

These minutes were approved at the February 9, 2022 meeting.

TOWN OF DURHAM
DURHAM PLANNING BOARD
Wednesday January 12, 2022
Town Council Chambers, Durham Town Hall
7:00 pm

MEMBERS PRESENT: Paul Rasmussen (Chair), Lorne Parnell (Vice Chair), James Bubar, William McGowan, Heather Grant, Sally Tobias (Council Rep), Chuck Hotchkiss (Alternate Council Rep), Nicholas Germain (Alternate); Ellie Lonske (Alternate-Remote), Barbara Dill (Alternate-Remote)

ALSO PRESENT: Michael Berendt, Town Planner: Richard Kelley will be late.

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 Nicholas Germain until Richard Kelley arrives; Ms. Lonske on Zoom due to bronchitis; Ms. Dill on Zoom for safety reasons.

III. Approval of Agenda

Mr. Bubar MOVED to approve the Agenda as distributed; SECONDED by Mr. McGowan; APPROVED 7-0, Motion carries.

IV. Town Planner's Report

Mr. Behrendt said he had nothing to report.

V. Reports from Board Members who serve on Other Committees

Reporting from Town Council: Councilor Tobias said the Council met Monday and Oyster River School District will be opening the new Middle School after February break, on target and on budget; discussed how Town Council should educate public on Mill Pond Dam Article, waiting on an FAQ; 3 open positions on the Town Council with Ballot sign-up January 19-28, 2022.

Reporting from Housing Task Force: Ms. Grant said the committee met Monday continuing to go through review of Zoning; suggestions made for enhancing increase of housing availability in Durham.

Reporting from HDC: Mr. McGowan said there were 2 items of recognition: (1) Recognition of Lori and Steve Lamb for enhancement of Thompson House on Bennett Road; (2) received LCHIP grant to identify historic components of Bickford-Chesley House and Wagon Hall Farm.

Reporting from the Conservation Commission: Mr. Bubar said the Commission met December 15 and discussed the Land Recognition Statement and continued discussion to have a representative of the Abenaki community discuss land stewardship issues; brief discussion on Colonial Durham to review current set of plans; discussed Pike Place property and Town contribution of \$35,000.

Reporting from Agriculture Commission: Chair Rasmussen said the Commission met Monday; continuing plans for Oyster River Farmers Meeting in 2 weeks; discussed Moore fields fertilizing and issues raised by community.

VI. Public Comments

Chair Rasmussen asked that residents serviced by fire hydrants remember to shovel them out.

Diane Chen expressed thanks to the Chair for his approach to the many public comments at the last Mill Plaza Public Hearing.

VII. Review of Minutes (old): None

VIII. 190 Piscataqua Road - Extension. Extension to meet precedent conditions for lot line adjustment between 190 Piscataqua Road, Map 12, Lot 7, owned by Thomas Daly c/o Daly Rev. Trust and 194 Piscataqua Road, Map 12, Lot 6-2, owned by John Leland. Eric Buck, Terrain Planning and Design, agent. The lot line adjustment was approved on January 12, 2020. Residence Coastal District. Recommended action: Decision for extension.

Chair Rasmussen said the State finally provided the driveway permit about 6 weeks ago. Mr. Bubar questioned if March 31st was enough of an extension.

John Leland, owner of 194 Piscataqua Road, said he felt March 31st would be enough time to finish the precedent conditions and have the land transferred; he said there are no issues between Mr. Daly and myself.

Mr. Behrendt said it looks all set; just waiting for DOT approval.

Vice-Chair Parnell MOVED to approve the extension to meet precedent conditions for lot line adjustment between 190 Piscataqua Road, Map 12, Lot 7, and 194 Piscataqua Road, Map 12, Lot 6-2 under the conditions of the Notice of Decision as of this date; Ms. Grant SECONDED the motion, APPROVED 7-0, motion carries.

IX. Public Hearing - Lot Line Adjustment – 21 and 31 Newmarket Road. Lot line adjustment between 21 Newmarket Road, owned by Joan and Jeffrey Osborn, Map 6, Lot 11-6 and 31 Newmarket Road, owned by Great Bay Animal Hospital, c/o James McKiernan, Map 6, Lot 11-8. Kevin McEneany, Surveyor. Residence Coastal District. Recommended action: Final action.

