

These minutes were approved at the September 14, 2022 meeting.

**TOWN OF DURHAM
DURHAM PLANNING BOARD**

Wednesday July 27, 2022

**Town Council Chambers, Durham Town Hall
7:00 pm**

MEMBERS PRESENT: Paul Rasmussen (Chair), Heather Grant (Vice Chair), Lorne Parnell, Sally Tobias (Council Rep), William McGowan, James Bubar, Chuck Hotchkiss (Alternate Council Rep), Barbara Dill (Alternate-remote); Emily Friedrichs (Alternate–arrived late)

ABSENT: Richard Kelley, Nicholas Germain (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: Seated Barbara Dill for Richard Kelley; Barbara Dill remote from now on due to eyesight.

III. Approval of Agenda

Mr. McGowan MOVED to approve the Agenda as presented; SECONDED by Vice-Chair Grant; Roll Call Vote: Bill McGowan-aye, Lorne Parnell-aye, James Bubar-aye, Paul Rasmussen-aye, Heather Grant-aye, Sally Tobias-aye, Barbara Dill-aye; APPROVED 7-0, Motion carries.

IV. Town Planner's Report

Mr. Behrendt said the Planning Board toured the Middle School today to see some of the geothermal sustainable elements: the school will be net positive with solar panels on roof and large parking canopy, 70 geothermal wells for heating/cooling, solar with electric and hot water. Gerrish Drive Subdivision was remanded back to Planning Board; working with Strafford County Conservation District to verify Soils Map. For August 10: Public Hearing for 19-21 Main Street; new CU for single-family house at 74 Mill Road; new 2-unit subdivision on Schoolhouse Lane; Public Hearing for Solar Ordinance; Board should discuss FY-2023 Budget by end of August.

V. Reports from Board Members who serve on Other Committees

Reporting from the Conservation Commission: Mr. Bubar said the Conservation Commission met Monday and discussed a couple of dock extensions and CU that are coming to the Commission; meeting was productive.

VI. Public Comments

William Hall addressed correspondence from DOT 3 years ago regarding road improvements in Durham. He said the Town hired VHB to evaluate traffic in town with 10 recommendations, but the Northern Connector which enters at Route 4 intersection with Madbury Road was not done even though funded in the 10-year plan. This would have eliminated the lights and traffic on Madbury Road entirely and needs to be looked at.

VII. Review of Minutes (Old): June 8, 2022 & June 22, 2022

Minutes of June 8, 2022:

Mr. Bubar and Ms. Dill said they turned in their comments to Karen.

Mr. Bubar MOVED to approve the Minutes of June 8, 2022 as amended; SECONDED by Vice-Chair Grant; Roll Call Vote: Bill McGowan-aye, Lorne Parnell-aye, James Bubar-aye, Paul Rasmussen-aye, Heather Grant-aye, Sally Tobias-aye, Barbara Dill-aye; APPROVED 7-0, Motion carries.

Minutes of June 22, 2022:

Mr. McGowan MOVED to approve the Minutes of June 22, 2022 as presented; SECONDED by Mr. Parnell; Roll Call Vote: Bill McGowan-aye, Lorne Parnell-aye, James Bubar-aye, Paul Rasmussen-aye, Heather Grant-aye, Sally Tobias-aye, Barbara Dill-aye; APPROVED 6-0, with 1 abstention, Motion carries.

VIII. Public Hearing - 15 Newmarket Road – Tideline Public House. Site plan application to create a tap room (serving beer and wine), store and food truck court with 8 food trucks, covered pavilions, a landscaped community gathering space, and other site changes behind the old Durham Town Offices. Scott and Karen Letourneau, applicants. William and Carrie Salas, current property owners. Mike Sievert, Horizons Engineering. Map 108, Lot 69. Recommended action: Final action.

