

These minutes were approved at the June 14, 2023 meeting.

**TOWN OF DURHAM
DURHAM PLANNING BOARD**

**Wednesday, April 26, 2023
Town Council Chambers, Durham Town Hall
7:00 pm**

MEMBERS PRESENT: Paul Rasmussen (Chair), Heather Grant (Vice Chair), Sally Tobias, Richard Kelley, Peyton McManus, Barbara Dill (Alternate), Chuck Hotchkiss (Alternate Council Rep)

EXCUSED: James Bubar, Emily Friedrichs (Council Rep), 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 Councilor Hotchkiss for Emily Friedrichs and Ms. Dill for Mr. Bubar; Peyton McManus is now a regular member.

III. Approval of Agenda

Chair Rasmussen switched the Public Hearings for items 9 and 10 to do applicant before Zoning.

Chair Rasmussen MOVED to approve the Agenda as amended; SECONDED by Councilor Hotchkiss; APPROVED 7-0, Motion carries.

IV. Town Planner's Report

Mr. Behrendt said this is Barbara Dill's last meeting with the Planning Board after many years, as well as Mr. Bubar's, who was unable to make it tonight. Climate Action Plan MP continued to May 24, 2023; May 10th Annual Meeting to elect officers and appoint Board members to various committees; Workshop May 24th and Climate Action Plan Master Plan, guest speaker Bart McDonough, Town Planner for Newmarket, to discuss issues of common interest.

Mr. Behrendt said the former Goss Building at 121 Technology Drive was acquired 3 years ago by RJ Kelly who have signed a contract with Raytheon for a 93,000 sq ft 15-year lease; possible presentation in June.

V. Reports from Board Members who serve on Other Committees

Reporting from the Town Council: Councilor Hotchkiss said the Council met April 17; 3 items pertinent to Planning Board: (1) presentation from NHDOT and GM on Route 4/Madbury Road intersection; (2) presentation from Mike Hoffman proposing Dame Road be officially designated as

Scenic Road; (3) Council renewed charge to HTF with language change: “encourage housing forms designed to accommodate under-served household types.”

Ms. Dill said Earth Day was cancelled last Saturday due to weather and will be held this Saturday.

VI. Public Comments

Joshua Meyrowitz of 7 Chesley Drive expressed his thanks to all members of the Planning Board for their service; he said Barbara Dill and James Bubar made unique and significant contributions to this Board and thanked them for their dedication and focus.

Beth Olshansky also acknowledged Ms. Dill and Mr. Bubar’s years of service and said they were a strong voice on many projects and she appreciated their strong environmental ethic. She said their presence has always been reassuring and she will miss them.

VII. Review of Minutes (old):

VIII. Longmarsh Road – Conditional Use. Conditional use to install driveway, drainage structures, and utilities in Wetland Conservation Overlay District. Vacant lot on northerly side of Longmarsh Road near Newmarket Road. Map 118, Lot 3. Ted Mulligan, SEJ Properties Inc, property owner. Steve Riker, wetland scientist, Ambit Engineering. Residence B District. Recommended action: Set public hearing date.

Steve Riker said the drainage analysis was sent to Mr. Behrendt, he went through Sheet C-1 plan set, and presented some technical details of wetland crossing and structure being used there. Lot has frontage along Longmarsh Road, bounded to west by Longmarsh Brook, undeveloped and mostly forested; eastern end of lot is cleared but undeveloped; powerline utility easement to rear of parcel; vegetated wetland associated with Longmarsh Brook with wetland finger along Longmarsh Road. Colored Sheet C-2 shows orange area as wetland, abutting parcel to east property line of subject lot, pink line is 75-ft Town Wetland Buffer.

Mr. Riker said the culverts are two 60-in CMPs with smooth interior for water conveyance under Longmarsh Road. The proposal is to construct a single-family home on lot in cleared area; test pits were performed and State has approved septic design. DES Wetland Permit for proposed driveway in wetland crossing is under review and driveway is outside FEMA Regulatory Floodway; will also include underground electric and communication cable; overhead electric will cross Longmarsh Road then go underground.

