

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

**TOWN OF DURHAM
DURHAM PLANNING BOARD**

Wednesday, December 13, 2023

Town Council Chambers, Durham Town Hall

7:00 pm

MINUTES

MEMBERS PRESENT: Paul Rasmussen (Chair), Heather Grant (Vice Chair), Peyton McManus, Sally Tobias, Emily Friedrichs, (Council Rep) (arrived at 7:03 p.m.), Chuck Hotchkiss (Alternate Council Rep), Erika Naumann Gaillat (Alternate)

MEMBERS ABSENT: Richard Kelley, Bill McGowan, Chris McCain (Alternate), 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 Erika Naumann Gaillat for Bill McGowan and Chuck Hotchkiss for Emily Friedrichs as Council Rep.

III. Approval of Agenda

*Councilor Hotchkiss MOVED to approve the Agenda for December 13, 2023;
SECONDED by Ms. Grant; APPROVED 6-0 Motion carries.*

IV. Town Planner's Report

Planner Behrendt did not have anything to report

V. Reports from Board Members who serve on Other Committees

Reporting from Housing Task Force: Ms. Tobias stated that the Housing Task Force didn't have a quorum at their last meeting. They discussed their business and employee outreach and next steps. Councilor Hotchkiss asked when they might be receiving the consultant's report. Planner Behrendt stated that it should be in before the end of the year.

Reporting from Town Council: Councilor Hotchkiss stated that the Town Council met on December 4 and heard from all but one of Durham's State Legislators. They also heard from Nell Neal, chair of the Integrated Waste Management Advisory Committee. The Council adopted the 2024 Town Budget.

Councilor Friedrichs arrived.

Reporting from Traffic Safety Committee: Mr. McManus stated that the Traffic Safety Committee met last week to review a draft analysis by Tighe Bond on standardizing and improving crosswalks in Durham and at UNH. Councilor Friedrichs asked if the Committee had had a discussion around e-scooters and the like. Mr. McManus stated that, yes, they discussed that. Planner Behrendt stated that there was a separate discussion at UNH last Wednesday night with a panel of Town representatives and the UNH Student Body President about mobility devices. The Town does not allow these devices on sidewalks. UNH has their own rules about them. Education is necessary. Mr. McManus stated that additional signage will probably go up. Chair Rasmussen stated that the speed of the devices is important to think about as well. Mr. McManus stated that there will be further study on this. There was some discussion about the issues with the crosswalks on Mill Road and near the Mill Road Plaza.

VI. Public Comments – None

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

Chair Rasmussen MOVED to accept the minutes for August 9, 2023; SECONDED by Ms. Tobias; APPROVED 5-0 with one abstention, Motion carries.

VIII. Public Hearing – Tideline Public House – After Hours Delivery Service. 15

Newmarket Road. Amendment to approved site plan for food truck court to allow for third-party after-hours delivery service. Providers such as Door Dash and Grub Hub would be allowed to pick up pre-ordered food from the food trucks after general closing time from 10:00 pm until 2:00 am on Thursday, Friday, and Saturday nights from October 1 to March 31. No walk-up service would be provided, and the site would otherwise be closed. Scott and Karen Letourneau, property owners. Map 108, Lot 69.

Ms. Naumann Gaillat recused herself as she lives in close proximity to the property.

Planner Behrendt mentioned a correction to the application description. There will be no limitations on time for the inside business at this location.

Mr. Letourneau spoke on the application. This was a request from one particular food truck. The other food trucks were polled, and 3 food trucks were not interested in after-hours delivery. Three others stated that they might be interested. This after-house delivery would only apply to winter months. Mr. Letourneau stated that if this becomes a nuisance, he will shut it down.

Chair Rasmussen asked if the food pick-up is restricted to third-party vendors. Mr. Letourneau stated that, yes, he is proposing only third-party vendors for this.

