

These minutes were approved at the April 12, 2023 meeting.

**TOWN OF DURHAM
DURHAM PLANNING BOARD**

**Wednesday, March 8, 2023
Town Council Chambers, Durham Town Hall
7:00 pm**

MEMBERS PRESENT: Paul Rasmussen (Chair), Heather Grant (Vice Chair), Sally Tobias (Council Rep), Peyton McManus (Alternate), Barbara Dill (Alternate); Chuck Hotchkiss (Alternate Council Rep); Arrived late: William McGowan, Richard Kelley, Emily Friedrichs

EXCUSED: James Bubar

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 Bill McGowan and Peyton McManus for Emily Friedrichs.

III. Approval of Agenda

Chair Rasmussen MOVED to accept the Agenda as presented; SECONDED by Vice-Chair Grant; APPROVED 5-0, Motion carries.

IV. Town Planner's Report

Michael Behrendt said he was in court today for the appeal of the denial of 19 Main Street by the Toomerfs with Laura Spector presenting for the Town, Nathan Hennessey for abutters, and Monica Kaiser for Toomerfs. For Gerrish Drive the Planning Board approval of that subdivision was appealed again by Gail Kelley with a May 15 court date. The President of UNH wants to get moving on "The Edge" project on westerly side of campus on a long-term schematic plan to develop that triangle as a kind of high-tech village which would be great for Durham.

Bill McGowan arrived at 7:04 pm as well as Emily Friedrichs on Zoom. Chair Rasmussen seated Barbara Dill for James Bubar and Peyton McManus for Richard Kelley.

Mr. McGowan said he needed to leave at 8:30 pm. Mr. McManus asked whether the project would be exempt from the Zoning Ordinance; Chair Rasmussen said if they are only doing it for their own use it would be exempt, but if they have to go into a public/private partnership then it falls under Zoning. Mr. Behrendt said they would want this to be a partnership mainly with high-tech R&D companies, making it taxable and under Planning Board review.

V. Reports from Board Members who serve on Other Committees

Reporting from Town Council: Councilor Tobias said the Council recognized outgoing elected officials; officially last meeting until after elections; presentation by Katharine Miller on Cable Franchise. She said this is her last Planning Board meeting as Council Representative.

Reporting from HDC Commission: Mr. McGowan said the HDC Commission met last week and discussed setting for Lafayette Plaque; looking to do a presentation on Indigenous People from this area.

Reporting from AG Commission: Chair Rasmussen said the Agricultural Commission will be meeting next week.

Reporting from Housing Task Force (HTC): Vice-Chair Grant said HTC will be meeting next week.

VI. Public Comments

No Public comments.

VII. Review of Minutes (old): February 8, 2023 and February 22, 2023

Approval of Meeting Minutes of February 8, 2023:

Councilor Hotchkiss asked a question about process from page 4 and Chair Rasmussen said lines 30 and 31 should be struck. (*Note: The name of the person who left the meeting was corrected and the statement retained.*)

Chair Rasmussen MOVED to approve the minutes of February 8, 2023 as amended; SECONDED by Mr. McGowan; Roll Call Vote: Peyton McManus-aye, Bill McGowan-aye; Paul Rasmussen-aye, Heather Grant-aye, Sally Tobias-aye, Barbara Dill-aye, Emily Friedrichs-aye; APPROVED 7-0, Motion carries.

Approval of Meeting Minutes of February 22, 2023:

Ms. Dill and Mx. Friedrichs stated that corrections were sent to Karen Edwards.

Chair Rasmussen MOVED to approve the minutes of February 22, 2023 as amended; SECONDED by Vice-Chair Grant; Roll Call Vote: Peyton McManus-aye, Bill McGowan-aye; Paul Rasmussen-aye, Heather Grant-aye, Sally Tobias-aye, Barbara Dill-aye, Emily Friedrichs-aye; APPROVED 7-0, Motion carries.

VIII. 14 Riverview Road – Stairway to Dock. Conditional use to build stairway leading to existing dock within the Shoreland Protection Overlay District (SPOD). Keith Carney and Adrian Shulman, property owners. Jay Aube, TF Moran, Certified Wetland Scientist. Map 214, Lot 9. Residence Coastal District. Recommended action: Set public hearing date.

Wetland Scientist Jay Aube stated that the property owner was in the audience and he had been asked to be on standby to answer questions. He said the project was 158 sq ft solely for the purpose of installing a new wooden stairway down to an existing residential pier; existing pathway of sorts there now; no tree removal or earthwork and relatively low impact. He said from an environmental standpoint the project poses no threat or harm to neighboring woodlands or wetlands function and values.

