

These minutes were approved at the September 21, 2022 meeting.

**TOWN OF DURHAM
DURHAM PLANNING BOARD**

Wednesday August 24, 2022

**Town Council Chambers, Durham Town Hall
7:00 pm**

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

ABSENT: William McGowan

ALSO PRESENT: Town Planner Michael Behrendt

I. Call to Order

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

II. Roll Call and Seating of Alternates

Chair Rasmussen called the roll: Seated Emily Friedrichs for Bill McGowan.

III. Approval of Agenda

Mr. Kelley MOVED to approve the Agenda as presented; SECONDED by Mr. Parnell; APPROVED 7-0, Motion carries.

IV. Town Planner's Report

Mr. Behrendt said Chair Rasmussen asked the Board to set aside September 21, 2022 for an extra meeting and reviewed upcoming meetings. September 14: Public Hearing for Solar Ordinance, continue Public Hearing for Schoolhouse Lane, CIP review, Public Hearing for Adams Point Road, 19 Main Street; Gerrish Drive coming back soon; issue regarding Bill Hall and the Fire Lane next to his property. September 28: 74 Main Street, and possible new application.

Chair Rasmussen said his thought is to schedule smaller meetings for September 21 as well as decision on Solar Ordinance; hold Solar Ordinance Public Hearing September 14, close the hearing, and hold off on any deliberations until the next week.

V. Reports from Board Members who serve on Other Committees

Reporting from the Housing Task Force Committee: Vice-Chair Grant said the Committee met Monday and finalized their draft proposal on zoning changes for housing and hope to schedule with the Planning Board in October.

Reporting from the Town Council: Councilor Tobias said the Council met August 15; got the annual report from Theresa Walker on AG Commission.

Reporting from AG Commission: Chair Rasmussen said the Commission had not met but did hold Farm Day and received much positive feedback. He said they plan to do it again next year as an Oyster River Farm Day. Mr. Kelley asked if there were any interest in pushing it to September and getting it out of summer; Chair Rasmussen said he would bring that up at the next meeting.

VI. Public Comments

William Hall mentioned a 2019 joint report of a peer review panel on nitrogen which DES lost and suggested anyone who accepts anything but the appropriate treatment from the engineer should read that report. He said the lot next to College Brook at 155A and Main Street is where the nitrogen liquid fertilizer was put down a few days before a torrential rain.

Mr. Hall raised the Fire Lane issue and showed pictures of fires in the area and fire trucks in the Fire Lane. He said elderly housing has had in excess of 1,000 fire responses and said at the next meeting he will bring pictures of parked cars blocking the road; he said the Fire Lane is depicted in CU very specifically.

Mr. Parnell asked Mr. Behrendt if someone will be dealing with this issue. Mr. Behrendt said this has been an issue for a number of years with the Fire Lane next to Mr. Hall's property and Community Church; an old site plan showed markings and signage that was never really done. He said September 21 would be a good meeting to bring up the issue to the Planning Board.

VII. Review of Minutes (Old):

VIII. 20 Adams Point Road – 2-Lot Subdivision. 2-lot subdivision of 34-acre parcel at the southeast corner of Adams Point Road and Bay Road. Anthony and Natalie Diberto, owners. Chris Berry and Ken Berry, Berry Surveying. Map 230, Lot 7. Residence Coastal District.
Recommended action: Accept as complete and schedule a site walk and the public hearing.

Christopher Berry, principal member of Berry Surveying & Engineering, said the property at 20 Adams Point Road is owned by Anthony Diberto and his sister and located at the corner of Adams Point, Durham Point, and Bay Roads and is 34 acres in size. He said a detailed overview plan is provided of topographic survey of entire site and a wetlands analysis for entire site, and said the land goes all the way down to the contributing bay; most of the northern and southern field of property is under Conservation Easement with a Trust.