Steve of Civilworks Inc. said the Town Planner had identified the Historic District line which we were misunderstanding. Our plan was revised with the Historic District line following the Stone Wall, which will not change the lot line adjustment. Saw recommended comments for Notice of Decision and additional Planner notes.

Vice-Chair Parnell MOVED to open the Public Hearing on Lot Line Adjustment – 21 and 31 Newmarket Road; SECONDED by Mr. Bubar; APPROVED 7-0, motion carries.

Chair Rasmussen opened the Public Hearing at 7:16 pm.

Chair Rasmussen read the statement for Public Hearings and asked if anyone wished to speak

Vice-Chair Parnell MOVED to close the Public Hearing on Lot Line Adjustment – 21 and 31 Newmarket Road; SECONDED by Ms. Grant; APPROVED 7-0, motion carries.

Chair Rasmussen closed the Public Hearing at 7:17 pm.

Mr. McGowan MOVED to approve the Lot Line Adjustment between 21 and 31 Newmarket Road; SECONDED by Mr. Germain; APPROVED 7-0, motion carries.

A date was corrected under Precedent Conditions from January 12, 2022 to January 12, 2023.

- X. ***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***: Continuation of review and public hearing to a February meeting.

Mr. Behrendt left the table and was replaced by Rick Taintor, Contract Planner for this project.

Chair Rasmussen said next Tuesday, January 18, 2022 at 7:00 pm the Planning Board will hold a confidential meeting with the Town Attorney which could be held here or entirely on Zoom. The Board agreed that they preferred to meet live.

Chair Rasmussen said at the last meeting the Board finished the Stormwater Peer Review and said he would like to discuss issues that directly pertain to our Conditional Use decision; general site plan discussion can wait. Mr. Taintor said landscaping and buffer restoration were major topics at the last Public Hearing and questions were sent to applicant and answered by mail.

Mr. Ari Pollack said on December 8, 2021 they discussed Stormwater engineering and had consultation with the Town's Peer Review Consultant. After the meeting they received landscape notes and questions from Mr. Taintor which were answered by Joe Persechino of Tighe & Bond and Howard Schneider our landscape architect with Harriman. He said there was also a submission by Brian White, licensed New Hampshire appraiser retained by applicant to provide valuation regarding development, in response to Mr. Meskill's critique. He said they are happy to answer any questions and to ask that the Public Hearing be closed, as topics are otherwise exhausted and they are looking to make progress after a significant amount of time and work.

Chair Rasmussen asked the Board if they have further questions regarding landscaping or the Management Plan. Vice-Chair Parnell asked Mr. Taintor if he was happy with the responses to questions he sent out. Mr. Taintor said he has further questions regarding details of the engineered soil of the landscaped islands, as it was not clear whether the engineered soil ran the whole length of the islands or where the loam begins.

Mr. Joe Persechino said Mr. Schneider was not able to make the meeting. He said his understanding is this is typically a construction-level detail and not substantive to making a decision on the project; however engineered soil extends 8 ft from the tree plantings. He explained there is a segmented number for each tree, and it will be laid out to provide that amount which depends on conditions. Details can be provided to the Board before construction. Mr. Pollack said there was no conscious decision to provide less engineered soil and details will be flushed out in construction documents.

Mr. Taintor said your response then is that you would rather have subsequent approval by the Town of construction details. Mr. Pollack said that would typically be the Building Permit; Mr. Taintor said we are talking about a design of landscaped planters here, and Mr. Pollack said the Board can specify landscaping details be part of the building permit. Vice-Chair Parnell said regarding the issue of guarantees, the same people who own the property now will be owning it in the future and any resident has seen the current deficiencies there now. He said he is going to suggest the Board have a condition put in here that these plantings have to be maintained in perpetuity.