Keith Carney said he and Adrian Schulman are looking to get safe access to the existing dock; property purchased in September 2021. He said they discovered it was a treacherous trek down the steep hillside with loose rocks and are looking to get a safer access to the dock with as minimal an impact as possible and no trees will be removed. The access will be a 38-inch wide stairway about 20 ft down a close to 35% grade slope; a Shoreland Approval Permit has been obtained from the State.

Mr. McGowan asked about the rocks and whether the owners would have trouble digging footings for posts. Mr. Carney said they are close to entering a contract and an auger hole will be dug to support six posts using no heavy equipment.

Chair Rasmussen asked if the Board wanted to do a site walk; Mr. McManus said the photographs were quite good especially side photos showing hill and rocks which could be treacherous. Mr. Carney said there is also a profile from the neighbors showing this will be virtually invisible from their property. Mx. Friedrichs said the photos showed a lot of detail and did not think a site walk was needed.

Mr. McGowan MOVED that the Planning Board schedule a Public Hearing on March 22, 2023, for 14 Riverview Road – Stairway to Dock; SECONDED by Councilor Tobias; Roll Call Vote: Peyton McManus-aye, Bill McGowan-aye; Paul Rasmussen-aye, Heather Grant-aye, Sally Tobias-aye, Barbara Dill-aye, Emily Friedrichs-aye; APPROVED 7-0, Motion carries.

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

Day Care: Chair Rasmussen said Mr. Behrendt provided Day Care definitions from the State and the Board's definitions should be in close proximity, especially things that get licensed. Mr. Behrendt suggested a Planning Board member work with him on this and Councilor Hotchkiss volunteered. Ms. Dill said she would also be willing to work on this and said she is happy there is a separation between nighttime and daytime child care, as well as separate adult care and child care. She suggested Child Care Home be changed to *Family Childcare Home*.

Development: Chair Rasmussen questioned whether a definition for development was needed; Mr. Behrendt said it covers what is subject to Site Plan Review and what is not. The Board agreed to delete the second definition from adjustment of lot lines to the end. *Disturbed Area:* Chair Rasmussen said either the area is disturbed or it is not, there is not a level of disturbance; Board

agreed to delete “significant” and agreed that a definition for *Dimensional Standards* was not needed.

Dormitory: Mr. Behrendt said it is helpful to have a definition as this is a very particular kind of residential use which is important and central to Zoning. Vice-Chair Grant shortened the definition; Mr. Behrendt suggested combining the first and last sentences. A reference to a university was included.

Richard Kelley arrived at the meeting at 7:38 pm.

Driveway: Councilor Hotchkiss said Robin Mower’s definition is an improvement, and the Board agreed changing “house” to “dwelling units”. *Dust-Free Surface*: Self-explanatory; *Dwelling Unit*: Changed “1” to *one*; *Educational Facility*: No changes. *Exterior Architectural Appearance*: Mr. Behrendt suggested not referencing Site Plan Regulations as this definition is specific to the Historic District in the Zoning Ordinance and different from architectural regulations; Board agreed to reference the specific article.

Family: Board agreed to: See “*Dwelling Unit*” and “*Household*.”

Financial Institutions: Vice-Chair Grant said there was too much detail here; Chair Rasmussen suggested eliminating the list. Board discussed the definition in detail, shortening it to “*A business or nonprofit organization providing retail financial services, including but not limited to banks, credit unions, financial exchanges, freestanding Automatic Teller Machines (ATM), and check-cashing facilities.*”

Flood Hazard Overlay District: The Board agreed to move this definition under Flood Hazard article. Ms. Dill said FIRM (Flood Insurance Rate Map) should be explained at the beginning; Councilor Hotchkiss suggested spelling it out under *Area of Specialized Flood Hazard* where it first appears and the Board agreed. He also suggested defining “*Overlay District*” and referring people to the relevant sections.

Flood Area, Gross: Vice-Chair Grant said by just using exterior dimensions the basement cannot be included, and said floor area *gross* versus *habitable* is confusing. Mr. Behrendt said *habitable* means something particular for the developer and Durham requires minimum *habitable* areas for different uses; he said he would ask Audrey about this and get back to the Board.

Footpath: Change “walkers” to *pedestrians*; references “sidewalk and trail”. Mx. Friedrichs said ze found footpath in definition for Public Way and in Site Plan requirements. *Franchise Architecture*: Deleted. *Foundation Permanent*: Ms. Dill said this suggests there is a temporary one and Councilor Tobias said a foundation is permanent. Mr. Behrendt said it is useful to keep this definition.

