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3 **TOWN OF DURHAM**
4 **DURHAM PLANNING BOARD MEETING**

5 **Wednesday, April 23, 2025**
6 **Town Council Chambers, Durham Town Hall**

7 **7:00 pm**
8 **DRAFT MINUTES**

9
10 **MEMBERS PRESENT:** Paul Rasmussen (Chair), Sally Tobias (Vice Chair), Peyton McManus, Gary
11 Whittington, Heather Grant (Council Rep), Eric Lund (Alternate Council Rep); Richard Kelley
12 (arrived late)

13 **MEMBERS ABSENT:** Robert Sullivan

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

15
16 **I. Call to Order**

17 Chair Paul Rasmussen called the meeting to order at 7:00 pm

18
19 **II. Roll Call and Seating of Alternates**

20 Chair Rasmussen called the roll; no Alternates to seat.

21
22 **III. Approval of Agenda**

23 Item X. Dunkin Donuts postponed until May 14, 2025.

24
25 ***Vice Chair Tobias MOVED to approve the Agenda as amended; SECONDED by Peyton***
26 ***McManus; APPROVED: 5-0, Motion carries.***

27
28 **IV. Town Planner's Report**

29 Michael Behrendt said Dunkin Donuts was postponed at applicant's request until May 14, 2025.

30
31 **V. Reports from Board Members who serve on Other Committees**

32 Reporting from the Town Council: Councilor Lund said Councilor Grant did not attend the last
33 meeting on April 21; committee appointments on agenda; some discussion of 2025-2026 Town
34 Council goals; discussion of downtown zoning changes; adopted a resolution modifying how to
35 implement 79-E Community Revitalization Tax Incentive making provisions less onerous.

36
37 Chair Rasmussen said he received an application for an Alternate Member of the Planning Board he
38 will present at the next meeting.

39
40 **VII. Review of Minutes (old):**

41
42 **VII. Public Comments**

1 **Dennis Meadows** said there are good reasons Durham should divide the plaza and separate CBD
2 into two different zones: CB-1 and CB-2: it has been discussed for years, is likely to improve
3 efficiency of future discussion, helps create a central buffer between businesses and residential,
4 and helps Durham deal with problems in the Central Business District. But he said the map
5 presented tonight goes far beyond that idea, adding 19 properties along Mill Road, and
6 destroying the major buffer between commercial and faculty neighborhood.

7
8 Mr. Meadows said issues are typically analyzed and discussed until consensus, but Town Council
9 voted two days ago to forward this for Planning Board discussion by a vote of 5-3, with no data
10 at all, and the idea is delusional. He said this proposal eliminates the only buffer still existing and
11 asked that in future the Board provide serious analysis before considering a proposal.

12
13 **Joshua Meyrowitz** of 7 Chesley Drive said he hoped that in future the Board: (1) with regard to
14 all zoning changes keep in mind past projects and reviews that generated a lot of controversy;
15 (2) when considering new ideas keep in mind problematic and positive features of Durham; (3)
16 not go for simplicity when hard work is needed; (4) watch for huge distinction behind great ideas
17 and challenge of identifying a mechanism for achievement.

18
19 *Richard Kelley arrived at the Planning Board meeting at 7:12 pm.*

20
21 **VIII. Public Hearing - 9 Madbury Road – Apartments.** Conditional use to convert the
22 commercial fourth floor to residential apartments. Matthew Crape, property owner. Nick
23 Isaak, architect. Liz Shepard, general manager. Central Business District. Map 106, Lot 39.
24 *Recommended action:* Possible final action.

25
26 Chair Rasmussen asked Ms. Shepard if there were any changes. Ms. Shepard said regarding the
27 email from Mr. Behrendt, they would be willing to consider shifting to 2-bedroom units, if
28 necessary, then bring it back to Zoning Board. She said the difficulty is with floor plan. Mr. Kelley
29 asked for the background on that.

30
31 Mr. Behrendt said he sent an email to the Board on Monday with suggested revised language.
32 He said the CU is to convert 4th-floor core commercial use to residential use, and the application
33 showed a floor plan with mostly 4-bedroom units; CBD only allows 2-bedrooms and Town
34 Attorney says this property cannot be grandfathered and non-conforming expansion is only for
35 use and this is a building condition. He recommended approval as 2-bedroom units with a note
36 that applicants retain option to seek a variance.

