

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

**TOWN OF DURHAM
DURHAM PLANNING BOARD**

Wednesday October 26, 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), Chuck Hotchkiss (Alternate Council Rep), Emily Friedrichs (Alternate); Arriving Late: Richard Kelley, Barbara Dill (Alternate-remote)

ABSENT: James Bubar, William McGowan, 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 Emily Friedrichs for James Bubar.

III. Approval of Agenda

Councilor Tobias MOVED to approve the Agenda as presented; SECONDED by Mx. Friedrichs; APPROVED 5-0, Motion carries.

IV. Town Planner's Report

Mr. Behrendt presented agenda for November 9: Adams Point Rd continued, proposed Housing Ordinance to Planning Board from Housing Task Force; no regular second meeting in November; set aside 5th Wednesday November 30.

V. Reports from Board Members who serve on Other Committees

Reporting from Town Council: Councilor Tobias said Council met October 12 with 3 presentations: Durham Climate Action Plan updated; ZBA update of Zoning Board by Mike Warnock; update from DPW on complete redo of Madbury Road (pictures mounted in background).

Barbara Dill joined the Planning Board Meeting on Zoom at 7:05 pm and Chair Rasmussen seated Ms. Dill for Bill McGowan.

Reporting from Energy Committee: Mx. Friedrichs provided notes from Jim Lawson: closing following presentation of Climate Action Plan, Solar Ordinance reports; continued exploring thermal imaging; Button Up Workshop Thursday, November 3 at 6:30 pm, hosted by Rye and Portsmouth (attend by Zoom), looking at NH Saves and information for residents to save on energy costs.

Reporting from AG Commission: Chair Rasmussen said the AG Commission cancelled the meeting for the month of October due to continuation of Fair Season.

VI. Public Comments

VII. Review of Minutes (old): July 27, 2022 Site Walk – Oyster River Middle School

Chair Rasmussen MOVED to accept the minutes of the July 27, 2022 Site Walk; SECONDED by Vice-Chair Grant; Roll Call Vote: Barbara Dill-aye, Heather Grant-aye, Paul Rasmussen-aye, Sally Tobias-abstain, Emily Friedrichs-abstain, Lorne Parnell-abstain; APPROVED 3-0 with 3 abstentions, Motion carries.

VIII. 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: Final recommendation.

The Board reviewed the Draft Solar Energy Systems Ordinance. Vice-Chair Grant asked about carport mounted systems attached or unattached to residence. Chair Rasmussen said for carport in front yard special exception is required. He said Mr. Behrendt has already forwarded a letter to Todd Selig which is suitable to be used as cover letter to go forward.

Mx. Friedrichs MOVED that the Planning Board approve the Draft recommendation on Solar Energy Systems Ordinance and forward to Town Council; SECONDED by Vice-Chair Grant; Roll Call Vote: Lorne Parnell-aye, Paul Rasmussen-aye, Heather Grant-aye, Sally Tobias-aye, Emily Friedrichs-aye, Barbara Dill-aye; APPROVED 6-0, 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. Doug Clark and Jerry Pucillo of Foundation for Civic Leadership/Democracy House, applicants. Mike Sievert, Horizons Engineering. Jason Cohen and Tim Digan, Bergmeyer Architects. Map 106, Lot 59. Central Business Zone. *Extended* to November 30. Recommended action: Final action.

Chair Rasmussen said the Board now has updated, finalized plans for this project. Mr. Behrendt said the Final Notice of Decision is not much different from the Draft of October 12, 2022 except DPW reviewed the plans in detail and added comments which were incorporated into the final notice; also added #46 deadline to complete off-site work with \$500 penalty/day if not finished at that time; Mr. Sievert asked for clarification that it be 18 months from start of construction instead of a set date of August 2024. There are 3 waivers overall and one condition for School

Impact Fees: one-time payment of \$1,812 per unit for school-age child; 2 conditional uses: Mixed-Use and Height of Building to exceed 30 ft.

Mr. Parnell asked if condition #43 about tree protection zones around trees in Ballard Park should go *before* start of construction rather than be a subsequent condition. The Board discussed the issue and decided it would be new #51 and be emphasized on the plans as a precedent condition.

