

*These minutes were approved at the January 22, 2020 meeting.*

**DURHAM PLANNING BOARD**  
**Wednesday, January 8, 2020**  
**Town Council Chambers 7:00 p.m.**  
**MINUTES**

**MEMBERS PRESENT:** Paul Rasmussen, Chair  
Barbara Dill, Vice Chair  
Richard Kelley, Secretary  
Lorne Parnell  
Bill McGowan  
Heather Grant, alternate  
Carden Welsh, Council Representative to the Planning Board  
Sally Tobias, alternate Council Representative to the Planning Board

**MEMBERS ABSENT** Jim Bubar  
Michael Lambert, alternate  
Sarah Wrightsman, alternate

**I. Call to Order**

Chair Rasmussen called the meeting to order at 7:00 p.m.

**II. Roll Call and Seating of Alternates**

Ms. Grant was appointed as a regular member for the meeting in place of Mr. Bubar.

**III. Approval of Agenda**

Mr. Parnell asked why the Zoning amendments were on the Agenda before the public hearings, and said it was unusual to do things this way. Chair Rasmussen said there would be a quick presentation on the proposed amendments and the hearing would then be scheduled. Mr. Behrendt noted that these proposed amendments had been postponed a few times. Councilor Welsh said he agreed with Mr. Parnell, but said people were showing up tonight based on the agenda that had been sent out.

***Lorne Parnell MOVED to approve the Agenda. Councilor Welsh SECONDED the motion and it PASSED unanimously 7-0.***

**IV. Town Planner's Report**

Mr. Behrendt said he had nothing to report.

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

Councilor Welsh said at the December 16<sup>th</sup> Town Council meeting, the Council approved the 2020 Budget and the CIP. He also said ORCSD Superintendent Morse was there to talk about the project for the new Middle School, including explaining ways they were trying to facilitate the bond for the project without causing a spike in taxes. He provided details on this.

**VI. Public Comments**

**Bill Hall** said a 20-year bond today had a rate of 2.15%, which meant there was an incredible opportunity to get the school built as soon as possible.

**VII. Review of Minutes (old):**

November 13, 2019

***Chair Rasmussen MOVED to approve the November 13, 2019 Minutes. Lorne Parnell SECONDED the motion and it PASSED unanimously 7-0.***

**VIII. Zoning Amendments related to Agriculture.** Extensive amendments to the Zoning Ordinance relating to agriculture proposed by the Durham Agricultural Commission. Presented by Theresa Walker, Chair of the Commission.

Ms. Walker said the Agricultural Commission had been working on these proposed amendments for at least 2 years, and noted among other things that Mr. Behrendt had been very helpful during this process. She said Mr. Bubar and Councilor Jim Lawson had also been very helpful, bringing knowledge of local regulations, and perspective from other boards in Durham.

Agricultural Commission member John Carroll provided some perspective on the work done on the amendments, including the state statutes that provided authority for this.

Ms. Walker provided a detailed slide presentation on the proposed amendments.

Ms. Dill said an incredible job had been done on these proposed changes. She noted the comment Ms. Walker had made that the number of farms in NH was declining, and that it was important to make sure that the Zoning Ordinance encouraged farmers. She said at the presentation this summer on the proposed amendments, there weren't a lot of people there. She suggested that there should be another presentation to get the word out, including to farmers, in order to get their perspective on the amendments.

Ms. Walker said NH had been adding farms over the last several years, but had also lost some. She said the Commission was trying to enable this activity by the people who already lived in Durham, in an appropriate way, and said it would also be good to be able to welcome new farmers here. She noted that the barriers to farming were high, especially in the Seacoast area. She said food production was a vital activity in a community, and

said if they clarify where and how it could happen in Town, this would encourage people to see Durham as a place where there were opportunities for farmers.