Mr. Riker said the green area on Sheet C-2 is the 691 sq ft of direct impact to freshwater wetland to construct crossing; heavier blue dashed line is area of 75-ft Town of Durham Wetland Buffer covering 3,412 sq ft impacted. Septic Plan approved by DES; Sheet C-3 is driveway plan and profile using eco-passage culvert which allows wildlife passage; pre-cast concrete open-box type culvert; after coming off Longmarsh, go up a rise and have to maintain driveway rate at under 12% to

keep low and flat; elevation matches elevation of Longmarsh Road and top of culvert at 33 ft to prevent water off driveway onto Longmarsh Road; culvert will be placed at 30 ft with structure 3 in in height; allows for organism passage to protect endangered turtle species.

Mr. Riker said the detail sheet shows a silt sock, stabilized construction entrance, and typical driveway cross-section. For stormwater proposing storm-drip aprons around house to capture stormwater runoff from roof and infiltrate into ground around foundation; drainage analysis done to size culvert handling the 25-year flood.

Chair Rasmussen scheduled the Public Hearing for Longmarsh Road for May 10, 2023.

IX. Public Hearing - 74 Main Street – Amendment. Amendment to approved site plan and conditional use for construction of a 4-story mixed-use building with office, retail/restaurant, and residential units. Changes to building footprint, upper floor plans, drainage plan and minor site changes. 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. Recommended action: Final action.

Mike Sievert said he has the edits from TRG/TRC curbing and signage changes and will review. The island in upper right is modified for better turning radius and movement; using sloped granite curbing allows vehicles to pass over; signage for parking space for adjacent property delineated by different colored blocks and sign for loading. Added in pavement, dashed line is old edge of pavement surveyed in original subdivision, removed overhangs and building is now behind edge of pavement; small bumped-out overhang ends at door.

Mr. Sievert said the easements are not well-defined and are on the plan per conditions of approval. DPW added plan defining profile through underground storage system under pavers starting at catch basin to back of building; has a 5% slope going up, flattened bottom for more water storage. He showed the turning radius of a single-unit vehicle 30-32 ft long, has to make a turn at corner; existing conditions show easier to make turn but still have to back out. Trash would be pulled out, dumped, and rolled back in; adjacent property has exterior trash.

Ms. Tobias MOVED to open the Public Hearing for 74 Main Street – Amendment; SECONDED by Vice-Chair Grant; APPROVED 7-0, Motion carries.

Attorney Suzanne Brunelle, representing the Gangwer family, raised 3 issues: (1) turning radius from 2018 subdivision shows area designated as non-parking which is now where the building will be on changed site plan, clearly shows over easement area. Chair Rasmussen said his understanding is there are no metes and bounds in the back, simply that you have access, and the Board will not go into that argument.

(2) Attorney Brunelle said Ballard Street frontage is a vital part of 72 Main Street's use of the property and is an access point and right-of-way for customers with pickup for trash; Ballard Street has not been discontinued and was used as part of frontage to make 72 Main Street a conforming lot; to be discontinued there is a statutory process with underlying fee split by Town and 72 Main Street; Ms. Brunelle stated that the condition should be removed from the Site Plan and be re-reviewed by the Council; (3) CU Permit and what should and should not be looked at.

Mr. Kelley brought up the issue of his son working at 72 Main Street and asked if anyone felt he might be compromised in making a decision here; there were no objections.

Sam Gangwer of Town & Campus said there are a few problems with the way this is laid out, with access in the back and right-of-way, and questioned Mr. Behrendt's authority. Mr. Behrendt said everyone is a stakeholder but the bottom line is public interest which trumps everything. He said he keeps his own judgment as Town Planner based on his professional perspective and ethics and said he has been very clear in this case.

Mr. Gangwer said his family has been here since the mid-sixties and felt they have been left out of the decision-making process regarding the front and corner of this building. He said they need access to Main Street and need a sidewalk wide enough to provide for pedestrian traffic and are not in favor of having the area turned into a park. Mr. Sievert said the building volume is no different than it was and was already in the parking area and within the easement at that line. He said in back is not a driveway and they are giving a wider access; the intent of the easement is not changing whatsoever.