Chair Rasmussen opened the Public Hearing for 74 Main Street at 7:20 pm.

No one from the Public came forward.

Chair Rasmussen brought the Board's attention to sheet C-102 in the upper right-hand corner and said striping on Pettee Brook Lane has problems and suggested a turn lane into property to keep traffic pushed out. Mr. Sievert said there is not enough room for 2 lanes and said he could change the radius to 25 ft to keep traffic pushed out.

Richard Kelley arrived at the Planning Board meeting at 7:22 pm.

Chair Rasmussen asked Mr. Sievert if he had any issues with conditions in Notice of Decision. Mr. Sievert stated that tree protection is already on plan sheet C-101; he asked that #8 be changed to once/year for vacuuming porous pavers and the Board agreed. He said for #9 there is not enough room around the transformer for landscaping per Eversource requirements of 10 ft clear space in front and said he would not be able to meet that requirement. Mr. Behrendt asked that the applicant do the best they can and meet onsite or waive the requirement and the Board agreed for applicant and Town Planner to meet onsite.

Mr. Sievert asked that #11 Geothermal Wells be moved to subsequent conditions; Mr. Pucillo said he could get the well locations to meet the condition. Mr. Sievert asked that "provide detail" be taken off; Mr. Behrendt asked that details be provided 2 weeks prior to construction. Mr. Kelley asked the target area for the wells and Mr. Pucillo said they need to be 50 ft apart, approximate diameter of 24-30 inches, with manhole covers for access.

Mr. Sievert said #15 talks about building alignment and extensions beyond property line and said Sheet SOE-1.1 is just the detail to show the shoring and asked that his site plan (C-104) be used to show building limits more clearly; corners of the building will be staked at the site and shoring laid out from that; everything will be referenced from building corners. Mr. Kelley asked if the shoring was offset; Mr. Sievert said drilled shoring is offset from building approximately 5 ft but varies depending on sewer line location as shown on plan C-104; shoring is laid out between sewer and building corners.

Mr. Kelley asked that some sort of control should be called out on sheet C-104; Mr. Sievert agreed and said he would add a control to his plan to locate the shoring and note the need to show ties for construction layout of shoring plan on the Site Plan or C-104. Mr. Kelley said coordinates are not called out on those corners on the plans. Mr. Sievert said once plans are signed by Planning

Board, a construction set would be finalized, surveyor would get foundation plan from architect confirmed with his plans, and coordinates will be placed at those corners.

Mr. Sievert asked whether #28 under other precedent conditions could be moved to subsequent conditions. He said he is further expanding note #3 on C-104 and asked that "as a precedent condition for a minimum of 3 weeks" be added to #28. He asked about "other on-site improvements" under #40 construction guarantee (precedent condition), and Mr. Behrendt said this is just for a worst-case scenario reclaiming the site if the project stalls.

Mx. Friedrichs asked if it was possible to have the side stairway from first to second floor visible from the main entrance by eliminating one of the doors. Architect Tim Digan said they need the extra door as the stair does not open to outside, but they could look at fire glass to make the staircase visible. Chair Rasmussen said Fire Code requires the entire stair stack be able to be locked off.

Chair Rasmussen asked the Board to review the Waivers:

(1) Waiver of School Impact Fees until such time as Oyster River students are living there.

Mx. Friedrichs MOVED that the Planning Board grant the Waiver to delay payment of any School Impact Fees to the actual residency of Oyster River students; SECONDED by Vice-Chair Grant; Roll Call Vote: Richard Kelley-aye, Lorne Parnell-aye, Paul Rasmussen-aye, Heather Grant-aye, Sally Tobias-aye, Emily Friedrichs-aye, Barbara Dill-aye; APPROVED 7-0, Motion carries.

(2) Waiver of requirement to provide on-site parking in accordance with Section 175-113. Mr. Behrendt said the impact fee for parking is \$55,500 based on 37 required spaces with a parking impact fee of \$1,500/space; payable prior to certificate of occupancy; the Board is just waiving the requirement to provide on-site parking. Mr. Sievert broke down the numbers: 12 unit spaces, 11 commercial spaces, 14 meeting spaces = 37 total. Mr. Kelley asked to see the Waiver application.

