

These minutes were approved at the March 26, 2025 meeting.

TOWN OF DURHAM
DURHAM PLANNING BOARD MEETING

Wednesday, February 26, 2025
Town Council Chambers, Durham Town Hall
7:00 pm

MEMBERS PRESENT: Paul Rasmussen (Chair), Sally Tobias (Vice Chair), Peyton McManus, Robert Sullivan, Gary Whittington, Heather Grant (Alternate Council Rep)

MEMBERS ABSENT: Richard Kelley, Erika Naumann Gaillat (Alternate), Emily Friedrichs (Council Rep)

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 Heather Grant as Council Rep.

III. Approval of Agenda

The agenda was approved as presented.

IV. Town Planner's Report

Town Planner Michael Behrendt said the Conservation Commission is working on overhauling the WCOD and SPOD and are almost finished.

V. Reports from Board Members who serve on Other Committee

Reporting from the Town Council: Councilor Grant said Council met on 17th, approved Zoning Definitions update, Durham Historical Overlay District, and Student Rental Changes; voted on resolution to oppose Bill 457: talk of losing local control re density and pushing for 2 people per bedroom no matter the dwelling unit total; next meeting 3/3/2025.

Reporting from Housing Task Force (HTF): Vice Chair Tobias said HTF met a second time this month to work on miscellaneous zoning adjustments; subcommittee met and looked at downtown zoning to try to increase density options for more housing, came up with CB1 and CB2, presenting to Town Council March 3, 2025 and they can initiate to Planning Board; HTF will continue with other zoning.

VI. Public Comments – None

VII. Review of Minutes: (old)

VIII. Public Hearing – Proposed amendment to the Aquifer Protection Overlay District. Section 175-6 of the Zoning Ordinance: a) Remove requirement to connect with Town sewer (It is not available in most of the district); b) Make single-family residences exempt from the requirement to connect to an underground stormwater system. Recommended action: Vote to initiate amendment if acceptable.

Mr. Behrendt said this was presented to the Conservation Commission Monday: they understand the constraints with sewer and want to explore ways to mitigate the impacts; asked that the Public Hearing be held but be continued 4 weeks to March 26, 2025.

Chair Rasmussen opened the Public Hearing on the Aquifer Protection Overlay District.

Beth Olshansky said she lives in one of the Aquifer Protection Overlay Districts and there are under 40 different parcels (lots) on Packers Falls Road; 4 are conserved, all but 2 lots are built on: one $\frac{3}{4}$ wetlands and one next door to her property in the process of being donated to the Nature Conservancy; there is some inconsistency over many years of approving all parcels; no town water or sewer.

Chair Rasmussen continued the Public Hearing on the Aquifer Protection Overlay District to March 26, 2025.

IX. Public Hearing – Proposed amendment to the Office Research District for front setback. Reduce the front setback in the Table of Dimensions from 50 feet to 30 feet for minor and collector streets (This will not change the setback for Dover Road/Route 108). Recommended action: Vote to initiate amendment if acceptable.

Chair Rasmussen opened the Public Hearing for Office Research District Front Setback.

No public comments.

Chair Rasmussen closed the Public Hearing for Office Research District Front Setback at 7:15 pm.

Mr. Sullivan clarified that the Board is changing the setback for one street in Town on Stone Quarry Drive; does not affect the setback for Dover Road or Route 108.

Gary Whittington MOVED to initiate the Amendment to Office Research District for Front Setbacks; SECONDED by Robert Sullivan; APPROVED: 6-0, Motion carries.

- X. Strafford Regional Planning Commission.** Presentation about SRPC from Mike Lehrman, Durham representative on the commission.

Mr. Mike Lehrman said he has been on the Strafford Regional Planning Commission (SRPC) for about 8 months and served on the Energy Committee for a few years. He said he will give an overview of the SRPC and see if there might be other parties interested in joining.

Mr. Lehrman said SRPC is a multi-function entity, one of 9 regional planning commissions created by State Law in 1969, physically based in Rochester. Towns appoint commissioners based on population; commissioners elect officers and form an Executive Committee of which he has been a member for 2 months. Funding sources are multiple with towns paying a small municipal fee, plus Federal or State grants; can pursue private grants or provide contracted services to the town; also do project work.

Mr. Lehrman said SRPC is a Metropolitan Planning Commission with a lot of expertise and a huge database of information; works on State Transportation Plan and with neighboring commissions evaluating competitive grant requests, serves as an Economic Development District working on regional planning, develops resources for towns, and offers technical assistance and environmental planning project involvement; works with NHDES on structural improvements and shoreland improvements, and has profiles and demographics for each town

Mr. Lehrman said the role of a commissioner is to represent the community on issues, working with other towns; it is a professionally run organization with a quarterly education piece and meets monthly. Mr. Lehrman said people are on staff fulltime and the organization has a library of already generated reports. Mr. McManus asked if town requests could be made; Mr. Lehrman said they put different things together for different projects and may ask for a fee for a bigger project; they also apply for grants on behalf of the towns.

