

These minutes were approved at the January 8, 2003 meeting

**DURHAM PLANNING BOARD MINUTES  
WEDNESDAY, DECEMBER 18, 2002  
TOWN COUNCIL CHAMBERS – DURHAM TOWN HALL**

**MEMBERS PRESENT:** *David Pease, Chair; David Watt, Vice Chair; Amanda Merrill, Secretary; Suzanne Loder; Rachel Rouillard; Arthur Grant, Town Council; Annmarie Harris, Town Council Alternate*

**MEMBERS ABSENT:** *Neil Wylie; Julian Smith, Alternate; Nick Issak, Alternate*

**OTHERS PRESENT:** *Jim Campbell, Planner; Todd Selig, Town Administrator; Tom Johnson, Code Enforcement Officer; Walter Mitchell, Town Counsel; Malcolm Sandberg, Town Council Chair; Peter Smith, Town Council member; Interested members of the public*

**MINUTE TAKER:** *Michael Bornstein*

*Chair Pease called the meeting to order at 7:00 P.M.*

I. Approval of Agenda

*Vice Chair Watt MOVED to approve the agenda. The motion was SECONDED by Secretary Merrill.*

Jim Campbell stated a Zoning Re-write Committee meeting would be following the Board's meeting where the conservation subdivision provisions of the proposed ordinance will be deliberated. He stated the public hearing will be on changing the current administrative provisions in the Zoning Ordinance from Articles I-III. to Articles I-IX. in the proposed ordinance.

*Vice Chair Watt MOVED to end item II. By 8:30 P.M. The motion was SECONDED by Rachel Rouillard.*

*The Board unanimously APPROVED the amended agenda.*

II. PUBLIC HEARING on the proposed Zoning Ordinance's administrative provisions

*Suzanne Loder MOVED to open the public hearing. The motion was SECONDED by Vice Chair Watt and was unanimously APPROVED.*

Mark Eyreman, Zoning Re-write Committee consultant, gave a review of the proposed changes.

Chair Pease stated the PUD provision had been completely removed.

In response to a question from Jan Nesbit, 9 Woods Drive, Mark Eyreman stated the re-writing process has been guided by the 2000 Master Plan.

Annmarie Harris stated in the proposed table of land uses the Board has not severely limited the conditional uses and what is and isn't permitted. She stated the Board has not gone through these yet.

In response to a question from Jan Nesbit, Chair Pease stated the Board would be taking its obligation to listen to the citizens seriously.

Jim Jelmborg, 29 Park Court, suggested the words "non-residential" be added to the definition of commercial use.

Judith Spang, 55 Wiswall Road, suggested that UNH was not supposed to be listed under Applicability of Government Uses and that age 55 was too young to be listed under elderly housing and that age 65 should be used.

Chair Pease stated that the age 55 or age 62 is set by the Federal Fair Housing Act and that the Town must comply with the law.

In response to a question from Judith Spang, Vice Chair Watt stated that the act called for different restrictions regarding age 55 and age 62.

In response to a question from Ms. Spang, Chair Pease stated the Board has not sought legal counsel to consider if the Town was restricted to referring to the ages in the Federal Fair Housing Act.

In response to a question from Ms. Spang., Mark Eyreman stated the definition of shore line protection zone has been placed in a different section of the proposed ordinance that was not a part of the public hearing.

Jay Gooze, 9 Meadow Road, suggested the word integral under Accessory Apartments should be further defined.

Malcolm Sandberg stated every facet of the proposed ordinance needed to have close attention paid to it to make sure people knew what to expect and that the grammar and spelling needed to be checked. He suggested changes regarding the leasing of property; the definition of words under accessory apartments, accessory shed and accessory structure; and animal husbandry. He stated he was concerned with the wording under the definition of antiques that allows shop owners to sell items other

than antiques provided that 75% of its revenue is derived from antiques, as he believed that would allow the selling of any thing in any district.

Vice Chair Watt stated one of the Zoning Re-write Committee's procedures in developing the proposed Table of Uses was to go through the 2000 Master Plan.

Arthur Grant read from the proposed Table of Uses that listed where antique shops would be permitted and that the Table of Uses would be made available to the public at a later date.

In response to a question from Malcolm Sandberg, Chair Pease stated the definition of an aquifer was the same in the proposed ordinance as it was in the current one due to the fact that the Committee has not yet received input from the consultants working on the aquifer protection overlay.

