

These minutes were approved at the April 24, 2024 meeting.

**TOWN OF DURHAM
DURHAM PLANNING BOARD**

Wednesday, February 28, 2024

Town Council Chambers, Durham Town Hall

7:00 pm

MEMBERS PRESENT: Paul Rasmussen (Chair), Heather Grant (Vice Chair), William McGowan, Sally Tobias, Peyton McManus, Tom DeCapo (Alternate), Chuck Hotchkiss (Alternate Council Rep), Erika Naumann Gaillat (Alternate); Richard Kelley, Emily Friedrichs (Council Rep) (arrived late)

MEMBERS ABSENT: Chris McClain (Alternate)

ALSO PRESENT: Town Planner Michael Behrendt

I. Call to Order

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

II. Roll Call and Seating of Alternates

Chair Rasmussen called the roll and seated Erika Naumann Gaillat for Richard Kelley and Chuck Hotchkiss as Council Rep for Emily Friedrichs.

III. Approval of Agenda

Chair Rasmussen moved Other Business Item: Lot Line Adjustment to be addressed first.

Mr. McGowan *MOVED to approve the Agenda for February 28, 2024 as amended; SECONDED by Councilor Hotchkiss; APPROVED 7-0, Motion carries.*

IV. Town Planner's Report

Mr. Behrendt said he had nothing to report tonight.

Richard Kelley arrived at 7:01 pm.

V. Reports from Board Members who serve on Other Committees

Reporting from the Town Council: Councilor Hotchkiss said the Town Council met February 19; took a position on HB 1281 legislation that would affect the 3-unrelated ordinance; appointed Janet Perkins-Howland to IWMAC; presentation by consultants on Housing Needs Assessment; voted to extend Todd Selig's contract as Town Administrator to 2030.

Councilor Friedrichs arrived at 7:02 pm.

Councilor Friedrichs added that a question was raised re parking requirements for downtown and Council decided to hold that conversation when new members are present in April.

Reporting from IWMAC: Vice Chair Grant said IWMAC met February 21; DPW said language for Solid Waste Ordinance to be completed in 2 weeks; prepping request for acceptance of EV Trust Grant; heard intro from 2 UNH students on a Capstone project creating communications to target younger people and research other towns; for this year focusing on composting and education.

Reporting from Conservation Commission: Mr. Kelley said the Commission met Monday and discussed Item X. Workforce Housing on tonight's agenda, will provide comments later; discussed their work on overlay districts (WCOD, SPOD) and were pleased with results.

Reporting from AG Commission: Mr. DeCapo said the AG Commission met February 12; Alena Warren of Strafford County Conservation District presented on their community engagement effort; decided Durham would no longer be a certified member of Bee City USA; noted that some of the parcels that would be offered by proposed Zoning Ordinance changes were high quality solid parcels; continued community outreach on Co-op food production with survey of focus groups in April.

VI. Public Comments – None

VII. Review of Minutes (old):

XI. Other Business

- **Lot Line Adjustment – 33 Back River Road and Lot in Madbury.** Application for Extension to Record Documents submitted by Lisa Beaudoin.

Mr. Behrendt there is a requirement on lot line adjustments conveying land between 2 different parties that once plans are certified the Notice of Decision, plat, and deed are recorded within 60 days; applicants need more time to coordinate things between parties and communicate with attorneys; deadline to record is tonight and applicants asked for 2 more months.

Vice Chair Grant **MOVED** that the Planning Board approve the extension for submittal of documents for Lot Line Adjustment at 33 Back River Road and lot in Madbury, for extension to Record Documents by Lisa Beaudoin to April 30, 2024; **SECONDED** by Mr. McGowan; **APPROVED 7-0, Motion carries.**

VIII. Freestanding Solar Array for St. George's Church. Site plan application for a freestanding solar array as an accessory use to provide electricity for St. George's Church. The 16.8-kilowatt array would be located in the side lawn of the rectory. 1 Park Court. Nathan Bourne, Rector, and Scott Righini, Facility Manager, St. George's Church. Map 108, Lot 31.

Recommended action: Acceptance if determined to be complete and setting a public hearing date.

