

*These minutes were approved at the October 25, 2023 meeting.*

**TOWN OF DURHAM  
DURHAM PLANNING BOARD**

**Wednesday, September 27, 2023  
Town Council Chambers, Durham Town Hall  
7:00 pm**

**MEMBERS PRESENT:** Paul Rasmussen (Chair), Heather Grant (Vice Chair), Sally Tobias, Chuck Hotchkiss (Alternate Council Rep), Tom DeCapo (Alternate); Richard Kelley and Emily Friedrichs (Arrived Late)

**ABSENT:** William McGowan, Peyton McManus, Chris McClain (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 Tom DeCapo for Bill McGowan.

**III. Approval of Agenda**

***Councilor Hotchkiss MOVED to approve the Agenda for September 27, 2023 as presented; SECONDED by Vice-Chair Grant; APPROVED 4-0 with 1 abstention, Motion carries.***

**IV. Town Planner's Report**

Mr. Behrendt said for October 11 there is a Lot line adjustment off Piscataqua Bridge Road and presentation re Planned Unit Developments (PUD); Harmony Homes applying for CU for a Daycare Center on Route 4; UNH starting Master Plan, has \$20 Mil grant from NOAA for a building in West Edge before PUD in place; UNH Land Use Committee (part of UNH 10-year plan) looking for PB representative.

Chair Rasmussen agreed to be the PB representative to the UNH Land Use Committee.

*Richard Kelley arrived at the Planning Board Meeting at 7:05 pm.*

**V. Reports from Board Members who serve on Other Committees**

Reporting from the Conservation Commission: Mr. Kelley said the Conservation Commission did not meet this month.

Reporting from Town Council: Councilor Hotchkiss said the Town Council cancelled last meeting; toured the Olson Center.

Reporting from IWMAC: Vice Chair Grant said IWMAC is working on awareness recycling; presentation re composting at Library; October 25 Paige Wilson of DES presents on food waste compatibility.

Reporting from the Housing Task Force: Chair Rasmussen said the HTF has not met.

Reporting from the Agricultural Commission: Mr. DeCapo said the Ag Commission has not met.

**VI. Public Comments – None**

**VII. Review of Minutes (old): August 23, 2023**

***Councilor Hotchkiss MOVED to approve the Planning Board Minutes of August 23, 2023 as presented; SECONDED by Ms. Tobias; APPROVED 3-0 with 3 abstentions, Motion carries.***

**VIII. Request for Extension – Gerrish Drive Subdivision**. Parcel at 91 Bagdad Road. Request for extension to meet precedent conditions for approved 18-unit subdivision. The subdivision was approved on October 26, 2022, with a deadline of October 26, 2023. Marti and Michael Mulhern, property owners. Recommended action: Approval of extension to October 26, 2024.

Chair Rasmussen said this can be handled administratively as decision is still under appeal with Superior Court and nothing is being done with the project; applicants requesting a one-year extension and suggest Board grant an extension to one year after the final court decision; last appeal would be to the State Supreme Court.

***Chair Rasmussen MOVED that the Planning Board approve the extension for Gerrish Drive Subdivision to be one (1) year after final Court Decision regarding appeal; SECONDED by Mr. Kelley; APPROVED 6-0, Motion carries.***

Emily Friedrichs arrived at the Planning Board Meeting at 7:11 pm.

Councilor Friedrichs mentioned incorporating extensions for matters tied up in court into our changes for definitions. Mr. Behrendt suggested writing in Subdivision Regulations that timeframe to meet precedent conditions is automatically extended to 1 year after final court decision; Councilor Friedrichs recommended waiting until appeal period is closed; Ms. Tobias suggested “in the event something is challenged in court”.

**IX. Public Hearing - Technology Drive – WCOD Conditional Use**. 121 Technology Drive. Conditional use for new gas line in the Wetland Conservation Overlay District (WCOD) to serve existing office, research, and light industrial building. R. J. Kelly/121 Technology LLC,

property owner. Christal Ripley, Unitil, applicant. Stephen Herzog, VHB, engineer. Map 204, Lot 2. Office Research Light Industry District. Recommended action: Final Action.

