

These minutes were approved at the January 12, 2022 meeting.

TOWN OF DURHAM
DURHAM PLANNING BOARD
Wednesday December 8, 2021
Town Council Chambers, Durham Town Hall
7:00 pm

MEMBERS PRESENT: Paul Rasmussen (Chair), Lorne Parnell (Vice Chair-remote), James Bubar, William McGowan, Heather Grant, Sally Tobias (Council Rep), Chuck Hotchkiss (Alternate Council Rep), Ellie Lonske (Alternate), Nicholas Germain (Alternate-arrived at 7:02 pm)

MEMBERS ABSENT: Richard Kelley and Barbara Dill

ALSO PRESENT: Michael Behrendt, Town Planner

I. Call to Order

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

II. Roll Call and Seating of Alternates

The Chair took Roll Call and seated Ellie Lonske for Richard Kelley; Vice-Chair Parnell in Chicago.

III. Approval of Agenda

Mr. McGowan MOVED to approve the Agenda as distributed; SECONDED by Ms. Grant; Roll-Call Vote: Mr. Bubar-aye, Mr. McGowan-aye, Ms. Grant-aye, Chair Rasmussen-aye, Councilor Tobias-aye, Ms. Lonske-aye, Vice-Chair Parnell-aye; APPROVED 7-0, Motion carries.

IV. Town Planner's Report

Mr. Behrendt said there was one opening on the Planning Board for an Alternate. The Board is meeting next week November 17, 2021: Revised plans for 19 Main Street; discussion of 74 Main Street; new lot line adjustment on Newmarket Road. Next meetings January 12 and January 26, 2022.

V. Reports from Board Members who serve on Other Committees

Reporting from Town Council: Councilor Tobias said the Council met December 6, 2021 with presentation for Durham UNH Water System; continued discussion of FY2022-2023 Budget which should finish up at next meeting on December 20, 2021.

Reporting from the Energy Committee: Ms. Lonske said the Energy Committee met last night with 2 people from the Ag Commission looking for commonality between energy needs and moving forward in terms of Global Warming, meeting as a focus group to fund projects. Two students from UNH interested in a charging station for electric vehicles and skateboards.

VI. Public Comments

VII. Review of Minutes (old): None

VIII. Public Hearing - 32 Madbury Road – 6 Unit Addition. Preliminary Design Review application for new 3-story building with 6 dwelling units at 32 Madbury Road (northeast corner of Garrison Avenue intersection). The existing apartment which is a nonconforming use can be expanded up to 50% by conditional use. AAM Durham Residences, LLC, c/o Anthony Librot, property owner. Mike Sievert, Horizons Engineering, engineer. Market Square Architects, architect. Map 2, Lot 10-3. Professional Office District. Recommended action: Provide comments to the applicant and close the design review.

Chair Rasmussen explained that in a Design Review the applicant is getting the Board's ideas before submitting an actual plan and going through the site review process.

Mike Sievert of Horizon's Engineering said the Site Walk was held Saturday and the applicant is hoping for feedback to be able to work on a complete final design. For the building façade the Mansard roof was changed to a regular peaked roof; front, side, and back elevations were shown as well as the roof view showing the "L" shape with 3 steps on the side.

Mr. Sievert said the parking lot is not projecting in front with a tree in the new entry and plantings to screen parking. The slope at the corner of the building is the same as slope on other side of Garrison; may be room to reconfigure drainage/rain garden. He asked if there were any major concerns with the site plan or the building.

Mr. Bubar asked if the outside of the current building will be rehabbed, and Ms. Lonske said she would like to see colors more harmonious with brick buildings in the area. Ms. Grant agreed the look of the building was unappealing, and felt the front building being higher than the back building could be a problem.

Chair Rasmussen said whatever flat green area remains will absorb all outdoor student activity, and the landscaping should be designed with that in mind. Mr. Hotchkiss said moving the slope up pretty immediately helps create a flat space away from the road. Mr. Bubar asked if motorcycle/bicycle parking would be part of the 41 parking spaces, and Mr. Sievert said it will be a separate designated area.

Mr. Bubar MOVED to open the Public Hearing on 32 Madbury Road; SECONDED by Councilor Tobias; Roll-Call Vote: Mr. Bubar-aye, Mr. McGowan-aye, Ms. Grant-aye, Chair Rasmussen-aye, Councilor Tobias-aye, Ms. Lonske-aye, Vice-Chair Parnell-aye; APPROVED 7-0, Motion carries.

