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TOWN OF DURHAM
DURHAM PLANNING BOARD

Wednesday, March 27, 2024
Town Council Chambers, Durham Town Hall
7:00 pm

DRAFT MINUTES

9 **MEMBERS PRESENT:** Paul Rasmussen (Chair), Sally Tobias (Vice Chair), Richard Kelley, Peyton
10 McManus, Tom DeCapo (Alternate), Heather Grant (Alternate Council Rep), Chris McClain
11 (Alternate); Bill McGowan (arrived late)

12 **MEMBERS ABSENT:** Erika Naumann Gaillat (Alternate), Emily Friedrichs (Council Rep)

13 **ALSO PRESENT:** Town Planner Michael Behrendt
14

15 **I. Call to Order**

16 Chair Paul Rasmussen called the meeting to order at 7:00 pm; Heather Grant is the new Town
17 Council Alternate Representative.
18

19 **II. Roll Call and Seating of Alternates**

20 Chair Rasmussen called the roll and seated Tom DeCapo for Bill McGowan; Mr. Behrendt said
21 there are only 6 regular members now and Chair Rasmussen seated Chris McClain for the
22 vacancy.
23

24 **III. Approval of Agenda**

25
26 **Richrd Kelley *MOVED to approve the Agenda for March 27, 2024; SECONDED by Vice-Chair***
27 ***Tobias; APPROVED 7-0, Motion carries.***
28

29 **IV. Town Planner's Report**

30 Mr. Behrendt said for April 20 meeting: CU for Principal Use Parking at 9 Dover Road; School
31 Superintendent Morse to discuss potential impact of housing development on school capacity.
32 Closed out: Historic District Oyster River Massacre Marker, finalizing language for new marker;
33 finalized Section 106 for impact on Dam Removal to be followed by monitoring.
34

35 **V. Reports from Board Members who serve on Other Committees**
36

37 Reporting from the Town Council: Councilor Grant said new members were sworn in; unanimous
38 approvals moved forward to Public Hearing; UNH Student Representative discussed student
39 housing, limiting number of students per household, and struggles with housing costs in Durham.
40

41 Reporting from Conservation Commission: Richard Kelley said the Commission met March 25;
42 presentation by Land Stewardship Coordinator Sue Callaghan re current ongoing inventory at

1 Longmarsh; Doe Farm request re invasives after timber harvest with unanimous approval of \$3,500;
2 Land Stewardship Outreach Program for volunteers ongoing; approved alternates for Land
3 Stewardship Committee; total rewrite combining WCOD and SPOD into one article with language
4 by Conservation Commission Sub-Committee by next month.

5
6 Bill McGowan arrived at the Planning Board Meeting at 7:09 pm.

7
8 Reporting from Agricultural Commission: Tom DeCapo said the Commission met March 18,
9 discussed proposed Workforce Housing Zoning amendment and potential impact on areas of high-
10 quality soil; ongoing resident outreach to assess interest in community agriculture, focus group
11 study group possible; UNH took position with Bee Friendly with its pollinator gardens.

12
13 Reporting from Housing Task Force (HTF): Chair Rasmussen said Housing Task Force met Monday
14 and discussed topics for community outreach and what plans would look like.

15
16 **VI. Public Comments – None**

17
18 **VII. Review of Minutes (old):**

19
20 **VIII. Public Hearing - 12 Oyster River Road – Conditional Use.** Conditional use application to
21 install deck, patio, steps, retaining wall, and landscaping within the Shoreland Protection
22 Overlay District. Katherine Cook/New Heritage Designs, property owner. Ben Groves, Rye
23 Beach Landscaping, contractor. Map 109, Lot 80. Residence A District. Recommended
24 action: Final action.

25
26 Katharine Cook, owner, said proposal is to address water runoff and erosion issues on side of
27 property by installing a retaining wall, stone steps due to steep slopes, for access to rear yard;
28 also add 2 permeable paver patio surfaces, one at upper level and one at lower level, and add a
29 12 ft x 12 ft deck as access point to rear yard from main floor of house.

30
31 **Vice-Chair Tobias *MOVED to open the Public Hearing for CU at 12 Oyster River Road;***
32 ***SECONDED by Richard Kelley; APPROVED 7-0, Motion carries.***

33
34 **Elizabeth Stine**, neighbor at 14 Oyster River Road, spoke in support of the plans to mitigate
35 erosion on the side of the house and plant native species.

36
37 **Christine Caputo**, abutter at 7 Orchard Drive, also spoke in support of the project and the
38 proposal to improve the situation around the house.

39
40 Conservation Commission Recommendations: Mr. Kelley said the Conservation Commission
41 discussed native plants vs cultivators; expressed concern using wood chips as a stabilizer and
42 recommended combining with other erosion-control devices; concern re overflow of rain garden

1 and permeable pavers but use of level spreaders turns concentrated flow back to sheet flow.
2 *Recommendation*: approve and submit new criteria.

