

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

**TOWN OF DURHAM
DURHAM PLANNING BOARD**

Wednesday, November 8, 2023

Town Council Chambers, Durham Town Hall

7:00 pm

MINUTES

MEMBERS PRESENT: Paul Rasmussen (Chair), Heather Grant (Vice Chair), Richard Kelley, Peyton McManus, Sally Tobias, Chris McClain (Alternate), Tom DeCapo (Alternate), Chuck Hotchkiss (Alternate Council Rep),

ABSENT: William McGowan, Emily Friedrichs (Council Rep)

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 Tom DeCapo for Bill McGowan and Chuck Hotchkiss for Emily Friedrichs as Council Rep.

III. Approval of Agenda

Mr. Kelley MOVED to approve the Agenda for November 8, 2023 as amended; SECONDED by Councilor Hotchkiss; APPROVED 7-0 Motion carries.

IV. Town Planner's Report

Mr. Behrendt said the next meeting will be November 29 to discuss a second pass on Zoning rewrite definitions. Toured Portsmouth Navy Yard Historic District begun in 1800; 8,000 employees today of which 700 are Navy personnel; \$1 Billion worth of work yearly on nuclear submarines. Site Walk today at 81 Dover Road; new Planning Board Alternate: Erika Naumann Gaillat.

V. Reports from Board Members who serve on Other Committees

Reporting from Town Council: Councilor Hotchkiss said the Council approved new Planning Board Alternate member Erika Naumann Gaillat; had presentation from Trustees of Trust Funds and Cemetery Committee; \$20,000 grant for rehabilitation of Bickford-Chesley House at Wagon Hill; finished revised charge to HTF; approved next step in Durham joining Community Power Coalition of NH.

Reporting from Conservation Commission: Mr. Kelley said the Commission did not meet but he neglected to say Commission voted unanimously for Erin Hardy Hale to represent the Commission on the same UNH Master Plan Committee.

Reporting from IWMAC: Vice-Chair Grant said the Committee discussed how to draw more attention to all initiatives to reduce waste. For this year looking at getting UNH students to do more on social media side; presentation held at Library on composting; presentation at Library November 15 by NH Health Action Committee on health impact of climate change.

VI. Public Comments – None

VII. Review of Minutes (old):

VIII. Fitts Farm – Shed Addition. Request for waiver from site plan review for 24 square foot (4 feet x 6 feet) addition to existing mail kiosk for storage of materials. Marden Way just off Emerson Road. Requested by Robert Dusinberre, Maintenance Manager, Fitts Farm. If the waiver is not granted, then staff requests an okay to review the proposal under the Minor Site Review. Tax Map 104, Lot 21. Residence A District. Recommended action: Response to waiver (or minor site) request.

Chair Rasmussen said this is effectively a modification to a Site Plan; Mr. Behrendt said Fitts Farm was approved as a subdivision, but if there is common land where there will later be construction it is treated as a Site Plan. Chair Rasmussen said there should be some threshold where projects come to the Board or not and said there is an existing screened kiosk here with a small addition which could have been addressed administratively, and asked that the Board discuss this under Other Business tonight.

Mr. Kelley MOVED that the Planning Board grant the request for waiver from a Site Plan Review for a 24 sq ft (4"x6") addition to an existing mail kiosk for storage of materials; located at Marden Way just off Emerson Road, Tax Map 104, Lot 21 in Residence A District; SECONDED by Mr. DeCapo; APPROVED 7-0 Motion carries.

IX. Public Hearing - 81 Dover Road – Community Center. Conditional use application from Arts in Reach to establish a community center for arts programming. The nonresidential program serves youth 11 to 18 in school, after school, during school vacations, on weekends, and during the summer. The existing single-family house and barn will be converted for this purpose. Jennifer Minicucci, Executive Director, applicant. Todd Cain, property owner. Tax Map 209, Lot 7. Office Research District. ***NOTE:** This application is for conditional use only. Submission and approval of a site plan application would be required in order to use the site as a community center. Recommended action: Final action.

