

*These minutes were approved at the April 5, 2017 meeting.*

**DURHAM PLANNING BOARD**  
**Wednesday, January 25, 2017**  
**Town Council Chambers**  
**7:00 p.m.**  
**MINUTES**

**MEMBERS PRESENT:** Andrew Corrow, Chair  
Lorne Parnell  
Barbara Dill  
Paul Rasmussen  
Bob Brown  
Councilor Alan Bennett, alternate Council  
Representative to the Planning Board

**MEMBERS ABSENT** Bill McGowan, Vice Chair  
Councilor Jim Lawson, Council Representative to the  
Planning Board  
Wayne Lewis, alternate

**I. Call to Order**

Chair Corrow called the meeting to order at 7:00 pm.

**II. Roll Call**

The roll call was taken.

**III. Seating of Alternates**

Councilor Bennett was seated as a regular member for the meeting in place of Councilor Lawson.

**IV. Approval of Agenda**

*Lorne Parnell MOVED to approve the Agenda as submitted. Bob Brown SECONDED the motion and it PASSED unanimously 5-0.*

**V. Town Planner's Report**

Mr. Behrendt said the Town Assessor couldn't make it to the meeting this evening, so this would be rescheduled. He noted that three projects on the agenda have been postponed at the applicants' requests.

**VI. Reports from Board Members who serve on Other Committees**

Mr. Brown said the Land Use Committee working on the Future Land Use chapter of the Master Plan met last week, and decided to scrap the survey they'd been developing. He said they would be focusing instead on having a public forum, and said there would be a meeting next week to discuss this.

Mr. Parnell asked what the basis was for assuming that what the public wanted concerning future land use was known. Mr. Brown said it was felt that the information in the 2011 survey was still relevant, and noted that they would still be getting input from the public with the forum.

Ms. Dill arrived at 7:03 pm. She updated the Board on the most recent Conservation Commission meeting. She said that among other things, there was a discussion with DPW Director Mike Lynch, who spoke about the idea of using some conservation funds to update more of the notebooks for Town properties. She said Mr. Lynch also noted that forester Charlie Moreno was working with the Natural Resources Conservation Service on the clearing of almost 50 acres in the Oyster River Forest. She said there was also discussion with Mr. Lynch about the land stewardship/management arrangement being worked on with Ellen Snyder.

**VII. Public Comments**

There were no public comments.

**VIII. Review of Minutes (old): none**

**IX. Public Hearing - 250 Newmarket Road – Patio.** Conditional use to install a patio adjacent to an existing single-family house within the wetland and shoreland overlay districts. Jason and Megan Lenk, property owners. Rural District. Map 18, Lot 3-1.

***Lorne Parnell MOVED to open the Public Hearing on a Conditional Use Application submitted by Jason and Megan Lenk to install a patio adjacent to an existing single-family house within the wetland and shoreland overlay districts. The property is located at 250 Newmarket Road, Map 18, Lot 3-1 in the Rural District. Bob Brown SECONDED the motion and it PASSED unanimously 6-0.***

There were no members of the public who came forward to speak.

***Lorne Parnell MOVED to close the Public Hearing on a Conditional Use Application submitted by Jason and Megan Lenk to install a patio adjacent to an existing single-family house within the wetland and shoreland overlay districts. The property is located at 250 Newmarket Road, Map 18, Lot 3-1 in the Rural District. Paul Rasmussen SECONDED the motion and it PASSED unanimously 6-0.***

The Board reviewed the conditional use checklist, and had no issues with any of the criteria the application needed to meet.

***Lorne Parnell MOVED to approve the Conditional Use Application submitted by Jason and Megan Lenk to install a patio adjacent to an existing single-family house within the wetland and shoreland overlay districts, subject to the terms conditions as outlined in the Notice of Decision dated January 24, 2017. The property is located at 250 Newmarket Road, Map 18, Lot 3-1 in the Rural District. Bob Brown SECONDED and it PASSED unanimously 6-0.***

- X. Public Hearing - 44 Bennett Road – Garage.** Conditional use for construction of a 30 x 36 foot garage serving a single-family residence. The garage would be 75 feet +/- from Laroche Brook where 100 feet is required in the Wetland Conservation Overlay District and 75 feet is required in the Shoreland Protection Overlay District. Tabb Family Trust, Tom Boisvert, Trustee, property owner. Joel Runnals, Norway Plains Associates, surveyor. Map 15, Lot 2-1. Rural District.