Councilor Welsh thanked everyone for their work on the Zoning amendments. He said they might have underestimated the level of resistance to agriculture in residential zones. He noted that when he served on the ZBA, someone wanted to have a horse, and the neighbors came out against this. He said in the proposed changes to the Table of Uses concerning agriculture, some of the uses to be allowed in the RA district, and in the RB district, weren't consistent with the established character of the neighborhoods in those districts. He noted as an example that a pig farm was allowed next to a residence as a principal use on a 3-acre lot in the RB district. He said the Planning Board would have to wrestle with these kinds of things as it worked through the proposed amendments.

Mr. Kelley noted that there were few comments and questions at the July 8<sup>th</sup> informational meeting on the proposed amendments. There was further discussion that there weren't many people there, and Ms. Walker said another presentation could be done. Chair Rasmussen also said once the public hearing was scheduled, people would come out.

Mr. Kelley said it had been said that the current Zoning Ordinance was out of date in regard to agriculture, and wasn't based on science. He asked if it also inhibited agriculture in Durham, and Ms. Walker said yes. She said the current Zoning Ordinance didn't define agriculture based on statutory language that provided the basis for a decision. She also noted that in the Rural district, a lot of agricultural uses were allowed, but there was nothing on best management practices, carrying capacity, etc.

There was discussion about how commercial agriculture was handled in the current ordinance compared to how it was handled in the proposed ordinance changes.

Mr. Kelley asked what led to putting the many agricultural definitions under the agriculture provisions, as opposed to putting them with all the definitions in the Zoning Ordinance. Ms. Walker said they wanted to have everything having to do with agriculture in one place. Mr. Behrendt noted that this approach was used for the solar ordinance and for some other ordinances as well.

Councilor Welsh asked if the definitions for farm and farming were really meant to cover anyone who had any sort of food garden, chickens, etc., and said this was unclear. Ms. Walker said under the state definitions, that was correct. There was further discussion on this, and Mr. Behrendt noted that they had all wrestled with this.

***Richard Kelley MOVED to schedule a Public Hearing for February 12, 2020 on the proposed amendments to the Durham Zoning Ordinance relating to agriculture proposed by the Durham Agricultural Commission.***

Ms. Walker asked if it would be a good idea to have a public information session on the proposed amendments at the next Agricultural Commission meeting. Chair Rasmussen

said he didn't see any downside to doing that. Ms. Walker said she'd schedule it for next Monday's meeting.

***Bill McGowan SECONDED the motion and it PASSED unanimously 7-0.***

Ms. Walker said it would be helpful for Planning Board members to send their additional comments to her before the public hearing.

Councilor Tobias suggested that the PowerPoint presentation should be shared on the Town Facebook page, and on the Celebrate Durham page.

**IX. Public Hearing - Subdivision off Gerrish Drive.** Parcel at 91 Bagdad Road. Preliminary conceptual application for conservation subdivision on 16-acre parcel off Gerrish Drive. Marti and Michael Mulhern, property owners. Michael Sievert, engineer. Robbi Woodburn, Landscape Architect. Map 10, Lot 8-6. Residence B District.

Mr. Sievert said there were no changes proposed since the last meeting.

Mr. Kelley noted that the applicants were making a request to the Town Council on January 13<sup>th</sup> regarding utilizing the right of way to access the parcel. He asked whether the application would be done if this was denied. There was discussion about this with Mr. Sievert.

**Michael White, Ambler Way** said since the last meeting, he'd gathered some video evidence concerning the proposed right of way. He showed the video of the Gerrish Drive/Ambler Way area, including wetlands and a stream running through. He said the conditions had advanced since the right of way was designated many years ago. He noted the stream that would be paved over with this project, and spoke about how this would impact drainage in the neighborhood and the overall ecosystem.

He said NHDES had outlined that one of the most harmful things that could be done to a wetland area was to pave it, and segment it. He noted that the minutes of the last meeting included a comment made about how many trees, which filtered a lot of water, would have to be cut down with this project, as well as a comment that the area would be intensely planted after the trees were cut down. He said even with intensive planting, the drainage would be different than what was there now.

Mr. White said so far the applicant didn't have a timeline for construction of the houses in the subdivision. He said they'd also learned that there would be a good amount of blasting, which could happen for years into the future.

