

These minutes were approved at the February 22, 2023 meeting.

**TOWN OF DURHAM
DURHAM PLANNING BOARD**

**Wednesday January 11, 2023
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), Richard Kelley, Emily Friedrichs, Barbara Dill

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 seated Barbara Dill for William McGowan.

III. Approval of Agenda

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

IV. Town Planner's Report

Mr. Behrendt said there are no new applications, only a minor Permitted Use B for Eversource for January 25. Mr. Bubar asked if the NH Supreme Court had accepted or denied the Colonial Durham appeal. Mr. Behrendt said they can hear it or reject it and Attorney Laura Spector feels they will hear the appeal.

V. Reports from Board Members who serve on Other Committees

Reporting from Town Council: Councilor Tobias said the Council met December 19 and approved the Town Budget for 2023-24; also met January 9 and moved to first reading of Solar Amendment with Public Hearing February 6.

Mr. Behrendt said changes were made by Town Council to the Solar Ordinance: Large-Scale Utility and Large Net Metering only allowed in ORLI and MUDOR changed to CU; Small-Scale Utility as a principal use building-mounted changed to X.

Chair Rasmussen asked that the Board prepare something explaining Planning Board thoughts and views at the Public Hearing, and Mr. Behrendt send something to Todd Selig and Town Council explaining what Principal Use means in that scenario.

Reporting from the Housing Task Force: Vice-Chair Grant said HTF met Monday and several people are interested in joining; will ask to be on next Town Council Agenda to expand the Task Force from 7 to 10 + 2 alternates. The Board briefly discussed the percentage of available rentals needed for a healthy Housing Market (5%).

Reporting from the Energy Committee: Mx. Friedrichs said the Committee met last week and fleshed out goals and plans for the year; talked about the Inflation Reduction Act making money available for various energy efficiency projects; also funding for Coastal Communities for shoreline restoration, community solar, and for households who make 80% or less of median income, projects can be funded by the Federal Government; households with income higher than 80% but lower than 150% of the median, can be funded up to 50%.

Ms. Dill asked about Community Aggregation and Mx Friedrichs said Durham has to make a decision on whether or not to participate in the first round; should be going live in April.

Reporting from the AG Commission: Chair Rasmussen said the AG Commission met focusing on getting momentum back regarding Food Shed. The Commission is working on a tool to calculate how different livestock groups on a piece of land could all be counted together. If accepted will figure out how to incorporate into Zoning. He said as a side note Durham is now an Urban Community according to Federal Standards.

VI. Public Comments – None given

VII. Review of Minutes (old): November 9, 2022 and November 30, 2022 minutes

Vice-Chair Grant MOVED to approve the Planning Board Minutes of November 9, 2022; SECONDED by Councilor Tobias; APPROVED 7-0, Motion carries.

Vice-Chair Grant MOVED to approve the Planning Board Minutes of November 30, 2022; SECONDED by Councilor Tobias; APPROVED 6-0 with 1 abstention, Motion carries.

Mr. Kelley MOVED to open the Public Hearing for Young Drive; SECONDED by Mr. Bubar; APPROVED 7-0, Motion carries.

Chair Rasmussen opened the Public Hearing for Young Drive at 7:25 pm.

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. Accepted on December 14. Recommended action: Final action if ready.

Mr. Behrendt asked the status of activity impacting the wetlands on one of the lots at 5 & 7 Young Drive; Mr. Chase hired a Wetlands Scientist and Engineer who are in touch with David Price of NHDES; also request something back from NHDES confirming it was satisfactorily addressed. He said the Board could recommend a precedent condition be added that approval for that one lot is not final, documents cannot be recorded, and Certificate of Occupancy will not be issued.

Mx. Friedrichs asked if the Board received a Stormwater plan for this property which is required by subdivision regulations and said ze would like to hear from the Conservation Commission; the condos are close to an inlet of Great Bay and other wetlands not properly buffered. Chair Rasmussen said each condo is its own individual property; a shared condo is only that building and the property it is on. Mx. Friedrichs said there are vehicles and recycling on the property near steep slopes down to the Bay with little buffer for Wetlands and there should be a Stormwater plan.