Fraternity/Sorority: Ms. Dill asked if the word “fraternal” carried “sorority” with it; Chair Rasmussen said it does. Mr. Behrendt asked if members are *only* currently enrolled students and asked about alumni. Vice-Chair Grant said the definition is just defining the organization itself which should just be “a body recognized as such by UNH”; Chair Rasmussen suggested deleting “fraternal”.

Fraternity/Sorority House: Board deleted “bona fide”; and discussed whether alumni should be considered members. *Front Court:* Ms. Dill said the diagram included was confusing; after discussing the Board decided to leave the definition as is and move on. *Frontage:* See Lot Frontage.

Bill McGowan left the meeting at 8:22 pm.

Funeral Home: Changed “funerals” to *funeral services*; discussed “garage” and Mr. Behrendt said he would get back to the Board on that. *Golf Course:* Vice-Chair Grant asked if this definition was needed; only allowed as CU in Rural and RC; definition eliminated by Board. *Government Facility:* Wording as defined in RSA 674:54; delete “including facilities owned and operated by the Federal Government” redundant; Vice-Chair Grant said either take it out or say the Board has no jurisdiction over it; Board agreed to delete and just keep *Government Use*.

Grade: Chair Rasmussen said it was very simple, grade is whatever the land is now, once you dig it you have changed the grade; Mr. Behrendt said he would coordinate this with Richard Kelley and get back to the Board.

Greenway: Board agreed to eliminate definition and defer to Conservation Commission. *High Intensity Soil Survey:* Referenced *Soil Survey, High Intensity*. *Heliport:* No changes; excluded in all zones. *Highest Adjacent Grade:* Vice-Chair Grant said this should be *Grade, Highest Adjacent*; Mr. Behrendt said he would work on this with Richard Kelley.

High Water Levels: Deleted because it contradicts information under reference line below; *Greenway:* Board agreed to eliminate definition; *Groundwater:* No change; *High Intensity Soil Survey(HISS):* Referenced “Soil Survey, High Intensity”. *Home Occupation:* Ms. Dill asked why there were two separate definitions as the only difference is in scale; the Board discussed and agreed to put this aside and come back to it.

Hotel: Board discussed at length; Chair Rasmussen suggested “a commercial operation offering multiple sleeping rooms or suites”; Mr. McManus asked how an Air B&B would fit in and Chair Rasmussen said under short-term rentals and Mr. Behrendt confirmed this is for less than 30 days; Mr. Kelley said Hotel Guests and rental property tenants are treated very differently under the law.

Household: Vice-Chair Grant provided a family household definition; Councilor Tobias said “family” should not be defined, but Mr. Behrendt said the Board has to define it to allow for more

than 3 unrelated individuals, and said he would not change the current structure which is fundamental to Zoning and has been legally vetted. Vice-Chair Grant said the Town needs to recognize non-traditional families to be progressive as a town; Mr. Behrendt asked how the current definition was a problem and Chair Rasmussen said because it stops workforce housing from occurring; Mr. Behrendt said it does say there can be more than 3 unrelated as long as they are not all students. The Board continued discussing this at length; Chair Rasmussen suggested throwing this back to the HTF and making no changes for the time being. Mx. Friedrichs said there is nothing prohibitive about being unrelated households. The Board agreed to address this at the next Planning Board meeting.

X. Other Business

Mr. Kelley said he is concerned about the potential change to the character of Durham, and said when HTF comes back he would like to see them prepared to answer questions about how much growth we are looking at as a Town and what the impacts of that growth would be on our infrastructure: roadway networks, water and sanitary systems, and schools. Councilor Tobias said HTF is required to do that.

Mr. Kelley cited the current traffic issues in Dover where they have added a tremendous amount of bedrooms but the roadway network will not be getting any larger. The Board discussed traffic in Durham. Vice-Chair Grant said there are zones the Town could pinpoint that would make nice small communities, but added that the facts are needed as now it is just guesses.

The Board discussed nameplates and Mx. Friedrichs said ze has requested that pronouns be added to zir nameplate.

XI. Review of Minutes (new):

XII. Adjournment

Mr. Kelley MOVED to adjourn the Planning Board Meeting; SECONDED by Vice-Chair Grant; Roll Call Vote: Peyton McManus-aye, Richard Kelley-aye, Paul Rasmussen-aye, Heather Grant-aye, Sally Tobias-aye, Barbara Dill-aye, Emily Friedrichs-aye; APPROVED 7-0, Motion carries.

Chair Rasmussen adjourned the meeting at 9:29 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker
Durham Planning Board