There was discussion about exactly where the video was taken, and about the wetlands and drainage on the property and beyond. It was noted that the plan currently ended at the property line.

**Gail Kelley, Gerrish Drive**, discussed whether the road would be maintained by the Town if it was built. Mr. Behrendt said this hadn't been determined, and provided details on this. Ms. Kelley said there would probably have to be a culvert to deal with all of the

water, and said it would need to be cleaned out or flooding in the area would be worse. She asked if the Town was prepared to do this on an annual basis. Mr. Behrendt said if it was a Town road, the Town would be responsible for this.

Ms. Kelley said if it did come under the purview of the property owners to maintain the culverts, a question was what guarantee on this the abutters would have. She said the water table had risen since she moved there many years ago, and said they had to put the septic system above the water table, in fill. She said she worried that mitigation measures would also raise the water table, would impact her septic system and would also impact the Lewis's septic system, whose drainage went underneath her driveway. She said there were a lot of issues to consider.

She said she'd questioned the Mulherns' decision to eliminate a less problematic access to the property when they sold a house at 91 Bagdad Road and included the right of way into that property with the sale. She said that access was on higher land. She said that decision had now forced the Town to decide whether what was now the only access should be given more consideration than would be the case if it was just an alternative access.

**Diana Carroll, Canney Road** said she and her husband had lived at the corner of Canney and Gerrish since 1975, and knew the horseshoe layout there and the area under consideration for a road. She noted that a gray area on the map was the wetland shown in the video, and said it was a very wet area with water flowing through it. She said the map didn't show the surrounding area, including the wetlands that went into Madbury, and how the water resources there were connected. She suggested that there should be a larger map that showed these things, as well as a hydrology map. She also said if the deciduous trees, and shrubs were cut down, there would be even more water in the area.

Concerning the reference to installing culverts, Ms. Carroll said if one looked at other wetlands in Durham, including where there was flowing water during specific rain events, the culverts in these areas weren't working right. She noted Longmarsh Road as an example of this. She said a question was what culverts should be put in for an area like the property in question, knowing the predictions that there would be more water in the future. She noted that there had been at least two 100-year storms in the last 15 years.

Ms. Carroll said it sounded like the Mulherns would be responsible for building the road, and the Town would be responsible for the road after that. She asked if the Town would take this on, in this particular area. She considered whether a bridge was a possibility, if culverts didn't work there. She noted that there had been lots of problems with private roads.

She spoke about the values and benefits of wetlands, and said a wetland scientist was needed for this project. She said Walter Cheney, who built the development, gave the right of way to the Town. She said he did many good things for the Durham community, but noted that he gave other parcels of land to the Town, many of which were not

buildable sites and were wetlands. She spoke further on this, and said permission to use such lots in the 1970s would not be given such permission today.

**Kim Sweetman Ambler Way**, said this land was designated as right of way almost 50 years ago, and said certainly since then, the concept of usable land and wetlands had changed a lot.

Chair Rasmussen said when the land came up for use, it was evaluated. He also said it was a Town Council decision with regard to the right of way itself. Mr. Parnell asked what the Town Council would be deciding. Mr. Behrendt said the decision would be on whether the applicants could use the Town right-of-way for a road to access the subdivision.

**Otis Sproul, Gerrish Drive**, said he was a retired UNH dean and environmental engineer, and had lived in the neighborhood for 37 years. He said the water flowing through it seemed to increase exponentially by the month. He said with this project, a significant amount of water would be added from the 12 homes proposed to be built. He said he was very concerned that the Town needed to proceed carefully, and said it could be stuck with something that would be there forever. He said there were a lot of things that needed to be fully explored.

**Molly White, Ambler Way** said she and her husband had lived there for 1 ½ years. She said they hadn't realized that with the Mulherns' lot line adjustment application, the right of way was sold off. She said with the proposed access now, there could be disruption of the community there, and she also said she was very concerned about the drainage issue. She asked what rights she and others had that there wouldn't be flooding of their homes, if this project went forward. She also asked what assurances there were that if blasting was done, their foundations wouldn't be compromised. She said there had been no outreach to them on this proposal.

