

These minutes were approved at the August 23, 2023 meeting.

**TOWN OF DURHAM
DURHAM PLANNING BOARD**

Wednesday, July 26, 2023

Town Council Chambers, Durham Town Hall

7:00 pm

MEMBERS PRESENT: Paul Rasmussen (Chair), Heather Grant (Vice Chair), Richard Kelley, Peyton McManus, Chuck Hotchkiss (Alternate Council Rep), Tom DeCapo (Alternate), Chris McClain (Alternate); Emily Friedrichs (Council Rep - Arrived late)

EXCUSED: Sally Tobias, William McGowan

ALSO PRESENT: Town Planner Michael Behrendt

I. Call to Order

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

II. Roll Call and Seating of Alternates

Chair Rasmussen called the roll; seated Chuck Hotchkiss for Emily Friedrichs, Tom DeCapo for Bill McGowan, and Chris McClain for Sally Tobias.

III. Approval of Agenda

Chair Rasmussen said the Board received email from Mr. Behrendt on a Minor Site and applicants are present this evening and asked that the Board do that as new Item 8 (45 Main Street) and push other items back.

Mr. Kelley MOVED to approve the Agenda for June 26, 2023 as amended; SECONDED by Vice-Chair Grant; APPROVED 7-0, Motion carries.

IV. Town Planner's Report

Nothing to report tonight.

V. Reports from Board Members who serve on Other Committees

Reporting from IWMAC: Vice-Chair Grant said IWMAC met this morning, no specific updates; continuing discussion on education campaign with possible monthly themes and focus on Sustainable September.

Reporting from Town Council: Councilor Hotchkiss said Council met July 17; appointments made on ZBA and IWMAC; two presentations: Gail Jablonsky on Budget and Jim Rice on Income Asset and Exemption threshold for blind, disabled, and elderly exemptions to property tax.

Reporting from Conservation Commission: Mr. Kelley said the Commission met and elected Erin Hardie Hale as Vice-Chair; discussed Pike Property, now Town-owned, adjacent to Thompson Conservation Land and abuts Lamprey River; discussed possibility of installing permanent binoculars adjacent to Horsehide Brook to view nesting birds. Licensed Professional Forester and member Nicholas Lanzer presented on health of New Hampshire forests; discussed Town Council goals.

VI. Public Comments – None

Councilor Friedrichs arrived at 7:08 pm.

VII. Review of Minutes (old):

VIII. 45 Main Street – Scorpions. Application for outdoor seating area on adjacent owned property; Graham Camire and Frank Silva, property owners.

Chair Rasmussen said smaller projects are eligible for Minor Site Review; State requires Public Hearing on site with over 10 days' notice. Scorpions Restaurant is on one site with outdoor seating on adjacent site, same owners. State Liquor License requires approval from Town to have outdoor seating with variance needed for accessory use on an adjacent parcel. Applied to ZBA for variance and also needs Site Review; okay for minor site with Board's approval.

Mr. Behrendt said Ms. Tobias is representative for Minor Site; Chair Rasmussen said if she is not back from vacation before August, he will appoint an alternate. Mr. Behrendt said the site review will be held after the ZBA Hearing; merging the lots would not be ideal but would get around zoning. Mr. Kelley asked about using the space between Scorpions' exterior wall and porch as an egress area; applicant Graham Camire said only for emergency exit.

Mr. Camire said he was before the Board years ago to put a deck behind the restaurant which was approved by the Town and authorized by State Liquor License. The grassy area with tables was approved during Covid but use was continued after Covid laws were pulled.

The Board agreed to proceed with Minor Site Review for 45 Main Street.

IX. 121 Technology Drive – Site Plan Application. Application for various improvements to the developed site (former Goss Building) including drainage, utilities, parking, loading, pedestrian ways, landscaping, and lighting. Brandon Kelley c/o 121 Technology/R. J. Kelley, property owner. Shawn Smith, R. J. Kelley, applicant. Earle Blatchford, Hayner Swanson, Inc., engineer. Map 204, Lot 2. Office Research Light Industry District. Recommended action: Accept as complete and set public hearing for August 9.

Shawn Smith, RJ Kelly Co. Senior Vice President of Development, said RJ Kelly has acquired an industrial office building at 121 Technology Drive with associated site improvements and has

applied for Site Plan Application review and acceptance with longer presentation and Public Hearing on August 9.

Mr. Smith said the site is huge; showed existing building and façade and main south-facing entry area to be improved and modernized as part of site plan improvements; still working through final landscape plans. The back of the building will be one of the tenants with a new dedicated entrance off northeast portion; old stucco material will to be replaced with new insulated metal panels, brought up to code and modernized with new loading dock on right side.

