

*These minutes were approved at the June 28, 2017 meeting.*

**DURHAM PLANNING BOARD  
Wednesday, March 8, 2017  
Town Council Chambers  
7:00 p.m.  
MINUTES**

**MEMBERS PRESENT:** Andrew Corrow, Chair  
Bill McGowan, Vice Chair (arrived at 8:09 pm)  
Lorne Parnell  
Paul Rasmussen  
Barbara Dill  
Bob Brown  
Councilor Jim Lawson, Council Representative to the Planning Board  
Nathaniel Morneault, alternate

**MEMBERS ABSENT** Wayne Lewis, alternate  
Councilor Alan Bennett, alternate Council Representative to the Planning Board

**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**

Mr. Morneault was seated as a regular member until Mr. McGowan's arrival.

**IV. Approval of Agenda**

*Lorne Parnell MOVED to approve the Agenda as submitted. Paul Rasmussen SECONDED the motion and it PASSED unanimously 7-0.*

**V. Town Planner's Report**

Mr. Behrendt said he, Administrator Selig and Economic Development Director Mary Ellen Humphrey met last night with neighbors of the Young Drive property. He noted that it wasn't a public meeting, and said the purpose was to help everyone understand the larger picture concerning the property. He said three variances were needed as part of plans to redevelop the property, for building height, setbacks from wetlands and to allow

parking in front of the building. He said the sense of the neighbors was that the project was still too large.

He noted that in the past the 9 duplexes on the property was used for student housing, and up to 72 residents were permitted to live there. He said the site was vested for multiunit housing, and said at least 6 new duplexes could be built based on a previous approval, with 6 residents per unit. He said this potentially could result in a total of 180 residents on the site.

Mr. Behrendt said Young Drive LLC had said they'd gone as far as they were willing to go with the design review process, and had stated to Town staff that if they didn't get the variances from the ZBA, and approval from the Planning Board to build as was presently proposed with some adjustments, they would have no choice but to go back to student housing and develop 180 beds. He said Town staff wanted the neighbors to know that this as well as a 55 plus development were the two alternatives the owners had.

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

Mr. Brown said the Master Plan Land Use committee was meeting every other week. He said there would be a public forum on May 13<sup>th</sup> at UNH, and said a facilitator would be hired for the event. He said the committee had discussed marketing of the forum, and hoped to engage as many people as possible to participate.

Chair Corrow said the highlight of the recent Energy Committee meeting was a presentation by 350.org on offshore wind power. He said this meeting was available on DCAT.

Mr. Rasmussen provided details on the most recent Road Addressing subcommittee meeting. He noted that if roads were renamed, residents living nearby would be contacted to get ideas for the new names.

#### **VII. Public Comments**

There were no public comments

#### **VIII. Review of Minutes (old):**

#### **IX. 15 Main Street dormer. Conditional use to add dormer at rear of house at 15 Main Street. Enlargement of nonconforming use for a single-family dwelling with more than three unrelated residents in a dwelling unit. No additional occupants are contemplated. Peter Murphy, property owner. Nick Isaak, architect. Church Hill District and Historic District. Map 5, Lot 2-2.**

Mr. Murphy said he'd purchased the property and assumed the current tenants. He said when they moved out in May, he hoped to do some renovations, but said he would not be putting in additional bedrooms or students. He said he wanted to put a shed dormer on the

back that wouldn't be visible from the street, and wanted to add 2 ½ baths. He said he'd be replacing the roof, repointing the chimney, and doing some drainage work outside.

Mr. Parnell asked why the Planning Board was looking at this application. Mr. Behrendt said this was a single dwelling unit, but said there were 10 occupants so it was a nonconforming use. He said site plan review wasn't needed, but said any enlargement required a conditional use permit. He said what was proposed with the dormer was minimal, and said the use wasn't increasing.

Councilor Lawson suggested that the Board could approve the application after the public hearing at the next meeting if all of the paperwork was provided. He noted that the HDC had approved the dormer subject to Planning Board approval. There was discussion that there would be two bedrooms in the attic instead of one, with the same number of people as were there now.

Mr. Murphy said there would be a total of 7 bedrooms, as was the case now.

There was discussion on the building height, and Mr. Behrendt said he'd asked for the calculations on this. Mr. Murphy said he'd provide this information, and said the height was within the scope of where it needed to be.

Chair Corrow said the public hearing would be held at the March 22<sup>nd</sup> meeting.

