

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45

**DRAFT**

**DURHAM PLANNING BOARD**  
**Wednesday, September 9, 2020**  
**Town Council Chambers 7:00 p.m.**  
**MINUTES**

**MEMBERS PRESENT:** Paul Rasmussen, Chair (in person)  
Lorne Parnell, Vice Chair (in person)  
Richard Kelley, Secretary (remotely – joined meeting at approximately 7:45 pm)  
Bill McGowan (joined the meeting remotely at 7:03 pm)  
Jim Bubar (in person)  
Barbara Dill, Vice Chair (remotely)  
Mike Lambert, alternate  
Heather Grant, alternate (remotely)  
Sally Tobias, Council Representative to the Planning Board (in person)

**MEMBERS ABSENT:** Sarah Wrightsman alternate  
Jim Lawson, Council Representative to the Planning Board

**I. Call to Order**

Chair Rasmussen called the meeting to order at 7:00 pm. He said there was a quorum present in the room.

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

The roll call was taken.

<i>Chair Rasmussen</i>	<i>Yes</i>
<i>Lorne Parnell</i>	<i>Yes</i>
<i>Barbara Dill</i>	<i>Yes</i>
<i>Jim Bubar</i>	<i>Yes</i>
<i>Mike Lambert</i>	<i>Yes</i>
<i>Heather Grant</i>	<i>Yes</i>
<i>Councilor Tobias</i>	<i>Yes</i>

Chair Rasmussen said Mr. Lambert would sit in for Mr. Kelley until he arrived, and said Ms. Grant would sit in for Mr. McGowan until he arrived at the meeting.

Mr. Parnell recommended moving Item VIII, the Bagdad Wood application to after IX, the Colony Cove Road application. He noted that the impetus for the new construction

1 management plan came primarily from Mr. Kelley, so it would be useful if he was  
2 present for the discussion on this. Other Board members agreed.

3  
4 ***Lorne Parnell MOVED to approve the Agenda as amended. Jim Bubar SECONDED***  
5 ***the motion and it PASSED unanimously 7-0 by a roll call vote:***

6 ***Chair Rasmussen Yes***

7 ***Lorne Parnell Yes***

8 ***Barbara Dill Yes***

9 ***Jim Bubar Yes***

10 ***Heather Grant Yes***

11 ***Mike Lambert Yes***

12 ***Councilor Tobias Yes***

13  
14 **III. Town Planner's Report**

15  
16 Mr. Behrendt said at the meeting on September 23<sup>rd</sup>, there would be the continued  
17 hearing of the proposed Zoning amendments for the downtown, and continued review of  
18 the Mill Plaza application.

19  
20 He said the Town Council would take up the request for an extension concerning the  
21 Zoning amendments for the downtown at its meeting on Monday.

22  
23 **IV. Reports from Board Members who serve on Other Committees**

24  
25 Mr. McGowan said at the HDC meeting last week, they discussed installing a cell tower  
26 on Beech Hill Road, and said this would come to the Planning Board.

27  
28 Ms. Dill said at the recent Energy Committee meeting, they were asked by Administrator  
29 Selig to consider whether the Town should buy out the solar array installations at the  
30 Police Station, Library, and Jackson's Landing ice rink. She said they discussed this at  
31 some length and ultimately recommended that the Town Council should consider doing  
32 this because it was the right time to do it.

33  
34 She said the Committee also discussed further whether the Town should join the global  
35 covenant of mayors who'd set goals similar to the Paris Accord on Climate Change. She  
36 said they decided to form a subcommittee to do some research on this, and possibly  
37 recommend some goals to the Town Council. She said they would use the work of UNH  
38 Sustainability fellow Mary Potts, as the basis for starting this research.

39  
40 Mr. Bubar asked if there had been any discussion about the toxic waste in the solar  
41 panels, and the cost of disposal. Ms. Dill said they discussed this at length, and she noted  
42 the email Mr. Bubar had written on this. She said there was a provision in the draft solar  
43 ordinance on decommissioning, and said some work would have to be done on this. Mr.  
44 Bubar spoke about the concept of the Town buying out the toxic waste in those panels.

1 Ms. Dill said when their life was up, they would be disposed of properly. Mr. Bubar said  
2 that would be for an unknown cost.

3  
4 Chair Rasmussen said there was discussion on the proposed agricultural zoning  
5 amendments at the most recent Agricultural Commission meeting. He also noted that it  
6 had been a good year for home gardens.

7  
8 **V. Public Comments**

9  
10 There were no members of the public who came forward to speak.

11  
12 **VI. Review of Minutes (old):**

13  
14 July 22, 2020

15  
16 Mr. Bubar said he submitted two very minor changes to Karen Edwards.  
17 Page 7, line 28, should say “Innes”  
18 Page 9, line 16, should say “changed substantially”

19  
20 ***Chair Rasmussen MOVED to accept the July 22, 2020 Minutes as amended. Lorne***  
21 ***Parnell SECONDED the motion and it PASSED unanimously 6-0-1 by a roll call vote:***

22 ***Chair Rasmussen Yes***

23 ***Lorne Parnell Yes***

24 ***Bill McGowan Yes***

25 ***Barbara Dill Yes***

26 ***Jim Bubar Yes***

27 ***Mike Lambert abstained (had stepped away from meeting)***

28 ***Councilor Tobias Yes***

29  
30 **IX. Public Hearing - 22 Colony Cove – Shoreland Protection Overlay District.**

31 **Conditional use application** to install two patios within the 125-foot setback from Little  
32 Bay in the Shoreland Protection Overlay District. Request for expedited review of  
33 NHDES wetland/shoreland application. Naithan Couse, property owner. Beth  
34 Dermoddy, Landscape Architect, Allen & Major Associates. Map 12, Lot 25. Residence  
35 Coastal District

36  
37 Ms. Dermoddy said the applicant proposed to go forward with two patios within the  
38 Shoreland Protection zone. She noted that Mr. Couse had met with the Conservation  
39 Commission.

