

*These minutes were approved at the August 28, 2024 meeting.*

**TOWN OF DURHAM  
DURHAM PLANNING BOARD MEETING**

**Wednesday, July 24, 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, Peyton McManus, Tom DeCapo (on Zoom)

**MEMBERS ARRIVING LATE:** Erika Naumann Gaillat (Alternate), Richard Kelley, 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; Tom DeCapo on Zoom, all roll call votes.

**III. Approval of Agenda**

*Chair Rasmussen MOVED to approve the Agenda for July 24, 2024 as written; SECONDED by Councilor Grant; Roll Call Vote: Peyton McManus-aye, Paul Rasmussen-aye, Sally Tobias-aye, Robert Sullivan-aye, Heather Grant-aye, Tom DeCapo-aye; APPROVED: 6-0, Motion carries.*

**IV. Town Planner's Report**

Mr. Behrendt said Tideline produced a sandwich-board sign to put in the adjoining parking lot for evening meetings; there are openings for Planning Board Alternates; Board is meeting on July 31 to talk about zoning and rewrites; Bill McGowan will be joining the Board on August 14, 2024; a new National Estuarine Research Reserve map showing all NH Coastal Access including waterfront locations, rivers, wildlife sanctuaries, and Great Bay has come out.

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

Reporting from the Town Council: Councilor Grant said there was an adorable dog present for the Dog Raffle drawing at the last meeting; Council moved to set the public hearing for the Historic Overlay District; approved the appointment of Charlie Forcey to the Energy Committee; quarterly update on budgets by Gail Jablonski; introduced to new Assessor Darcy Freer; discussion of proposed changes for an all-veterans tax credit to be continued.

**VI. Public Comments – None**

**VII. Review of Minutes (old):**

**VIII. Public Hearing – Amendment to Site Plan Regulations regarding Accessory Freestanding Solar Arrays.** Proposed amendment to allow for freestanding solar arrays that are an accessory use to be reviewed under the Minor Site Plan process. Recommended action: Adoption of amendment.

***Vice-Chair Tobias MOVED to open the Public Hearing for Amendment to Site Plan Regulations; SECONDED by Peyton McManus; Roll Call Vote: Heather Grant-aye, Peyton McManus-aye, Paul Rasmussen-aye, Sally Tobias-aye, Robert Sullivan-aye, Tom DeCapo-aye; APPROVED: 6-0, Motion carries.***

*Erika Naumann Gaillat arrived at the Planning Board meeting at 7:08 pm and was seated for Richard Kelley.*

***Peyton McManus MOVED to close the Public Hearing for Amendment to Site Plan Regulations; SECONDED by Vice-Chair Tobias; Roll Call Vote: Erika Naumann Gaillat, Heather Grant-aye, Peyton McManus-aye, Paul Rasmussen-aye, Sally Tobias-aye, Robert Sullivan-aye, Tom DeCapo-aye; APPROVED: 7-0, Motion carries.***

***Chair Rasmussen MOVED that the Planning Board accept the Amendment to Site Plan Regulations as presented here in our packet, July 24, 2024, for the purpose of adding the installation of Free-Standing Solar Energy Systems accessory to multi-unit residential or non-residential uses to be moved to Minor Site Review; SECONDED by Tom DeCapo; Roll Call Vote: Erika Naumann Gaillat, Heather Grant-aye, Peyton McManus-aye, Paul Rasmussen-aye, Sally Tobias-aye, Robert Sullivan-aye, Tom DeCapo-aye; APPROVED: 7-0, Motion carries.***

*Richard Kelley arrived at the Planning Board meeting at 7:11 pm; Erika back to being an Alternate.*

**IX. Workforce Housing – Potential Zoning Amendment.** Discussion about rough draft (second iteration) of a proposed workforce housing ordinance. Recommended action: Scheduling public hearing if draft is acceptable.

Chair Rasmussen said Tom DeCapo has a significant issue to share and discuss with the Board.

Mr. DeCapo said the email he sent to Mr. Behrendt outlined the idea. He said he remains very concerned that what the Board does here is designed to benefit the workforce, and that the Board has ways to enforce that and police it over time. His proposal simply requires that

residents: (1) be in the workforce, and (2) be at a certain income level and are the segment of the population the Board is trying to target. He said a certain percentage of the units would need to show proof of full or part-time employment or that they are actively looking for work.

Mr. DeCapo said the idea would be that the average household income of the entire complex would be no more than 100% of the average median income (AMI), and the percentage of units that had to qualify for workforce housing would be lower than the AMI; the developer could average AMIs throughout the complex to hit 100%. Vice-Chair Tobias said this is a percentage of AMI versus using HUD Fair Market. Mr. DeCapo said this allows the developer to set the rents and focus entirely on the nature of the tenants.