Mr. Behrendt said he'd check to make sure that notices got to them.

Ms. Kelley said the right of way wasn't designated as part of the Wetland Conservation Overlay district.

Mr. Behrendt said the right of way was in fact part of the overlay district. He explained that because 2/3 of it was jurisdictional wetland, if the right of way use was approved by the Council, the Mulherns would need to get a wetland permit from NHDES. He said they would also need approval from the Planning Board, with a recommendation from the Conservation Commission because it was in the overlay district.

Mr. Sproul asked how close the wetland that had been delineated was to Gerrish Drive. Mr. Behrendt said there was no wetland delineation beyond the right of way, on private property. Mr. Kelley noted that the wetland delineation was on the map. It was noted that this delineation was done in 2017. Mr. Behrendt provided details on the wetland areas and drainage on the applicant's property and beyond.

**Andrew Merton, Gerrish Drive** said if he'd been asked if a delineation of the wetlands on his property could be done, he would have said yes.

Diana Carroll said perhaps now was the time for a wetland scientist to be involved, so people could see what the land was like outside the boundaries of the proposed development.

There was discussion that because this was a preliminary review process for a proposed conservation subdivision, the Planning Board could continue the public hearing if it chose to do so.

Ms. Kelley said she was in the process of doing a petition for the Zoning Administrator to engage a wetland scientist to delineate wetlands. She read from the Zoning Ordinance in regard to this. She said asking the developer to pay for this wasn't the proper way to go, and said an independent wetland scientist should be hired by the Town. She said people were prepared to pay for this if the Town refused to pay for it. Mr. Kelley asked Ms. Kelley if this was in regard to the wetlands on the applicants' parcel. Ms. Kelley said this was in regard to the wetlands on her property.

***Richard Kelley MOVED to continue the Public Hearing to the February 12, 2020 meeting.***

He noted that the issue of the right of way being usable was currently not clear.

***Lorne Parnell SECONDED the motion.***

Mr. Behrendt noted that the preconceptual review was the first part of a 3-part process. He said if the concern was about closing the hearing while there were issues, there would be more hearings with the other phases.

Mr. Sievert said he was trying to follow the process, and said he thought the Planning Board was supposed to make a decision during this phase, based on relatively limited information. He said he'd provided them with what the regulations required, which was the concepts. He also said he hadn't misrepresented the wetlands, and would be more than happy to provide a delineation of wetlands beyond the right of way.

He noted that the applicants would need to get a wetland permit. He said it was understood that there were wetlands in the right of way, and that the drainage from the neighborhood went right to that corner. He said a preliminary design to go to the Council had been started. But he said his clients' concern was that it didn't make sense to get to phase 3 in terms of the level of design detail provided, and then possibly find that the Council wouldn't allow use of the right of way. He spoke further on this.

Chair Rasmussen said if the Board didn't continue the hearing, they'd need to provide input to the applicant about the overall proposal tonight. He asked Board members if they felt prepared to provide that feedback now, or needed more time. There was further discussion.

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

Mr. Parnell said it looked like the wetland was only about 10% of the right of way from the map, not 66%, and asked for more clarity on this. There was discussion. Mr. Sievert said he'd work on the map to make the wetlands extent clear.

Ms. Dill said it would also be helpful to get more context next time.

The Planning Board stood in recess from 9:06 to 9:11 pm.

- X. Public Hearing - 19-21 Main Street – Parking Lot.** Preliminary design review for site plan and conditional use for parking lot and reconfiguration of existing entrance on 3.2 acre parcel (on four lots). Toomerphs, LLC c/o Pete Murphy and Tim Murphy, property owners. Michael Sievert, engineer. Map 5, Lots 1-9, 1-10, 1-15, and 1-16. Church Hill District.