Mr. Bubar said he was not comfortable pressing the applicant for details of construction plans prior to review and approval of CU criteria. Vice-Chair Parnell agreed he was not that concerned with construction details at this point and the Board should move on to CU criteria. Chair Rasmussen asked Mr. Taintor to provide a list of details to be included as part of the final package. Mr. Taintor said he interprets the applicant as saying they would like to postpone until after approval. Mr. Pollack said delineation of tree protection can be added to the plan as a condition of approval. Ms. Grant said the concern on specific types of trees could also be added as a condition of review by the applicant's landscape architect as a confirmation that plantings are proper. Mr. Pollack said trees can be shown on the planting plan as a condition of approval.

Councilor Tobias said regarding the Management Plan there was a concern about foot traffic in the parking lot in the evening coming from downtown, and I requested an after-hours entry into the building to mitigate noise disruptions to the neighborhood. Mr. Pollack said to this point they have prioritized walkability of the site for pedestrian access and said Section 4 of the plan deals with onsite security. Councilor Tobias said she would like to see it in writing in the plan. Ms. Grant asked that closing times of businesses also be included, and Vice-Chair Parnell agreed.

Mr. Bubar MOVED to re-open the Public Hearing on Mill Plaza Redevelopment; SECONDED by Councilor Tobias; APPROVED 7-0, motion carries.

Chair Rasmussen re-opened the Public Hearing at 7:54 pm and re-read the statement for Public Hearings.

Diane Chen of 12 Oyster River Road said she would like to revisit the ramp plan provided by Nick Issak with one switchback which would be a benefit to the community and needs further discussion. She said, regarding pedestrians, noise is only half the issue, the other being the volume of bodies encountered by vehicles driving on Mill Road or Main Street. She spoke with Deputy Chief Holmstock who said he expected a lot of Police resources to be tied up in Mill Plaza if the project goes forward.

Timothy Horrigan of 7 Faculty Road said he is a member of the Legislature and Attorney Pollack came to the House Judiciary Committee with a bill about using the Housing Appeals Board as an alternative to going to court to review Planning Board decisions as pressure to reduce the power of Planning Boards. He said there is a misperception that Planning Boards are there to serve the interests of developers, but first and foremost work for the people of the Town who are extremely skeptical about this project and feel it is unnecessary. He did not think this project was going to work and does not fit in with the overall needs of the Town.

Eric Lund of 31 Faculty Road followed up on Diane Chen's report from Deputy Police Chief about the need for additional resources and agreed the Planning Board needs more detailed information. He said regarding restaurants, 10:00 pm is a reasonable time and bars open until 2:00 am are not appropriate for this site. As far as landscaping, there is also the matter of snow removal and he expressed concerns given the past history of the applicant plowing snow into the Brook and asked the Board to make sure the clause in the Management Plan is adhered to.

Vice-Chair Parnell reiterated what he said earlier that the current owners are the future owners, and said snow is still being plowed into the Brook. He said it would be a sign of good faith if CDA started using the system they say they will be using in the new project now.

Joshua Meyrowitz of 7 Chesley Drive said the only Planning Board Site Walk on the Mill Plaza Plan was done on December 16, 2020 and was limited. Diane Chen and Robin Mower sent guidance letters to the Board for 12 items to look at and only 1 was addressed and said from Chesley Drive the trees will not hide a 3-story building. He also showed images of the first snowfall this year being plowed right up to the Brook, and subsequently into the Brook. He agreed that Nick Isaak's plan for the ramp is more sophisticated, is ADA compliant, and would be a wonderful asset to the community. He asked that the Planning Board try again on a Plaza Site Walk with checklist. He said this Project Management Plan is taken almost word for word from Madbury Commons Management Plan of 2014 and is not specific to this site.

Robin Mower first urged the Planning Board to keep the Public Hearing open as the Conservation Commission has asked to have the opportunity to review the current site plan. She said as Joshua pointed out the Security Management Plan is not tailored to this site as recommended by Councilor Jim Lawson. She said plowing snow laden with salt into the Brook damages water quality and is killing mature trees along the bank which provide a visual buffer to the residential neighborhood. She expressed concern with the response of the applicant that the Planning Board does not need to know details until after approval, and said landscape issues should be addressed prior to the deliberations; the Planning Board met once with the landscape architect in June 2020; more time should be taken on landscaping as the face of the project to the community.