Mr. Berry said there is a man-made pond toward center of property, a single-family home and well with septic behind house adjacent to pond area. The proposal is to sub-divide the parcel to create a 4-acre lot around the existing house, a stand-alone lot with all improvements; easement provides access to abutting lands. The new lot will be about 30 acres containing the remainder

of the land mass that goes down to water with one building lot created at front corner of Bay Road and Adams Point Road; a detailed overview plan provides a topographic survey of the entire site.

Mr. Berry said existing conditions meets minimum requirements for zone; proposed new lot meets same requirements, is outside all eased areas, and provides for a 4,000 sq ft leaching area, driveway location, and structure location all in buildable area. Wetlands were mapped by Deidre Benjamin of NHDOT, and soils analysis done by John P. Hayes; both confirmed buildable uplands and landmass outside of poorly-drained soils, frontage on Adams Point Road for both properties and ample frontage on Bay Road for larger 30-acre parcel.

Mr. Berry said Test Pits were conducted for new building lot and for existing for sewage disposal. Mx. Friedrichs asked if the location of the water table was determined with those test pits. Mr. Berry said the water table is between 2-3 ft in northeast corner, and below 2 ft in other property leveling area; lower test pit on new lot is 4-5 ft down. He asked Mr. Behrendt if the man-made pond falls under WCOD; Mr. Behrendt said WCOD applies to all wetlands except some man-made such as swales and ponds and is subject to the ordinance unless other evidence to the contrary.

Mx. Friedrichs said predicted groundwater rise from climate change seems to put that lot at risk and asked if the applicant reviewed the map. Mr. Berry said the new lot location is 76 ft above sea level and did not believe sea water would rise to that height. Mx. Friedrichs said the map shows 7-8 ft of groundwater rise even that high above sea level. Mr. Behrendt said DES has to approve this subdivision itself and approve the septic design.

Mr. Kelley asked why the difference between seasonal high water and the ledge measured 1.7 ft from natural ground but 5.9 ft from existing grade on TP8. Mr. Berry said a large amount of historic activity took place there with some cutting and filling in to create the natural grade there now, and he tried to describe that in the soil profiles. Mr. Kelley asked about the Conservation Easement; Mr. Berry said he reviewed the easement, and it permits one additional lot be created from the original parent parcel. Mr. Kelley asked Mr. Behrendt if it is within the authority of the Board to grant a drive access on Adams Point Road; Mr. Behrendt said the State or Fish & Game would need to approve it.

Chair Rasmussen asked Mr. Behrendt if the application was complete; Mr. Behrendt said it was and asked for a copy of the easement. He advised the Board that though this is a large parcel, the buildable area is tight at northwest corner showing a prospective driveway location, area for leveling, and building footprint. Chair Rasmussen said the Board needs to make sure future structures stay outside the WCOD.

Mr. Kelley asked about the location of the Conservation Easement. Mr. Berry said the easement is oddly worded and different areas of the parcel have different restrictions based on where they are and are mapped per this location. Mr. Kelley also asked that the existing septic system be indicated on the remnant parcel. He said he understood TP1 and TP2 would serve the existing

house should a replacement be required, and Mr. Berry said the Ordinance reads it is an existing non-conforming structure and they are charged with showing it as far away from WCOD as possible.

Mr. Behrendt said the shading on the existing lot is the potential septic area and asked if there is a specific size that must be shown. Mr. Berry said a new lot would require 4,000 sq ft and the area shown would be a new-size system for that particular house; the area shown is the size of the actual effluent disposal field.

Mr. Kelley MOVED that the Planning Board accept the application for 20 Adams Road, a 2-lot subdivision, Map 230, Lot 7 in Residence Coastal District, and schedule a Public Hearing for September 28, 2022; SECONDED by Mr. Parnell; APPROVED 7-0, Motion carries.

Chair Rasmussen asked about scheduling a Site Walk and the Board agreed to September 28, 2022 at 5:00 pm.

IX. Public Hearing - 74 Mill Road – Conditional Use. Conditional use for garage and accessory dwelling unit for single-family house to be located within the Shoreland Protection Overlay District (SPOD). Iago and Erin Hale, property owners. Alex Ross, engineer. Map 109, Lot 85. Residence B District. *Recommended action:* Final action.