Chair Corrow noted that there had been a site walk at the property this afternoon.

Ms. Dill asked if the lower driveway came off of Bennett Road, and was told that it did. There was discussion about an item on the map. Mr. Boisvert said the previous owner had a camper, and said it was no longer there. Ms. Dill said it seemed like a large garage was proposed. Mr. Boisvert said it would be a three-car garage, and said there would be an upstairs.

***Bob Brown MOVED to open the Public Hearing on a Conditional Use Application submitted by the Tabb Family Trust for construction of a 30 x 36 foot garage serving a single-family residence. The garage would be 75 feet +/- from Laroche Brook where 100 feet is required in the Wetland Conservation Overlay District and 75 feet is required in the Shoreland Protection Overlay District. The property is located at 44 Bennett Road, Map 15, Lot 2-1 in the Rural District. Paul Rasmussen SECONDED the motion and it. PASSED unanimously 6-0.***

No members of the public came forward to speak.

Mr. Behrendt said the Conservation Commission had reviewed the application and recommended approval subject to a satisfactory site walk. He said Commission members Sally Tobias and John Nachilly attended the site walk, and said that everything looked fine.

***Paul Rasmussen MOVED to close the Public Hearing on a Conditional Use Application submitted by the Tabb Family Trust for construction of a 30 x 36 foot garage serving a single-family residence. The garage would be 75 feet +/- from Laroche Brook where 100 feet is required in the Wetland Conservation Overlay District and 75 feet is required in the Shoreland Protection Overlay District. The property is***

***located at 44 Bennett Road, Map 15, Lot 2-1 in the Rural District. Bob Brown SECONDED the motion and it PASSED unanimously 6-0.***

The Board reviewed the Conditional Use checklist, and had no issues concerning the criteria that needed to be met.

***Lorne Parnell MOVED to approve a Conditional Use Application submitted by the Tabb Family Trust for construction of a 30 x 36 foot garage serving a single-family residence. The garage would be 75 feet +/- from Laroche Brook where 100 feet is required in the Wetland Conservation Overlay District and 75 feet is required in the Shoreland Protection Overlay District, subject to the terms and conditions as outlined in the Notice of Decision dated January 25, 2017. The property is located at 44 Bennett Road, Map 15, Lot 2-1 in the Rural District. Paul Rasmussen SECONDED the motion and it PASSED unanimously 6-0.***

- XI. Public Hearing - Young Drive Redevelopment.** Design review (preliminary) application for the redevelopment of Young Drive into a senior housing project (55 years of age +). Young Drive, LLC, owner. Francis Chase, agent. Eric Metz, consultant. Dennis Quintal, engineer. Gary Lowe/Ned Adams, Lowe Associates, architect. Jeff Brown, attorney. Map 4, Lots 42-2 through 42-14, Lots 42-16 & 17, Lot 47-0. Coe's Corner Zone.

Postponed to the February 8, 2017 meeting

- XII. Public Hearing - 2 Brook Way – Phi Sigma Sigma Sorority.** Site plan and conditional use/adaptive reuse for conversion of an existing multi-unit dwelling with 24 beds to sorority for 36 residents (plus one resident director). Exterior renovations to the building are proposed. Paul Berton, Fall Line Properties, LLC, property owner. Sandy Grossman and Heather Durant, representatives of Phi Sigma Sigma. Chris Wyskiel, attorney. Professional Office District. Map 2, Lot 9-4.

Postponed. The applicant will request a new date.

- XIII. Public Hearing - Mill Plaza Redevelopment.** 7 Mill Road. Design Review (preliminary application). Site plan and conditional use for the redevelopment of this 10-acre site. The project involves demolition of the rear commercial building; construction of 2 new mixed-use buildings with commercial on ground level and residential above; 386 parking spaces, including 36 garage spaces; a total of 80,000 square feet of commercial; 174,000 square feet of residential space for 330 occupants; new public spaces; and other site changes. Colonial Durham Associates, LP, property owner. Sean McCauley, agent. Joe Persechino, Tighe & Bond, engineer. Steve Cecil and Emily Innes, Harriman, site planner. Ari Pollack, attorney. Central Business District. Map 5, Lot 1-1.

Postponed to February 22, 2017 meeting

- XIV. Zoning Ordinance – General Amendments.** Numerous miscellaneous amendments are being proposed to the Zoning Ordinance based upon earlier discussions by the Planning

Board, issues that have been raised in recent years, and a review of the ordinance by the Town Planner.