Scott Righini, Faculty Manager of St. George's Church, and Rector Nathan Bourne said they have been looking into solar for some time. Mr. Righini said drawings were provided for a 16.8 kW array to produce about 23,600 kWh/year to power the Church and the Rectory. He said the array will be located behind the Church in our paring lot on an unused portion of the property adjacent to the Rectory lawn to position it to be south facing,

Councilor Friedrichs asked if applicant considered a roof-mounted array in front of the building; Mr. Righini said it would not be that viable due to shading by trees, and because it needs approval by the Historic District. Councilor Friedrichs also mentioned the frequent delays in installation of new solar arrays of up to a year.

Mr. Kelley MOVED that the Planning Board accept the Site Plan Application for the Freestanding Solar Array at St. George's Church and schedule a Public Hearing for March 13, 2024; SECONDED by Vice Chair Grant; APPROVED 7-0, Motion carries.

IX. Public Hearing – Zoning Amendment - Posting and Mailing of Public Notices – Proposed Zoning Amendments. The amendment would change the process for noticing public hearings for zoning amendments, conditional uses, historic district reviews, and UNH projects from publishing notices in a local newspaper to posting notices on the Town's website. Notices for conditional use hearings would be sent by verified mail rather than by certified mail. **Recommended action:** Vote to initiate amendments.

Mr. McGowan MOVED that the Planning Board open the Public Hearing for Zoning Amendment regarding Public Notices; SECONDED by Mr. Kelley; APPROVED 7-0, Motion carries.

The Public Hearing for Zoning Amendment–Posting and Mailing of Public notices was opened at 7:20 pm.

Mr. McGowan MOVED that the Planning Board close the Public Hearing for Zoning Amendment regarding Public Notices; SECONDED by Mr. Kelley; APPROVED 7-0, Motion carries.

The Public Hearing for Zoning Amendment–Posting and Mailing of Public notices was closed at 7:20 pm.

Councilor Friedrichs asked if the first section with procedures would be the same for public hearings of any kind. Mr. Behrendt said it would still be posted. Mr. McManus asked the difference between *verified* and *certified* mail; Mr. Behrendt said for certified mail a card is filled

out with signature; for verified mail the Post Office has to confirm they received it, and it is cheaper and easier.

Chair Rasmussen called a vote to initiate the Zoning Amendment regarding Public Notices; APPROVED by the Planning Board 6-1, Motion carries.

- X. ***Public Hearing - Workforce Housing – Proposed Zoning Amendment and Rezoning of Parcel.*** Consideration of a set of proposed amendments to the Zoning Ordinance pertaining to workforce housing including adding a definition, adding a line to the Table of Uses, adding a section providing the standards for workforce housing, making several other text changes, and rezoning a 117-acre lot of land owned by the Leda M. Keefe Rev. Trust, c/o Daniel Keefe, at 59 Piscataqua Road, Tax Map 209, Lot 39, from Residential Coastal (RC) to Office Research (OR). The amendments have been endorsed by the Durham Housing Task Force. *Recommended action:* Discuss and continue public hearing to March 13.

Chair Rasmussen said whether the Board deliberates tonight or not depends on how the Public Hearing goes.

Mr. Kelley said a general concern of the Conservation Commission was how to prevent it becoming student housing; under Site Plan change “50% open space of gross acreage of parcel be set aside” to “50% *contiguous* open space”; have applicant go in front of Conservation Commission for review and identification of the most sensitive land for their comment; change Walkability to “through and from the site”; add EV outlets for level 2 charging for each unit. Councilor Friedrichs said rezoning the large lot from RC to OR opens up the parcel to all the other OR uses.

Chair Rasmussen MOVED to open the Public Hearing; SECONDED: Mr. Kelley; APPROVED 7-0, Motion carries.

Chair Rasmussen opened the Public Hearing for Workforce Housing – Proposed Zoning Amendment at 7:29 pm.

John Carroll of 54 Canney Road, member of the Durham Agricultural Commission, said on behalf of Chair Teresa Walker, the area lying between Route 4 and Route 108 is composed almost entirely of the highest quality agricultural soils per US Department of Agriculture Natural Resources & Conservation Services and Planning Board should be informed before considering any decisions to rezone or redevelop this land for any purpose other than agriculture.