Iago Hale said he was not able to find the application approved by DES for septic on short notice but found some basic information on the AOS system; in the application on page 36 of PDF there is a graph showing the biological oxygen demand after passing through an AOS system; the discharge of waste into surface water from municipal plants is as much as 30 ppm and coming out of AOS is below 10 ppm. Councilor Tobias said she is satisfied with DES approval.

Councilor Tobias MOVED that the Planning Board open the Public Hearing for 74 Mill Road – Conditional Use for a garage and accessory dwelling unit in Residence B District; SECONDED by Mr. Bubar; APPROVED 7-0, Motion carries.

Chair Rasmussen opened the Public Hearing at 7:46 pm.

Seeing no one wishing to speak on this application Mr. Kelley MOVED that the Planning Board close the Public Hearing for 74 Mill Road; SECONDED by Mr. Bubar; APPROVED 7-0, Motion carries.

Chair Rasmussen closed the Public Hearing at 7:47 pm.

Mr. Kelley gave the applicant a copy of the Draft Notice of Decision and asked if the Board would be reviewing CU criteria; Mr. Behrendt said CU criteria for WCOD. Mr. Bubar asked that approval by DES be added to findings of fact; Chair Rasmussen added Oyster River and the Shoreland

Permit by DES. Mx. Friedrichs asked if the Board could also add that the septic system would reduce the oxygenated elements. Chair Rasmussen said the new septic system, as sized for new property, will reduce oxygenated particles (BODs) by over 60%.

Mr. Parnell asked if there is a note that the applicant will submit a plan to buffer and treat runoff from the new building. Councilor Hotchkiss said, as Mr. Hale pointed out, a great deal of the runoff is coming from the Town road onto their site. Mr. Kelley said he would like to see conditions written in with the burden on the Town and have Mr. Behrendt report back to the Board. Mr. Behrendt said he would arrange to meet onsite with the Town Engineer. Chair Rasmussen asked if everything was noticed appropriately, and Mr. Behrendt replied yes.

SPOD Specific Criteria

1. No alternative location on parcel outside SPOD that is reasonably practical for proposed use: Mr. Kelley said the Site Plan submitted is proof of that; Chair Rasmussen agreed.

2. Amount of soil disturbance will be minimum necessary for construction and operation of facilities: Chair Rasmussen said applicant is using a wall and pad instead of digging a full foundation and moving existing structure 20 ft and turning.

3. Location, design, construction, and maintenance of facilities will minimize detrimental impact to adjacent shoreland and water body: Councilor Tobias said the applicant is improving a situation already precarious in the Zone. Chair Rasmussen said the old building has no water control and new building will capture stormwater; he said the Board is only concerned with the new building and its construction.

4. Restoration activities will leave the site as nearly as possible in existing condition and grade: Chair Rasmussen said the applicant is not changing anything except re-pitching the driveway to handle water running off road. Mr. Kelley said it does maintain pre-existing conditions.

Conditional Use General Criteria

Item 1. Site Suitability: Mr. Behrendt said the question here is if the building within the Shoreland Protection Buffer is impacting vehicular access; probably N/A. Mr. Kelley said he would recognize that the site is suitable for this sort of development, in part because it is there today and is being perpetuated. Councilor Tobias said it is an improved situation.

Item 2. External Impacts: Mr. Kelley said it fits with Residence B District and the external impacts are not of concern. Mr. Bubar said external impacts resulting from the project will be no greater than they are today and may be a lot less.

Item 3. Character of Site Development: Mr. Kelley said the character of the site development is in conformance with Residence B District and adjacent uses. Councilor Hotchkiss said the new garage is designed to mimic the old garage.

Item 4. Character of Buildings & Structures: Vice-Chair Grant said applicant is basically taking one structure down and building an improved structure in the SPOD.