Mr. Smith showed the general overview of the property and modernization of front entry; building permit previously received for loading docks affixed to the building, all under Planning Board purview including moving a few utilities, drainage associated, and upgrading parking lot. Whole Site Survey is 147.98 acres; amount of disturbance is approximately 60,000 sq ft to be modified by DPW.

Chair Rasmussen said he had an issue with the land title plan showing prior owners as adjacent lot owners, not current owners. Mr. Smith said this plan was provided by prior ownership and will get an updated ALTA; abutters list was drawn from assessor's website. He said a bike rack is proposed for the primary entrance for UNH and bike rack in back will be replaced; 6 EV charging stations near new primary entrance in front of building; overall plan for 1400–1500 parking spaces. Councilor Friedrichs asked if bike parking would be covered and Mr. Smith said that was not proposed but some storage will be provided inside the building.

Mr. Smith said there is some vacancy remaining in the building in office spacing and there is an existent Bus Stop on site for on-demand only. Chair Rasmussen asked about reducing number of parking spaces; Mr. Smith said he spoke earlier with DPW re stormwater and impervious cover and possibility of eliminating some parking distant from the building; Ordinance requires about 940 spaces; exploring that as an option.

Mr. DeCapo said EV charging stations on the site account for half of 1% of total parking; study in 2021 reported 3% of new vehicle sales were electric and predicted to rise to 10% or more by 2025. Mr. Smith said part of our EV challenge is each station accounts for 50 amps of power with 6 spaces = 300 amps, and overall available building power is now limited with Madbury substation reaching capacity. He said certain tenancy does have a significant power demand in the building; once fully built out will have a better idea of our energy use; are bringing in natural gas to supplement and working with Until on gas heating.

Mr. Smith said pink areas on plan are loading docks previously approved for building permit; blue areas under purview of Site Plan Review. Installing 2 new grass island medians and one on right side bike rack location; drainage work to make sunken dock drain along with roof canopy. Retaining existing bus stop area as hardscape pavement; replace pavement lane with stone dust paths and gathering space where walkways come together. Initially proposed impermeable

pavers for landscape edging and new trees along side to right; to south new paving for tenant needing a single truck lane.

Mr. Smith said there will be enhanced maintenance of existing parking, increasing stall sizes to current city standards; pavement will need full depth reclamation as part of conversation with DPW re stormwater. Chair Rasmussen said there is a note for a proposed right-of-way and asked if it was for now or in the past. Mr. Smith said it was in the past and the Town never fully accepted it; approved but never built. Mr. Kelley said it is "not accepted and considered part of Map 204, Lot 2"; Mr. Smith said if you add 138.73 acres as shown on this plan plus 9.25 of right-of-way you get total acreage of 147.98 acres.

Vice-Chair Grant asked about waste management with multiple customers in building with different needs. Mr. Smith said existing compacter in rear serves 2 tenants well at the moment; exploring other locations which will be shown in final plan. Mr. McManus asked about a propane tank on the plan and asked about external generators; Mr. Smith said the tank will be decommissioned and removed to meet current regulations and he would get back to the Board re external generators.

Mr. Kelley asked that Mr. Smith review each area and said in Area 1 he does not see any electrical conduit lines and asked if that could be shown on the plans; retaining walls are being proposed as part of the loading dock which would need to be detailed out. He asked about an existing roof drain and Mr. Smith said there is an existing catch basin. Mr. Kelley said there is an 18-inch RCP which appears to go right up to the building; Mr. Smith said it is a drainage line that goes completely underneath the building coming out the other side with roof drain next to floor drain. Mr. Kelley asked what kind of curb would be used; Mr. Smith said bituminous sidewalk and curb with some granite.

Mr. Kelley asked about the gas line around the building perimeter in Area 2 and salvaging trees. Mr. Smith said he spoke with Until about rerouting to left; a lot going on in this area with water, drainage, and sewer lines and will do ground-penetrating radar there to locate the lines exactly and determine proper location; reserve this area as a small retention basin. All new tree wells are shown as circles on plan; as many trees as possible will be saved with substantial landscaping. Mr. Kelley said the slope in Area 4 needs to be under 5% or a rail would be needed; Mr. Smith said it is 3%. Councilor Friedrichs asked about a detectable warning panel; Mr. Smith said it is small bumps to alert the visually impaired they are coming to end of sidewalk and entering the street.

Mr. Kelley said the plan is great and asked when they intend to break ground. Mr. Smith said hopefully this year with finishing touches in the spring. He said they are already in demo inside the building and working with tenants on fit ups; with DPW an Industrial Wastewater Permit will come from 1 tenant using second entry; will pursue as part of Building Permit and occupancy requirements with pre- and post-treatment required; looking at 1 year to 15 months to have

everyone in. Mr. Kelley said the Board would want something showing safe egress on the site during construction.

