

*These minutes were approved at the October 12, 2022 meeting.*

**DURHAM PLANNING BOARD**  
**Wednesday, September 21, 2022**  
**SPECIAL MEETING**  
**Town Council Chambers 7:00 p.m.**  
**MINUTES**

**MEMBERS PRESENT:** Paul Rasmussen, Chair  
Heather Grant, Vice Chair  
James Bubar, Secretary  
Lorne Parnell  
Emily Friedrichs(alternate) (arrived late)  
Nick Germain (alternate) (via Zoom)  
Sally Tobias, Council Representative to the Planning Board  
(via Zoom)  
Chuck Hotchkiss, Council Representative to the Planning  
Board (alternate)

**MEMBERS ABSENT:** Barbara Dill (alternate)  
Bill McGowan  
Richard Kelley

**I. Call to Order**

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

**II. Roll Call & Seating of Alternates**

Roll call was taken. Nick Germain was seated for Richard Kelley.

**III. Approval of Agenda**

*Lorne Parnell MOVED to approve the agenda. James Bubar SECONDED the motion, and it PASSED unanimously by roll call vote.*

**IV. Town Planner's Report**

Mr. Behrendt mentioned that tonight's meeting is a special meeting. He went over the next two weeks' agendas. Gerrish Drive will be back before the Planning Board on October 12.

**V. Reports from Board Members who serve on Other Committees**

Mr. Bubar reported on the last Conservation Commission meeting. Their primary focus was reviewing the Gerrish Drive application. He stated that they reaffirmed their recommendation on the application from the last time it was before them – in his words, they begrudgingly approved it.

**VI. Public Comments**

There were no public comments.

**VII. Review of Minutes (old):**

There were no old minutes to review

Mx. Friedrichs arrived at the meeting. She was seated for Bill McGowan.

- VIII. 15 Newmarket Road – Tideline Public House.** Modification to approved site plan application to allow container units to be used for food service. The July 27 approval is to create a tap room (serving beer and wine), store and food truck court with 8 food trucks (*not including container units*), covered pavilions, a landscaped community gathering space, and other site changes behind the old Durham Town Offices. Scott and Karen Letourneau, applicants. Mike Sievert, Horizons Engineering. Map 108, Lot 69.

Scott Letourneau mentioned that they had scaled back their proposal to six food trailers and one container. Chair Rasmussen mentioned that he had looked up the different types of food vendors. He had found that there were three types – food trucks, food carts and food booths. He felt that a container would fall under the definition of a food booth. Chair Rasmussen asked if the Board would want to approve this application for all three types of food vendors? Mr. Germain was wondering if the Board would want to leave the approval open-ended for more than one container. Mr. Parnell believes that approving a “non-fixed food serving unit” is a good idea. Chair Rasmussen and Mr. Behrendt amended the Notice the Decision to say that “the Planning Board approves a street food court with up to eight non-fixed food serving units including food trucks, food carts and food booths.”

***James Bubar MOVED to approve the modification with the amendment to the Notice of Decision. Lorne Parnell SECONDED the motion, and it PASSED unanimously through a roll call vote.***

- IX. Public Hearing - Solar Energy Systems Ordinance.** 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.

Mr. Behrendt re-stated the process of the approval of this Ordinance. Chair Rasmussen stated that he does not want to get involved with re-writing the Ordinance tonight. He would like to provide the Council with a vote on how they feel about the Ordinance as-is. If there are changes the Board would like to make, he would like to provide a bullet list of each change, taking a vote on each of them. He is hoping that all can be done in two meetings.

Councilor Jim Lawson gave a PowerPoint presentation on the specifics of solar systems and the Solar Ordinance.

***James Bubar MOVED to open the public hearing. Emily Friedrichs SECONDED the motion, and it PASSED unanimously through a roll call vote.***

**Scott Picard**, Watson Road. He stated that he is looking to have a tracking system, 48 panels, installed on his property. It will be 30-32 feet tall. He stated that the change in language to the ordinance to increase the height of a system to 35 feet is key for his property. He stated that he is a “super user” as per Mr. Lawson’s definition.

**Robin Mower**, Britton Lane. She gave a presentation which is included in the file.

**Malcolm Sandberg**, Langley Road. He complimented the Energy Committee and Jim Lawson on the work they have done. He has sent the Board some ideas. He gave the Board the specifics of his own solar tracker.