- X. Zoning Amendments – Elderly and Multi-Unit.** Consideration of Town Council-initiated zoning amendments. *Recommended action:* Make recommendations on amendments or revise if appropriate and set a new public hearing.
  - A. Public Hearing - Mixed Use with Elderly Housing.** Add a new definition for Mixed Use with Elderly Housing (office/retail down, elderly housing up), allow as a conditional use in Central Business District, and add references to this use in Section 175-41 Central Business District and Section 175-53 B. General Use Regulations.
  - B. Public Hearing - Mixed Use with Residential.** Change Mixed Use with Residential (office/retail down, multiunit residential up) from conditional use to not permitted in the Central Business District.

Chair Corrow noted that the Town Council had recently voted 8-0 to forward some information to the Planning Board relative to the Zoning proposal, and said it was received yesterday. Councilor Lawson provided details on this, and noted that he'd provided this information to the Council at the meeting on Monday. He said he'd taken a lot of time to document the sources of the information.

He said looking at the wording in the Zoning Ordinance, he didn't think the Planning Board had to make a recommendation on whether to adopt a Council initiated Zoning proposal, and said he thought the Planning Board review could be a statement of benefits and concerns.

Councilor Lawson reviewed in significant detail the sections of the documentation he'd provided to the Planning Board. He noted that he'd provided the documentation to Attorney Pasay, including the sources referenced in it. (The information Councilor Lawson reviewed is on the Town website.)

<https://www.ci.durham.nh.us/planningandzoning/other-plansstudies> )

Chair Corrow said there were some heavy questions in the documentation, and said he wasn't sure he was qualified to answer them.

Councilor Lawson spoke about the data provided on demands on the Police and Fire Department and EMS nights and weekends, which was driven by activity in student areas. He said the Town had been working through this data, and said it painted a concerning picture. He said he asked Police Chief Dave Kurz and Fire Chief Corey Landry to review the information before he provided it to the Council, and said both of them were comfortable with it. He suggested that they could perhaps attend a Planning Board meeting.

Mr. Parnell said he thought the information provided here was a condemnation of high density nonrelated residential, i.e. student housing. He said he thought the changes made in the last couple of years to require 600 sf as well as Conditional Use had taken care of the issue. He said he thought the Zoning change being suggested to make all residential uses not permitted was overreach, and prevented property owners from doing what they might want to do to develop the downtown. He said he thought time should be spent doing some other things to discourage uses they didn't want, and noted that Administrator Selig had made some suggestions concerning this related to parking. He also said they should be doing some things to encourage other uses.

Chair Corrow said he agreed. He noted that Councilor Katrak had said the Zoning changes proposed was phase I, and that the Council would work with business owners in phase II.

Councilor Lawson said in the 4.6 acres remaining undeveloped in the downtown, there was the possibility of bringing in 440 new unrelated beds. He also said there were clearly some challenges in the downtown, as those who rode with the Police Department and residents living in downtown neighborhoods knew. He said Durham had an amazing capacity to solve challenges, but couldn't do this if there was continued build-out of the very thing that caused the challenges.

He said the Council saw that the downtown lacked a plan, and said a consensus was developing that if the Zoning amendments were adopted, this would be the start of working on that plan. He said just as the Master Plan said, the Town needed to evaluate and use mixed use judiciously in the downtown. He said if the Planning Board was to say a plan was needed, it could recommend that this needed to be explicitly included in a Council Resolution. He said the proposes Zoning changes weren't a plan.

Chair Corrow asked how the Planning Board would like to proceed regarding providing recommendations to the Council. He said he didn't think they needed to take a vote. He said he shared Mr. Parnell's concerns, but understood that a comprehensive plan for the Central Business District was lacking.

Mr. Brown said he didn't see a lot of collaboration with the business owners, but said he assumed that going forward, there would be such collaboration. Chair Corrow spoke about how the Zoning amendment review process had been morphing over time. Mr. Brown said he would have thought discussion with the business owners would have started earlier.

Councilor Lawson said he had previously misstated, and said the Zoning Ordinance did in fact say that the Planning Board should provide a recommendation to the Council on a Council initiated Zoning change..

Chair Corrow noted his own idea some weeks back to increase the requirement to 1200 sf per occupant, in an attempt to be able to have multiunit use in the Central Business District. He also noted a possible option Administrator Selig had brought up related to the parking requirements, and asked Councilor Lawson if he thought it would bring about the same result. Councilor Lawson said he had some concerns about the parking idea, and provided details on this. He said he didn't want to see any more asphalt downtown, or losing first floor commercial space.