Presentation on Workforce Housing – Chair of Housing Task Force, Sally Tobias

Ms. Tobias said the owner of the property under consideration approached Durham Town Planner Michael Behrendt to explore the possibility of developing workforce housing on his property, but development in RC would mean a much smaller density. She said when developers

have limits on property, they have to get the best use out of that property which often means more expensive homes rather than cheaper; changing to OR would allow for more affordable housing and more density.

Ms. Tobias said Census Tract 802.2 from the Housing Needs Assessment is based on extensive data; property is divided into 2 sections by Johnson Creek and abutting OR District on the other side. The area is buildable due to the amount of acreage, and is on a transportation route offering utilities. The Planning Board would like to rezone this entire property or just the property west of Johnson Creek.

Ms. Tobias said a definition of Workforce Housing will be added to the Table of Uses, changed to OR, and allowing in OR, ORLI, MUDOR, and DBP; Conservation Subdivision already allows for Senior and Workforce Housing. Standards for Workforce Housing: 100% of units in perpetuity, maximum rent levels (HUD), facilities, housing types, walkability, and transportation with a lot of possibilities on Route 4. Suggestions: limit change to OR, limit change to affected lot only west of Johnson Creek.

Councilor Friedrichs asked if the Housing Task Force looked at other permitted uses in OR like warehouses or other possible outcomes. Chair Rasmussen said that is not in the scope of what the Council charged the Housing Task Force. Ms. Tobias said workforce housing is a very deliberate process and is difficult to build within the confines of the pricing structure; looking to create more density without changing entire zoning.

Councilor Friedrichs said the ordinance and proposed amendments create Workforce Housing category but is not limited to that; parcel being rezoned not only for workforce housing but for all OR purposes. Ms. Tobias said by law the town does not allow any multi-family homes or buildings in Durham, which has significant impact on housing in general and across the nation and has contributed to the housing shortage. The only focus of the Housing Task Force is to create the opportunity for workforce housing to fulfill the law.

Mr. McManus asked about the 100% qualification and whether the Housing Task Force think that might limit the ability to create Workforce Housing. Ms. Tobias said it could, but the Housing Task Force desires 100%, though the Board may decide on a split. Councilor Friedrichs asked if the Housing Task Force researched that 100% to see if it is feasible. Chair Rasmussen said there are HUD grants that allow 100% and require it.

James Lawson said he has spent many years of work on housing and graphics using Town data, Census data, ACS UNH, and State data to inform the Town Council and Planning Board. He said workforce housing is a good thing, but Durham residents expect best-in-class zoning which is not respected in this amendment: carefully define housing characteristics, carefully examine land use incentives required, and carefully incorporate it into the zoning with Workforce Housing Overlay Districts.

Mr. Lawson said this was tried in DC by integrating affordable housing into a community, and by separating Workforce Housing into 100% areas which did not work; the solution should not be separate and segregated but integrated. He said the zoning is being proposed based on a draft report using wrong data, not using Work Force Housing thresholds, the methodology is wrong and Durham's obligation is grossly overstated. It is unconscionable to push the zoning amendment forward without better data to make a decision and for the community to provide input, and said this should have been reviewed by the Town Attorney before getting into public comment.

Mr. Kelley asked Mr. Lawson why the 100% workforce housing areas did not work. Mr. Lawson said the housing built was separated from other housing by economic and racial status.

Dennis Meadows of 34 Laurel Lane said he thought workforce housing a good thing and he was in favor of it. He said the Planning Board should not rezone the entire Keefe property but just move the OR boundary eastward to the creek as the RC Zone was specifically created to protect the water quality of the community's principal surface water, and it would eliminate explicit protection of Johnson Creek. He said switching RC to OR adds 36 new activities which are currently prohibited in RC, and said it was not necessary to change the designation of the other 3 zones as it opens up many other issues that will slow down consideration of this project.

Denise Day of 89 Bagdad Road commended the Housing Task Force and said she is very much in favor of workforce/affordable housing; it is something desperately needed and Durham should be part of that solution. She said apartments that were built in Durham are no longer affordable with units going for \$2,200/month. She said we are in a desperate situation and hoped the Council and the Planning Board really do what they can to be part of the solution.