Item 5. Preservation of Natural, Cultural, Historic, and Scenic Resources: Councilor Hotchkiss said they are preserving extensive portions of the existing foundation. Mx. Friedrichs asked that the site be restricted to a 5-bedroom septic system. The Board discussed the issue and decided that was outside the purview of the Planning Board and was not part of this application.

Item 6. Impact on Property Values: Councilor Tobias said the new building with accessory dwelling unit will improve the property value.

Item 7. Availability of Public Services: Chair Rasmussen said applicant is only adding an ADU. Mr. Bubar said the drainage off the Town road needs to be fixed.

Item 8. Fiscal Impacts on Town: N/A

Mr. Kelley MOVED that the Planning Board finds the applicant has met specified CU criteria in the SPOD, specifically Section 175-72B, as well as the eight general CU criteria specified in Section 175-23C and as documented this evening by recording and minutes reading put forth; SECONDED by Vice-Chair Grant;

Discussion: Chair Rasmussen asked if there were anything else not covered. Mx. Friedrichs still felt it would be helpful to subsequently request the DES application that indicates the number of bedrooms. Mr. Behrendt said there are two DES applications and Vice-Chair Grant said the Board would like both for the file.

Mr. Behrendt said conditions are to submit the Shoreland and Leach Field applications from DES; Town Engineer and I will meet onsite and look at issues of runoff from Mill Road; 3 things for findings of fact about new septic system and local advisory committee and DES Shoreland Permit. Mx. Friedrichs added total suspended solids as well as BODs.

Vote: APPROVED 7-0, Motion carries.

- X. Public Hearing - 14 Schoolhouse Lane – 2-lot Subdivision.** 2-lot subdivision of 1.3-acre lot with single-family house. Bill Matson, property owner. Bruce Scamman, engineer. John Salter of James Verra Associates, surveyor. Kevin Baum, attorney. Map 108, Lot 73. Residence A District. Accepted on August 10. Recommended action: Final action.

Chair Rasmussen said the Board needed to have a short discussion. Mr. Behrendt explained that the Board is required to notify all direct abutters, and one abutter, Holly Neiweem, did not receive notice which has to be corrected before the Board can take action. He said the wise thing to do is have the Public Hearing tonight, discuss the issues, and continue the Public Hearing to the next meeting September 14.

Chair Rasmussen said for something as small as this he was more inclined to postpone this agenda item to the next meeting in entirety all at once. Mr. Parnell said the only issue with that is the Public Hearing is scheduled for tonight and people may wish to speak to the issues tonight. Mr. Behrendt suggested the Board may want to hear from the applicant and the abutter.

Attorney Kevin Baum said that it had been planned that he was representing the applicant at this meeting. He said that from their records the abutter was properly noticed, and he requested to go forward tonight and asked if the abutter would be willing to waive the additional notice. Holly Neiweem said she wanted to have the proper notice and go through these documents before this gets approved, and she would not waive the additional notice.

Mr. Bubar MOVED that the Planning Board open the Public Hearing for 14 Schoolhouse Lane – 2-lot Subdivision; SECONDED by Mr. Parnell; APPROVED 7-0, Motion carries.

Chair Rasmussen opened the Public Hearing for 14 Schoolhouse Lane at 8:32 pm.

Attorney Kevin Baum said his understanding was that there is a sewer both on Schoolhouse Lane and via easement that goes back to Old Landing. He said with a 2-lot subdivision the applicant does not propose a home at this time and is not proposing a sewer connection, only confirming the availability at this time. He said any future owner would probably want to use the easement which is completely capable of taking another house.

Attorney Baum said the easement was set up in 1938 by Arthur Armstrong to Durham School District. He said he could not imagine that a 2-lot subdivision with one additional home could overburden the easement meant for an entire School District and felt that was a non-issue for this Board. Mr. Bubar asked how many residences were connected to that sewage pipe and Attorney Baum said there is a single-family residence with 2 ADUS on the site.

