

These minutes were approved at the July 10, 2019 meeting.

DURHAM PLANNING BOARD
Wednesday, March 13, 2019
Town Council Chambers 7:01 p.m.
MINUTES

MEMBERS PRESENT: Paul Rasmussen, Chair
Barbara Dill, Vice Chair
Lorne Parnell
Bill McGowan
James Bubar
Michael Lambert, alternate
Carden Welsh, Council Representative to the Planning Board
Sally Tobias, alternate Council Representative to the Planning Board

MEMBERS ABSENT

I. Call to Order

Chair Rasmussen called the meeting to order at 7:01 pm.

II. Roll Call and Seating of Alternates

Chair Rasmussen said Mr. Lambert would be serving as a regular member for the meeting.

III. Approval of Agenda

Jim Bubar MOVED to approve the Agenda as submitted. Barbara Dill SECONDED the motion and it PASSED unanimously 7-0.

IV. Town Planner's Report

Mr. Behrendt said there was a site walk today for the Cedar Pt. Road Conditional Use application. He noted that the Planning Board would be discussing the Conditional Use review process with Town Attorney Laura Spector at the next meeting in closed session.

He said he and Ms. Dill had worked on a new set of the Planning Board's Rules of Procedure. He said it was a big improvement, and said hopefully it would be presented at the next meeting.

He noted the Planning Board's recent approval of the site plan and conditional use applications for a parking lot on the property on 18 Main St, while the HDC had denied

an application on the project. He said the applicant had appealed the HDC's decision, and said it would be heard by the ZBA at its meeting on April 9th. He explained that the ZBA would have all the powers of the HDC in reviewing the appeal, and would look at the same standards the HDC used. He said it would almost be like having a new application.

V. Reports from Board Members who serve on Other Committees

Mr. McGowan said at the HDC meeting last week, Land Stewardship Coordinator Ellen Snyder provided a presentation on the cellar holes at the Oyster River Forest, Doe Farm and Langmade Farm.

Mr. Bubar said the Agricultural Commission continued its work on the agricultural ordinance with Mr. Behrendt's assistance.

Councilor Welsh said the Town Council recently approved a new force main (sewer) project, and also noted that the funding for this project was approved by 88% of Durham voters this week. He said at its March 4th meeting, the Council discussed the Mill Pond Dam issue. He said there would be a fairly major study concerning what should be done with the Dam and Pond, and said no decision would be made before the summer of 2020 at the earliest. He said there would be opportunities for the public to provide comments while the study was being done.

Ms. Dill said at the Energy Committee meeting last week, members honed down some subgroups in order to get projects moving along.

Councilor Tobias said at the most recent Economic Development Committee meeting, they interviewed three candidates for the Economic Development Director position.

VI. Public Comments

Kim Chaze, Surrey Lane said he'd lived in Durham for 15 years. He noted that Packers Falls Road was a scenic road, and said the amorphous nature of the scenic byway rules concerning the width of the scenic road buffer was troubling. He said there needed to be a definitive description of the buffer, in writing, and said it should be clear that there should not be any cutting taking place contiguous to the width by private parties. He spoke about the purpose of the scenic road statute, and asked that the Board be mindful of this issue.

VII. Review of Minutes (old):

October 24, 2018

Page 1, under list of members, delete the word “Councilor” before Carden Welsh, and Sally Tobias.

Page 5, line 23 should read “...seated him as a regular member..”

Councilor Welsh MOVED to approve the October 24, 2018 Minutes as amended. Bill McGowan SECONDED the motion and it PASSED unanimously 7-0.

November 7, 2018

Page 1, under list of members, delete the word “Councilor” before Carden Welsh, and Sally Tobias.

Page 2, 2nd paragraph, needs a period

Page 3, line 20, should read “... Town would get the money up front...”

Councilor Welsh MOVED to approve the November 7, 2018 Minutes as amended. Bill McGowan SECONDED the motion and it PASSED unanimously 7-0.

VIII. Public Hearing - 32 Cedar Point Road – Conditional Use. Conditional use for revetment (retaining wall) within the Shoreland Protection Overlay District. Heiderscheidt Trust, Benedict and Manisha Heiderscheidt, Trustees, property owner. Steve Riker, Wetland Scientist, Ambit Engineering, designer. Map 12, Lot 1-8.