Chair Rasmussen said instead of focusing on rents we are using incomes to create a set of rents whose average then meets a percentage of AMI. Mr. DeCapo said this is an attempt to target the residents and let rents float to whatever level that development is able to obtain versus focusing on rents to attract the type of renters we are seeking. Chair Rasmussen said the Board then needs to deal with residents failing to meet workforce standard qualifications in future years.

The Board addressed the concern about people being thrown out of the development. Chair Rasmussen said income is not usually checked yearly unless someone is falling behind with rent payments. Vice-Chair Tobias said she would not support the idea of retirees having to leave the community; Councilor Grant agreed. Mr. DeCapo said there would be a period of several years before someone would have to leave and the units would no longer qualify, and it would be up to the property owner how to proceed.

Chair Rasmussen said he sees this ordinance more as an amendment to create affordable housing, and said this requires discussion to try to figure out what exactly the Board is trying to accomplish with this particular amendment: is it strictly for people in the workforce or just trying to solve the Affordable Housing issue. He asked Board members to state whether this is a workforce housing ordinance or an ordinance for affordable housing.

Mr. Sullivan said this is a Workforce Housing Ordinance that allows people who work in this town to actually be part of the community, and it is a workforce housing goal the Board is shooting for with units affordable for the workforce. Mr. Kelley said affordable housing would include a larger group. The Board agreed this was primarily for workforce housing and Chair Rasmussen said in that case Mr. DeCapo's ideas are stronger, and they ensure the units are going to the people the Board is targeting.

Mr. McManus said trying to provide workforce housing also means trying to make housing affordable for people who work locally; the request for workforce housing leads to affordable housing and just going after workforce housing leads down a path of income verification, which would be onerous and difficult to audit, and said folks should still have the right to have an affordable place to live.

Emily Friedrichs arrived at the Planning Board meeting at 7:35 pm and was seated as Council Rep.

Councilor Grant said the property owner has to make sure a certain number of people coming in meet their percentage, and a person who retires will just be outside that percentage. Chair Rasmussen suggested the percentage of units that qualify towards workforce housing could be 50%. Mr. DeCapo suggested that if the Board likes his idea in concept, they have a discussion with a potential developer.

Vice-Chair Tobias said as long as people will not be thrown out, the Board now needs to come up with a percentage. Chair Rasmussen said his concern is having to look at income every year, which is a disincentive to increasing income, rather than allowing people to make their own decisions. Mr. DeCapo said he does not see it as a curb for people to receive higher income and has serious concerns with the current draft as there would be nothing stopping a high-income Durham resident from renting multiple units.

Mr. Behrendt pointed out that units have to be rented “where income is from employment or other personal income”. Mr. DeCapo said employment verification would be checked yearly at lease renewal. Chair Rasmussen asked the Board for a show of hands in favor of adopting Tom’s plan. Mr. McManus voiced concerns that housing is needed for both workforce and affordable housing, and this complex model can have unintended consequences. Other Board members expressed concerns, but the majority were willing to continue discussion of the plan.

Chair Rasmussen said the Board needs to start getting a draft together stating the content of the email more clearly setting the idea and scope followed by paragraphs addressing some of the concerns of the Board. Mr. Kelley wondered if perhaps this was going a step too far. Mr. Behrendt said the ordinance is now very simple and doable and rents are set, whereas this plan is very complicated and has to be enforced. He said as a Professional Planner he has to be concerned about what is enforceable.

Mr. McManus agreed and said sometimes with software a lot of complexity has to be distilled down and simplified into a good model that makes sense. He said a lot of complexity is being built in here and recommended the Board stay with rents and try to create affordable housing. Chair Rasmussen said that is why he asked earlier if they are trying to create only workforce housing or trying to create something affordable for the workforce.

Mr. Sullivan said both models are trying to address something that might have unintended consequences, and asked Board members what forces them to go one way or another with each model. Chair Rasmussen asked that the Board come back to that. Vice-Chair Tobias said she did not want to start discriminating against older people. Councilor Friedrichs recommended the Board look again at public comments and concerns and ask how they are being addressed in this ordinance, and said she does not want to create something a developer cannot comply with.

Mr. Kelley said the Planner has pointed out something important: the Board has a piece of work in front of them that has taken a long time, and he would like to see something move forward. Mr. Kelley also suggested putting this out on the street as it stands now, making F. into F.1 and F.2, giving the developer an option in strategies. First, use HUD Fair Market, it is there for you; if you prefer the workforce housing model it is there as well, and said the Board could spend 5 or 6 months on this issue.

