

These minutes were approved at the November 9, 2022 meeting.

**TOWN OF DURHAM
DURHAM PLANNING BOARD**

Wednesday October 12, 2022

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

MEMBERS PRESENT: Paul Rasmussen (Chair), Heather Grant (Vice Chair), Richard Kelley, Lorne Parnell, James Bubar, William McGowan, Sally Tobias (Remote), Barbara Dill (Alternate), Chuck Hotchkiss (Alternate Council Rep), Emily Friedrichs (Alternate)

ABSENT: 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: No Alternates needed to be seated.

III. Approval of Agenda

Chair Rasmussen stated 20 Adams Point Road, Item VIII, was postponed at request of the applicant to November 9, 2022.

Mr. Parnell MOVED to approve the Agenda as amended; SECONDED by Mr. Bubar; APPROVED 7-0, Motion carries.

IV. Town Planner's Report

Mr. Behrendt said two projects were appealed: Mill Plaza to Housing Appeals Board; Site Plan for 19-21 Main Street to the court.

V. Reports from Board Members who serve on Other Committees

Reporting from Town Council: Councilor Tobias said Council met October 3: report on archeological researches into Durham's indigenous past; update from Jim Lawson on School Superintendent; Housing Task Force update; going into Budget beginning of November.

Reporting from HDC Committee: Mr. McGowan said HDC met; history of raid on Fort William & Mary presented, anniversary coming up in 2024; discussed uses for old sewer pump.

Reporting from IWMAC: Ms. Dill reported that IWMAC met this morning and continued discussion of Sustainable Durham unifying town groups to ward off climate change.

VI. Public Comments

John Carroll asked to read a statement by Kim Sweet regarding Gerrish Drive. Chair Rasmussen said there would be no comments on that until the Public Hearing.

Diana Carroll requested that before the Public Hearing for Gerrish Drive information be provided to the public; she could not read the numbers on the HISS Map provided. Chair Rasmussen asked that she work on that with Mr. Behrendt.

VII. Review of Minutes (old): August 10, 2022 & August 24, 2022 Site Walk Minutes (2 sets)

Minutes of August 10, 2022: Changes/Corrections sent to Karen Edwards.

Vice-Chair Grant MOVED to approve the Agenda as amended; SECONDED by Mr. McGowan; APPROVED 7-0, Motion carries.

Minutes of August 24, 2022 Site Walk for 74 Main Street:

Mr. Kelley MOVED to accept the minutes from the Site Walk for 74 Main Street; SECONDED by Chair Rasmussen; APPROVED 4-0 with 3 abstentions, Motion carries.

Minutes of August 24, 2022 Site Walk for 14 Schoolhouse Lane:

Mr. Kelley MOVED to accept the minutes from the Site Walk for 14 Schoolhouse Lane; SECONDED by Councilor Tobias; APPROVED 4-0 with 3 abstentions, Motion carries.

VIII. Public Hearing - 20 Adams Point Road – 2-Lot Subdivision. 2-lot subdivision of 34-acre parcel at the southeast corner of Adams Point Road and Bay Road. Anthony and Natalie Diberto, owners. Chris Berry, Berry Surveying. Map 230, Lot 7. Residence Coastal District. Accepted on August 24. Recommended action: Final action if ready.

POSTPONED BY APPLICANT TO NOVEMBER 9

IX. Subdivision off Gerrish Drive. Application and conditional use for 18-unit conservation subdivision for seniors. 91 Bagdad Road address. ****The project was remanded by the Superior Court back to the Town for consideration.*** Marti and Michael Mulhern, property owners. Mike Sievert, Horizons Engineering. Mark West, Wetland Scientist. Sharon Cuddy Somers, attorney. Map 206, Lot 46. Residence B District. Recommended action: Accept as complete and schedule public hearing for October 26.