Chair Corrow said he'd have to think about Administrator Selig's idea concerning parking. He said he didn't see how first floor parking was considered to be a nonresidential use when it supported a residential use. Mr. Behrendt said if they went with that option, Administrator Selig had suggested adding wording to clarify that nonresidential didn't include parking.

Councilor Lawson asked what was wrong with pausing development, as proposed in the Zoning change, and then looking at all of the options available. He said perhaps parking would be part of a plan, but not the solution. He said he didn't want them to do something that was piecemeal.

There was discussion about the idea of doing some planning before changing the Zoning Ordinance. Mr. Morneault said changing from 300 sf to 600 sf was the first phase of a plan, and asked how that number was determined. There was discussion. Councilor Lawson said he'd like to take a year to develop a plan. He noted that unfortunately developers might present a minimal preliminary design in order to vest the right to develop under the existing regulations.

Chair Corrow said the Public Hearing would be continued now.

**Ken Young, 48 Main St.** said the downtown business owners like him knew that their property values would be squashed by this Zoning change, and also said it would take away their fundamental property rights. He said if the intention was to coordinate with

the business owners, the Council would have reached out to them well in advance of the proposed Zoning change. He said it had been obvious that there was a group in Town that tried to use their power to set the agenda.

He said he'd supported the Town and the University over the years, including speaking out against his own business interests in not wanting the Zoning changes to allow 200 sf per occupant and 4 story buildings downtown. But he said he didn't feel the Town was supporting him.

He said it had been said that the proposed Zoning changes were necessary for health and welfare reasons, but he said the numbers provided on this could be refuted and he spoke in some detail on this. He also noted that no new student housing had been built since the 600 sf per occupant Zoning change in 2014, so the Council had already accomplished its goal, and student housing had been stopped.

Mr. Young spoke further about the downtown business owners not being engaged in the discussions about the future of the downtown, and said the process had been wrong from the beginning. He asked the Planning Board to send a message that the proposed Zoning change was bad for business and was a bad and illegal economic development strategy.

Mr. Behrendt noted that several people had contacted Planning Board members individually during the process or reviewing the proposed Zoning amendments. He said the Board's attorney had advised that these kinds of individual discussions should not take place outside of Planning Board meetings.

Mr. McGowan arrived at the meeting at 8:03 pm.

**Joe Michael, 50-54 Main St,** said the rationale for the proposed Zoning changes was a moving target, and he spoke in some detail about this. He spoke about the idea of property owners in the Central Business District holding off on redevelopment in order for some collaborative planning to take place, and said there would be some real support for something like that. He said it would be a much more responsible way to move ahead, and spoke further on this.

He said he didn't see that the Zoning change was a constructive way to proceed. He said while it was clear that people didn't want student housing, that didn't mean that everything in terms of development should be taken off the table, and that property values should be taken away. He suggested that perhaps someone could speak about the financial loss to the property owners if property values decreased. He asked that a moratorium be considered in order to do some planning, and said this would ease a lot of the tension.

**Roger Hayden, 44-46 Main St,** said a part of the process that hadn't worked for him was the way the Town had approached this, where someone like him was perceived as the enemy. He said assumptions had been made that all the landowners in the Central

Business district wanted to build student housing, but said he hadn't been asked what he would like to build.

He noted that he'd presented some plans informally a few years back that included public space, and a way to get people from the Petty Brook Lane area to Main Street. He noted that two main walkways for this were located on private property, and said the plans he'd presented devoted part of his property to a public walkway as part of thinking about how to make the community better.

Mr. Hayden said he was willing to collaborate with the Town, but said very few people had asked him what he would like to do. He said this proposed Zoning change would kill any development. He said he'd love to be part of a planning process, and not be the enemy. He said he'd appreciate it if everyone kept the discussion civil and positive.

**John Petrovitsis, 40 Main St**, noted that his dad and grandfather bought the property in 1973 and opened Durham House of Pizza in 1976. He said he and his brother would be taking over the property, and said they would like to help improve the downtown. But he said the Zoning proposals were stopping anything that could be done. He said they'd like to see collaboration between the Town and the business owners, and spoke about possible development ideas for the downtown that would benefit everyone.

**Michael Sievert, 28 Riverview Road**, said he was present to speak against the Zoning proposal, which he said was not in the best interest of tax payers.

