neighborhood. There would no longer be an orderly transition in uses between the two distinctly different neighborhoods. Additionally, there could be unintended consequences in granting the variance by setting a precedent in permitting multi-family conversions to other abutting properties between Schoolhouse Lane and Old Landing Road properties, resulting in further diminishing of value of those properties.

"In order to assess impacts to value, factors such as views, noise and use are reviewed...."

The letter lays out those impacts in detail. From my own personal experience as a home buyer, I concur with Ms. Shelton's comments that "All other things being equal, a single-family home in a restricted residential zone which abuts another single-family lot will be more marketable and sell for a higher price than one which abuts a property with a multi-family apartment building, particularly if the primary market for apartments is student housing."

5. Denial of the variance would result in unnecessary hardship to the owner

The applicant fails to provide a cogent argument, instead detailing aspects of the neighborhood rather than of the subject property, and providing the non-persuasive statement, "The size and shape of the Property allows for construction of the Project while complying with the Residence A Zone's dimensional requirements. Thus, the Project is arguably more compliant with the intent of the ordinance than surrounding rental properties."

What, exactly, are the **unique features of the property** that would make it a hardship to enjoy other viable economic uses?

Regards,

Robin Mower