Ms. Mower presented a power point on Trees and Medians and showed comparisons of trees in 10-foot medians versus 6-foot medians. She said she was very concerned on August 25 when the Board waived the regulation for the maximum number of parking spaces between landscaped medians and said they could have asked CDA to widen the strips to 9 ft per current Site Plan Regulations. Also, with regard to restoration plans along College Brook within the 75-foot wetland buffer, it is incumbent on the Planning Board to get those details about landscaping as well as everything else before it is approved.

Attorney Nathan Fennessy said he represented every resident near Mill Plaza and in the adjoining neighborhood, and we agree with the recommendations provided by Mr. Taintor that you continue the Public Hearing to February 9; the Conservation Commission is considering the revised site plan at their January 24 meeting; under regulations you have a duty, with advice of the Conservation Commission, to consider whether or not the proposed plan complies with CU regulations.

Attorney Fennessy said also the Planning Board has not yet really grappled with the current condition of the property versus pre-2002 conditions before improper bulldozing. He said the tenant does not have to accept the deteriorating state of the property as the measure of what is appropriate, and the Planning Board has an obligation that even a non-conforming lot needs to be brought into compliance. CDA is proposing a significant change in the use and intensity of use at Mill Plaza, and history of the plaza suggests the activities that intruded on WCOD and SPOD have continued over time.

Debra Hirsch Mayer said she agrees with everything that has been said, and respectfully asked the Planning Board to continue the Public Hearing until after the Conservation Committee meeting. She cited the lack of a pedestrian traffic study and said it is imperative the Planning Board get a study of extra pedestrian traffic that will increase from housing 258 people coming and going. She said Chesley Drive is of particular concern, as students will use the path and congregating on the footbridge will only increase. Also, if students living there are not allowed to bring their cars into the plaza, they will arrange to be picked up or dropped off on Chesley Drive or Faculty Road and use the path. This will cause noise and litter problems and it is imperative that it be studied.

Beth Olshansky thanked Lorne Parnell for requesting a tree guarantee in perpetuity and Councilor Tobias for requesting an after-hours entrance to channel people away from the neighborhoods, with not being enough of a buffer between neighborhood and a student housing complex. She also asked that the Public Hearing stay open until after the Conservation Commission review of current plans and feels there is a lot more for the Planning Board to discuss. She said the language in the CU criteria is vague enough to allow various interpretations, and it will be at the discretion of Planning Board members to determine the impact on the quality of life of the neighborhood.

Katherine Morgan of 16 Valentine Hill Road said regarding security in the plaza, she is concerned about security around the building for neighborhood children who use the footpath through the woods to Chesley Drive walking to and from school. She said some middle school girls have faced some harassment in Fraternity areas, and there needs to be a presence outside these massive buildings to ensure the safety of children from faculty neighborhoods. She also stated that responses to comments raised by Rick Taintor in terms of the landscape plan should either be more complete, or a revised plan needs to be provided.

Beth Olshansky said she forgot to mention the 75-foot buffer which is also an issue. She questioned the number of parking spaces CDA really needs when they are already renting 150 of those spaces.

Mr. Pollack said regarding Police impacts they submitted a fiscal impact study prepared by a qualified expert which references discussion with the Police Department submitted as part of the record. He said the Conservation Commission has had an opportunity to review this project and their recommendations are also in the record. He said he does not see a benefit to leaving the Public Hearing open as comments at this point are redundant.

Mr. Pollack said we have been extremely responsive and are entitled to closure, and it is time to respect they have reached the end. He asked that the Board please close the Public Hearing, confer with their attorney, and then enter deliberations on the application and work on conditions of approval. He said he does not believe there is value to holding this hearing open and made it very clear they have done everything possible to respond to the Board's requests.

Joshua Meyrowitz said Rick Taintor's review says to continue the Agenda to February so if the Public Hearing were closed the public would have no advance warning that they had missed the final opportunity to comment, and hoped they would leave the Public Hearing open.

Chair Rasmussen said if the position of the Police Department changed, he would expect they would notify the Board and asked if there was a reason to revisit with them. Mr. Taintor said the Police Department gave a separate memo very early in the process. Mr. Bubar felt it would be worth following up with the current Police Chief to re-confirm.