Chair Rasmussen said some Department of Transportation money is going out to local communities for various projects and the State is asking regional commissions to do a scoring; 3 projects in the region are competing. Councilor Grant asked the number of seats for Durham; Mr. Lehrman said along with himself and Paul Rasmussen there is one seat available; Chair Rasmussen said the discussions are very Planning Board related. Mr. Behrendt said anyone from the public is welcome to join as a commissioner. Mr. Lehrman said the Executive Committee meets at 8:00 am on Fridays.

- XI. Site Plan Regulations – Invasive Species.** Review of a proposal from the Durham Conservation Commission to amend the site plan regulations regarding the list of prohibited invasive species. Recommended action: Schedule public hearing.

Chair Rasmussen said this involved grammatical corrections and a rewrite of Invasive Species to clarify the list for allowed and prohibited species. Mr. Behrendt said the appendix in the

landscaping section also has recommended plans for screening; it is really a partial list of the most common around Durham. Under landscaping regulations, 5.4.9 lists everything prohibited by the State which has 2 lists: State prohibited and a watch list, and Durham includes both in its site plan regulations with no impact on single-family or existing sites; prohibition is against planting them. Chair Rasmussen said the way this is done is confusing and asked that number 5 Appendix B be removed and just use the State's list to make things clear.

Chair Rasmussen set the Public Hearing for Site Plan Regulations-Invasive Species for March 26, 2025.

XII. Planned Unit Development Ordinance. Proposed Planned Unit Development (PUD) ordinance. PUD's are special zoning tools which allow 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, and other potential large mixed-use projects. Recommended action: Continue review.

Chair Rasmussen noted that the Edge project is not completely west of Mast Road and includes a parcel on the east side as well. He asked that the Board go through the draft ordinance page by page and figure out how this interacts with the Town Council and asked if everyone had reviewed the RFP put out by UNH. He said it includes other parcels of interest including 66 Main Street, Leawood Orchards, and Mast Road to Route 4.

Councilor Grant said the Board needs to decide whether to just focus on the Edge and not an overall PUD and decide which way to go. Chair Rasmussen said he was asking for something more generic and less specific, but they are running out of time to do a generic one. Board agreed it would be easier for this specific site. Mr. Whittington said the Board should be aware there is a kind of tension between this issue and the issue of how the development plan for the PUD gets approved, and said they need to be careful to draft this with only the Edge in mind. He said Mr. Behrendt was concerned it could be viewed as spot zoning, but he did not think so.

Mr. Behrendt said it was probably not spot zoning as the PUD is a large area and broad planning concept that would be applied with flexibility. Chair Rasmussen said it does not say anywhere in here that anyone can come in and do a PUD by right. Page 1 comments already dealt with; deleted "and excellence" under B. first sentence, second paragraph. Mr. Whittington said he wrote: "the purpose of this Ordinance is to promote efficient and beneficial development within certain of Durham's existing zones for the creation and approval of PUDs under circumstances where modifications of the Town Code are necessary to make such developments practical and achievable". Chair Rasmussen asked that they be side-by-side in the next draft.

The Board discussed the last paragraph defining PUD; Mr. Behrendt felt it should be included to explain what a PUD is and how it works to the public. Mr. Whittington said there was no need to

talk about the discretion of the Town of Durham to amend a law and it should be removed. Chair Rasmussen said he agrees with Gary that a Zoning Ordinance is not an instructional document and should not be used as an instructional mechanism. Vice Chair Tobias said our ordinances should be user-friendly for the residents of the community.

C. Basic Requirements: Chair Rasmussen said a question was raised: if a PUD is in a zone covered by an Overlay District, could that be used inside the PUD; this is in the Workforce Housing Overlay District. Mr. Behrendt said they probably could if they wanted to. Mr. Whittington asked if there would be conflict in that case. Mr. Behrendt said this is oriented toward the Edge and there will be a significant residential component. The Board discussed whether to add language for affordable housing.

Mr. Sullivan said they could say “affordable housing is a desired goal” and give incentives. Mr. Behrendt said with a PUD incentives are not really relevant; the only incentive is for the developer to get his plan approved and this is a negotiation and a discretionary review. Chair Rasmussen asked if it would go under C. Basic Requirements or D. Standards & Objectives of Development. Mr. Whittington advised the Board not to be too specific with an RFP. Board agreed to add it as #18 under D. Standards & Objectives of Development requiring that X% be affordable housing.