Jennifer Minicucci, Executive Director of Arts in Reach, said they wish to establish the property at 81 Dover Road for arts programming for gender-expansive youth and girls ages 11-18; programs are offered at no cost at times kids may be unsupervised and includes: literary, performing arts, and visual arts to help build protective factors, life skills, and confidence for students to envision an exciting future for themselves.

Mr. McManus asked when the organization was formed, the number of years operating, and number of kids in the program. Ms. Minicucci said the organization was founded in Durham in 1997, became a 501c(3) non-profit 2 years later and has served approximately 2,200 kids. She said currently they are a floating organization with offices in New Castle and programming held in rental spaces in the Rochester-Portsmouth area. Hours of operation: after school 3:30-6:00 pm, summer 10 am-2 pm, and during school vacations with 15 kids at a time serving 127 kids/year; 5 staff members: 4 full-time and 1 parttime, as well as other contracted people.

Ms. Minicucci said there is only 1 program currently, but they eventually hope to offer 2 programs for both age groups 11-13 and 14-18 at the same time with renovation of the barn. Vice-Chair Grant raised the issue of traffic and asked about a transportation plan; Ms. Minicucci said there are 2 passenger vans, one for transporting art materials and one for bringing the teens; after school 75% of kids come by van with the rest dropped off by parents or carpool. Currently there are 3-4 cars at the program for parents and 2 vans. She said virtually all programming is held indoors but she would like to allow students to have use of outdoor space.

Ms. Minicucci said Arts in Reach has been around for 26 years and said since Covid there is a need to be more trauma informed. Currently kids are being brought to unfamiliar locations where they are not able to have a sense of safety and security and parents are reluctant to sign up; research has been done around kids having a sense of place and identity to build confidence and be free to do the creative work. She said this is about serving our kids the best way possible and serving more kids more often when they need it.

Ms. Tobias MOVED to open the Public Hearing for 81 Dover Road; SECONDED by Mr. Kelley; APPROVED 7-0 Motion carries.

Chair Rasmussen opened the Public Hearing for 81 Dover Road at 7:29 pm.

Leonie Meijer said she lives next door at 85 Dover Road and went on the Site Walk with the Planning Board. She said she is absolutely in favor of the Arts in Reach mission but is very concerned about traffic and having 30-40 kids at the same time next door, with noise, and lack of privacy. She said traffic could cause delays for the Durham Police Station and she is worried about devaluation of her property.

Bonnie McDermott of 80 Dover Road said we are not in favor of this community center for the following reasons: inadequate vehicular and pedestrian access for intended use, busy traffic on

Route 108, no sidewalks, septic system is a concern, and no taxes will be paid to the Town of Durham.

Beth Olshansky spoke in support of this CU Permit and said program directors have put a lot of thought into minimizing impact on the community. Additional traffic will be minimized with vans and carpooling, and AIR will be a great resource of which she is highly in favor.

Becky Kates said she has been a Durham resident for 8 years and moved back to the community because of the Town's reputation for being progressive; she has 2 young girls and is excited for Arts in Reach to come to this Town. She said non-profits have to raise funds and depend on a nurturing community to bring all those opportunities to young girls and gender-fluid teens and she hoped the Planning Board would recognize the uniqueness of this organization.

Janice Aviza said this property is apparently now under contract between the applicant and owner, and she asked if the property would be tax exempt if accepted. Mr. Behrendt said this is a non-profit and if they meet certain requirements, it will be exempt from property taxes and may or may not need to make a payment in lieu of taxes. Ms. Aviza said she did not feel this organization has the depth and breadth for such a trade-off.

Katyanne Zink said she is a Somersworth resident, is on the Board of Directors of Arts in Reach, and participated in AIR as a teen 1998-2000 which was a magical experience for her as a teenager. She said she continues to participate in AIR as a volunteer and said there are 2,200 of us out there now doing this.

