

These minutes were approved at the August 14, 2024 meeting.

**TOWN OF DURHAM
DURHAM PLANNING BOARD MEETING**

Wednesday, July 10, 2024

Town Council Chambers, Durham Town Hall

7:00 pm

MEMBERS PRESENT: Paul Rasmussen (Chair), Sally Tobias (Vice Chair), Heather Grant (Alternate Council Rep), Robert Sullivan; Erika Naumann Gaillat (Alternate), Richard Kelley (arrived late)

MEMBERS ABSENT: Tom DeCapo, Peyton McManus, Emily Friedrichs (Council Rep)

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 and seated Heather Grant as Council Rep.

III. Approval of Agenda

Chair Rasmussen asked the Board if they would like to set a target endpoint for the meeting; the Board agreed on 9:30 pm.

Robert Sullivan MOVED to approve the Agenda for July 10, 2024 as written; SECONDED by Councilor Grant; APPROVED 4-0, Motion carries.

IV. Town Planner's Report

Mr. Behrendt announced that Annual Farm Day is coming up in about a month, Saturday, August 17, rain or shine; visiting farms in Durham, Lee, and Madbury.

V. Reports from Board Members who serve on Other Committees

Reporting from the Housing Task Force (HTF): Chair Rasmussen said HTF met, presentation put together in preparation for outreach; will present to all Town committees to get feedback from them as members of the community, then figure out next steps for outreach.

Reporting from the Town Council: Councilor Grant said the Town Council has not met since the last Planning Board meeting.

VI. Public Comments – None

VII. Review of Minutes (old):

VIII. Workforce Housing – Potential Zoning Amendment. Discussion about rough draft (second iteration) of a proposed workforce housing ordinance. Recommended action: Continued discussion.

Chair Rasmussen said this is the second iteration of the rough draft of the Workforce Housing Ordinance, and he felt positive about putting together a final rough draft tonight for final review.

Councilor Grant recommended changing “applicants” to *property owners* under F. Hud Fair Market Rent. Mr. Sullivan asked if under E. Dwelling Units the units are designated or if it is just a certain number of units; Chair Rasmussen said the idea is a building with a certain number of units, some below fair market rates and some above; renters pay as they are able then transition out, but all units are mostly identical. Vice-Chair Tobias said it is a question of income qualifications.

Chair Rasmussen said for G.2 Housing Units he did not think the Board should be trying to explain how fair market rent is calculated; Board agreed to eliminate G.2. Mr. Sullivan said the averaging explained in G.3 is clear. Mr. Behrendt said the Fair Market Rent has to be averaged: take the percentage of all units, and the average of those percentages may not exceed 100%. Vice-Chair Tobias said that is how income averaging works and said G.4 should be 80%.

Chair Rasmussen said under H. Housing for Workforce he does not like the last paragraph; he said these are performance standards, and he does not want to micromanage how their business is run; Vice-Chair Tobias said the Board already has a procedure. Chair Rasmussen asked under I. Tenant Selection why the Board needed to know developers marketing plans; Mr. Behrendt said I. and H. are different; Board agreed to delete I., G.2, and second paragraph of H.

Richard Kelley arrived at the Planning Board meeting at 7:14 pm.

Erika Naumann Gaillat arrived at the Planning Board meeting at 7:17 pm.

Chair Rasmussen gave a handout to Richard Kelley and Erika Naumann Gaillat explaining how Fair Market Rent is calculated. He said if this graph shows all the different rentals in the market, the first line in the middle would be the median point. Fair Market Rent is determined by finding the point at which you are in the 40th or 80th percentile, where 40% of the rentals are to the left of that line. Vice-Chair Tobias said this explains what Fair Market Rent means but does not relate to income qualifications.

J. Income Qualifications: Mr. Sullivan said part of the tenant selection is about prioritizing and asked if the Board is explicitly saying there are no priorities or preferences built into this in any way. Chair Rasmussen said the only priority we can provide is the one we do not want: senior

housing. Vice-Chair Tobias said we are discriminating at that point and can only ask applicants not to accept guarantors or guarantees from third parties.

Chair Rasmussen said some people want to put an income cap on renters, but if we do that, we are no longer creating affordable housing but creating low-income housing. Councilor Grant said an income cap adds complexity to the ordinance and would be adding a maximum income. Vice-Chair Tobias said she is not comfortable with telling tenants they have to leave because of increased income.

