

These minutes were approved at the April 9, 2025 meeting.

**TOWN OF DURHAM
DURHAM PLANNING BOARD MEETING**

Wednesday, March 12, 2025

Town Council Chambers, Durham Town Hall

7:00 pm

MEMBERS PRESENT: Paul Rasmussen (Chair), Peyton McManus, Robert Sullivan, Gary Whittington, Heather Grant (Alternate Council Rep); Richard Kelley, Emily Friedrichs (Council Rep) – arrived late

MEMBERS ABSENT: Sally Tobias (Vice Chair), Erika Naumann Gaillat (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 Heather Grant as Council Rep.

III. Approval of Agenda

Chair Rasmussen added under Other Business: Possible Workshop Date Change

IV. Town Planner's Report

Town Planner Michael Behrendt said next meeting is March 26: new application for 4-lot re-subdivision, Bagdad Road; Public Hearing for Invasive Species; amendments to Site Plan regulations; Aquifer Protection Public Hearing continued; any items continued tonight. Public Hearing for Mill Plaza adding CU for drive-up window. Meeting with Energy Committee next week to discuss proposed EV amendment; Staff will meet to discuss Riverwoods land swap and road changes; meeting with RJ Kelly, 121 Tech Drive re possible new plans.

V. Reports from Board Members who serve on Other Committee

Reporting from the Town Council: Councilor Grant said the Council met March 3 with detailed presentation from State of New Hampshire on Route 4/Madbury Road roundabout, targeted for 2027; presentation from Sally Tobias on Housing Task Force.

Reporting from Housing Task Force (HTF): Chair Rasmussen said the HTF will be wrapping up their suggestions, Town Council in general favor. Town Council appointed me as representative to the Strafford Regional Planning Commission; of 3 projects being considered by SRPC for State funding, Madbury Road Project scored highest.

Emily Friedrichs arrived at the Planning Board meeting at 7:06 pm; seated as Council Rep.

VI. Public Comments

VII. Review of Minutes: (old)

VIII. Public Hearing - Mill Plaza – Façade Improvements and Site Enhancements. Site plan application for façade improvement to rear building, site enhancements around rear building, and relocation of northerly crosswalk on Mill Road. Torrington Properties, c/o Pete Doucet and Matt Morgan, property owner. Steve Mayer c/o Allen & Major, engineer. Jeff Gannon c/o PCA, Inc., architect. Gregg Mikolaite, agent. Central Business District. Map 109, Lot 3. Recommended action: Discuss and continue the public hearing.

Gregg Mikolaite said he is joined by Engineer Steve Mayer with Pete Doucet on Zoom. He said they were last before the Board in December, and will present a simplified plan tonight for 2 major tenants in Building 2: façade improvements, site disturbance minimized from 29,000 sq ft to 10,000 sq ft. One tenant will go into the north end with patio; bank will relocate to south end of building with existing drive-through, timing for fall semester. He said there is some urgency right now in possibly losing tenants.

Richard Kelley arrived at the Planning Board meeting at 7:09 pm.

Engineer Steve Mayer said Chesley Path would be widened in association with Fire Department, crosswalk on Mill Road relocated per DPW, fixing sidewalk and curb. Revisions are minor: reduced site disturbance with less grading, improving stormwater by treating 6 of existing catch basins around rear of building, roughly 20 % of the site. Mr. Mikolaite it is truly a building project now, and they want to get some life and momentum with ramps and sidewalks for ADA parking.

Pete Doucet said goal is to improve the entire property over time and we are presenting Step 1 tonight: renovate the building, move some tenants around and bring life back to the building. He said the idea is to keep pedestrian access with patio, plantings and ADA improvements; provide a facelift for the building, replacing old roof, coordinating all new signage, all new lighting and soffits with a mural on one side, and taking care of a lot of deferred maintenance issues, leaving a path to continue the work over time.

Richard Kelley MOVED to open the Public Hearing for Mill Plaza; SECONDED by Councilor Friedrichs; APPROVED: 6-0, Motion carries.

Chair Rasmussen opened the Public Hearing for Mill Plaza at 7:21 pm.

