

These minutes were approved at the October 24, 2018 meeting.

DURHAM PLANNING BOARD
Wednesday, July 11, 2018
Town Council Chambers 7:00 p.m.
MINUTES

MEMBERS PRESENT: Barbara Dill, Vice Chair
Bob Brown, Secretary
Bill McGowan (arrived at 7:55 pm)
Lorne Parnell
Mike Lambert, alternate
Nathaniel Morneault, alternate
Councilor Carden Welsh, Council Representative to the
Planning Board
Councilor Sally Tobias, alternate Council
Representative to the Planning Board

MEMBERS ABSENT Paul Rasmussen, Chair

I. Call to Order

Vice Chair Barbara Dill served as Chair of the meeting in place of Mr. Rasmussen, and called the meeting to order at 7:00 pm.

II. Roll Call and Seating of Alternates

Mr. Morneault was appointed to be a regular member in place of Mr. McGowan until his arrival.

III. Approval of Agenda

Chair Dill noted that the Mill Plaza application would not be heard this evening.

Lorne Parnell to approve the Agenda as amended, to postpone the Mill Plaza application to August 8, 2018, including extension of the public hearing. Nate Morneault SECONDED the motion and it PASSED unanimously 7-0.

IV. Town Planner's Report

V. Reports from Board Members who serve on Other Committees

Mr. Bubar said at the most recent Agricultural Commission meeting, Mr. Behrendt did yeoman's work helping with work on the draft agricultural ordinance. He said Durham Farm Day and a community picnic were scheduled for August 18th. He said the bee friendly program and food friendly yards programs were discussed at the meeting. He noted that the Commission was doing a survey on urban/suburban gardening.

Councilor Welsh said at the most recent Town Council meeting, thought was given to the idea of taking the opportunity, as part of the installation of a new wastewater pipeline

along Route 4 to put in a new water main in the same trench that was being dug. It was noted that putting in both the water and sewer pipes at the same time would save money.

Councilor Welsh also said Council approved the renewal of the Comcast agreement.

Councilor Tobias said she attended the recent Land Stewardship Committee meeting as a member of the public. She said Ms. Snyder spoke about the work being done at various Town properties, including work being done by interns.

VI. Public Comments

VII. Review of Minutes (old):

VIII. Young Drive Condominium Conversions. Application under the Subdivision Regulations to convert the duplexes on three separate lots into three separate 2-unit condominiums. 14 & 16 Young Drive (Map 4, Lot 42-8), 22 & 24 Young Drive (Map 4, Lot 42-6), and 25 & 27 Young Drive (Map 4, Lot 42-16). Young Drive LLC, property owner, c/o Francis Chase as agent. Coe's Corner District.

Mr. Chase spoke about the conversion of ownership of the property, and the proposal to change the existing duplexes on 3 separate lots into condominiums, which each would contain two individual units. He said the division of land would go through the middle of each building.

Councilor Welsh asked how long the duplexes had been unoccupied. Mr. Chase said there were 10 unoccupied units right now and said they were trying to fill them. He said the units involved with this application were all unoccupied except for unit #16.

Councilor Tobias asked why there was an application for just the 3 buildings. Mr. Chase said the intention was to convert the others as well. He spoke about renovations done for these buildings and more renovation planned for other buildings, and said they were trying to find a sweet spot in the market. Mr. Bubar asked Mr. Chase if he knew what the target market was for the units, and Mr. Chase said it was hard to figure out.

Councilor Welsh said the documentation in the application said the buildings were two detached structures, but said it looked like they were attached. Mr. Chase said he would address this and some other issues. There was discussion about the responsibility each of the 2 condo owners in a building would have for maintenance of the building. There was also discussion about possible future problems managing or redeveloping the buildings if the condo units didn't sell. Mr. Behrendt asked Mr. Chase if he thought there was some chance that the buildings would become individually owned homes, and there was further discussion.

Mr. Brown got clarification that each building would have 2 units, but there would be one homeowner association. Mr. Chase said right now there would be 3 associations, and said there eventually would be 15 associations. He noted that with the new state condominium law, if the roof of one of the buildings needed to be repaired, the association and not the homeowner was responsible for this. There was discussion on this.

Mr. Morneau asked if the owners of the condos would be able to rent them out, and Mr. Chase said there was no stipulation on this.

Mr. Bubar asked if it would be possible for the Board to get a fiscal analysis concerning what was proposed. Mr. Behrendt said he didn't think the Planning Board could require this since this wasn't a conditional use application.

Mr. Parnell asked if the application was ready for acceptance by the Planning Board. Mr. Behrendt said yes.