**Nancy Lambert, Faculty Road** said her first concern was that the community had failed to protect College Brook's water quality and quantity, and she noted that the storm runoff from Mill Plaza in particular was almost entirely unfiltered before it entered College Brook. She also said it was a flashy stream that rapidly collected runoff after a storm, because there was no forest floor or grassland to absorb the runoff before it got there. She said high water from the brook flooded a neighborhood trail, flushed pollutants into the brook, eroded streambanks and impacted wildlife habitat.

She said the proposed project would replace the forested hillside in the watershed with pavement, which would inevitably be another blow to College Brook. She said there was no engineering solution that would provide better treatment than what was there now. She said the impacts would extend beyond College Brook, to Great Bay, and spoke further on this. She said it was difficult to see that what was proposed reflected the values articulated in the Master Plan, and also said she didn't think the project would meet the Conditional Use criteria.

Ms. Lambert also spoke about the impact of the project on the Faculty neighborhood, noting that the small forest that existed buffered the neighborhood from the noise and pollution from nearby commercial areas, which preserved their quality of life. She said she and her husband had helped protect that buffer, and spoke further on this. She said looking out her back window, she saw the forested hillside involved. She said the impact on her property and her neighbors' properties would be significant, and would be even worse for people living on Chesley Drive.

**Joshua Meyrowitz, Chesley Drive** noted that he lived near the site in question, and said the forest buffered the neighborhood and separated it from the downtown. He said people enjoyed walking down the wooded path, and he noted the wildlife there. He said while the greenway wasn't much compared to that found on some larger parcels, it was important because of the compactness of the neighborhood, and said the project would be very destructive to this valued greenway.



He said Conditional Use criteria were intended to assure that approved projects preserved natural resources, scenic views, etc., and provided protection from possible external impacts from a project concerning traffic, noise, lighting, hours of operation, etc. He said there were existing parking lots further up the hill, but said the proposed new parking lot would create extreme, new impacts on abutting properties beyond the impacts from any of the existing parking lots.

Mr. Meyrowitz questioned how the developers could add 200 vehicles next to homes and not add traffic, add much more noise, vibrations, fumes from engine exhausts, etc., light and glare from car lights and lamp posts. He said the parking area would also cause impacts in terms of the height and massing from the proposed 14 ft mound with a retaining wall. He said there would likely be a structure that was at least 26 ft high, noting that the 14 ft mound would be on top of ground that was already 20-30 ft above the level of the marsh and the brook. He also said the width of the lanes of travel from the neighborhood to the Plaza would be about 174 ft, which was wider than a football field.

He asked if any Board members would like to have such a structure looming over their homes and footpaths. He said the Conditional Use criteria seemed to have been written to prevent what was proposed here. He said he was sure there was a more integrated use for the property, and he urged the Planning Board as part of the design review process to tell the applicants about these problems before they designed a final application.

**Jay Michael, property owner in the business district, and resident,** said he watched the recent Planning Board meetings on this proposal, and was also at the site walk. He said there were a number of comments made at these meetings that left a question as to whether the Town was looking at the idea of joining with the applicants to enlarge the proposed parking lot.

Councilor Welsh said the issue of adding a second layer of parking had been brought up but said at this point the Town wasn't specifically looking at this. He noted that Councilor Lawson recently completed a report on parking downtown, and said the report said additional parking, with a parking garage wasn't needed now.

Mr. Michael said the point would come when a decision would need to be made on this.

Mr. Behrendt said the issue was raised recently and there was strong interest in it, but said he hadn't heard more discussion on this.

Councilor Welsh said a question was how Durham could grow without adding a parking garage. He said the Town had had a lot of success managing parking with meters, and also noted that they'd seen a slight decline in usage. He said one idea to allow more parking spaces downtown for those who would like to use them was to move some people with parking permits further outside of the downtown. He said if there was to be a parking garage, the question was who would pay for it. He noted that there would need to be approval by Town residents for a parking garage project because of the cost. He spoke further.