Mr. Kelley asked what they would be doing with excavated soil during installation, Chair Rasmussen said it would all be going under pavement.

Christal Ripley of Unitil Gas Company said it is planned to be under pavement but will also be in grass and they will make sure excavated material is outside wetland buffer zones. Mr. Kelley recommended including a provision in Draft Notice of Decision that measures will be implemented to prevent any runoff from entering the WCOD; Ms. Ripley said plans included installing a silt sock.

Councilor Friedrichs said CU criteria #3 for WCOD, states that the site performs the functions of the wetland and buffer to extent workable and includes planting of native/naturalized vegetation which seems appropriate here. Ms. Ripley said the plan was to replace pavement after installing the gas line under the roadway and was informed by RJ Kelly that there was no need to do restoration here as it is part of their overall project. Councilor Friedrichs said normally with an applicant, the board would ask them to replant the area between a road and the wetland with native vegetation, and it is unusual that the applicant wouldn't address the landscaping. Maybe there is a way to include, as a condition of approval, that the owner later address landscaping.

Chair Rasmussen said the other site plan shows that area will be reworked in spring. Councilor Friedrichs said the WCOD criteria are laid out specifically that buffers be restored, and this needs to be addressed in this approval. Ze said our criteria no longer says a site must be restored to existing condition – that was the old WCOD criteria. The new criteria require that the site be restored to perform the function of a buffer and wetland. There was a long discussion by the Board about what is appropriate in this situation.

Shawn Smith of RJ Kelly Co. said, in his opinion, planting a 4-ft strip of native plants along the road and never mowing them again is counterproductive to the project because it is too narrow and small of a native planting area. He said gas mains do not have a deep trench box and would be 18 in with 2 pieces of pipe. Ms. Ripley said Unitil usually has 36 in of cover and the trench is 18 in wide, 2 ft at most. She said all along the road they will be in the paved area and will install a silt sock as a buffer to wetland area with no sediment contamination.

Chair Rasmussen said the issue is that the packet plan does not look anything like what Mr. Smith is showing on the screen. Mr. Behrendt said the wetland overlay district is limited and squeezed between wetland and entry drive; there is erosion control and not really room to plant there. Mr. Smith said he would direct Unitil to stay out of the Wetland Buffer. Vice-Chair Grant questioned what wetlands are being asked by the Board to be replaced.

Chair Rasmussen said he will have trouble approving the application as what is in the application is not representative of work being done and better detail is needed. Ms. Ripley said the gas line will be going down the road until the turn onto 121 Tech property and pictures showing all markings were forwarded to Mr. Smith. Mr. Smith said the work is outside the scope of this conversation and was already approved under the plan shown.

Chair Rasmussen said the Board cannot approve without an appropriate plan and the only plan in the packet is a preliminary administrative review from June 30 with few colored lines submitted by VBH. Mr. Smith said he needs the gas line and did not realize VBH submitted a plan. Mr. Behrendt said work outside of the buffer can be started and Chair Rasmussen said the road goes through the buffer. Councilor Friedrichs asked that a condition be put in that the gas trench will remain under existing pavement area for entire scope of wetlands buffer and the Board agreed.

***Mr. Kelley MOVED to open the Public Hearing for Technology Drive – WCOD Conditional Use; SECONDED by Councilor Friedrichs; APPROVED 6-0, Motion carries.***

Chair Rasmussen opened the Public Hearing at 7:58 pm.

Chair Rasmussen asked that the Board clarify the wording. The Board discussed the wording and agreed to keep the gas line under existing pavement.

All Board members in favor of closing the Public Hearing 6-0.

Board agreed to the following language: *“Within the WCOD, gas line will be installed under existing pavement the entire length of Technology Drive to North end of intersection of entry drive. BMP measures will be installed and maintained to prevent sediment-laden runoff from any temporary stock-piled material from entering the WCOD.”*

Mr. Behrendt said there is also a provision in the NOD that: *no material will be placed within the 75-ft buffer except for temporary construction of the pipeline*; they are also adding erosion control as a precaution per Conservation Commission.