Mr. Kelley MOVED the Planning Board approve a Waiver from the requirement to provide on-site parking in accordance with Section 175-113; SECONDED by Vice-Chair Grant; Roll Call Vote: Richard Kelley-aye, Lorne Parnell-aye, Paul Rasmussen-aye, Heather Grant-aye, Sally Tobias-aye, Emily Friedrichs-aye, Barbara Dill-aye; APPROVED 7-0, Motion carries.

(3) Waiver from the requirement to visually buffer the driving/parking area from Pettee Brook Lane.

Mr. Kelley MOVED that the application for a Waiver from Section 5.8.2 of Site Plan regulations is approved by the Planning Board; SECONDED by Mx. Friedrichs; Roll Call Vote: Richard Kelley-aye, Lorne Parnell-aye, Paul Rasmussen-aye, Heather Grant-aye, Sally Tobias-aye, Emily Friedrichs-aye, Barbara Dill-aye; APPROVED 7-0, Motion carries.

Chair Rasmussen asked Mr. Behrendt if all application, notices, and requirements for this project have been met; Mr. Behrendt said they have. Mr. Behrendt said the 2 Conditional Uses are for Building in excess of 30 ft in height, and for Mixed-Use with Commercial; take both as single discussion and vote separately.

Review of 8 Conditional Use Criteria

- (1) *Site Suitability*: A 45-ft building with two 55-ft towers; Board agreed height was in agreement with Master Plan and other buildings adjacent to location;
- (2) *External Impacts*: Board agreed extra housing/collaborative space benefits community, adjacent existing uses are comparable;
- (3) *Character of Site Development*: Board agreed proposed use was compatible;
- (4) *Character of Buildings & Structures*: Board agreed building brings a more modern element not out of character with the neighborhood;
- (5) *Preservation of Resources*: No resources on the site; N/A;
- (6) *Impact on Property Values*: Board agreed no evidence of impact on adjacent properties;
- (7) *Availability of Public Services & Facilities*: Self-contained on site;
- (8) *Fiscal Impacts*: Board agreed impact looks positive.

Mr. Parnell MOVED the Planning Board approve Conditional Use Application for demolition of current wood-frame building and construction of a 4-story mixed-use building at 74 Main Street and approve Conditional Use for height in excess of 30 ft and less than 60 ft; SECONDED by Councilor Tobias; Roll Call Vote: Richard Kelley-aye, Lorne Parnell-aye, Paul Rasmussen-aye, Heather Grant-aye, Sally Tobias-aye, Emily Friedrichs-aye, Barbara Dill-aye; APPROVED 7-0, Motion carries.

The Board discussed the Site Plan. Mx. Friedrichs asked for details on what is being done in the Park; Mr. Behrendt said applicant is simply removing pavement, planting grass, and putting in sidewalks and curbing as existing parking area is suboptimal. Mx. Friedrichs asked that in the future the Board bring the abutter into the conversation earlier.

Vice-Chair Grant MOVED the Planning Board approve the Site Plan for a 4-story mixed-use building with residential/non-residential uses with CU uses approved; SECONDED by Mr. Parnell;

Discussion: Mr. Sievert said he will modify the plans in accordance with the conditions of approval and go over plans to make sure construction plans and specifications are ready for finalization. Mr. Kelley raised further questions on Sheet C-103 about grading in the Park area; Mr. Sievert said grading there would be finalized onsite and discussed details in depth with Mr. Kelley. Mr. Kelley said he felt more information is warranted on these plans.

Mr. Kelley asked if in the Notice of Decision listed as a precedent condition that definitive information shall be shown on the plans to show layout of proposed building and layout of

proposed sheet piling. Mr. Behrendt said the Board discussed adding a note to C-104 that control for shoring will be based upon Sheet C-103 for layout of building; Mr. Sievert preferred using Sheet C-104 with sewer information. He said he could add layout to an existing plan or create a new layout plan; Mr. Kelley said a note will then be needed that says the horizontal layout of the building and temporary shoring shall be provided on an existing plan or new layout plan. Chair Rasmussen said the note will be under Plan Modifications. The Board reviewed the changes that were made to the Notice of Decision as noted above.