Chair Rasmussen said 2-unit condominiums are only "technically" a subdivision and do not fit with most of our subdivision regulations and said the Board is not going to ask for a Stormwater plan. Mr. Chase said there are 4 paved parking spots available for each unit on every lot. Chair Rasmussen said parking is defined in the Town Ordinance and is only allowed on improved surfaces. He said the Planning Board cannot be changing the rules after the application is started.

Mr. Behrendt said subdivisions creating the separate lots were already approved by the Planning Board. Mr. Kelley said the way the land is today, is the way it was subdivided and why require a stormwater plan. The Board discussed the issues at length. Mx. Friedrichs read aloud portions of the Site Plan Regulations that referred to general Stormwater Plan requirements and Stormwater Plan requirements for new development. Mr. Behrendt asked if some language could be included in the condo bylaws alerting future owners to issues of parking, trash, and proximity to wetlands.

Councilor Tobias suggested language directing owners to review Town of Durham WCOD and SPOD rules and regulations and Town rules on parking and garbage disposal. Chair Rasmussen said he liked the idea of referencing regulations and the need to live in accordance with the Town's regulations. Mr. Bubar said he agrees as long as it is in every condo document going forward. Mr. Kelley said he would like to know definitively the regulation wording.

Chair Rasmussen raised the issue of "administrative gloss" and said *typically* for a subdivision like this we have always ignored the plan, which from the Board's point of view has been a consistent "administrative gloss". Mx. Friedrichs said that only applies to a situation where it is not spelled out clearly and it is spelled out clearly in the Ordinance. Mx. Friedrichs also stated that administrative gloss has to have been in effect for 5+ years over 5+ applications, and this ordinance is dated 2018. Chair Rasmussen said the ordinance could have had this same language prior to 2018 and Mx. Friedrichs agreed but said it was unknown among the board without further

research. Councilor Tobias said if the Board has never done it, they should not start doing it now; she said adding a note is responsible and rational and should be in all condo documents.

Mr. Chase said he was here 3 years ago and is here now for the same thing with nothing changed. He said he has made sure everything is being taken care of in a respectable manner, and everything the Board has talked about is all in the Ordinances today.

Chair Rasmussen asked Mr. Behrendt to review the 2 changes to the Notice of Decision; Mr. Behrendt said one is about the wetland issue. Mr. Chase said he has complied with everything DES has asked for, but they do not respond in a timely manner; wetland scientist Mark West "suggested" re-grading the lot and it was immediately done. He said he has a real problem with the Board putting that condition on 5 & 7 because he does not have anything written from DES.

Councilor Tobias asked if the new lots being built were sold and had closing dates set. Mr. Chase said closing is at the end of January, and Councilor Tobias said it is a sensitive situation. Mr. Kelley said an email received on January 6 from DES references Millennium Engineering. Mr. Chase said Millennium did all the plans before the Planning Board tonight. Mr. Kelley said DES is saying they need to contact Millennium and confirm the work is in accordance with the approved permit.

Mr. Chase said that work was done 4 years ago for a wetland crossing to get to units 13 & 14 with which they complied, and Durham did the inspection. Mr. Behrendt said it is most likely done but said he would like confirmation from DES that they are in compliance for wetland violations on that lot. Mr. Kelley asked Mr. Chase if he was copied on this email regarding his lot. Mr. Chase said he has not gotten any correspondence or response from DES. He said Mark West feels the project is okay and Millennium has not provided any feedback about any issues.

Mr. Kelley asked if the permit referenced in the email has anything to do with the lots that are closing at the end of the month. Mr. Chase said that is correct and said it was stated to him that he had filled in the wetlands for 5 & 7 which he did not do; then questions came up about where the permit was for the wetland crossing on 13 & 14 which they are referencing and not 5 & 7. Mr. Behrendt asked the concern with 5 & 7 was that there was extensive construction and no erosion and sedimentation control in place protecting the wetlands.

Mr. Chase said that was all taken care of and Councilor Tobias said you can see it when you drive by. Mr. Bubar asked why the Board is still talking about this. Chair Rasmussen said the outstanding thing from DES does not then apply to 5 & 7, and Mr. Behrendt pointed out that 5 & 7 Young Drive is the subject line of the email. Mr. Kelley provided a copy to Mr. Chase who said he took the picture included, which was sent to Mark West who asked how the grass area would be treated. Mr. Kelley said that Mr. Chase never saw a permit for the construction of those 2 units because one was not required, and someone alleged you filled in the wetlands.