Mr. Michael said at the December 11<sup>th</sup> Planning Board meeting, someone asked about whether there was a need for more parking. He noted the 17 spaces that ran along Pettee Brook Lane, and spoke about the idea of removing them and turning that road into a two lane road, which was needed because every day there was major traffic congestion that made it difficult for cars to get through the downtown. He said this was a real problem, and said to say there wasn't a parking issue was to ignore the fact that they couldn't give up any parking in order to make traffic flow downtown easier and safer. He said he thought resources could be better spent making changes in regard to this.

He said he'd like to see some other format under which they could be assured of having parking at Pettee Brook, and noted that the agreement with UNH could be terminated, so this was a tenuous situation. He also noted that Young's restaurant had started cordoning off its parking because of difficulties for his employees. Mr. Michael said he respected the work being done by Councilor Lawson and Councilor Welsh concerning parking, but said he didn't think it was true that there wasn't a need for alternate parking.

**Matt Komanchak, Thompson Lane** said he echoed what Mr. Meyrowitz and Ms. Lambert had said. He also said parking in the center of Town rather than on Church Hill was important, and said UNH drove the demand for parking. He said who paid for the parking was critical, and said he didn't think the Town should subsidize UNH parking.

He said many hours and years had been consumed concerning redevelopment of Mill Plaza, without the participation of the anchor tenant, and said they'd all seen, years later what had happened. He said he had the same feeling today, and said it seemed that some were accepting a fiction that the Colonial Durham application and this application were distinct and independent from one another.

He said they shouldn't accept that fiction. He said the two projects were brought forward in unison to the TRG Committee, and were also brought forward at the same time to the Planning Board. He provided additional examples of the connection, including the fact that the proposed parking lot was noted by Hannaford as an essential element of the Colonial Durham plan to move forward. He noted that the attorney for Colonial Durham had told the Planning Board that the two projects were linked, and was here tonight.

Mr. Komanchak said the Town attorney had looked at this issue, and wrote a memo stating that the Colonial Durham application wasn't a new application, and had just moved things around. He said that was only true if the Toomerfs parcel was ignored. He said the legal argument in the attorney's memo wasn't convincing, and said the conclusion in it didn't acknowledge the reality of Hannaford's control in the Plaza. He also said the legal case she relied on in her memo didn't match the facts in Durham, and he spoke further on this. He asked the Board to reconsider whether the two applications should go forward independently given these things.

**Bill Hall, Smith Park Lane**, said the backup on Pettee Brook Lane could be solved by eliminating 5 parking spaces, and turning that road into two lanes. He said building 200 parking spaces on the second floor would cost about \$8 million. He also said the

problems with College Brook had nothing to do with the proposed project, and noted the manure from UNH that impacted the brook.

**Debra Hirsh Mayer, Garden Lane** read a letter from **Rich Hallett, Colony Cove Road**, who was a forest ecologist. Among other things, Mr. Hallett said it was important to think about what Durham would look like in the future, in the face of increasing population and climate change. He quoted from landscape architect Frederick Law Olmstead, and said it was because of people like Olmstead that New York City contained much needed greenspace.

Mr. Hallett said Durham needed to think in the same way, and said the value of this small, precious forest on Church Hill could not be overstated. He said it was where these trees were, in the center of a growing community, that made them invaluable and irreplaceable. He said it was about the benefits they would provide for the next 100 years or more in that location, and said instead of cutting them down, the Town should be thinking about creating a park in the most densely urbanized part of Durham. He asked if the additional parking to be provided by destroying an acre of trees would really resolve Durham's parking issues now and in the future.

**Carol Birch, Garden Lane**, read a letter from **John Parry**. In his letter, Mr. Parry noted that he was an urban forester. He said since the 1990s, all 50 U.S. States had recognized the value of urban forests and had established Urban Forestry Programs to better managing this resource. He said there had been much research in recent years to show the value of the urban forest to a community. He said they managed stormwater and improved water quality, saved energy for homeowners, and resulted in more frequent and longer shopping trips at local businesses.