Roll Call Vote: Richard Kelley-aye, Lorne Parnell-aye, Paul Rasmussen-aye, Heather Grant-aye, Sally Tobias-aye, Emily Friedrichs-aye, Barbara Dill-aye; APPROVED 7-0, Motion carries.

President of Foundation for Civic Leadership Ian Simmons thanked the Planning Board for diligence in moving the project forward, officially accepted the offer to have the address be 76 Main Street and thanked all involved in the project for their assistance.

Chair Rasmusen announced a 5-min recess at 8:42 pm and the meeting was resumed at 8:50 pm.

X. *Public Hearing - 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. *Accepted* on October 12. *Recommended action:* Final action.

Sharon Somers of Donahue Tucker & Ciandella, representing the Mulherns, said they were here pursuant to a remand order and have obtained and provided a new HISS Plan stamped by Mike Mariano. She said Mr. Sievert will address the HISS stamped plan and will note that changes to this plan do not contain any information to support Wetlands boundaries have changed from original HISS Plan and will describe that the ratio of usable vs unusable land has not been altered. She said following Mr. Sievert's presentation, Public Comment, and rebuttal the applicant asks for approval of this application. She said her client Marti Mulhern submitted a letter requesting a show of hands of the number of people interested in speaking.

Mike Sievert of Horizons Engineering said he will review the final stamped HISS Map submitted but would not go through plans submitted at the last meeting. He said there is a question whether our soil scientist Mr. Mariano had reviewed Mr. Cuomo's letter and made those changes. He said he now has a final updated plan with changed notes and modifications to some soil series designations.

Mr. Sievert said this plan does not significantly alter the density calculations for the size of the development and does not alter the boundary line location of wetlands. He said the blue line showing edge of wetlands was brought forward as well as edge of soil series; red delineated

wetlands are shown offsite. He said there were small changes to soil classifications within the delineated wetland which went to a higher value in larger areas more consistent with functions and values report by Mark West. He said the soils surrounding the tributary have gone from poorly drained to very poorly drained soils.

Mr. Sievert stated that material submitted to complete the application does not alter approved plans, is in compliance with Town's Subdivision Regulations, and does not alter the Conditional Use Permit.

Attorney Somers said at the last meeting they incorporated by reference all previous documentation submitted with this stamped plan.

Councilor Tobias MOVED that the Planning Board open the Public Hearing for Gerrish Drive Subdivision; SECONDED by Mr. Parnell; Roll Call Vote: Richard Kelley-aye, Lorne Parnell-aye, Paul Rasmussen-aye, Heather Grant-aye, Sally Tobias-aye, Emily Friedrichs-aye, Barbara Dill-aye; APPROVED 7-0, Motion carries.

Chair Rasmussen opened the Public Hearing for Gerrish Drive Subdivision at 9:01 pm.

Chair Rasmussen asked for a show of hands of people planning to speak and counted 7. He reminded the public that everything said before is in the record and repeating it would not change anything.

Gail Kelley of 11 Gerrish Drive said some very good questions were asked at the last meeting about the HISS Map process and Mr. Sievert went through the table of soil types, but the Board was not shown how to decode the map. She said it is important how you correlate numbers on the map with information given about those numbers in the Soil Report. She took several numbers from the HISS Map as examples, located the numbers in the Soil Report and identified and described the soil types, then covered uses for that soil type in the report.

Ms. Kelley said looking at the HISS Map there is an access point off Route 108 totally outside WCOD with no ledge and not severely steep. She said with Gerrish access water will eventually back up onto her property as well as the Lewis property, and she showed a number of videos of flooding in those areas after a heavy rain. She asked the Board to consider the Route 108 access as it meets all 4 CU criteria.

Attorney Somers reiterated that they were here tonight as a result of a Court ruling and the Planning Board should act consistent with that order. Chair Rasmussen said it is the Board's position not to restrict Public Hearings.

John Lewis said the HISS Map is new as well as Ms. Kelley's reading of it, and it is fair for us to look at it carefully. He said he attended the Conservation Commission meeting and 2 members who walked Bagdad Road made explicit comments that the access there is clearly less impactful

to wetlands. He said many members also expressed frustration with the CU Ordinance and the language in the criteria which had been amended from the original wording. He said the Route 108 access has to be analyzed.

