

These minutes were approved at the June 22, 2022 meeting.

TOWN OF DURHAM
DURHAM PLANNING BOARD
Wednesday April 13, 2022
Town Council Chambers, Durham Town Hall
7:00 pm

MEMBERS PRESENT: Paul Rasmussen (Chair), Lorne Parnell (Vice-Chair), Heather Grant, James Bubar, Sally Tobias (Council Rep), Richard Kelley, Nicholas Germain (Alternate); Barbara Dill (Alternate); Emily Friedrichs (Alternate-remote), Chuck Hotchkiss (Alternate-remote)

ABSENT: William McGowan

ALSO PRESENT: Town Planner Michael Berendt

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: Seated Barbara Dill for Bill McGowan and Nicholas Germain for Richard Kelley until his arrival.

III. Approval of Agenda

Vice-Chair Parnell MOVED to approve the Agenda as distributed; SECONDED by Mr. Bubar; APPROVED by a vote of 7-0, Motion carries.

IV. Town Planner's Report

Town Planner Michael Behrendt said there is a Special Meeting April 20, 2022 with Lot Line Adjustment for Laurel Lane, Expansion of Apartments for 32 Madbury Road, and 19 Main Street; Regular Meeting April 27, 2022 with CU for new driveway Durham Point Road, Permitted Use B for a new house lot at 52 Oyster River Road, and Mixed-Use building at 74 Main Street. Site Walk scheduled for Saturday April 16, 2022 at 9:00 am for 52 Oyster River Road, and for CU on Durham Point Road at 10:00 am.

Chair Rasmussen welcomed Richard Kelley to the meeting at 7:05 pm.

V. Reports from Board Members who serve on Other Committees

Reporting from Integrated Solid Waste Advisory Committee: Mr. Kelley said the Board will need to assign a new member for this committee as meetings will be held Wednesdays in Town Hall and he will no longer be able to attend.

Reporting from the Housing Task Force: Ms. Grant said the Housing Task Force met this week and had a discussion with Harmony Homes owners John and Maggie Randolph about their work on workforce housing. The Randolphs reviewed a project they worked on in Dover for 34 tiny homes on a 3.5-acre lot with 4-acre conservation area and discussed the challenges they faced to be able to squeeze construction costs to afford them being workforce housing.

Chair Rasmussen welcomed Chuck Hotchkiss on Zoom at 7:08 pm.

Reporting from the Conservation Commission: Mr. Bubar said the Conservation Commission meeting was primarily a discussion of 52 Oyster River Road, a proposed single-family house on the river with land eroded by former stormwater culvert and various challenges; discussed landscaping in a Wetland area and the Site Walk this Saturday with the Planning Board.

Reporting from the AG Commission: Chair Rasmussen said Durham Farm Day will now be Oyster River Farm Day, a 3-town farm day starting this August, with Lee, Madbury, and Durham joining forces; if all goes well next year there will be a Farm Weekend.

Reporting from the Town Council: Councilor Tobias said the Council met April 4th and discussed the Town Administrator entering into a parking agreement with Slipknot Properties, LLC, owned by Scott and Karen Letourneau, for property located across the street with 10 spaces we currently use for parking; the Letourneaus want to use those spaces to facilitate their Food Truck Court, and the Council agreed the Town Administrator could enter into that contract. She said all Council appointees were approved and Richard Kelley and Lorne Parnell are still on the Planning Board.

VI. Public Comments

Robin Mower of 6 Britton Lane advised the Planning Board that when approaching the driveway on Durham Point Road there was a very short sight line and a steep hill before the turn and said they should signal as they approach the crest of the hill.

VII. Review of Minutes (old): None.

VIII. *Deliberations* - 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:* Deliberate on applications for conditional use permits and continue to March 23 or April 13.

Town Planner Michael Behrendt left the table at 7:12 pm and was replaced by Contract Planner Rick Taintor.

Chair Rasmussen said at the last session the Board came to a decision on WCOD and SPOD, and the draft conclusion along with bulleted points provided by Mr. Taintor was included in the packet. He said the Board will next finish all Conditional Use Permits.