Joshua Meyrowitz of 7 Chesley Drive said he is an abutter to the project. He showed a view of Chesley Path from his study window and said it is a cherished wild area and people are very protective of it; it is the closest the town has to a transition zone between a family neighborhood and a commercial zone. He asked what it would look like to widen it enough for emergency vehicles,

and said the area also has flooding. He said part of the problem is the prior owner of the plaza started illegally putting in parking spaces and instead of restoring the area put a surface of loam on it; they took out a permit to remove a chain-link fence and instead bulldozed the entire hillside.

Mr. Meyrowitz said Rich Reine showed him what the path would look like with spaces of gravel on either side of the paved path but said he is not happy with it, and it would be a bigger temptation for cars and motorcycles to drive through. He suggested moving the crosswalk on Mill Road further down and closing off the existing entry with a driveway gate.

John Hartz of 13 Mill Road, primary abutter to the project, said his concerns are with the riparian buffer ecosystem function and excessive asphalt, with primary concern being College Brook and the proposed path there. He said the plan to continue to maintain existing storm drains is not a best practice; water needs to stay on the site with filtering if possible and not let pollutants into the brook, allowing more infiltration and cooling of the heat island.

Martha Anderson of 8 Chesley Drive said she is an abutter and is thrilled with the plans from Torrington, but her main concern is the walking pathway. She said this is a precious breathing space for people in town and people depend on it for a sense of peace; every year people try to drive their motorcycles and jeeps through the path. She said she is afraid that by widening, it will become a road with less well-intentioned people and that would be catastrophic; it is a wetland and is very important and gravel on either side would not support a 20,000-40,000-lb vehicle.

Charlotte Wallace said she is here as a resident concerned about Mill Plaza and she was shocked at how unpleasant it looked. She thanked Torrington and said this plan needs to be done now or the town will lose it and asked what the process is.

Chair Rasmussen said the application has been presented, Planning Board hears from public, then deliberates and decides if application should proceed through; takes a couple of meetings. Ms. Wallace said clearly, they have a due date; Chair Rasmussen they have given a due date of March 26, 2025.

Mr. Mikolaites said he appreciates the comments, is on the same page with everyone and will do what the town wants for that second access. He said they will be meeting Thursday with TRG to get some direction and are not looking to cause any conflict. He said he spoke with Rich about quarterly maintenance and will be using Sno Pro Plan certified snow removal. They will be removing the concrete islands and adding landscaping, benches, bike racks, etc. and are committed to working with the town on the path.

Mr. McManus asked about bike and pedestrian movement across the site. Mr. Mikolaites said we are adding 3 ft to sidewalks in front of buildings to create an 11-in sidewalk and can get to Chesley Path along that frontage which will be tight because of the slope. There will be benches, new lighting, and a whole new façade and canopy. Mr. Doucet said the intent coming from UNH is to

add the same sidewalk expansion in front of Hannaford, down the sidewalk and across the front ending at new patio, adding some beautification and landscaping then out to path along the brook.

Chair Rasmussen said it will be important for the Planning Board to understand the importance of that access; Mr. Sullivan said as TRG representative he will be at the meeting next week. Mr. Kelley said he would like to hear from DPW Director Reine the justification for the need for 2 lanes coming out and 2 lanes going in right next to each other. Mr. Whittington said there is a lot of empty asphalt on that property which now looks excessive in relation to number of patrons.

Mr. Mikolaites said as part of this plan we are taking out 8,600 sq ft of pavement along the buffer and will change concrete islands to landscaped. Mr. Doucet said we know the plaza is under-performing, but once we bring life back to it, we expect more activity and higher demand for parking. Councilor Friedrichs said the snow storage area is close to the brook and asked if it could be moved in back of the building.

Mr. Sullivan asked about the number of bike racks shown on the drawing and the request for a waiver. Mr. Meyer said the number of bike racks is based on required number of parking spaces, 1 for every 3 parking spaces; they are asking for a waiver from 89 spaces required down to the 36 existing which will be moved. He said one bike rack is behind the patio area and one by the drive-through. Councilor Friedrichs suggested the bike racks be visible from the parking lot. Councilor Grant said bike racks for employees should be put back in the corner and remove a few parking spaces around the bank area to the side.

Mr. Sullivan said the Board should decide if 36 is a good enough number for bike parking. Chair Rasmussen said tonight is not for major deliberations. Councilor Friedrichs asked the reason for the re-design of the striping in the parking lot. Mr. Meyer said 8,000 sq ft of pavement was being removed. Mr. Kelley asked about upsizing the caliber of trees for landscaping.