Kim Sweetman of 18 Ambler Way said she would show a clip of the Conservation Commission meeting where the language Mr. Lewis alluded to was discussed and said she also wrote a letter supporting some of Gail Kelley's arguments. Statement from the Conservation Commission: from a wetland standpoint the Bagdad Road access is clearly better for the wetlands than the other (Gerrish); a 20-yard bridge across it would not touch the wetlands at all; it is a small stream in a valley whereas with Gerrish you are building a road in a stream.

Diana Carroll of Canney Road said the new HISS Map has the information they needed over 2 years ago when this application was accepted. The HISS Map submitted at that time was 8 1/2 x 11 inches and it was impossible to read the soil numbers needed for a decision. She said the Conservation Commission did not have this map to make a good decision, and neither the Bagdad access nor the Route 108 access were included in the Site Walk as the application was for the Gerrish Drive access. She said the public keeps trying to get more information some of which is incorrect. She said new information has been heard tonight which has a strong bearing on the outcome and evaluation of the project and the vote.

Timothy Horigan of Faculty Road said there is a concerted effort at the State level to reduce the power of planning boards and a bill for an expedited Housing Appeals Board which was turned around by the NH Superior Court. He said this project is well-conceived, but workforce housing is preferable; his main problem is with the access road which does not handle flows of water going through. He said the Planning Board's primary function is to serve the people of the Town and not rubber-stamp developers, and it is the Board's job help prevent a bad plan from happening.

Joshua Meyrowitz of Chesley Drive said he also watched the Conservation Commission meeting which captured the dilemma of this project and also expressed some ferocious opposition to it. He said this is a nice project for the Town of Durham in terms of a Conservation Subdivision, but clearly the Bagdad Road access is better for the wetlands. He said he had no opposition to the core of the project and said it is all about the periphery.

Attorney Somers again said that the applicant is here by remand, and the Planning Board's job is to try to determine if there is any new information that can be used to supplement the previous extensive record. She agreed the HISS Map is new, but the Soil Report is not and there is no merit in terms of new evidence submitted. If the intent is to allege that the methodology used by the Planning Board is incorrect in terms of scope of the analysis, it should have been brought up in Court but it was not.

Mr. Sievert said he would explain false information given tonight falling on his professionalism. He said this plan was given to the Planning Board and abutters 3 years ago with all the soils

information on it, the wetlands, and how we developed it. He said he followed the 3-step process of the Town of Durham and submitted everything required on the project and copies of all maps were provided. He said he never stated that the pink coloring on the Site Analysis Map was wetlands and said it was pink because regulations do not allow development on “somewhat poorly drained soil” and label it unsuitable. He said this access (Route 108) was not used because they do not have access to it, and the comparative analysis was put in as a requirement of DES.

Mr. Sievert said with regard to the Route 108 access now being brought up, the green part is on the property and the white is a right-of-way extending onto someone else’s property. He said the slope here is a 32% slope, with contours 18 ft in 57 ft, and he cannot design an 8% road through a 32% grade and not come out underground for a long way; he cannot build a road there to meet regulations and could not make cuts and stay within a 50-ft right-of-way. He said he would also have to come off Route 108 at a negative grade to prevent run-off onto a State Highway.

Mr. Kelley asked Mr. Sievert if he felt the Route 108 access was just not achievable and would not provide a route cheaper to construct and maintain. Mr. Sievert said it would not be cheaper to construct and would be equal to the other costs. Mr. Behrendt said the applicant would most likely have to go to court for permission to use that road, and the owner of the other property has stated he will not allow the use.

Gail Kelley asked for a point of order which Chair Rasmussen denied.

Mr. Parnell MOVED to close the Public Hearing for Gerrish Drive Subdivision; SECONDED by Councilor Tobias; Roll Call Vote: Richard Kelley-aye, Lorne Parnell-aye, Paul Rasmussen-aye, Heather Grant-aye, Sally Tobias-aye, Emily Friedrichs-aye, Barbara Dill-aye; APPROVED 7-0, Motion carries.