Chair Rasmussen opened the Public Hearing at 7:21 pm.

Mr. McGowan MOVED to close the Public Hearing on 32 Madbury Road; SECONDED by Ms. Grant; Roll-Call Vote: Mr. Bubar-aye, Mr. McGowan-aye, Ms. Grant-aye, Chair Rasmussen-aye, Councilor Tobias-aye, Ms. Lonske-aye, Vice-Chair Parnell-aye; APPROVED 7-0, Motion carries.

Chair Rasmussen closed the Public Hearing at 7:22 pm.

- IX. Public Hearing - Mill Plaza Redevelopment.** 7 Mill Road. Continued review of application for site plan and conditional use for mixed-use redevelopment project, drive-through facility for bank, and activity within the wetland and shoreland overlay districts. Colonial Durham Associates, property owner. Sean McCauley, agent. Joe Persechino, Tighe & Bond, engineer. Emily Innes and Sharon Ames, Harriman, project designer. Rick Taintor is serving as the Town's Contract Planner. Central Business District. Map 5, Lot 1-1. Recommended action: Discuss and continue review to another meeting.

Chair Rasmussen informed the Board that a special meeting will be scheduled with the Town Attorney in closed session in early January to answer Board member questions; Mr. Taintor is working with Mr. Behrendt on available dates. Tonight the Board will start with Stormwater Analysis from Engineer Janet Bernardo of Horsley Witten Group, the Board's peer review consultant.

Stormwater Analysis

Ms. Bernardo said the applicant's 2020 Stormwater design was reviewed to compare with the revised version. The new application shows reduced parking spaces (196) with impervious area reduced by 15,000 sq ft but still showing an increase of 2,164 sq ft; rain garden and gravel wetland size both increased; decreased sub-surface detention system and adjusted weir in manhole in final discharge plans. Addressed pre-development flows/May 2020 flows/October 2021 flows, decreased from pre-development conditions but increased from May 2020 with volume slightly increased from pre-development but decreased from May 2020 between 2,000-3,000 cu ft; limit of disturbance has increased to provide additional grading and planting of Wetland Buffer Zone (WBZ); parking lot has been pulled out 75 ft from WBZ.

Ms. Bernardo answered questions regarding possible obstruction of flood flow by culvert on Mill Pond Road and whether downstream flooding might increase due to on-site Stormwater detention. She said the culvert should not be an issue as flow has decreased; downstream flooding is a possibility with the combination of upstream water and water held in Stormwater detention but is a difficult analysis to perform. She asked that applicant confirm increasing disturbance because of Wetland Buffer restoration and confirm correct adjustment in rain garden.

Ms. Grant questioned the applicant's responses to the feedback, and said we know there will be increase in flow, but retention system and reduced flow was supposed to help with some

concerns going into the Brook; the applicant confirmed the Weir was updated and the manhole was the required size but did not address the fact that the storage volume of the underground detention system is reduced.

Tighe & Bond Engineer Joe Persechino said the current design flow is still less than pre-development and flows for the 2-year flood are close to May 2020 design. He said Stormwater was redesigned and updated to pull back from the Wetland Buffer which resulted in relocation and reconfiguration of the Stormwater underground detention system, sized appropriately for new impervious area resulting in different flows.

Ms. Grant said for item 4, Horsley Witten calculates a slope of 1 vertical to 2.25 but best practices recommend slope be 1.3 and the response did not address why not using best practices. Mr. Persechino said the slope in the back corner of the 3-story building is a 3-1 slope (3 horizontals to 1 vertical) and they are trying to change the grade quicker using 2.25-1 with a rip-rap area to direct Stormwater for super-stabilization and erosion control.

Mr. Bubar said his understanding is rain hits the parking lot and runs south to a curb where it is redirected to manholes and Stormwater Management and asked if the Stormwater discharges include what is south of the curb in the Buffer. Mr. Persechino said they pick an area to be modelled starting with the boundary of an existing condition to pick up any changed or modified areas and model the area to be captured; area not captured in SW system is included in the model but not run through the system; the area outside the curb is included but separated into sub-catchment areas which meet back up in the model; everything being modified is included in their analysis.