3
4 **Richard Kelley *MOVED to close the Public Hearing for Conditional Use at 12 Oyster River***
5 ***Road; SECONDED by Bill McGowan.***

6
7 **SPOD Conditional Use Criteria:**

- 8 1. No alternative location on parcel outside of SPOD: Criteria met.
9 2. Minimize soil disturbance and adverse impacts to water quality: Not working outside area of
10 impact.
11 3. Mitigation, restoration activities of area being restored: Criteria met.
12 4. Proposed project will not have substantial adverse impacts: Applicant not required to provide
13 support documentation for this criterion.

14
15 **Basic Conditional Use Criteria:**

- 16 1. Site Suitability for projected use: N/A
17 2. External impacts of proposed use on abutting properties: Residential use in residential zone.
18 3. Character of site development: Residential single-family home with back yard in appropriate
19 neighborhood.
20 4. Character of building and structures: Only structures permeable paver patios, deck, native
21 stone stairway; character appropriate to neighborhood.
22 5. Preservation of resources: Mature trees not being touched.
23 6. Impact on property values: N/A
24 7. Availability of public services and facilities: N/A:
25 8. Fiscal Impacts on Town: None.

26
27 Mr. Kelley asked about requirements for State Permits. Ms. Cook said anything within 250 ft of a
28 designated river requires some kind of permitting by the State and this project qualifies for a
29 permit by notification filed under woodland buffer which is within 150 ft of river, and shoreland
30 within 50 ft (project falls within 100-150 ft); in process of getting a permit of notification by the
31 State with project contingent on Town and State approval of both permits.

32
33 ***Motion to close Public Hearing APPROVED 7-0, Motion carries.***

34
35 **Chair Rasmussen closed the Public Hearing at 7:32 pm.**

36
37 ***Bill McGowan made a motion that the Planning Board approve the CU Application to***
38 ***install deck, patio, steps, retaining wall and landscaping within SPOD, Katharine Cook,***
39 ***New Heritage Designs, property owner, Ben Groves, Rye Beach Landscaping, contractor,***
40 ***Map 109, Lot 80, Residence A District; SECONDED by Chris McClain; APPROVED 7-0,***
41 ***Motion carries.***
42

1 **IX. Review of Definitions in Zoning Ordinance.** Review of the Zoning Ordinance as part of the
2 zoning rewrite. The board completed a first pass through the Definitions. The board is
3 conducting its second review. Once the board is satisfied with the changes an amendment
4 will be presented for a public hearing. Recommended action: Make any final adjustments
5 and set date for public hearing.
6

7 Chair Rasmussen said the Board allowed a few definitions to remain that are not in the Table of
8 Uses. Mr. Behrendt said they can inform discussions of other matters. Chair Rasmussen said it
9 would be better to put them in the Table of Uses and say they are not allowed anywhere.

10
11 Councilor Grant said the Board has CU for Student Housing across all commercial core zones as
12 well as research and industry and asked to narrow that to just PO with everything else X. Mr.
13 Behrendt said mixed use with residential is CU in Central Business.

14
15 Vice-Chair Tobias said multi-unit is the most economical for workforce housing and not allowed
16 anywhere; designate Office Research, MUDOR, ORLI as overlay districts where workforce housing
17 would be considered; student housing only in Office Research. Councilor Grant said she thought
18 residential multi-unit would be phased in with Workforce Housing. Mr. Behrendt said workforce
19 housing will have its own line.
20

21 Mr. DeCapo raised concern about making changes to the Table of Uses now that might be
22 changed again later; Mr. McClain felt this was more transparent. Chair Rasmussen recommended
23 the Board try to allow multi-unit complexes somewhere; Councilor Grant said she would not
24 recommend putting multi-unit complexes in PO and Board agreed on MUDOR.
25

26 Definitions:

27 *Restaurant* – Change “prepared on site” to “prepared and served”.

28 *Structure* – See Setback Definitions on page 47 for setbacks specific to each structure.
29

30 *Bill McGowan left the Planning Board meeting at 8:09 pm; Tom DeCapo was reseated.*
31

32 **Richard Kelley *MOVED that the Planning Board advance Definitions and Table of Uses as***
33 ***amended this evening for Public Hearing on April 10, 2024; SECONDED by Councilor Grant;***
34 ***APPROVED 7-0, Motion carries.***
35

36 **X. Workforce Housing – Potential Zoning Amendment.** Discussion about issues related to
37 potential zoning amendment to facilitate the creation of workforce housing with a possible
38 overlay district encompassing a number of properties including a 117-acre lot of land
39 owned by the Leda M. Keefe Rev. Trust, c/o Daniel Keefe, at 59 Piscataqua Road, Tax Map
40 209, Lot 39. The Planning Board put aside an earlier proposal and is now working on a
41 new/revised draft. Recommended action: Discuss issues.
42

1 Mr. Behrendt said Attorney Spector recommended that the Overlay District also be done in other
2 areas so it cannot be called spot zoning: 3 obvious areas are OR, majority of Tech Drive, and near
3 the West Edge. Chair Rasmussen said the general process right now is for the Board to provide
4 ideas to Mr. Behrendt to create a draft, review the draft, have Town Attorney rereview, then
5 schedule public hearing and follow rest of manual process.