Diana Carroll of 54 Canney Road said a group of houses was built 25 years ago on Cove Drive across from the Middle School and were very plain and simple as they were meant to be affordable. She said families lived there until one by one they were bought up and turned into student housing, often by out-of-state landlords. She said this was built in good faith but did not achieve the goal it was supposed to achieve. She said we need affordable housing to live in this community and said the ideal is to have a mixed neighborhood economically, and cited a project in Exeter with mixed housing types where you cannot tell which are affordable and which are higher end but inside materials differed.

Mrs. Carroll said she visited a development for affordable housing in Dover on Back River Road with clusters of 40 tiny houses and said she was concerned that the Keefe property is talking about 200-250 such units. Chair Rasmussen said they were not discussing the project development but the proposed zoning change. Mrs. Carroll said she also agrees that the zoning should not change to OR in all 4 areas and that properties should be looked at more carefully.

Matt Komonchak of Thompson Lane agreed Work Force housing is needed in the area but said it was far too early for a Public Hearing on zoning of this particular parcel and more work needs to be done. He said he is against zoning based on the Housing Task Force and Planning Board meetings he has watched and said he has no faith in the process used to get to this point. He said the Housing Task Force hired RKG as consultant but the Planning Board wrested control away from the Housing Task Force and did not allow them to finish; the Housing Task Force held a formal presentation of its findings to the Planning Board February 14 before RKG had completed its work, and instead of methodically analyzing Work Force housing, the Housing Task Force became focused on this single development project and failed to consult the towns of Lee and Madbury.

Mr. Komonchak said environmental concerns were not addressed, Oyster River School District was not engaged in the conversation, there are gaps in the information and vague premature conclusions, and there is uncertainty about whether certain segments of the population can be excluded. He said he cannot trust the approach to date and information to support a zoning change has not been provided.

Robin Mower of 6 Britton Lane said she first thought it was a great idea for Work Force housing on the parcel which is driving the zoning amendments but that is not the way to go, and they should consider an Overlay District. She said her main concern is for any large housing project outside of town as it will be cut off from other neighborhoods and the key is to enhance community rather than isolate a part of town. She said it is important to look at other ways to approach adding housing with a mix of building types, pay attention to orderly growth in the Town of Durham, and consider the needs of people who live here. She felt more consideration is needed before changing the impacts of RC to OR.

Joshua Meyrowitz of 7 Chesley Drive said this is a big proposal with many moving parts and urged the Board to keep the Public Hearing open. He emphasized that the rezoning cannot be made conditional on that particular property and would open up all permitted uses in that zone, and agreed they should limit rezoning to west of Johnson Creek. He said for scale comparison, this project could mean a dramatic increase in the number of Durham households, and said good intentions is not a bad start; this is the largest undeveloped piece of property and has access to water and sewer, but this plan needs more careful analysis of variables.

Mr. Meyrowitz said there are potential downsides: adding students to the schools needs to be studied closely; a balance is needed in housing sizes as limiting size could increase turnover; increased traffic on Route 4; should discuss demographics and address questions about the soil. He said Madbury may decide to fill the regional gap in workforce housing increasing students at the school without tax benefits.

Alecia Magnifico of 426 Bay Road said she has worked for UNH for 10 years primarily teaching graduate students who want to be teachers. She said because of local rents and housing prices it

has become completely untenable for people like them and people looking to go into public service jobs to live here. She said rents at Madbury Common are \$2,200, also in Dover and Newmarket, and said she thinks Durham needs to rush to address this problem. She said if we want young people to stay in Durham and raise their children here, we need to give people who need jobs a way to stay here.

Beth Olshansky of Packers Falls Road said she supports Work Force housing and said this proposal has a lot of interesting opportunities with a parcel opening up that could serve well in terms of site location, transportation etc. She agreed the Work Force housing amendment should only be for this particular zone because the unintended consequences are unknown and keep to this one site for now with boundary at Johnson Creek. She said before moving forward there needs to be some digging deeper into actual information.

