

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

TOWN OF DURHAM
DURHAM PLANNING BOARD
Wednesday September 28, 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 (Remote), Barbara Dill (Alternate), Chuck Hotchkiss (Alternate Council Rep), Emily Friedrichs (Alternate)

ABSENT: William McGowan, Nicholas Germain (Alternate)

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 Barbara Dill for Bill McGowan.

III. Approval of Agenda

Mr. Kelley MOVED to approve the Agenda as presented; SECONDED by Vice-Chair Grant; Roll Call Vote: Richard Kelley-aye, Lorne Parnell-aye, James Bubar-aye, Paul Rasmussen-aye, Heather Grant-aye, Barbara Dill-aye, Sally Tobias-aye. APPROVED 7-0, Motion carries.

IV. Town Planner's Report

Site Walk today at Adams Point Road 5:00 pm; Board Meeting October 12: Gerrish Drive Subdivision; no new applications. ATO Project Update: met all precedent condition, building demolished; project on hold due to increased costs.

V. Reports from Board Members who serve on Other Committees – None

VI. Public Comments – None

VII. Review of Minutes (old):

VIII. Public Hearing - 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, Berry Surveying. Map 230, Lot 7. Residence Coastal District. Accepted on August 24. Recommended action: Discuss and continue to October 12.

Christopher Berry of Berry Surveying & Engineering said at the site walk the potential building area was viewed; building footprint, envelope, possible locations of sewage disposal systems were discussed. Current plan has driveway off Adams Point Road; next revisions will relocate access off Durham Point Road with a sight distance profile per AASHTO standards outside the 100-foot setback to wetlands; some clarification provided by easement-holder at site walk with key restrictions on how site can be developed to be added to recording plan.

Mr. Kelley MOVED to open the Public Hearing for 20 Adams Point Road; SECONDED by Mr. Bubar; Roll Call Vote: Richard Kelley-aye, Lorne Parnell-aye, James Bubar-aye, Paul Rasmussen-aye, Heather Grant-aye, Barbara Dill-aye, Sally Tobias-aye. APPROVED 7-0, Motion carries.

Krista Helmboldt, NH Nature Conservancy Easement Program Manager, stated that this property is subject to a Conservation Easement which covers the entire Diberto property including the adjoining property, and allows for a “conservation area” and a “development area” also subject to the terms of the easement, allowing a total of 4 single-family residential structures with subdivision of up to 4 parcels. After review of the plan, she found that the proposed subdivision and house site are not inconsistent with the terms of the easement, but some foundational inaccuracies in how the Conservation Easement is referenced in the proposed plan need to be corrected and there are relevant terms in the easement to the proposed plan.

Ms. Helmboldt said the plan shows a lower and upper field where it says no development allowed and should be labeled as Conservation Area and Development Area; specific requirements of the easement include no impervious area and no blocking water flow over the property. The goal is for transparency and things that should be in the plan are labels, relabeling of the line between conservation and development areas, and making sure Note 8 on the plan is accurate.

A discussion of the Board ensued including the possibility of further subdivision of the land not for building purposes. Mr. Berry said the applicant may be willing to restrict the plan to no future subdivision of lots. The Board continued discussion of the property and proposed plans.

Walter Rous of Adams Point Road said he is an abutter, and his neighbor Mike Morneault feels he is also an abutter but was not notified. He said Mr. Morneault is the owner of a right-of-way extending along the old Adams Point Road just parallel which runs across the Diberto property and should be part of Planning Board considerations.

Mr. Behrendt said Mr. Morneault owns a portion of Adams Point Road that runs along his property but does not extend all the way to Durham Point Road. Mr. Rous said Mr. Morneault believes that it does. Mr. Berry said he did not find that in the deed research of the property and would investigate and provide information at the next meeting.

Chairman Rasmussen continued the Public Hearing for 20 Adams Point Road to October 12.

IX. *Public Hearing - 74 Main Street – Mixed-Use Building.* 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 5 parking spaces. Doug Clark and Jerry Pucillo of Foundation for Civic Leadership/Democracy House, applicants. Mike Sievert, Horizons Engineering. Jason Cohen and Tim Digan, Bergmeyer Architects. Map 106, Lot 59. Central Business Zone. *Extended* to November 30. *Recommended action:* Review preliminary Notice of Decision.

Chair Rasmussen asked the applicant if there were objections to anything specific in the Notice of Decision which there were not. Chair Rasmussen asked Mr. Behrendt to clarify Item 56; Mr. Behrendt said the Town does pick up single-stream recycling on commercial properties, but solid waste has to be a private provider.

Chair Rasmussen opened the Public Hearing on 74 Main Street at 7:41 pm.

