

These minutes were approved at the February 8, 2023 meeting.

TOWN OF DURHAM
DURHAM PLANNING BOARD
Wednesday December 14, 2022
Town Council Chambers, Durham Town Hall
7:00 pm

MEMBERS PRESENT: Paul Rasmussen (Chair), Heather Grant (Vice Chair), James Bubar, Sally Tobias (Council Rep), Chuck Hotchkiss (Alternate Council Rep), William McGowan, Richard Kelley; Arrived Late: Emily Friedrichs (Zoom)

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; no alternates to be seated; Mx. Friedrichs tested positive for COVID and will be on Zoom.

III. Approval of Agenda

Mr. Bubar MOVED to approve the Agenda as amended; SECONDED by Mr. McGowan; APPROVED 6-0, Motion carries.

IV. Town Planner's Report

Mr. Behrendt said this is the only Planning Board meeting in December due to holiday; next meeting January 11, 2023, continue going over definitions. Detailed comments received from Paul, Emily, James, and Heather.

V. Reports from Board Members who serve on Other Committees

Reporting from Town Council: Councilor Tobias said the Council met Monday December 5; finished items pertaining to Budget; voting on Budget at next meeting.

Reporting from the AG Commission: Chair Rasmussen said the AG Commission met Monday for short end-of-year meeting; discussion on how to recruit younger people to interest next generation.

Reporting from the Housing Task Force: Vice-Chair Grant said the HTF met; meeting was not recorded; Carden Welsh visited; discussions on first phase of Public Comments; discussed potential mini-grant from State of New Hampshire for facilitator and zeroing in on priorities regarding zoning.

Mx. Friedrichs joined the meeting on Zoom at 7:04 pm.

VI. Public Comments – None

VII. Review of Minutes (old): October 26, 2022 minutes

Chair Rasmussen said these minutes were discussed at the last meeting, but a decision was not reached. Mx. Friedrichs said ze had some edits that were extensive and expressed concern that all topics were not covered.

Mr. Kelley MOVED to approve the Planning Board Minutes of October 26, 2022 as they stand before us this evening; SECONDED by Councilor Tobias; Roll Call Vote: Bill McGowan-abstain, Sally Tobias-aye, James Bubar-abstain, Paul Rasmussen-aye, Heather Grant-aye, Richard Kelley-aye, Emily Friedrichs-nay; APPROVED 4-1 with 2 abstentions, Motion carries.

VIII. Young Drive Condominiums. Application to convert five existing duplexes on separate lots to two-unit condominiums. 5 & 7 Young Drive, 18 & 20 Young Drive, 29 & 31 Young Drive, 30 & 32 Young Drive, and 34 & 36 Young Drive. Map 107, Lots 91, 102, 96, 99, and 98, respectively. Young Drive, LLC, property owner. Francis Chase, agent. Coe's Corner District. Recommended action: Accept as complete and schedule public hearing.

Chair Rasmussen said he understood this agreement was essentially the same as one presented about a year ago for other sets. Francis Chase said that was for three conversions and this request is for the other five. He said points of action came out of a Tech Review; some storage on Lot 29-31; Wetland Scientist Mark West unable to make meeting today for Lots 5&7 but will be resolved with DES and verified by Mr. West.

Mr. Kelley asked what the issue was; Mr. Chase felt said it was insinuated that he was filling in wetlands which he was not; Mr. West asked that he regrade the lot to reduce steepness of embankment which was done and sealed with mesh to stop erosion. Mr. Kelley asked for clarification that each one of these units will become its own condominium, and each owner has a 50% stake. Mr. Chase said each owner has half the house and each condo has its own board, bylaws, registry of deeds and questions will have to be decided between the boards. There are 2 separate water meters and 4 electric meters: 2 for heat and 2 for electricity.

Mr. Kelley asked Mr. Behrendt if the application was complete; Mr. Behrendt said it was.