C. Mixed-Use with Residential and Parking

General Characteristics for Conditional Uses

Item 1. Site Suitability for Proposed Use

Chair Rasmussen said the Board needs to determine whether the two mixed-use buildings as part of this project conform or do not conform to this CU Permit.

a. Adequate Pedestrian and Vehicular Access

Mr. Bubar said the plan included multiple pedestrian and one vehicular access. Ms. Grant felt the sidewalk along the south border was a significant improvement to pedestrian access; Ms. Dill felt that the flow into parking spaces for retail was also good. Councilor Tobias said there was some concern about the back entrance and people wanting the ramp to stay versus stairs.

Ms. Dill felt the ramp was a big concern and did not understand why there was no follow-up to a solution that was presented to make the ramp work for pedestrians. Councilor Tobias said a switchback was needed to make it ADA accessible. Chair Rasmussen said the diagrams presented by Nick Isaac crossed the boundary line and were outside the property footprint; he said there are several other ADA accesses to the premises. The Board discussed the issue further.

Mr. Kelley said the applicant is replicating what is already there on the norther access just not for all users. He said a tremendous number of new users are being introduced and the Board needs to look at whether enough has been done within the site to accommodate that. He said internally on the site vehicular movement is improved but was not sure everything needed for pedestrians was being done.

b. Availability of Public Services

The Board discussed the availability of Public Services and agreed they were adequate.

c. Environmental Constraints or plan to mitigate

Mr. Bubar felt there were numerous environmental constraints with a 300-ft steep slope, and a continuous embankment with ledge. He said an excessive amount of natural resources are being removed on the hill and there is a 25-30-ft drop from neighboring property. Chair Rasmussen said he saw 8-10 ft of fill being removed, and referenced Sheet C-103 showing the depths they would be digging down to at various points.

Mr. Kelley said Sheet C-103 shows existing and proposed contours, but on the elevation from the back the building is making up the grade from one side to the other. Mx. Friedrichs reiterated her concerns about the increased volume of water flowing into College Brook and stressed the importance of addressing the environmental impact of increased water volume and said a lower peak rate did not do enough to address potential flooding and climate change. Ms. Grant said the analysis on Stormwater is based on climate change figures dictated by the State of New Hampshire and is already in the calculations.

Mr. Bubar felt a better strategy than removing the steep slope was requesting a waiver from the Planning Board or a member of the Board making a motion to waive that section of the Natural Resources requirement. Chair Rasmussen said the language is unclear as to whether a steep slope is something to be protected or something to be removed. Mr. Kelley said a steep slope creates a constraint which can be either left alone or accommodated by removal or otherwise.

Ms. Grant felt the applicant had a plan to substantially mitigate the impact of the steep slope, and Councilor Tobias felt the mitigation was appropriate for steep slopes and flood plain. Mr. Kelley said what Mx. Friedrichs stated about increased water volume was valid and should be considered as the site is adjacent to a floodplain. He said the applicant showed the peak rate of flow is lower, but the total volume is higher, and for the 50-year storm we are talking about 0.12 acre-feet or 4,500 cu ft of water which is a small amount.

d. Availability of Appropriate Utilities

Chair Rasmussen said the big issue here is Stormwater disposal, which the Board has been discussing, and saw no issues with the others listed.

Item 2. External Impacts

Chair Rasmussen said the Board needs to address whether the external impacts of the proposed use on abutting properties and neighborhood [will not/will] be greater than existing, and also that the location and design of structures and intensity of use [will not/will] not have an adverse effect on the surrounding environment and [will not/will] discourage the appropriate and orderly development and use of land and buildings in the neighborhood.

External Impact of proposed use on abutting properties.

Councilor Tobias asked if the Board was following the definition of neighborhood as a 1,000-ft radius. Chair Rasmussen felt the key was to identify the unifying characteristics of this property with its neighbors within 1,000 ft. He said this is a commercial property with neighboring commercial properties on Main Street. Councilor Tobias said it is commercial on Main Street but there are also aspects of the university and the dip into the faculty neighborhood.

