

*These minutes were approved at the January 10, 2024 meeting.*

**TOWN OF DURHAM  
DURHAM PLANNING BOARD**

**Wednesday, November 29, 2023  
Town Council Chambers, Durham Town Hall  
7:00 pm**

**MEMBERS PRESENT:** Paul Rasmussen (Chair), Sally Tobias, Richard Kelley, William McGowan, Heather Grant (Vice Chair), Tom DeCapo (Alternate), Chuck Hotchkiss (Alternate Council Rep), Chris McClain (Alternate), Erika Naumann Gaillat (Alternate); Peyton McManus (via Zoom); Emily Friedrichs (Council Rep – Arrived Late)

**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 as Council Representative.

**III. Approval of Agenda**

***Mr. McGowan MOVED to approve the Agenda for November 29, 2023 as presented; SECONDED by Councilor Hotchkiss; Roll Call Vote: Richard Kelley-aye, Chuck Hotchkiss-aye, Paul Rasmussen-aye, Sally Tobias-aye, Heather Grant-aye, Bill McGowan-aye, Peyton McManus-aye; APPROVED 7-0, Motion carries.***

**IV. Town Planner's Report**

Mr. Behrendt said the only meeting in December is the next Planning Board meeting December 13, 2023: Agenda will be continuing definitions and Amendment for Tideline Public House; ATO Fraternity at 18 Garrison has broken ground; Open House tomorrow re Madbury Road Complete Streets (5:50-7:00 pm Library), design team will be there to answer questions. Town Assessor Jim Rice retiring end of February; tonight is last night for DCAT Operator Richard Belshaw.

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

Reporting from Town Council: Councilor Hotchkiss said Town Council met November 20; discussed Report of External Auditors; presentation/discussion with Strafford County Commissioner and County Administrator; completed review of Town Budget for coming year.

Reporting from IWMAC: Vice Chair Grant said the Committee met November 15; discussed proposal for bulky waste disposal to eliminate curb pickup and focus more on reuse; potential for drop-offs at Transfer Station; discussion on Oyster River High School doing more recycling.

Reporting from AG Commission: Mr. DeCapo said the AG Commission met November 13, discussed next steps assessing cooperative food production in town; spreadsheet on how to apply Zoning to livestock; best year in honey production; discussed general directional purpose going forward.

Emily Friedrichs arrived at 7:08 pm.

Reporting from Conservation Commission: Mr. Kelley said the Commission did not meet but there were a number of emails; Mr. Behrendt said the meeting date will be December 11 or December 18, 2023.

Reporting from Energy Committee: Councilor Friedrichs said most recent meetings were dedicated to establishing goals for next year; December presentation of current owners of the Lee Grid and whether it makes sense for the town to purchase that grid, complicated by net-metering proposals to lower rate; Town Council to send NH SAVES letter to PUC re funding of net metering, Energy Committee to send separate letter. Conversations ongoing with Audrey and Michael re Energy Checklist; EV Ordinances passed in Dover and Lebanon.

## **VI. Public Comments**

**Erin Kilkenny Bayshee**, student and registered voter of Durham, NH majoring in Environment Conservation, said she has a deep understanding of the Durham Master Plan and its goals for quality of life. She urged the Planning Board to call representatives and ask for a permanent cease-fire in the Middle East in Palestine, upholding their principles across the world for the good of all humans.

## **VII. Review of Minutes (old): August 9, 2023**

Chair Rasmussen said he was not sure why these came back; Mr. Behrendt said he would check and bring them back for the next meeting.

**VIII. Review of Definitions in Zoning Ordinance.** Review of the Zoning Ordinance as part of the zoning rewrite. The board completed a first pass through the Definitions. The board is starting the second review. Once the board is satisfied with the proposed changes an amendment will be presented for a public hearing. Recommended action: Continued review.

Chair Rasmussen asked the Board to go through the first draft of definitions page by page and call out anything they wish to discuss; he recommended the Board share the working version from tonight with other committees for feedback.

Page 1: Meanings of Words/Definitions - Councilor Friedrichs said the intro paragraph is redundant and asked if it was needed; Mr. Behrendt said he would combine the two paragraphs.