Mr. Kelley MOVED that the Planning Board accept this application for Young Drive Condos to convert five existing duplexes on separate lots to two-unit condos, 5 & 7 Young Drive, 18 & 20 Young Drive, 29 & 31 Young Drive, 30 & 32 Young Drive, and 34 & 36 Young Drive, Tax Map 107, Lots 91, 102, 96, 99 along Young Drive, Young Drive, LLC, property owner; SECONDED by Mr. McGowan; Roll Call Vote: Bill McGowan-aye, Sally Tobias-aye, James Bubar-aye, Paul Rasmussen-aye, Heather Grant-aye, Richard Kelley-aye, Emily Friedrichs-aye; APPROVED 7-0, Motion carries.

Chair Rasmussen said this is a special-case subdivision and the Board has limited authority. Mr. Behrendt said it is considered a subdivision and the Board has domain in reviewing; he asked the Board if they would like to do a site walk; Mr. Kelley said they did not need a site walk to act on this application.

Chair Rasmussen scheduled a Public Hearing for January 11, 2023 for Young Drive Condos.

Mr. Chase commented that everything was inspected by the Fire department, with thorough inspections on the buildings.

IX. *Public - 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. (Timeframe for action extended to December 14). *Recommended action:* Final action.

Chris Berry, Berry Surveying, said the Planning Board walked the new proposed lot and building area; Board felt access was better off Bay Road and not Adams Point Road; comments from easement-holder spurred need for clarification on subdivision plan with easement restrictions to be noted on plan; potential easement-holder not notified with easement over property. Question of vernal pools on the site: Scientist review over course of project asked that note on plan be updated to state, “there are no vernal pools” and that her stamp and seal be put on the plans.

Mr. Berry said the driveway access was moved on plans from Adams Point Road to Bay Road and a sight-line profile would be provided to meet adequate sight distance requirement and remove CU requirement on plans. Sight-distance profile uses NHDOT and AASHTO required sight distance. The Nature Conservancy (TNC) asked that some things on plans be clarified, are satisfied with initial changes and asked for additional notations to plan which Mr. Behrendt has included in Conditions of Approval; the Notice of Decision is consistent with easement, putting future owners on notice of restrictions

Questions: Mr. Kelley said there is a new plan reference 8 and asked if what follows is verbatim. Mr. Berry said it is an excerpt regarding the two easements Mr. Morneault has: one covers our property, and one encumbers an abutting parcel; excerpt only covers our property. Mr. Kelley said his interpretation of the note is that future owners are not to build, impede, or regrade that area in any way; Mr. Berry said that is correct and said he would be happy to locate that road on the plans. Mr. Kelley asked if suggestions of Mrs. Helmboldt (TNC) were incorporated in the Notice of Decision (NOD) and Mr. Behrendt said those four items would be incorporated.

The Board discussed NOD #15 regarding invasive species and Mr. Bubar said he would like it stated that these were State of New Hampshire standards. Mr. Behrendt asked about including the old road in a plan note; Mr. Berry said it would be surveyed, located, and shown on the plan. Mx. Friedrichs asked if in NOD #14 it made sense to include “abide by Town Zoning Ordinance”,

which introduces language that could potentially conflict with the Conservation Easement which could be more restrictive than our Zoning Ordinance.

The Board discussed the concern raised by Mx. Friedrichs and determined she was speaking about the section referenced as "Notes on Plans" and not the plans themselves. Chair Rasmussen said ze is speaking about the second sentence under Final NOD Note 16. Mr. Kelley suggested saying "there may be no encroachment within these buffers except as permitted in the Zoning Ordinance and by Conservation Easement". Mr. Behrendt said the Conservation Easement is a private agreement, but the applicant did not object.

Mr. Kelley MOVED the Planning Board approve a 2-lot subdivision of a 34-acre parcel, SE corner of Adams Point Road and Bay Road, Anthony and Natalie Diberto owners, Christopher Berry, Berry Surveying, Map 203, Lot 7. Residence Coastal District at 20 Adams Point Road as submitted and revised this evening; SECONDED by Mx. Friedrichs; Roll Call Vote: Bill McGowan-aye, Sally Tobias-aye, James Bubar-aye, Paul Rasmussen-aye, Heather Grant-aye, Richard Kelley-aye, Emily Friedrichs-aye; APPROVED 7-0, Motion carries.