37
38 Mr. McManus asked about fixed costs upfront in converting 4-bedroom to 2-bedroom units. Ms.
39 Shepard said she had not yet looked into the cost and said it depends on window availability.
40 Vice Chair Tobias said a 2-bedroom unit is more likely to be rented to a non-student population.
41 Ms. Shepard said the floor plan would have to be reconfigured to see what can be done. She said
42 our leases run from June 15 to May 31 and are booked the prior semester.

Vice Chair Tobias MOVED to open the Public Hearing for 9 Madbury Road Apartments; SECONDED by Peyton McManus; APPROVED: 6-0, Motion carries.

Chair Rasmussen opened the Public Hearing for 9 Madbury Road Apartments at 7:26 pm.

Chair Rasmussen said the Planning Board received a few letters today which were reviewed. Mr. Behrendt said the applicant has also applied for a waiver on school impact fees and explained that the purpose is for infrastructure and is levied on all residential units depending on the number of additional units created, with a provision to waive the fee. Mr. Whittington said he did not understand the basis for the waiver. Mr. Behrendt said in the past the fee has been waived but if any school-age children move in the applicant would need to pay.

Vice-Chair Tobias said she is stuck on the fact that the original purpose here was student-centered intent. Ms. Shepard said she would like the Board to consider a precedent that has been set in the past for other student-oriented facilities to be fair to this application, and said fairness goes both ways. Mr. Behrendt said he is not aware of any past multi-family project where the fee has been paid. Councilor Grant said the structure of the whole school system is important to the entire community.

Chair Rasmussen said there are arguments for both sides. Mr. Kelley said the fee amount is not going to make a bit of difference to the Oyster River School District, and said because of our history he is inclined to accept the waiver. Ms. Shepard said most families do not want to live with students.

Richard Kelley moved that the Planning Board approve the waiver for School Impact Fees for 9 Madbury Road; SECONDED by Councilor Grant; VOTE: 2-4 , Motion does not carry.

Gary Whittington moved that the Planning Board deny the waiver for School Impact Fees for 9 Madbury Road; SECONDED by Richard Kelley; VOTE: 4-2 , Motion carries.

Mr. Behrendt said the Board needs to keep applying the impact fee and would also no longer be waiving the fee for 55 and over. Mr. Kelley said the Board is approving a CU Permit which is a use, and the floor plan does not matter. Mr. Behrendt agreed and said the Notice of Decision should be clear they are listed as 2-bedrooms units and a provision added in the event they get a variance for 4-bedroom units, they would not have to come back to the Planning Board.

Conditional Use

1. Site Suitability: Existing renovation, no issues.

2. External Impacts: Existing area with significant Student Housing. Mr. Kelley said the Board did receive public testimony by email; Councilor Grant said demand for office space has plummeted.

3. Character of Site Development: Nothing about exterior is changing nor with upstairs patio.

4. Character of Buildings & Facilities: Not touching the exterior.

5. Preservation of Resources: Building already exists.

6. Impact on Property Values: N/A

7. Availability of Public Services and Utilities: Mr. Kelley said this is a change in use which will need more water and sewer; issue discussed at Workshop Meeting; Ms. Shepard said property and uses have existed since 2012.

8. Fiscal Impacts: Councilor Grant said it is definitely not a negative impact. Mr. Whittington said income-producing property is valued on cash flows of projected revenues. Ms. Shepard said there are a finite number of students that will be living downtown may not be 18 new people needing services.

Councilor Grant Moved to close the Public Hearing for 9 Madbury Road Apartments; SECONDED by Peyton McManus; VOTE: 4-2 , Motion carries.

Mr. Behrendt said the Draft Notice of Decision is for 2-bedrooms per the zoning ordinance and this CU covers that; also, this approval includes levying the School Impact Fees, payable at certificate of occupancy; Draft Notice of Decision will be amended. He said any change to a CU needs Planning Board approval.

Mr. Whittington Moved that the Planning Board approve the changes to Madbury Road Apartments incorporating the above comments; SECONDED by Vice Chair Tobias; VOTE: 6-0, Motion carries.

IX. Public Hearing - Four-lot Resubdivision – 53 Bagdad Road and Emerson Road.
Resubdivision of three lots into four lots. 53 Bagdad Road – Map 104, Lots 41 and 42 owned by Frank Lavalliere, Qing Lin, and Quan Li. 51 Emerson Road – Map 104, Lot 40 owned by John and Nickoll Lauze. Bob Baskerville, engineer, Bedford Design Consultants. Residence A. Recommended action: Final action.

