

These minutes were approved at the November 13, 2024 meeting.

**TOWN OF DURHAM
DURHAM PLANNING BOARD MEETING**

Wednesday, October 9, 2024

Town Council Chambers, Durham Town Hall

7:00 pm

MEMBERS PRESENT: Paul Rasmussen (Chair), Sally Tobias (Vice Chair), Peyton McManus, Emily Friedrichs (Council Rep), Heather Grant (Alternate Council Rep), Erika Naumann Gaillat (Alternate), Tom DeCapo (Alternate)

MEMBERS ABSENT: Robert Sullivan, Richard Kelley

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 Tom DeCapo for the vacant seat and Erika Naumann Gaillat for Richard Kelley.

III. Approval of Agenda

Vice-Chair Tobias MOVED to accept the Agenda for October 9, 2024; SECONDED by Paul McManus; APPROVED: 6-0, Motion carries.

IV. Town Planner's Report

Michael Behrendt said the next meeting would be the Annual Planning Board Workshop where the Board does not review applications. Agenda: first look at PUD Ordinance; draft for definitions incorporating Planning Board final comments and schedule Public Hearing for November 13, 2024; only one meeting in November and December due to holidays.

V. Reports from Board Members who serve on Other Committees

Reporting from the IWMAC: Chair Rasmussen said the Composting Program kicks off next week and the Committee is working on a variety of things; check Friday Updates.

Reporting from the Town Council: Councilor Friedrichs mainly a presentation on changes from DPW and IWMAC and what will change with out Solid Waste Ordinance; language changes to enable transition to 2-bin system, with 1 recycling bin and 1 solid waste bin provided to each resident. School Superintendent Dr. Shaps talked about school opening; discussion on revenue from Municipal Transportation Improvement Facility committing future revenue for net zero

transportation, tabled for further discussion: pay an additional fee, on top of State \$5.00 car registration fee, which goes to Durham's Road Infrastructure and came up through Energy Committee. Set aside Town Council goals progress report; approved purchase of new parking kiosks.

Chair Rasmussen said the State has come out with the Housing Championship where you have to score 80 points with one-half from zoning and the rest from other areas of the Town with everyone pulling together, and said he wants to confirm with the Town Council that they would be in support of becoming a Housing Champion in the State and would forward the information to the Board. Councilor Friedrichs said the Council wants a written summary and not a link. Ms. Naumann Gaillat said she was confused by the points system categories and Chair Rasmussen said they could discuss it further under other business.

Councilor Friedrichs said Superintendent Dr. Shaps also talked about School Infrastructure and beginning discussion of future school building needs. The Middle School projections are going down, primary school projections will continue to go up, looking at renewing agreement with Barrington for high school, a 10-year agreement with a 4-year notification built in.

VI. Public Comments

No Public Comments.

VII. Review of Minutes (old):

VIII. *Public Hearing - 280 Durham Point Road. 2-lot Subdivision.* Subdivision of 33.5- acre parcel into a 5 - acre lot to contain an existing house and a 28.5 - acre lot intended for acquisition by The Nature Conservancy. Dick and Kathleen Gsottschneider, Gsottschneider Family Trust, property owner. Ben Wallace, The Nature Conservancy, applicant. Valerie Shelton, Real Estate Agent. Adam Fogg, Surveyor. Map 227, Lot 36. Residence Coastal and Rural Districts. *Recommended action:* Final action.

Valerie Shelton of Appledore Real Estate said she is the Agent for the owners of the property and is here tonight with Ben Wallace of the Nature Conservancy. She said Surveyor Adam Fogg could not be here tonight. She provided an updated plan adding note #6 on the plan to delineate the soils mapping for the 5-acre homestead parcel to ensure it meets new minimum requirements for buildable area. The other update is access for the larger parcel showing existing gravel road.

Chair Rasmussen said the Board has the details they need, and it is now an opportunity to ask questions then open the Public Hearing. Mr. Behrendt said he found the proposed driveway adequate, and all the other notes and requirements have been taken care of.