Chair Rasmussen said the plan is to continue to next meeting on March 26. Mr. Behrendt said he would prepare a Notice of Decision if the Board and applicant will be ready for final decision.

IX. 3 Dover Road – New Dunkin Donuts. Site plan application for new 1,500 +/- square foot Dunkin Donuts restaurant on ¼ acre lot located between the Holiday Inn Express and the Mobil Station. JESP Enterprises, LLC, property owner. Jim Mitchell c/o Tropic Star Development, LLC, applicant. Matt Perry, Civil Engineer, The Engineering Corp. Jeffery Dirk, Traffic Engineer, Vanasse & Assoc. Courthouse District. Map 108, Lot 38. Recommended action: Accept as complete, discuss, and schedule public hearing.

Civil Engineer Matt Perry said he is joined by owners Jim and Scott Mitchell, with Traffic Engineer Scott Thornton on Zoom. He said one month ago he presented preliminary application, and they are now moving forward with the formal application for a proposed restaurant at 3 Dover Road; met with Design Review Board last week.

Mr. Perry said they plan to demolish the existing structure and remove existing pavement, scaling back overgrowth, and removing 4 pine trees along northeast property line. The building will be a 1,520 sq ft Dunkin Donuts with 15 parking spaces, 2 ADA accessible with dumpster at rear of site with loading zone. Some landscaping along front parking stall with 3 boxwoods; rhododendrons along front of building and boxwoods on side; new crosswalk and sidewalk improvements and ADA accessible routes to building and ADA parking.

Mr. Perry said the site will retain 2-way traffic circulation with connections to Dover Road and shared driveway with abutting parcel; retain similar grading and design points for stormwater with catch basin on Dover Road with new closed drainage system; 2 catch basins along curb line to improve stormwater runoff; filling out drainage permit with DPW. Utilities: use existing stubs on site, coordinating with sewer and water departments; grease trap at rear. During construction they will have erosion and sediment controls in place with construction entrance on Dover Road, and erosion controls and silt socks also in catch basins.

Jim Mitchell of Tropic Star Development said they also own the Irving Station across the street, and Irving would like to expand space inside and moving Dunkin Donuts across the street picking up 15 parking spaces; went to ZBA for variances in February. He said there will be no drive-through, just a pickup window; renderings were shown at last meeting; major focal point was traffic and he agrees queuing becomes an issue during peak traffic on Dover Road and there will be no left turn out at those times.

Chair Rasmussen asked if they had seen DOT's response that came out today. Mr. Mitchell said they did but had not yet had time to digest it. He said they will be posting a "no left-turn out" during peak hours and posting a sign in easement with abutter saying "left-hand turn" so people do not cut through his property. Chair Rasmussen said they need to go back and digest what DOT said and decide how it will affect them for the next meeting; they also did not go through the energy checklist. He pointed out that the walkup window is right where the ADA crosswalk is and a potential bottleneck.

Councilor Friedrichs asked about replacing the trees with some sort of screening to block wide expanse of parking lot. Mr. Mitchell said it is a detention pond that falls off and they are taking out some scrubby overhang, not cutting down physical trees. Councilor Grant said the trees being removed are on the other side. Mr. Mitchell said he would look at landscaping further.

Mr. Kelley said we were given a traffic impact study dated January, updated in February and submitted to DOT who had a completely different recommendation than what was in front of the Planning Board. Mr. Thornton said the study was revised to incorporate a revised access treatment with left-hand turn prohibited. Mr. Kelley asked if Mr. Thornton had seen what DOT had to say and said he would like to see a splitter island as well, which would have to be mountable to get trucks in and out; but next door will still have 2-way traffic.

Mr. Scott Mitchell said he has been in contact with Mr. Patel who owns the hotel, and he sent a letter today basically endorsing my project. He said he has been in this business for 40 years and these projects have a way of self-regulating: if people cannot get in, they will not go. He said he is very disappointed with DOT, and said looking at the close proximity of the 2 curb cuts, there is no way we can restrict that driveway.

Mr. Kelley asked Mr. Thornton if he would be willing to do a gap analysis to demonstrate there are times during the day when left turns in and out can be afforded. Mr. Thornton said they would do that if asked and have more discussion with DOT to see if we can address their concerns. Mr. Kelley said they could solve their own driveway issues with the driveway next door as part of the solution. Chair Rasmussen said left-hand turns may be reduced with coffee available on both sides of the street.