Chair Rasmussen asked the Board if there was anything to add to the discussion at the last meeting. Mr. Bubar asked the applicant if they would remove the Bartlett Pear trees as they are an invasive species. Mr. Letourneau said at this point he planned to try to save them and get them healthier. Mr. Friedrichs asked the location of bike parking on the site. Mr. Letourneau said there is one at the top by end of median, one in front of the building, and possibly one in right-of-way at end of walkway, if Town permits.

Chair Rasmussen said there were some last-minute updates from Public Works this afternoon and the Board would go through those.

Chair Rasmussen opened the Public Hearing for Tideline Public House at 7:19 pm.

Review of Notice of Decision with Comments by Public Works: Mr. Parnell said comments from Public Works coming in at the last minute was inconvenient and not the way things should be done. Mr. Behrendt said on page 3 Public Works suggested language about drainage be changed to include inspection and repairs if needed of existing drainage infrastructure.

Mr. Sievert said the applicant does not agree with the second sentence; they agreed to do some inspection on-site to see condition and status, make some changes, and introduce an additional catch basin with deep sump that collects sediments, but object to repairs of offsite drainage infrastructure on Schoolhouse Lane. He said the design analysis shows we are decreasing runoff and volume from the site by removing impervious surface. Chair Rasmussen said everything up to that catch basin could be considered part of the second sentence, and everything along Schoolhouse Lane is not their responsibility.

Mr. Letourneau said regarding stormwater runoff and pressure or volume on system, applicant is decreasing both of those with a sediment-retaining catch basin in upper right, and additional catch basin closest to building to collect and settle stormwater. The Board agreed that the language in the second sentence should read that the applicant is responsible for all work up to and including first catch basin on Schoolhouse Lane.

The Board continued to discuss language provided by Public Works: Mr. Parnell asked that new #18 be deleted; Mr. Parnell questioned #19 and Mr. Sievert said that was required as part of MS4; Mr. Bubar felt numbers 19 and 20 should be moved to subsequent conditions. Chair Rasmussen asked Mr. Sievert about the Solution Tracking System; Mr. Sievert said it is a one-time report to be filed based on the stormwater report, which will set a program to track maintenance and performance of system going forward. He said drainage is a long-term operations and maintenance plan and can stay as a pre-existing condition.

Mr. Behrendt asked that the Board discuss the comment at the bottom of page 4 from Public Works about snow (#26); snow storage is shown in the 10 spaces allocated to the Town and is also shown in the lane to enter the property. Mr. Sievert said the oval just represents an area of snow storage and it could be taken out and noted on plans. Mr. Bubar said melting in winter could become quite slick and result in more salt being added to the parking lot.

Chair Rasmussen said given that the 10 Town spaces are not designated it would be better to not shade anything and have a note about the floating spaces. Mr. Behrendt said there is a condition under #14 that the easement must be recorded prior to occupancy. Mr. Parnell asked if #28 composting is a Town requirement and Mr. Behrendt said no but the applicant met with IMAC; Mr. Parnell asked that it be removed.

Mr. Letourneau asked about #29 NHDES Sewer Connection Permit and how waste generated per day will be measured. Mr. Sievert said it is all based on the number of people at x gals/person, and also triggered by installation of a manhole and one will be installed on the site. Mr. Letourneau said #32 is crossed out and replaced with new paragraph on construction guarantee; he said he is mostly interested in what to tell the bank he will need. Mr. Behrendt said it seems the real purpose of a construction guarantee is to reclaim the site if abandoned. Mr. Sievert said typically we ask the cost of work within right-of-way connecting to sewer and water, sidewalk improvements and reclamation which came up to \$27,000.

Mr. Bubar said it states for all sitework not just in the right-of-way. Chair Rasmussen suggested deleting the word "all" and using the list provided. Mr. Behrendt said the Board will figure out the surety amount with Public Works and the applicant. Mr. Parnell said it is the same thing on #41 Maintenance Guarantee; Mr. Behrendt said the purpose is if a problem is discovered in the right-of-way after work is completed. Chair Rasmussen said they are two different things; one is to make sure the work gets done at the time of occupancy and the other is an insurance policy for 2 years out.