Sara Chapman of Nottingham said she was in the AIR program for 3 or 4 years as a child and the impact of that experience is hard to put into words and provided her with a sense of belonging and a voice. As far as traffic, AIR is very aware and conscious of their impact and very creative with solutions. She said it is hard to hear taxes are more important than the lives of our youth who do not always have a place where they feel they matter and said AIR creates a better future for the wider community around us.

Cliff Zetterstrom, of 80 Dover Road, stated that he is not saying the program is not worthwhile but that the location is not going to work. Traffic between 3-4 pm is currently backed up from the light at the bridge to the Police Station and from the light to downtown. He said only a handful of residents live there now and if this proposal goes through a light will probably be eventually installed there. He said traffic has become horrendous and you cannot go South during those hours; a traffic study needs to be done to look into it more carefully.

Laurence Esmonde of Kensington, NH said he has a child in AIR and addressed 2 things that were said this evening: (1) people saying, "art is nice", but art is the medium in which this organization works and the way they reach out to kids who are really struggling, some in very material ways, and gives them some place where they can feel safe and begin to work things out. He said he has

not seen any other organization who is doing this for this group of kids. (2) Attended an AIR event tonight and there were 4 cars and 1 van which will not make a significant difference on that road.

Ron James of 89 Dover Road said it is a good idea but not a good location: narrow driveway and not enough space for turning/parking, heavy traffic area with no sidewalks. He said people who live on that corridor would rather see it someplace else.

Liliana Mangan, Program Coordinator for AIR, said as a floating organization they often have to share space with other people so expectation for teens is strict and they cannot be interruptive. She said right now AIR is trying to expand service opportunities for towns they work with; AIR will not interfere with your life but will just be a benefit.

David Greene said he is an attorney in Dover and on the Board of Directors of AIR. He said traffic for years in that area has not been great, and AIR does not intend to any have a significant impact on traffic or on neighbors. He said non-profits are a benefit to communities and AIR would expect to be a benefit to the Town of Durham.

Mr. Kelley said normally the applicant is given an opportunity to respond to public questions and concerns. Ms. Minicucci said she appreciates the Board thinking about this application seriously and carefully and said AIR has every intention of being a good neighbor. She said she has rented spaces everywhere with no complaints and it does not benefit AIR in any way to create animosity with anyone in the neighborhood. She said we are very creative problem solvers and can work with our community partners to solve traffic issues, and she is not sure they will have a more significant impact on the community than other approved zoning uses.

Ms. Minicucci said financial impact is difficult to talk about but adverse childhood experiences also involve financial costs to the community, and AIR knows some things that can be done to counterbalance that and ensure a positive impact. She said there is a huge financial benefit to giving these kids the resources they need to be successful in the future. She said taxes on that property now are probably \$6,000 and she cannot imagine not giving those kids a place to be when they are otherwise unsupervised and highly prone to high-risk behavior at those ages.

Chair Rasmussen explained that when the Board evaluates CU criteria, the impacts of this application will be compared to those otherwise permitted for that property.

Chair Rasmussen MOVED to close the Public Hearing for 81 Dover Road; SECONDED by Vice-Chair Grant; APPROVED 7-0 Motion carries.

Public Hearing for 81 Dover Road was closed at 8:11 pm.

Mr. McClain said he assumed the applicant would need approval from NHDOT regarding traffic. Mr. Behrendt said as part of the Site Plan review, they will need DOT approval. Mr. McManus

asked if DOT would also be responsible for the sidewalks; Mr. Kelley said with a major capital improvement DOT may consider sidewalks.

General Condition Use Criteria

1. Site Suitability: Mr. Kelley asked for a description of how the use was determined; Mr. Behrendt said it is first determined if a proposal is permitted by CU, then every permitted use in that zone is gone through to make a judgment; no uses matched exactly with closest match a Community Center. Chair Rasmussen said the applicant could go to the Zoning Board and challenge this use.