Mr. Bubar asked about the increase in the limit of disturbance with gravel in the Wetland. Mr. Persechino said there will be restoration plantings further down resulting in more disturbance going down to the edge of the Wetland. Mr. Bubar asked about existing soils and Mr. Persechino said most will remain on that slope.

Ms. Bernardo asked the applicant to explain their erosion control plan while working in that buffer. Mr. Persechino said the green area being restored is presented in our restoration plan; after solid is disturbed, erosion control fabric will be added to the slope with a silt sock at the bottom to halt rain at edge of limit of work and prevent flow into the Brook. Ms. Graham asked as a condition of approval this will be added to the Construction Management Plan (CMP).

Mr. Taintor suggested opening a Public Hearing just on Stormwater; Chair Rasmussen explained that for tonight they will open a Public Hearing, have comments on Stormwater Management Plan (SMP), Board will then act on that plan and public comments, then go back to Public Hearing for rest of comments

Councilor Tobias MOVED to open the Public Hearing on Stormwater Management Plan; SECONDED by Ms. Grant; Roll-Call Vote: Mr. Bubar-aye, Mr. McGowan-aye, Ms. Grant-

aye, Chair Rasmussen-aye, Councilor Tobias-aye, Ms. Lonske-aye, Vice-Chair Parnell-aye; APPROVED 7-0, Motion carries.

Joshua Meyrowitz said he felt it would be in error to make a judgement on the Stormwater Management Plan in isolation from larger question of violation of WCOD Zoning. Ms. Bernardo's chart shows an increase in the rate of discharge and increase in volume, and another chart shows that in every level of storm something worse is going on in this plan than existing conditions right now. He said since this system will slow down the rate of flow into the Brook, and water coming from upstream, will mean more water coming together at the same time.

Eric Lund of 31 Faculty Road said Ms. Bernardo's documents show that as events get more extreme the change from current conditions becomes smaller with more frequent intense rainfall. He said he is concerned for people who live downstream along with the change in the timing of upstream flows.

Ms. Bernardo said with regard to water flowing downstream and the site holding water back, it is not holding water back completely and a dam is opened an hour later; it will continue to flow in slower and has to meet peak rates as it flows on into College Brook and is a very difficult analysis to present. Ms. Grant asked if the +15% rate NHDES is now asking for is based on planning for climate change already, and Mr. Persechino said that is correct.

Nathan Fennessy of Preti & Flaherty said he represents more than 60 individuals from 40 households including direct abutters, and residents of 12 streets in faculty neighborhoods and throughout the community who are concerned about this plan. He said one issue that has not come up yet is the Board's consideration of a separate proposal for Church Hill Woods, and said they need to keep in mind what is being proposed in that application is to essentially eliminate an urban forest, which will increase impervious surface and impact the flow of water into College Brook.

Diane Chen said her recollection was that during a hard rainstorm of more than 2 inches the Stormwater System could not handle that amount in a short time, and it would flow into the Brook, and asked if this has been planned for by Ms. Bernardo. Chair Rasmussen said he would probably have to go to the Town Engineer to confirm. Ms. Chen also asked about nitrogen removal in the system

Mr. Pollack said the application has been peer-reviewed twice and the proposal fits with regulations and is compliant. Ms. Bernardo said a 2" storm is similar to a 2-year storm; water not collected in catch basins would hit the 6" curb and would have to raise 6" to jump over; rain events are based on 24 hours. She said the applicant can confirm that the catch basins are adequate.

Mr. Persechino said the 2-year storm modelled has the larger extreme precipitation value bumped up 15%, so our 2-year storm modelling in pre-existing conditions and post development

is actually 3.6" over a 24-hour period. He said the Stormwater system was designed for the carrying capacity of a 25-year storm, then to a 50-year storm. This project will also be permitted through the AOT Bureau and one of their requirements is Channel Protection Volume for lower-level storms occurring more frequently, which can affect downstream channels and brooks, is modelled in our report; the criteria can be met by reducing 2-year storm runoff by 50% in post-development condition from preexisting.

Mr. Persechino said the closed drainage system and catch basins will get everything where it needs to go in the underground detention system and that is the 25-year storm; the gravel wetland and underground detention basin are all modelled and sized for a 50-year storm, with a factor of safety built into the system.

Mr. Bubar said when the retention system reaches its physical limitation it will overflow into the gravel wetland and effectively be untreated. Mr. Persechino said treatment is to take pollutants out of the Stormwater runoff based on a 1-inch storm, but water in detention will build up and start to bypass the treatment component of the system.