Mr. McManus asked if Durham has an ordinance that regulates how late a business can stay open. Planner Behrendt stated that there were no ordinances that he knew of.

Chair Rasmussen MOVED to open the Public Hearing; SECONDED by Councilor Friedrichs; APPROVED 5-0 Motion carries.

Erika Naumann Gaillat, 14 Schoolhouse Lane, stated that she has not had any issues with the food truck patrons living close to the site. She doesn't think traffic will be an issue.

Council Friedrichs stated that car idling could be an issue down the road. Ms. Tobias didn't think most third-party deliverers waited around very long.

Mr. McManus asked if Mr. Letourneau was both the owner of the property *and* the business. Mr. Letourneau stated that he was. Mr. McManus stated that because of that, there is strong interest in self-regulating. Mr. Letourneau agreed. Mr. McManus also asked if the Planning Board had recourse if this becomes disruptive after they approve it. Chair Rasmussen stated that that would be a good reason to institute a trial period. Planner Behrendt stated that the Board would have enforcement action only if there were a violation of the approval terms. Ms. Tobias asked if the Board would have to reconvene on this after the trial period. Planner Behrendt suggested that the Board could state within the approval that if there were concerns, Mr. Letourneau would come back to the Board. Ms. Tobias stated that she is not a fan of instituting a trial period. Councilor Hotchkiss spoke in favor of the trial period. Councilor Friedrichs acknowledged that the Board had received one letter from the public.

Vice Chair Grant MOVED to close the Public Hearing; SECONDED by Mr. McManus; APPROVED 5-0 Motion carries.

Vice Chair Grant likes the suggestion that the owners would not have to come back to the Board after the trial period if everything went well. Councilor Friedrichs likes the idea of a trial period. Planner Behrendt stated there was no concern from the Police.

Planner Behrendt suggested that if the Board wanted to institute a trial period, it could go through April 30, 2024, and the Board could state in the approval that the Planning Board reserves the right to not continue the trial period. If Mr. Letourneau is not alerted by the Planning Board during the trial period, the activity can continue permanently.

Vice Chair Grant MOVED to approve the Tideline Public House after-hours delivery services requested at 15 Newmarket Road; the decision will come with the change in wording as Planner Behrendt has suggested; SECONDED by Ms. Tobias; APPROVED 5-0 Motion carries.

Mr. Letourneau asked if there were an appeal period for the public or if he could tell the food truck owner that he could start tomorrow. Chair Rasmussen stated that there is a 30-day appeal period, but they are able to start tomorrow. They will be notified if someone appeals.

IX. 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 conducting its second review. Once the board is satisfied with the changes an amendment will be presented for a public hearing.

Chair Rasmussen stated that they left off at the bottom of page 13.

“Developer – Dormitory” – Councilor Friedrichs stated that there was a typo in the definition for Dormitory. Chair Rasmussen doesn’t believe there is a need for separate study quarters in that definition.

“Driveway – Flood Hazards” – Councilor Friedrichs stated that the licensing body should be double-checked for Educational Facilities. Chair Rasmussen asked if a private school fits in to that definition? There was additional discussion on this definition and which State body oversees the facility.

“Floor Area...” – Chair Rasmussen mentioned that Mike Hoffman had sent a letter speaking to the definition of Habitable Floor Area. There was discussion as to what makes an area habitable. There was agreement that the definition should stay as it is.

“Fraternity/Sorority – Gas Station” – Planner Behrendt mentioned that Art Center and Gallery should be combined.

“Governmental Uses – Soils Survey, High Intensity” – Council Friedrichs asked if there were an industry standard for measuring Grade? Chair Rasmussen also had some questions on the definition of Grade but decided the questions could wait until Richard Kelley were back in attendance.

“Home Occupation...” – Chair Rasmussen asked if it mattered if it were a volunteer or commercial home occupation? There was discussion around this. Councilor Friedrichs asked for clarification on Principal Manufactured Product. It was decided to remove the word “Principal.” Councilor Friedrichs also mentioned that there was a typo in Home Occupation 2 (c).