Board discussed traffic and vehicular access, noted septic would need to be updated for Site Plan review; discussed a capacity consideration with some sort of limit on growth and Board agreed it should be done as part of the Site Plan review and not part of use determination. Mr. McManus said the organization appears to be strong and he would hate to arbitrarily insert a limit and would want to know all of the situation as well a reason for limiting.

2. External Impacts: Mr. Behrendt listed other permitted uses in the Office Research District and said this zone is intended for institutional office type semi-commercial use. Vice-Chair Grant said this has more visual appeal than the current home. The board agreed there is a very limited external impact compared to other possibilities. Mr. Kelley added that the traffic there is not generated by the properties along that corridor.

3. Character of Site Development: Board agreed layout and design of site is not changing and only adding a parking area.

4. Character of Buildings & Structures: Not changing; neighborhood is not what Town wants area to be according to our zoning.

5. Preservation of Resources: None.

6. Impact on Property Values: Board agreed there were no negative impacts; strong organization with buildings staying in place.

7. Availability of Public Services & Facilities: Property has its own sewer and water well; look at solid waste disposal during Site Plan review.

8. Fiscal Impacts: No evidence provided for negative fiscal impact, but proposed use will have a positive impact on the Town of Durham; tax bill for property last year was \$6,560.

Chair Rasmussen said the positive impacts jumped off the page, letters were heart-felt and sincere, and Durham is fortunate to have an organization like that. Mr. McClain said the benefit cannot be quantified.

Councilor Friedrichs joined the meeting on Zoom at 8:54 pm; not seated for meeting.

Mr. Kelley MOVED that Planning Board approve the CU application from Arts in Reach to establish a community center for arts programming; the non-residential program serves 11-18 year olds in school, after school, on weekends and during summer; existing single-family house and barn will be converted for this purpose, Tax Map 209, Lot 7, Office Research District; SECONDED by Ms. Tobias; Roll Call Vote: Richard Kelley-aye, Chuck Hotchkiss-aye, Paul Rasmussen-aye, Heather Grant-aye, Sally Tobias-aye, Peyton McManus-aye, Tom DeCapo-aye; APPROVED 7-0 Motion carries.

- X. ***Public Hearing – Proposed amendments for deadlines.*** Proposed amendments to the Site Plan and Subdivision Regulations to provide that when a Planning Board approval is appealed to court, the timeframe to meet precedent conditions automatically extends to one year after final court disposition. *Recommended action:* Adoption of amendments.

Mr. Behrendt explained that the purpose is for a proposal in cases where an approval is appealed to Court where the timeframe to meet precedent conditions is automatically extended to one year after final Court disposition. Chair Rasmussen said this is saying the clock does not start until they are out of the Court system.

Mr. Kelley MOVED to open the Public Hearing for Proposed Amendments for Deadline; SECONDED by Mr. DeCapo; APPROVED 7-0 Motion carries.

There being no members of the public wishing to speak on this topic:

Mr. Kelley MOVED to close the Public Hearing for Proposed Amendments for Deadlines; SECONDED by Mr. DeCapo; APPROVED 7-0 Motion carries.

Vice-Chair Grant MOVED that the Planning Board approve the Proposed Amendments for Deadlines to Site Plan and Subdivision Regulations to provide that when a Planning Board approval is appealed to court, the timeframe to meet precedent conditions automatically extends to one year after final court disposition, as explained; SECONDED by Councilor Hotchkiss; APPROVED 7-0 Motion carries.

XI. Other Business

Discussion of Fitts Farm item: Chair Rasmussen asked if the Board wanted to set a threshold on what items come to us. Mr. Behrendt said he could first call the Chair and discuss and report afterwards. Board agreed.

XII. Review of Minutes (new): October 11, 2023

Chair Rasmussen MOVED to accept the Planning Board Meeting minutes of October 11, 2023; SECONDED by Mr. McManus; APPROVED 6-0 with 1 abstention, Motion carries.

XIII. Adjournment

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

Chair Rasmussen adjourned the meeting at 9:02 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker
Durham Planning Board