

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

TOWN OF DURHAM
DURHAM PLANNING BOARD
Wednesday January 26, 2022
Town Council Chambers, Durham Town Hall
7:00 pm

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

ALSO PRESENT: Town Planner Michael Berendt, Town Councilor Jim Lawson

I. Call to Order

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

II. Roll Call and Seating of Alternates

Chair Rasmussen took roll call, no alternates to seat. Reasons for Remote: Mr. Germain is on-call, Ms. Lonske watching pet; Ms. Dill watching Rufus; Mr. Kelley by preference.

III. Approval of Agenda

Mr. McGowan MOVED to approve the Agenda as distributed; SECONDED by Councilor Tobias; Roll Call Vote: Heather Grant-aye, James Bubar-aye, Paul Rasmussen-aye, Sally Tobias-aye, Bill McGowan-aye, Lorne Parnell-aye, Richard Kelley-aye; APPROVED 7-0, Motion carries.

IV. Town Planner's Report

Town Planner Michael Behrendt said there are two postponements from tonight at applicants' request: 74 Main Street Mixed-Use Building and 19-21 Main Street Parking Lot. Agenda for February 9th meeting: Mill Plaza, 2-lot subdivision of Pike Property for conservation (35 acres), expansion of small apartment house at 4 Old Landing Road, and conceptual application for a Food Truck Emporium at old Town offices. Town Election March 8, 2022; deadline to apply for vacant positions this Friday at 5:00 pm.

V. Reports from Board Members who serve on Other Committees

Reporting from Agriculture Commission: Chair Rasmussen said the Ag Commission met last night and 40 farmers from Durham/Lee/Madbury presented ideas on work they plan to do together.

Reporting from Conservation Commission: Mr. Bubar said Conservation Commission met Monday and approved spending \$35,000 from Conservation Commission Fund to participate in purchase of

Pike Property, subject to Town Council approval of purchase. Discussed CDA conditional use (CU) in WCOD/SPOD and sent note reaffirming the full 75-foot setback.

VI. Public Comments

Eric Lund commented on remarks from last meeting by Mr. Parnell regarding the importance of acting in good faith with regard to neighbors, especially in Mill Plaza decision.

VII. Review of Minutes (old): None

VIII. Public Hearing - 74 Main Street – Mixed-Use Building. Formal site plan and conditional use application for demolition of current wood frame building and construction of a 4-story mixed-use building with nonresidential uses, 12 residential units, and 13 parking spaces. Doug Clark, applicant. Jerry Pucillo, consultant with Centergreen, representing Foundation for Civic Leadership/Democracy House, a potential partner/tenant in project. Mike Sievert, Horizons Engineering. Zach Smith, Bergmeyer Architects. Map 2, Lot 14-1-1. Central Business Zone. Recommended action: Discussion and continuation

****POSTPONED TO FEBRUARY 23 AT THE APPLICANT'S REQUEST***

IX. Solar Ordinance. Presentation by Town Councilor Jim Lawson about the updated draft solar ordinance. Recommended action: Offering comments from board members.

Town Councilor Jim Lawson said he would present the key aspects of the Solar Ordinance and get feedback from the Planning Board. He said the ordinance will be initiated by the Town Council and he asked them to hold a Public Hearing before referring back to the Planning Board. He said the ordinance uses much of the Planning Board's original work and he will review changes.

Councilor Lawson said there are three areas: (1) Using solar as an accessory use to a single-family or duplex home, with reasonable limits to size of a free-standing system; allows residential solar to be a Group Net Metering host with more options for free-standing systems having negligible visual impact; (2) better aligned definitions of super-large systems and utility systems, with the RSA, and PUC (Public Utility Company) definitions on the regulatory side; (3) introduced concept of Solar Photovoltaic Parking Canopies.

Looked at characteristics and needs of solar in a residential environment; electric energy is evolving with EV (electric vehicles) and Geo-Thermal. Due to concerns about financial incentives to oversize free-standing systems, the 30 kW size limit was reintroduced; most homes require a 6-10 kW system and adding EV driven 16,000 miles/year would require a 5.3 kW system, geothermal for a 2,000 sq ft home 8 kW system, and 30 kW for free-standing system with less than 1,800 sq ft of ground area; having a maximum limit creates the opportunity for residential systems to be a Group Net Metering host, with most roof mounts 10 kW systems.