Lorne Parnell MOVED to Accept an Application under the Subdivision Regulations submitted by Young Drive LLC to convert the duplexes on three separate lots into three separate 2-unit condominiums: 14 & 16 Young Drive (Map 4, Lot 42-8), 22 & 24 Young Drive (Map 4, Lot 42-6), and 25 & 27 Young Drive (Map 4, Lot 42-16), and to schedule a public hearing for July 25th. The property is located in the Coe's Corner District. Nate Morneau SECONDED the motion and it PASSED unanimously 7-0.

A site walk was scheduled for July 25th at 4 pm. It was agreed that Planning Board members would be able to see the inside of one of the units.

IX. Public Hearing - 91 & 93 Bagdad Road – Lot Line Adjustment. Relocation of lot line on Map 10 between Lot 8-6 and Lot 8-8. Martha and Michael Mulhern, lot owners. Bob Stowell, Trittech Engineering, Surveyor. Residence B District.

Mr. Stowell explained that with the boundary line adjustment, the 93 Bagdad Road property (Map 10 lot 8-8) would have 2 acres and the 91 Bagdad Road property (Map 10 lot 8-6) would become the large lot, with 15 acres. He said this was being done to facilitate the sale of the 93 Bagdad Road property, and said the applicants would hold onto the 91 Bagdad Road property.

Mr. Behrendt asked that some overview be provided concerning the possibility of future subdivision of the 91 Bagdad Road property. He noted that some people had raised some concerns about this.

Mr. Stowell said a conceptual plan for a conservation subdivision, without specifics had been developed. He said high intensity soils mapping would be done to determine the appropriate density, and said somewhere around 8 units might be appropriate. He said no layout of this had been developed yet. He said the buildable portion of the lot was at the northern end, and he spoke about challenges concerning access. Asked for more specifics on the access issue, Mr. Stowell said he wasn't prepared to discuss the access issue yet.

Mr. Behrendt said there were three connections to the large parcel, and said all of them had challenges. He spoke further on this. There was discussion about how the access issue related to the boundary line adjustment application, which was what was before the Planning Board this evening. Chair Dill said doing the boundary line adjustment at this time didn't really change things down the road. Mr. Behrendt said it would still be a developable area, but said a potential access point would be removed. He said the

applicant understood this. He said the boundary line adjustment application met the requirements.

Mr. Brown noted that there had been the option to do a site walk and asked why it was felt this wasn't needed. Councilor Tobias said she didn't think they could forecast the future, and said any future subdivision proposal would be vetted at that time.

Councilor Welsh MOVED to open the Public Hearing. Bob Brown SECONDED the motion and it PASSED unanimously 7-0.

Kim Sweetman, 18 Ambler Way, said she was speaking for herself and her spouse, and said since the boundary line adjustment was proposed with the intent to create a future subdivision, they opposed it. She said there were too many unknowns, and said the scope and scale of the future plans hadn't been shared with the neighbors. She said the scale would have a direct impact on their quality of life, and said before they could support the boundary line adjustment, they'd need to know this. She said they didn't know if the extension of Gerrish Drive would require a cut through, and they didn't know what the environmental impact would be of extending it and developing the land. She said parts of the land were quite wet, and said possible disturbance of drainage was a concern.

Denise Day, 89 Bagdad Road, said she would definitely be impacted by a development on the 91 Bagdad Road property. She asked if there was a plan to demolish the house on the property. Mr. Mulhern said the intention in doing the boundary line adjustment was to downsize, after living in Durham for 20 years, and to sell the big house and move into the smaller house. He said he completely respected the neighbors, and said he wasn't prepared to discuss the subdivision issue right now. Ms. Day asked if the intent was to continue to use the shared driveway for the 91 Bagdad Road property, and Mr. Mulhern said yes. Ms. Day said she'd have further things to say if anything came before the Planning Board concerning the property in the future.

Mr. Mulhern said he'd like to talk with the neighbors. He said he and his wife had no intention to do something that wouldn't be healthy for the neighborhood.

Mr. McGowan arrived at 7:55 pm.

Gale Kelley, Gerrish Drive, read a lengthy letter into the public record, which provided some history of previous development in the area and its impacts. Her letter also spoke in detail about her concerns about a possible future subdivision in the area and the impacts this could have in part because of extending Gerrish Drive. She asked for a postponement of approving the boundary line adjustment application.

Diana Carroll, Bagdad Road said she knew the area well, and said based on the discussion this evening, it was really important that the Planning Board have a site walk and see the area first hand. She also said it was too soon to vote this evening. She said the Board had gotten some great background about the area involved from Ms. Kelley, and said the planning for the neighborhood wasn't the best especially regarding the drainage. She said it was important not to add to that problem.