Mr. Riker passed out some information on the technology involved in the proposal to stabilize the shoreland. He noted discussion at the site walk about the slope involved, and spoke in some detail on sheets C3 and C4, which showed cross sections of the proposed slope stabilization. He said there was also discussion at the site walk on the proposed plantings, and said details on this were provided on sheet C2.

He said the design life for the product was up to 75 years, noting that there had been questions about this at a previous Planning Board meeting. He also spoke about who would be liable if there was a problem with the stabilization system. He reviewed information provided to the Board on the value of vegetated slopes compared to other possible slope stabilization strategies, and noted some case studies provided by Propax on projects in Mississippi, Washington, New Orleans and Tulsa.

Councilor Welsh noted that the New Orleans levy involved the laying of sod, and asked if that would be done with the Durham project. Mr. Riker said there would be loaming and seeding, and said the loam would be about an inch thick. He said there would be netting over the loam to keep everything in place, which would biodegrade.

Councilor Welsh asked if the vegetation would be checked to be sure that it stayed in place. Mr. Riker said NHDES would check on it for 3-4 years, and said photos would be provided on a yearly basis. He said in order to be compliant with state shoreland protection rules, there needed to be vegetation in the waterfront buffer, and said if the vegetation died it would need to be redone. He said he'd met with DPW Director Mike

Lynch about the project as well as the Wagon Hill Farm project, and got some great information on shoreline stabilization and erosion control.

Barbara Dill MOVED to Open the Public Hearing. Councilor Welsh SECONDED the motion and it PASSED unanimously 7-0.

Brian Fleming, 30 Cedar Point Road, said he wanted to make sure that the retaining wall between 30 and 32 Cedar Point Road was replaced, or taken down.

Chair Rasmussen explained that this had been part of the last site plan application approval for the property. Mr. Riker said there would be a retaining wall there as part of redevelopment on the lot, and said there would be a stone veneer on the retaining wall so it would be aesthetically nice and would match the new house.

Craig Harris, 34 Cedar Point Road, noted materials that had been dumped along the shoreline in that area, which needed to be addressed.

Luis Chaves, 36 Cedar Point, said there was a mountain of debris there, which didn't look safe, and asked if this would be addressed.

Mr. Riker said the demolition and removal of the old pier was only partially complete at this point, and said a barge would return and get the remaining debris. He noted that there were several engine blocks out in the water, as well as numerous things underneath the pier that would be removed.

Ms. Dill said at the site walk, there was discussion about a possible inspection plan over time, and she suggested possibly formalizing this. Mr. Riker said the paperwork on this would go to NHDES as well as to the Conservation Commission, and suggested that it could also be sent to the Planning office. He also said NHDES's 3-4 years of inspection could be extended. Ms. Dill suggested that it could be 5 years.

Mr. Riker said there would be a post construction report that would probably be provided this summer, and also said reports would be provided at the beginning and end of the growing season each year. He said the work would start in mid-April of this year, pending DES approval, and would focus first on finishing the pier. He said the applicant would wait until the shoreland stabilization work was done before building the house.

It was agreed that the reports would be sent to the Planning office.

Bill McGowan MOVED to close the Public Hearing. Councilor Welsh SECONDED the motion and it PASSED unanimously 7-0.

The Board went through the Conditional Use Checklist in regard to the application

- Site suitability – Councilor Welsh said the house was consistent with other properties nearby. He noted the steep slope, within the shoreland setback, and said measures were being taken to mitigate the erosion issues there. The criterion is met.
- External Impacts –Mr. Bubar said there would be noise impacts during construction. But said when the project was done, it should fit in nicely.

- Character of the site development – The criterion is not pertinent.
- Character of the buildings and structures - The criterion is not pertinent.
- Preservation of natural, cultural, historic, and scenic resources –This criterion is met; It was agreed that the resources were being improved.
- Impact on property values – The criterion is met.
- Availability of Public Services and Facilities - The criterion is not pertinent.
- Fiscal impacts – It was agreed that there will not be a negative fiscal impact.

Chair Rasmussen said there were no warning signs in looking at the Conditional Use criteria.