Chair Rasmussen asked the Board if they wished to accept the application or hear from the applicant. Mr. Kelley said he would like to hear what the applicant has done to address the two items missing from the original application of 2018: the HISS Map and the verification thereof.

Sharon Somers, attorney for applicants: purpose of tonight's meeting is to accept the application as complete; Public Hearing date to be set. She stated that on June 1, 2022 Strafford County Superior Court issued an order remedying an omission by the Town saying application was complete without a stamped HISS Map; grounds incomplete application and lack of determining viability of different access road; no alternative access road outside the WCOD. The Court order indicates missing HISS Map directly relates to issues complained of ability to identify wetlands in the HISS Map. Project remanded back to Planning Board for further proceedings. An extensive record was produced as evidence and the applicant requests the Board incorporate by reference all materials submitted.

Mike Sievert of Horizons Engineering distributed copies of the new stamped HISS Map to the Board; a HISS Map was submitted under Phase I with setbacks and topography as well as a stamped HISS report. This new submission includes 6 plans; the Site Inventory Plan has the HISS Map embedded in it showing soil boundaries with red lines added showing setbacks from wetlands. He pointed out that the shape of the wetlands (blue area) and highlighting of wetland boundaries are different from the HISS Map.

Mr. Bubar pointed out a demarcation line missing on the HISS Map between CH and BH which should be shown; Mx. Friedrichs pointed out that slope grade A should be B. Mr. Sievert agreed and said Mr. Cuomo and Mr. Mariano agreed on additional modifications after a site walk; changes were to be made by Mr. Mariano. Mr. Sievert said he was not authorized to make those changes and was trying to reach Mr. Mariano to create a new Stamped HISS Map.

Mr. Behrendt said Mr. Cuomo, in his letter of August 5, 2022, verified the HISS map and made several comments. Mr. Sievert said the comments were not addressed on this plan: one listing the A designation, incorrect information in plan notes, and note 4 does not apply to this project. Mr. Kelley asked Mr. Sievert to read paragraph 4 of the letter from Mr. Cuomo in entirety for the record: *"Resulting from my review, I agree that the HISS map accurately represents the soil conditions on the site."*

Mr. Sievert explained that the easements were not done because Board regulations specifically eliminate use of easements in density calculations of development; two of the easements are not on the parcel, one goes down Route 108 with sliver on parcel shown on original site analysis. He said the whole project is 8,000 sq ft with adjustments made on HISS Map; small changes are shown in areas outlined in red.

Mx. Friedrichs asked for clarification between edges of wetlands flagged in 2018 and wetland edges as of February 2020. Mr. Sievert said the legend does not refer to red markers of edge of wetlands in 2018 and the blue line with circles is underneath the black line and marks the edge of wetlands; wetland boundaries mapped in 2018 were accurate.

Mr. Sievert clarified that there were 2 sets of changes: revised HISS Map by Mariano and notes on verification by Cuomo; a stamped HISS map with all the minor changes made is needed. Mr. Parnell said the new map has come back with soil scientist certification and there are still changes to be made. Mr. Sievert said the Planning Board will get a revised set of plans.

Attorney Somers said the Board is here to deal with a remanded court order and the matter discussed by this Board has to do with whether there is an alternative access road outside the WCOD now that they have a stamped HISS Map; she assured the Board of Mr. Mariano's cooperation for a more complete revision for next meeting.

Mr. Bubar raised issues regarding the wetland buffer; Chair Rasmussen said Mr. Bubar is making the point that precedent conditions potentially change the 75-ft wetland buffer line, which could affect placement of buildings; he asked that Mr. Bubar send his concerns to the Town Attorney

for a response. Mr. Behrendt said after approval by DES, anything significant has to come back to the Planning Board.

Chair Rasmussen said because the application was improperly accepted and remanded, everything has to be reapproved and asked that the Board hold further discussion to the next meeting. Mx. Friedrichs asked about maps C201 and C202 in road profile and said C202 was not correctly labeled in the title block; Mr. Kelley said the title block is wrong as well as profile station interval at both locations.