**Beth Olshansky**, Packers Falls Road. She appreciates the work being done on this Ordinance. One of her concerns has been the endorsement of nature as a climate solution. She would like to protect nature, scenic vistas and productive farmland.

Councilor Lawson stated that Durham produces 193 million tons of greenhouse gas a year. Thirty-one percent of those emission are sequestered in Durham. Forests are incredibly important as well as solar arrays.

Chair Rasmussen would like the Council to keep track of the trends towards electric heating use in the future.

***Heather Grant MOVED to close the public hearing. Emily Friedrichs SECONDED the motion, and it PASSED unanimously through a roll call vote.***

Chair Rasmussen would like to know if anyone wants to move to approve the draft Solar Ordinance as presented? Ms. Grant does not think that should be done. Ms. Friedrichs would like to re-visit the table of uses and work on some things to better achieve the purpose of the Ordinance. Councilor Hotchkiss does think that there is some wording that could be changed.

Chair Rasmussen would like to provide a set of suggestions rather than re-write the document. Councilor Lawson agrees.

Mr. Bubar is concerned about some people’s perceptions of buffering. Councilor Lawson states that there is no requirement right now to create visual buffering. Chair Rasmussen stated that some of the comments they have received mentioned adding buffering requirements to the special exception. He would be opposed to that idea, however.

Chair Rasmussen would like to begin with the Definitions Section of the Ordinance.

Mx. Friedrichs would like to add Mixed Use to the Multi-Unit Residential and Non-Residential definition. Councilor Lawson clarified for Mx. Friedrichs that Multi-Unit/Mixed Use Residential can only provide energy on-site. This was in the original

Ordinance from the Planning Board. Mx. Friedrichs thinks it would be great to allow for group-net metering or utility scale for these types of structures.

Chair Rasmussen asked for a vote on adding “Mixed-Use” to Multi-Unit Residential and Non-Residential Solar Energy Systems. All stated that they were in favor of this change by roll call vote.

Ms. Grant stated that there were questions on Group-Net Metering Small and Large. The public feedback has been that there be more language to explain the two. Chair Rasmussen doesn’t think that this is needed.

Mx Friedrichs stated ze would like to add the Nameplate Rating definition and remove the Shared Solar Energy System definition. Ze stated that this wording is not used anywhere else in the Ordinance. However, it could be added under Article XX if they wanted to keep the definition.

Mr. Bubar questioned the definition of Solar PV Parking Canopy. It seems to be restricted to parking areas. Could it be allowed on top of a parking garage? Mx. Friedrichs thinks that adding the word “structure” would be a good idea, as in “surface or parking structures.” Ms. Grant stated that what you are trying to do is define your residential from your non-residential. Mr. Bubar stated that you need to accommodate all areas where you are going to be putting a car. Councilor Tobias suggested getting rid of “surface parking” and adding “over a paved parking area.” Mx. Friedrichs would like it to say, “impervious parking area.” Councilor Tobias would not define the parking area as permeable or impermeable. Ms. Grant would suggest taking out the word “surface” and adding “area” after parking. Mr. Bubar asked if this definition conflicts with the parking ordinance that requires putting trees in the parking area. Chair Rasmussen stated that that was something they will have to address when they look to revise the Site Plan Regulations. Council Lawson is concerned that they are using terms to define parking that are not in the Zoning Ordinance. He would suggest they work on the definition of surface parking in the Zoning Ordinance. Mx. Friedrichs would like to add a sentence to direct people to the definition of Carport in this section as well. Council Lawson suggests putting in a sentence that “the Solar PV Parking Canopy is not a Carport – see Article II.”

Mr. Bubar has a question about Building Mounted/Roof Mounted Systems. Does this include structures such as chicken coops or sheds? Chair Rasmussen believes that any accessory structure is valid.

Mx Friedrichs mentioned that another public comment was that the Board better define agriculture. Chair Rasmussen stated that they are going to use “commercial farm” instead of “commercial agriculture.” Mr. Bubar believes that commercial farm is not necessarily defined as contiguous property, however. Chair Rasmussen mentioned that if the land is in Current Use, it will need to come out of Current Use if solar is placed on it.