The original proposal for freestanding systems was to locate the system behind the house, or by ZBA special exception to locate anywhere; in front of house if 150 feet off public road, or screened from road by topography and vegetation; residential now allowed to be in Group Net Metering arrangements, which allows sharing of solar energy. The host applies to PUC, and RSA allows entering into an agreement with members all sharing in capital costs upfront; host can be anywhere the utility company serves.

For Large-Scale solar systems tried to better align definitions with RSA-362-A and PUC 9000 but are not quite there yet. There are Small Utility-Scale solar energy systems with electric capacity less than or equal to 100 kW, generating electricity for use offsite by customers, and Large Utility-Scale solar energy systems greater than 100 kW and less than 5 MW. Group Net Metering Hosts: Small solar Photovoltaic (PV) less than or equal to 100 kW that shares net metering benefits with members of a registered group, or Large PV systems greater than 100 kW and less than 5 MW sharing energy.

Green energy is energy produced by a provider and sold to customers who get to choose a provider with more green content. There are a lot of utility-scale systems outside New Hampshire which are not permitted here due to the political and regulatory environment. But there may be large group net metering hosts in the future in similar arrangement to shared solar, but serving potentially hundreds of homes; the State recently increased the capacity from 1 MW to 5 MW; and there is a need to be careful about where large-scale solar can be located.

A UNH sustainability fellow, working with the Town of Durham produced a greenhouse gas inventory of 80,000 tons in aggregate per year; greenhouse gases are primarily from built environment and transportation. The 8,300 acres of forest in Durham sequesters almost 50% of that carbon, and forests will become a very important part of the plan to reduce greenhouse gases to be submitted by Durham to GCOM; every acre of forest is taking 4.8 tons/acre of carbon out of the air. Looked at all Durham Conservation Land and can see concerns of residents in R and RC zones about large-scale solar; the amount of conservation land tends to push that kind of solar to residents and neighborhoods.

This is a first iteration of the Solar Ordinance which needs to be a living document with changes ongoing. It is CU but focused on our industrial and commercial areas (ORLI & MUDOR zones) and not yet appropriate for R and RC zones. New Solar Photovoltaic Parking Canopies must be an approved use (not single-family or duplex) limited to parking area with height limits (current maximum=25 ft above ground); CU for all commercial and research/industry zones excluding the CBD; site plan review. Multi-Unit and Non-Residential Solar is newly defined as an accessory use to provide solar energy for principal and accessory uses of multi-unit residential, mixed-use with residential, and other non-residential uses.

Questions: Chair Rasmussen said some agricultural/commercial uses in agriculture may go over the 30 kW limit. Councilor Lawson said as a non-residential use that system could be sized to meet farm requirements; with agriculture as a primary use they are allowed to go up to 100 kW

beyond what they require. Chair Rasmussen said solar parking arrays would reduce the heat-island effect by absorbing the solar energy. Councilor Lawson said parking also creates more demand on electricity with buildings right next to parking. With a parking array, some of the energy no longer has to be dissipated as heat is creating electricity and shading the parking lot; solar panels are also somewhat reflective; there is a lot of work to do to catch up but the biggest lot in town is in ORLI district.

Mr. McGowan said with solar not allowed in rural (R) areas, solar arrays could be located along transition lines, but Councilor Lawson said people would be very concerned about that. Mr. Kelley asked if anything prevents sharing solar energy with a commercial entity to provide the infrastructure. Councilor Lawson said on utility scale it would be Group Net Metering with someone providing the service; would need to look for an area where there is already high-voltage, 3-phase distribution access for utility-grade sale solar.

Councilor Lawson said the Energy Committee is now looking at what Durham residents use for energy and possible increases to the load on distribution systems and planning to meet with Eversource for guidance. Ms. Grant said she did not feel rural owners should be limited and more dialog is needed. Councilor Lawson said in Massachusetts you do not see solar in rural areas but in large scale in triangles created by exit ramps; the majority of Durham is forested, and solar is high impact and disruptive to wildlife.

Mr. Bubar said he was the lone dissenter when the ordinance was approved by the Planning Board, and his objection was forcing solar into peoples' scenic view. He said also for Special Exception, you have to have one of 5 criteria and was not sure how one could get special exception for solar. Councilor Lawson said the criteria for special exception are very different from variance and much less rigorous.