- X. ***Public Hearing - Housing Amendments.*** Consideration of numerous amendments to the Zoning Ordinance proposed by the Durham Housing Task Force to enhance housing opportunities in Durham. *Recommended action:* Discussion about next steps.

Carden Welsh of 3 Fairchild Drive said it would be important to determine a specific written objective of the proposed changes and what we are trying to accomplish that people can agree on and build a general consensus behind what we are doing. Three key items in objective: (1) reduce Durham's carbon footprint and encourage more environmentally friendly housing; (2) housing that facilitates lifecycle availability; (2) adopt changes that retain and advance the character of Durham as a small New England community. He suggested denser dwelling units like condos, apartments, and duplexes with smaller footprints that will not be overtaken by students, conservation subdivisions with smaller houses, and said more family-size homes in Rural could be problematic.

Recap: Councilor Hotchkiss summarized that Carden noted an apparent lack of consensus about the objective and listed 3 possible objectives and the direction that might take us.

Carol Birch said this seems overwhelming to her and thanked Carden Welsh for putting some kind of order to this, like what is the purpose of all this and what are possible changes; before a decision is made there needs to be great deal of community discussion and more clarity, organization, communication, education and input, as well as some kind of order so people until people know what is going on.

Councilor Tobias asked if it would be helpful for the Housing Task Force to put together some sort of power point for Friday updates that better summarized the changes and Ms. Birch said it

would be hugely helpful, so people have a better understanding. Mr. Behrendt said he would be happy to put something together.

Recap: Councilor Hotchkiss summarized that Carol questioned objectives and stated a need for community discussion and input and advocated for a vote; opposed to proposal as it is.

Janet Perkins Howland of 32 Frost Drive implored the Planning Board and Housing Task Force (HTF) to consider this in terms of human rights, to be a welcoming community and support a wide range of housing choices. She said most people who have spoken and sent letters are of essentially one demographic which is concerning; have not heard from the people who are struggling and cannot find housing. She said she has heard a lot about obstacles but not a lot about solutions; would love for Durham to use a thoughtful and thorough approach and have diversified voices and housing.

Recap: Councilor Hotchkiss summarized that Janet asked that human rights implications of proposed changes be considered; stressed need to hear from more diverse perspectives.

Nancy Sandberg read a letter submitted by **Diana Carroll** who said she found it frightening that the HTF suggests increasing housing and density in every Durham Zoning District without presenting research to residents that shows changes will have a positive effect on the Town; research should include examples of changes made by other college communities to increase diversity. Ms. Carroll also expressed concern that the Planning Board December 2nd Friday update was a misrepresentation and in reality, the number of people in opposition at the Public Hearing was 9-1, as 2 in favor were affiliated with committees. She urged the committee and the Town to take a more nuanced, well-researched approach before diving head-first into Zoning changes that could forever change Durham, and not for the better.

Recap: Councilor Hotchkiss summarized that Nancy presented Diana's concern that increased density is proposed townwide without presenting research in support of workforce/affordable housing; objectives are not entirely clear; information from other college towns should be presented; urged the Planning Board not to dive into major changes without a lot more consideration.

Councilor Tobias said the HTF presentation given by Vice-Chair Grant was meant to explain our reasoning and people perhaps did not see it or understand. She said the Power-Point explained why we went into this, the goals, and what we were looking to accomplish, and we expected as a Task force to submit recommendations and then get into discussion at this level.

Erika Namann Gaillat of 14 Schoolhouse Lane said she agreed that more information needs to be given in a simpler format. She said housing is difficult to find and renting itself is difficult and said her generation would really benefit from some of the changes being made here. She said she understood rezoning would also include current housing and was concerned about her own property and hoped the overall process would be positive.

Recap: Councilor Hotchkiss summarized that Erika provided a very different perspective and testified to tightness of Housing Market and challenges facing young adults; favored proposal as it would enable younger would-be homeowners to afford homes; desired a simpler presentation for the public.