Attorney Sean O'Connell said the easements are not properly before this Board for consideration as to their legitimacy or effectiveness. Plan presented tonight clearly shows building moved out of easement area and all easements are met. He said more relevant are comments on Ballard Street and said it is still there and will continue as a paper street with no vehicular traffic, but still a public way for pedestrians; the notion there is a taking there is not supportable.

Attorney O'Connell said regarding reconstruction of the property, the sidewalk as proposed in front of both buildings is very wide; parking will be gone but sidewalk will not. He said regarding the size and scope of the building the Board has already approved this before and height and massing are substantially identical and no different from previously approved. He said there are no significant changes proposed and the Board should not upset its previous decision approving the Site Plan.

Ms. Tobias said she believes that when the subdivision was done Ballard Street was approved as a paper street. Mr. Behrendt agreed and said Mr. O'Connell had felt the abutters met the letter of the law with frontage requirements at that time. He said there is nothing relevant being changed there which was confirmed by the Town Attorney. Chair Rasmussen pointed out that there is another part of Ballard Street which is not shown here. Attorney Brunelle said a property

cannot have frontage on a paper street; as a park the abutters do not have access for deliveries and the Town does not have the authority to take this street.

Mr. Kelley said all that exists for the Construction Management Plan is a 2-page graphic and asked if there was a narrative as well. Mr. Sievert said it needs to be updated; under conditions of approval there is a full requirement to update the construction management plan and staging plan and said the Martini Northern graphics were incorporated into these plans. He said there is access to construction storage with a trailer temporarily taking over neighboring parking lot, full repaving plans, and setting up barriers in back of building.

Mr. Kelley asked for a timetable and the duration of construction; Mr. Martini said once construction is started, barriers will be established for safety; duration of construction is about 16-18 months. He said once we are working inside the building barriers along Pettee Brook could go away. Mr. Sievert said the plan was revised 9/28/2022. Mr. Behrendt said developers also agree that impacts on Town property will not extend past 18 months from start of construction and said he included a few additions from Attorney Brunelle under modifications to plans.

Mr. Kelley asked Ms. Brunelle for an explanation of note 15 asking to eliminate the sheet showing a new potential easement. Mr. Brunelle said when plans were presented there was a tack-on plan with a potential new shared easement which they do not approve. Mr. Sievert said it was not intended to be part of the approval but to clarify what the easement potentially is and is just sheet 102 with a couple of variations highlighted. Ms. Brunelle said they have strong objections to it and Mr. Sievert took it out.

Mr. Kelley asked what note 20 might be and Attorney Brunelle said it was actually part of a license agreement between parties. Mr. Sievert objected to providing note 21 with a brief description of the easements. Ms. Tobias said we make reference to recorded deeds and easements are there and the Board agreed to eliminate note 21. Mr. McManus said it was unclear to him what the Board should do with conflicting easements and Vice-Chair Grant said the Board does not act on it; Mr. Behrendt said as long as the Site Plan meets our regulations, we have to leave it to the private parties.

Mr. Kelley asked Mr. Sievert the intent of the hatched area on Sheet C-102; Mr. Sievert said it is repaving with grade to match existing asphalt pavement. Councilor Hotchkiss asked if the Board was purely considering the amendment; Mr. Behrendt said potentially 2 things: Amendment to Site Plan, only the changes and have to review CU criteria overall. Ms. Dill said she did not understand why the Board needed to review the CU criteria again. Mr. Behrendt said there are 2 CUs, one for mixed-use building and one for building height.

Conditional Use Criteria

Mr. Behrendt stated that all notices and application requirements were taken care of.