40  
41 Mr. Couse said there were some decks that they would remove, and said they wanted to  
42 swap them with some patios that would be permeable. He also said there was a lot of  
43 stone/gravel between the house and the shoreline that they’d been requested to move, and  
44 said they would do this and turn that area into greenspace. He said they also proposed to

1 install a lot of native shrubs and plantings. He said the patios would be placed between  
2 the house and the shoreline.

3  
4 Mr. Bubar said it didn't appear that the trees being removed had anything to do with the  
5 patio, and asked why they were being removed. Mr. Couse said this was being done to  
6 enhance the sight line, and said they proposed to leave the stumps and grind them flat to  
7 avoid erosion. Mr. Bubar asked if the tree warden was required to approve tree removals  
8 within the shoreland setback. Mr. Behrendt said the applicants were applying for a  
9 shoreline permit from the state for all of this.

10  
11 Mr. Couse said they'd shown the trees to be removed, and had asked for permission from  
12 the Conservation Commission to be able to remove trees within the buffer. He said they  
13 also showed NHDES that they met the requirements of the Shoreland Protection Act,  
14 using the point system the state used. He said there was a good buffer of trees there.

15  
16 Mr. Bubar said the points were a state issue, not a Town issue. He asked if the  
17 Conservation Commission had approved the tree removal. Mr. Behrendt said the  
18 Commission didn't discuss this, and perhaps should have. He said approval wasn't  
19 needed to cut the trees as long as the buffer requirements were met.

20  
21 Mr. Parnell said he thought there were restrictions on vegetation removal in general in the  
22 shoreland protection setback area. There was further discussion. Mr. Couse provided  
23 details on what was provided to NHDES. Mr. Behrendt said he'd been thinking that the  
24 tree removal was covered as part of the submittal to NHDES. Mr. Couse said the tree  
25 cutting had to do with visibility and safety, and noted that one of the trees was a hazard.

26  
27 Mr. Behrendt said he didn't know if the Town's woodland buffer requirements were met,  
28 and said he hadn't looked at that. He said the tree issue wasn't part of the Conditional  
29 Use application, but was part of what was proposed. He said he'd have to go to the site to  
30 see if the buffer requirements were met. There was discussion that trees didn't need to be  
31 removed in order to put in the patio. Mr. Behrendt suggested that the Board could vote  
32 just on the patio this evening, or could postpone voting on everything until the next  
33 meeting. Mr. Bubar asked if there had been a site walk by the Conservation Commission,  
34 and Mr. Behrendt said no.

35  
36 Chair Rasmussen asked when the work was planned, and Mr. Couse said it would be  
37 done next spring. Chair Rasmussen summarized that there wouldn't be a hardship then in  
38 delaying a decision on the application. Mr. Parnell said he wasn't prepared to make a  
39 decision this evening. Chair Rasmussen suggested that the Board could vote on  
40 approving the patios this evening, and could approve the trees at a later date, or could  
41 delay voting on everything.

42

1 There was further discussion. Mr. Behrendt said he and DPW Director Rich Riene, who  
2 was an arborist, could look at the buffer. Mr. Parnell suggested that the Planning Board  
3 should wait until they did this, and said the Board would then be ready to vote on the  
4 application at the next meeting. Mr. Bubar said he'd like to see a memo from Mr. Riene  
5 on this.

6  
7 ***Chair Rasmussen MOVED to Continue the application to the September 23, 2020***  
8 ***Planning Board meeting. Lorne Parnell SECONDED the motion and it PASSED***  
9 ***unanimously 7-0 by a roll call vote:***

10 ***Chair Rasmussen Yes***

11 ***Lorne Parnell Yes***

12 ***Bill McGowan Yes***

13 ***Barbara Dill Yes***

14 ***Jim Bubar Yes***

15 ***Mike Lambert Yes***

16 ***Councilor Tobias Yes***

17  
18 Mr. Behrendt said he'd go to the site with Mr. Riene.

19  
20 **VIII. Bagdad Wood – Construction Management Plan.** 38 Madbury Road. Review of  
21 construction management plan for approved site plan for addition with 26 dwelling units  
22 and expansion of parking area by 33 spaces for senior development. Cyndy Taylor and  
23 Bill Walker, c/o Housing Initiatives of New England Corporation, property owner. Mr.  
24 Behrendt Sievert, MJS Engineering, engineer. Tax Map 2, Lot 10-4. Professional Office  
25 District.

26  
27 Chair Rasmussen said he would recuse himself for this application. Vice Chair Parnell  
28 took over, and noted that the Board had approved the site plan application, and decided at  
29 that time that the construction management plan would be presented at a later date.

