

1
2 **TOWN OF DURHAM**
3 ***DURHAM PLANNING BOARD MEETING***
4

5 **Wednesday, December 10, 2025**
6 **Town Council Chambers, Durham Town Hall**

7 **7:00 pm**

8
9 ***DRAFT MINUTES***

10
11 **MEMBERS PRESENT:** Paul Rasmussen (Chair), Sally Tobias (Vice Chair), Richard Kelley, Peyton
12 McManus, Gary Whittington, Robert Sullivan, Heather Grant (Council Rep), Munish Nanda
13 (Alternate), Darrell Ford (Alternate Council Rep), Peter Howd (Alternate), Julian Smith (Alternate)

14 **ALSO PRESENT:** Town Planner Michael Behrendt
15

16 **I. Call to Order**

17 Chair Paul Rasmussen called the Planning Board meeting of December 10, 2025 to order at 7:00
18 pm.
19

20 **II. Roll Call and Seating of Alternates**

21 Chair Rasmussen called the roll, all members present.
22

23 **II. Approval of Agenda**
24

25 ***Peyton McManus moved to approve the agenda as amended; SECONDED by Richard***
26 ***Kelley; APPROVED: 7-0, Motion carries.***
27

28 **IV. Town Planner's Report**
29

30 Mr. Behrendt said the Board is not meeting again for 4 weeks, next meeting January 14, 2026:
31 Amendments driven by state laws; Dunkin Donuts met their conditions with preconstruction
32 meeting next Tuesday.
33

34 **V. Reports from Board Members who serve on Other Committees**
35

36 Reporting from Town Council: Councilor Grant said the Council met December 1 and 8;
37 December 1: updates from committee members, student presentation on composting study;
38 December 8: Full discussion on Budget; next meeting Monday, December 15, 2025.
39

40 Reporting from Conservation Commission: Mr. Sullivan said members broke up into subgroups
41 to deal with WSOD, ongoing with Public Meetings.
42

43 Reporting from Energy Committee: Chair Rasmussen said the *Energy Committee* cancelled due
44 to snow.
45

Reporting from IWMAC: Chair Rasmussen said the IWMAC meeting discussion of PFAS; Swap Shop has closed for the season.

VI. Public Comments

Judith Spang of 55 Wiswall Road said she is a former member of the Housing Task Force (HTF) and understands the Planning Board is considering taking up the issue of building heights in downtown. She said the Town Council thoroughly examined this issue and voted. She said 260 petitioners and people at the Public Hearing all spoke against increased building heights in our downtown; Planning Board seeks to ignore a Town Council effort and should not undertake revisiting this comprehensive Town Council work but use it as a starting point.

Roger Hayden said he is the owner of 44 and 46 Main Street, his properties are currently up for sale, and he has an issue with the building height of 42 ft-50 ft. He said he has a developer interested in purchasing but if the zoning does not change, nothing will change in downtown. Currently, his sales are down 25%; there is a lack of new retail space in downtown and parking is also an issue. He said he has no intention of staying in Durham and continuing to do business over the next year and is anxious to get things going as the current buyer might drop out.

Nick Isaac of 35 Oyster River Road said he is here to support the 4-story height increase and emphasize that a commercial building is not built at the same standards today: with larger spans, depth of floor, and higher ceilings 10-12 ft, 4 stories is fine but height is not reasonable and should be 45-50 ft in order to have nice architecture.

David Choate from Colliers said he is the listed agent for Mr. Hayden's building and he also spoke at the Council meeting. He said he encourages the Board to read a document provided by Mr. Isaac with empirical evidence as to why 42 ft will not allow 4-story buildings or flat-roof buildings; with a height of 48-50 ft being acceptable. He asked about the process and Chair Rasmussen said the Board will discuss the issue internally then schedule a public hearing. Mr. Kelley asked Mr. Choate to explain who he is to the board.