Chair Rasmussen asked if MUDOR and ORLI is too wide a net, as ORLI reaches all the way down to Packers Falls Road. Mr. Whittington suggested just saying: “we are creating a PUD for the geographical area that is subject to the Edge”. Mr. Behrendt said that would not work as any changes would involve rezoning and said it should just be a base zoning district you are dropping this into, spelling out the process and rules. Chair Rasmussen said he is happy with it being MUDOR and ORLI but would like to exclude the area in ORLI not contiguous with Mast Road in the Oyster River Forest. The Board agreed to exclude that area in ORLI. Mr. Whittington said the Board should be careful with Workforce Housing as there may be no need for it in a future PUD.

D. Standards & Objectives of Development: Councilor Grant asked about changing Master Plan in the entire document to Development Plan and Mr. Behrendt said he would change the draft. He asked that “attractive” be deleted in the last sentence of #2 and said the comment about TND is standard for these kinds of projects; #3 no changes; #4 Street Design: Board agreed to replace the last 2 sentences with “Pedestrian and micro transit ways should be prioritized over vehicular traffic to the greatest reasonable extent.” Under D.6 delete “attractive” and “carefully”.

7. Parking: Mr. Behrendt asked to add “also can be on-street parking”. Mr. McManus recommended they encourage bike parking here; Mr. Sullivan said it is under 9. Transportation; deleted last sentence under parking. 8. Utilities: no changes; 9. Transportation: add “including bicycle ways, micro transit, public transportation, and transportation management demand methods. The Planning Board may require a traffic study at its option.” Chair Rasmussen said this is all about accommodation for the mode of travel but is not dealing with what happens when you get there. Mr. Sullivan suggested adding “accommodation and storage for multiple modes of transportation”.

Mr. Whittington said this is becoming a checklist for the applicant, but there is another submission requirement in H.5 which overlaps. He suggested instead of listing all the things they should provide an explanation of the way they were addressed. Chair Rasmussen said H.5 is wrong and part of the list belongs in H.6. 10. Level of Development: Mr. McManus asked if each building could have different densities; Chair Rasmussen said absolutely, as one building may be designed for industry needing more volume and space. Mr. Sullivan said there should be some unifying concept that ties it all together outside the building. Mr. Behrendt said 10 is related to 1, they have to give a level of detail to the site the Board is comfortable with and that makes sense.

11. Building Heights: Mr. Sullivan asked why they should stop at 6 stories. Mr. Behrendt said he got a sense from UNH buildings, may be as high as 6 stories; important to have a maximum. Mr. Whittington said that is too specific. Chair Rasmussen said put it in now, so it is on the table for negotiations; Board agreed to delete the last sentence. 12. Open Space, 13. Buffers – no changes. 14. Natural & Cultural Resources: no changes. 15. Sustainability: Chair Rasmussen said net zero should be encouraged and “practical” deleted; Mr. Sullivan suggested “shall be incorporated”. 16. Public Access: Board agreed to end sentence with “shall be established.”

17. Private Covenants: Mr. Whittington said for 17, add “and ground leases”. Councilor Grant said the Board also added 18. Affordable Housing. E. Allowed Uses: 1. Residential Uses: includes everything except detached single-family; 2. Non-Residential Uses: storage facilities deleted; EV charging stations added: “Parking facilities including electric vehicle stations”. Mr. Sullivan said to exclude rifle ranges under 4. Prohibited Uses and Designs.

F. Process: Mr. Behrendt said he rewrote this based on what he was hearing from the Board. Mr. Sullivan asked when the Town Council approves it and delegates it to the Planning Board to execute. Mr. Behrendt said to treat this as a Zoning Amendment and Town Council does a full review of development PUD and adopts it, or where the Town Council has input, but Planning Board approves the development plan. Vice Chair Tobias asked if the Board could create this PUD as zoning code, with a process to first introduce it to the Planning Board for their thoughts, then take it to Town Council for their preliminary thoughts. Town Council can then act on final approval, turning over all the site review to the Planning Board to go forward with approval.

Mr. Behrendt said the Planning Board will do all the site plan reviews anyway; when developer comes up with their complete, detailed development plan as a concept, does the Board go through the regular zoning process and review it all, then Council reviews it in detail and in depth, and ultimately adopts that development plan; or have the Planning Board approve it with some Council role along the way, probably non-binding. Mr. Whittington said he thought a decision like that should be made by elected officials.

Chair Rasmussen said he felt the Board would have a hard time getting this document past the Town Council if they did not get a vote on it. He said he agrees with having a streamlined, nondiscretionary process, and likes Town Council input at the beginning. Councilor Grant said if it is going to be a large land development over a period of time, it makes sense Town Council would approve this significant land use concept, which should be clear enough in preliminary review for them to approve the continuation of this project; Board picks it up and finishes it off; developers still have to meet the core scope of what the project would look like at Preliminary Review.