Bruce Scamman said the sewer crosses over the applicant's property and starts at the house with no upstream residences. He said the easement does say "grantee" of the easement has the right to attach to the sewer as well, reserving right to grantor to connect his said premises with a T-connection on his own land without a charge. Mr. Bubar asked which of the parcels along the easement is the grantor's land. Mr. Scamman said Holly's property on Old Landing at the corner and said the property should be labeled 108-57. Mr. Kelley asked Attorney Baum if the reasonable use Armstrong gave to the School District was the sewer line across the property, could the School District then be allowed to subdivide the property and the rights as well.

Attorney Baum said his opinion is the easement runs with the land which includes the subdivision. He said the question is whether future use by parent lot or subdivision would overburden or exceed the intent of the original grant and he did not believe it would and feels confident the easement includes the subdivision. He said in any case the lot will have sewer service. Mr. Behrendt said there may be ledge further up Schoolhouse land and asked Mr. Scamman if he saw a problem connecting to the existing manhole on Schoolhouse Lane; Mr. Scamman said he did

not. Chair Rasmussen said per our Town Attorney it is not the duty of the Planning Board to adjudicate easement disputes.

Mr. Kelley said there was a question last time about the size and material of the existing sewer line. Mr. Scamman said our surveyors dug up the line at the top of the hill and found a 6-inch PVC line; cleanouts further down are also PVC pipe. Mr. Kelley asked if it might be prudent to access that lower cleanout by camera to verify size, type, and condition going across 108-57. Mr. Scammon said it has been running and functioning without issues for many years and preferred to move forward and get the subdivision.

Mx. Friedrichs asked if a sewer line were found to be inadequate in an easement, who would be responsible for the cost of improving the line. Chair Rasmussen said the uphill owners, and that is why a potential new property owner would want to have it scoped out before the sale. Mr. Kelley said there is no draft language for meets and bounds which would be created when the sewer easement is described. Mr. Scamman said it is now all one ownership, and the location of a future easement would be shown when one of the lots is sold, at that point it can be put on the record as an easement.

Holly Nieweem of 13 Old Landing Road said with lack of clarity around the sewer line, her concern essentially goes back to the notice period and not having received the documents. She said the Planner's Report says the sewer will be the same that served the house lot but said it did not look like that line was in use at the Site Walk. She said the active sewer line is the one that goes across her property and asked if the house was using a different sewer line. Mr. Scamman said work was done on the sewer line in the yard when a tree uprooted and fell, and it is the same line.

Ms. Nieweem asked if there were any outstanding or open permits or applications associated with the property. Mr. Scamman said no active permits requested at this point and no proposed construction. Ms. Nieweem said another concern is about volume and velocity of water flow down the hill and said permeability will be greatly increased causing runoff to property. She asked the Board if this subdivided property could be sub-divided again. Mr. Scamman said the lot is not large enough and would have no frontage.

Chair Rasmussen asked the Board about continuing this meeting. Mr. Behrendt said unfortunately the Board will have continue the Public Hearing because there is some question about notification and the notice will have to be resent.

Chair Rasmussen continued the Public Hearing to September 14, 2022.

- XI. Public Hearing - Huddleston Hall Addition.** Main Street (next to Quad Way). Opportunity to provide nonbinding comments on UNH project for partial renovations to the existing Huddleston Hall and a 3,500 sq ft addition on the westerly side of the building to create a new home for the University's Honors College. Presented pursuant to RSA 674:54. Ken Weston, University Architect. Recommended action: Provide nonbinding comments.

Mr. Behrendt explained that public projects in New Hampshire at the local, state, and federal level are exempt from zoning and formal Town review, but Statute RSA674-54 provides that at the Town's option a Public Hearing may be held with presentation of all material at which the Planning Board and public can provide nonbinding comments.

University Architect and Executive Director of Campus Stewardship, Ken Weston, said he is here with his colleague Jeremiah Johnson who is Assistant University Architect. He said he is presenting a renovation to Huddleston Hall, 75 Main Street, between Fairchild Hall and Holloway Commons, buildings designed by Eric Huddleston in 1917. Huddleston Hall is now an academic building, mostly offices, with an event space called the Ballroom.