Mr. Behrendt said 2% of construction costs seems high; it is really related to utilities and their connection within the Town's right-of-way. Mr. Sievert said in the past 10% of the surety would remain in place for 2 years for maintenance of vegetation and landscaping. Mr. Letourneau asked in what form it should be provided; Mr. Behrendt said it could be a letter of credit.

Mr. Bubar said a lot of what he is seeing on page 7 should be reviewed as part of the Site Plan application. Mr. Parnell asked why "all public sewer system infrastructure extensions should be designed and installed" was listed under terms and conditions since Public Works should have approved those by now. Mr. Behrendt said anything within the right-of-way will be inspected and is listed on page 9. Mr. Letourneau said these were presented to Mr. Behrendt as comments and may not be intended as conditions.

Mr. Bubar said on page 8 the inspection of installation of water and wastewater is to be done by an independent third party and said he is not sure if stormwater is included. Councilor Hotchkiss said stormwater shows up in #9 which has a lot of the same language as numbers 8 and 9 on page 8; Mr. Behrendt suggested eliminating #8 on page 8. Mr. Bubar said part of this is due to information coming in at the last minute.

Chair Rasmussen said #1 Stormwater Infrastructure on page 7 is not needed, or keep it there, and remove it on page 4. Mr. Behrendt said on page 7 sewer and water infrastructure has to be done anyway and can be left as comments. Mr. Sievert said if these are just comments, he does not want to have 40 conditions precedent. Mr. Behrendt said he felt this could be deleted as it has to be done anyway.

Mr. Sievert said #5 Utility Permit Application will not be done until the applicant is ready and is beyond conditions to be met prior to issuance of occupancy permit and should be under

subsequent conditions. Mr. Behrendt said it is also on top of page 5, and #5 on page 7 can be eliminated. He said with #9 at top of page 8 all parties want to make sure all utilities are installed properly. Mr. Sievert said inspection of utilities is fine but questioned having a qualified engineer on site for all aspects of site work. Mr. Behrendt suggesting just keeping the second sentence and deleting the first.

Mr. Parnell questioned the statement under Fire Department that “it is understood the building will be sprinkled”; he suggested changing it to the main building will be sprinkled. Ms. Dill stated that the proper word is “sprinklered” not sprinkled. Mx. Friedrichs said under lighting, string lights with a Kelvin temperature of K2700 would be ideal as K3000 will interfere with lightning bugs. Mr. Letourneau said he was not sure about what was available for purchase as product information was conflicting.

Mr. Parnell said under item #62 Weekend Cleanups the Town Code is mentioned and the Board needs to know what the Durham Town Code says. Mr. Behrendt suggested changing to “applicant shall inspect and clean up” and Mr. Parnell agreed. Chair Rasmussen said he was not sure it belonged in this application. Mr. Behrendt said to include it if something specific, otherwise delete it.

Chair Rasmussen said Mr. Kelley listed key points regarding the parking waiver and it is important they be included in the Notice of Decision: underutilized public parking, on Schoolhouse Lane, at Old Landing, and Mill Pond Road. Mx. Friedrichs asked whether the item on page 10 - the letter from the neighbors agreeing to the dumpster’s location - had been submitted. Mr. Letourneau said he has permission from Mr. York but still needs a letter.

Mr. Parnell MOVED to close the Public Hearing for Tideline Public House; SECONDED by Councilor Tobias; Roll Call Vote: Bill McGowan-aye, Lorne Parnell-aye, James Bubar-aye, Paul Rasmussen-aye, Heather Grant-aye, Sally Tobias-aye, Barbara Dill-aye; APPROVED 7-0, Motion carries.

Chair Rasmussen closed the Public Hearing for Tideline Public House at 8:14 pm.