Robin Mower said with regard to nitrogen removal, the filter in the Stormwater System removes 51% of total nitrogen according to performance testing by the vendor. She said it is also important to consider that pollutants removed from Stormwater are typically retained in a bioretention system, which remains a concern. Mr. Persechino said their long-term maintenance plan includes manufacturer recommendations for removal of those materials.

Ms. Bernardo left the Planning Board meeting at 8:26 pm.

Chair Rasmussen called for general questions/comments on the rest of the plans and returned to the Public Hearing at 8:27 pm

Jay Gooze of 9 Meadow Road asked that when considering CU criteria about the effect on adjacent properties, the Board take into account the history of student behavior, their effect on residents, and how to mitigate those problems. He asked that the Board take into consideration that there will be a group of people on the path from Chesley Drive to the Plaza and asked if anything can be done about it.

Joshua Meyrowitz of 7 Chesley Drive showed his video soundscape from the Plaza at night then moving up the path to Main Street demonstrating significant differences in noise which are not subjective. The Plaza buffers the noise from Main Street by a forested hillside targeted for destruction for this project, and the Plaza is a significant buffer for Brookside Commons; Police do not enforce the 10:00 pm noise ordinance unless people call to complain and asked how the noise would be mitigated in terms of materials buffering. He said this plan is taking a buffer that protects Brookside Commons and a faculty neighborhood and turning it into a student playground.

Robin Mower asked if residents were not to use their experience of what they have seen when young people wander around at night after bars have closed; she said the proximity of young people to alcohol and faculty neighborhoods is a recipe for disturbance. She hoped the Planning Board would scrutinize the Property Management Plan and try to find a way to mitigate connection to the single-family neighborhoods.

Eric Lund said he recalled discussion at the last meeting of noise from students returning to the Plaza when bars close. He in Building B space is proposed for a restaurant and said he is not aware of any mechanism the Town legally has to prevent a bar from opening at that location. Chair Rasmussen said when a business comes in there is a review by the Planning Board, and hours of operation in the plaza can be addressed.

Carol Birch said this kind of development can have a terrible impact on the neighboring communities.

Beth Olshansky said she is confused by the removal of the word “student” from all CDA documentation and hoped it was not an attempt to whitewash the CU process by pretending that 258 student beds were not going to be inhabited by young people maintaining a lifestyle not compatible with adjacent neighborhoods and said mixed-use in Durham has always meant student housing. She said Building B is now 25 ft closer to the faculty neighborhood with an additional 31 parking spaces behind Building B.

Chair Rasmussen explained that the word “student” was removed as Mr. Kelley had raised the point that the documents were not consistent; they will rent to anyone but the bulk of people living there will be students.

Nathan Fennessy said there are 4 separate CU applications in front of you and he would first address the ones in the WCOD and SPOD; issue also raised that CDA plans to continue intrusion on those buffers. He said the Board has the obligation to determine, with the advice of the Conservation Commission, whether all 4 standards are met. He said two that stand out are: (1) there is no alternate location that is reasonably practical for the use on the property, but Conservation Commission says there are alternate places on the site for the driveway; (2) location, design, construction, and maintenance will minimize any detrimental impact, but do not believe the application in its current state satisfies that standard.

Mr. Fennessy said the CU application for mixed-use development has 8 different criteria. He highlighted questions raised regarding pedestrian/bike traffic and people entering and existing the Plaza and said the applicant should perform some sort of analysis of non-vehicular traffic. The applicant has an obligation to look at impact on property values and potential negative impacts of this development on the neighborhood, the scale of the development to surrounding neighborhood, and consider whether the CU being requested will have a positive economic and fiscal impact on the Town.

Mr. Pollack said the Planning Board is aware of the CU tests and well-versed in the criteria for CU in all respects. He said traffic was peer-reviewed as was Stormwater and said pedestrian travel ways and bicycle/scooter areas are part of the management plan. Regarding property values the conclusion of the reports is clear, and the fiscal impact of the project will be significantly positive for the Town.