Chair Rasmussen stated that they should now look at the Table of Uses. Mr. Bubar asked why the solar energy system is considered an accessory use rather than a principal use. Chair Rasmussen stated that the Agricultural Commission brought this question up as well. Mr. Behrendt stated that everything that supports a single-family residential is accessory use. Mr. Bubar stated that this means you cannot put solar on a unique lot that doesn't have a residence. Council Lawson stated that this was a different use. Mx. Friedrichs thinks that there should be a sentence to say that this use includes carport, building mounted and free-standing systems. Mr. Behrendt stated that that is why there is a reference to Article XX.

Chair Rasmussen asked if the SE for Multi-Unit Residential/Non-Residential free-standing systems in the Central Business District should be an X. There was discussion on this, and Chair Rasmussen took a vote. It was decided that SE was the preferred option.

Mx Friedrichs mentioned that she would like to see building mounted Large Utility-Scale solar energy systems allowed in all zones. Chair Rasmussen stated that he would be concerned about a possible loophole there. He believes that they could update the Ordinance as technology improves. Mr. Lawson stated that there might be conflict with the Architectural Regulations if you allowed these systems in Central Business.

Mr. Parnell asked why the free-standing Large Utility-Scale solar energy systems were CU and not SE. Mr. Behrendt stated that these are high impact and would need Site Plan Review anyway. Mx. Friedrichs stated that the Conditional Use does address impacts on the natural environment that Special Exception does not. Chair Rasmussen stated he could see X's for both those zones. Ms. Grant agrees. Mr. Lawson states that it is a bold move to have these as CU, and he is in favor of it. If you make these X, however, you could revisit it later. Chair Rasmussen took a vote, and it was unanimous to change the CU designations to X.

Mx. Friedrichs asked if they are excluding anything that is not a single-family home but is located in one of those districts to have a Small Group Net Metering Host building-mounted system? She would like to see P's for these and for Small Utility Scale solar energy systems. Mr. Lawson believes the Council would be supportive of that.

Chair Rasmussen would like to make the free-standing Large Group Net Metering host as X for all Zones and not CU's. There was agreement on this.

Chair Rasmussen believes that there should be P's in all zones for Solar PV Parking Canopy. Mx. Friedrichs feels that this makes sense. There will still need to be Site Plan approval. Mr. Behrendt mentioned that on Page 9 under section 8(b), canopy is excluded for single family and duplex homes. Mr. Lawson stated that the parking canopy was never envisioned for residential. Chair Rasmussen stated that once they were done with the definitions of carport and canopy, this needed to be very clear. There was more discussion on carports and canopies. Chair Rasmussen stated that the question is where

does the Board want to change an X or a CU to a P for Canopy? He stated that the real question is what serves Durham the best? Mr. Parnell suggested keeping the X's in the residential zones and putting a P everywhere else. There was consensus on this.

Chair Rasmussen asked if there should be all P's for Small Group Net Metering Host free-standing systems? Ms. Grant believes there should be. Mx. Friedrichs believes the note on the free-standing system should say "the maximum size specified in Article XX." Chair Rasmussen mentioned that they are planning to change the wording in Article XX to be square footage *or* kilowatts. Mr. Lawson stated that this may be an area that needs clarification.

Chair Rasmussen asked if they need to add any other category of use in the Table of Uses? There was additional discussion of the definitions and uses of carports and canopies.

Chair Rasmussen asked if the Solar Ordinance could be put on the next meeting's agenda. Mr. Behrendt believes that would be doable. Chair Rasmussen would like Mr. Behrendt to make a list of the changes they made tonight for the next meeting.

## **X. Other Business**

- **Discussion about procedures for minutes**  
This item was put off until the next meeting.

## **XI. Review of Minutes (new): August 24, 2022**

Page 3, Line 22. "seawater" should be "groundwater"

Page 3, Line 25. "Mr. Kelley asked why....."

Page 6, Line 30. Add "as well as" after solids.

Page 12, Line 21. Strike the first sentence.

***Lorne Parnell MOVED to approve the August 24, 2022 minutes as amended. Heather Grant SECONDED the motion and it PASSED unanimously by roll call vote.***

## **XII. Adjournment**

***Lorne Parnell MOVED to adjourn the meeting. James Bubar SECONDED the motion and it PASSED unanimously by roll call vote.***

Adjournment at 10:43 pm

Karen Edwards, Minutes taker