Mr. Choate said he has been in real estate since 1983 and works with Colliers Company in Portsmouth. He said he represented Riverwoods when they acquired the site and worked with Mill Plaza to try to transition it from the previous owner to Torrington and he has worked with a lot of developers of various type projects. Mr. McManus asked what sort of concessions developers would have to make with a building height of 40-42 ft. Mr. Choate said from the perspective of different developers who looked at Mr. Hayden's site, you can just go to the Zoning Board and get a variance to go higher.

Beth Olshansky of Packers Falls Road provided the details of the Town Council vote and said a recommendation was sent to the Planning Board from the Town Council meeting of November 3, 2025 with changes including either a pitched or flat roof with a 10-foot setback and building height of 42 ft. She said should the Planning Board decide to change the height limit on this, against the Town Council decision, there will be a lot of public input.

Joshua Meyrowitz of 17 Chesley Drive said he endorses everything Ms. Olshansky has said.

Mr. Hayden said if structures are built that do not give developers a legitimate return on investment they will simply go somewhere else. He said we are now in the \$400/sq ft range for construction, and asked what he is supposed to do with 2 old buildings.

VII. Review of Minutes (old): None

VIII. Public Hearing - 12, 14, and 16 Jenkins Court: 2-lot subdivision. 2-lot subdivision of developed .28-acre parcel with three buildings. Tom Christie, Slania Enterprises, owner. Adam Fogg, Atlantic Survey. Central Business-1 District. Map 196, Lot 65. Recommended action: Final action.

Mr. Christie said the property is currently 1 lot with 3 buildings; proposal is to segment off one building with 2 restaurants and residential above to occupy 1 lot on plan; other lot would have University Market and Wentworth Douglass on their own lot with associated residential units.

Richard Kelley moved that the Planning Board open the Public Hearing for Jenkins Court 2-lot subdivision; SECONDED by Peyton McManus; APPROVED: 7-0, Motion carries.

Mr. Behrendt said the Planning Board accepted the application as complete subject to submitting utility information and explanation for items on plan near lot line, all were submitted on the revised plan. Chair Rasmussen asked Mr. Christie if he read the Notice of Decision and whether the conditions were acceptable.

Mr. Christie said he did, and as he understands the conditions, they will be put together for the final plan for submission to the County.

Richard Kelley moved that the Planning Board close the Public Hearing for Jenkins Court 2-lot subdivision; SECONDED by Peyton McManus; APPROVED: 7-0, Motion carries.

Richard Kelley moved that the Planning Board approve the 2-lot subdivision of a developed 2.3-acre parcel with 3 buildings, numbers 12, 14, and 16 Jenkins Court, owner Slania Enterprises represented by Tom Christie in Central Business District; SECONDED by Gary Whittington; APPROVED: 7-0, Motion carries.

Chair Rasmussen asked Mr. Christie to explain why he was not allowed to have gutters in the original construction. Mr. Christie said we were required to retain pre- and post-development flows; at the time, the Planning Board and DPW deemed that gutters feeding water into underground storage was not acceptable due to winter climate as gutters could freeze; flat roof with scuppers and roof drains needed to bring water to task on plan.

1 **IX. *Public Hearing - Dame Road: 3-lot subdivision.*** 3-lot subdivision of vacant 23-acre parcel
2 located at the northwest intersection of Dame Road and Durham Point Road. Greg Miller,
3 Dame Road Properties, owner. Valerie Shelton, Appledore Real Estate, agent. Adam Fogg,
4 Atlantic Survey, surveyor. Marc Jacobs, Wetland Scientist. Residence Coastal and Rural
5 Districts. Map 227, lot 30. *Recommended action:* Final action.

6 Valerie Shelton, agent of Appledore Real Estate, said the Site Walk was held on Saturday at Dame
7 Road. Proposal is a 3-lot subdivision on a vacant 23-acre parcel on NW intersection of Dame Road
8 and Durham Point Road. Wetland Scientist Marc Jacobs did the wetland delineation in spring
9 then went back and designated somewhat poorly drained soils in the fall. Proposal is to have all
10 lots accessed by Dame Road to minimize impacts to developments; test pits done for all 3 areas
11 September 2025 witnessed by Code Enforcement Officer.