Mr. Parry said as Durham continued to grow at a rapid pace, the tree canopy cover was decreasing, and suggested that this should be monitored. He said while this decrease in canopy happened in small amounts it added up, and he considered what Durham would look like in 30 years. He said the proposed project would result in the loss of another small wooded area, in a prominent location in the core downtown area where there were few remaining wooded sites. He said it provided a valuable aesthetic buffer between businesses and properties, and also provided watershed protection on a fairly steep slope.

He said some development was warranted, and said there were always trade-offs with these projects. He noted that there were some assessment tools available that would allow an estimate of some of the environmental service values this small forest provided to the Town. He said he thought those values would be significant. He said he appreciated the Planning Board's efforts to consider Durham's community trees and forest in past project reviews, and said he hoped they would give this issue strong consideration in this case. He said he'd be glad to provide information and assistance in regard to the comments he'd made.

**Bob Russell, Croghan Lane** said he appreciated the opportunity to walk the site, and said it raised a number of questions that should be addressed. He said the sooner that

issues were brought up, the sooner they would be addressed. He said one issue was the sewage pipes that would be covered by fill with the new parking lot, and said they were quite old and could be severely damaged with the fill and retaining wall on top of them. He asked if they would be replaced or rerouted as part of the project, and also asked about access to the pipes for maintenance.

He said a second issue was what the plans were for snow and ice removal, and also asked what kind of surface treatment there would be for debris from the parking lot. He noted that there had been discussion about a filtration system under the new parking lot, and asked about access to it once it was in place for maintenance and repairs. He also said a question was where the water would finally end up after being filtered. He asked how the huge 16 ft retaining wall, topped with guard rails, light fixtures would be accessed. He also asked the Board to consider the light and noise impacts that would be created for the surrounding neighborhood.

Mr. Russell asked what happened if the Mill Plaza project wasn't approved, and what control there would be by the Town over the use of the lot if that happened. He said the use would affect the traffic flow in and out of the lot, noting that it had been said there would be long-term student parking, but if that wasn't the case, the traffic patterns could change dramatically. He said the traffic flow could turn out to be much heavier on a daily basis, and said Main Street might have to be redesigned to take that into account. He noted that this area was already congested, and spoke about needing additional turning lanes although there didn't seem to be room for this. He said putting a traffic light there would make the congestion worse.

He said even if the Plaza project was approved, there would need to be vehicle access to the student housing building by others besides the students, which would cause an increase in traffic in and out of the parking lot. He said there might be a situation where even the student traffic in and out would be heavy, when students were graduating, etc. He urged that the Board to demand a thorough, independent traffic study to consider among other things all of the possible alternative uses of the parking lot regardless of current guarantees, and what control the Town would have if the uses changed.

There were no further comments from members of the public, and the Board decided to provide comments at this point on the proposal. Mr. Kelley said he thought there was a high bar to be raised because this was a conditional use that was proposed. He said a strong case had been made in the comments this evening in regard to this.

Chair Rasmussen said he concurred, and said traffic was a major concern for him so a traffic study would be critical. He said there were permitted uses that would fit the property better, but noted that the owners were free to pursue what they wished.

Councilor Welsh said he concurred, and said it would be pretty tough to address all of the conditional use criteria, especially 1,2, 3 and 5. He said it would be hard to engineer around all of the issues.

Peter Murphy said he appreciated hearing the input this evening, and said Toomerfs understood the issues. He said he hoped as they moved forward with the project, there could be a conversation to see if there could be a middle ground. He said they'd been listening tonight and would address the points that had been brought up. He said he hoped they could meet the demands, and be good neighbors.

He noted comments about this project being tied to the Colonial Durham project. But he said it was two years ago that Toomerfs had looked at the property and considered what they might do with it. He said whatever was done with the property would affect the trees and the site line. He said if the Colonial Durham project wasn't happening, that wouldn't affect this project at all, and said they were mutually exclusive.