Mr. Kelley said the property straddles the central business district and RA district and abuts residential neighborhoods and said if this project were on the other side of Main Street, he could support numbers 2 and 3, but cannot for this location. He said he finds an increase in traffic,

noise, hours of operation, potentially lighting, and finds that the nature, design and height of this structure as submitted does not suffice. He said the structures being proposed are very high and the existing structure is one story, which certainly is an impact. He stated that the applicant has chosen to move into the overlay district and chosen the structure heights in their application and said he cannot support Item 2.

Chair Rasmussen felt that the Board definitely had issues with abutting properties. Mr. Bubar said by putting in a commercial facility, the noise or light could travel 2,000 ft without adequate buffering and that would define the neighborhood. Vice-Chair Parnell said the Board discussed this, and in his opinion, it should be up to Planning Board members to define "neighborhood" in this area. He said impacts are to be no greater than impacts of adjacent existing uses and other uses permitted in the zone, and for this reason he disagrees with Mr. Kelley. He said this use is not prohibited but felt the Board needed to put in some conditions for hours of operation, security, and limited access.

Ms. Dill said she does agree with Mr. Kelley and said what troubles her the most is what happens at night. She said the videos of noise on Main Street is different because it is not occurring next to residential neighborhoods and said Mill Plaza now serves as a buffer there. She said nighttime will not be the same and will be very unpleasant for families. She said she saw as a big problem and felt strongly the Board should not be doing that.

Mx. Friedrichs said the Board needs to consider the demographics of our town and be realistic about what happens. Ze said a mitigation effort for a use like this would need to include features like requesting commercial uses to be shut down and having no access to open spaces that could support partying at night. Ms. Grant said she agrees more with Vice-Chair Parnell that the Town has zoning regulations that include sections that take care of the unusual. Councilor Tobias said if this project is built there is a tremendous need for mitigation to account for external impacts of noise after hours as well as on-site security.

Effect of location/design/nature/scale of structures on surrounding environment.

Mr. Kelley said the proposed structures are not a fit and he would be bringing it up again under Item 3 Character of Site Development. Vice-Chair Parnell said it refers to the surrounding environment and will not discourage appropriate and orderly development and use of land.

Ms. Dill said it is *completely* out of scale compared to the residential neighborhood and out of scale to the remaining building which will not be upgraded. Mr. Bubar said it might not be out of scale with the north buildings if it were were on the same level and said the buildings could be more compatible. Mr. Kelley said he finds the architectural and renderings of elevations very different for Durham but finds it often in mixed-use developments. He said he could not see the proposed design in the neighborhood and did not find it compatible with Main Street. Mx. Friedrichs felt it was possible to do these commercial mixed-uses and still use architecture in line with the surrounding environment. The Board discussed the Orion building on Main Street.

Item 3. Character of the Site Development

Proposed layout and design [will/will] not be compatible with established character of the neighborhood and [will/will not] mitigate any external impacts of the use on the neighborhood.

Mr. Kelley said there was no compatibility relative to the street whatsoever and the design is not compatible with the established character of the neighborhood but is setting a new architectural trend. Ms. Grant said for mitigation the only thing is buffering the adjacent properties and the ability to do that right. Councilor Tobias said buffering adjacent properties is one of the most important aspects here and it is needed on the south side.

Vice-Chair Parnell said the Board has not seen anything about what is being proposed in the buffer and felt adequate buffering on the south side could be a condition of approval. Mr. Bubar felt a good deal of buffering was needed on the east side as well. Ms. Grant said the Board talked about some questions being addressed as a condition of approval and said the Board should pay attention to the wording on the landscaping, and possibly validate the plantings through a third party.

Item 4. Character of the Buildings and Structures

The design of buildings and structures [will/will not] be compatible with the established character of the neighborhood.

Mr. Kelley said the proposed buildings and structures are out of scale with existing and with those in the neighborhood. He said this project has the unique luxury and burden of abutting an RA neighborhood, and he does not think the applicant has mitigated any of these items 2, 3 and 4. He said they are looking to develop too much of the site, and have too much on the site given its unique space and location. He reiterated that with this proposal the applicant has chosen to go into those districts and the footprint and height are determined by choice.