Mr. Parnell MOVED to approve the Site Plan Application to create a taproom, store, and food truck court, a community gathering space and other changes behind the old Durham Town Offices at 15 Newmarket Road, Scott and Karen Letourneau applicants, Map 108, Lot 69, according to the Notice of Decision presented this evening as amended; SECONDED by Mr. McGowan;

Discussion: Mr. Behrendt sent a memo that Pear Trees can be removed at the discretion of the owner. Mr. Letourneau asked if the approval received for short-term overnight lodging should be included in the wording of the motion; Chair Rasmussen said it was in the Notice of Decision.

Mr. Bubar said there is one condition that needs to be eliminated or changed regarding best efforts to maintain Bartlett Pear trees and said he did not want that. Mr. Parnell said he disagrees first of all that it is a Bartlett Pear and said it is a perfectly good tree that grows well in the area if properly cared for, and it is important trees are maintained.

Roll Call Vote: Bill McGowan-aye, Lorne Parnell-aye, James Bubar-aye, Paul Rasmussen-aye, Heather Grant-aye, Sally Tobias-aye, Barbara Dill-aye; APPROVED 7-0, Motion carries.

IX. *Public Hearing - 74 Main Street – Mixed-Use Building.* Site plan and conditional use application for demolition of current wood frame building and construction of a 4-story mixed-use building with nonresidential uses, 12 residential units, and 5 parking spaces. Minor site changes are also proposed for the adjacent lot at 72 Main Street. Doug Clark, applicant. Jerry Pucillo, representing Foundation for Civic Leadership/Democracy House, applicant. Mike Sievert, Horizons Engineering. Zach Smith, Winter-Holben Architects. Map 106, Lot 59. Central Business Zone. *Recommended action:* Review and continue to August meeting.

Jerry Pucillo (on zoom) introduced the Board to Jason Cohen of Bergmeyer Associates who is taking the place of Zach Smith and will be heading up the architectural side of the project and will review it with the Board.

Mike Sievert showed the original recorded subdivision from Doucet (2018) which is recorded at the registry with easement notes, all existing conditions from here. He showed the newest updated Site Plan, and said he was trying to expand some existing conditions outside of the property to show adjacent uses and access points. The 20-ft aisle is still outside the building; shows porous pavement area and concrete area underneath building with parking spaces; turned stairway back in.

Mr. Sievert said there are 4 parking spaces, 2 under the building and two at the top corner of the lot; one dumpster pad under building; building was pulled back 6 ft and area between buildings will be repaved to property line; dashed lines show overhang of upper floors; building dimensions were added. Sidewalk will be reconstructed along park and parking will be removed with 6 additional spaces along Main Street.

Mr. Sievert said the final design layout for Site Plan shows few changes; parking spaces at the top to be used during construction; geothermal wells shown on plan, building footprint, and square footage of upper floors. He said the plans were broken into 2 sets: site plan and grading/drainage plan which shows stormwater system and grading with all pervious pavers; black lines represent all drains in sub-base of stormwater collection system with perforated pipes on the bottom, flows through closed drains and out to drainage basin. He said other drains are roof drains; still putting catch basin at property line for runoff from adjacent property.

Mr. Sievert said finished floor elevation of building is 53-ft at edge of pervious pavers and majority is at 56 ft. A new sewer (6 ft down) on property will tie back into existing sewer on adjacent property; existing water line running along Pettee Brook sleeve and ties back in; old water line in park will be abandoned. Electric transformer in same location with all electric lines underground, secondary is 30-36 inches just below porous pavers. He said lights and parking meters on Pettee Brook Lane will be relocated, and the plan picks up all of the utility infrastructure, existing and proposed.

Mr. Sievert said existing buildings on property and park paved area will be coming out and demolition notes were added. He said the Construction Management Plan is based on same plans seen before; construction company is Martini Northern LLC. Plan shows construction trailer storage area with fencing (behind bank parking lot); there will be sidewalk closures; blue lines show pedestrian routes to get around site and access adjacent site. There are other construction storage areas along the side; shows location of shoring to be installed for excavation and construction of building.