Jim Bubar MOVED to approve a Conditional use application submitted by the Heiderscheidt Trust, Benedict and Manisha Heiderscheidt, Trustees, for a revetment (retaining wall) within the Shoreland Protection Overlay District. The property is located at 32 Cedar Point Road, Map 12, Lot 1-8. Bill McGowan SECONDED the motion and it PASSED unanimously 7-0.

- IX. Public Hearing – Tree Cutting on Packers Falls Road.** Request from Eversource Energy to trim and remove trees along Packers Falls Road, which is designated a scenic road. Review in accordance with RSA 231:158. Ian Farley, Arborist with Eversource. William Burleigh, Asplundh, contractor.

Mr. Farley provided details on Eversource's enhanced tree trimming program, and said it was 100% done with permission from individual property owners. He noted that there had been numerous outages on Packers Falls Road in recent years, with three of them causing power failures. He spoke about the fact that a storm event last year broke several poles and brought down sections of wires, resulting in a 24 hr. outage. He said there were complaints about this, and comments that tree trimming was needed, and said this had initiated the process of taking a harder look at the situation.

He said it was known that Packers Falls Road was a scenic road, but said 17 trees had been identified for removal. He said he'd reached out to Mr. Behrendt and Mr. Lynch , and said there was a field meeting with them about these trees.

Mr. Parnell noted that Eversource had been before the Planning Board fairly recently, and asked if the trees being spoken about now were different trees than were addressed then. Mr. Farley said Bob Berner was before the Board recently, as part of the 4-year trimming cycle. He said right now, Eversource was targeting a segment of trees within a specific section of Packers Falls Road that would harden a specific zone against outages that could impact 200-300 homes there.

He said this enhanced tree trimming program had also been carried out in Durham for circuits on Piscataqua Road, as well as a circuit that included a portion of UNH and Kingman Farm. He explained that the Enhanced Tree Trimming Program work plan was

presented to the PUC, and said the most critical circuits in the plan were done each year. He said the program was developed after the ice storms in the late 90's, and was being carried out statewide over time.

Mr. Parnell asked if the work proposed on Packers Falls Road would solve the problems in that area. Mr. Farley said it should solve the problem, with good permissions from the property owners there. Mr. Parnell said he was very much in favor of that..

There was discussion about the fact that the section of Packers Falls Road being looked at now was a different than the section that was done as part of the other project. Ms. Dill said she lived on Packers Falls Road, and said the two sections were on different circuits. Mr. Farley provided details on what area was involved with the current project.

Councilor Welsh asked how the decision was made on what trees to cut, and Mr. Burleigh provided details this. Mr. Farley said they were trying to get an enhanced zone within 8 ft of a conductor. He spoke about how the property owner could refuse to allow tree cutting if it was on private property.

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

Kim Chaze, Surrey Lane, said he as a member of the public, he should have some right to participate in the process of determining if trees would be cut.

Mr. Bubar said a member of the public couldn't stop the taking down of a neighbor's tree if the neighbor had given permission for this.

Mr. Chaze said he didn't want each property owner to cut what they wanted to cut with impunity, and he noted that his neighbor had done this.

Chair Rasmussen said his reading of the scenic roads RSA was that the Planning Board had no control over tree cutting on private property. Mr. Chaze said he disagreed, and said the statute referred it to the Town to designate scenic roads, and then the Town was to provide parameters on what was to occur. Chair Rasmussen said clearing of trees on private property didn't fall under the wording in the statute. Mr. Chaze said this wasn't cut and dried, and said this was being looked into by attorneys.

Chair Rasmussen thanked Mr. Chaze for his opinion, but said right now the Board was discussing the Eversource work.

Mr. Chaze said he was just asking the Board to be mindful of what could occur. He said the depth of the scenic road buffer was the question, and said a property owner couldn't go into that area with impunity and do tree cutting.

Councilor Welsh asked if the Town Attorney would be looking into this. Mr. Behrendt provided some details on the issue Mr. Chaze was speaking about, where there was tree cutting on his neighbor's property. He said the Town attorney along with Town staff would provide an answer on that issue very soon.

Mr. Chaze spoke further about the buffer issue, and said the buffer needed to be definitive.

