

*These minutes were approved at the December 11, 2024 meeting.*

**TOWN OF DURHAM  
DURHAM PLANNING BOARD  
WORKSHOP MEETING**

**Wednesday, October 23, 2024**

**Town Council Chambers, Durham Town Hall**

**7:00 pm**

**MEMBERS PRESENT:** Paul Rasmussen (Chair), Sally Tobias (Vice Chair), Peyton McManus, Robert Sullivan, Heather Grant (Alternate Council Rep), Erika Naumann Gaillat (Alternate); Richard Kelley (arrived late)

**MEMBERS ABSENT:** Emily Friedrichs (Council Rep), Tom DeCapo (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 the vacant seat and Heather Grant as Town Council Representative.

**III. Approval of Agenda**

Chair Rasmussen asked that VII. Other Business: Housing Champions Program be moved to be first item, and item VI. State Planning Law be training time for all present.

***Chair Rasmussen MOVED to adopt the Planning Board Workshop Agenda as modified;  
SECONDED by Vice-Chair Tobias; APPROVED: 6-0, Motion carries.***

**VII. Other Business: New Hampshire Housing Champions Program**

Mr. Behrendt said the State is trying to create more housing, much is legislative but also deals with infrastructure and financing programs like 79-E. The Housing Champions Program aims to provide incentives to cities and towns to create more local housing. If a municipality meets 80 points on the list of criteria, they can be designated a Housing Champion and be eligible for up to \$5 million in State Aid for infrastructure improvement or assistance creating workforce housing. The Town is now at about 40 points.

Chair Rasmussen said the Town Council will take a few months before they make a decision on this, but the Board currently has a lot in process to start positioning themselves to get more of the zoning points they are currently not getting. The Board should take a quick look at the first 14 points and sort them into 3 or 4 buckets: will not pursue-not obtainable, easily attainable, pursue but not sure obtainable; absolutely pursue, and keep those in mind while drafting other

agenda items. Mr. McManus said the initial applications were due November 15, 2024 for 2025. Mr. Behrendt said the State funded \$5 million for this coming year with \$10,000 per each deed-restricted unit; state will need to refund the program next year.

1. Workforce Housing: Allow by right across entire town; current Workforce Housing Overlay District is too small to qualify for land area: Not attainable.

2. ADUs: Allow by right in all zoning districts; allow detached ADUs in all residential districts; currently not allowed in RA and RB districts: Attainable.

3. Cluster Development Ordinance/Conservation Subdivision: Allow by right in majority of zones; current Conservation Subdivision does not meet criteria. Chair Rasmussen said if the density bonus were changed from “age restricted” to extra conservation land it could qualify: Attainable.

4. Form Base Code: Allow a diverse range of housing types with minimum 5 dwelling units per building or adaptive re-use of existing buildings into residential buildings downtown by matter of right: Attainable by tweaking Table of Uses, making most **CU**s in Central Business District **Ps**. Councilor Grant asked about mixed use, and Chair Rasmussen said that would qualify as a housing type as long as allowing 5 units by right, now only allowed by CU. Attainable.

5. Inclusionary Zoning Ordinance: Not attainable for Durham.

6. Manufactured Housing Ordinance: Mr. Behrendt said State Law requires that all municipalities allow manufactured housing on individual lots in 51% of residential areas, which the town meets. The rural zone allows manufactured housing on individual lots; however, this is saying opportunity must be provided for a manufactured housing park. Ms. Naumann Gaillat said people in Durham are very much against that; Chair Rasmussen said opinions could be changing, but it is probably not attainable.

7. Missing Middle Housing Ordinance: Mix of residential and commercial in same building or lot by right or allow multi-use housing with 5 or more dwelling units by right in mixed-use zones; allow conversion of space in existing buildings or structures to residents by right in mixed-use districts: Table of Uses modification, highly attainable; key is commercial space.

8. Mixed Use Zoning: Allow mix of residential, commercial, retail by right; Board did not understand difference between items 7 and 8; Councilor Grant suggested light industrial for commercial.

9. Multi-family Housing Ordinance: Allow non-age-restricted by right in all zoning districts that encourage higher density mixed-use multi-family or overlay district; no restriction on number of units in a multi-family building. Challenging as it has to be all the districts where we allow mixed use.