Mx. Friedrichs agreed and said somehow a redistribution of the use of the site would lessen the stark differences in scale between a 1-story untouched old building and these massive new buildings not seen anywhere else in town. Vice-Chair Parnell said there are massive buildings in Riverwoods, which is adjacent to a residential neighborhood and was approved by the Planning Board. Ms. Grant said she did not think the design of the building is out of character for a Central Business District.

Chair Rasmussen said this one does not reference other permitted uses and stands alone by itself, and said he was trying to make sure comments are being made in appropriate context. He said regarding Item 4, it does bother him that the Hannaford Building is not being included and raises questions regarding character of site. Mr. Bubar said he did have a concern that it will eventually be a white-out if built and dominate the view-scape.

Item 5. Preservation of Natural Resources

Proposed use of the site [will/will not] preserve identified natural, cultural, historic, and scenic resources on the site and [will/will not] degrade such identified resources on abutting properties.

Ms. Dill said there was not much to preserve, and Chair Rasmussen added other than the Brook. Vice-Chair Parnell said what they are doing is beneficial to the Brook. Mr. Bubar said in taking a literal look at the site plan regulations, he does not agree, and said obliteration of the hill is not mitigation to me. Chair Rasmussen said this is where the Board should talk about preserving; Mr. Bubar said here is where you grant or deny the waiver.

Mr. Kelley said the Brook and the forested hill could certainly be seen as natural or scenic resources, but the property is privately owned. He agreed what the applicant is doing with the Brook is a benefit, but there have to be additional buffer opportunities explained there. He said by choice the applicant has decided to extend into the east zone of the property. Chair Rasmussen did not see the forested hill as being a resource worthy of protection. Mx. Friedrichs felt the Board may need to address the expert testimony from forestry experts saying it connects to College Woods which is a wildlife habitat.

Mr. Kelley said he did not see this stretch of woods as a significant wildlife habitat. Councilor Tobias asked if the Board has a legal ability to stop the removal of the hill and Chair Rasmussen said not unless a protected species is identified there. Ms. Grant said the hill does not have a lot of value as a steep slope. Mx. Friedrichs said ze does not know if this is a wildlife habitat, but the Board needs to acknowledge the expert testimony received from forestry experts and respond appropriately.

Item 6. Impact on Property Values

Proposed use of site including related activities [will not/will] cause or contribute to a significant decline in property values of adjacent properties.

Ms. Grant said she relies on Mr. Rice and his opinion that the proposed use would not impact property values. Councilor Tobias said she did not see where it would negatively impact the value of adjacent properties at this point. Mr. Bubar said the key issue is that he did not think there would be a decline in property values going forward.

Item 7. Availability of Public Services and Utilities

Adequate and lawful facilities or services [are/are not] approved or assured and [will/will not] be capable of proper operation or cause excessive demand on municipal services.

Chair Rasmussen said the proposal calls for a trash compactor which will greatly reduce solid waste disposal; he said they are generating more but taking care of it. Mr. Kelley said he does not find any issue here.

Item 8. Fiscal Impacts

The proposed use [will not/will] have a negative fiscal impact on the Town.

Mr. Kelley said that was the scope of the applicant's study. Vice-Chair Parnell said when discussing this subject an issue came up about whether the study should be broadened to include possible impacts on other rental facilities in Town, and since then a major property on the other side of Town has been sold. Mr. Bubar said he would disagree about worrying about a competitive marketplace.

Vice-Chair Parnell MOVED that the Planning Board finds that the application to allow 2 mixed-use buildings as part of the Mill Plaza Redevelopment conforms to all of the conditional use permit criteria; SECONDED by Mr. Kelley; VOTE 4-3, motion failed.
(Needs super-majority of 5 votes)

Chair Rasmussen asked the three Board Members to state their reasons for voting no.

Ms. Dill said she had problems with Items 2, 3, and 4, and for Item 2 they were all items of choice on the part of the applicant.

Mr. Bubar said he disagrees with many on the issue of steep slopes and exposed ledges, and felt natural resources were not being preserved.