Vice-Chair Tobias MOVED to open the Public Hearing for 280 Durham Point Road, 2-Lot Subdivision; SECONDED by Erika Naumann Gaillat; APPROVED 6-0, Motion carries.

Mr. DeCapo asked the reason it was being done in the form of a sale instead of an easement. Mr. Gsottschneider said it was offered as an easement, but the Nature Conservancy wanted to purchase it. Ben Wallace of the Nature Conservancy said the way their funding is coming together, it would work better for the Nature Conservancy to purchase the parcel.

Councilor Friedrichs asked if the Board felt confident, without having done a Site Map or a complete Wetland Survey, that the larger parcel would have enough buildable land should the lot become a single-family home. Chair Rasmussen said he did based on GIS Wetland Maps that do not show much wetland on the larger parcel.

Councilor Friedrichs MOVED to close the Public Hearing for 280 Durham Point Road, 2-Lot Subdivision; SECONDED by Peyton McManus; APPROVED 6-0, Motion carries.

Discussion: Councilor Friedrichs asked if the gravel drive could be used as a future driveway; Chair Rasmussen said it could. Mr. Behrendt corrected a word in the first note to: the driveway may be *improved* not “approved”. Mr. McManus asked if the entire parcel is in current use. Mr. Gsottschneider said yes, the whole parcel except 1 acre around the house, and of the 5-acre parcel being created, 4 acres of that will be coming out of current use and will be a house lot *not in current use* on which taxes will be paid; the other lot will remain in current use.

Councilor Friedrichs asked about the Flood Hazard Overlay District and whether the Board follows FEMA’s map or a slightly altered map; Mr. Behrendt said they follow FEMA’s map. Councilor Friedrichs said they are based on climate data looking backwards.

Chair Rasmussen MOVED that the Planning Board accept the Notice of Decision which includes several waivers for 280 Durham Point Road, 2-Lot Subdivision, Dick and Kathleen Gsottschneider, Gsottschneider Family Trust, property owners, Ben Wallace of Nature Conservancy, applicant, Map 227, Lot 36, as dated October 9, 2024; SECONDED by Vice-Chair Tobias; APPROVED 6-0, Motion carries.

- IX. 65 Durham Point Road – 2-lot Subdivision/Adjustment of Right-of-Way line.** Former owners of the subject lot made an agreement with the Town of Durham in 1985 for the Town to relocate a portion of Durham Point Road onto the subject lot in order to remove a tight bend in the road. The land underlying the newly located road was never conveyed to the Town nor was the right of way line moved. A new plat has been created to correct that omission. Sarah Ford Trust, property owner. Map 115, Lot 6. Residence Coastal District. Recommended action: Accept as complete and schedule a public hearing for November 13.

Valerie Shelton said she was hired by Sarah Ford Trust to sell the remaining family land, and before marketing the property it was discovered there was an agreement in the early 1980s by Sarah’s mother to transfer property on Durham Point Road to the Town so the road layout could

be changed; the Town agreed to provide survey work and prepare the deed but papers were never filed. The Town hired Doucet Survey, LLC who met with DPW asking what the Town needed to actually own that section of the road to fulfill the requirement under the agreement to clean up the title so the lot could be sold.

Mr. Behrendt said the application is complete and requested that the Board approve the waivers, accept application as complete, and schedule the public hearing. He said the waivers are extensive and include some of the general items, everything under platting, topographic site features, and everything under utilities.

Councilor Friedrichs asked the meaning of “fee ownership”; Mr. Behrendt said it means just owned outright. Councilor Friedrichs said the lot in question is north of the road and what is south of the road will be conveyed to the Town property line; the purple area is subject to right-of-way because that is where the road should have been. Mr. Behrendt said it is confusing because there is no old survey or correct plat of the subject lot so the southwesterly boundary of that lot is not known; Doucet Survey surveyed the changes and agreed it was reasonable.