Mr. Sullivan said the purpose of this was that the Board did not want to develop a place where people of means would move in because it was a good deal, and asked how that purpose is achieved if not with income qualifications. Chair Rasmussen said that is one of the reasons we do the rental averaging; Councilor Grant said it is the responsibility of the property manager. Chair Rasmussen said financials will be required as part of income qualifications in the application.

Mr. Sullivan asked if there was a legal way to prefer someone, not exclude them. Mr. Behrendt said in one sense these are market units because Fair Market Rent is fairly high, and they will be built to that level. Councilor Grant said F. explains about the rent levels and averaging and she felt income qualifications were not needed. The board agreed to eliminate J. for now.

K. Allowed Uses: Chair Rasmussen said Michael Mulhern gave HTF a presentation on Monday about the Service Credit Union project: part of the project will be mixed-use, and they are trying to get daycare and a laundromat. Mr. Sullivan said everything he just built on this scale had laundry in the units. Mr. Behrendt asked if a commercial laundry would be acceptable; Chair Rasmussen said laundromats and daycare are not allowed as an accessory use to anything and the ordinance would have to override that.

Vice-Chair Tobias suggested it be added under allowed uses as developers are already including stackable laundry units or allow a community room with laundry facilities. Chair Rasmussen said the Table of Uses has: Uses Accessory to Residences and we could have Uses Accessory to the Overlay District.

L. Density & Dimensional Standards: Mr. Behrendt said 4,200 sq ft of land per unit is pretty dense; Chair Rasmussen said we are requiring 60% be open space which leaves only 40% for buildings, driveways, roads, as well as meeting setbacks and building height limits; also have minimum unit sizes. Councilor Grant said she drove by the Dover project on Sofie Lane; some housing lots were bigger and some smaller, with apartments in the back. One of the 3-bedroom, 2 bath homes was sitting on 0.09 acre; can get 10 single-family homes on an acre lot. The Board agreed to 4,200 sq ft of land per unit.

M. Other Zoning Parameters: Mr. Behrendt said at the last meeting the Board stated that they did not want 3-unrelated to apply here. Chair Rasmussen said we are also limiting units to 1 or 2

bedrooms and the number has nothing to do with how many people are living there. Mr. Sullivan said the Board was comfortable cutting out 3-unrelated because not allowing guarantors, cuts out the students. Vice-Chair Tobias said the Dover Ordinance has a limit to how many people can live in a unit.

Mr. Behrendt said the Board needs a number for minimum floor area. The Board compared the numbers for various districts and discussed 175-56 General Dimension Standards: minimum habitable floor area per occupant by dwelling types. Mr. Behrendt suggested 250 sq ft or 300 sq ft. The Board agreed to 250 sq ft for the minimum habitable floor area per occupant/unit, which will be added to M. Other Zoning Parameters.

Councilor Grant asked about the last paragraph in L. regarding senior housing and asked why that was needed. Mr. Behrendt said there is a provision that any senior project gets double or triple density, and we are not allowing it here.

N. Low Income Housing Tax Credit project: Vice-Chair Tobias said someone with LIHTC (Low Income Housing Tax Credit) can get incentives through CU, but the process is expensive. Chair Rasmussen said he did not think the Board would see LIHTC here because they would want everything within walkable distance. Mr. Behrendt said LIHTC can still be done if it falls within the requirements of our ordinance.

O. Perpetuity: Mr. Kelley recommended replacing “Planning Board” in the last sentence with “Town of Durham, or its agents” may incorporate periodic requirements at its option.

P. Site Plan & Subdivision Regulations: Chair Rasmussen said this is just saying this ordinance is not a Conservation Subdivision because we wrote our own rules for open space. In third sentence the word “to” was deleted from: “separate lots to as part of phasing”.

Q. Topography and Open Space: Chair Rasmussen said he was happy with this item. Mr. Kelley asked why they said “all or most”; Mr. Behrendt said you design around it. Ms. Naumann Gaillat asked the definition of “sensitive”, and Mr. Kelley said in this instance it is prime agricultural land. The Board agreed to delete the third sentence “*All or most of the most sensitive environmental lands shall be included in the open space, as determined by the Planning Board*” as there is guidance is in the last sentence.

R. Buffers: Mr. Kelley said this then depends on the location in nature and the scope or extent and suggested replacing “nature” with *magnitude*. Mr. Sullivan suggested “location and characteristics of the proposed development”. Mr. Behrendt said the Board can use its judgement, and on these projects a preliminary would almost always be done.