30  
31 Mr. Sievert shared the plan on his screen. He showed phase I and phase II of the project  
32 on separate sheets. He said updates included showing the tree buffer, methods to  
33 minimize soil compaction, cutting tree roots carefully, parking and delivery areas,  
34 security fencing, hours of operation, etc.

35  
36 He said phase I included just construction of part of the parking area, construction of the  
37 stormwater management ponds, and reconfiguration of a parking area. He spoke in detail  
38 about the security fencing that would be installed, and also showed the trees that would  
39 be saved. He showed parking spaces for residents during construction, and for  
40 construction workers, and explained how the parking areas would shift during the project.  
41 He said the first phase did not include any building construction. He provided details on  
42 the stormwater management ponds that would be built in a phased manner.

43

1 Mr. Sievert noted how construction materials would be delivered to the site. He also  
2 showed the plan for pedestrian access during construction, including how people would  
3 be directed out to their cars in a temporary parking area with signage. He said there had  
4 been a meeting with the DPW, which had asked them to provide details on notifications  
5 that would be needed concerning access, etc.

6  
7 He provided details on what was shown about phase II on the sheet, and said among other  
8 things it showed the construction sequencing and traffic patterns. He said the general  
9 contractor for the project was on board, and had helped put the construction management  
10 plan together.

11  
12 Mr. Walker said they'd spoken with the project manager for the Middle School project,  
13 and he provided details on this. He said the Bagdad Wood project would be completed  
14 before the Middle School building was constructed. He said his project manager would  
15 outline the school traffic issues so deliveries could be coordinated to avoid conflicts.

16  
17 Vice Chair Parnell noted that Mr. Kelley had joined the meeting.

18  
19 Mr. Bubar said the comments regarding working with the school had resolved any issues  
20 he'd had. Mr. Kelley asked Mr. Walker if he'd spoken with the School District.

21  
22 Mr. Walker said he'd only spoken with the construction manager for the Middle School  
23 project. He said when he and his project manager met with the DPW, they discussed  
24 possibly needing additional parking. He said the DPW said the Town could provide  
25 offsite parking for employees and could shuttle them to the site.

26  
27 There was discussion that there would be cranes on site during construction for the upper  
28 floors, and that there was the issue of vehicular access when the cranes were in place.  
29 Mr. Sievert spoke in further detail about this.

30  
31 Vice Chair Parnell noted that three comments had come in from the Town Engineer  
32 today. He said one was about the issue of heavy traffic coming in and out of the site, and  
33 asked if this would be part of the construction management plan.

34  
35 Mr. Sievert said the DPW had talked about not using Madbury Road from the site out to  
36 Route 4. He said they were ok with that, and said a note on this was on the plan. He said  
37 the routes they would use, coming in from the east on Route 108, and going out to the  
38 west on Garrison to Route 4, were on the plan.

39  
40 Mr. Bubar asked in regard to the cranes if the front door would be accessible for an  
41 ambulance. Mr. Sievert said yes.

42

1 Mr. Behrendt said there was some question about what the optimal truck route should be.  
2 He suggested including a note on the approval that the DPW would specify the truck  
3 routes, and this would be included in the construction management plan. Board members  
4 were ok with this.

5 Mr. Kelley said the construction manager needed to reach out to the School District,  
6 exchange contact information, and let them know the intended schedule. Mr. Walker said  
7 he'd do this.

8  
9 ***Richard Kelley MOVED to approve the Construction Management Plan submitted by***  
10 ***Cyndy Taylor and Bill Walker, c/o Housing Initiatives of Corporation of NE for the***  
11 ***approved site plan for an addition with 26 dwelling units and expansion of the parking***  
12 ***area by 33 spaces for a senior development. The property is located at 38 Madbury***  
13 ***Road, Tax Map 2, Lot 10-4 in the Professional Office district. Bill McGowan***  
14 ***SECONDED the motion.***

15  
16 Vice Chair Parnell appointed Ms. Grant in place of Mr. Rasmussen for this application.

17  
18 ***The motion PASSED unanimously 7-0 by a roll call vote:***

19 ***Lorne Parnell Yes***

20 ***Richard Kelley Yes***

21 ***Bill McGowan Yes***

22 ***Barbara Dill Yes***

23 ***Jim Bubar Yes***

24 ***Heather Grant Yes***

25 ***Councilor Tobias Yes***

26  
27 **X. Public Hearing - Alpha Tau Omega Fraternity – Amendment to Plans.** 18 Garrison  
28 Avenue. Amendment for proposed changes to approved site plan and approved  
29 conditional uses establish a fraternity, exceed 30 feet in height, and place structures in the  
30 wetland buffer. Proposed changes include demolition of the former Elizabeth DeMeritt  
31 House, change in design for the new building, and various site changes. Richmond  
32 Property Group, c/o Sarah Layton, owner. Bruce Scamman, Emanuel Engineering. Isaac  
33 Schlosser, Krittenbrink Architecture. Map 2, Lot 12-12. Central Business District.