Councilor Friedrichs said the blue polygon should be conveyed as right-of-way not fee ownership. Mr. Behrendt said they are not absolutely certain about that line because it extends from lot corner to lot corner, and agreed the purple line is owned by subject property so the Ford family will own the parcel, the curved parcel the Town owns, then a strip of land technically still owned. He said the original intention was to convey that in fee simple to the Town.

Vice-Chair Tobias said the “blue polygon” encompasses the purple area and the blue area will be conveyed fee simple. Ms. Shelton said that is because the boundary of the remainder lot under the Ford Trust will be the surveyed boundary. Mr. Behrendt said the purple area is assumed to be an old right-of-way so Doucet might have done this before we clarified the question. Ms. Shelton said that is correct as under the agreement in 1980s all of that land was to be deeded to the Town with the Fords not retaining any of it.

Mr. Behrendt said this map is a little early; Town Attorney clarified afterwards that the blue polygon should be conveyed to the Town as fee simple but not the right-of-way portion. Ms. Shelton said the way the Town Attorney will draft the Deed will be all of the land southwest of the surveyed line referencing a recorded plan subject to any and all rights-of-way or easements of record; other owners have the right-of way in their deeds.

Chair Rasmussen MOVED that the Planning Board accept the application for 65 Durham Point Road as complete; SECONDED by Tom DeCapo; APPROVED 6-0, Motion carries.

Chair Rasmussen scheduled the Public Hearing for 65 Durham Point Road for November 13, 2024.

- X. **4 Riverview Court – Conditional Use Application.** Conditional use in the Shoreland Protection Overlay District for an existing single-family house for structures to be located within the 125-foot setback line: freestanding garage, expansion of existing driveway, retaining wall, shed, and buried electric line that currently runs overhead. Arthur McManus, property owner. Chris Guida, Fieldstone Land consultants, wetland and soil scientist. Map 214, Lot 11. Residence Coastal District. Recommended action: Discuss application and schedule a public hearing for November 13.

Arthur McManus said he purchased the property at 4 Riverview Court about 6 months ago, house was built in 1965 and not kept up, existing garage foundation as well as house were compromised, and he is looking to build a garage with 2 options: (1) original option of detached garage on east side of property within setbacks and put in a new septic system; (2) expand existing garage, add living space in both, and change orientation of the driveway to come directly to the house.

Mr. A. McManus said he is asking for option 2 to expand the existing garage to 24 ft wide x 50 ft deep; garage will be 24 x 26 ft, living space 24 x 24 ft with entry on that side as well. Along with this is the driveway reconfiguration: come through pre-existing access path, down Riverview Court in front of house into garage, with front entrance in that corner. He is also requesting a retaining wall on west side next to covered porch 8 x 4 ft high; steep incline and retaining wall with steps down to water. Also, a Shed further back from the road than building, as far from wooded area as possible.

Councilor Friedrichs asked about an extension of the house to garage shown on this plan. Mr. A. McManus said that area is now an 8 x 10 ft foyer, garage will be extended 30 ft out from the house, and house will be all single floor 24 x 50 ft. He said the driveway will be filled in a little because of slope to build up garage walls to allow for more soil and the garage is now rotated. Councilor Friedrichs asked about the impervious surface limit allowed; Mr. A. McManus said calculations show it at 5% today and is proposed to be 8.8%.

Chair Rasmussen said the new retaining wall with steps is located at the 12-ft high water mark and recommended not having the steps come all the way up to the house and consider having access below going around the retaining wall. Mr. Behrendt suggested the Board do a Site Walk; Board agreed to Saturday, October 26 at 10:00 am with the Conservation Commission: have new building structure staked out, new driveway outline, and visit retaining wall area.