Mr. Murphy said they would push forward with a parking lot proposal because there was a demand for parking. He said he heard people talk about students and their cars, and said it was almost like they were considered second class citizens. He said right now a nursing student who lived in one of his buildings had to get up at 5:30 am, and either walk or take an Uber to the West lot to get her car, and said it would be good if she could park closer to where she lived. He said Toomerfs was trying to benefit her and others with this project. He noted that Durham encouraged students to vote, and to be on local boards.

He said he appreciated the comments from the Board that there was a high bar, and appreciated the comments and letters from the neighbors. He said Toomerfs would hopefully address a lot of the issues that were raised, and create a plan that was worthy of consideration.

Tim Murphy said he and Peter Murphy were both environmentalists. He said people who spoke tonight about the trees on the lot in question lived on cleared lots, and said they could plant trees on their own lots. He also said the CO2 mitigation from the trees on the lot was trivial compared to the CO2 release from one of their autos. He said what Toomerfs proposed was to be compared to whatever was allowed in the district, and noted that they were surrounded by parking lots. He spoke about how runoff would be mitigated better than was the case with the surrounding parking lots, and said they would also address noise, lighting, etc.

Mr. Sievert said the design review should be closed, and said Toomerfs would decide what the timing would be to come back to the Planning Board.

Tim Murphy said the Master Plan called for commercial development in the commercial core, where their lot was. He said off street screened parking was allowed, and said that lot was one of the few places that could support commercial development in the commercial core. He spoke further on this. He also said with any additional development, the parking downtown would become deficient. He said for those who said what was proposed was not well aligned with Durham's goals, they should check the Master Plan.

***Chair Rasmussen MOVED to close the Public Hearing. Bill McGowan SECONDED the motion and it PASSED unanimously 7-0.***

**XI. Other Business**

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

November 25, 2019 Site Walk

*Chair Rasmussen MOVED to accept the November 25, 2019 Site Walk Minutes as submitted. Heather Grant SECONDED the motion and it PASSED 4-0-3, with Richard Kelley, Councilor Welsh and Bill McGowan abstaining because of their absence from the site walk.*

December 11, 2019

Bottom paragraph, should read “She asked if the stormwater system would do a better job of treating runoff than the trees, and Mr. Sievert said no.”

Page 16, line 9, should say “Gerrish”

Page 18, line 14, should say “John Lewis, Gerrish Drive”

*Chair Rasmussen MOVED to accept the December 11, 2019 Minutes as amended. Councilor Welsh SECONDED the motion and it PASSED 5-0-2, with Lorne Parnell and Bill McGowan abstaining because of their absence from the meeting.*

Councilor Welsh asked if it was ok for Planning Board members to send their comments to the Agricultural Commission on the proposed Zoning amendments. Mr. Behrendt said they should email the comments to him and he would forward them to the Commission. There was further discussion on this, with Mr. Parnell saying it seemed more appropriate to provide the comments at the meeting.

Chair Rasmussen said he’d like the Commission to do some outreach to avoid people not understanding what they were reading, before they came to the public hearing.

There was discussion about the fact that there was wording in the General Provisions section of the Zoning amendments that was also repeated in the sub-sections. It was agreed that those kinds of details could be addressed later on in the review process.

Chair Rasmussen said on another matter, which was somewhat related, he felt the Town could benefit from an RA overlay district, with the idea that in regard to agriculture, solar, parking, etc. there were a couple of neighborhoods that had distinctly different needs than other areas of the RA district. He said an overlay district would provide a means to have two different sets of rules for the RA district that would meet their needs. He said this would be easier than creating RA1 and RA2, or a whole new zone. He asked if Board members thought this idea should be pursued.

There was discussion that the distinction was between RA neighborhoods that were close to the downtown and in proximity to students, as compared to those RA neighborhoods that weren’t. Chair Rasmussen noted that the distinction wasn’t necessarily about the size of the lots. There was discussion about whether it would be better to create some

additional residential zones instead of having an overlay district. Board members considered whether this idea should be explored. Mr. Parnell said he thought they should be very careful about making changes to districts.

### **XIII. Adjournment**

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

Adjournment at 10:26 pm

Victoria Parmele, Minutes taker

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Richard Kelley, Secretary