1. Site Suitability: Appropriate access for pedestrians and vehicles, adequate public services, absence of environmental constraints. Parking for residents will be offsite; Ms. Tobias said the Town has a public lot nearby and there is no room for downtown developments to create their own parking;

2. External Impacts: Impacts on abutting property no greater than existing; location and height of structure; intensity of use; no adverse effects on surrounding environment. Mr. Kelley said seeing that end of Main Street go higher is the intent of long-term planning for our downtown and it blends in with larger institutional brick buildings; the applicant has done a nice job of a modern adaptation. Vice-Chair Grant said the building added a really nice impact and was appreciated as a good design balance.

3. Character of Site Development: Layout and design not incompatible with established character of neighborhood. Mr. Kelley said in the Central Business District developers are able to build right up to the property line.

4. Character of Building & Structures: Scale, height, massing, and architectural treatment. Mr. Kelley said his mind has not changed since he last spoke on the matter.

5. Preservation of natural, cultural, historic and scenic resources: Ms. Tobias said the situation will be improved.

6. Impact on Property Values: Chair Rasmussen said he does not see that and said the existing building is a sore thumb right now; Ms. Tobias said she is not convinced it would diminish property values next door.

7. Availability of Public Services: Adequate. Mr. Kelley said most buildings do not have opportunities for any off-street services like this. Stormwater will improve slightly.

8. Fiscal Impact: Chair Rasmussen said he was not seeing any fiscal impacts here.

Mr. Kelley MOVED that the Planning Board approve the CU amendment for 74 Main Street, 4-story mixed-use building with residential and non-residential uses, CU for mixed-use building and a height exceeding 30 ft; SECONDED by Vice-Chair Grant; APPROVED 7-0, Motion carries.

Chair Rasmussen asked that the Board now review the amendments to the Site Plan. Mr. Behrendt said the Notice of Decision is complete and includes additional conditions except the one referencing a description of easements. Mr. Kelley said the Board heard some testimony and some concerns raised are not in our sphere of influence. He said what stood out for him was the request to remove the park requirement; he still finds CU acceptable. He said with the testimony tonight, Mr. Behrendt was to go back to Laura Spector. Mr. Behrendt said that would not be necessary as she has already concurred that Ballard Street is not relevant to this.

Ms. Tobias asked if the park had to be part of this notice and Chair Rasmussen said it was part of the negotiations for the project as a whole. Mr. Kelley said the parking that is there now is not safe and did not think the Board should support that. Mr. McManus asked about the park and Mr. Behrendt said the applicant is going to reclaim the pavement and plant grass with an opportunity for the Town to embellish further in future. Councilor Hotchkiss corrected language from "a minimum of 2 bedrooms" to *no more than 2 bedrooms*.

Ms. Dill said the number of the building has been 74 Main Street but is going to be 76 Main Street and asked if all paperwork filed will be corrected. Mr. Behrendt said if it is changed it will be noted on all paperwork. Mr. Kelley asked how the conditions of approval relate to what was approved in October; Mr. Behrendt said this is replacing the former. Mr. Kelley said he would like to put language in the Construction Management Plan: "It is recognized that the Construction Management Plan is a dynamic plan that may be revised per request of applicant or the Town in which case revisions shall be reviewed and approved by DPW." Councilor Hotchkiss asked that the final item be changed to: "from the start of construction as documented by DPW."

The Board discussed the \$500/day cost for every day past the 18 months; Attorney O'Connell said we agree we have an amount that is fair and liquidated damage the Town would suffer. The Board agreed to change the reference on Sheet C-102 to "license agreement". Mr. Kelley asked if the applicant had time to review all the requirements and Mr. Sievert and Attorney O'Connell agreed that they had.

Chair Rasmussen MOVED that the Planning Board approve the amendment to 74 Main Street, site plan for 4-story mixed-use building with residential and non-residential uses, Map 106, Lot 59 per the Notice of Decision as amended this April 26, 2023; SECONDED by Vice-Chair Grant; Motion withdrawn.

Mr. Kelley made a motion to close the Public Hearing for 74 Main Street; SECONDED by Ms. Tobias; APPROVED 7-0, Motion carries.

Chair Rasmussen closed the Public Hearing at 9:16 pm.