Mr. Weston said the project is important to the University by allowing us to address many life-safety and accessibility concerns with new egress stairs, sprinkler system, upgrading Fire Alarm System, a new accessible entrance, adding an elevator and upgrading bathrooms. The addition on the west side includes renovated space for the Honors College with office and teaching space on second floor of addition, renovation of the Ballroom, and renovation of the second floor.

Mr. Weston said Huddleston Hall was selected for the opportunity to create a living, learning, and dining neighborhood for Honor students near Mills Hall and Holloway Commons on the core campus. More specifically, a partial renovation of 40,000 sq ft of existing space and a 2-storey 3,500 sq ft addition, with existing footprint 11,000 sq ft, and an addition footprint of 2,000 sq ft; new sidewalks, landscaping, and minor parking modifications to south. He said he expects impacts to water and sewer to be less with minor increase to stormwater.

Mr. Weston said architecturally the addition is set back from Main Street and main façade of Huddleston Hall to be deferential to original architecture, and lower in height making it feel subordinate with intentionally simple expression.

Comments: Mr. Kelley asked if there were bedrooms on the second floor. Mr. Weston said it is now used for office space; living space will be in Mills Hall, with learning space in Huddleston, and dining in Holloway Commons; the Ballroom will be a shared space for Honor students and will continue to host events; renovation will preserve characteristics and features of the space with ceiling work and reinforcing.

Mx. Friedrichs asked if any energy updates or efficiency improvements might be included. Mr. Weston said the renovation is extensive but not complete; roof will be replaced with slate; spaces need sprinkler system and fire alarm devices. Mx. Friedrichs said the energy source will eventually run out and asked if there were any thought to future planning. Mr. Weston said that conversation has been started and said this is a donor-led initiative.

Mr. Kelley asked if there were a committee tasked with reviewing the design as it developed. Mr. Weston said there is a committee in his office, as well as the donor who is funding the Honors

College renovation, a design architect, and construction manager (Engelberth Construction). Ms. Dill said she loves traditional buildings at UNH but felt the more modern addition was nicely done, and an excellent blend of old and new.

Mr. Bubar said he did not see any plans for stormwater based on the new addition. Mr. Weston said the Site Plan is still being designed; stormwater for the addition will be collected through roof drains and diverted to storm sewer; sidewalks are sheet flow to adjacent lawn. Mr. Kelley asked about the sidewalk program and Mr. Weston said sidewalks will be wider (8.5 ft) with entry court space for informal gathering.

Mr. Kelley asked when they would break ground; Mr. Weston said the design for the addition is not complete, but they have applied for and been granted a demolition permit starting this week; major construction is not expected until beginning of year. Chair Rasmussen asked how traffic would be affected on Main Street and Quad Way. Mr. Weston said there is a logistics plan: an ADA ramp will be installed from sidewalk down to Huddleston Hall down to lower sidewalk with construction fence all in-board and said he does not expect significant impacts to traffic; staging and storage will be in parking lot.

Councilor Tobias said it looks great and agreed there is a very modern feel next to old traditional building. Mr. Kelley asked if this solved some accessibility issues; Mr. Weston yes, the new addition will be the new accessible entrance. Councilor Tobias asked if the elevator will be accessible from the entrance. Mr. Weston said the elevator was strategically positioned at interior of building so the runout height would not create a tower element in the addition, drawing too much focus away from the original building.

Chair Rasmussen said he sees elements of 74 Main Street in the exterior of the addition, creating mirroring back and forth. Mx. Friedrichs asked about the reconfiguration of the parking in back. Mr. Weston said currently there is 1 accessible spot and 2 service spots, and there will be 2 accessible spots with 2 service spots with pavement improvements in that area. Mr. Kelley asked Mr. Behrendt to put together a memo from the Town.

XII. 19-21 Main Street – Parking Lot. 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. Monica Keiser and Tim Phoenix, attorneys. Map 108, Lots 10, 11, 12, and 13. Church Hill District. *Extended to September 28. **The Public Hearing is closed.*** Recommended action: Deliberations.