Beth Olshansky of Packers Falls Road said Carden Welsh brought up the question of how to balance the idea of more housing with the Town Council trying to reduce the Town's carbon footprint, and that changes made we make should enhance the community. She said there is so much about Durham that is special, and the presentation was so board and sweeping it is easy to see it getting out of hand with unintended consequences. She said she would like the committee to try to clarify what it is doing; she said unless we are very thoughtful about more housing it will just be more of the same which will not welcome young families. She said houses students are renting could come up for sales and could become great first homes for young families.

Recap: Councilor Hotchkiss summarized that Beth shares concern about preserving Durham's character and thinks broad changes proposed could get out of hand; voiced some confusion about objectives; doubts ability to create affordable housing without price caps and controls; student enrollment cliff might create some significant turnover.

Chair Rasmussen said what takes effect in the summer from the State is specifically workforce housing which is income-adjusted based on household size. Vice-Chair Grant said workforce housing is controlled in legal ways of keeping housing prices at the level of HUD as it changes ownership, you cannot put student housing in workforce housing, and rules can be put in place. For affordable housing there are certain drivers one of which is land and about increasing density; also helps environmentally to have more people on less land; have to be able to appreciate both.

Peyton McManus of Ross Road and Stagecoach said at high level he is in favor, and it sounds reasonable, and he broadly supports providing additional housing for different groups. He said Durham is special and they need to think through and decide where density is appropriate and where it is not and connect it in a way that makes sense. He said adding density adds supply and prices go down. He said towns in Europe have a dense core funneling out through to a lot of open space and said density is not a bad thing in itself

Recap: Councilor Hotchkiss summarized that Peyton spoke in favor of the proposal and supports providing housing for different groups of people at all stages of lifecycle.

Maria Newcombe of Pinecrest said she would appreciate something more pared down and agreed that a "cliff notes" version of the presentation should be given to people before making a decision.

Marti Mulhern of 91 Bagdad Road said she was in favor of the changes and loved the idea of duplexes and triplexes but added that there are a lot of conditional uses (CUs) put onto all of the zones, and after her own experience with CUs wondered why that is. She said if you are looking at opening up an area it makes sense to just let people do it without CU.

Recap: Councilor Hotchkiss summarized that Marti favors the proposal, and in particular focused on provisions that would allow duplexes and triplexes, but is concerned about CU.

Chair Rasmussen said the presentation covered suggestions that came out of a group put together focusing on a single chapter of the Master Plan and everything they thought of that could potentially help. He said this Public Hearing is to hear what people like and figure out what makes sense for the Board to start focusing on to build from. As far as CU, the Planning Board sits through every single CU that comes to the Board; with the last few amendments to Zoning the Board has been cutting back on CUs where they can.

Mr. Kelley said imposing a high threshold of CU brings an uncertainty for developers that keeps them away, and that needs to be a strong consideration of what the Board does here. Councilor Tobias said CU needs to be looked at in general.

Robin Mower of Britton Lane said the demographic that has spoken is people who follow Planning Board issues, know the zoning ordinances and site plan regs, and tend to have a sense of the community having lived here a long time. She said people need to listen to Carden Welsh and his comments about work done over many years to try to expand housing only to see it devolve into student housing. She said personally she did not believe a revision of the presentation will be a solution to engaging the community and moving forward. She said this is about deeper issues, and one not raised yet is the expectation to be able to live in any town you want, and the impact on people here a long time.

Ms. Mower said she would like to hear the Board explain why they think they should move forward with proposed Zoning Amendments now as opposed to asking HTF to go back and consider the extensive feedback. She said she would like to see some smaller units attractive to different demographics: ADUs, pocket neighborhoods, and reducing required lot areas would be valuable. She strongly urged the Planning Board to not speed through this but to ask HTF to regroup and get more input from the community.

Recap: Councilor Hotchkiss summarized Robin's comments; she was skeptical a modification of the presentation would achieve consensus and urged the Board to urge HTF to regroup and address some of the criticisms raised.

***Chair Rasmussen MOVED to close the Public Hearing on Housing Amendments;
SECONDED by Mr. Kelley;***

Chair Rasmussen closed the Public Hearing on Housing Amendments at 9:14 pm.