Malcolm Sandberg stated he believed the use of 200 gallons per minute was too high and that 50 gallons would be better. He stated the aquifer protection line should be changed to include lots and that the ordinance should place the burden on the developer and not the abutters to defend the argument that the property is an aquifer protection district.

Malcolm Sandberg suggested changes to the wording under Special Flood Hazards.

Jack Farrell, Packers Falls Road, suggested under the elderly provisions the age be changed from 55 to 62.

In response to a question from Glenda Howard, 5 Bayview Road, Chair Pease stated after the public hearing the Board will consider what it heard and will make changes itself, send it back to the Zoning Re-write Committee or send it as is or with changes to the Town Council.

In response to a question from Ms. Howard, Arthur Grant stated if the Board made many substantitive changes it would hold another public hearing.

In response to a question from Ms. Howard, Mark Eyreman read from the criteria required in granting a CUP.

Judith Spang stated she was concerned about the section in the proposed ordinance that allows structures used in open space and suggested taking out the word structures.

Ms. Spang stated that under non-conforming buildings and structures she was concerned about references to the wetlands and that it would be difficult for the Town to enforce.

Ms. Spang suggested that it should read in the proposed ordinance that if the Board approves a golf course, a club house that was to be used as a function hall would need to seek separate approval.

Jan Nesbit stated the Durham Neighborhood Alliance included 50 citizens and that it was concerned that the language in the ordinance did not match the 2000 Master Plan.

Neil Niman, 10 Cold Spring Road, submitted for the record two proposed additions to the Zoning Ordinance.

Beth Olshansky, 122 Packers Falls Road, submitted for the record a letter from herself and Richard Moore, U.S. Geological Survey Hydrologist, regarding the Town aquifer. She suggested taking out the word direct under the aquifer protection section in the ordinance.

Jim Campbell stated the Conservation Law Foundation and the American Groundwater Trust is working on the language regarding the aquifer.

***Arthur Grant MOVED to extend the hearing by 15 minutes. The motion was SECONDED by Vice Chair Watt and was unanimously APPROVED.***

Eileen Fitzpatrick, attorney for Durham Neighborhood Alliance, submitted for the record proposed revisions to the Zoning Ordinance.

***Arthur Grant MOVED the hearing be extended for 10 minutes. The motion was SECONDED by Secretary Merrill and was unanimously APPROVED.***

Peter Smith stated the Board find ways to get the public involved regarding the proposed Zoning Ordinance and that every Town Board should have a clear understanding of what its role is regarding the proposed Zoning Ordinance. He suggested the Board make clear when it has recommended changes contrary to the 2000 Master Plan and changes that were made that were not in the 2000 Master Plan; and not to use statute as the forum for making notes.

Mr. Smith made suggestions regarding the elderly exemptions and the omitted CUP section of the proposed Zoning Ordinance.

Chair Pease stated it was a policy of the Board and the Zoning Re-write Committee to make no changes to the Zoning Ordinance contrary to the 2000 Master Plan but that there were different interpretations of the Plan.

Suzanne Loder stated there were places in the 2000 Master Plan that were in conflict with each other.

Mark Eyerman suggested that people keep making changes to the ordinance and submit them to the Board or the Zoning Re-write Committee.

Jim Campbell stated the proposed Zoning Ordinance was at the Town Hall, the library, the UNH library, on the web and it can be e-mailed.

***Arthur Grant MOVED to continue the Public Hearing to Thursday, January 2, 2002. The motion was SECONDED by Suzanne Loder.***

Vice Chair Watt stated the Historic District Commission was meeting at that time.

***Arthur Grant WITHDREW the motion. Suzann Loder WITHDREW her second.***

***Suzanne Loder MOVED to continue the public hearing until Wednesday, January 15, 2003. The motion was SECONDED by Vice Chair Watt and was unanimously APPROVED.***

Chair Pease called for a 5 minute recess at 9:08 P.M.

Chair Pease reconvened the meeting at 9:16 P.M.

### III. Discussion with Town Counsel

Walter Mitchell submitted for the record a letter regarding the tabling of the acceptance of applications and the law.

In response to a question from Arthur Grant, Mr. Mitchell stated the 90 day extension was in addition on to the original 65 days.