Page 2: Accessory Dwelling Unit-Detached – Vice-Chair Grant suggested removing “in” an accessory structure; Councilor Hotchkiss recommended removing “located”. Board agreed to “ADU not attached to a single-family residence.”

Mr. DeCapo said “Shed” is not used anywhere in Zoning Ordinance and falls under the definition of Accessory Structure; Board agreed. Mr. Kelley said he did find “Shed” in the Ordinance and Mr. Behrendt said that is a different use.

Page 7: All-Terrain Vehicle – Board discussed definition at length; added “Off-Road Recreational Vehicle” to ATV definition; Councilor Friedrichs suggested keeping Off-Road Recreational Vehicles and adding ATV definition there; Councilor Hotchkiss said any case where ATVs are treated differently from OHRVs would guide whether 1 or 2 definitions are needed; Chair suggested adding “see Off Highway Recreational Vehicles” under ATV; changing “legally registered motor vehicles” to: “all motor vehicles when used for off-highway recreational purposes”.

Board discussed electric bikes, trail use, bicycles vs motorbikes, snowmobiles. Mr. DeCapo said some bikes should be treated more like regular bicycles than motorbikes; Chair Rasmussen said bikes should be on bike trails not people trails but said he was open to including non-motorized bikes; Mr. McManus said he was not sure they should discourage having recreational bike paths. Councilor Friedrichs said e-bikes, farm equipment, and motorized vehicles are not considered off-road recreational vehicles. Mr. Behrendt suggested taking this up separately outside of Zoning.

Mr. McGowan left the Planning Board meeting at 7:56 pm. Chair Rasmussen seated Mr. DeCapo.

All-Terrain Vehicle Facility – Mr. Behrendt said this might be better dealt with as a regulation not a Zoning Ordinance. He suggested working on these 2 definitions outside of meeting and bringing them back. Chair Rasmussen asked for a show of hands that this does not belong in Zoning Ordinance or Table of Uses and should be handled in some other way.

And – Councilor Friedrichs suggested putting a note to see “or” as well and align the 2 definitions. Vice-Chair Grant asked if and/or should be up under “Meaning of Words”

Apartment – Vice-Chair Grant said “non-residential” should be “multi-use”; Chair Rasmussen said it may not be multi-use but light industrial as an industrial building may have an accessory apartment. The board agreed to delete the last sentence.

Page 8: Aquifers – Moving to Aquifer Protection Overlay District.

Area Median Income – Councilor Friedrichs said this definition is provided under 175-107.1 Workforce Housing Option and is not needed here. Mr. Behrendt said workforce housing is a big issue of discussion and it should be upfront in the Zoning Ordinance. Mr. Kelley said it is in Workforce Housing now almost verbatim; the Board agreed to delete here.

Art Center – Councilor Hotchkiss said Mr. Behrendt questioned needing both Art Center and Gallery defined. Councilor Friedrichs said under Table of Uses there are different uses, but they should not be treated differently. Chair Rasmussen said one is institutional and one is commercial and 2 different definitions are needed. The board agreed to combine the 2 definitions under Art Center, and make it CU in R and RC, and code “P” in all other zones.

Automotive Uses – Pushed to “Motor Vehicles”.

Page 9: Basal Area – Councilor Friedrichs suggested moving it to WCOD and SPOD. The board agreed to leave it.

Bedroom – Definition deleted.

Boarding House – Not in the Table of Uses but makes a great catch area for student housing; worth keeping to further leverage. The board agreed to keep definition.

Bog – Definition deleted.

Page 10: Building – Mr. Behrendt said by adding “permanent, long term or ongoing” we need to define long term. Ms. Tobias preferred “permanent ongoing” over “long term”; Mr. Behrendt said where it is regulated “permanent” may not apply. Board agreed to: “a structure with a roof and walls attached to the ground in a fixed location with continuous support”.

Building Footprint – Board agreed a deck is not part of a building footprint.

Canopy – Definition deleted; same as awning.

Page 11: Caretaker Apartment – Vice-Chair Grant asked if this is separate from an ADU. Chair Rasmussen said an ADU has to be attached to a primary residence and this does not.