Mr. Bubar asked about a back-up generator and Mr. Sievert said the transformer is ground-mounted on the back, with a conduit for all service providers underground to transformer. He said construction details show cross-section of pervious pavers on a 5% slope; shows pipe which fills up with water and spills out. On-site filtration tests required by DPW completed; designed for 0.5 in/hour and came out to 2.4 in/hr, or 1.2 with safety factor; confirms system will function as designed or better.

Architect Jason Cohen said he is not new to the project and has been working with Zach Smith since January. He said the view of the building on Main Street does not change; building is now back 6 ft 3 in at furthest extent of existing pavement; dashed line represents overhang of upper floors achieved with a structural cantilever. Showed building elevations: front remains the same; side shows building comes back out at second floor up to fourth floor and roof; cantilevers back out over easement close to property line; core part of building with stair and elevator does not extend out.

Mr. Cohen said second, and third-floor plans show break for stair/elevator; floors are residential with 6 units/floor; roof the same with roof deck and stair/elevator to penthouse; other stair brought back in; fourth floor is program space for Democracy House with details to be worked out. He pointed out the sustainable features of the building: geothermal heating/cooling system with 3 wells dug on site, cuts back on fossil fuel and electrical consumption; panelized prefabricated wall system which is super insulated on outside of building. Building is a handsome addition to the streetscape with a glazed tower element at front. Mr. Pucillo added that they are still working on solar panels for the roof but will not have enough to power the whole building.

Mr. Bubar asked about natural gas backup for geothermal in winter; Mr. Cohen said the building will have a conventional heating/cooling system to supplement. Mr. Friedrichs said architectural regulations state entrance shall be located on front center façade, prominently and readily

recognizable. Mr. Cohen suggested putting signage for residential entrance; public entrance is in glazed stair tower in front and will be glowing at night. The Board discussed the entrance tower; Mr. Sievert said the entry is at grade and he widened the sidewalk to 20 ft there.

Ms. Dill thought the architecture looked stunning and agreed with Mx. Friedrichs on calling attention to the entrance. She asked what the building will be called, and Mr. Pucillo said just 74 Main Street at this time; Democracy House will be a program inside the building. Mr. Behrendt asked if the building exceeds 50 ft in height, and Mr. Cohen said top of coping is at 50 ft, but the upper roof penthouse, back a good amount from the parapet, is taller than that. Mr. Behrendt asked about materials and Mr. Cohen said the main volume of the building is two kinds of fiber cement: horizontal fiber cement siding, with middle bays fiber cement panels; tower is metal panels with storefront.

Chair Rasmussen opened the Public Hearing for 74 Main Street at 9:04 pm.

Chris A. Swiniarski, attorney representing Town & Campus Inc, owners of abutting property to the south, said his colleague Suzanne Brunelle had spoken to the Board many times about the easement on the existing paved area, and said this building encroaches on the easement. He said the Planning Board can go through the entire process to review this but at that point the attorneys are going to court and this project stops. He said the Planning Board is within its rights to deem this application incomplete until the applicant can demonstrate that it has the legal right to build this proposal, but it is not permissible as designed with overhang.

Mr. Parnell asked Mr. Behrendt how high an easement goes. Mr. Behrendt said he believed the purpose was to allow vehicles to pass to Town's parking area in front, but that parking area is being removed and there would not be any purpose for vehicles on that side lot line. Chair Rasmussen said it depends on the purpose of the easement. Councilor Tobias said for deliveries trucks would have to back out. Attorney Swiniarski said the reason for the easement is irrelevant and 11 ft is not enough.

Mr. Pucillo said there is room for emergency vehicle access and ambulance if needed to pass under. He said the easement was predominantly designed for pedestrian access, and our legal team believes we are within our rights to build the building as designed. Chair Rasmussen said the Board will move forward at the applicant's risk, but with changes to the park there will be no through traffic.

Chair Rasmussen said this application is CU and asked the Board what else they needed to see. Mr. Behrendt said the applicant needs one CU for Mixed-Use, one for the height of the building to go beyond 30 ft to 50 ft; approval of parking as it is well below requirements and will need to pay impact fees of \$1,500/space; need an accessible van space on site. He said if continued to the August 10 meeting, the Board and Town Planner can review plans and identify any issues, and the proposal could be ready for final action on August 24, 2022.

