

These minutes were approved at the September 13, 2023 meeting.

**TOWN OF DURHAM
DURHAM PLANNING BOARD**

**Wednesday, August 23, 2023
Town Council Chambers, Durham Town Hall
7:00 pm**

MEMBERS PRESENT: Paul Rasmussen (Chair), Peyton McManus, Sally Tobias, Chuck Hotchkiss (Alternate Council Rep), Chris McClain (Alternate); Emily Friedrichs (Council Rep – Arrived Late)

ABSENT: William McGowan, Heather Grant (Vice Chair), Richard Kelley, Tom DeCapo (Alternate)

ALSO PRESENT: Town Planner Michael Behrendt

I. Call to Order

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

II. Roll Call and Seating of Alternates

Chair Rasmussen seated Chuck Hotchkiss for Emily Friedrichs and Chris McClain for Heather Grant.

III. Approval of Agenda

Chair Rasmussen added Review of Rules and Procedures (Bylaws) under Other Business.

*Chair Rasmussen **MOVED** to approve the Agenda for August 23, 2023 as modified; **SECONDED** by Councilor Hotchkiss; **APPROVED 5-0, Motion carries.***

IV. Town Planner's Report

Mr. Behrendt said ZBA attended Scorpions for a variance last night and decided a variance was not needed as seating is integral component of principal use; Minor Site was held a week ago and issues have been addressed. He said the Board will have a CU application from 121 Tech on September 13 for the gas line to be located in Wetland Overlay District, with extra meeting next week for WCOD definitions.

V. Reports from Board Members who serve on Other Committees

Reporting from Town Council: Councilor Hotchkiss said there was a meeting but he was not in attendance.

VI. Public Comments – None

VII. Review of Minutes (old):

VIII. *Public Hearing - 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 Kelly c/o 121 Technology/R. J. Kelly, property owner. Shawn Smith, R. J. Kelly, applicant. Earle Blatchford, Hayner Swanson, Inc., engineer. Map 204, Lot 2. Office Research Light Industry District. *Recommended action:* Final action

Chair Rasmussen said the Board has a Notice of Decision, Public Hearing is still open, and asked for public comment at 7:08 pm. Mathias Carpentier said he looked forward to another Energy Meeting with the applicant; Mr. Smith said he has not had time to schedule.

Chair Rasmussen said Councilor Friedrichs was concerned about the landscape plan and NOD says it will be provided before planting in the spring and Town Staff will review at that time. Mr. Behrendt said there is no list of plants or exact locations but landscaping elements are not being used here to mitigate elements of the plan. Chair Rasmussen said he is happy with the way it is set up now as administrative and a memo from Public Works states that stormwater has been met.

Mr. Behrendt said #2 should be incorporated as a condition under Terms & Conditions and modify that “the applicant has satisfied the criteria for a waiver”; #4 is already in #23 in NOD regarding maintenance but should replace NOD#23 with DPW#4; DPW#5 is new and prior to construction guarantee; DPW#6 erosion control already under 14d, replace with DPW#4 (more detailed); add DPW#7 about new Green Sno-Pro contractor; add DPW#8 as new precedent condition #12 on NOD re proximity of nitrogen to river. Mr. Smith said he was fine with DPW and NOD.

Councilor Friedrichs arrived at 7:43 pm.

Chair Rasmussen said the Board discussed Councilor Friedrichs letter and consensus is NOD seems sufficient for needs for this project regarding landscaping. Councilor Friedrichs said she felt uncomfortable about that. Chair Rasmussen said allowable trees and shrubs are listed in the Ordinance and it is simple for Staff to handle administratively. Mr. Smith said the Scope of Work is isolated to the sheet in front of you; further improvements are planned for a future time, once we have a better sense of full occupancy of the building.