34  
35 Mr. Scamman reviewed the fact that instead of going forward with the approved  
36 expansion to the existing building, the project was redesigned and now involved  
37 demolishing the building and building a new one. He showed a rendering of the new  
38 building. He noted that a series of conditional use permits, variances and waivers were  
39 received with the original application. He reviewed the differences in the amended plan  
40 as compared to the approved site plan application:

- 41
- 42 • no basement
  - 43 • lowered first floor by a foot
  - doors on all 4 sides, and walkways, stairs

- 1 • larger front porch
- 2 • patio on both sides
- 3 • 2 ft drip edge along back
- 4 • back patio
- 5 • building moved forward further from Pettee Brook
- 6 • utilities coming in from road in NE corner of building.
- 7 • revised yard drainage
- 8 • revised bike racks
- 9 • removed slab in back where new patio will be
- 10 • building is smaller, so waiver requested concerning landscaping not needed

11

12 Mr. Scamman said since the last meeting, they had revised the structure based on  
13 comments, etc. recently received:

- 14 • added retaining wall, where before there was a set of stairs going to the sidewalk.
- 15 • added sidewalk to the front walkway, and as part of this added a handicap sidewalk,  
16 which wasn't a ramp.
- 17 • added front patio
- 18 • relocated some sidewalks
- 19 • lowered the sidewalk for handicap parking spot
- 20 • 2 Norway maples as recommended will be removed
- 21 • waiver request for proximity of corner of pavement to front property line, - is 9.5 ft to  
22 the edge of pavement for the loading area for handicap
- 23 • removing 3 ft of pavement out of the road, which will provide additional  
24 landscaping – more trees added, more coverage at the end of the structure
- 25 • the existing amount of impervious area is 9335 sf; the previously approved amount  
26 was 5775 sf; the proposed amount now is 6536 sf, which is 761 sf more than what  
27 was previously approved, but is still a 2800 sf reduction from what is there now. All  
28 the new pavement is porous pavement so overall there is a large reduction.
- 29 • the lighting plan was submitted.

30

31 Mr. Kelley asked if the midblock crosswalk On Garrison Road was always in the plan.  
32 Mr. Scamman said it was there before in that same location, and said this was reviewed  
33 and approved by the DPW. He noted that there were no sidewalks on that side of  
34 Garrison Ave, and provided details on why it was needed.

35 Attorney Baum said there were 5 conditional use approvals in May, and said 2 were  
36 being slightly modified by the amended plan and were related to the Wetland  
37 Conservation Overlay district. He said one of these was concerning the driveway and  
38 utilities, and the other was concerning the location of the structure. He said they met with  
39 the Conservation Commission to address the Wetland Conservation Overlay impacts, and  
40 said the Commission voted to recommend approval.

1 He said the third conditional use permit still being requested was concerning the building  
2 height being over 30 ft. He said there would be a 4 ft increase in height over the prior  
3 design, but said the height was buffered because of the elevation of the lot, so the  
4 increase wouldn't be noticed for the most part.

5 ***Lorne Parnell MOVED to Open the Public Hearing. Jim Bubar SECONDED the***  
6 ***motion and it PASSED unanimously 7-0 by a roll call vote.***

7 ***Chair Rasmussen Yes***

8 ***Richard Kelley Yes***

9 ***Lorne Parnell Yes***

10 ***Bill McGowan Yes***

11 ***Barbara Dill Yes***

12 ***Jim Bubar Yes***

13 ***Councilor Tobias Yes***

14

15 **James Buckman** said he was in support of the new house at 18 Garrison.

16 Mr. Bubar noted that there was an ordinance in the works as to how to calculate building  
17 height. He asked if the applicant had to go by the new ordinance or not.

18 Mr. Behrendt said because the hearing was posted prior to the public hearing on this  
19 amendment, the applicant had to meet the current and proposed ordinance while it was  
20 pending. He also noted that the Planning Board could approve a building height up to 50  
21 ft, which covered the building height that was proposed.

22 There was discussion on the note from the Town Engineer concerning the reporting on  
23 the porous pavement. Mr. Behrendt said Ms. Talon provided wording on how and when  
24 this reporting should be done. He said she also asked the Board to include here, and on all  
25 site plans, the requirement that a land use development tracking form would be filled out,  
26 using the online pollution tracking portal. Mr. Parnell said he wasn't willing to have the  
27 Planning Board ask the applicant to do this, when the Board didn't know what it was. He  
28 said if it was important, Ms. Talon should explain to them what it was.

29 Mr. Behrendt said it had to do with protection of Great Bay, and related to NHDES and  
30 EPA stormwater standards to monitor nonpoint source pollution from sites. Mr. Parnell  
31 said he didn't recommend including this requirement, because he had no idea what it was  
32 about. Mr. Bubar said he agreed with Mr. Parnell. There was further discussion. Chair  
33 Rasmussen suggested that the Board should get a letter on this from Ms. Talon.

34 Mr. Scamman explained that on sheet C2, note 14 included wording about an annual  
35 report to the Town on porous pavement maintenance. He also said there was a  
36 maintenance form as part of the drainage design that included logs to be filled out. He  
37 said the two requests from Ms. Talon were therefore already part of the original approval,  
38 and were in the original plans.

1 Mr. Kelley noted that the proposed crosswalk was close to the Strafford Ave intersection.  
2 He said he wasn't convinced it could be put in, when on one side it ran into a curb, and  
3 said he thought there was an ADA requirement for a pedestrian ramp there. There was  
4 discussion. Mr. Scamman said another option was to slide the crosswalk up about 6 ft to  
5 Strafford Ave. Mr. Kelley said he'd like to be sure that Mr. Riene and Ms. Talon were ok  
6 with that.