She said if the Board voted in favor of the application tonight, one access to the land would be taken away. She said it was important to keep all three access possibilities. She said while this application dealt with a small issue, it was important to keep the big picture in mind. Ms. Carroll asked whether the area that had been given to the Town would come under the Town Council, if it was proposed that this land should be used for a road.

John Lewis, Gerrish Drive, said he'd thought this was an application for a subdivision but was hearing it was for a lot line adjustment. He said it was important to take a pause, and said he welcomed the idea of having the applicant talk with the neighbors to give them a better sense of what he was trying to do instead of seeking the boundary line adjustment at this time.

Molly White, Ambler Way, said extension of Gerrish Drive would be along her property. She noted that she'd just closed on her house last week. She said she didn't think there could be a plan right now, even for a boundary line adjustment, when there was no definitive answer about the entrance point, especially given concerns the neighbors had raised about the Gerrish Dr. extension, and wetlands.

Bill Berenson said he was the abutter on the Madbury side of the property. He encouraged the Planning Board to do a site walk. He said water ran down the driveway 12 months a year unless it was extremely dry, and also said there was a fairly steep grade with a lot of granite so construction would be very difficult. He said he didn't know if a private driveway would be permittable. He said if consideration was given to building a roadway off of Route 108, that would affect his property, and said he'd want to consult his attorney concerning whether this was permissible under the deed. He spoke in further detail on this, and said it was a complicated situation. He said the boundary line adjustment would close off one access, and said a Route 108 access would have a lot of issues too.

There was discussion about the location of the right of way and whether this was referenced in the deed.

Jim Connell, Gerrish Drive, said he opposed the boundary line adjustment, and the extension of Gerrish Dr. for the same reasons that neighbors had given this evening.

Gale Kelley said that in the notice to abutters about the application for a boundary line adjustment, it was noted that there would be a possible conservation subdivision in the future. Mr. Behrendt provided details on this.

Otis Sproul, Gerrish Drive, said he'd owned his home at the end of Gerrish Drive where it became Ambler Way for 37 years. He said it seemed that all of this meant there would be a significant change in the neighborhood, and the life of residents would change. He said the traffic would clearly increase, and said more consideration needed to be given to what might happen with this change.

Rich Spear, Gerrish Drive, said themes he was hearing this evening were that a lot of people could be affected by this change, and that they didn't have the facts. He said there

needed to be a thorough analysis including a site walk in order to know whether the access road was viable.

Matt Sylva said he was a friend of the applicants. He said they'd been passionate about taking a conservative approach, and said possibilities were being explored about whether a home or homes could be built out there. He said his role was to help people understand the process from the beginning. He said he built net zero energy homes, and said any development there would be custom, net energy homes, on a small footprint.

He said the applicants hadn't expected to see so many people here for this application. He said they were looking to sell their home and said they couldn't get the value they needed for it without doing the lot line adjustment. He said there might be one or more lots created in the future, and said there were very strict guidelines for building there that would have to be met. But he said not moving forward with the boundary line adjustment would change the applicants' plans for the homes they owned. He said not allowing them to move forward with this portion of the project would be unfair.

Councilor Welsh said there were three potential accesses, and said it sounded like it would be impossible to come in from Route 108. He said they were also hearing that it would be difficult to come in from Bagdad Road, which left only Gerrish Drive. He asked if there really was no access available from Route 108, and if giving up access from Bagdad Road forced the issue of using Gerrish Drive. There was discussion by Planning Board members about the potential accesses. Mr. Stowell said there were three potential accesses now, and said Bagdad Road was the least likely of the 3. There was discussion about the spur of Town land off of Gerrish Drive.

Mr. Behrendt asked if there was objection to doing site walk. Mr. Lambert said he didn't think it mattered, and said the point still was that the applicants wanted to move the boundary line, with the rest to be dealt with in the future. He said the land had challenges in terms of being buildable.

Mr. Stowell said the applicants were here to get approval for a boundary line adjustment, and said they hadn't determined that they even wanted to do a subdivision. He said they didn't come to the meeting prepared to say what the best access was.

Mr. Brown said the comments had been important, and said there would be time for more comments if the applicants went forward with a subdivision application.

Councilor Tobias said comments heard this evening made some good points about a subdivision at a later point in time, in what was a difficult spot. But she said tonight there was a boundary line adjustment application before the Board. She said getting one wouldn't necessarily guarantee the other.