Councilor Friedrichs said a lot of the information was not presented on the Energy Checklist that would normally be provided, and Mr. Carpentier thought of having another non-binding meeting with the applicant. Chair Rasmussen said they met the requirement with the meeting in July; applicant has committed to another meeting which will not affect the Board’s decision. Mr. McManus said the Energy Checklist looks mostly informational and non-binding. Councilor Friedrichs said the Energy Committee did not feel the requirement had been met. Chair Rasmussen suggested the Board discuss the Energy Checklist under Other Business.

Councilor Friedrichs added that lighting should be set at 2700 lumens to minimize its effect on fireflies. Mr. Smith said he was not sure how easy that would be using current fixtures and could agree for any new fixtures. Ms. Tobias said she was not comfortable making changes at the last minute and said updating Site Plan Regs is the place to put the effort. Chair Rasmussen said he did not want to put the Energy Committee and the Conservation Commission at odds.

Councilor Friedrichs announced a *Point of Order* stating that ze missed certain parts of the conversation on this project and asked that Councilor Hotchkiss vote in zir stead.

Chair Rasmussen MOVED to approve the Notice of Decision dated August 23, 2023 for 121 Technology Drive, various site improvements including drainage, utilities, parking, loading, pedestrian ways, landscaping and lighting; Brandon Kelly c/o 121 Technology/R. J. Kelly, property owner, Shawn Smith, R. J. Kelly, applicant, Earle Blatchford, Hayner Swanson, Inc., engineer; Map 204, Lot 2 in Office Research Light Industry District (ORLI) as amended during tonight's discussion; SECONDED by Ms. Tobias; APPROVED 5-0, Motion carries.

X. Other Business

Review of Energy Checklist as part of Site Plan Regulations:

Chair Rasmussen asked that the Board talk about the Energy Committee issue and the best way to move forward. Mr. Behrendt said the Energy Checklist was put together by the Energy Committee, but the Board adopted it and included it in both Site Plan Regulations and Subdivision Regulations that the applicant must submit it and must meet with a member of the Energy Committee, Audrey Cline, and myself though everything on the list is voluntary.

Chair Rasmussen asked Mr. Carpentier how he felt things could be improved. Mr. Carpentier said the Energy Committee felt there was not a full understanding of both the HVAC and energy use, and it seemed it was not something they could evaluate. Chair Rasmussen asked that the Energy Committee put together some thoughts on how it can be made better: update the checklist, add new questions that dig deeper, or decide if it is a procedural thing; bring that to Mr. Behrendt and work with the Board on trying to incorporate that into the Site Regulations.

Mr. McManus asked if the Energy Committee had a set of best practices or design principles. Mr. Carpentier said the committee is pushing to expand their portion of the town website to provide more educational resources for both residential and commercial. Mr. McManus suggested having something the applicant can review with the Committee ahead of time. Mr. McClain said there needs to be more definition of what you are looking for, what you want to get out of the checklist, and what applicants need to do. Mr. Behrendt said he would set up a meeting.

Review of Rules and Procedures:

Chair Rasmussen said Mr. Behrendt provided a draft of changes regarding noticing: Verified Mail instead of Certified Mail and dealing with how the Board notices. Councilor Friedrichs asked if there was any benefit to accepting the application as complete at the beginning of any Public Hearing and still send notice 2 weeks in advance. Chair Rasmussen said the application comes for the first meeting, Board can determine if everything is in order, and Notice will say accepting and holding Public Hearing at next meeting.

Mr. Behrendt said RSA says the Planning Board shall notify abutters, etc., of the date when application will be formally submitted. Chair Rasmussen said the Board then needs both submission and Public Hearing dates. Mr. Behrendt said the Board has done the first meeting as a presentation for acceptance so the Planning Board sees the application first and sets the Public Hearing date. He said he is just proposing that for site plan and subdivision applications the date for hearing be set up front expecting the application to be accepted and Public Hearing at the next meeting.

Chair Rasmussen said the Draft will be up for Public Hearing on September 13 with CIP. Mr. Behrendt said the second item is notices are now being sent by “verified mail” rather than certified mail; posting for Site Plan applications used to require notice in a newspaper and now requires posting on the website; the Town Council sets the fees.