Mr. Baskerville said he has gone over the Town Planner's recommendations with the owner, and we are okay with all of it. Mr. Behrendt there is a waiver for underground electric for the existing house with above-ground electric; only participating use is a lot line adjustment.

Vice Chair Tobias MOVED to open the Public Hearing for Four-lot Resubdivision; SECONDED by Peyton McManus; APPROVED: 6-0, Motion carries.

Allen Drake of 55 Bagdad Road, Lot 43, said 2 weeks ago he was concerned about the extra driveway on Old Bagdad Road and the difficulty for 2 cars to pass, and said the road is only 14 ft wide; he also concerned about 2 drainage ditches which fill up in the rainy season. He asked how they would be taken care of with a driveway crossing them. Chair Rasmussen said any driveway would have to provide a culvert for the drainage which as part of the permitting process; there was also correspondence with DPW about the matter.

1
2 **Robert Weckler** of 55 Bagdad Road said he is a tenant of Allen Drake and said there are no
3 shoulders on the road, and it will have to be widened. Mr. Behrendt said it is very narrow with a
4 limited shoulder, but it is up to the Board for 1 new lot. Mr. Weckler said he also has a bedroom
5 that looks out over the proposed lot, works second shift getting home around midnight, and it
6 will be a huge disturbance with noise all day long; also, more trees will be taken down. He said
7 Eversource took down his landline and he was without a phone for 8 days. Mr. Behrendt said the
8 Board can establish hours of activity at the house if desired.

9
10 **Frank Lavalliere**, owner, said the issue with the phone was Eversource changing a utility pole
11 because it was rotten, and said we did not cause that problem. He said we build from 8:00 am to
12 4:00 pm to stay mindful for the public and said the lot is quite a bit distant from his property. He
13 said the old colonial house inspection is today for the inside and ready to be finished; trees are
14 mostly on Old Bagdad Road, with 3 or 4 on the other side, and the orchard there will be kept to
15 maintain the beauty of the property.

16
17 Mr. Kelley asked about putting in the sewer; Mr. Lavalliere said it will be a minor inconvenience
18 with the road open on one side. Mr. Kelley asked if any test pits or borings had been done to
19 determine if they might encounter ledge; Mr. Lavalliere said the excavator will do that and he
20 will call "dig-safe" to make sure. Mr. Baskerville said this is not a public sewer, it is a 4-inch line
21 and only needs 4 ft of cover. Mr. Kelley said any disturbance will be at the sewer manhole cover
22 you are dropping into and suggested a little temporary widening of the road during sewer
23 construction.

24
25 Mr. Behrendt asked if the owner would be putting down gravel where the driveway is and Mr.
26 Lavalliere said we have to dig it up anyway. Mr. Behrendt said if extra work is done, please contact
27 DPW. Chair Rasmussen said the culvert there should not be disturbed, and the Board agreed not
28 to make that a condition. He asked if the applicant was okay with the Notice of Decision.

29
30 The Board discussed the buildable area of 1,300 sq ft. Mr. Baskerville said it includes a 2-car
31 garage leaving 800 sq ft for the house and the owner has agreed to it. Councilor Lund said with a
32 30 ft height it would be possible to add some living area over the garage. Mr. Kelley asked about
33 describing the easement by meets and bounds; Mr. Baskerville said they are making an
34 agreement between owners for maintenance.

35
36 ***Richard Kelley MOVED that the Planning Board approve the 4-Lot Resubdivision of 53***
37 ***Baghdad Road and 51 Emerson Road Resubdivision of 3 lots into 4 lots, Map 104, Lots 41***
38 ***and 42, and Map 104, Lot 40 in Residence A District, and also that Planning Board approve***
39 ***application of waiver from regulation, and the existing house may maintain the overhead***
40 ***communication and utility service; SECONDED by Peyton McManus;***

41
42 Councilor Lund raised a minor point on subsequent condition 33. Tax Implications to contact the
43 assessor Jim Rice

Motion APPROVED: 6-0, Motion carries.

- X. **Public Hearing - 3 Dover Road – New Dunkin Donuts.** Site plan application for new 1,500 +/- square-foot Dunkin Donuts restaurant on ¼ acre lot located next to Holiday Inn Express. JESP Enterprises, property owner. Jim Mitchell and Scott Mitchell, Tropic Star Development, LLC, applicant. Matt Perry, Civil Engineer, The Engineering Corp. Scott Thornton, Traffic Engineer, Vanasse & Assoc. Courthouse District. Map 108, Lot 38. Recommended action: Update on applicant's discussions with NHDOT, discussion of other issues, and continuation to May 14 for possible final action.