Mr. Behrendt noted that there were 8 general criteria under 175-21 Conditional Use Permits, which applied to conditional uses in various districts in Town. He said there were also the 4 criteria for conditional uses in the wetland and shoreland overlay districts. He said it seemed that for applications for proposed uses in the wetland and shoreland overlay districts, the only relevant criteria were the 4 criteria outlined in the Zoning Ordinance for the overlay districts. He said all of the general criteria usually weren't applicable, and said it was questionable whether the Planning Board could for example deny an application because of an architectural criterion in the list of 8 criteria, when an application had to do with wetlands.

He said he thought the Board could get into trouble if it denied an application based on a fiscal or architectural criterion that wasn't really relevant to the overlay issue. He noted the application this evening for a garage in the shoreland and wetland overlay districts, and said a question was whether it was legitimate to be asking about the character of the structure.

Ms. Dill noted that larger, commercial projects needed site plan review so got into a lot of issues, as compared to applications for residential uses that had wetland issues.

Mr. Parnell said he didn't think the Conditional Use applications the Board had heard tonight should be subject to the 8 criteria, and said it would have been difficult this evening if the Board had objected to the look of the garage. But he said not all situations within the wetland and shoreland setbacks would be as straightforward as this. He said Conditional Use allowed the Board to have a lot more influence on a project, and said he didn't think they should give this up. He said it was unfortunate that the same term "conditional use" was used for both kinds of situations.

Mr. Behrendt said this was because that was how the state set it up. He asked what the Board would do if someone said a building to be located in an overlay district wasn't attractive, or was concerned about its fiscal impact. Mr. Rasmussen said if there was a fiscal impact, it would be subject to site plan review.

After further discussion. Mr. Parnell withdrew his objection to not requiring that the Board use all 8 criteria for projects in the wetland and shoreland overlays. Mr. Behrendt said he would include proposed revised language in the next draft.

#### 175-107 Conservation Subdivision

D. 4. The subdivision will create not more than one additional lot accommodating one (1) dwelling unit and no other lots have been created from the parcel within the preceding seven (7) year period. ***This exemption allows for the subdivision of one lot at a time, leaving residual land for potential future subdivisions, provided that at least 7 years pass between subdivisions.***

The Planning Board discussed Mr. Behrendt's suggested addition to this provision.

175-108. Stewardship Fund.

Payments to the Town to provide for the periodic monitoring of conformance with the conservation restrictions on common open space shall be deposited in the Town's Stewardship Fund. The Stewardship Fund shall be maintained as a separate trust account and shall be used only for the monitoring of conservation restrictions. The use of the Fund shall be managed by the Town's Conservation Commission. The Commission shall provide the Town Council with an annual accounting of the use of the fund. *At its discretion, after consulting with the Conservation Commission, the Planning Board may approve an alternative arrangement to the stewardship fund as described here.*

The Planning Board discussed Mr. Behrendt's suggested addition to this provision.

**Article XX PERFORMANCE STANDARDS**

175-109. Compliance Required.

**B. Accessory Animal Husbandry – Livestock, not including poultry.** Accessory Animal Husbandry – Livestock shall conform to the following standards:

There was discussion on where the wording on goats was in the Site Plan regulations. Mr. Behrendt said he would check on this.

Mr. Behrendt said he would like to add a section to Article XX on Home Occupations, and the process for reviewing them. He said it would be good for proposed home occupations to obtain approval from the Code Administrator. Mr. Parnell said he thought that during the Board's discussion on Definitions in the Ordinance, they decided that this wasn't the way to go. There was discussion on this, and on why there were two classes of Home Occupations. The Board agreed to use Home Occupation I and Home Occupation II.

**H. Hotels and Motels.** Hotels and motels shall conform to the following standards:

**I.** No person may stay in a hotel or motel as a guest for more than fourteen (14) days in any thirty (30) day period.

There was detailed discussion on the limitation in the Ordinance on staying more than 14 days in a 30-day period. Mr. Parnell said this provision came out of concern about hotels becoming student residences. There was discussion about increasing the allowed length of stay to 60 days at any one time. The Board agreed to strike the language "Hotels and motels shall conform to the following standards."

There was discussion on portable sawmills, in relation to the performance standards in **J. Forestry.**

**O. Accessory Shed.** An accessory shed used in conjunction with a residential use shall conform to the following:

There was detailed discussion about increasing the size allowed for accessory sheds. Board members spoke about 200 sf as being reasonable. Mr. Behrendt said he'd do some work on this provision, and would discuss it with Ms. Cline. There was discussion that there was no definition in the ordinance for a barn. Mr. Behrendt said he'd give some thought to this and come back with a suggestion.