S. Design: The Board agreed to delete the word “reasonable” in the first sentence. Vice-Chair Tobias said she was not sure about “harmonious living environment”. Ms. Naumann Gaillat said section S. is very vague then section T. is very strict. Mr. Kelley said he does not want to take on

the specifics of a design. Chair Rasmussen said this is saying we want a neighborhood here but it's up to the developer how to accomplish that.

T. Transportation: Board changed to: *"The applicant shall develop a transportation plan for the project pursuant to Article 11 – Pedestrian, Bicycle, and Transit Facility Standards in the Site Plan Regulations."*

U. Infrastructure: Chair Rasmussen said he was confused by the wording of the last sentence. Mr. Behrendt said it means there will be a private road in a project where a property owner would like his own lot, so frontage requirement would come off the private road. He suggested: "where there is a private road serving the interior maintained by the developer, lots outside of the project may be subdivided". The Board agreed to move that sentence to section P.

Mr. Behrendt questioned whether they should limit the number of lots that can be subdivided. Chair Rasmussen said any subdivision is still going to have to meet the underlying zoning requirements. Vice-Chair Tobias said she would not want to buy the property without the subdivisions upfront and easements already created. Mr. Kelley said it would all come in front of the Board through the subdivision process, and during that process we will not allow a land-locked parcel to be created.

Ms. Naumann Gaillat said because we are here and it is all part of the subdivision process, she did not think the Board needed to worry about it. Mr. Kelley said he would not personally take issue if some houses utilized the private road through the workforce housing to gain access to their driveway and said in that case frontage requirements around roads do not really exist. Mr. Sullivan said the easement on the road gives others the right to use that private road as their driveway. Mr. Behrendt said there has to be frontage.

The Board agreed to eliminate the last sentence of U. Infrastructure.

V. Incentives: Mr. Behrendt said there is really no need for extra density. Chair Rasmussen agreed that trying to implement and manage incentives would not be worth the effort. Mr. Sullivan said he likes incentives here to force the building to be right construction; if someone wants to go above and beyond but cannot afford to pay for it, incentives give them money in the pocket of the renter which helps achieve affordability.

The Board discussed incentives and type of bonuses to give for each; Mr. Sullivan said he would put together a table that says "better building shall..." listing incentives and bring it to the next meeting. Vice-Chair Tobias suggested things that focus on energy efficiency. Chair Rasmussen said he would be in favor of keeping the list simple and effective; Mr. Kelley added that it needs to make a significant impact on the electrical use for that community.

175-107.1 Workforce Housing Options in a Conservation Subdivision, replace F. Density Incentive with new section for clarification. Chair Rasmussen suggested the Board keep revisiting this section to make the Zoning Ordinance more effective to what they want. Councilor Grant said it should just be fixed to match density requirements for seniors.

Chair Rasmussen said they would review the ordinance for final draft at the next meeting, talk about incentives, then put the draft ordinance up for Public Hearing.

IX. **Amendment to Zoning Definitions**. The Planning Board prepared an extensive set of changes to Article II – Definitions, including related changes to the Table of Uses, and forwarded the proposal to the Town Council. The Town Council offered numerous comments and returned the proposal to the Planning Board for further consideration. As part of this review the board may also discuss a change to the definitions of *Household* and *Family* (possibly affecting the “three-unrelated rule”) and additional changes to the Table of Uses Recommended action: Discussion.

Chair Rasmussen suggested the Board simply respond to the comments the Town Council sent back and take a look at some of the extra definitions. Councilor Grant asked that the Board make sure that in *any* change going back to the Council, *parking* is addressed in the Table of Uses.

Shed: The Board already previously noted, incorporated, and talked about what they wanted here. Mr. Behrendt said, “sheds and accessory buildings are best addressed under Section 175-109 A and B”, which is why the Board is not dealing with them under definitions.

Apartment: Board agreed to eliminate definition.

Dwelling Unit: Chair Rasmussen said the second sentence says we are forcing a restaurant to be residential use. Ms. Naumann Gaillat asked why the Board was talking about sleeping here. The board agreed no changes.

Floor Area, Gross: Chair Rasmussen said the only logical way to tweak it would be to reference a height, or basement area in excess of height.

Permitted Uses in Setback Area: Mr. Behrendt asked if septic tanks and leach fields should be specifically noted under permitted uses. He said the definition for “structure” 56D has new language, and for other things not listed setbacks do apply; page 54 has a definition of structure, so everything under that definition has a setback. Chair Rasmussen said zones where you have a 50-ft side setback gives you more space to work with.