Mr. Kelley asked the Town Planner if the application was complete, and Mr. Behrendt responded that it was.

Mr. Kelley MOVED that the Planning Board incorporate by reference all materials and testimony previously given as well as the amended and new materials resubmitted with the current application and the Board finds it accepted; SECONDED by Mr. McGowan; APPROVED 7-0, Motion carries.

Mr. Parnell MOVED that the Planning Board schedule a Public Hearing for Gerrish Drive Subdivision for October 26, 2022; SECONDED by Mr. McGowan; APPROVED 7-0, Motion carries.

- X. **Solar Energy Systems Ordinance.** *The public hearing is closed.* Continued review of proposed amendment to Zoning Ordinance initiated by Durham Town Council. The draft addresses numerous aspects of solar energy systems including rules and allowed locations for systems that are accessory to single family houses, systems accessory to multifamily and nonresidential uses, small and large utility-scale systems, and group net metering host systems. Recommended action: Continue review.

Chair Rasmussen asked Mr. Lawson about the current format used by Mr. Behrendt for Planning Board responses; Mr. Lawson said a letter would be more appropriate. Chair Rasmussen asked Mr. Behrendt to compose a letter with bullet points for specific items.

The Board reviewed the comments listed on the last draft ordinance and agreed to the following changes: Page 1: Ground-mounted already in definition; Mixed-use residential included and capitalized. Page 2: Agreed to keep definition as rewritten outright; add under Parking Canopies: this does not constitute structured parking; "storage" not included in other definitions. Page 6: Change SEs to Ps. Page 7: Under purpose change "implementation" to *installation*. Page 8: Change "land topography" to *topography*. Page 9 no questions; Page 10: Change (a) to "Site plan review and approval is required" for consistency.

Mr. Behrendt said on page 11 the Board did not resolve whether to include language for a free-standing system that exceeds 25 ft not exceeding 35 ft. After discussion, the Board agreed to allow the 25 ft free-standing system eliminating numbers 3 and 5 and keeping 1, 2, and 4.

Mx. Friedrichs expressed further concern about cutting down mature trees to meet requirements of Zoning. Chair Rasmussen said if an applicant fails to obtain a special exception, they can come back for a variance.

XI. Other Business

Mr. Parnell asked Mr. Behrendt about the waiver of subdivision fees in the note for Gerrish Drive. Mr. Behrendt said that would be dealt with when the Board takes final action; the fees have already been paid and will be reimbursed.

Discussion about procedure for minutes

The Board discussed the procedure for minutes: whether minutes actually needed to be approved, the content of minutes, timing, and what was required. Mr. Parnell said he did not understand this discussion and did not see anything wrong with the minutes. He checks and makes sure what he said is correct.

XII. Review of Minutes (new): September 14, 2022, September 21, 2022, Site Walk Minutes for September 28, 2022

Minutes of September 14, 2022: Corrections sent to Karen Edwards

Mr. Parnell MOVED to approve the minutes of September 14, 2022 as amended; SECONDED by Mr. McGowan; APPROVED 6-0 with 1 abstention, Motion carries.

Minutes of September 21, 2022:

Vice-Chair Grant MOVED to approve the minutes of the Special Meeting of September 21, 2022; SECONDED by Mr. Parnell; APPROVED 5-0 with 2 abstentions, Motion carries.

Site Walk Minutes of September 28, 2022:

Mr. Parnell MOVED to approve the Site Walk Minutes of September 28, 2022; SECONDED by Councilor Tobias; APPROVED 5-0 with 1 abstention, Motion carries.

XIII. Adjournment

Mr. McGowan MOVED to adjourn the Planning Board Meeting; SECONDED by Councilor Tobias; APPROVED 7-0, Motion carries.

Chair Rasmussen adjourned the meeting at 9:23 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker
Durham Planning Board

James Bubar, Secretary