Mr. Pollack said discussions with Police and Fire have already occurred, and said we are at the end. Chair Rasmussen agreed and said with reference to the public encouraging the Planning Board to push for tighter changes re parking lot plan and 75-foot buffer, the applicant has said they are not going to budge any more. This is what we have and what we will be voting on either way and making a decision regarding CU criteria. He said he hoped in February that this Board will have the opportunity to get into serious deliberations and make the decision, whether or not we are happy with the current plan and approve or not approve.

Chair Rasmussen said the next topic for the Board to discuss is whether to close the Public Hearing tonight or not. If we wait until February 9th, we will have spoken with the Town Attorney, the Conservation Commission will have a chance to review, with no reason not to close the Public Hearing on February 9.

Councilor Tobias felt they needed to wait for the Conservation Commission considering the enormity of this plan but saw no reason to go beyond that date. Mr. Hotchkiss said it is then incumbent on us to explain to public satisfaction what we have concluded from what we already have. He said people have had significant questions about important aspects of this project and we need to decide what we are willing to do to address those.

Ms. Grant said there will be dialogue when the Board is going through all the CUs and starts to pick through and analyze the facts and have that give-and-take on each criterion. Councilor Tobias said we have a lot of information from the public and understand their many concerns; once we have no more information coming in, we can hash through how it applies to CU.

Vice-Chair Parnell said we have had this discussion before and have sometimes found a benefit in keeping the Public Hearing open while doing our deliberations; as Board members we should all be prepared to begin discussion of these criteria for CU for all these items at the next meeting, and hopefully all voting members will be here.

Mr. Taintor said if the Board closed the Public Hearing prematurely and then wanted to ask the applicant a question, they would have to readvertise and may lose another month. Mr. Kelley (at 9:16 pm) said he would prefer the Board leave the Public Hearing open during initial deliberations to allow the ability to ask questions.

Richard Kelley stated that he joined the Planning Board meeting around 8:30 pm and had accessing difficulties.

Mr. Pollack suggested to the Chair that the Board discuss leaving the Public Hearing open with their attorney next week. He stated that the applicant is asking you to close the Public Hearing tonight and the record should be clear about that.

Chair Rasmussen MOVED to continue the Public Hearing on Mill Plaza Redevelopment to February 9, 2022; SECONDED by Vice-Chair Parnell; APPROVED 7-0, motion carries.

XI. Other Business

Chair Rasmussen raised a possible Workshop topic and asked Board members if they would be interested in taking a project from 5-10 years ago and asking how they would do it differently today; discuss what the Board did right/wrong and how they would address any deficiencies using today's Ordinances.

XII. Review of Minutes (new): December 8, 2021 & December 15, 2021

Approval of the Meeting Minutes of December 8, 2021

Mr. Bubar provided his changes online.

Mr. Bubar MOVED to approve the Meeting Minutes of December 8, 2021; SECONDED by Mr. McGowan; Roll Call Vote: Bill McGowan-aye, Heather Grant-aye, James Bubar-aye, Paul Rasmussen-aye, Lorne Parnell-aye, Sally Tobias-aye, Richard Kelley-abstain; APPROVED 6-0 with 1 abstention, motion carries.

Approval of the Meeting Minutes of December 15, 2021

Vice-Chair Parnell MOVED to approve the Meeting Minutes of December 15, 2021; SECONDED by Councilor Tobias; Roll Call Vote: Bill McGowan-abstain, Heather Grant-aye, James Bubar-aye, Paul Rasmussen-aye, Lorne Parnell-aye, Sally Tobias-aye, Richard Kelley-abstain; APPROVED 5-0 with 2 abstentions, motion carries.

XIII. Adjournment

Mr. McGowan MOVED to adjourn the meeting; SECONDED by Mr. Bubar; Roll-Call Vote: Bill McGowan-aye, Heather Grant-aye, James Bubar-aye, Paul Rasmussen-aye, Sally Tobias-aye, Lorne Parnell-aye, Richard Kelley-aye; APPROVED 7-0, motion carries.

Chair Rasmussen adjourned the meeting at 9:27 pm.

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Respectfully submitted,

Patricia Denmark, Minute Taker

Durham Planning Board

Richard Kelley, Secretary