Discussion: Chair Rasmussen said at this point the Board needs to find their direction, discuss things on the table in front of them now, and probably take this off the agenda for a while. He asked that people who still want to write letters send them to the Housing Task Force (HTF) where the work will be getting done. Mr. Behrendt said because this is a quasi-judicial issue and not an application, people can still submit comments in writing.

Councilor Hotchkiss said this Public Hearing is about this specific proposal and the Planning Board is not going to push this through without feedback and sees no downside to closing the Public Hearing. Chair Rasmussen said there was never any intent, and said the first draft always gets shelved, massively rewritten, then brought back up for Public Hearing. Mr. McGowan asked what the next step will be, and Chair Rasmussen said to discuss at the Planning Board level what the focus should be and establish a set of goals.

Roll Call Vote: Bill McGowan-aye, Sally Tobias-aye, James Bubar-aye, Paul Rasmussen-aye, Heather Grant-aye, Richard Kelley-aye, Emily Friedrichs-aye; APPROVED 7-0, Motion carries.

Chair Rasmussen said in the next hour he would like to discuss: (1) decision on the two grants; (2) Boards' idea of proper direction for HTF to start searching; what the Board wants back from HTF in terms of data and type of housing to encourage (goals); (3) CU discussion is better held here rather than Conservation Wetland-Shoreland Subcommittee; may belong in both, has to do with reducing the carbon footprint.

Mr. Bubar recommended that given the RSA timeline it would be prudent for Mr. Behrendt to prepare the revisions to the Ordinance to remove the housing density for our existing ordinances, hold a Public Hearing on these revisions in January, and wait until the drop-dead date for Council to process it in the event we do not have successful Housing Amendments by July; suggested housing density bonus be eliminated and rolled back in.

Vice-Chair Grant MOVED to reopen the Public Hearing on Housing Amendments; SECONDED by Mr. Kelley; Roll Call Vote: Bill McGowan-aye, Sally Tobias-aye, James Bubar-aye, Paul Rasmussen-aye, Heather Grant-aye, Richard Kelley-aye, Emily Friedrichs-aye; APPROVED 7-0, Motion carries.

William Hall said to live in a low-income house it helps if there is a 2-job family. He said Durham has an Industrial Park which is not developed and has run off two of the best companies who could be there and would give 2-job families employment as well as lower taxes. He said there are also a number of people who are fed up with Durham and have moved out. He said he supports what they are trying to do with housing but there are "bugs in the ointment".

Recap: Councilor Hotchkiss summarized that Bill talked about broader factors that complicate our ambitions regarding workforce housing, and changes needed to do anything effective on this.

Mr. Kelley MOVED to re-close the Public Hearing on Housing Amendments; SECONDED by Vice-Chair Grant; Roll Call Vote: Bill McGowan-aye, Sally Tobias-aye, James Bubar-aye, Paul Rasmussen-aye, Heather Grant-aye, Richard Kelley-aye, Emily Friedrichs-aye; APPROVED 7-0, Motion carries.

Density Issue: Chair Rasmussen asked that the Board discuss the density issue brought up by Mr. Bubar proposing that a draft ordinance be ready that removes the density bonus in Senior Housing. Mr. Behrendt said the suggestion is a good one because July 1, 2023 workforce housing gets double the density bonus if you do not change the ordinances; means any household or rental of \$1,500 gets double the number of units. He said workforce housing should have a density bonus as long as the Board is clear about how it is implemented.

Mx. Friedrichs agreed and said she looked at the language in the RSA and the State does not define workforce housing in the way it is being discussed here, only mentioning the price point; the State's definition would conflict with the Board's stated goals of wanting a diverse population with diverse housing options. Vice-Chair Grant disagreed with removing a density bonus all together and felt it was a knee-jerk reaction that makes the Planning Board look bad.