7 Mr. Kelley asked if a railing would be needed on top of the retaining wall on the west  
8 side. Mr. Scamman said yes, and provided some options. He said he'd be glad to add  
9 either a rail or a fence to the plan, and spoke further on this. It was noted that this would  
10 be a guard for pedestrians. Mr. Behrendt said this was shown on the updated elevations,  
11 and should also be shown on the plan.

12 Attorney Baum said the original parking fee in the draft Notice of Decision was based on  
13 44 occupants, but said the actual count was 41 occupants. He asked that the Board  
14 provide a credit for the two spaces for scooters, to bring it to a total of 34 parking spaces  
15 that would be provided on the site.

16 Mr. Behrendt summarized that the maximum number of spaces allowed for fraternity  
17 members would be 41, so the parking fee would be 41-34 spaces = 7 x \$1500. He  
18 reviewed the other changes that had been discussed

19 Mr. Kelley asked for details on the construction schedule.

20 Mr. Scamman noted the construction sequencing drawing, and said it had been amended  
21 to show removal of the Norway maples, the new footprint, the temporary slopes to be put  
22 in when the foundation was dug before the retaining walls were installed, so there would  
23 be a large lay down area on the southern and west sides. He said they showed the  
24 perimeter silt sock and fence to maintain the wetlands and stay out of them. He also said  
25 there would be construction fence around the property.

26 Chair Rasmussen said there was heavy traffic in this area on the weekends, so security  
27 should be a significant concern.

28 Mr. Bubar said they were tearing the building down, and said he didn't see a  
29 deconstruction sequence. He asked if this was a concern.

30 Mr. Scamman said all demolition would be taken off site, and said a note could be added  
31 on this. There was discussion about how long this would take. Mr. Scamman said  
32 removal of the trees would make it easier to pull the front wall down. He said a 6 ft chain  
33 link security fence would be placed around the site during construction.

34 There was discussion that a demolition permit would be needed, and that concerns about  
35 asbestos, etc. would need to be addressed as part of this. Mr. Behrdt said Ms. Cline  
36 would look at all of this as part of the permit.

37 Mr. Kelley said he didn't think the chain link fence would be needed on the Pettee Brook  
38 side. There was discussion and Mr. Scamman said it would be needed on at least 3 sides.

1 Mr. Parnell asked what the expected schedule was.

2 Ms. Layton said they would move forward with demolition this fall, and could provide a  
3 schedule on this.

4 Mr. Bubar asked if there would be an acceptable construction bid prior to demolition.  
5 There was discussion, and Ms. Layton said the numbers were set.

6 Mr. Scamman said the revised drawings included the dimensions from the wetland to the  
7 edge of the patio, and from the wetland to the building. He said the distance to the  
8 building now was 7 ft, and said it would be 20 ft after construction.

9 There was discussion that for the 3 conditional uses - for the fraternity in the zone,  
10 exceeding the allowed building height, and having structures, utilities and the main  
11 building in the wetland overlay district, the Board would need to vote that the criteria still  
12 applied.

13 Mr. Kelley said the applicant had done a great job. He asked if the idea was that the  
14 proposed west and south corner of the building would be a concrete wall, with no  
15 basement. Mr. Scamman said there might be a very small partial basement for utilities on  
16 the east end. He spoke further about this.

17 ***Lorne Parnell MOVED to Close the Public Hearing. Jim Bubar SECONDED the***  
18 ***motion and it PASSED unanimously 7-0 by a roll call vote:***

19 ***Chair Rasmussen Yes***  
20 ***Lorne Parnell Yes***  
21 ***Richard Kelley Yes***  
22 ***Bill McGowan Yes***  
23 ***Barbara Dill Yes***  
24 ***Jim Bubar Yes***  
25 ***Councilor Tobias Yes***  
26

27 ***Chair Rasmussen MOVED that the existing Conditional Use Permit is sufficient for***  
28 ***the needs of this application. Bill McGowan SECONDED the motion and it PASSED***  
29 ***unanimously 7-0 by a roll call vote:***

30 ***Chair Rasmussen Yes***  
31 ***Lorne Parnell Yes***  
32 ***Richard Kelley Yes***  
33 ***Bill McGowan Yes***  
34 ***Barbara Dill Yes***  
35 ***Jim Bubar Yes***  
36 ***Councilor Tobias Yes***  
37

38 Mr. Behrendt reviewed the changes from the previous application:

- 1 • Show railing on right side plans – modification to the plans
- 2 • Crosswalk - adjust as needed with the DPW for accessibility – modification to the
- 3 plans
- 4 • Chain link fence around 3 sides
- 5 • The site is approved for 41 occupants. Mr. Behrendt asked if the 41<sup>st</sup> occupant would
- 6 be in the additional accessible unit.
- 7 • Norway maple trees are being removed.
- 8 • Porous pavement will be finalized with the DPW
- 9 • Parking fee, as calculated above
- 10 • The conditional use regarding the wetland overlay is for a new building.