Mr. Morneau asked if there was general consensus on the Board to vote this evening.

Diana Carroll said she was concerned about the way things were going, and said no decision was a small decision. She said the prudent way to proceed was to look at the property. She said they'd heard this evening from Ms. Kelley that when the area was

developed, a property on Gerrish Road was given to the Town for a potential entry road in the future. She said she wasn't sure if anyone went out to see it. She said it was important not to repeat history and to take some time now. She said if the Board decided to vote for the boundary line adjustment, and a subdivision application came to it in the future, it would be hard to stop. She asked the Board for the sake of prudence not to vote tonight.

Matt Sylva said the comments received had been useful, and said the applicants had offered to meet with other property owners. He said not moving forward with the boundary line adjustment would have a fiscal impact on them. He said this was the best time of year to sell a home that would accommodate a large family. He said he knew that a site walk would take place later before anything else came to the Planning Board.

Andrew Merton, Gerrish Drive, said some comments made by Mr. Sylva reinforced the point Ms. Carroll had made about an application being hard to stop in the future. He recommended prudence, and said the wetlands were a main concern. He said the Planning Board should see the property. He spoke further, and said it was assumed over the years that the area in question was landlocked.

Gale Kelley suggested that the property could be put under current use to keep property taxes down.

Kim Sweetman, Ambler Way, said it sounded like there were three potential entries, and said her concern was that by moving the boundary line one of these would be taken off the table. She said it was therefore worth considering all of this further.

Matt Sylva said he'd spoke about increasing the marketability of the 93 Bagdad Road property given its size. He agreed that the 91 Bagdad Road property could be put under current use with the increase in acreage and said the various options were being considered.

There was discussion about what the purpose of a site walk would be.

Lorne Parnell MOVED to close the Public Hearing. Nate Morneault SECONDED the motion and it PASSED unanimously 7-0.

Mr. Morneault said he thought the Board should vote on the boundary line adjustment application this evening. Mr. Parnell said he agreed, and said that was what was in front of them. He said the issues raised would be brought up in the future and would be well covered at that time. He said the applicants owned both lots, and said if they wanted to move the boundary line, there was no legal reason why they shouldn't be allowed to do this. He said he thought the Board should vote in favor of the application.

Mr. Bubar said he thought creating a land locked parcel was a bad idea.

Mr. McGowan said this was a lot line adjustment application the Board was looking at, and said if the applicants wanted to subdivide the property in the future, the issues addressed this evening would be discussed.

Mr. Brown said he concurred with Mr. Parnell and said the owner had the prerogative to do that. He said the comments heard this evening had value, and said there would be an opportunity to voice them in the future. Mr. Lambert said he agreed as well.

Councilor Welsh said the boundary line adjustment would have some impact on something. He said the input from neighbors had been good, and said whoever developed the property, there would be some huge difficulties. He said he couldn't think of anything the Board would see at the site walk that would lead to not approve this application.

Councilor Tobias said the boundary line adjustment application was in front of the Board, and said the arguments from the neighbors were pertinent to possibly subdividing in the future. She said it would be challenging to subdivide the property.

Chair Dill said she agreed, and said if the Board approved this application, she didn't think they would be prejudicing something that would happen down the road.

Mr. Behrendt said it was correct that in approving this application, there was no implication that anything should be expected in the future concerning a prospective subdivision application. He said it would be considered on its own merits.

Lorne Parnell MOVED to approve an application for Lot Line Adjustment submitted by Marth and Michael Mulhern to relocate the lot line on Map 10 between Lot 8-6 and Lot 8-8, according to the conditions in the Notice of Decision as of this evening, July 11th, 2018. The properties are located at 91 & 93 Bagdad Road, in the Residence B District. Bill McGowan SECONDED the motion and it PASSED 7-0.

- X. Public Hearing - 38 Bagdad Road – Two-lot subdivision.** Subdivision of 49,277 square foot lot. Tom Toye, property owner. Adam Fogg, Atlantic Survey, surveyor. Map 3, Lot 3-3. Residence A District.

Mr. Toye noted that there had been a site walk. Mr. Bubar asked about the sewer easement, and Mr. Toye said this would be done after the application was approved, and before the plat was recorded. It was noted that it would be a condition of approval.

There was discussion about the fact that a concrete tank on the property that had contained a pressure tank for the well must be physically removed, as a precedent condition. Mr. Toye said this would be done when the lot was cleared, before the new house was built. Mr. Behrendt said he didn't think that would be burdensome to a buyer. There was discussion and Mr. Behrendt suggested wording for a condition concerning removal and reclamation of the area before a certificate of occupancy was issued.