**WCOD CU Criteria:**

1. No other design location on parcel for proposed project outside WCOD; Board agreed it was reasonable and workable.
2. Design, construction, maintenance, operation of proposed structures within Wetland Buffer will minimize soil disturbance and address water quality to extent workable; Board agreed.
3. Mitigation/restoration activities in the area being disturbed will allow the site to perform function of Wetland Buffer to extent workable; Board found did not apply.

4. Proposed project will not have substantial adverse impacts to abutters; Board agreed no issues.

**Standard CU Criteria:**

1. Site Suitability: Utility line going under road to existing building.
2. External Impacts: All underground, no impacts on abutting properties.
3. Character of Site Development: Everything underground.
4. Character of Buildings & Structures: No buildings or structures.
5. Preservation of Resources: N/A
6. Proposed Use of Site and Related Development: N/A
7. Property Values Impact: N/A
8. Fiscal Impact: No impact on Town.

***Vice-Chair Grant MOVED that the Planning Board approve the Conditional Use for 121 Tech Drive CU for gas line in WCOD to serve existing office research and light industry building, RJ Kelly 121 Tech Drive LLC, property owners and Utilil applicant for the Notice of Decision as amended; SECONDED by Councilor Friedrichs; APPROVED 6-0, Motion carries.***

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

Vice-Chair Grant asked that the Board consider adding Student Housing as a definition which could then be narrowed to be approved in a specific zoning district and be in Table of Uses. She said it is a business model and it is important to understand that. The Board discussed language and asked that draft language be put together by Vice-Chair Grant and Ms. Tobias.

Substantial Damage: References Article 8. Board found term used in ordinances and other definitions; Substantial Improvement term used in Flood Hazard Overlay District; Board agreed to strike both terms from definitions.

Surface Parking: Chair Rasmussen said a performance standard does not belong in definitions unless Board goes back to defining Steep Slopes. The Board agreed to keep the Surface Parking definition in blue including a grade definition, and agreed to add separate Steep Slopes definition. Councilor Friedrichs provided a definition of steep slopes from the Statistical Guide to Innovative Land Use authorized by RSA.

Theater: Reference to commercial needed; change dramas and musicals to “live entertainment” or “live performances”.

Toxic or Hazardous Materials: Listed under prohibitive uses for Aquifer Protection Overlay District and flood overlay; reference erosion services rules and leave out list; Board agreed.

Trail: Used for CU in WCOD; footpath already added; Board agreed to DES definition.

Treated Soil: No changes.

Trucking and Distribution Facility: Board agreed to delete definition.

Understory: Board deleted.

Unrelated Occupants: Board agreed to keep definition and delete Unrelated Household.

Unsuitable Area: No changes.

Useable Area: Part of Conservation Subdivision; use “specific purpose(s)”.

Variance: Variance deviation must specify criteria per ZBA; allows a “use not otherwise permitted by the Zoning Ordinance” or “determined by ZBA”; reference Article VIII.

Vernal Pool: Definition straightforward.

Veterinary Clinic/Grooming: Under performance and design standards and under CU; Board agreed definition not needed, deleted.

*Richard Kelley left the Planning Board meeting at 9:30 pm.*

Warehouse: No changes.

Warehouse/Mini Storage: Changed to Self-Storage Facility.

Worker Dependent Structure: Definition deleted.

Wetland: Definition uses standard Wetland Science terms; no changes.

Wholesale Sales: Board deleted definition.

Workforce Housing: Standard definition; Mr. Behrendt to rewrite for next meeting.

#### **XI. Other Business**

#### **XII. Review of Minutes (new):**

#### **XIII. Adjournment**

***Ms. Tobias MOVED to adjourn the Planning Board Meeting; SECONDED by Mr. DeCapo; APPROVED 5-0, Motion carries.***

Chair Rasmussen adjourned the meeting at 9:40 pm

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Respectfully submitted,

Patricia Denmark, Minute Taker

Durham Planning Board