10. PUD: Allowing a planned unit development by right in a PUD base or overlay district that encourages higher density mixed-use developments, missing middle, cluster developments. Discussing tonight; probably would qualify.

11. Minimum Lot Size: Not attainable for Durham.

12. Tiny Homes: Allow by right as small as 220 sq ft as long and fire and building codes are met; 400 sq ft with foundation. Vice-Chair Tobias said they need to be allowed on private property; Chair Rasmussen said tiny homes are meant to be a step to ownership that is affordable. Attainable, but not there yet.

13. Parking: In most zones that permit residential use, no more than 1 off-street space per housing unit. Attainable, but do not know amount of risk involved.

14. Transfer of Development Rights: Designate sending and receiving zones: Complicated, will not pursue.

*Richard Kelley arrived at the Planning Board Workshop meeting at 7:25 pm.*

Mr. Kelley asked what the benefit is to getting enough points to be designated a Housing Champion. Chair Rasmussen said it is \$10,000 per deed-restricted residential units from the State and puts Durham on a priority list for other funds for related programs; need to apply yearly and state needs to fund every year. He explained that the Board wanted to go through these points before discussing other zoning issues.

Chair Rasmussen said some points are for ongoing infrastructure work; Mr. McManus asked about water/ sewer infrastructure upgrades and public transportation/walkability infrastructure. Chair Rasmussen said the Madbury Road project will qualify for some of that, and potentially Riverwoods though it is age-restricted; allows the town to create TIFs. The Board discussed 79-E projects in Durham.

**IV. Amendment to Zoning Definitions.** Review of revised set of Definitions for posting for public hearing. Recommended action: Schedule public hearing if draft is acceptable.

Chair Rasmussen said the Board has what they feel is a final draft and asked if there were any definitions that needing to be reworked again or were left out. Mr. Kelley asked if “abutter” needed to be redefined to be in agreement with the new House Bill; Mr. Behrendt said abutter is not listed under definitions. Chair Rasmussen said since it has to be the state definition, just use the RSA and the Board agreed.

Chair Rasmussen suggested the Board take a look at Table of Uses on page 45 to address Town Council comments; Mr. Behrendt recommended sticking to the definitions to get them done.

Councilor Grant said one thing that came out of all the Town Council feedback was that Church Hill is still shown as allowing a parking lot with **CU** on the Table of Uses and needs to be **X**.

**Changes to Table of Uses/Definitions:**

*Abutter:* See RSA.

*Daycare Center:* Residence A and Residence B are X, with P everywhere else.

*Daycare Home:* For more than 6 and not more than 6, P across the board.

*Parking Lot:* Church Hill X, Courthouse CU, Central Business CU with the rest X.

*Parking Garage:* Central Business CU with all the rest X.

*Residence, Multi-unit Complex:* Residential Zones X; Core Commercial Zones X in Courthouse, P for the rest; Research Industry Zones P for MUDOR and X for the rest.

*Student Housing:* X everywhere except CU in Professional Office.

*Self Storage Facility:* X across the board.

*Caretaker Apartment:* P across the board.

Mr. Behrendt said he would correct all alignment issues in the Table of Uses. No changes were made to *Animal Care* or *Motor Vehicle Gas Station*.

Board agreed to meet November 20, 2024 for Public Hearing: Amendment to Zoning Definitions.

**V. Planned Unit Development Ordinance.** Beginning the discussion about proposed Planned Unit Development (PUD) ordinance. PUDs are special zoning tools which allow for flexible and innovative planning for large-scale mixed-use projects. A draft ordinance has been prepared to accommodate the potential development of The Edge project at UNH, located westerly of the intersection of Main Street and Mast Road. Recommended action: Start discussion.

Chair Rasmussen said this draft is to set the groundwork for the Edge project, with secondary possibility as a means for workforce housing. Mr. Behrendt said it is State property and UNH will probably retain ownership of the land and do land leases but is subject to Town Zoning and town taxation (the buildings, not the land).