12 She said lot 30 is farthest to west and has state-approved septic system built in 2024, is a 5.76 acre parcel
13 with 300 ft of road frontage; middle lot 8.76 acres with 363 ft of road frontage; corner lot 8.8
14 acres with over 1,215 ft of road frontage; all lots exceed 120,000 sq ft of buildable area. Corner
15 lot has 3 isolated wetlands, no vernal pools, confirmed to be under 3,000 sq ft. Received updated
16 Notice of Decision issued yesterday and applicant agrees with all conditions.

17 ***Gary Whittington moved that the Planning Board open the Public Hearing for Dame Road***
18 ***3-lot subdivision; SECONDED by Peyton McManus; APPROVED: 7-0, Motion carries.***

19
20 Mr. Whittington said on the site visit the possibility was discussed of a visual buffer or mechanism
21 to make sure the view from Dame Road is protected from more conditional development and
22 asked what was going to happen there. Chair Rasmussen said forestry laws circumvent anything
23 we try to do there and we would not want to saddle future owners. Councilor Ford said it is not
24 a part of our ordinance. Ms. Shelton said we wanted to hear from the Planning Board.

25
26 Mr. Kelley said the discussion Mr. Whittington is alluding to did occur with concern about the
27 homes on Durham Point Road not being right up against the road. Vice-Chair Tobias said she is
28 concerned about attaching some kind of requirement to the land. Mr. Behrendt said Planning
29 Board could not impose that without agreement of the owner. Board members expressed their
30 opinions individually and agreed it was not reasonable to impose any sanctions on the land
31 without express consent of the owner. Ms. Shelton said she was instructed to listen to feedback
32 from the Planning Board and said it could also possibly rule out the ability for solar.

33
34 **Kaitlin Luker** of 347 Dame Road said she cares about this and said she moved to Dame Road
35 because of what it offers. She said what happened down the street has affected all of us and she
36 did lose a little faith in the Town.

37
38 Ms. Shelton said the owner is open to doing a buffer and I have drafted language with
39 specification of a 50 ft scenic buffer along the public roadway; structures already have a 50 ft
40 setback from the property line, only exception would be the driveway, utility lines, solar or any
41 lawful activities. She said some of the language is from your existing ordinances relative to

1 shoreland buffers with a 250 sq ft forest canopy. Owner is fine with having a burden on the land
2 realizing it could diminish the land value, and is willing to have as a condition of approval on a
3 scenic buffer from setback of the road. Mr. Behrendt said the stone wall is most likely the
4 property boundary; Ms. Shelton said not from the right-of-way but from the roadway.

5
6 Chair Rasmussen said the setback here is only 30 ft; referenced utility lines but not septic system
7 which would be larger than 250 sq ft. Ms. Shelton then asked that it be reduced to 30 ft; she said
8 it would be a condition of approval and also on a deed restriction. Board agreed to accept the
9 offer of the owner for a condition of approval and deed restriction on the land; only language
10 change would be from a 50-ft to 30-ft buffer from edge of travelway. Mr. Behrendt said it will be
11 a private covenant and also a condition of approval which will be added to the Notice of Decision;
12 purpose to maintain a tree canopy on Dame Road. He said the language should also be on the
13 plat.

14
15 Mr. McManus said the land is registered as "in current use". Ms. Shelton said it is in current use,
16 and when a property changes it no longer conforms to code use; lots sold would come out of
17 current use and be subject to land use change tax. Chair Rasmussen said when he looked at the
18 property as a whole he thought it would have been a great conservation subdivision due to the
19 buildable area. Ms. Shelton said we looked at that and there are a lot of characteristics of the
20 land that self-serve a lot of this property.

21
22 Mr. Behrendt said a revised plan was sent which addressed most of the precedent conditions so
23 they no longer apply. He said with the new plan all plan modifications except 10 and 12 are met.
24 Mr. Kelley said in number 7 you reference 2 small wetlands but there are 3 wetlands. Mr.
25 Behrendt said Mr. Jacobs checked all 3 wetlands and none are vernal pools, but 2 vernal pools
26 are contained within the large wetland; only 3 are under 3,000 sq ft, identified as being exempt
27 with borders. He said with this plan the buildable area at the front of the first lot is significantly
28 bigger because the 2 wetlands are exempt.