11 Mr. Kelley confirmed that the crosswalk would be reviewed by the DPW,

12 ***Lorne Parnell MOVED to approve the Amendment submitted by Richmond Property***  
13 ***Group to the approved Site Plan and approved Conditional Uses establishing a***  
14 ***fraternity, exceeding 30 feet in height, and placing structures in the wetland buffer***  
15 ***according to the Notice of Decision as amended on September 13, 2020. The property is***  
16 ***located at 18 Garrison Ave, Alpha Tau Omega fraternity, Map 2, Lot 12-12 in the***  
17 ***Central Business District. Councilor Tobias SECONDED the motion and it PASSED***  
18 ***unanimously 7-0 by a roll call vote:***

19 ***Chair Rasmussen Yes***  
20 ***Lorne Parnell Yes***  
21 ***Richard Kelley Yes***  
22 ***Bill McGowan Yes***  
23 ***Barbara Dill Yes***  
24 ***Jim Bubar Yes***  
25 ***Councilor Tobias Yes***  
26

27 **XI. Public Hearing - Zoning Amendments related to Agriculture.** Extensive proposed  
28 amendments to the Zoning Ordinance pertaining to agriculture. The Agricultural  
29 Commission prepared a set of amendments for consideration by the Planning Board. The  
30 board has made significant revisions to that draft and is presenting this new proposal for  
31 review.

32  
33 Agricultural Commission Chair Theresa Walker was present in the Council chambers to  
34 discuss the proposed amendments.

35  
36 ***Chair Rasmussen MOVED to open the Public Hearing. Councilor Tobias***  
37 ***SECONDED the motion and it PASSED unanimously 6-0-1 by a roll call vote:***

38 ***Chair Rasmussen Yes***  
39 ***Lorne Parnell Yes***  
40 ***Richard Kelley Yes***  
41 ***Bill McGowan abstained***  
42 ***Barbara Dill Yes***

1            **Jim Bubar**            *Yes*  
2            **Councilor Tobias**       *Yes*

3  
4            **Malcolm McNeil, Colony Cove Road** said it was in the RC District, which had a  
5            minimum lot size of 150,000 sf, or 3.4 acres. He said the zone was subject to numerous  
6            overall requirements at the state and local level. He said he looked at the purpose of the  
7            ZO for this zone, which I included preserving the natural and scenic environment, He  
8            read from the ordinance. He said the primary uses in the zone were highly assessed sf  
9            dwellings with accessory residential uses. He said the goal should be to not adversely  
10           affect property values and ensure the quality of life for residents in the zone.

11  
12           He said some of what he was saying could apply to other zones. He said the RC zone was  
13           a special place, which was recognized in terms of its sensitivity at the state and local  
14           level, and said this should be considered in regard to the animals and other components  
15           that were proposed.

16  
17           He said the most recent Table of Uses allowed “farmers market” by special exception and  
18           said this was a desirable provision, which wouldn’t diminish the values of surrounding  
19           properties. He also said it was desirable to require a 3-acre lot for chickens, turkeys,  
20           goats, and sheep as accessory uses. He spoke further on this and said he was comfortable  
21           with having large lots for these uses. But he said he didn’t see why there wasn’t also a 3-  
22           acre requirement for horses that were an accessory use.

23  
24           Mr. McNeill said there was also the issue of when a farm became a commercial farm, and  
25           he noted the request to raise the number from a \$1,000 minimum in revenue to \$10,000.  
26           He suggested that there should be the \$1,000 minimum because there could be impacts  
27           on neighbors and others, and site plan review requirements for parking, etc.

28  
29           Mr. Behrendt noted that under General Provisions, it was proposed that site review was  
30           required for buildings, etc., that were part of a commercial operation, but not for  
31           agricultural uses unless there was a structure. He said that would include parking lots. He  
32           said site review wasn’t required for temporary farm stands, but would be required for a  
33           permanent farm stand.

34  
35           Mr. McNeill said the RC zone was a particularly sensitive area, and said he thought his  
36           requests were reasonable.

37  
38           **Theresa Walker, Bennet Road**, thanked the Planning Board and Mr. Behrendt for  
39           working with them on this Zoning proposal. She said a memo tonight outlined three  
40           requests, which made the ordinance much more viable. She noted that the goal with this  
41           ordinance was to empower local food production in a way that respected the  
42           neighborhoods in Durham.

43

1 **Dave Langley, Longmarsh Road** said \$1,000 in revenue wasn't commercial agriculture,  
2 and said someone wouldn't be able to make a living off of it. He said \$10,000 was also  
3 rather small but seemed reasonable. He said the idea with commercial agriculture was  
4 that it would be viable.

5  
6 Mr. Behrendt got clarification from Mr. McNeill that he was saying that horses as an  
7 accessory use had a 3-acre minimum requirement, but this wasn't required for chickens,  
8 turkeys, goats, and sheep. He said there should be consistency on this. Mr. Behrendt  
9 noted the amendment to the Zoning Ordinance prepared a few years ago to allow these  
10 animals as an accessory use in all zones. He also said for a single-family home in any  
11 zone, a question he'd been asked was whether 3 acres was necessary, even for someone's  
12 personal horse. Mr. McNeill said he didn't know, and said he was looking for equity in  
13 how the ordinance treated all of these animals.

14  
15 Mr. Bubar noted that chickens and turkeys as an accessory use was capped at 12 animals,  
16 but said there wasn't a cap for commercial uses. He said there was a big difference  
17 between these uses.