Chair Rasmussen said it is important for everyone to understand the purpose of the HISS Map for this Planning Board and what it is used for.

Mr. Behrendt explained that the HISS Map is a planning tool put together by soil scientists based on a series of test pits and gives drainage class, parent material, information about restrictive features underground, and slope. The HISS Map is used to calculate density and helps in large-scale planning; it is not used for wetlands. The key issue in WCOD is the wetland and the wetland buffer, delineated before the HISS Map is put together. Mr. Sievert embedded the HISS Map into the inventory map which our regulations call for and Mr. Sievert was following our regulations.

Chair Rasmussen said sheet 107 with colorations pointed out by Ms. Kelley are the density calculations/colorations used to categorize the number of housing units allowed for that property and has nothing to do with the wetlands. Mr. Kelley said there was mention of the soil report and two classes were called out there; seasonal high water was only 18 inches down in test pit 6 and that test assigns a hydrologic group to the soils. He said wetland scientists testified that the wetland complex along the southern part of the site is the most valuable.

Chair Rasmussen asked if the Board's review of the new HISS Map leads the Board to believe more information is needed or changes our prior decisions. Mr. Parnell said he did not get any new information and is prepared to go into deliberations and come to a decision; Vice-Chair Grant and Councilor Tobias agreed.

Mx. Friedrichs said she was surprised by the new HISS Map and was not expecting the whole access to be a stream running parallel and not crossing the stream and said the Board cannot confidently say there is no other access that is reasonable unless the Board walks the two easements. Chair Rasmussen said the Board walked the easements during the first conceptual phase, and there had been a total of 5 Site Walks.

Mr. Parnell said that they have been through all this in great detail and the reasons why they discussed this project the way they did, why they evaluated the way they did, and why they came to the decisions they did. He said the project has been reviewed in great detail, and the public had unlimited opportunity to speak. The project has come back now based on a technicality, no new information has been received, and reviewing a completely new project is completely out of line. The Planning Board has the duty now to proceed with the evaluation and decision on this project.

Chair Rasmussen MOVED the Planning Board waive the application fees and the fees for submission; SECONDED by Vice-Chair Grant; Roll Call Vote: Richard Kelley-aye, Lorne Parnell-aye, Paul Rasmussen-aye, Heather Grant-aye, Sally Tobias-aye, Emily Friedrichs-aye, Barbara Dill-aye; APPROVED 7-0, Motion carries.

Chair Rasmussen said the second Waiver is to waive the HISS Mapping for the right-of-way being used and said this works into Emily's concerns and whether there is anything in the HISS Map where road is going that would affect the Board's decision. Mx. Friedrichs said the Gerrish access has steep slopes within a 50 ft right-of way and asked how that is different from the Route 108 access right-of-way easement as there are a lot of parallels in slope. Mr. Behrendt suggested looking at Sheet 201 with the road profiles of existing and new slope of road.

Chair Rasmussen said after the first steep slope on Gerrish the second is being handled with a bridge and culvert. Mr. Kelley said it is a question of whether HISS mapping needs to extend further to the west through the right-of-way; a risk the applicant takes by not extending into that area which they now own, most of which is wet and pretty flat. Mr. Behrendt said prior to construction the applicant will have to drill a test pit there as a requirement in precedent conditions.

Mr. Kelley said personally he does not need a HISS map of that area and said most of the access is running through a mapped wetland. Mx. Friedrichs said she has questions about whether a road would be possible further into the development, the cost of that road, and how much buildable land would be lost, which are valid questions not in the record. Chair Rasmussen said it has to do

with legal challenges of trying to connect a right-of-way of another person's property on Route 108 into a private road. He said Durham cannot put a road there as it is on the wrong side of the Town line; Mx. Friedrichs said it would then need Madbury to approve the Site Plan.

Mr. Kelley MOVED that the Planning Board allow the applicant to grant a waiver from performing HISS mapping within what was formerly the Town's right-of-way and is now their property on the west side edge between their property line and Ambler Way; SECONDED by Councilor Tobias; Roll Call Vote: Richard Kelley-aye, Lorne Parnell-aye, Paul Rasmussen-aye, Heather Grant-aye, Sally Tobias-aye, Emily Friedrichs-abstain, Barbara Dill-aye; APPROVED 6-0 with 1 abstention, Motion carries.