Suzanne Brunelle of Devine Millimet asked if the shoring would be done in the easement area; Mr. Pucillo said the shoring design has changed and there will be no shoring in the easement area. Attorney Brunelle asked for clarification on the status of the loading dock, parking during construction, the construction sequence, and utility connections; and asked that distances on the property line at the two different levels be shown on the plans.

Mr. Behrendt said the loading dock will be in front of the bank property on Main Street which applicant would create at their own expense; parking during construction will not cross the boundary line; the construction sequence is still being worked on; utility connections still being worked out with DPW to put in a new line to lot line and connect to existing line on your property; water and sewer will connect at the rear of the building.

Sam Gangwer of 72 Main Street said the easement mentions sharing the responsibility for snow removal which needs to be worked in. He said he objects to access to Main Street being cut off as he envisions underground parking on his property in future and does not want to be blocked in by a park. Mr. Behrendt said the Town can do what they wish with the property and the idea has been out there for at least 6 months

The Board returned to discussion of the Notice of Decision. With regard to School Waivers for School development fees the Board agreed the applicant should stipulate that any children living there will not be exempt from paying School taxes. The Board discussed the driveway entrance ramp from Pettee Brook and agreed it should be a conventional tip-down, shown in a note on the plans or in a detail.

Mr. Pucillo said as soon as agreement is reached with DPW, Mr. Sievert will issue a new set of plans based on those agreements. Mr. Behrendt said the idea is to pull together all the terms and conditions pertinent to this project and there are significant issues the applicant and Mr. Sievert are working on with Public Works. He asked about the footings; Mr. Pucillo said what is required

for footings for the foundation within the right-of-way will be shown and said the shoring plans are being worked on now. He said his goal is to get approval and move as quickly as possible to demo then start construction.

Chair Rasmussen said until Mr. Sievert and DPW have worked things out and the Board has new plans and construction plans he did not see any need to talk with the applicant. The Board agreed and asked the applicants to continue work. Chair Rasmussen asked that the Board wait until they have the final plans before continuing discussion.

Chair Rasmussen continued the Public Hearing for 74 Main Street to October 26.

- X. **Solar Energy Systems Ordinance.** *The public hearing is closed.* Continued review of proposed amendment to Zoning Ordinance initiated by Durham Town Council. The draft addresses numerous aspects of solar energy systems including rules and allowed locations for systems that are accessory to single family houses, systems accessory to multifamily and nonresidential uses, small and large utility-scale systems, and group net metering host systems. **Recommended action:** Review the proposal. Continue the review to October 12 if more time is needed.

Chair Rasmussen explained that rather than rewriting and word-smithing the Solar Ordinance the Board is providing a list of suggestions they think will make it better and giving it back to Town Council. He said the Board got through the Table of Uses at the last meeting. Ms. Dill said she missed the last meeting and the discussion and asked if there would be any going back. Chair Rasmussen said he would like to keep moving forward and did not want to go back and rework all the definitions now.

Chair Rasmussen asked that on page 3, third line Freestanding Multi-Unit Residential or Non-Residential solar energy systems in the Table of Uses, **SE** be changed to **X**; page 8 Applicability, if doing a small system off the grid, #3 under Solar Energy Systems, do not have to abide by the regulations.

The Board discussed whether to allow free-standing solar systems in the WCOD and SPOD; if not allowed a variance would be needed. Mr. Lawson said the intent was directing it away from WCOD because many more options have been created where solar may be placed. Mr. Behrendt said the Board should either add it to be explicit or put language to clarify.

Chair Rasmussen asked for a show of hands for leaving it in: Richard Kelley-aye, Paul Rasmussen-aye, Barbara Dill-aye, Sally Tobias-nay, James Bubar-nay, Lorne Parnell-nay, Heather Grant-nay; vote 3-4, nays carry. The Board agreed to add that Freestanding Solar Systems are prohibited in the WCOD and SPOD and should be listed under prohibited uses, requiring a variance.

The Board reviewed the Draft Solar Systems Ordinance in detail. Please see link below with all changes/additions/deletions marked to the side.

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/71583/solar_energy_systems_-_comments_by_pb_through_sept_28.pdf

XI. Other Business

Discussion about procedure for minutes - Postponed

XII. Review of Minutes (new):

XII. Adjournment

Councilor Tobias MOVED to adjourn the Planning Board Meeting; SECONDED by Vice-Chair Grant; Roll Call Vote: Richard Kelley-aye, Lorne Parnell-aye, James Bubar-aye, Paul Rasmussen-aye, Heather Grant-aye, Barbara Dill-aye, Sally Tobias-aye. APPROVED 7-0, Motion carries.

Chair Rasmussen adjourned the meeting at 10:29 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker
Durham Planning Board

James Bubar, Secretary