- He said it went against the smart growth concept of having denser development in central areas
- He said it didn't provide an incentive for property owners to invest in their properties
- He noted that previously the Town had wanted more businesses in the downtown
- He said new buildings would be more energy efficient, and safer
- He said there had been a property valuation increase of over 120 million since 2008, and stabilized tax rates since 2014
- He said the Zoning changes so far had worked, and said growth had now slowed.
- He said he disagreed strongly with the idea that the Planning Board shouldn't vote on this. He said they had a role to play concerning a Zoning change, and said it wasn't fair to the citizens if this didn't happen.
- He said a developer couldn't just file an application and vest their property anymore because the Planning Board had changed the process. He said it was now a very intensive process to do a design review with the Planning Board.

**Cristina Brisotti, 2 Hoitt Drive**, read a letter from **Beth Olshansky, Packers Falls Road**. In her letter, Ms. Olshansky said the Town was at a critical crossroads, where the supply of student housing had met the demand, and she said allowing more of it threatened the fiscal wellbeing of the entire community. She said residents at the Lodges and the Cottages were hoping to move downtown, and also said more beds at Mill Plaza would push things well over the top.

She noted that both the Cottages and the Lodges were approved after they submitted fiscal analyses. She said if they emptied out, tax revenue would decrease, and also said they might fill up with families, which could result in 27 new students in local schools. She said the cost of these students would blot out any positive fiscal impact from new student housing development downtown.

Ms. Olshansky said a correction was needed or they would lose the soul of the community. She said there were more and more student oriented businesses downtown, and asked what would draw people other than students into the downtown. She said she hoped the Planning Board would look at the long term welfare of the community, which was what planning was all about. She said she supported the idea of a moratorium.

**Robin Mower, Faculty Road**, said she and others were moved by Ken Young's comments about the personal impact of unpredictable zoning changes. She said zoning was a process, which did impact people, including herself at various times. She said both times she'd spoken about this Zoning proposal, she'd asked the Planning Board to consider the impact on the community as a whole. She said she took offense at the characterization that she didn't care about the property values of the business owners.

She noted that in the past few years, some members of the community had asked for a complete moratorium on development. She said doing this would be complex from a legal perspective, and she said it would be helpful to have Mr. Behrendt talk about what this would entail, and the constraints in terms of the time frame.

Ms. Mower said the Zoning proposal would allow a pause in order to be able to take a step back, and allow some planning. She spoke in some detail on this, and said one step that might be taken was to develop some more concrete planning for the downtown. She noted that she'd suggested this years ago, and said there had to be the political will, including on the Planning Board, to actually plan, including collaborating with the property owners.

She said things were already out of balance concerning the uses in the community core, and said steps should be taken so that this didn't get worse. She said Councilor Lawson had laid out the potential negative impacts of additional student housing. She said it would be costly financially to taxpayers, and said there would also be negative impacts on the health, safety and welfare of residents.

Ms. Mower noted a comment made on the Zoning proposal at a recent Town Council meeting, - that Durham residents came after the students, and someone who didn't like this should go live somewhere else. She said the person who said that didn't live in Durham, including near the downtown. She said historically, there were benefits but also negative impacts from living in her neighborhood near the downtown.

She said the person who said someone who didn't like the students should live someplace else had also said the market would dictate what would happen. She said this was completely irrelevant to Durham's challenges, and said the structures already built for



student housing would last for decades. She said the market didn't always work well and for the benefit of the whole. She said the proposed Zoning amendments wouldn't solve the problems, but would provide some breathing space and allow them all to consider how best to allow mixed use in a geographically challenged downtown.

**Peter Murphy, 37 Main St**, noted that he'd recently purchased the Town and Campus building on Main St. He said the workforce housing units he'd included as part of his redevelopment of the Grange property 5-6 years ago had been a 100% success, and said he'd been and still was committed to doing this. He said as a business owner in the Central Business District, he wanted to voice his support of the other business owners who'd spoken about the Zoning proposal. He said at some point he'd like to build something behind the Town and Campus building on Jenkins Court, such as a 3-story addition that would blend in with the old 2 story building that faced on Main St. He asked the Planning Board not to support the Zoning amendment that was proposed.

Ms. Mower said residents really did appreciate the local business owners. But she said they also were wary because of the large student housing projects that had been done by out of town, out of state developers, which hadn't necessarily turned out as some people had expected. She said the massing of the buildings had been difficult for some people to swallow. She said Mr. Murphy's purchase of the Town and Country property was something to cheer about. She said she thought some way should be found to work with the downtown property owners, early in the planning process.