18  
19 Mr. Langley said in some ways, the size of the animal needed to be considered. He said  
20 he didn't know that allowing a horse on less than 3 acres made sense for a horse, which  
21 weighed 1000 lbs. He said the horse wouldn't have a lot of room to move around, and  
22 would need to be fed from outside sources. He said having one acre of land that was just  
23 for the horse would be reasonable.

24  
25 Mr. Bubar said he expected that 12 chickens didn't weigh as much as a Labrador  
26 retriever.

27  
28 ***Lorne Parnell MOVED to Close the Public Hearing. Councilor Tobias SECONDED***  
29 ***the motion and it PASSED unanimously 7-0 by a roll call vote:***

30 ***Chair Rasmussen Yes***

31 ***Lorne Parnell Yes***

32 ***Richard Kelley Yes***

33 ***Bill McGowan Yes***

34 ***Barbara Dill Yes***

35 ***Jim Bubar Yes***

36 ***Councilor Tobias Yes***

37  
38  
39 Chair said 4 items came up under public comments. 3 of these items were from the memo  
40 from the Agricultural Commission:

41 Page 3, Definitions – Farms and Farming The Agricultural Commission requests changing the  
42 threshold of \$1,000 of agricultural products to \$10,000 to enable more small scale, backyard  
43 producers to sell produce, crops, poultry and livestock to neighbors, other producers, and local

1 food distributors without the burden of site plan review. The new sentence would be – “An  
2 operation may be deemed a commercial farm where at least \$10,000 of agricultural products is  
3 produced and sold in a year.

4 Ms. Dill said she was in favor of using the larger figure, for all the reasons given. Ms.  
5 Grant said \$10,000 was too high, and also said \$1,000 might be too low.

6 Mr. Bubar said his concern was about compliance, and who would check on this.  
7 Councilor Tobias said Ms. Cline would be called out if there were complaints. Mr.  
8 Behrendt said there was the issue of whether site plan review was needed, and said Ms.  
9 Cline would make a judgment on this after speaking with the property owner. Councilor  
10 Tobias said Ms. Cline needed the regulation in order to do this.

11 Mr. Parnell said he tended toward requiring more rather than fewer stie plan reviews, so  
12 favored a lower number. Chair Rasmussen noted that the Agricultural Commission  
13 considered using \$5,000 as the minimum. Mr. Parnell said a question was what that  
14 meant. Chair Rasmussen said a lot of this would depend on what was being sold, and  
15 said \$1,000 worth of eggs might be a problem, and selling \$10,000 of maple syrup might  
16 not be. Mr. Parnell said he was leaning toward requiring site plan review for things that  
17 might have an impact on the neighborhood.

18 Councilor Tobias said Ms. Cline inspected home businesses, but didn’t look at the  
19 revenue issue. She spoke further, and said she didn’t know what the basis for the revenue  
20 amount was. Chair Rasmussen said the question was whether the structures involved  
21 required site plan review.

22 Mr. Bubar said he was hearing that it was more of a traffic issue, depending on the  
23 particular agricultural use. There was further discussion. Councilor Tobias said she’d be  
24 concerned about excessive amounts of traffic. Chair noted that there could be online  
25 sales, but site plan review could still be triggered by the sales number. Mr. Bubar and  
26 Councilor Tobias said they tended to defer to the Agricultural Commission on this issue.

27 Chair Rasmussen noted that the old definition for commercial agriculture didn’t have a  
28 revenue amount in it. He said it did refer to schedule F as a commercial operation.  
29 There was discussion that the RSA didn’t include a dollar limit. Mr. Behrendt said to the  
30 USDA, a farm was an operation that had \$1,000 or more in revenue. Ms. Grant said why  
31 not follow that since it existed.

32 Mr. Behrendt noted the cost of the site plan review process, and Mr. Bubar also noted  
33 that that cost didn’t go away for a minor site plan.

34 Chair Rasmussen asked for a show of hands on different revenue amounts that each  
35 Board member favored.

36 \$1,000 Mr. Parnell

37 \$5,000 Ms. Grant

1           \$10,000 Ms., Dill, Mr. Kelley, Councilor Tobias, Mr. McGowan, Chair Rasmussen

2           Mr. Bubar said he wanted a revenue number higher than \$10,000.

3           Chair said they would go with \$10,000.

4

5           Page 7, Compliance Required – Item 5.a The Agricultural Commission requests reinstating the  
6           following sentence struck-out by the Planning Board – “Site plan review is not required for  
7           structures to house livestock, supplies, or equipment for non-commercial agriculture on the lot  
8           where erected.”

9           Chair Rasmussen said the problem was that there wasn’t anything in the ordinance for a  
10          non-commercial principal use on a property that didn’t have a residence.

11          The wording in the proposed ordinance was noted. 3. Site plan review. a. Site plan review is  
12          required as specified in the text of Section 175-53 – Table of Land Uses and in the Site Plan  
13          Regulations (except as specified in b., below). Site plan review is required for all buildings,  
14          driveways, parking areas, public use areas, and significant structures and for site changes that  
15          are part of any commercial agricultural operation.

16          Chair Rasmussen said for someone who wanted to tap a few trees and put in a sugar  
17          shack, the way the ordinance was set up, it wasn’t clear whether site plan review was  
18          required. He said it wasn’t addressed in the ordinance and was therefore illegal.