Town Planner Behrendt said there are 3 criteria: not detrimental to neighborhood in general; not injurious or obnoxious to neighborhood; not contrary to public health, safety, or welfare. Councilor Lawson said the Planning Board originally used the house as placement and felt that would work well; only special exception if placing array out front.

Chair Rasmussen said the public can express concerns at Town Council Public Hearing or contact Councilor Jim Lawson directly.

X. *Public Hearing - 19-21 Main Street – Parking Lot*. Formal site plan and conditional use application for parking lot as principal use on four lots and reconfiguration of the entrance. Toomerfs, LLC c/o Pete Murphy and Tim Murphy, owners. Mike Sievert, engineer. Robbi Woodburn, Landscape Architect. Map 5, Lots 1-9, 1-10, 1-15, and 1-16. Church Hill District.

****POSTPONED TO FEBRUARY 9 AT THE APPLICANT'S REQUEST***

XI. Other Business

Discussion of Alternates

Chair Rasmussen asked that the Board discuss Alternates during CU and said Ellie Lonske found something in RSA that says Alternates should leave the table when deliberations start so it is clear which members of the Planning Board are actually deliberating. Town Planner Behrendt said it was a recommendation from the State Planning Office but not required.

Ms. Lonske said at a recent meeting, the Town Attorney strongly recommended that Alternates not participate in deliberations and the optics are not good. Mr. Kelley said he is bothered that the Board does not have Alternates involved in deliberations, and said it is important to keep the Public Hearing open and take that pause for members to talk. Ms. Grant said it could be confusing to the public, but the Board could be clearer.

Vice-Chair Parnell said there is a difference between discussion and deliberations, and Alternates have always taken part in discussions; once deliberations begin on the merit of the project, perhaps comments should be limited to voting members only, whether Alternates are at the table or not. Board members discussed that a dividing line might be: when a motion is made, when Chair begins to go through CU criteria, or by closing Public Hearing.

Councilor Tobias said she did not like to diminish the role of Alternates and restrictions were never put on the general public, and said it has always worked from her experience; Alternates are here for a reason and we need them to be well aware of the project; they are not voting and should not be involved in going through CU criteria and the specifics of the decision.

Mr. Kelly said he really values the fact that the Board has Alternates who have been attending these meetings and he wants to hear what they have to say, and would hate to act on a decision without hearing from them and having the opportunity to ask questions; he recommended just leave the Public Hearing open, no longer take public testimony, and let the Board members talk.

Ms. Dill said as an Alternate and someone who has served on the Planning Board for a long time, it would be really hard to suddenly change to a situation where a number of people have to get up and leave the table; also Alternates are supposed to be prepared to be voting members and need to participate all along and going through CU may actually take more than one meeting.

Mr. Bubar said he completely agrees with Mr. Kelley to leave the Public Hearing open, and said he values and needs the input. Mr. McGowan asked if they can leave the Public Hearing open and not take comment. Chair Rasmussen said if the Board reaches deliberations or a motion is made, at that point it is inappropriate for Alternates to be speaking. Councilor Tobias said we have been doing that all along.

Chair Rasmussen said the intent of the discussion was to see if there was a need to change Planning Board rules and procedures, but in general it sounds like nothing needs to be changed.

Town Planner Behrendt said in terms of CU when you go through the criteria you are still discussing at that point and do not vote until the end.

Vice-Chair Parnell said things we are saying during deliberations over the 8 CU criteria are very important in terms of any possible comeback from applicants if they get a decision they do not like; concern would be statements by non-voting members that would influence voters, and from a legal point of view we have to be sure of what we are saying and be consistent.

Mr. Hotchkiss said he did not hear the lawyer draw the distinction that is being made between discussion and deliberations which seems somewhat superficial, but said he will support that once the Public Hearing is closed, Alternates do not have a voice. Mr. Kelley said it is very clear who the voting members are when votes are cast, and he does not like the optics of telling alternates they cannot sit at the table.

Chair Rasmussen said the Planning Board will leave the rules and procedures as they are and said anyone is always welcome to leave the table.

XII. Review of Minutes (new): Site Walk Minutes of January 12, 2022

Approval of the Site Walk Minutes of January 12, 2022

The minutes of the Site Walk of January 12, 2022 were postponed until the next meeting as the incorrect minutes were included in the packet.

XIII. Adjournment

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

Chair Rasmussen adjourned the meeting at 8:40 pm.

Respectfully submitted,
Patricia Denmark, Minute Taker
Durham Planning Board

Richard Kelley, Secretary