Mr. Behrendt said the Town Attorney had confirmed that cutting by Town or a utility could be done within the Town right of way, which was generally 50 ft wide, and generally followed stone wall to stone wall. Mr. Chaze said there was nothing about this in writing.

Chair Rasmussen said this issue couldn't be solved this evening, and said it wasn't what the agenda item was about. Mr. Chaze spoke further about his concerns.

Mr. Behrendt spoke about Eversource's request, and said both Mr. Farley and Mr. Burleigh were familiar with the policy that had been developed on tree trimming. He said it included some good language, and good information from John Parry, a forester and town resident, and said he trusted that Mr. Farley and Mr. Burleigh would be sensitive to the items in it.

Mr. Farley said it was in Eversource's interest to do the best job possible. There was discussion about the fact that property owners could keep the logs that were cut, or Eversource/ Asplundh could remove them.

Mr. Behrendt noted an email received from resident Beth Olshansky concerning Eversource's policy of responding to individual property owners who contacted the company about hazardous trees. He explained that when Eversource staff came to the property, they would due diligence and inspect the entire line. There was further discussion on this.

There was discussion about when Eversource would be coming back to do more tree cutting/trimming like this.

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

Lorne Parnell MOVED to approve a Request from Eversource Energy to trim and remove trees along Packers Falls Road, which is designated a scenic road, according to the details received about removing 17 trees and trimming numerous other trees. Councilor Welsh SECONDED the motion and it PASSED unanimously 7-0.

- X. 149 Mill Road Lot Line Adjustment.** Lot line adjustment between 149 Mill Road, Map 14, Lot 7-5 owned by Scott (and Claire) Righini and vacant lot on Map 14, Lot 7-7 owned by Adam, Jade, and Troy Fogg. Adam Fogg, Atlantic Survey, surveyor.

Mr. Righini represented himself and his wife at the meeting. Chair Rasmussen asked if the application was complete and Mr. Behrendt said yes. There was clarification about some of the language in the application concerning the sizes of the two lots.

There was discussion about the fact that the Mr. Fogg no longer had a home occupation on the property, and also didn't live there anymore. Mr. Behrendt noted that there were two driveways, and said the regular paved driveway was just for the house. He said the second driveway was put in for customers when Mr. Fogg had his survey business there.

Mr. Righini said his parents lived in an apartment on the property, and he and his wife lived there too. He said an extra car that didn't fit in the garage parked in the driveway in question, and also said visitors used it. He explained that part of that driveway was on their lot and part was on the other lot, and said the lot line adjustment seemed to make sense to address this situation.

It was agreed that there should be a site walk on March 27th, at 3 pm. Chair Rasmussen said the public hearing would be held on March 27th.

Lorne Parnell MOVED to accept as complete an Application for a Lot line adjustment between 149 Mill Road, Map 14, Lot 7-5 owned by Scott (and Claire) Righini, and a vacant lot on Map 14, Lot 7-7 owned by Adam, Jade, and Troy Fogg, and to schedule a public hearing for March 27th, 2019. Bill McGowan SECONDED the motion and it PASSED unanimously 7-0.

Mr. Behrendt noted that there were two people in the audience who'd expressed interest in serving on the Planning Board, Ray Philpott and Sarah Wrightsman. He said he'd spoken at length with both of them.

Mr. Philpott and Ms. Wrightsman introduced themselves to Planning Board members. Ms. Wrightsman noted that she was the Executive Director of the Workforce Housing Coalition, and said before that she'd worked on health and its relationship to the built environment. Mr. Philpott said he'd recently moved to Durham from the Northwest, and was glad to be back closer to home. He said his background was in finance and accounting, and said he was excited about being a part of Durham.

- XI. Solar Energy Systems – Revised Draft.** Proposed amendments to the Zoning Ordinance to accommodate solar energy systems as accessory uses and principal uses.
Recommended action: Finalize draft if acceptable and schedule public hearing.

There was discussion on shared and community solar systems, how they were different, how they were addressed in the definitions, and consideration of them as primary or

accessory uses on a lot. Ms. Dill noted that the model ordinance didn't have anything on shared solar, but had a community solar definition.

Among other things, there was discussion about whether a shared system, depending on how it was wired, could actually share energy with nearby properties, rather than just sending the energy back to the grid to then be shared..