Chair Rasmussen said most of the work is within the SPOD line. Mr. Behrendt said the garage may be allowed by right; the Board will look at the one-story building extension with attached garage at entryway 24 x 50 ft, changes in driveway, burying the electric, new shed, and retaining wall; Mr. A. McManus said there will be 2 retaining walls, one near the patio and one on north side of driveway which falls outside of the 125-ft setback. Councilor Friedrichs asked if the septic system would be outside that setback boundary. Mr. Behrendt said they can do a replacement septic

with review of the Code Administrator, but it has to be as far from the reference line as possible. Mr. McManus said he spoke with the Town Attorney who will be part of it and will work with the State.

Public Hearing for 4 Riverview Court, Conditional Use scheduled for November 13, 2024.

XI. Public Hearing - Miscellaneous Zoning Amendments. A set of zoning amendments regarding freestanding small group net metering uses in the five core commercial districts, childcare as an accessory use to all residential uses, requirements for accessory buildings to single-family houses, zoning enforcement, clarifying text consistent with state law, terminology, and formatting of the ordinance. Recommended action: Initiate amendments if acceptable.

Chair Rasmussen said the Town Attorney raised some concerns with the 300 square footage change for ADUs which will need to be discussed.

Chair Rasmussen MOVED to open the Public Hearing for Miscellaneous Zoning Amendments; SECONDED by Vice-Chair Tobias; APPROVED 6-0, Motion carries.

Joshua Meyrowitz of 7 Chesley Drive said that any lists of numbers should have both the *word* and the *number*, as it is important for searching a document and removes potential transfer errors. He asked that the Planning Board, when they are not addressing applications, write up generic rules for everything, and plan for what the public wants and not what they do not want; to think about things ahead of time, possibly at the upcoming Workshop.

Councilor Friedrichs asked if the section on Lighting had been intentionally eliminated from this previous document dated 9/25/2024. Chair Rasmussen said it was intentional as it would require more in-depth review before moving forward and he wanted to get these through quickly as they are currently out of step with State Law.

Chair Rasmussen MOVED to close the Public Hearing for Miscellaneous Zoning Amendments; SECONDED by Vice-Chair Tobias; APPROVED 6-0, Motion carries.

Chair Rasmussen said the issue raised by Audrey regarding changing maximum floor area for Accessory Buildings for Single-Family Use from 200 sq ft to 300 sq ft is a valid argument as maximum floor area at 300 sq ft triggers a lot of further review; no objections by the Board. Under Article XX: *B. Accessory Dwellings for Single-Family Use* – corrected language for standards adding “not including garages and additional connected spaces” and eliminating “second floor above garage”.

Mr. McManus asked why numbers under 10 in an ordinance are written out, without the corresponding number, and those above are written *only* as numbers. Mr. Behrendt said that is the convention in writing that is simple and more elegant. Mr. McManus said in general the Board

should start designing the ordinances for digital markup and searching and the design should be for digital absorption and not necessarily aesthetics. Chair Rasmussen said it should be digits only and not written out when talking about a number with a label.

Councilor Fredrichs MOVED to initiate Miscellaneous Amendments to the Town Council; SECONDED by Peyton McManus; APPROVED 6-0, Motion carries.

XII. Public Hearing - Workforce Housing Zoning Amendment. Amendment for a proposed new Article XVIII.1 - Workforce Housing Overlay District for the purpose of providing opportunities for the development of workforce and affordable housing and to ensure the availability of a diverse supply of rental housing. A revised draft is being finalized to be placed for a new public hearing after okay from Planning Board. Recommended action: Initiate amendment is acceptable.

Vice-Chair Tobias MOVED to open the Public Hearing for Workforce Housing Zoning Amendment; SECONDED by Peyton McManus; APPROVED 6-0, Motion carries.

Susan Richman of 16 Cowell Drive read comments from **Beth Olshansky**, who thanked the Board for excluding agricultural lands and parcels to the south in ORLI from the overlay district allowing Durham to retain its rural character; asked why small parcels along Route 108 are included and about protecting gateways; asked if Housing Task Force could focus on revising zoning for Mill Plaza and Church Hill to be considered for workforce housing.