Mr. Kelley asked if the Board would go through every wetland crossing. Mr. Behrendt said there is activity in 4 areas: crossing of wetland within the Gerrish Drive right-of-way, crossing of stream in a ravine, crossing of wetland finger on the interior, and all miscellaneous activity in the wetlands. Mr. Parnell said the Board should just go through the criteria for the wetland crossing and not the whole project.

Vice-Chair Grant said discussion should be about whether there is any information they have seen that changes votes taken originally. Mr. Parnell said nothing he had seen would change the decision he made previously that each of the 4 WCOD criteria were met for each of the 4 parcels. Chair Rasmussen said the boundaries of the wetlands did not change and categories of soils in the other areas improve the density calculation marginally; that is what the updated HISS Map has informed them.

Review of WCOD Criteria

WCOD criteria: (1) No alternative location on the parcel outside the WCOD; (2) amount of soil disturbance will be minimum necessary; (3) location, design, construction maintenance of facilities will minimize any impact on wetland; (4) restoration activities will leave the site as near as possible in existing condition and grade.

Chair Rasmussen said all underlying information is effectively the same; the amount of soil disturbance will be minimal necessary for construction and operation of facilities as determined by the Planning Board; location, design, construction maintenance of facilities will minimize any detrimental impact on the wetland with mitigation to counterbalance any adverse impacts. Vice-Chair Grant said it was explained well in terms of work being done there. Councilor Tobias said nothing has changed in my opinion.

The Board continued discussion of the four WCOD criteria. Chair Rasmussen said the plans were approved and have not changed. The Board then reviewed the 8 General Conditional Use Criteria

Review of General CU Criteria

General CU Criteria: (1) *Site Suitability:* Board agreed nothing had changed; (2) *External Impacts:* nothing different with new HISS Maps; (3) *Character of Site Development:* layout and design compatible; (4) *Character of Buildings & Structures:* bridges and culverts; (5) *Preservation of*

Resources: no change; (6) Impact on Property Values: HISS Map has not changed anything; (7) Availability of Public Service Facilities: private road, all will be self-contained; (8) Fiscal Impacts: no fiscal impact on the Town.

Mx. Friedrichs voiced concerns that as the HISS Map shows a really significant wetland in Gerrish Drive Extension and with ground water rise and images of flooding recorded in the past there could be a negative fiscal impact on abutting properties. Mr. Parnell said the Board has discussed all this previously and decided what was being proposed would not have any impact on flooding of adjacent properties and did not feel this was an issue.

Mr. Kelley MOVED that the Planning Board approve the Conditional Use for an 18-unit conservation subdivision for seniors at 91 Bagdad Road, Map 206, Lot 46, Residence B District including the CU Criteria for WCOD and the other 8 General Criteria for the CU; this vote for approval incorporates all previous documentation, testimony and evidence, reviews, discussion and considerations that supported the earlier approval on November 21, 2021; SECONDED by Vice-Chair Grant; Roll Call Vote: Richard Kelley-aye, Lorne Parnell-aye, Paul Rasmussen-aye, Heather Grant-aye, Sally Tobias-aye, Emily Friedrichs-nay, Barbara Dill-aye; APPROVED 6-1, Motion carries.

Mr. Parnell MOVED that the Planning Board approve an 18-unit conservation subdivision off Gerrish Drive, property address 91 Bagdad Road Map 206, Lot 46, Residence B District, formerly Map 10, Lot 8-6 according to the Notice of Decision of October 26, 2022 as amended this evening; SECONDED by Vice-Chair Grant; Roll Call Vote: Richard Kelley-aye, Lorne Parnell-aye, Paul Rasmussen-aye, Heather Grant-aye, Sally Tobias-aye, Emily Friedrichs-nay, Barbara Dill-aye; APPROVED 6 1, Motion carries.

XI. Other Business

XII. Review of Minutes (new): September 28, 2022 - The minutes were not reviewed.

XIII. Adjournment

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

Chair Rasmussen adjourned the meeting at 11:26 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker
Durham Planning Board