Mr. Jim Mitchell said there is a lot to unwrap, and they need a lot of answers: the easement next door and the tenant component, as we have pushed our tenant as far as we can. Mr. Whittington said it is hard to make a judgement as the Board cannot really assess the traffic situation without exact information. Mr. Sullivan said the answer from DOT is no and it is unlikely Mr. Thornton can convince them otherwise. Mr. Kelley said entrance through Gibbs would get the two existing driveways farther away from the light.

Mr. Scott Mitchell said he is very anxious to get back control of the Irving Station to fix it up with landscaping and snow plowing as the property has deteriorated. He said he also does not want to lose Dunkin Donuts as a tenant and said this is a chance to get this mess cleaned up. Mr. Jim Mitchell said the proposed plan is the plan with the signage; Dover Road remains the same with current queuing: no right on easement and no left turn out in peak hours. Mr. Thornton said peak hours were 7:00–9:00 am, 4:00–6:00 pm and add a time for Saturday.

Mr. Behrendt asked if setting the site up to be only right-in and right-out was unworkable. Mr. Jim Mitchell said it is driven by the tenant as they need corporate approval, which is acceptable at the current level. Mr. Scott Mitchell said it is very unlikely to get the Hotel to restrict the full access driveway they have now. Mr. Kelley read the letter from DOT in full. Mr. Behrendt said the application is complete.

Chair Rasmussen MOVED to accept the application for 3 Dover Road as complete; SECONDED by Richard Kelley; APPROVED: 6-0, Motion carries.

Chair Rasmussen continued the Public Hearing for 3 Dover Road to March 26, 2025.

- X. Planned Unit Development Ordinance.** Proposed Planned Unit Development (PUD) ordinance. PUD's 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 and southerly of

the intersection of Main Street and Mast Road, and other potential large mixed-use projects. Recommended action: Continued discussion.

Chair Rasmussen said C.1 Location should be: MUDOR and ORLI (part of), otherwise he found nothing missing. Councilor Grant asked about note 11 on page 6 under F. Process; Chair Rasmussen said number 12 defines significant and everything else is “minor”. Councilor Grant asked if nothing minor would need a Public Hearing. Mr. Whittington said it is up to the applicant ordinarily to build in sufficient flexibility, which is taken care of in site plan/subdivision approval.

Chair Rasmussen said PUD includes an architectural plan, other design standards, and guidelines; maybe have the Board say “public hearing at our prerogative” and reserve the right to approve something minor without one. Mr. Sullivan asked what was meant by “endorsement” under 11b. Chair Rasmussen said the Town Council *endorses* the preliminary review with comments; change is to something *part of* that endorsement.

Mr. Behrendt said under 11.b there are 2 kinds of significant changes: significant so you have a higher bar, or counter to the Council’s binding terms. Mr. McManus asked if that should be *approval* or *endorsement*. Chair Rasmussen said it is not an “approval” but saying it is okay for the Board to continue. Mr. Whittington said he is not comfortable with the vague concept of endorsement and said it should be approved as a preliminary plan. Board agreed to: “*approve* the preliminary plan”, and under 11.b: refer to F.3 for clarity.

Chair Rasmussen said he does not want to overload the words *approval* or *adopt*. Councilor Grant said the Town Council only sees it once and does no other approval, they are endorsing the project to go ahead, and Planning Board gives final approval. Mr. Whittington objected to the use of “reasonableness” in the ordinance, which changes the burden of proof for an unsuccessful applicant to challenge the actions of the town. Mr. Kelley said it appears 3 times.

Mr. Sullivan asked about F.12 “significant changes in proposed configuration of uses”. Mr. Behrendt said it means shifting the uses. Mr. Kelley suggested using “location” in place of *configuration*. Mr. Whittington said there should be a point at which the final integrated plan is the document the Planning Board has approved so there will be no ambiguity: a final integrated document. Board agreed to delete last sentence in F.8 and delete “proposed” before conditions of approval.

Mr. Kelley asked if under G. “in their sole reasonable discretion” should be deleted. Mr. Whittington proposed: “The Town Council and the Planning Board in their respective reviews shall base their approval of proposed PUD on the following determinations: (1) applicant has demonstrated the PUD is necessary to facilitate the proposed development; (2) the development within the proposed PUD is more beneficial to the Durham community than would be possible under existing ordinances; (3) the proposed PUD incorporates a general standard of excellence.”