Mr. Kelley said he felt the modification of existing buildings is not compatible with the other buildings on the site; the new buildings on the site are not compatible with the established character of the neighborhood due to scale, height and massing; he found no relationship of the buildings to the street; buffering to adjacent properties has not occurred; applicant has not mitigated the external impacts of use on the adjacent neighborhood; he has concerns about traffic, noise, and hours of operation.

Mr. Bubar said he had a lot of concerns about buffering issues and was going to make that a condition of approval. Mr. Kelley said ultimately it is a matter of choice that the applicant made a submission that is too intense for the site where it is particularly located and did not take into consideration going above and beyond to mitigate impact of their development to adjacent neighborhoods.

D. Drive-Through Facility Adjacent to a Financial Institution

General Standards for Conditional Uses

Item 1. Site Suitability

Chair Rasmussen asked if the site was suitable for a drive-through bank. Ms. Dill felt it was a great idea for the site but did not like the fact of it being open 24 hrs/day with headlights shining toward the Brook. Chair Rasmussen said the cars would be making a circle with headlights pointing in every direction at some point.

Item 2. External Impacts

Chair Rasmussen said external impacts on neighbors of the drive-through bank are going to be a problem for potentially excessive light. Councilor Tobias said also for hours of operation. Mx. Friedrichs raised the issue of pedestrian access for proposed Building B, leaving the bank and going to the entrance of Mill Plaza and turning left onto Mill Road, and said there needs to be an additional crosswalk there. Chair Rasmussen said that would be looked at for a Site Plan Review.

Item 3. Character of Site Development

Chair Rasmussen said this is really just a subset within an existing building and is not really applicable here.

Item 4. Character of Buildings and Structures

Chair Rasmussen said this is also not applicable.

Item 5. Preservation of Natural Resources

The Board agreed that this is not applicable.

Item 6. Impact on Property Values

The Board agreed that this is not applicable.

Item 7. Availability of Public Services and Facilities

The Board agreed that this is not applicable.

Item 8. Fiscal Impacts

Chair Rasmussen said he does not see where that comes into play.

Vice-Chair Parnell MOVED that the Planning Board finds that the application to allow an accessory drive-through within the Mill Plaza Redevelopment conforms to all of the conditional use permit criteria; SECONDED by Mr. Bubar; APPROVED 7-0, motion carries.

Chair Rasmussen asked Mr. Taintor to put together a notice and finalize these for next time. Mr. Taintor said this is an open application, so the Board has to at least go through these Conditional Use Permits, finalize them, and come to agreement on the Mixed-Use Development; then move on to a quick vote on the Site Plan to close up the application.

Chair Rasmussen said the Board will need to vote the Site Plan down since it did not pass conditional use. At the next meeting the Board will review and sign off on the notices of decision for the four conditional uses, then close out the application by voting down the Site Plan. Mr. Kelley said that can occur this evening because you will need all that written out.

Mr. Behrendt said next week the Board has three projects for April 20th and April 27th meetings, with appointments to committees on May 11, 2022. After discussion by the Board, Chair Rasmussen recommended the Board make this first on May 11th and close out the application.

Mr. Rick Taintor left the meeting at 9:26 pm.

IX. Other Business

X. Review of Minutes (new): March 9, 2022

Approval of Meeting Minutes of March 9, 2022

Changes/corrections: Councilor Tobias made a correction on page 1, line 34; Vice-Chair Parnell corrected a statement on page 3, line 34; Mr. Bubar submitted his comments to Karen, and they were corrected. Mx. Friedrichs made changes to page 3, line 18; page 4, line 4; page 6, line 12; page 9, line 21.

Vice-Chair Parnell MOVED to approve the meeting minutes of March 9, 2022, as amended; SECONDED by Ms. Grant; APPROVED 7-0, motion carries.

XI. Adjournment

Vice-Chair Parnell MOVED to adjourn the meeting; SECONDED by Councilor Tobias; APPROVED 7-0, motion carries.

Chair Rasmussen adjourned the meeting at 9:34 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker
Durham Planning Board

James Bubar, Secretary