## **ARTICLE XXI**

### **OFF-STREET PARKING AND LOADING**

Mr. Behrendt said most of this article could be eliminated now that there was a new section on Parking in the Site Plan Regulations. He also noted that the exemption for parking in the Central Business District needed to be clarified. He said he would retain in this section whatever seemed to make sense.

## **ARTICLE XXIII**

### **SIGNS AND COMMUNICATIONS DEVICES**

#### **175-127. General Provisions/*Application Process.***

Mr. Behrendt said some general standards were needed. He also said at some point there could be discussion on whether there should be design review for signs. He noted that there was the question of whether these standards should say "should" or "shall".

Concerning the proposed standard on signage being professionally designed, Ms. Dill said the word "professional" was vague, and said sign companies weren't really designers. There was discussion that these provisions applied to all signs, so the word "professionally" could perhaps be deleted.

The Board reviewed the other standards Mr. Behrendt had proposed and was generally ok with what was proposed. They said the standard on historical colors should be removed, but said the provision on fluorescent colors not being permitted should stay. They revised the language on Typefaces. It was noted that the language on this in the HDC regulations said "should", but the language in the Zoning Ordinance said "shall", so this needed to be made consistent.

There was discussion on whether signs inside of a building should be regulated. Mr. Behrendt suggested that the Article could state upfront that signs inside buildings weren't regulated.

#### **175-132. Condition of Signs.**

***C. The owner of any sign shall inspect annually each sign belonging to him/her, and it shall be the duty of said owner to keep his/her sign(s) in good repair and in good appearance at all times***

There was discussion about reducing the proposed wording in C. down somewhat.

There was detailed discussion on **175-33 K. Window Signs.**

The Board discussed the issue of the content of signs, and how this might be reflected in the Zoning Ordinance based on the ruling that had recently come down from the Supreme Court. Mr. Behrendt said the Town was looking into this issue.

#### **ARTICLE XXIV SEPTIC SYSTEM**

##### **175-139 Suitability of the Location of the Leaching Field.**

“Innovative systems approved by the NH Department of Environmental Services that provide a higher level of treatment may be installed on sites that cannot meet all of the above standards if the Zoning Board of Adjustment grants a Special Exception and a report is provided to the Code Enforcement Officer every two years by a certified septic system evaluator *for up to six years from the time of installation.*

There was detailed discussion on Mr. Behrendt’s proposed wording in italics, and whether it should stay or be removed.

#### **XV. Other Business:**

##### Designate Planning Board representative to Addressing Committee

Mr. Rasmussen agreed to be the representative to the Addressing Committee.

##### Designate Planning Board representative to Integrated Waste Management Advisory Committee

Chair Corrow said he’d attended two IWMAC meeting, and said he believed the Planning Board had a big role to play in the issues this committee dealt with.

Ms. Dill said it needed to be easier for students to recycle. There was discussion that the landlords of the three new developments downtown were required to have single stream recycling, but this wasn’t happening. Chair Corrow provided details on this, and said IWMAC members had been going around to these developments to look at the extent of recycling. He said they planned to try to work with the owners. He noted that DPW employee Doug Bullen, who worked with the IWMAC said recycling cost 75% less to haul away than regular trash did, so it was beneficial financially for these developments to recycle.

Mr. Brown said there were some residents in the Brookdale development who had a strong interest in recycling, and were frustrated that it wasn’t happening. Chair Corrow said the management there would need to want to start a recycling program, and suggested that members of the IWMAC could speak with them about starting such a program.

Mr. Behrendt said the 3 new developments required to do single stream recycling needed to show a real effort to do this, and said if they didn’t, they were in violation and this would be enforced. There was further discussion. It was suggested that for future



projects like those proposed at Mill Plaza and Young Drive, perhaps the IWMAC could provide advice on single stream recycling. Mr. Behrendt said detailed recycling plans should have been required for the three projects large projects downtown. He said this would be done in the future.

Mr. Brown said he would attend the IWMAC meeting as a Planning Board representative.

**XVI. Review of Minutes (new): none**

**XVII. Adjournment**

***Bob Brown MOVED to adjourn the meeting. Lorne Parnell SECONDED the motion and it PASSED unanimously 6-0.***

Adjournment at 9:02 pm

Victoria Parmele, Minutes taker

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Paul Rasmussen, Secretary