The Board discussed parking on the site and Mr. Sievert said there were 19 spaces prior to reconfiguration. Chair Rasmussen asked if the Board was close to being able to deliberate. Mr. Behrendt said there should be another TRG meeting on August 18, and he could provide a detailed write-up of all the issues for the August 10 meeting, including CU, architectural details, and site issues. Councilor Tobias said she would like the applicants' thoughts on providing more parking spaces for residents.

Mr. Pucillo said he opened a conversation with the new Bank owners next door and was asked to wait another couple of months. He said they will either purchase spaces with a long-term lease or work with Town on a long-term policy. Mr. Sievert asked if the TRG meeting could be held earlier; Mr. Behrendt said next regular meeting is August 2 and can be brought up then.

Vice-Chair Grant felt the Board did need to see more of a visual regarding the architecture seen earlier in the project to see what is missing from the original proposal. Mr. Cohen said he could do that with the cantilever. Mr. Pucillo said for the Board's knowledge, since we started discussion around abutters, we have not changed any of the design except this cantilever area and said he would bring back the originals.

Chair Rasmussen continued the application for 74 Main Street and the Public Hearing to August 10, 2022.

X. **19-21 Main Street – Parking Lot.** Site plan and conditional use application for parking lot as principal use on four lots and reconfiguration of the entrance. Toomerfs, LLC c/o Pete Murphy and Tim Murphy, owners. Mike Sievert, engineer. Robbi Woodburn, Landscape Architect. Map 108, Lots 13, 12, 11, and 10. Church Hill District. ***The Public Hearing is adjourned until August 10. The Planning Board is holding its final deliberations.***

Chair Rasmussen recused himself and passed the gavel to Vice-Chair Grant.

The Planning Board recessed at 9:27 pm.

Acting Chair Grant seated Emily Friedrichs for Paul Rasmussen. She said the Public Hearing is adjourned with public comments only in written form; Mr. Behrendt sent out a communication with adjustments in process for this meeting.

Mr. Behrendt said the vast majority of projects that come to the Planning Board are not that complicated, but for projects with a great deal of public input it is helpful for the Board to put a hold on public comments to allow sufficient time for deliberations. The Town Attorney advised that since the Public Hearing is not actually closed the Board has to accept written comments during that period.

Mr. Behrendt said for 19 Main Street the Town Attorney's recommendation is to close the Public Hearing on August 10, Board will continue deliberations, Board will give directions to draft a

Notice of Decision for approval or denial, then schedule a subsequent meeting, send new notices, and reopen the Public Hearing. The Board will next get input on the Draft Notice and take final action with several votes, then have a final meeting on CU, Site Plan, and Notice of Decision. Will not know the outcome until the final meeting; Site Plan approval requires 4 affirmative votes; CU requires 5 affirmative votes.

Mr. Parnell said he does not agree at all and feels the Public Hearing should have been closed at adjournment. He said getting written comments and not verbal is making the whole public comment process not good. He suggested that tonight the Board finish CU criteria deliberations and at the next meeting after the Public Hearing, the Board should start taking votes on CU criteria, do deliberations on the Site Plan and take a vote on that; notice of decision is basically paperwork.

Mr. McGowan said he does not recall in the past voting on the Notice of Decision. Mr. Parnell said in bigger projects, voting is important as the Notice of Decision is the conditions under which approval/denial is done. He agreed you have to have a Public Hearing at that time because you have to speak to the applicant about what the conditions are but feels in this case the Board has dragged this on long enough.

Councilor Tobias agreed and said it seemed odd discussing CU criteria and then getting written comments back pertaining to the discussion. She said it was hard enough that the Board split the discussion of CU criteria over two meetings, and it is very confusing with applicant and residents still discussing what we are saying now. She said there should be a defined process no matter what and the Board should not be changing and making a subjective decision because of one applicant being contentious or more involved.