Mr. Behrendt said this is a step beyond what he wrote which would be a preliminary submission requiring Town Council approval; then finish up with the Planning Board to finalize a development plan, reasonably consistent with the preliminary. Councilor Grant said the Council will say they approve the continuation of this project. Mr. Whittington said there is just the question of how specific the development plan should be; Vice Chair Tobias said after Council approval, site plans can be done with the Planning Board. Mr. Whittington said the PUD applicants are extremely interested in making it as flexible for themselves as possible.

Mr. Behrendt said this is a good compromise, a PUD plan that is actually 2 steps: present a preliminary application without a lot of detail, get Town Council approval, but final approval by the Planning Board. He said this is not an amendment to zoning, just an approved PUD. Vice Chair Tobias said if there are any substantive changes in the site plan review it would go back to the Town Council. Mr. McManus asked when regional impact would hit; Chair Rasmussen said mostly due to traffic in and out of Lee. Mr. Behrendt said more discussion about numbers 10 and 11 is needed to better identify "minor" and "significant" changes, with significant changes needing Town Council approval.

Chair Rasmussen said anything added by the Town Council not in the preliminary plan would go back to the Council for approval; if significantly rearranged it could be handled by CU. Mr. Whittington suggested this will provide the guidance needed to prepare something that is flexible and incorporating a lot of different options to be approved subsequently by the Planning Board; if inconsistent with an express term of approval it goes back to the Town Council.

Mr. Behrendt said it is then either consistent with the express terms or not, and "minor modification" is not relevant; Mr. Whittington suggested putting in a *de minimis* exception. Chair Rasmussen said there are changes they might make during our initial work for their approval and then changes that might come 2 years later. Mr. Behrendt said once the PUD is approved, the Planning Board will decide if a site plan is consistent or not. Chair Rasmussen said his concern is that the Town Council will see this a bit early, before the actual implementation of the PUD.

Mr. Whittington said this is a kind of slippery slope where the applicant is getting a certain number of units, and at some point you have to draw the line and let things fall out; key is to make sure you are negotiating for what you really care about. Mr. McManus said when something significant is brought forward make sure the applicants are engaged in a fair process. Mr. Whittington said if the Council is uncomfortable, they can get more specific.

Mr. Behrendt said they could add under G. Criteria for Review of PUD Proposal that "it also must demonstrate a benefit to the community", as this is the final development plan the Planning Board is deciding to approve or not. Councilor Grant said under #3, we should have found that out at the preliminary review. Chair Rasmussen said if #3 is a problem, the Town Council should not have sent it to us in the beginning; PUD is innovation and Master Plan is not. Board agreed to delete #3 under G.

Mr. Whittington said things could be recast as "findings" and have the Town Council focus on legal findings they should be looking at which would also focus the public debate. Vice Chair Tobias said it would focus the Town Council on certain specifics. Mr. Sullivan asked if G. is criteria for Town Council approval; Mr. Behrendt said he sees this as the criteria for the Board in its final vote. Chair Rasmussen said the Board needs to discuss criteria for the Town Council at the next meeting.

H. Submission Requirements: Chair Rasmussen said #5 says general information about existing parcels and proposed project, but the list is not current conditions but development plan conditions which need to be separated out between existing and proposed; from k. down belongs under #6. He asked where the 300 ft for abutters came from; Mr. Behrendt said it is used for CU notices. I. Interpretation/Application of PUD Development Plan: Mr. Sullivan said to change Master Plan everywhere to “Development Plan”. Chair Rasmussen said the rest is saying that the Planning Board will do its job. Mr. Whittington said in paragraph 2 “Planning Board may allow departures from the approved PUD” should be removed as it is inconsistent.

XIII. Other Business

XIV. Review of Minutes (new): January 8, 2025 and January 22, 2025

Minutes of January 8, 2025

Mr. Sullivan changed “affluent” to *effluent* on page 3, line 38.

Chair Rasmussen MOVED to approve the Planning Board Meeting Minutes of January 8, 2025 as amended; SECONDED by Robert Sullivan; APPROVED: 6-0, Motion carries.

Minutes of January 22, 2025

Chair Rasmussen MOVED to approve the Planning Board Meeting Minutes of January 22, 2025; SECONDED by Peyton McManus; APPROVED: 6-0, Motion carries.

XV. Adjournment

Vice Chair Tobias MOVED to adjourn the Planning Board Meeting of January 26, 2025; SECONDED by Peyton McManus; APPROVED: 6-0, Motion carries.

Chair Rasmussen adjourned the meeting at 10:02 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker
Durham Planning Board