Chair Rasmussen suggested the Board take a look at the Workforce Housing definition and make sure it has the important perpetuity clause included. Mx. Friedrichs said any definition Durham creates will not apply to that State Law as defined in that RSA. Mr. Kelley said he would like another opinion on the matter, and asked Mr. Behrendt what his peers have been doing. Chair Rasmussen said several towns are doing what James suggested. Mr. Behrendt said removing the bonus temporarily gives the Town time to think through how this State Law is going to apply.

After further discussion, the Board agreed to have Mr. Behrendt contact the Town Attorney for clarification on the State RSA.

Grants: Chair Rasmussen said two grants will be available for application: a mini grant to hire a facilitator for a community forum, and a larger grant to do an analysis of what kind of multi-unit, non-single-family housing would work in what parts of Durham, which would help tremendously and then zoning could be fine-tuned. Councilor Tobias thought the larger analytical grant should come first, then use the facilitator for final explanation to the public.

Councilor Hotchkiss asked if the structure of the \$25,000 Housing Opportunity Grant would be spelled out or would need to be defined by the Board. Mr. Behrendt felt it could be tailored and there should be a range of what can be asked for. Mr. Kelley said they should apply for both. Vice-Chair Grant said the Board needs to make sure the analysis request is tailored and be extremely clear what kind of data points are needed to make a decision. Mr. Bubar said the Board needs to get behind what the outputs are they are looking for.

Vice-Chair Grant said the mission of the Housing Task Force was to identify, analyze, and advocate for a balanced and diverse supply of housing that meets the economic, social, and physical needs of Durham and its residents in order to maintain a vibrant community. She said they talked about smaller density in rural instead of requirements for a 3-acre lot. Chair Rasmussen said rural is probably stocked with as many single-family homes as are wanted, and the Board needs to look at what kind of development is going to be happening.

Mr. McGowan left the Planning Board meeting at 10:02 pm.

Councilor Hotchkiss said he would approach this whole issue completely differently, and said he hears discussion of alternative courses of action, but a lot of public input was they do not understand how the problem is being defined, what the objective is, or what criteria are being used to evaluate alternatives. He said after that is done you can get to what the alternatives are, how they stack up on the criteria identified, then make intelligent choices. Mr. Kelley agreed that was a valid point. Councilor Hotchkiss said some concern was also expressed about the composition of the HTF, and Chair Rasmussen said there are two open seats.

Mx. Friedrichs said the housing component is just one part of the Master Plan and reiterated that sharing from other committees would be important. Ze said it is hard to imagine something as broad as what is being proposed without changes in other areas to ensure community needs are balanced. Mr. Kelley asked how the Board will know when they have succeeded; how many units are enough. Vice-Chair Grant said within zoning we are just showing property owners they have choices. Mr. Kelley said he has reservations about ADUs without further research.

Vice-Chair Grant said every little piece has a reason why it was thought to be a good idea which I tried to highlight in the presentation. She said ADUs are being considered country-wide to be one of the primary “easy wins” in housing shortages. Chair Rasmussen said part is supply and demand, but part is the type of housing you build, and now it is not affordable unless you get some bonus to build.

Mr. Behrendt asked to clarify if the Board wants to apply for the mini grant of \$5,000 to hire a facilitator and hold a community forum about housing, as well as the planning grant with up to \$25,000 to hire a consultant to do an analysis for us. He said he would apply for both grants over the next month. He said the Planning Board is simply taking this issue and turning it over to HTF to work on more.

Mr. Kelley left the Planning Board meeting at 10:22 pm.

Chair Rasmussen said the HTF could start to work towards some of these answers, then work with the grant recipient to potentially get more done upfront. The HTF can focus on the easier stuff and the grant recipient can focus on more complicated issues.

XI. Other Business

XII. Review of Minutes (new): November 9, 2022 & November 30, 2022 minutes – Not addressed.

XIII. Adjournment

Councilor Tobias MOVED to adjourn the Planning Board Meeting; SECONDED by Mr. Bubar; Roll Call Vote: Sally Tobias-aye, James Bubar-aye, Paul Rasmussen-aye, Heather Grant-aye, Emily Friedrichs-aye; APPROVED 5-0, Motion carries.

Chair Rasmussen adjourned the meeting at 10:28 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker
Durham Planning Board