19          Mr. Bubar asked if a building permit would be needed for a sugar shack, and Mr.  
20          Behrendt said probably, if it was on a foundation. There was further discussion. Chair  
21          Rasmussen noted that the Agricultural Commission said it wasn’t needed if the use  
22          wasn’t commercial, which meant they were under the \$10,000 review, which was the  
23          intent all along.

24          Board members were ok with putting the language back in: “Site plan review is not  
25          required for structures to house livestock, supplies, or equipment for non-commercial  
26          agriculture on the lot where erected.”

27          Mr. Bubar said the property owner would still have to comply with wetland and  
28          shoreland overlay provisions for the activity involved.

29          Mr. Behrendt said this kind of situation was somewhat unusual in Durham, and had a  
30          pretty low impact. He suggested that the wording on this in the ordinance should be  
31          broader – and should say “Site plan review is not required for noncommercial  
32          agriculture.” Board members agreed with Mr. Behrendt’s suggestion. It was noted that a  
33          building permit would still be required for a structure like a driveway, barn, etc. on such a  
34          property.

35

1 Page 13, Housing and Land Standards for Livestock – Item E.2 The Agricultural Commission  
2 requests the sentence be changed to, “All undeveloped land on the subject parcel, and any  
3 structures built for the animals, subsequent to the consideration of pertinent Best Management  
4 Practices (BMPs), counts toward the minimum area of land per animal.” Protection of water  
5 quality is at the core of the Best Management Practices already referenced in the proposed  
6 regulations.

7 Chair Rasmussen said this was the provision Councilor Lawson and Mr. Bubar had  
8 discussed. Mr. Bubar said he was ok with this as long as the BMPs protected water  
9 quality. Other Board members agreed.

10 Chair Rasmussen said the last issue to discuss was what Mr. McNeill had brought up  
11 concerning the Table of Uses. He said the Board had discussed the fact that accessory  
12 agricultural uses had strict requirements because they would be on smaller lots.

13 Councilor Tobias said the consistency, fairness issue was addressed in the body of the  
14 Zoning amendments, and said the Table of Uses didn’t really call that out.

15 Mr. Bubar said the chicken ordinance especially was written to allow residents in Town  
16 to have chickens. Ms. Grant said this ordinance wasn’t a problem. Councilor Tobias said  
17 there had been no issues on this.

18 Chair Rasmussen said he didn’t hear any contrary thoughts on this. Councilor Tobias said  
19 the provision was fine the way it was.

20 Chair Rasmussen summarized that the Agricultural Commission’s suggestions were  
21 accepted by the Planning Board with a minor tweak.

22 Mr. Behrendt noted the language that the Commission had suggested concerning BMPs.  
23 He said he thought that what the Planning Board had in the ordinance was sufficient.  
24 There was discussion, and it was noted that the BMP wording covered the whole  
25 document. The Board agreed with Mr. Behrendt that the current language was sufficient.

26 ***Jim Bubar MOVED that the Planning Board approves the Agricultural Ordinance as***  
27 ***amended this evening and submits it to the Town Council for its review, comment, and***  
28 ***authorization. Councilor Tobias SECONDED the motion and it PASSED 6-0-1 by a***  
29 ***roll call vote, with Lorne Parnell abstaining:***

30 ***Chair Rasmussen Yes***  
31 ***Lorne Parnell abstained***  
32 ***Richard Kelley Yes***  
33 ***Bill McGowan Yes***  
34 ***Barbara Dill Yes***  
35 ***Jim Bubar Yes***  
36 ***Councilor Tobias Yes***  
37

38 Mr. Parnell said he abstained because there were too many things in the ordinance that he  
39 didn’t agree with. He said they’d been discussed by Board, and said the majority of

1 Board members was in favor of the ordinance. He said he'd had his chance to speak and  
2 wouldn't vote against it, but wouldn't vote for it either. He said he'd be watching for pig  
3 farms on the 3-acre lot across from him, whether it was commercial or not.

4 **XII. Other Business**

5 **XIII. Review of Minutes (new):**

6 July 15, 2020

7 Mr. Bubar said he submitted minor corrections to Karen Edwards.

8 Page 5, "handicap accessibility" should say "ADA accessibility".

9 *Chair Rasmussen MOVED to approve the July 15, 2020 Minutes as amended. Lorne*  
10 *Parnell SECONDED the motion and it PASSED unanimously 7-0 by a roll call vote:*

11 *Chair Rasmussen Yes*  
12 *Lorne Parnell Yes*  
13 *Richard Kelley Yes*  
14 *Bill McGowan Yes*  
15 *Barbara Dill Yes*  
16 *Jim Bubar Yes*  
17 *Councilor Tobias Yes*

18

19 **XIV. Adjournment**

20 *Bill McGowan MOVED to adjourn the meeting. Richard Kelley SECONDED the*  
21 *motion and it PASSED unanimously 7-0 by a roll call vote:*

22 *Chair Rasmussen Yes*  
23 *Lorne Parnell Yes*  
24 *Richard Kelley Yes*  
25 *Bill McGowan Yes*  
26 *Barbara Dill Yes*  
27 *Jim Bubar Yes*  
28 *Councilor Tobias Yes*

29

30 Adjournment at 9:48 pm

31 Victoria Parmele, Minutes taker