POSTPONED UNTIL MAY 14, 2025 AT APPLICANT'S REQUEST.

- XI. **Public Hearing - Proposed Zoning Amendment – CB-1 and CB-2.** Amendment initiated by Town Council to designate Mill Plaza property and portion of UNH land toward Quad Way as Central Business-2, to designate the rest of the existing Central Business District as Central Business-1 (CB-1), and to change Mixed-Use with Residential in CB-1 from a conditional use to a permitted use. Recommended action: Vote to initiate amendment if acceptable.

Chair Rasmussen said this was initiated by the Town Council to designate Mill Plaza and a portion of UNH land toward Quad Way as CB-2 and designate the rest of Central Business District CB-1 and change mixed-use in CB-1 from CU to Permitted.

Peyton McManus MOVED to open the Public Hearing for Proposed Zoning Amendment CB-1 and CB-2; SECONDED by Vic-Chair Tobias; APPROVED: 6-0, Motion carries.

Joe Friedman, member of the Town Council in Durham, said it was brought up at the Council meeting on Monday to ask the Planning Board to consider adding additional properties to the CBD-2 zone, to look at these properties closely, and help the Planning Board make a decision about consideration of all the factors of these properties. He said one way to counter rising expenses is to create more revenue for Durham by expanding its downtown: multiple businesses are reporting declines and properties are for sale; infrastructure is in place and these properties are transitional now.

Mr. McManus said one issue is the area does not have density on both sides and asked if that is the best use of that space. Mr. Friedman said he understands but the properties already about parking lots, basketball courts, and institutional buildings; he said UNH is talking about putting in a possible fire station or parking garage, and this is the perfect time to ask if there is any other part of town where commercial and transitional development could occur. Vice Chair Tobias said in coming up with CB-1 and CB-2 we realized Mill Plaza was a great opportunity to create a transitional zone where you have CU in place, but said she was concerned about the impact there.

1 Mr. McManus asked about the Town Council vote; Mr. Friedman said the vote was 5-3 for me to
2 come here tonight and recommend the Board consider these changes. He said people are talking
3 about a vibrant downtown and Durham is well-positioned to do that right now. Councilor Grant
4 asked if this is more like a Phase II. Councilor Lund said the Council did not discuss a Phase II, and
5 this proposal is a modification to extend the CB-2, and he voted against it because he felt they
6 were moving too fast.

7
8 **Beth Olshansky** of Packers Falls Road asked if this was a vote by the Town Council to have the
9 Board consider this notion or a recommendation for Planning Board to accept. Chair Rasmussen
10 said a recommendation to consider. She said she supports the idea of 2 downtown zones, but
11 said this proposal does not serve the purpose of making a softer buffer into the faculty
12 neighborhood. Chair Rasmussen said there will be no student housing; could be housing for
13 seniors; and said he did not see 4 stories in height for a transition zone.

14
15 Ms. Olshansky said the Church Hill proposal had 4 different lots, 2 above and 2 below for a softer
16 transition in CB-2 and would not have to include UNH. She said there is also something about CB-
17 1; Mr. Behrendt said they are changing mixed-use residential in CB-1 from CU to Permitted on
18 Table of Uses. Ms. Olshansky said CB-2 would be great for commercial businesses or senior
19 housing, and revitalizing downtown will not happen by adding more student housing.

20
21 **Joshua Meyrowitz** of 7 Chesley Drive said he agrees with everything said by Ms. Olshansky in
22 terms of lack of transitional space, and said it would make sense to be more protective of the
23 plaza having more development in other parts of the CBD, and said he did not think people
24 wanted more housing in Mill Plaza. He said there are limits and positives in Durham, and the
25 positives need to be sustained. He said he understands Mr. Friedman but the town has so little
26 transition between business and family neighborhoods, and he agrees with the idea of including
27 2 lots in Church Hill.

28
29 **Robin Mower** of Britton Lane said she appreciates Mr. Friedman's concern for the future and
30 financial well-being of Mill Road. She said the Board needs to focus on the mechanism by which
31 their goals are achieved, not just zoning, and also voiced concern about having 4 stories. She said
32 she is more concerned with the elements of development that would encourage non-student
33 housing, and said that there must be architectural standards; if aesthetics are addressed there
34 will be less concern about the use.