Chair Rasmussen recused himself from this project and passed the gavel to Vice-Chair Grant.

Acting Chair Grant seated Nicholas Germain for Paul Rasmussen. She said the Public Hearing is closed and the Board agreed to go into deliberations this evening and said she would like to get through a vote on CU. She suggested they go through all the criteria again and vote at the end.

Mr. Behrendt said the consensus of the Board is to vote on CU but there was a few of the Site Plan issues that were key and the Board did not finish that discussion. Mr. Parnell thought the Board should be prepared to vote on CU criteria right now. He said the Board has already gone through and given comments and did not think that needed to be done again. He said the Board needs to get to a vote on CU before moving on to discuss other things. The Board was in agreement.

Ms. Dill said she recalled that Mr. Kelley was unprepared to say exactly where he stood, and she felt that issue was still hanging there. Mr. Kelley said after giving it some thought he was prepared to vote. Mr. Parnell said it is important when Board members vote that they give their opinions, specifically why they are voting a particular way with reference to the 8 criteria and said he would make a motion without prejudice.

Mr. Parnell MOVED that the Planning Board approve the Conditional Use Application for a parking lot on 19-21 Main Street; SECONDED by Mr. Kelley;

Acting Chair Grant said the motion proposed is to approve the CU Application for 19-21 Main Street parking lot.

Lorne Parnell said he did not support this motion and felt this CU application should be denied because of Criteria 4-Character of Buildings and Structures: design of buildings or structures shall not be incompatible with established character of neighborhood, and shall be limited to the scale, height, and massing. He said in his view this parking lot is too big for this zone, and the reason it is CU is to prevent the zone from becoming overbuilt compared to other parking lots in the zone and does not feel it passes CU criteria.

Richard Kelley said he also cannot support this CU application and said Criteria 4 is certainly a consideration that the nature of the development is incompatible with the surrounding area. He said the applicant has done an incredible job trying to minimize external impacts and asked that the Board recognize that an application that is not CU would be similar in grade and offer far less buffering. He said he is fine with external impacts but the nature of the development itself is incompatible. He said the Board is charged to abide by the preservation of natural, cultural, scenic, and historic resources including wildlife habitat and mature tree lines and said impacts still exist. He said he does not find Criteria 7 and 8 grounds for not granting the request, but for him Criteria 5, 4, and 3.

James Bubar said he also does not support the application for CU. Site Suitability talks about needing a plan to substantially mitigate the impacts, but they are filling in steep slopes with no plan to mitigate but to obliterate. He said this is not designated structured parking and said he can agree it is not structured parking but cannot agree it is surface parking. He said under external impacts the extensive fill will create a facility that is out of scale with the nearby residential neighborhood. Character of Site Development says extensive grading and fill shall be avoided; he

found the amount of fill to be extensive, and felt they were not even trying to follow the natural contours of the land.

Heather Grant said she also could not go forward with an approval for CU but said there were a lot of things in this project she was fine with. She said she does not have a problem with the slope using extensive fill but felt slope should be defined by some sort of percentage. She said for External Impacts there are other uses for this particular property and felt it did limit the orderly development of the zone. She said for Criteria 4, the scale, height, and massing does not fit into Church Hill, and said these were her key areas to not approve CU for this.

Sally Tobias said this plan has been around for a long time and there has been a lot of time to think about it. She said she would love to have a parking lot in Town with parking for college students and there is not enough parking for residents, and fully understands the applicant's desire to provide that. She said her point of contention is that in the criteria it says the site shall not be incompatible with established character of neighborhood; the front of this area is all parking lots, but this lot is hanging over a different type of neighborhood. She said she did not think it would impact property values, and fiscal impact would be providing a service to the community. She said this lot is overhanging the Chesley Drive neighborhood and it is incompatible with that. She said she cannot support this application.