Chair Rasmussen said the first paragraph is good but was not sure about rewording 1 and 2 as they stand. Mr. McManus asked the Board again if they should use “approve” or “endorse”. Chair Rasmussen asked about the agenda at the next meeting. Mr. Behrendt said there is a new application for Bagdad Road, Invasive Species public hearing, continue public hearing on Aquifer, Mill Plaza final action, Dover Road. Board agreed PUD discussion would resume April 9, 2025.

XI. Other Business

Discussion of 361 Durham Point Road

Mr. Kelley said Mr. Behrendt shared a letter with the Board that went to 361 Durham Point Road from Laura Spector-Morgan stating: “We are allowing you until June 1, 2025 to provide the additional information required, on the condition that no activities occur within the Buffer.” Mr. Behrendt clarified “no activities that are in violation of the ordinance.” Mr. Kelley asked if the Board was going along with this.

Mr. Behrendt said Mr. Sullivan spoke with Todd who was at the site and said the owner may want to cut more trees. He said part of the challenge is that the current language in the WCOD ordinance allows things as permitted use A, provided they do not alter the surface conditions or configuration of the land, and do not obstruct the flow of water and comply with regulations planting native species. He said he and the Town Administrator recognize these things are allowed, but asked the owner to contact the Tree Warden, though they cannot require it.

Mr. Sullivan said the approvals are already done and the Planning Board looked at the map, and asked when you start challenging those wetland lines, do restrictions for activity fall away too. Mr. Behrendt said all the rules apply unless they can demonstrate at some point that it is not subject to the ordinance. Councilor Friedrichs asked if their application would have to come back to the Planning Board as the plan approved was based on the wetland lines shown.

Mr. Kelley said the wetland adjacent to the pond is another thing because it is *land*; and said activity still continues and it may be an allowed activity. Mr. Sullivan said a lot of trees are being cut down; the Planning Board approved a drawing with wetlands delineated on the drawing, and all the stone they took out of the foundation is spread all around the entire site, including well within the wetland setbacks delineated on the drawing. The position the owners are taking is it is a man-made pond, so all dotted lines disappear.

Mr. Behrendt said they will have to prove that they meet the exemption in the WCOD, which is a burden, and they have not proven it is exempt. Mr. Sullivan asked at what point the Board should say the activity should not continue. Mr. Behrendt said the letter could not have been written any other way. Mr. Kelley said when the landowners and their agents came back with the argument it is not wet, they wanted to wait because the ground at that time was frozen, but it did not stop activity from occurring.

Mr. Kelley said if they come back with a different wetland scientist assessment based on plants and soils, the plants are all gone and they will demonstrate there is no wetland; the land is also beneath a fast layer of stone, and we need our own Wetland Scientist to weigh in. Mr. Behrendt said they would not succeed with that; if they fail to demonstrate they are exempt the Town will require a mitigation plan. Councilor Friedrichs asked if the plan should be re-approved at this point, as they submitted a plan with wetlands not an agricultural pond which changed their application substantially and fundamentally.

Mr. Whittington asked if there is a process for revocation of the building permit. Mr. Kelley said there is no site plan for single-family homes. Mr. Behrendt said riprap in the buffer will require a mitigation plan and said he made a mistake on this and should have been quicker. He said he was onsite several times with the owner who assured me he knew all about this, and there is also complexity in how the site is situated. He said enforcement takes time.

Possible Workshop Date Change

Councilor Friedrichs said ze was wondering if it would be helpful to spend some time thinking and talking about how all these different proposed changes will interact with each other, also the Wetland/Shoreland rewrite, and an EV ordinance the Energy Committee is working on. Mr. Behrendt said it might be helpful if Todd, Rich Reine, and he were part of a Planning Board meeting at the Workshop to talk about all the ordinances passed, the Master Plan, and the Town's capacity with water and sewer and could schedule it for May 28 or move to April.

The Board agreed it was a good idea and reviewed possible dates for the discussion. Chair Rasmussen suggested they try for an extra meeting on April 16 as there were too many absences on May 28.

XII. Review of Minutes (new):

XIII. Adjournment

Gary Whittington MOVED to adjourn the Planning Board Meeting of Marh 12, 2025; SECONDED by Chair Rasmussen; APPROVED: 6-0, Motion carries.

Chair Rasmussen adjourned the meeting at 10:21 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker
Durham Planning Board