Chair Rasmussen set the Public Hearing for Draft Rules & Procedures for September 13, 2023.

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

Restaurants; Restaurants, Carry-Out – Chair Rasmussen asked if the Board needed to define 2 types of Restaurants in a post-covid world. Councilor Friedrichs said carryout restaurants are not a permitted use in the Churchill District; note to change Table of Uses. Chair Rasmussen said if the Board takes out carryout and modifies Restaurant to “primarily within the principal building”, then all places that prepare food become restaurants. The Board discussed the definitions and language and decided to strike *Carry-Out Restaurants* and *Cafeterias*.

Chair Rasmussen said they could strike “consumed” and just say “prepared and served” food on site; he said “and” is “and/or” in a series so it could be prepared *or* served. Mr. McManus questioned that and said he would never consider that something he has known the meaning of his whole life could be structurally changed by another reference. He said it is not clear the shortcut is being invoked and is confusing to readers. Chair Rasmussen said all the work the Board has done over the last 6 months has been with that in mind.

Retail Store, Medium Sized; Retail Store, Small Sized – Mr. Behrendt said in Churchill District medium is CU and small is allowed. The board corrected small stores to “less than 5,000 sq ft”, no changes to medium stores; Mr. Behrendt said “engaged in selling goods” is not needed.

Rooming House – Already taken care of in earlier discussion.

Saw, Temporary – No issues or comments.

Schools – Under Educational Facilities.

Screening – Deleted “more sensitive”; removed 2nd sentence; kept 3rd and 4th sentences; added “also see buffering and buffers”.

Seasonal High-Water Table – Stock definition deleted.

Senior Care Facility; Senior Housing – Reference *Nursing Home* and *Day Care Facility*; add pursuant to RSA for licensing. Robin Mower’s comment re “housing for older persons” versus senior; suggested “age-restricted housing”.

Septage – No changes.

Setback; Setback Area – Change “designated line or point” to “reference line or point”.

Sewage – No changes.

Shall – No changes.

Shore Frontage – Two separate words; delete everything in blue, lot line is a reference line period. Mr. Behrendt said in the Table of Dimensions there is a minimum shore frontage of 200 ft in residential zones where lots are subdivided. Chair Rasmussen said all the definition is saying is frontage is drawn in a straight line from point A to point B where property hits the water. Councilor Friedrichs said a 200-ft stretch of shore frontage can be cooperatively owned and shared. The board agreed to delete Moat Island Pond and Durham Reservoir from the list of water bodies.

Mr. McManus raised an issue with measuring shore frontage; the Board gave reasons of water quality, fairness and consistency, issues with septic on properties too close together and solves compliance problems later on.

Short-Term Rental – Councilor Friedrichs raised the issue of the challenge to enforce “not more than 3 sleeping rooms” brought up by Audrey Cline and felt “not more than 3 unrelated” would be simpler. Chair Rasmussen said that is zone-specific and does not apply to Rural Zone; he suggested asking Councilor Welsh to contact Audrey Cline to straighten out this issue.

Sidewalk – Deleted “established” before paved; Ms. Tobias said a sidewalk is along a public street for safety reasons, which may or may not be paved. Can be curbed or set off street; delete “typically a public street”

XII. Review of Minutes (new): June 12, 2023 and June 26, 2023

Mr. McManus MOVED to accept the Planning Board Minutes of July 12, 2023; SECONDED by Ms. Tobias; APPROVED 4-0 with 1 abstention, Motion carries.

Chair Rasmussen MOVED to accept the Planning Board Minutes of July 26, 2023; SECONDED by Mr. McManus; APPROVED 5-0, Motion carries.

XIII. Adjournment

Mr. McClain MOVED to adjourn the Planning Board Meeting; SECONDED by Mr. McManus; APPROVED 5-0, Motion carries.

Chair Rasmussen adjourned the meeting at 9:28 pm

Respectfully submitted,

Patricia Denmark, Minute Taker
Durham Planning Board