Chair Corrow said he agreed with much of what had been said. He said the Zoning proposal wasn't planning, and noted that the Planning Board was currently involved in developing the Future Land Use chapter of the Master Plan. He said he thought a short-term moratorium made sense, in conjunction with the Future Land Use chapter, and said this could take about two years. He said perhaps there could be a Central Business district study committee, like the Mill Plaza Study Committee, so business owners, residents, members of the Town Council and the Planning Board could all have a say in what happened to the downtown.

Ms. Dill agreed with Chair Corrow, and said she'd wanted to talk about the fact that the Future Land Use chapter was currently being worked on.

Councilor Lawson said he'd like to respond to some things that members of the public had said. He said the data he'd presented wasn't his, and said he'd simply put it into graphic form. He spoke in detail about this. Chair Corrow said he thought it was a baseless claim to say Councilor Lawson had shaped the data, and said Attorney Pasay's letter was wrong on this.

Councilor Lawson said the 55 and older Zoning amendment was included in the proposal only because it was specifically recommended in the Master Plan. He said everything had been carefully referenced, and said this was not an arbitrary effort. He also said the NH RSA on zoning spoke about protecting health, safety, and the general welfare, and didn't talk about the issue of diminution of property values. He noted that it had been pointed

that there had been no student housing development since the 600 sf requirement was put in place, and said it was therefore hard to understand why it was still considered to be the highest and best use.

He said the idea of a moratorium was interesting, and he considered whether it would apply to all building in the community, or could be specific to a district. He asked why they couldn't make this Zoning change the start of a moratorium, and a planning process. There was discussion about this with Mr. Behrendt. Mr. Brown said he saw a moratorium as a time to make a plan, and said then the zoning changes could be done. Chair Corrow said that was the intent in developing the Future Land Use chapter. Councilor Lawson said using the analogy of a dam, he thought they should fix the leak and then fix the dam. He asked what was wrong with plugging the hole of the one use that the Master Plan, a Planning Board document, said needed to be evaluated.

Chair Corrow said he'd like to understand what a moratorium would entail. Mr. Brown said he would like to see this become a more collaborative situation rather than an adversarial situation. Chair Corrow said the Planning Board had a lot of information to digest. Councilor Lawson noted that the extension that had been granted was until March 24<sup>th</sup>.

Mr. Rasmussen asked if the two proposed Zoning amendments could be handled separately, and said he was ready to act on the first one. Chair Corrow said he thought it would be better to address both of the proposed amendments at the same time, by March 22<sup>nd</sup>.

***Paul Rasmussen MOVED to close the Public Hearing. Lorne Parnell SECONDED the motion.***

Mr. Parnell said although he'd seconded the motion for purposes of discussion, he was not in favor of it. There was discussion that members of the public should be able to respond if more information was provided.

***The motion FAILED unanimously 0-7.***

Board members agreed to continue the public hearing to March 22<sup>nd</sup>. Mr. Parnell asked if Board members should be looking toward developing a common view, or should provide individual comments. There was discussion. Chair Corrow confirmed that the Board would take a vote on A and B, and would not be looking at any other alternatives.

## **XI. Other Business:**

There was discussion about the issue of Planning Board members speaking with members of the public about legislative/administrative matters, and it was noted that a policy on this wasn't currently in the Board's Rules of Procedure. Mr. Behrendt said the Town Attorney had recommended that Planning Board members not engage in such conversations, and he spoke in some detail on this. There was discussion.

**XII. Review of Minutes (new):**

December 14, 2016

Page 4, line 11 should say "Coes Corner";

line 15 should say "...Young Drive in a way that respected Beard's Creek."

Page 5, line 14 should read "Erick Ickes";

line 15 should read "...looking at it from his side"

Page 9, line 18 should read "Ms. Olshansky said she still believed..."

***Paul Rasmussen MOVED to approve the December 14, 2016 Minutes as amended  
Barbara Dill SECONDED the motion and it PASSED 6-0-1, with Lorne Parnell  
abstaining because of his absence from the meeting.***

**XIII. Adjournment**

***Bill McGowan MOVED to adjourn the meeting. Lorne Parnell SECONDED the  
motion and it PASSED unanimously 7-0.***

Adjournment at 9:28 pm

Victoria Parmele, Minutes taker

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Bob Brown, Secretary