Emily Friedrichs said there is no plan to substantially mitigate the impacts of environmental constraints given the steep slope and extensive fill; regulations mention preserving the existing topography, and though the proposal is filling in a bowl it is built up on one end and changing the slope with a substantial amount of fill then going down to neighboring lots. Ze concurred that the applicant has done much to try to mitigate external impacts.

Mx. Friedrichs said there is a question as to whether this proposal interrupts the appropriate and orderly development and use of land and buildings in the neighborhood and feels there is a conflict there with the Master Plan and what would be appropriate. Ze said the massing sets this parking lot apart from others in the Church Hill neighborhood and stressed how large it would look from Chesley Drive. Ze said there was a lot of local and expert knowledge shared about degradation to College Brook; diverse information was provided regarding effect on property values; for fiscal impact, this would provide an increase in tax revenue for the Town, but which could be higher with a different use.

Nicholas Germain said he also cannot support the application and agrees with a lot of what has been said tonight already. He said one of the larger things for him was property values and he felt having a parking lot in your back yard would hinder property values in the neighborhood.

Roll Call Vote: Richard Kelley-nay, Lorne Parnell-nay, James Bubar-nay, Heather Grant-nay, Sally Tobias-nay, Emily Friedrichs-nay, Nicholas Germain-nay; DENIED 7-0, motion fails.

Acting Chair Grant stated that the motion to approve the CU application has been denied.

Mr. Parnell MOVED that the Planning Board deny the Conditional Use Application for a parking lot on 19-21 Main Street; SECONDED by Mx. Friedrichs;

Mr. Kelley said the idea here is that Mr. Behrendt prepare a Notice of Decision on this matter to be voted on at next meeting, gathering information heard from each Board member tonight and included it in that.

Roll Call Vote: Richard Kelley-aye, Lorne Parnell-aye, James Bubar-aye, Heather Grant-aye, Sally Tobias-aye, Emily Friedrichs-aye, Nicholas Germain-aye; Motion approved 7-0, motion carries.

Mr. Parnell asked about the Site Plan Application and Mr. Behrendt said if CU for use is denied the Site Plan is moot. He said he will prepare a Draft Notice of Denial and the Board would just be voting on particulars. Mr. Bubar said there are 2 Alternates here tonight which has been a problem in the past, and Mr. Behrendt said the Board has already denied CU and would only be voting on the Draft Notice of Decision.

Pete Murphy, applicant, thanked everyone on the Planning Board for taking the time to hear their application, and said he appreciated hearing the comments of Board members this evening.

Acting Chair Grant said at the last meeting there was concern about the process in this particular project and the fact the Public Hearing was closed but still open for written comments. She said she went through all the written comments submitted and through DCAT and wanted to say to the applicant and their legal team that she did not see anything that came in that was different from what the Board had heard already and that would influence a different decision.

Chair Rasmussen returned to the table and took back the gavel at 10:21 pm.

XIII. Planning Board 2023 Budget. Recommended action: Endorse proposed budget.

Mr. Behrendt stated that \$500 for Planning Board Development was not used but wanted to keep it there; \$10,000 for Contracted Services was mostly spent on Rick Taintor but the Board may want to keep \$1,000 or \$2,000 in case something comes up. Mr. Parnell said it was usually a large number for Master Plan/Site consultants. The Board discussed Contracted Services and agreed to keep a \$1,000 contingency fund.

XIV. Other Business

Chair Rasmussen suggested the Board look at any fifth Wednesday for next year as a tentatively scheduled date and put it on their calendar; if not needed for work it can be used for a workshop

day; gives the Board 2 or 3 meetings/year to take care of paperwork. Mr. Behrendt felt it was a great idea to schedule those 4 meetings and get rid of the Workshop for 2023.

XV. Review of Minutes (new): July 27, 2022 – Postponed.

XVI. Adjournment

Mr. Kelley MOVED to adjourn the meeting; SECONDED by Councilor Tobias; APPROVED 7-0, Motion carries.

Chair Rasmussen adjourned the meeting at 10:33 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker
Durham Planning Board