In response to a question from Vice Chair Watt, Mr. Mitchell stated if the Board accepts an amendment to an application it was appropriate to begin the expiration clock again but the applicant should be made aware of it.

Arthur Grant stated he believed the Board should not accept amendments, as they change the expiration clock and the amendments keep growing.

Annamarie Harris stated she believed the Board should not accept amendments and that a policy should be set.

Chair Pease stated the Board should have guidelines regarding the accepting of amendments.

In response to a question from Chair Pease, Walter Mitchell stated the Board had up to 30 days to act on an application.

In response to a question from Jim Campbell, Mr. Mitchell stated the Town could use its 21 day requirement as opposed to the State's 15 day requirement when making sure applications are complete.

Chair Pease stated the Town uses 21 days to make sure the application was complete while still meeting the 15 day statutory regulation.

Chair Pease stated the Board needed to look at the regulations regarding what defines a completed application.

Jim Campbell stated the regulations refer to a checklist regarding a completed application.

In response to a question from Arthur Grant, Walter Mitchell stated the Board could revise the checklist.

In response to a question from Mr. Grant, Mr. Mitchell stated that new applications should be considered by the Board under the proposed Zoning Ordinance and that the Code Enforcement Officer must make sure none of the applications are in violation of the current ordinance and the new proposals as posted. He stated in order for an application to be treated only under the current ordinance it must have been accepted by the Board as complete before the first posting of the public hearing and that the Code Enforcement Officer could not issue building permits for new applications if they are prohibited by the new ordinance. Mr. Mitchell stated the proposed Zoning Ordinance puts every thing into a holding pattern until the Board acts on it.

In response to a question from Tom Johnson, Mr. Mitchell stated the only time the Code Enforcement Officer would hold applicants up on the proposed changes is if they are more restrictive and not if they are less restrictive.

Mr. Mitchell stated the Board could decide that the public hearings it is currently holding could be considered informational hearings, as the proposed Zoning Ordinance is in the preliminary stages.

In response to a question from Arthur Grant, Mr. Mitchell stated the Board could not find that applications are premature as the Zoning Re-write Committee is writing a proposed conservation subdivision ordinance. He stated the Board could no longer require off site improvements.

Annmarie Harris stated the Town needed a house in value of \$450,000 to break even for municipal cost.

Chair Pease stated the Town could not build schools, as the School District is its own political subdivision.

In response to a question from Secretary Merrill, Walter Mitchell stated the Board would have to layout the facts regarding schools and scattered and premature housing if it was going to use that as a basis for denying an application.

In response to a question from Vice Chair Watt, Chair Pease stated if an application can not meet the requirements of the current ordinance or the proposed one the Board can't accept it, as it would not be compliant with one ordinance or the other.

Peter Smith stated he believed that it will be difficult for the Board to decide which ordinance was stricter, as the judgment would go to Board members' value assessments. He stated the applicant was taking a risk when presenting an application when there is a posting regarding proposed Zoning Ordinance changes and that if the applicant responded to the risk by not moving forward, that could help the Board catch up on applications.

In response to a question from Rachel Rouillard, Walter Mitchell stated the Board could make further changes to the proposed amended ordinance after its posting of a public hearing unless the changes are substantially different.

In response to a question from Vice Chair Watt, Mark Eyreman stated the Zoning Rewrite Committee still had steps to take before holding a public hearing on part B of the proposed Zoning Ordinance.

Malcolm Sandberg stated he believed the burden was not on the Board regarding accepting applications and that the burden would be on the applicant. He stated part A of the proposed Zoning Ordinance relates to part B and that the Town did not know yet what regulations an applicant would have to follow.

Annmarie Harris stated the Board needed a way to explain the ordinances to the applicants. Walter Mitchell will draft a letter to explain the implications of posting new ordinance language.

#### IV. Other Business

##### A. Role of the Planner

Jim Campbell stated that, given the late hour, the Board probably did not want to discuss his role this evening.

Amanda Merrill suggested that a time be set for a Board retreat.

The Board discussed the retreat but no time was set.

***Arthur Grant MOVED to adjourn. The motion was SECONDED by Vice Chair Watt and was unanimously APPROVED.***

***The meeting ADJOURNED at 10:49 P.M.***

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Amanda Merrill, Secretary