Ms. Olshansky recommended talking to the Town Attorney about a legal way to ensure that these structures serve people and not students; meeting with Superintendent Morris about school capacity; look at impacts on taxes, and get more information so the community knows what it is looking at, and hear the presentation by Jim Lawson. She said she would like Durham to do it right and agreed with orderly growth.

John Randolph, owner of Harmony Homes, said he quickly got associated with this project. He said there are 5 assisted living and skilled nursing facilities that have closed in the area because they do not have enough staff and said if they had not started projects they would now be closed now and said the staffing problem will continue to grow. He said many of our staff travel over an hour to work and an hour to get back home, trying to find childcare support in between; if we want people to continue to work in our community, they need to live closer; young professionals would not be able to live in our community otherwise.

Mr. Randolph said affordable housing is extremely tough to build to make it affordable for residents and make it happen for the municipality as well as with the developer. If we do not do something about affordable housing on the Seacoast, we will lose our businesses and the tax base will get crushed. A survey of employees making less than \$30/hour showed 40% thinking about leaving. If we do not do something about affordable housing, we will have a significant problem in our business community.

Chair Rasmussen continued the Public Hearing on Workforce Housing/Zoning Amendment to March 13, 2024 at 9:03 pm.

Chair Rasmussen recommended the Board invite Superintendent Morris as well and the new superintendent. Mr. Tobias said Al Howland from the Housing Task Force, who has been on the School Board, is preparing some studies. Mr. Behrendt suggested Al Howland also be invited to the next meeting and stated that the Housing Needs Assessment was *not* the driver for this

zoning change, which has been in the works for several months. He said it was just a happy coincidence that it reinforced what we have been doing and it is our legal obligation.

Mr. Kelley said he disagrees with sending the zoning draft to the Attorney for legal counsel, but she might be able to set up some guardrails for the Board as well. Mr. DeCapo said there are some topics that it would be helpful to inform us and the public: how to ensure FT students do not take over. Councilor Friedrichs asked about spot zoning; Mr. Behrendt said it is *not* spot zoning.

Chair Rasmussen said he read a lot about fair housing over the past few years and age discrimination is 18 years and under and 55 years and older and suggested sending only the section on "Standards for Specific Uses" to the Town Attorney. Mr. McGowan recommended sending the whole thing because they may take things out of context.

Mr. Kelley said Action Items include bringing in the School Superintendent, having a legal review, and should also reach out to Lee and Madbury and bring them into the Housing Task Force. Mr. McManus said that is more of a learning session or discussion. Chair Rasmussen said the Housing Task Force has a certain charge, and we have to make sure they stay within it. Mr. DeCapo said he would like to better understand approaching this as an Overlay District.

Mr. McGowan left the Planning Board meeting at 9:21 pm.

Ms. Naumann Gaillat asked for clarification on the numbers in the RKG report versus workforce housing and zoning. Chair Rasmussen explained there are different numbers for how many Work Force owners and for how many rental units; also State numbers were corrected for our large student population which does not qualify as workforce housing. Councilor Friedrichs said the Town Council sent the draft report back to RKG to look at some of the data in more depth and it has not been finalized.

Councilor Friedrichs also asked that the Housing Task Force get more data from seacoast developers, so a decision is not made based on a hunch in terms of 100% Work Force housing. Chair Rasmussen said the Housing Task Force has talked with other groups on the seacoast specializing in certain types. Mr. Behrendt said there is the Non-Profit Housing Partnership, but he is not aware of any other for-profit developers in NH who have figured out how to do an 80% or 100% Work Force housing without using low-income tax credit.

Councilor Friedrichs said you cannot write an ordinance to one particular plan; Chair Rasmussen said he would take that back to the Housing Task Force. Mr. DeCapo asked what it is about this project that is allowing them to get it done at 100% while others cannot. Ms. Tobias said it is just a goal set out by the Housing Task Force. Mr. Behrendt said the Randolph's have figured out how to design these units very efficiently. Chair Rasmussen said they cut out overhead and middlemen being their own contractor.

XII. Review of Minutes (new):

XIII. Adjournment

***Ms. Tobias MOVED to adjourn the Planning Board Meeting; SECONDED by Mr. McManus;
APPROVED 6-0, Motion carries.***

Chair Rasmussen adjourned the meeting at 9:35 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker
Durham Planning Board