Joshua Meyrowitz of 7 Chesley Drive said there is not enough focus on planning for what the public wants. He pointed out positive changes to the ordinance: limiting number of 3-bedroom units, expanding and elaborating allowed uses, living environment for future residents with pedestrian-oriented designed streets, transportation plan, and asked for more detail under "open space". He said he liked other Incentives, not just for density, and would add recreational facilities open to the public and trail networks, including to the downtown core. He asked that the Planning Board make this plan the best it can be and enhance the overall experience of living in Durham.

Chair Rasmussen MOVED to close the Public Hearing for Workforce Housing Zoning Amendment; SECONDED by Vice-Chair Tobias; APPROVED 6-0, Motion carries.

Ms. Naumann Gaillat said locations are not ideal on the current map, making it difficult to see what is being discussed. Mr. Behrendt said he would talk to the GIS coordinator to make the map more readable. Chair Rasmussen said everything east of Route 108 is included in the Overlay District to avoid little cuts in the zone. Vice-Chair Tobias said the Board needs to remember what already exists and what is allowed in those zones. Councilor Friedrichs said there is good reason to include a height maximum, as well as a story maximum, or screening options rather than setbacks.

Mr. McManus said for transportation and access the Board should equally weight pedestrians and disabled and not have it skewed to vehicles, and equal weighting of that in terms of safe transportation within the lot would make sense. Board agreed priority one is affordability; Chair Rasmussen asked that they keep that in mind; incentives are there because nobody can afford to build it, and we need to be careful not to make it unaffordable.

Vice- Chair Tobias recommended limiting things listed and allowing for the creativity of the developer, and asked the most important thing the Board would like to see out of this. Councilor Grant said the connection. Chair Rasmussen advised the Board to be careful between requirements and suggestions, and said when it comes to any sort of incentive it becomes a discussion between the applicant, the Town Administrator and the Town Council, and asked that they capture language suggested by Councilor Friedrichs.

Councilor Friedrichs said the Board looked at recreation facilities, perhaps say “public recreational facilities” then “active transportation networks” instead of trail networks and eliminate “transportation connections and sustainability”. Mr. McManus suggested discounting recreational facilities against open space as an incentive. Councilor Friedrichs said the current definition of open space includes recreational facilities; language could be added that the Planning Board may negotiate with applicant to allow for additional density or reduced open space. Councilor Grant recommended not expanding incentives further as they are fairly clear. Chair Rasmussen suggested keeping it high level and generally allowing for creativity with details.

Mr. McManus said comments and emails from the public have made this a better ordinance and he felt it was ready to be sent on. Councilor Friedrichs asked where the AG Commission stands with things and if there has been further feedback. Chair Rasmussen said some AG Commission members felt that since no farmers are going for this, adding agricultural leases under incentives is a better option.

Mr. Behrendt asked what can be done to improve the GIS Map and make it easier to read. Vice-Chair Tobias said we do need to see what is already there. The Board discussed various options such as bolder outlines, changing colors, or cross-hatching. Chair Rasmussen said Creek Road jumped out for him, a type 6 road off of Bagdad; Councilor Grant said it would be ideal if it could go through to Route 108. Chair Rasmussen said it would need to be paved to use as entrance.

Chair Rasmussen asked about adding a few more questions to the FAQ list. Vice-Chair Tobias said they should include that they are looking at Mill Plaza and Church Hill but not right now. Chair Rasmussen suggested adding in first sentence: “this is just the first step of several the Planning Board will be looking at; plan on the core business area and other infill options as future steps”. Councilor Grant said that it is a perfect sentence and needs to be listed first. Vice-Chair Tobias said the Planning Board, along with the Housing Task Force, will be bringing forth recommendations in other areas.

Mr. McManus asked what the FAQ question “Why is this valuable for Durham?” is adding. Ms. Naumann Gaillat said it is not just for people here but for future people. Mr. Behrendt said it was a question on Sally’s power point presentation. Ms. Naumann Gaillat said if more people move here, they will be part of a livelier downtown which will benefit Durham. Councilor Friedrichs said it will also add to Durham’s historical diversity.