Mr. Kelley asked Mr. Behrendt if the Site Plan/Application was complete. Mr. Behrendt said it is complete with the Board granting waivers from the checklist, and said he recommends granting all except with the understanding that applicant is working with DPW on stormwater and drainage. Councilor Friedrichs asked that the Board take the time to go through each waiver individually.

Waivers Requested:

Waiver for Zoning Overlay Districts: Aquifer Overlay District on the lot to NE, where ground is higher than the rest of project; waiver requested as this is outside the impacted area.

Waiver for Separate Topography Sheet showing all Wetlands provided; waiver no longer needed.

Waiver for Site not affected by other Overlay Districts: Not needed and eliminated.

Waiver for Public Works Drainage Information: Work is ongoing with DPW.

Waiver for Signage, Lighting, and Landscaping: Board agreed that information can be provided later; Chair Rasmussen said the waiver is for acceptance not for approval. Mr. Behrendt asked that the applicant provide another plan rather than making conditions after approval.

Waiver on Building Footprints/Uses on Abutting Properties: Councilor Friedrichs expressed concern about Conservation Land in proximity to the site and quality of stormwater. Mr. Smith said landscaping will be native species and all drainage from those areas will go into the Fire Pond flowing away from any conservation land. Chair Rasmussen said when stormwater is finalized it will negate any potential risk or hazard downstream. Board in favor of waiver for use/building footprints.

Waiver for Soil Types and Boundaries: Not needed as work is strictly on areas already impervious.

Waiver for Delineation of Trees and Open Areas: Mr. Kelley said there is a tree line on the plan and proposed new tree wells and this requirement has been met.

Building Information: Mr. Behrendt said renderings of elevations are provided and material details are not needed.

Existing Utilities: Mr. Kelley asked that the electric line profile be shown in plan view and asked that a note be provided for the water line giving depth. Councilor Friedrichs asked about snow storage; Vice-Chair Grant said it is not a tight lot where there would be a concern; Mr. Smith agreed to show snow storage areas.

Waiver for Drainage Study Calculation Impacting Analysis & Mitigation Plans: Mr. Behrendt said technically a drainage analysis is called for but it is unclear if DPW will demand a waiver for this; he recommended the Board provide a waiver on drainage with understanding the applicant will

provide all information requested by DPW. Councilor Friedrichs said ze would like to hear from the Conservation Commission in terms of impact analysis and mitigation before approving the waiver.

Mr. Behrendt said he would inform the Conservation Commission of the issues discussed by the Board and invite them to come to the Public Hearing. Mr. DeCapo asked what the procedure is if a waiver is granted and an abutter at the Public Hearing raises objections. Mr. Behrendt said the judgement of the Board is what is needed for a full review; abutter may question something but the Board makes the final judgement.

Mr. Smith said a modified plan will be provided and granting a waiver for stormwater tonight will not release us from our obligations to provide the information. Mr. Kelly said the Board would expect to see an erosion and sedimentation plan. Chair Rasmussen said it would be part of the Construction Management Plan; demarcation of limits for construction is done but strategy to protect vegetation is not yet in writing and may not be known until talking with Until.

Waiver for Signage: Board agreed to accept.

Waiver for Outdoor Lighting: Needed for parking lot and new entrance; height of fixtures and wattages needed; part of lighting plan to be provided later.

Chair Rasmussen MOVED that the Planning Board grant the waivers as discussed; SECONDED by Vice-Chair Grant; APPROVED 7-0, Motion carries.

Mr. Kelley MOVED that the Planning Board accept the Site Plan Application for 121 Technology Drive, application for various improvements to the developed site including drainage, utilities, parking, loading, pedestrian ways, landscaping, and lighting, Brandon Kelly c/o 121 Tech/RJ Kelly property owner, located on Map 204, Lot 2 in ORLI District, and set a Public Hearing for August 9, 2023; SECONDED by Vice-Chair Grant; APPROVED 7-0, Motion carries.

The Board discussed the possibility of a Site Walk; Mr. Smith said he is normally there every Wednesday and would like to be notified of anyone on the site who is not part of construction crew for security reasons. He said the Site Supervisor sits at the primary entrance and he will provide Mr. Behrendt with all contact information. Mr. Behrendt asked that interested parties contact him and he will forward emails to Shawn.

X. Review of Definitions in Zoning Ordinance. Review of the Zoning Ordinance as part of the zoning rewrite. *Recommended action:* Ongoing review.

Chair Rasmussen recommended the Board skip over discussion of Zoning definitions and move on to Other Business.

XI. Other Business

Discussion of new Statute about density of workforce housing and senior housing.