35
36 ***Peyton McManus MOVED to close the Public Hearing for Proposed Zoning Amendment***
37 ***CB-1 and CB-2; SECONDED by Vice-Chair Tobias; APPROVED: 6-0, Motion carries.***

38
39 Chair Rasmussen closed the public hearing for Proposed Zoning Amendment CB-1 and CB-2 at
40 9:25 pm.

41
42 Chair Rasmussen said the Board first needs to think about what to do with the suggestion
43 Councilor Friedman has asked us to consider. He said he thought it was extremely bold but said

1 he liked it. He explained that he stopped at College Brook because he wanted to make sure CB-2
2 got passed to ensure we could continue working on CB-1. He said his preference is to table the
3 expansion tonight and potentially bring it back and decide how much of it would be reasonable
4 to consider as an expansion.

5
6 Councilor Lund agreed and said he voted against the proposal as he felt it was not fully thought
7 through. Chair Rasmussen said the Board will expand down Mill Road after we finish figuring out
8 how CB-2 will look as a transition zone. Mr. McManus said we may end up with nothing; the
9 Board will do CB-1 and be right back where we started with CB-2. Mr. Kelley said he did not think
10 expanding CB-2 is what the Board should be doing now and felt downtown should be expanded
11 in another direction.

12
13 Vice Chair Tobias said we have to separate it out or we will lose the ability to do what we are
14 tasked with. Councilor Grant said the current owner of Mill Plaza has no plans to put any housing
15 there. Mr. Behrendt said a recommendation needs to be made to the Town Council on this
16 proposal and said the Planning Board made one change to limit CB-2 to 4 stories.

17
18 The Board agreed there was more to be discussed and tabled the Town Council proposal to a
19 later date. Mr. Kelley said he was trying to encourage fewer stories on the south side. Councilor
20 Grant said first the Board needs to pass this zoning amendment. Councilor Lund said he felt
21 Church Hill was a transition zone of another sort.

22
23 Mr. Behrendt said this sets up Mill Plaza in its own zone and adjustments can be made in the near
24 future. Mr. Whittington said he found the public comment compelling and said the Board is
25 thinking globally and people are thinking of the relationship of these changes to the overall long-
26 term plan. He agreed with sending the proposal back to the Town Council as the Board is not
27 prepared tonight.

28
29 Chair Rasmussen said Heather and Eric will pass the message on to the Council and the Board will
30 look at expansion at a later date.

31
32 ***Richard Kelley MOVED that the Planning Board initiate the proposed Zoning Amendment***
33 ***CB-1 and CB-2, as presented this evening; SECONDED by Councilor Grant; APPROVED: 6-***
34 ***0, Motion carries.***

35
36 Mr. Behrendt said the Board is not initiating it, just supporting it, and the motion was amended:

37
38 ***Richard Kelley MOVED that the Planning Board support the proposed Zoning Amendment***
39 ***CB-1 and CB-2 as presented this evening; SECONDED by Councilor Grant; APPROVED: 6-***
40 ***Motion carries.***

41
42 **XII. Proposed Zoning Amendments.** Two amendments initiated by Town Council regarding:
43 1) allowing multi-unit residential in the Professional Office, Church Hill, and Courthouse Districts;

and 2) removing the three-story height limitation in sections of the Central Business District.
Recommended action: Discuss both amendments and schedule public hearings.

Chair Rasmussen asked that the Board discuss both and schedule a public hearing for the next meeting on May 14, 2025.

XIII. Other Business

Chair Rasmussen asked if any board members were interested in setting up a sub-committee to discuss other proposals for CB-2. Councilor Lund volunteered to assist Chair Rasmussen.

XIV. Review of Minutes (new): March 26, 2025

Minutes of March 26, 2025: Chair Rasmussen moved line 21 on page 3 to a position above the motion.

Vice Chair Tobias moved to approve the Meeting Minutes of March 26, 2025 as amended; SECONDED by Peyton McManus; APPROVED: 5-0 with 1 abstention, Motion carries.

XV. Adjournment

Vice Chair Tobias moved to adjourn the Planning Board Meeting of April 23, 2025; SECONDED by Councilor Grant; APPROVED: 6-0, Motion carries.

Chair Rasmussen adjourned the meeting at 9:51 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker
Durham Planning Board