Mr. DeCapo said he disagrees with this ordinance because there is absolutely nothing here to ensure this housing gets into the hands of the people we are talking about, and it is simply not enough to “encourage” developers to build. There are big costs and risks being incurred with a development of this size, opportunity costs by using up the land, and no incentives to make sure this housing will get to the people we are targeting. Developers are in business and at a minimum want to make sure people can pay. He said it is reckless, and he cannot support it, unless there is something in here that guarantees who it *must* be rented to.

Vice-Chair Tobias MOVED that the Planning Board initiate this Workforce Housing Overlay District Zoning Amendment to go forward to the Town Council; SECONDED by Peyton McManus;

Councilor Friedrichs said Mr. DeCapo made some good points and Ze wanted to think that over; there was also compelling information submitted from the Energy Committee about energy efficiency being tied to any workforce housing amendment and those concerns were not adequately addressed.

Chair Rasmussen said there are 2 safety nets on that: Site Review and Energy Checklist. He said it cannot be required without being able to codify it, and it is better handled outside of zoning. He said the goal here is to provide missing middle housing of all types for all people, and we help the workforce by doing that. He said he agrees with what Mr. DeCapo has to say but sees it more as supply and demand. Mr. DeCapo said he would agree if the Town had an unlimited supply of land.

Mr. McManus said it seems by definition the Board has created affordable housing by stating it needs to be 100% HUD Fair Market value; then added an extra requirement that 20% of those are at 80% or less and 20% above which is sustainable in theory long-term without stepping in to subsidize. Chair Rasmussen said Mr. DeCapo’s concern is with rich people buying up the units.

After further discussion the Board added number 4. under F. HUD Fair Market: “Rental units must be the primary residence for all lessees,” and under H. Housing Guarantees: “units may not be sub-leased at a rent that exceeds the base rate”.

Vote: APPROVED 4-2, Motion carries.

Votes in favor: Erika Naumann Gaillat, Paul Rasmussen, Sally Tobias, Peyton McManus

Votes against: Councilor Friedrichs, Tom DeCapo

Councilor Friedrichs said the Board has put in all reasonable requirements to target this to the best of their ability, and sending this ordinance to the Town Council with a 4-2 vote is a healthy thing. Mr. DeCapo said he did not think he would feel the same about the downtown district, but the magnitude of the risks for a development of this size and the opportunity costs of giving up the land are too great. Chair Rasmussen said it is clear an income verification needs to be included.

Mr. Behrendt said he disagreed, and said the Board really wrestled with this early on, but found it would be very difficult to do. He said the purpose of this ordinance is to provide units that are affordable and not to be determining who lives there; he is not concerned about wealthy people taking over as rents are still pretty high and the units will not be luxurious as a developer cannot afford to build them. Mr. DeCapo said it depends on what the goals are. Mr. McManus said he is not sure what the Town is giving up as the land could be divided up now, and it is making something available to people who work here.

Ms. Naumann Gaillat said given the 2 nays are for different reasons and Councilor Friedrichs want to do more review, the ordinance should still go to Town Council to see what they say. She said the Board has been working on this for so long that fresh input would be helpful; see what the Council says and move on from there and address other concerns accordingly.

XIII. Other Business

XIV. Review of Minutes (new): September 11, 2024

Meeting Minutes of September 11, 2024:

Vice-Chair Tobias MOVED to accept the meeting minutes of September 11, 2024; SECONDED by Peyton McManus; APPROVED: 4-0 with 2 abstentions, Motion carries.

XIV. Adjournment

Tom DeCapo MOVED to adjourn the Planning Board meeting of October 9, 2024; SECONDED by Councilor Friedrichs; APPROVED: 6-0, Motion carries.

Chair Rasmussen adjourned the meeting at 10:05 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker
Durham Planning Board