Chair Rasmussen said the first aspect is whether the Board feels everything that now applies to 55 and older now also applies to Workforce Housing or if anything needs to be modified in Zoning; second aspect has to do with requirement that adequate opportunities for Workforce Housing are provided in our Zoning. He asked the Board if there were any concerns the new law is going to cause a misappropriation of our Zoning.

Mr. Behrendt said, in other words, this is a risk where someone could double the number of units with a commitment to keep all units for sale at \$407,000 or less/rentals for under \$1,840 which are considered workforce housing and be able to double the bonus. He said workforce housing rent is based on a flat number of 60% of median income, affordable to a family of four. Councilor Hotchkiss said in some ways it makes it less likely that kind of development would be proposed: "housing developments in which more than 50% of dwelling units have less than 2 BRs shall not constitute Workforce Housing for purposes of this subdivision."

Chair Rasmussen said that means the bulk of units have to be 2-BR or bigger. Mr. Behrendt said the likelihood of 2-BR units in Durham being below \$1,840 is low to none, so not much risk of someone getting the density bonus for student housing. Councilor Friedrichs said except only a certain percentage of units are needed to qualify for workforce housing. Chair Rasmussen said only units rented as workforce housing get the double bonus; Vice-Chair Grant said units have to be of like construction and design. Chair Rasmussen said there is nothing the Board needs to take immediate action on.

Mr. McManus asked if the Town is out of compliance with the State right now on any ordinances; Chair Rasmussen said that is something the HTF is working towards. He said the Town got a grant for a study on housing supply coming due in October and we will be able to answer the question of what we have and what we are lacking in order to have an adequate level of Workforce Housing.

Chair Rasmussen said the second part of the discussion is whether an adequate opportunity to create Workforce Housing is provided in our Zoning. He said the only properties in town sold at that level are on Young Drive; suggesting only valid workforce housing is 2-family duplexes which we do not allow to be built right now. He asked if the Board should take action now or wait until challenged, and recommended allowing WF Housing in Rural Zones.

Mr. McManus said he felt the Board did have a problem and recommended a short-term solution thinking about density and transportation. Chair Rasmussen said that is what the HTF will be looking at which is 1 ½ years down the road. Mr. DeCapo asked Mr. Behrendt to summarize the legal requirement the Board is perhaps not in compliance with. Mr. Behrendt said first the Statute states a density bonus given for Senior Housing also has to apply to WF Housing and there should be some language in the ordinance consistent with that; secondly State Law says every city and town must provide adequate opportunities for WF Housing.

Chair Rasmussen said student housing does not qualify as the rents are too high. Mr. McClain asked how to make sure there is adequate opportunity without being able to regulate what people can charge. Chair Rasmussen said that is the whole purpose of coming to the Board and requesting the bonus as the Board can put conditions in the agreement. He said the HTF has someone working on providing this information to the Board next month, and because the Ordinance as written totally disallows 2-family dwellings he expects HTF will tell the Board what our Zoning has to provide for this to work; the housing supply report is expected in October.

Vice-Chair Grant said an easy fix would be to allow WF housing where Senior housing is now allowed and felt the sticking point for the Board is student housing and said the definition of WF housing is a renter or owner family. Mr. Behrendt said State Law defines WF housing as “housing which is affordable to a household with an income no more than 100% of median income for a 4-person household”. Mr. McManus said a potential developer would have to take a risk and have a way to assess that risk.

The Board continued their discussion; Mr. Kelley asked if the Board could create a WF Housing use and make it a duplex. Chair Rasmussen said it is a simple band-aid that meets the intent. Mr. McManus said the problem with WF housing will only get worse and the State is trying to cobble together incentives for towns to deal with it. Chair Rasmussen said some communities are working with State representatives to get the ruling reversed.

Richard Kelley left the Planning Board meeting at 10:06 pm.

Chair Rasmussen said the Board should not wait for the full HTF report and should have interim or quarterly updates. He said in the meantime the Board should work on adding a Workforce Housing definition to definitions update and may take a small action in October. Mr. Behrendt said zoning changes were not well received; need to create and find a community consensus about what people want. Chair Rasmussen said the first step is explaining and selling what the problem is.

XII. Review of Minutes (new): June 14, 2023

Mr. McManus asked that an important statement of his not covered in the minutes be added and Mr. Behrendt agreed to make that correction.

Chair Rasmussen MOVED to approve the Meeting Minutes of June 14, 2023 as amended; SECONDED by Mr. McManus; APPROVED 5-0 with 1 abstention; Motion carries.

XIII. Adjournment

Councilor Hotchkiss MOVED to adjourn the Planning Board Meeting; SECONDED by Vice-Chair Grant; APPROVED 6-0, Motion carries.

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Chair Rasmussen adjourned the meeting at 10:14 pm

Respectfully submitted,

Patricia Denmark, Minute Taker

Durham Planning Board