Mr. Behrendt said it was not wetlands but total land disturbance. Mr. Kelley said the initial concern was then that the toe of the slope in back of the house may have encroached on a wetland which was mapped by Mr. West. Mr. Chase said that is correct and Mr. West's

recommendation was to see less of a slope, to which he agreed and regraded and seeded the lot placing required fabric down. Mr. Kelley said it sounds we are talking about a different lot.

Chair Rasmussen said the Board will only add the language referencing Town rules and regulations in the condo bylaws to the Notice of Decision: "homeowners must comply and abide by the Town of Durham's Ordinance regulations regarding parking, trash and treatment of WCOD and SPOD where appropriate" in all condo documents.

Mr. Kelley MOVED to close the Public Hearing for Young Drive; SECONDED by Mr. Bubar; APPROVED 7-0, Motion carries.

Chair Rasmussen closed the Public Hearing for Young Drive at 8:26 pm.

Mr. Kelley MOVED that the Planning Board approve the application to convert 5 existing duplexes on separate lots to 2-unit condominiums at 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, located in Coe's Corner District and approve that application as amended this evening; SECONDED by Mr. Bubar; APPROVED 6-1, Motion carries.

Mx. Friedrichs clarified that ze could not vote in favor because the Site Plan Regulations seem to require a stormwater plan.

Mr. Chase thanked the Planning Board and said it is a great honor for them to do this kind of work.

IX. Review of Definitions in Zoning Ordinance. Continuing review of the Zoning Ordinance section by section as part of the zoning rewrite. Recommended action: Discuss and continue the review.

Chair Rasmussen said he plans to go quickly through marked comments under Definitions and asked if there was anything on Page 1 to discuss. Mr. Behrendt explained that the asterisk at the top was added as a guide to the Planning Board and said it may be helpful to include in 175-7. The Board agreed to include in 175-7: "Note that definitions are descriptive and not prescriptive, they may however operate in a prescriptive manner" and provide an example. The Board agreed to include the statement.

Ms. Dill said that definitions incorporating the term itself should be avoided if possible and cited the instance of "nursing" under Nursing Home. She suggested taking out "as a nursing home" after a facility licensed by the State as it is not needed. Chair Rasmussen said it is needed and he would say: "a facility licensed by the State of New Hampshire as a Nursing Home" period and take out the rest which is superfluous. The Board agreed.

Chair Rasmussen moved on to Page 2. Mr. Behrendt said the size of an accessory unit is 300 sq ft to 850 sq ft maximum, anything above is a duplex; an ADU is only for a single-family home but could have one with a duplex and Chair Rasmussen asked that he verify that. Mr. Bubar asked if a multi-use business with apartment could have an ADU. Mr. Behrendt said if zoned for 2 units they could have another dwelling unit but not an ADU as defined now.

Councilor Hotchkiss asked that the definition of "Acre" be removed. Ms. Dill also asked if was necessary to write the number of acres out in words. The Board agreed to delete the definition of ACRE from the document. Mr. Bubar asked why a definition was needed for Adaptive Reuse. Mr. Behrendt said it is referenced under CUA, conditional adaptive reuse; it is also in the Table of Uses.

Chair Rasmussen jumped to ATVs Pages 6-7, All Terrain Vehicle and All-Terrain Vehicle/Off Highway Recreation Vehicle Facility. Ms. Dill suggested "off-road" rather than off highway and recommended replacing off highway recreational vehicle everywhere with ATV and the Board agreed. Mx. Friedrichs asked about electric bikes and motorized wheelchairs. Chair Rasmussen asked at what threshold you become "designed to travel over surfaces other than maintained roads" and asked if the Board was thinking about road-legal vehicles versus non-road legal vehicles. Mr. Behrendt said an ATV is specifically designed and intended for travel off-road; Chair Rasmussen suggested adding "primarily" before travel off-road.

X. Other Business

Chair Rasmussen asked how many Board members would like to hold a 3rd meeting in January working solely on definitions and be out by 9:00 pm. The Board was mostly in agreement.

XI. Review of Minutes (new):

XII. Adjournment

Mx. Friedrichs MOVED to adjourn the Planning Board Meeting; SECONDED by Mr. Kelley; APPROVED 7-0, Motion carries.

Chair Rasmussen adjourned the meeting at 9:00 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker
Durham Planning Board