6
7 Mr. Kelley asked about spot zoning; Mr. Behrendt said if spot zoning is not justified it is not good
8 for planning. Mr. DeCapo said there should be some urgency around getting something approved
9 to enable the Keefe property to go forward. Mr. Behrendt said the Board first needs to work
10 through concerns for student housing and income requirements raised by the Town Attorney.

11
12 HUD Standards: New Hampshire calls out 25 HUD standards. Mr. Behrendt said parameters are
13 needed with clarification on number for the Zoning Ordinance as RSA is confusing. Chair
14 Rasmussen suggested looking up HUD fair market rates; Vice-Chair Tobias said it was easier to
15 stick with RSA.

16
17 Units for Sale vs Rentals: Rental at 60% AMI, 100% AMI for sales; Mr. Behrendt suggested a
18 higher density for rental. Mr. DeCapo asked about the need to specify percentage for sale or
19 rental, rather than adapting to a particular parcel or development; Mr. Behrendt said it could be
20 flexible in the ordinance or have a minimum or maximum. Mr. Kelley asked why not leave
21 proportions for the market to decide. Mr. Behrendt said it is better to structure the Ordinance
22 based on 60% rentals, 100% single-family/condos; Board agreed not to mix senior housing in this
23 ordinance.

24
25 Vice-Chair Tobias said the Board would need third-party oversight on buyer qualification with
26 annual reports to the Town Council. Mr. DeCapo said regarding perpetuity, over a long period of
27 time some sales could roll off into the free market. Vice-Chair Tobias said they will still have equity
28 and homes were not purchased at market rate. Mr. Behrendt said he would recommend against
29 it as there is such a need for workforce housing.

30
31 Chair Rasmussen said the Board needs to discuss what percentage of a development needs to be
32 workforce, either sunset or in perpetuity; Mr. Behrendt said workforce housing and sales would
33 never sunset. Councilor Grant emphasized making this a coherent community, deciding on a
34 percentage of workforce housing, and letting developers figure out the number of rentals and
35 sales. Mr. Behrendt said you get more density for rentals than sales.

36
37 Chair Rasmussen said when you have a developer willing to subsidize a workforce housing
38 development, go for 70%; for a developer wanting to make a profit lower the percentage to 25%-
39 30% workforce housing. He said other development projects being done range from 10%-100%.
40 Vice-Chair Tobias said there are incentives because it is a partnership that has to happen between
41 a community and a builder if it is going to be done. Mr. Behrendt said the Board has an
42 opportunity here to have the majority on a site be workforce housing.

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Vice-Chair Tobias said the Board started with an amendment to change the zoning on one particular property and now has to create an overlay district; the Board has to come up with a figure to fit more than just one project and needs to find other places in town. The Board discussed running out of workforce housing at some point in the future; Chair Rasmussen said there is only so much property in the overlay district.

Mr. McManus said looking at percentage and perpetuity you could run into economics where it becomes difficult to sustain the development and need to make sure the development is still sustainable in 25 years. Chair Rasmussen said right now the Board needs to get an outline done.

RSA 674:58 States that workforce dwellings may not be rented to or sold to any household whose income is greater than that specified. Councilor Grant said the Randolph's have an agreement with the city of Dover that states they will maintain those property levels.

Chair Rasmussen said every workforce housing development in the State has that provision and that paragraph is the blueprint for how to solve the problem. He said the Board will have the report on who is purchasing sale units within whatever limits we specify; income qualifications will manage that with requalification required at renewal; income: wages or employment.

The Board discussed issues and concerns in depth; agreed Support Facilities can be discussed later and may not be feasible. Target Density: Chair Rasmussen said this cannot be a bonus but needs to be a flat number for an Overlay District. Vice-Chair Tobias asked about Open Space and Chair Rasmussen said they first need to look at the density. Mr. Behrendt said huge perimeter buffers should be possible with larger parcels.

XI. Other Business

XII. Review of Minutes (new): February 14, 2024

Vice-Chair Tobias said she sent changes and spelling corrections to Karen Edwards.

Mr. Kelley MOVED to approve the minutes as amended; SECONDED by Mr. McManus; APPROVED 4-0 with 3 abstentions, Motion carries.

XIII. Adjournment

Councilor Grant MOVED to adjourn the Planning Board Meeting; SECONDED by Vice-Chair Tobias; APPROVED 7-0, Motion carries.

Chair Rasmussen adjourned the meeting at 9:37 pm.

Respectfully submitted,

- 1 Patricia Denmark, Minute Taker
- 2 Durham Planning Board

DRAFT