29
30 ***Councilor Grant moved that the Planning Board close the Public Hearing for Dame Road***
31 ***3-lot subdivision; SECONDED by Vice Chair Tobias; APPROVED: 7-0, Motion carries.***

32
33 ***Mr. Kelley moved that the Planning Board approve the 3-lot subdivision on Dame Road,***
34 ***a vacant 23-acre parcel located at NW intersection of Dame Road and Durham Point***
35 ***Road, Greg Miller, Dame Properties owner, shown as map 227, Lot 30 in both Rural***
36 ***Coastal and Rural districts, as amended this evening; SECONDED by Peyton McManus;***
37 ***APPROVED: 7-0, Motion carries.***

38
39 **X. Proposed Zoning Amendment to Change Three-Story Height Limit.** Proposed
40 amendment to remove the three-story height limitation in a section of the Central Business
41 District (CBD) where there is a maximum of three stories. The original amendment would
42 allow for four stories by right and five stories by conditional use. A revision to the original
43 amendment prepared by the Town Council would allow four stories with either a pitched
44 roof with dormers or a fourth story with a setback (and no fifth story). The Planning Board

1 will continue its review including consideration of this alternative proposal from the Town
2 Council. Recommended action: Schedule public hearing.

3 Chair Rasmussen said he told the Town Administrator the board would need an extension for a
4 Council-initiated amendment and was told it is not a Council-initiated amendment and basically
5 left a lot for the Planning Board to determine. He said the Council is asking us to draft language
6 and give advice on building heights; may need to split Central Business again to separate the part
7 with these rules.

8 Councilor Grant said we have gotten to 4 stories but recent technical information received makes
9 it clear we will have nothing downtown if we are not careful. Chair Rasmussen said the utopian
10 dream of a 3-story downtown is not feasible; he asked if the Planning Board should listen to
11 opinions of the community or look at the reality of the future of downtown. Mr. Behrendt
12 emphasized that is just a recommendation from the Town Council and the Board can change
13 whatever they like.

14 Chair Rasmussen said he created a Logic Tree to work through the issue tonight: first the Board
15 needs to set the Building Height; to have buildings that will promote good living space and good
16 commercial properties we need at least 50 ft or higher. Secondly Setbacks: should there be a
17 setback or not; could set back the 4th story. Mr. Behrendt said it is the easterly part now which
18 is limited to 3 stories; the westerly part is 5 stories by Conditional Use.

19 Mr. Whittington said he personally does not find a 4-story building in downtown offensive and it
20 does not bother him aesthetically. Mr. McManus said he agrees 100% and said 4 stories should
21 be a bare minimum and there should be no setback on the 4th floor. Mr. Behrendt said there is
22 a "build to" or maximum front setback in Central Business. Mr. Kelley said wider sidewalk widths
23 should be provided with 4-story buildings. Chair Rasmussen said wider sidewalks has to come
24 with street design, and said we are going back to what we originally sent the Town Council: 4
25 stories with no setback.

26 Chair Rasmussen said Mr. Behrendt mentioned the appropriate point for zone boundaries: they
27 are back lines not property front lines. He said it almost makes sense to move it into PO rather
28 than create a new zone. Mr. Kelley said 2 zones are plenty and downtown should jump to the
29 other side of Garrison instead of PO jumping into downtown; the tallest building in Durham is on
30 Garrison and parcels up the street are not owned by the university and could be developed. Chair
31 Rasmussen said there is nothing historically significant about the buildings on the other side of
32 Garrison.

33 Chair Rasmussen said the next most important question is how fast we want this to get back to
34 the Council. Mr. Sullivan said we should get it back as quickly as we can as there is commercial
35 activity pending in downtown. Chair Rasmussen said the only thing different about tonight's
36 discussion from what was originally sent is we changed the height to 50 ft. The Board agreed to
37 eliminate mention of stories and just say 50 ft building height. Mr. Behrendt asked the board to
38 be mindful of standards already in the rest of CB-1 district. Mr. Sullivan said in this town it means

1 3 floors commercial, one residential; maximum height at 50 ft with no setbacks and developer
2 can decide.