Chair Dill MOVED to open the Public Hearing. Lorne Parnell SECONDED the motion and it PASSED unanimously 7-0.

Alicia Paley, 39 Bagdad Road, said she'd just moved into her house. She said her impression was that the property was bought for investment purposes, and Mr. Toye said that was correct. He noted that he was a resident of Durham, and said the intent was to clear the lot. Ms. Paley asked about standards concerning replacing trees that were lost and maintaining the tree canopy.

Mr. Behrendt said there was no specific requirement about this as part of a subdivision. But he said the Planning Board could require that the tree buffer be maintained, for good cause, and said this would need to be consistent with the character of the rest of the street.

Ms. Paley said she'd just moved here from Florida, where she'd watched a lovely neighborhood become one she hated because it changed so drastically, and lost a lot of the tree canopy. She said she had a live free or die mentality, but she spoke about balancing her rights with the rights of the property owners. She said she'd be sad if the deer were gone, and said it would be great if there was a buffer.

Jim Bubar MOVED to close the Public Hearing. Lorne Parnell SECONDED the motion and it PASSED unanimously 7-0.

Councilor Tobias said she understood what Ms. Paley was saying, and spoke further on this.

Mr. Behrendt said there would be a precedent condition that the applicant would submit an easement for the sewer, which would be recorded.

Bill McGowan MOVED to approve an application submitted by Tom Toye for a two-lot subdivision of a 49,277 sf lot. The property is located at 38 Bagdad Road, Map 3, Lot 3-3 in the Residence A District. Bob Brown SECONDED the motion and it PASSED unanimously 7-0.

Recess from 9:24-9:30 pm

- XI. Public Hearing - Mill Plaza Redevelopment.** 7 Mill Road. 1) Site plan review and 2) Conditional Use for mixed use and activity within the wetland and shoreland overlay districts. 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. (Rick Taintor is serving as the Town's Contract Planner.) Central Business District. Map 5, Lot 1-1. Recommended action: Public hearing and continuation to July 25 or August 8

Postponed

- XII. Solar Energy Systems.** Proposed amendments to the Zoning Ordinance to accommodate solar energy systems as both accessory uses and principal uses.

After discussion the Board agreed to eliminate the second sentence in 4.b regarding setbacks: "In addition, for a freestanding solar energy system that exceeds 10 feet in height (any part of the system), no part of the system may be placed closer to the front

property line (and side property line in the case of a corner lot) than the fully enclosed part of the house furthest from the street.”

There was discussion that clarification was needed on 7.c. concerning the height of free standing systems. Chair Dill said 24 ft was probably as big as they were made. There was detailed discussion about possibly taking out the last sentence, but Mr. Behrendt said he thought they somehow wanted to regulate the height issue there. Councilor Welsh suggested putting in 25 ft. After further discussion, the Board agreed that the last sentence of the paragraph would read: “The maximum height for freestanding systems is 25 feet.”

The Board agreed to keep the existing wording in 7.c. for roof and building mounted systems: “For roof- or building-mounted systems located in any of the four residential zoning districts, the maximum height for any part of the system is ten feet above the ridge of the roof or ten feet above the highest part of the roof where there is no ridge. For roof- or building-mounted systems not located in one of the residential zoning districts, there is no height limit.”

There was discussion on 7.g. Historic District. “Proposed solar energy systems within the Durham Historic District are regulated under Article XVII of this ordinance.” Mr. Behrendt suggested some additional wording that referred to additional standards for solar ordinances contained in the Historic District provisions. There was discussion, and he said he’d check with the Historic District provisions.

There was discussion on 7.h. Nuisance. “Should any solar energy system become a nuisance by virtue of glare or other impacts, as determined by the Zoning Administrator, the property owner shall mitigate the impacts as appropriate. The Board agreed to grid of the wording “or other impacts”. After further discussion, 7.h was eliminated entirely.

There was discussion on 7.i., Solar Easements.

XIII. Other Business

XIV. Review of Minutes (new):

April 25, 2018

Page 10, 2nd paragraph from the bottom, should read “...and said the Planning Board...”

Bill McGowan MOVED to approve the April 25, 2018 Minutes as amended. Bob Brown SECONDED the motion and it PASSED 6-0-1 with Jim Bubar abstaining because he wasn’t on the Planning Board at that time.

XV. Adjournment

Councilor Welsh MOVED to adjourn the meeting. Nate Morneault SECONDED the motion and it PASSED unanimously 7-0.

Adjournment at 10:15 pm

Victoria Parmele, Minutes taker

James Bubar, Secretary