“Hotel – Inn” – Councilor Friedrichs suggested putting a period after domestic help for Household Per Family and not use the word servant. There was discussion as to what the number of domestic help persons should be. Ms. Tobias doesn’t feel they should limit the number to three. Councilor Friedrichs mentioned that under Impervious Surface there was a reference to “oiled or compacted earthen materials.” It was agreed to delete this wording.

“Junk Yard – Landscaping” – Chair Rasmussen stated that he feels that the definition of Landscaping is really complicated here. There was discussion, but it was decided to leave the definition as it is.

“Tree Warden...” – No comments

“Light Manufacturing – Lot, Corner” – Chair Rasmussen questioned the reason for the definition of Lodging. Planner Behrendt feels that it is important to make a distinction between lodging and residential. There was discussion on this. It was decided to remove the definition of Lodging. Councilor Friedrichs would like to shorten the definition of Light Manufacturing. Councilor Friedrichs asked for clarification of the definition of Lot Area. There was discussion about right-of-ways and roads. It was decided to put a period after “road right-of-way.”

“Lot Frontage – Side Lot Line” – No comments

“Manufactured Housing – Mining” – No comments

“Minor Site Committee – Motor Vehicle Gas Station” – Chair Rasmussen asked if they need both of the mixed-use parking definitions. It was decided that one of the definitions could be eliminated. Chair Rasmussen also asked why parking is restricted to the first floor. Planner Behrendt stated that it doesn’t have to be on the first floor. He also doesn’t believe they need the second sentence in the definition. Chair Rasmussen asked about the last line in the definition of Motel. It was decided to delete the last line. Councilor Friedrichs asked if EV charging stations should be added to the definition of Gas Station. Mr. McManus feels that the definition should remain as is. There was discussion on this. It was decided to leave the definition as it is.

“Motor Vehicle Sales Facility – Nonconforming Lot” – Chair Rasmussen asked why there were some things excluded in the last sentence of Motor Vehicle Sales Facility. There was some discussion on this. It was agreed that the sentence after “supplies” should be eliminated. Councilor Friedrichs does not like “similar economic characteristics” in Neighborhood. It was agreed to delete it. Ms. Tobias asked what a “sense of neighborhood among the residents” means? There was discussion on this, particularly how it relates to the Conditional Use requirements.

“Nonconforming Use – Office” – Councilor Friedrichs stated that ze believes that Nonconforming Use should have the same language as Nonconforming Structure and Nonconforming Lot. Chair Rasmussen likes the language for Nonconforming Use better than the other two definitions. Planner Behrendt will re-write the other two definitions to correspond to Nonconforming Use. Chair Rasmussen asked if they needed the list under “Office.” It was decided that Office would stay as it is. Chair Rasmussen feels that Medical Clinic is included under Office and should be eliminated.

“Office/Retail – Opacity, Vertical” – There was discussion around using 1950 as the date for the Older Single-Family Residence definition. It was decided to leave the definition as it is. There was discussion around whether they needed the separate definition for Office/Retail as it was in the Mixed-Use definition. It was decided to keep the Office/Retail definition and remove the wording from Mixed Use with Residential. Councilor Friedrichs would like to change Opacity, Vertical to Vertical Opacity.

XI. Other Business – There was discussion on whether there should be a meeting on April 3 or April 17 rather than on April 10. It was decided not to make a decision tonight but to put it as an item on the next agenda.

XII. Review of Minutes (new): November 8, 2023

Ms. Tobias MOVED to accept the Planning Board Meeting minutes of November 8, 2023; SECONDED by Vice Chair Grant; APPROVED 5-0 with one abstention, Motion carries.

XIII. Adjournment

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

Chair Rasmussen adjourned the meeting at 9:48 pm.

Respectfully submitted,

Karen Edwards, Minute Taker