Katherine Morgan pointed out that since the legal settlement of 2015, CDA is responsible for dragging out the process by presenting plan after plan that does not comply with CU regulations of the Town or the legal settlement. She said unfortunately CDA has not done the one thing that would probably bring the process to a quick conclusion: shrink the 2 buildings by reducing height and footprints, move large building back away from the hillside, and reconfigure the driveway outside the buffer. She said the applicant should imagine environmentally sustainable buildings and match architecture and building scale in surrounding neighborhoods. Residents have been waiting for 7 years for a fully functional shopping area in Town center and CDA has failed to meet the most basic aspects of the settlement in a useful plan that meets the needs of the Town, the Master Plan, and CU.

Robin Mower said in June 2008 the Town Council approved a goal to reconsider an appropriate balance of on-campus versus off-campus student housing and have been trying ever since to get that balance in a Zoning Amendment; the Council also tries to help boards and committees to be aligned with those goals.

Eric Lund said he had an issue with the real estate appraisal submitted by Mr. White and said he strongly disagrees with Mr. Pollack's statement of the project having no impact on appraised values which is not proven.

Joshua Meyrowitz stated that a study of current and future pedestrian traffic on the site has not been done, nor a study of on-site Plaza traffic.

Mr. Persechino said they did do a thorough study of pedestrian traffic and adjacent crossings, met with the Traffic Safety Committee, and had a third-party review which was studied and discussed with the Planning Board.

Mr. Taintor said a lot of what Mr. Meyrowitz is describing sounds like a noise analysis and said the issue required in the traffic study was as a condition of Site Plan Regulations; the Planning Board can always ask for more analysis than what is required. Ms. Lonske requested the application be continued to January as the Board is getting off topic. Chair Rasmussen said the Property Management Plan would go quickly.

Mr. Pollack said 4 items were submitted last week: (1) Revised Site Plan based on Board comments; (2) list of active documents considered by applicant; (3) Preliminary Construction Management Plan to be customized with site contractor; revised the Property Management Plan to remove "student" from all documents; (4) Site Security included in Section 4 of plan: Mill Plaza

will have an on-site security office staffed 24/7 working with Police; will have infrastructure in place with property under site surveillance; license plate scanners will only be used if legal.

Chair Rasmussen said there will be 2 Planning Board meetings in January; Mr. Pollack said he would be available on January 12, 2021. Chair Rasmussen said there are 4 variables: Town Attorney availability, Mr. Taintor availability, and room availability. He said they could get the Public Hearing closed on the 12th, and the Board needs to get through the documentation.

Mr. McGowan MOVED to continue the Public Hearing on Mill Plaza Redevelopment to January 12, 2022; SECONDED by Councilor Tobias; Roll-Call Vote: Mr. Bubar-aye, Mr. McGowan-aye, Ms. Grant-aye, Chair Rasmussen-aye, Councilor Tobias-aye, Ms. Lonske-aye, Vice-Chair Parnell-aye; APPROVED 7-0, Motion carries.

X. Other Business

XI. Review of Minutes (new): November 10, 2021 & November 17, 2021

Minutes of November 10, 2021:

Mr. Bubar said he sent a single correction to Karen.

Mr. McGowan MOVED to approve the minutes of November 10, 2021; SECONDED by Mr. Grant; Roll-call vote: Mr. Bubar-aye, Mr. McGowan-aye, Ms. Grant-aye, Chair Rasmussen-aye, Councilor Tobias-aye, Ms. Lonske-aye, Vice-Chair Parnell-aye; APPROVED 7-0, Motion carries

Minutes of November 17, 2021

Mr. Bubar said a comment made by Vice-Chair Parnell at the meeting about why the Board should not go forward with the 74 Main Street Project was important and should be added on page 3, line 22.

Chair Rasmussen postponed the approval to the next meeting.

Ellie Lonske left the Planning Board Meeting at 10:00 pm.

XII. Adjournment

Mr. McGowan MOVED to adjourn the meeting; SECONDED by Councilor Tobias; Roll-Call Vote: Mr. Bubar-aye, Mr. McGowan-aye, Ms. Grant-aye, Chair Rasmussen-aye, Councilor Tobias-aye, Vice-Chair Parnell-aye;

Vice-Chair Parnell felt the Board stopped the discussion on Mill Plaza too early and said there was plenty of time to discuss the reports presented, and they should have gone through them this evening.

Motion to Adjourn APPROVED 6-0, Motion carries.

Chair Rasmussen adjourned the meeting at 10:02 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker

Durham Planning Board

Richard Kelley, Secretary