Mx. Friedrichs said ze agreed with Councilor Tobias and said the Board needs to have consistency and whatever works has to work for all applications, and in the name of transparency needs to be predictable. Ze said ze can understand the attorney's recommendations if you are a trial lawyer to change strategy as things evolve, but from a Town lawyer people expect predictability as a bureaucracy. Ze is concerned the Board has had accusations of bias from both applicant and abutters as well as numerous rumors around town. Ze said it is important the Board maintains the faith and trust of the public and changing approaches in the middle of an application is less than ideal.

Ms. Dill agreed with everyone so far and said she thinks it is bad practice to be doing deliberations so late at night and asked that Board members be more tolerant of each other. Acting Chair Grant said it has obviously been difficult to try to maneuver and if the Board had just closed the Public Hearing, they would all be farther along. Mr. Bubar said it is a mistake not to have a robust discussion of nuance, opinion, or interpretation and said it modified his position.

Mr. McGowan said moving forward, the Board should open the Public Hearing on August 10 and listen to comments, close it, and then based on the time start the voting. Acting Chair Grant said

the Board has also been reluctant at times to close the Public Hearing. Mr. Bubar said it is also possible over a long process that something *seems* to be agreed to by applicant or Board, but it is not there in the Notice of Decision and said he would not want to discount the public's oversight of that.

Mr. Parnell said once the Board starts deliberations, particularly on CU criteria, we should go through them and vote and should try to do that together in future. Mx. Friedrichs asked if an item to be voted on could be first on the agenda, instead of opening deliberations at 9:00 or 10:00 pm. Mr. McGowan said the rules and procedures are listed and the Board may have to vote to change them. Mr. Behrendt asked if the Board closes the Public Hearing and has deliberations, would they then vote on CU and Site Plan at the same time.

Mr. Parnell said the Board has not yet deliberated on the Site Plan and would vote on CU criteria first then discuss site plan issues and vote on that. Mr. Behrendt said the Town Attorney recommended all votes at the final meeting. Mr. Parnell said the concerns of the Town Attorney are different from his, and the Board should make both votes the same night with the same people. Councilor Tobias said that is the way the Board has always done it for the most part. Mr. Behrendt said the Board never closed the Hearing and re-notified. Mr. Parnell said he always assumed that asking for discussion with applicant at a later point was not considered part of the Public Hearing.

Mr. Bubar said there is a wetland south of the site and asked if the Board needed to get a consultant to review the HISS map provided by the applicant. Mr. Behrendt said the wetland is larger than 3,000 ft but the buffer is 75 ft away and the applicant could not do grading in the buffer without moving the retaining wall or getting a Permitted Use B. Mr. Sievert said he believes the retaining wall can be put in and installed without going into the buffer.

Discussion of Site Plan: Acting Chair Grant asked the Board if they would like to start Site Plan review from the beginning or only discuss concerns. Mx. Friedrichs said Section 16.2 talks about modifying lights at intersection of Route 108 and Main Street as well as in front of the Post Office and changing stop sign to yield sign there to improve traffic flow and asked where that stands. Mr. Parnell said the stop sign was a yield sign not long ago, and there is no connection of the traffic study done at that time to this particular project.

Acting Chair Grant said the Board is looking at the traffic study we have and making sure it is tied to the plan based on long-term parking. Mr. McGowan said because based on that it was minimal impact. Mx. Friedrichs said the project spans 4 different lots and asked if approved would there also be lot-line adjustments. Mr. Behrendt said the applicant would have to combine them into 1 or 2 lots.

Mr. Parnell addressed the wording under 8.2.1 that extensive grading and filling should be avoided and said it was not really discussed. He said if the Board did not allow the project because of that they were saying this lot cannot be developed. Mr. Bubar said he will continue to say it is

extensive and Mr. Parnell agreed. Mx. Friedrichs said the Board is held to Durham's regulations and ordinances, and it is not the Board's job to interpret whether those ordinances hold up in court. Councilor Hotchkiss said if this is not an instance where 8.2.1 comes into play, it is hard to imagine what it ever would have affect. Mr. Bubar said he feels a 34,000 sq ft increase in impervious surface is extensive.