There was discussion about the distinction between enterprise solar and multi-unit solar (Madbury Commons with solar arrays, for example)

The Board agreed to include a definition of community solar in the draft ordinance. There was discussion about the differences/possible overlap between community and enterprise solar systems. Mr. Behrendt suggested that the definition for community solar could include a limit on its size, and said it could be put under multi-unit nonresidential uses.

There was discussion about whether if community solar arrays were relatively limited in size, they could be allowed everywhere in Durham. The alternative was discussed of restricting their location, along with restricting enterprise solar locations, which would mean that the community solar arrays wouldn't have to be limited in size. The Board agreed to go with the second approach. There was discussion about the fact that the ownership model for community solar was different than the ownership model for enterprise solar.

It was noted that in provision 4.b of the draft Ordinance, 10 feet was changed to 12 feet: "In addition, for a freestanding solar energy system that exceeds 12 feet in height (any part of the system).

Bill McGowan MOVED to schedule a Public Hearing for March 27, 2019. Jim Bubar SECONDED the motion.

Ms. Dill proposed that the fees for having to go to the ZBA for a Special Exception should be waived, and said they were burdensome. There was discussion that the Planning Board could recommend to the Town Council that there be no application fee. There was also discussion about possibly removing the Special Exception requirement instead.

Ms. Dill noted that many towns were committing to 100% renewable energy, and said Durham wasn't treating this issue with the urgency it deserved. Councilor Welsh said he disagreed, and said Durham was ahead of most other towns. There was further discussion.

The motion PASSED unanimously 7-0.

The Board agreed that the Town Council would address the issue of possibly waiving the fees.

XI. Parking Section of Zoning Ordinance – Proposed Revisions. Proposed changes to Article XXI – Off-Street Parking and other sections of the Zoning Ordinance related to parking.

Chair Rasmussen said he thought the draft was ready for a public hearing.

Mr. Bubar spoke about the permits required, under 175-112, and said it would drive people nuts, having to get a driveway repaved. It was noted that someone needed a town permit for repaving a driveway, but not a state permit if the driveway wasn't located off of a state road. Mr. Behrendt said he didn't think anything was being added to what was already required.

There was further discussion on the draft. Some Planning Board members said they didn't like elements of it, but they agreed with other Board members that it was time to send it on.

Bill McGowan MOVED to schedule a Public Hearing on Proposed changes to Article XXI – Off-Street Parking and other sections of the Zoning Ordinance related to parking. Carden SECONDED the motion and it PASSED unanimously 7-0.

XII. Minor Site Committee. Discussion of proposed amendments to the Site Plan Regulations to create a procedure for minor site applications. Continued from earlier discussion. Recommended action: Discussion.

Mr. Parnell asked Mr. Behrendt why he wanted this committee to exist. Mr. Behrendt said this provided a better process, but also said he wasn't sure it would be used much. There was discussion about aspects of the proposal. It was suggested that the Committee should perhaps include a member of the Planning Board. There was discussion about things like patios for outdoor restaurants and other uses that should still come to the Planning Board.

Bill McGowan MOVED to schedule the Public Hearing on proposed amendments to the Site Plan Regulations to create a procedure for minor site applications for April 10, 2019. Chair Rasmussen SECONDED the motion and it PASSED unanimously 7-0.

XIII. Other Business

XV. Review of Minutes (new):

December 12, 2018

Page 1, remove Councilor in front of Sally Tobias and Carden Welsh

Page 6, line 33 should say Mike Sievert; line 36 should say "Mr. Sievert first noted the proposed..."

Page 7, line 34 should read "He said there might be..." ; last line should say "conditional use"; line 16, should say "*Bill McGowan MOVED...*"

Page 8, line 4 should say “Mr. Behrendt said the plan was to keep...”
Several punctuation marks that needed to be changed were noted

***Lorne Parnell MOVED to approve the December Minutes as amended. Carden Welsh
SECONDED the motion and it PASSED unanimously 7-0.***

XVI. Adjournment

***Bill McGowan MOVED to adjourn the meeting, Mike Lambert SECONDED the
motion and it PASSED unanimously 7-0.***

Adjournment at 9:38 pm

Victoria Parmele, Minutes taker

Richard Kelley, Secretary