Chair Rasmussen MOVED that the Planning Board approve the amendment to 74 Main Street, site plan for 4-story mixed-use building with residential and non-residential uses, Map 106, Lot 59 per the Notice of Decision as amended this April 26, 2023; SECONDED by Mr. Kelley; APPROVED 7-0, Motion carries.

- X. ***Public Hearing - Amendments to WCOD and SPOD.*** Amendments to the Wetland Conservation and Shoreland Protection Overlay Districts proposed by the Conservation Commission and modified by the Planning Board. *Recommended action:* Hold public hearing and then consider proposed amendment.

Mr. Behrendt said two members of the Conservation Commission, Neal Slepian and Dwight Trueblood, are here as well as Sally Needell of the Wetland & Shoreland Committee to explain the amendments and answer any questions.

Chair Rasmussen MOVED to open the Public Hearing on Amendments to WCOD/SPOD; SECONDED by Councilor Hotchkiss; APPROVED 7-0, Motion carries.

Chair Rasmussen opened the Public Hearing at 9:19 pm.

Beth Olshansky spoke in support of the changes and emphasized the important role of the Conservation Commission in reviewing and providing feedback to the Planning Board, and said the new language helps close up some of the loopholes to help the Town of Durham make good decisions. She said Joshua Meyrowitz was here earlier to speak in support but had to leave the meeting.

Chair Rasmussen said a word was left out in the Town Planner's report in the first blue paragraph B-4 which should read: "the proposed project will not have substantial adverse impacts to *known* rare species". Mr. McManus asked if the information provided by the applicant for Longmarsh Road regarding rare species was a condition or optional. Mr. Behrendt said that had to be done anyway; Mr. Kelley said it is required in the Wetland Permit to answer questions about protected species or habitat.

Mr. Behrendt said the applicant went to DES for the permit but came to the Planning Board for work in the Wetland Buffer. Mr. McManus asked about sequencing and Chair Rasmussen said sometimes the Conservation Commission reviews the information first and sometimes the Planning Board, but whenever there is a wetland overlay district issue it also goes to the Conservation Commission. Ms. Tobias asked how soon into a large project the Conservation Commission should be involved. Mr. Behrendt said a Conservation Subdivision is a different process.

Mr. McManus asked if comments and recommendations from the Conservation Commission are potentially broad without yet seeing the full design. Mr. Behrendt said on CU and Permitted Use B, everything is submitted for their review and they make recommendations. Chair Rasmussen said with Gerrish Drive subdivision there are 3 phases and CU is covered in Phase 3; the first 2 phases of subdivision do not apply to the CU discussion and you would need to go into the Site Plan and Subdivision process to include the Conservation Commission.

Chair Rasmussen explained that the Conservation Commission has felt current criteria are too narrow in terms of what they need to look at and focus on and this is step 1 in trying to broaden that out to be more in line with their mission. The term "take action" was corrected to *take final action*. The Board discussed the Gerrish Drive Subdivision and Chair Rasmussen said the entrance decision was made in the conceptual phase of the project and the reasons explained.

Mr. Slepian said with Gerrish Drive Subdivision the Conservation Commission had to vote on was whether or not there was another access *inside* the WCOD and should have been able to look at alternate areas outside the WCOD. Mr. Kelley said it is covered in B-1 revised language to look at the “parcel”. Mr. Behrendt said that would not have affected Gerrish Drive because it has to be workable and reasonable to utilize, which it would not have been due to legal issues.

Mr. Behrendt reviewed language changes recommended by Robin Mower which were discussed and reviewed by the Board. Mr. Behrendt said the Board should vote to initiate the amendments which would then go to the Town Council.

Mr. Kelley MOVED that the Planning Board implement these amendments to WCOD and SPOD as amended this evening; SECONDED by Councilor Hotchkiss; APPROVED 7-0, Motion carries.

XI. 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.

XII. Other Business

Davis Court Application: Parking spaces were reduced from 7 to 5; the Board approved Davis Court as a Minor Site Application by consensus.

XIII. Adjournment

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

Chair Rasmussen adjourned the meeting at 10:10 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker
Durham Planning Board