Mx. Friedrichs said valleys are being filled in, but the profile does not seem to be following only the valleys and slopes but rather building above the slope to change the grade by 5-10%. Acting Chair Grant said some areas have more fill than others. Mr. Bubar said looking back at plan presented March 23 there are substantially more steep slopes than he had thought were there. Ms. Dill asked how much of a drop there was from the existing lot going down. Mr. Bubar said he believes it is 8 ft.

Ms. Dill asked if coming into the lot at night in winter and sliding could you build up enough momentum unintentionally that would take you all the way through and hit the guardrail. Mr. Bubar said as you come down the headlights will be over the fence. Mr. McGowan said the drive down goes from 72 ft to 66 ft. Councilor Hotchkiss suggested resolving the issue under conditions.

Acting Chair Grant asked Mr. Behrendt why he did not include Section 7, erosion and sedimentation control, in his summary. Mr. Behrendt said the applicant submitted an erosion/sedimentation plan as part of the drainage plan. Councilor Hotchkiss said soil erosion is also addressed in 5.1, number 5.

Mx. Friedrichs asked if there is a Plan B if the grass on the slope is not coming in. Mr. Behrendt said adequate screening and buffering from adjacent uses is required under Article 5. He said the most important part of deliberations is the fundamental question of does this as now presented, or as may be modified, meet the requirements. Acting Chair Grant said the buffering plan is well done to screen from other properties. Ms. Dill said she finds too much is being destroyed here with not much benefit to the Town.

Mr. Parnell said his suggestion would be to try to put this first on the agenda for the next meeting. Mr. Behrendt said the Board has a couple of small new items which usually take about 15 minutes for presentation and scheduling a hearing. He said the Public Hearing is reconvening on August 10 and asked the Board if they plan to close the Public Hearing at that meeting. Mr. Parnell said he would make that motion.

Acting Chair Grant handed the gavel back to Chair Rasmussen at 10:34 pm.

Chair Rasmussen said it was very frustrating to hear Board members plan future meetings and discuss future processes and agendas while he was in recusal and could not participate. He said when the Board is on an application they should stay on the application. He said Mr. Behrendt would like to put all non-public-hearing items first on the agenda and given all the administrative

reasons the Board is finding itself in trouble he is not in the mood to be going against rules and procedures.

Chair Rasmussen said in future, even if it means setting aside a special meeting because the Board feels it will take that much time, the Board should aim for doing all deliberations in one sitting for an application, at least everything for CU in one go, and get all deliberations associated with a particular vote done together.

XI. Other Business

Mx. Friedrichs said ze is concerned that procedurally it is very important to be extremely attentive to the language of our ordinances and have these things prepared for the record and expressed concern that the Board did not address the definition of surface parking. Ze said what is permitted under CU is surface parking and the Board needs to be sure we identified this application in that context.

Chair Rasmussen said when you go back and review definitions you will find a huge overlap between the two given recent interpretations, and you will have to decide whether it is one or the other or both. Mx. Friedrichs said zir concern is that the Board does not have a discussion on record around the definition of surface parking. Chair Rasmussen said the Board is not done yet. Ms. Dill felt the term structured parking in the Town's Ordinance should say *parking structure*.

XII. Review of Minutes (new): No new minutes.

XIII. Adjournment

Mr. McGowan MOVED to adjourn the meeting; SECONDED by Mr. Parnell; Roll Call Vote: Bill McGowan-aye, Lorne Parnell-aye, James Bubar-aye, Paul Rasmussen-aye, Heather Grant-aye, Sally Tobias-aye, Barbara Dill-aye; APPROVED 7-0, Motion carries.

Chair Rasmussen adjourned the meeting at 10:43 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker
Durham Planning Board

James Bubar, Secretary