3 Mr. Behrendt said the easiest way to do it is area to the east: maximum 4 stories, 50 ft; rest can
4 go 5 stories, 60 ft with conditional use. Chair Rasmussen said we still end up with a split zone and
5 would prefer a simple set of rules across the whole zone. Mr. Behrendt said to throw out the 3
6 story limit, all zones are 4 stories by right, 50 ft or 5 stories, 60 ft by conditional use. He said that
7 was your original proposal, but Town Council disagreed and made a different recommendation.

8 Chair Rasmussen said the rub for the public is building too tall and said he wants to put out a
9 version that will not have to be resent to the Council which he is confident is going to get done
10 with Public Hearing. Vice-Chair Tobias said the rules we create have to fit the zone and the
11 purpose of those zones; right now our Central Business District is lacking in value and on the
12 verge of losing more appraised value and asked what the purpose is for a 10-ft setback. Mr.
13 Nanda said he did not think it should be a rule about setbacks. Mr. McManus said our goal is to
14 do the best we can to facilitate creating a character in downtown defined by the people who
15 actually want to go there.

16 Chair Rasmussen we will be close and running into the election in March when councilors change
17 seats. Councilor Grant said the Town Council only meets once in January. Chair Rasmussen said
18 the Council should schedule a special meeting in January or we will not get this to you in time;
19 Councilor Grant said the meeting is January 12.

20 Mr. Behrendt said the process is confusing and talks about council-initiated amendments, and
21 you now have some additional amendments to their recommendations. He said legally what you
22 may need to do is just hold a hearing on what they sent you; schedule 2 public hearings for
23 January 14, limiting comments on first; then make your changes differentiating the 50 ft vs 60 ft,
24 4 or 5 stories. Chair Rasmussen said no 5 stories either; just 4 stories by right, 50 ft for CB-1. The
25 Board agreed.

26 Mr. Sullivan said to recap: Town Council said 4 stories, 42 ft, we said 4 stories, 50 ft; we agreed
27 to 4 stories and picked a different height. Mr. Behrendt said council cannot adopt something new
28 unless you hold a hearing on it. Chair Rasmussen said we closed all the open applications tonight
29 and this can be the only thing we put on the agenda for January 14, 2026; also new state laws
30 which can be last with discussion only.

31 **XI. Electric Vehicle Charging Stations.** Continued discussion of proposed amendments to the
32 Site Plan Regulations to create more electric vehicle charging stations. Developed by the
33 Durham Energy Committee. Recommended action: Continued discussion.

34 **ITEM POSTPONED.**

35 **XII.** Review of Minutes: October 29, 2025 and November 12, 2025

36 Approval of meeting minutes of October 29, 2025:

37 Mr. Smith said Approval of Agenda on page 3 should be 7-0, not 9-0.

Chair Rasmussen moved to approve the minutes of the Planning Board Meeting of October 29, 2025 as amended; SECONDED by Councilor Grant; APPROVED: 7-0, Motion carries.

Approval of meeting minutes of November 12, 2025:

Corrections: Page 3, line 17 should be 3,000 sq ft; page 4, line 37 should be *excavation plan*, line 38 should be *struck*, not stricken.

Chair Rasmussen moved to approve the minutes of the Planning Board Meeting of November 12, 2025 as amended; SECONDED by Councilor Grant; APPROVED: 7-0, Motion carries.

XIII. Other Business:

- St. George's Church. Determination whether new site plan review is needed to convert existing accessory solar array to small group net metering host

Chair Rasmussen said they are going to change where the electricity from existing channels is being divided up which changes its use according to our zoning, and asked if the Board needs a site plan review.

The Planning Board agreed this was an administrative matter.

XIV. Adjournment

Vice Chair Tobias moved to adjourn the Planning Board Meeting of December 10, 2025; SECONDED by Richard Kelley; APPROVED: 7-0, Motion carries.

Chair Rasmussen adjourned the Planning Board meeting at 9:53 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker
Durham Planning Board