Mr. Kelley brought up the comment by DRG that this draft is very discretionary on the part of the Town and the Planning Board, which adds uncertainty and risk to density. Councilor Grant said the Board has heard that before and said the Town Council should be involved from the very beginning and say if they want this in their community. Vice-Chair Tobias said there will need to be guidelines everyone will be following as politics is not always rational; Mr. McManus agreed and asked how it could be structured.

Vice-Chair Tobias said because the Council is not following along on the process, they do not necessarily trust the people doing it. Chair Rasmussen said based on this conversation the Board should start on page 6 with F. Process and do the first 5 pages later; Section E. Allowed Uses is extremely helpful. Mr. Kelley said if the form-based code layout is followed, it has to look good; the initial money is on the embellished renderings and not on the engineered drawings where the cost comes in.

Section F. Process: Chair Rasmussen said they will not qualify as Housing Champions with the current process as points are for “allowing a PUD by right in a base already established”; a plan will be submitted, and the Board will basically do site management it. Councilor Grant said they first need to define what zones they would want to be a PUD Overlay District. Mr. Kelley suggested just having a PUD Ordinance townwide to get the points.

Mr. Behrendt explained that this is a negotiating process and there is no way around that. Chair Rasmussen said it needs to be a negotiated process where the Board has taken their hands off some of the controls, tell them how to do it, then it is just a matter of Site Plan review to manage it. Mr. Behrendt said once this ordinance is in place there are really 2 steps: (1) present a PUD application (general plan), design (not engineered), and go through a negotiated process with the Board and the Town Council.

Mr. Behrendt said applicants have to come up with a plan the Board approves and is approved by engineers who bring in their site plan. He said there is no such thing as a by right PUD as it is a complex, detailed negotiations process. Steps include: (1) have the ordinance in place and hopefully adopted within a year; (2) UNH will then go through the process to get PUD Plan approved (with general drainage and infrastructure) by Board and Town Council; (3) once the plan is approved the 35 acres for the Edge is shown on our Zoning Map as PUD-The Edge then bring in the Site Plan.

Mr. Behrendt said DRG was looking for ways to have a process that includes a lot of dialogs with all partners, including the Town Council early on, so everyone comes along together. Chair Rasmussen stated that that could be done by having the Town Council make the decision first and not last. Mr. Behrendt said there are planning issues in which the Board is more knowledgeable; Councilor Grant said the Council is looking for the concept and the Board cannot go to the Town Council with all that zoning and have them question it all. Mr. Behrendt said that will be their role and suggested having a joint committee without looking at specifics in the general plan.

Mr. Sullivan said there are gates you have to go through: you will have the site, show access and black boxes not defined by size showing massing and height; applicant has to spend 10%-15% of their budget designing which is pure risk, then have it approved before they spend the next 50% of their budget; Town Council needs to be on board at that level and then has to delegate the

authority to figure out the details. Mr. Kelley said that would be part of the Preliminary Review; Chair Rasmussen recommended Town Council get involved as part of the committee.

Mr. Sullivan said there are market effects that will take place and this will not happen all at once: Town Council will have to sign off on the scheme, development could take 5-10 years, and approval has already happened long ago. Mr. Kelley said the PUDs he is familiar with are specific to an area like the West Edge will be. He said typically the owner would come to the table with something and that would be part of the PUD that would define some of those uses and massing requirements, and it is hands off after that; *or* we work with the University putting out an RFP which provides some parameters.

Mr. Kelley said there are residential allowed uses and they will sell, and asked if the Board can specify that a certain amount need to be workforce housing. Mr. Behrendt said it will be mixed uses: retail, restaurants, research and development, light industry and multi-family residences. Mr. Sullivan said they need a good table of allowed uses and a good prohibitions table which should be good enough in the PUD because you have to make it attractive.

Chair Rasmussen said per UNH Campus Architect Ken Weston: "UNH will likely have some industrial/quasi-industrial uses and specialized uses" and the "Prohibited Uses list needs to be carefully considered". Mr. Sullivan said we can work on the gaps, but the approval gate has to be early for the Town Council. Mr. Behrendt said between (2) Preliminary Review, (3) Committee, and (4) Formal Application we need to require there also be Town Council preliminary approval.