Signs: Mr. Behrendt said this definition is fine.

All Terrain Vehicles: Mr. Behrendt said under Table of Uses, all-terrain vehicles and off-road vehicles are prohibited uses anywhere. He asked that the whole definition of Off-Highway Recreational Vehicle, at the top of page 36, be deleted.

Awning: Board deleted “made of cloth or metal and supported by a frame” from definition.

Basement: Chair Rasmussen said this came up because of a difference in the definition under Flood Hazard Overlay District and questions about walk-out basements. He said the definitions for each are different. Mr. Kelley said FEMA defines basement as being below ground level on all sides. Chair Rasmussen said if the Board goes with that definition, then a basement is the first floor of a house and that changes story limitations. Councilor Grant said the second bullet accounts for the fact that 50% of Durham residents have walkout basements.

Chair Rasmussen said Flood Hazard says a “portion of a building” not all sides. Mr. Behrendt said FEMA is its own thing and the definitions do not need to match. He said the reason we give a definition in the ordinance is because we say: “no new basement dwelling is permitted in the multi-unit (dwelling) zones”. The board made no changes.

Boatyard: Question of including Marine Sales. Vice-Chair Tobias said the Board discussed at length leaving the two definitions separate and they are separate in Table of Uses; Mr. Sullivan thought they would always be together. Chair Rasmussen said they decided to have one on the water and one that was not. Mr. Kelley said to leave Boatyard on the water; Vice-Chair Tobias said to eliminate “on navigable water” from Marine Sales; Board decided to do both.

Buffer vs Screening: Chair Rasmussen said it is good the way it is as they need both definitions.

Daycare Center: Clarification in the wording; Board agreed to keep as is.

Conditional Use: Change Article number to VII. CU Permits.

Development: Need to match definition in Zoning with definition in Site Regulations.

Disturbed Area: Took out word “natural” on following page.

Educational Facility: Change “accredited” to *approved*.

Grade, Grading: Need to define “extensive grading” in Site Plan Regulations, paragraph 8.2.1. Chair Rasmussen said it cannot be defined as it is subjective, and recommended eliminating: “extensive grading and fill should be avoided” from Site Regulations. Mr. Kelley said there is required grading and extensive grading. Councilor Grant suggested using *excessive grading*: grading in excess of that which is required for use.

The board discussed the issue at length; agreed it was site-specific and anything more than that which is needed, and agreed it would be better received if it were defined. Chair Rasmussen said it has been used to interpret the Zoning Ordinance in a way the Planning Board does not believe it was written; Mr. Behrendt said the Board could provide a waiver. Mr. Kelley suggested defining *extensive grading* as “greater than that which is required for the proposed use on the site”. Ms. Naumann Gaillat said the Council is worried about the Board changing members, but it is the nature of the Planning Board to change members over time.

Ground Water/Ground Water Recharge: Chair Rasmussen said this is a repeat as the copy that went to the Town Council only had definitions that were changing; sometimes a definition changed and referenced a definition not being changed.

Home Occupation: Not allowing sales; Mr. Behrendt suggested changing the language that would allow for sales where they are incidental to the main activity.

Hotel: Chair Rasmussen said our definition does not allow extended stays over 30 days. Vice-Chair Tobias said they can check out and check back in, and it is never 30 consecutive days. Councilor Grant said it is an issue because Durham does not want students living in a hotel for the entire fall semester.

Inn/Motel/Hotel: Board discussed use of the word “temporary” and the 30-day limit; agreed to eliminate the word “temporary” and go 30 days across the board for all three.

Historic or Special Interest Trees: Board decided to keep it in.

Chair Rasmussen said at the next meeting the Board will start on page 31 of this same copy of the definitions.

X. Other Business

XI. Review of Minutes (new): May 12, 2024

Approval of Meeting Minutes of June 12, 2024

Richard Kelley moved that the Planning Board approve the minutes of June 12, 2024 as in front of us tonight; SECONDED by Robert Sullivan; APPROVED 5-0 with 1 abstention, Motion carries.

XII. Adjournment

Richard Kelley MOVED to adjourn the Planning Board Meeting; SECONDED by Robert Sullivan; APPROVED 6-0, Motion carries.

Chair Rasmussen adjourned the meeting at 9:32 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker

Durham Planning Board