Cinema – Councilor Friedrichs said people may not know what a motion picture is; Chair Rasmussen said Cinema and Theater should be merged and are identical in the Table of Uses.

Page 11-12: Club – Chair Rasmussen said definition means all of our fraternities and sororities are clubs and should match up in Table of Uses. Mr. Behrendt said Fraternity has its own more specific definition; Board agreed to delete the last sentence.

Page 12: Conditional Use – Councilor Friedrichs asked why this definition is necessary. Mr. Behrendt said they could just say see Article 7. Chair Rasmussen said there should be something as CU is so prevalent; Mr. McManus suggested adding CU in parentheses.

Daycare – Mr. McClain asked if “pre-school” and “school-age” children should be specified. The board agreed on either Children or Adults.

Page 13: Condominium – Councilor Friedrichs said this is listed under subdivision; Vice-Chair Grant said to her condominium does not mean a subdivision with a Condo Association but the structure of that type. Mr. Kelley read Condominium Act 356-B; Chair Rasmussen said this definition is a good summary of that Act. The board agreed to leave definition as it is.

Conference Center – Councilor Hotchkiss said the Board removed accommodations for sleeping from the previous definition and asked if it must have a hotel associated with it. Chair Rasmussen said it may or may not. The board agreed to “a facility used for conferences, seminars, and other gatherings”.

#### **X. Other Business**

Tom DeCapo encouraged the Board to consider whether or not the public comment process used for national, political, or international affairs purposes, and use or potential misuse of our Public Records process for pursuing those is appropriate and whether they should be vetted in advance. He said he is sensitive to a forum designed for something being used for a purpose for which it is not intended.

Mr. Kelley added that the Board could begin to see a long line of individuals coming in to tie it somehow to our Zoning Ordinance but bring up a litany of issues. Mr. DeCapo said our silence on the issue could suggest we agree. Vice-Chair Grant said the Board should have no opinion either way on the topic in this forum. Councilor Friedrichs said ze was hesitant to act on a single incident. Mr. DeCapo said he would agree if it did not come with placards shown on the video screen.

Chair Rasmussen said right now the Board’s rules on public comments are uncensored; the Board is not a political forum and political statements to us have no bearing. The board discussed updating the comments in the Agenda to make sure comments are germane to our business and adding the purpose of the Planning Board. Ms. Naumann Gaillat asked if there were a forum for people to be heard, and Board agreed it was the Town Council.

Councilor Friedrichs asked a procedural question about a resident asking about the site plan proposal for a Carwash on Route 108 that went to ZBA, after conceptual review by the Planning Board, to request a variance for the setback where at least 3 components of ZBA were not being complied with in the conceptual plan presented; confused about process if more variances are needed, and asked if the Board should make sure in a conceptual review that all compliance issues have been identified.

Chair Rasmussen said they can go back and forth as many times as needed. Mr. Behrendt said he was not sure what the resident was referring to. Councilor Friedrichs said parking spaces cannot be put in a setback, and the density was going to be above what is allowed in our Ordinance. Vice-Chair Grant said in theory the Planning Board did not identify something the resident perceived as being a violation. Mr. Behrendt said he sent a letter to the Town Attorney today and she will qualify and decide if another variance is needed.

**XII. Review of Minutes (new): October 25, 2023**

***Vice-Chair Grant MOVED to accept the Planning Board Minutes of October 25, 2023; SECONDED by Mr. Kelley; Roll Call Vote: Richard Kelley-aye, Paul Rasmussen-aye, Emily Friedrichs-abstain, Sally Tobias-aye, Heather Grant-aye, Bill McGowan-aye, Peyton McManus-aye; APPROVED 6-0 with 1 abstention, Motion carries.***

**XIII. Adjournment**

***Vice-Chair Grant MOVED to adjourn the Planning Board Meeting; SECONDED by Mr. DeCapo; All in favor APPROVED 7-0, Motion carries.***

Chair Rasmussen adjourned the meeting at 9:29 pm

Respectfully submitted,

Patricia Denmark, Minute Taker  
Durham Planning Board