Vice Chair Tobias said the Council appoints members to this Board and at some point, the Council has to do its job by appointing people who are qualified and trained to do this work and trust them to do the work they are given. Mr. Behrendt said there are PUDs that are not Zoning Amendments that are CUs, and said this does not have to go to the Town Council, but they would have to be comfortable with Planning Board authority to approve a larger, mixed-use project.

Ms. Naumann Gaillat asked if there was some way to get Council feedback before holding a public hearing. Chair Rasmussen said Mr. Behrendt can speak to Todd and give a short flow chart of the process and ask if they will accept it; Town Council needs to come in early on and approve the property guardrails; principals are Planning Board and Applicant, and third parties should not be able to interfere. Mr. Behrendt said the Town Council approves a preliminary scheme, then to the Planning Board for formal application and engineered site plan. He said there is concern about how this will affect the downtown and the Town's fiscal situation.

Mr. McManus said core infrastructure information is also needed about the number of people water and sewer can support. Mr. Kelley said he is looking at PUDs in other towns where the governing body approves both preliminary and final plans and asked if UNH is putting the preliminary plan out on the street. Mr. Behrendt said UNH is still talking with consultants and

master developers, looking at how to pay for this and leverage their land to private developers, but they do have a concept plan.

Chair Rasmussen said under G. Criteria for Review of PUD Proposals, paragraph 4 should be deleted, as there is no way anyone will come to the Planning Board after Mill Plaza to do a major project that is CU. Mr. Kelley suggested the Town Council be involved on the front end with the UNH plan; or say the sewer system cannot support the plan without UNH or a development team kicking in money; the details are here with guardrails decided by owners, UNH, and the Town Council before the plan is on the street; could have Planning Board and Council in preliminary and once during final.

Chair Rasmussen said the Board can flesh out a process, but a flow chart might be helpful showing who is doing what and where decisions points are to use as a next discussion aid; also feedback from Ken Weston requested more detail. Mr. Behrendt said he would bring this back after November 20, 2024.

**VI. State Planning Law.** Discussion about recently enacted and proposed state laws related to land-use planning. Recommended action: Discussion only.

Chair Rasmussen said this is part training session to be updated on State Law.

SB437: Adoption of any building code more stringent than State Code needs state approval.

HB1202: All driveway and DOT stuff.

HB1221: Solid Waste landfill; of regional concern.

HB1359: Abutters: should start using the official abutter definition; *only* abutters can appeal vs any aggrieved party formerly.

HB1361: Existing Manufactured Homes Statute: need to have reasonable and realistic opportunities for expansion.

HB1371: New Master Plan Chapter: allowing a chapter on waste reduction, then zoning. Chair Rasmussen said from the IWMAC Committee: do not have the industry support necessary to do the things we want to do; do not have industry-size composters.

HB1400: Zoning and Planning Regulations shall not set the required maximum number of residential workforce housing parking spaces to more than 1 parking space per residential unit; allows developer to go lower. Board agreed to 1.5 parking spaces per multi-family dwelling unit (non-workforce housing) and deleting the entire reference to 3-unrelated as a code amendment; Site Plan Regulations to be updated.

Mr. Behrendt said this amendment will be also presented for Public Hearing at the November 30, 2024 meeting.

**Discussion of local transportation:**

Chair Rasmussen said Durham has 2 bus services, Coast and Wildcat; Coast supports the region, Wildcat supports UNH and the public as a side thing. UNH schedules are focused on campus life so when school is not in session the bus service gets cut by 2/3; but because Durham has Wildcat, Coast will not come in; services Newmarket and Route 108 on a call basis. He said the Lodges and Cottages pay for a bus route to run, and Durham could, depending on cost. Councilor Grant said the state is caring about more room for housing, not increased public transportation; also need more flexible mid-sized buses with smaller routes for pockets of people

Chair Rasmussen said he sent the 2023 New Hampshire Bike Plan Assessment study to Mr. Behrendt related to a pedestrian-biking infrastructure. He said you think of New Hampshire as rural but 63% of people live in a census-designated metropolitan area.

**VIII. Adjournment**

***Erika Naumann Gaillat MOVED to adjourn the Planning Board Workshop meeting of October 23, 2024; SECONDED by Richard Kelley; APPROVED: 7-0, Motion carries.***

Chair Rasmussen adjourned the meeting at 9:44 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker  
Durham Planning Board