Chair Rasmussen started drafting the change: "50% of units filled with households with job earnings between 40%-80% AMI, from part-time or full-time employment". He said both pools need to be sizeable, and these numbers are more difficult to work with than rents and will be difficult to explain. Mr. DeCapo said it is not that complicated; verifying income will be done by the landlord not the town, and it comes down to whether the developer can accomplish a plan that achieves the goals of the Planning Board.

Chair Rasmussen asked the Board to look at the pros and cons of both sides and see how they fit in against the comments to determine which way they should go. He said so far with the new proposal: constant verification is potentially onerous with too many back doors to allow non-workforce to move in. Mr. McManus said coupling employment with insurance is brutal, and coupling employment with housing is equally dangerous.

Ms. Naumann Gaillat said the community spoke against it not being senior housing and also against it being a "project", and said she was in support of allowing retirees to stay in the community. Councilor Grant said she did not see a difference between the income model and the rental model, as people will be bucketed at a certain rent number by their income. Chair Rasmussen said in using rents, the higher-paid person is actually paying for someone who does not have a job at all.

Vice-Chair Tobis said one of the challenges in the community is that older people are not able to move out of their larger homes into apartments. She suggested taking aspects of both: go with HUD Fair Market but have a percentage of workforce housing qualification standards. Mr. Kelley said Durham already has a lot of housing in town specifically targeting retirement. Mr. DeCapo agreed and said it is incorrect to suggest there can be no retired people and said it is where you set the percentage; he said his target would be 65% workforce, leaving 35% for those not working. Mr. McManus said putting yourself in a position where you are never over 100% AMI is complex and very challenging to do.

Chair Rasmussen asked about the suggestion by Mr. Kelley to have F.1 and F.2 under F. HUD Fair Market Rent; or do F.1 now and F-2 as a later phase. Ms. Naumann Gaillat recommended using F.1 and F.2 for the public opinion of each one. Vice-Chair Tobias said the Board still needs some very clear examples. Mr. McManus agreed and said the current language is structured from other activity throughout the State and he would want to see a real-life example.

Mr. Behrendt said the developer will have to figure out how to design and develop these units, and finds the current plan much simpler. Councilor Friedrichs said the housing study of Durham actual properties and incomes showed that there is a large percentage of people in houses smaller than what they can afford. Mr. DeCapo said higher income people *do* want to live in low-income units; the supply of workforce housing has not yet reached an equilibrium and the Board will not reach their objective by simply adding to the workforce housing supply.

Chair Rasmussen said the RKG study also showed that Durham has a high percentage of people who are over-housed, a demographic which includes people who would not qualify for workforce potentially but need smaller units. Councilor Grant recommended just adding a paragraph under F. about income verification, adding a percentage that allows people in big houses to downsize, and said part is controlled workforce housing, and the rest is free market.

Chair Rasmussen said the idea would be to take our existing F. and add paragraph number 4: "65% of units need to be filled by a qualified workforce housing household where at least one member of the household is employed". Mr. DeCapo said there is a paragraph now that says "any income counts"; change that to read "working income" counts toward 65% to meet the requirement.

Chair Rasmussen suggested replacing the second sentence in H. with: "65% of units must be rented to households with at least one member in the workforce or a combined household working 30% or more hours/week". Councilor Friedrichs said the Board needs to set a maximum income level as well. Mr. DeCapo recommended: "people who are (a) working, and (b) not exceeding a certain income". Vice-Chair Tobias suggested the average household income should not exceed X% of AMI. Mr. Behrendt said AMI is only for a family of three, not based on bedroom size and said the Board would need to come up with a formula, and any income qualifications should apply to everyone.

Mr. Behrendt said if the Board wants income qualifications, they need to use 100% of units as workforce, but not based on AMI; maximum rent people are supposed to pay is 33% of their income. Mr. DeCapo said rents are already set up here; a household that exceeds a certain percentage of AMI, coupled with work requirements, satisfies the objective. Councilor Grant said the manager of the lease will verify those units that are to be at workforce housing levels. Councilor Friedrichs clarified that AMI figures and tables exist for every possible household configuration.

Mr. McManus said there are 3 things: (1) percentage that are workforce; (2) saying everyone needs to work; (3) income verification for the percentage that are workforce units. Chair Rasmussen said with 65% of units rented by households not exceeding 80% AMI, leaves 35% to average the other units, and linking that to employment verification gets a little tricky. Mr. McManus said there are situations where some people work half a year or are in and out of jobs

and said it feels complicated. Councilor Friedrichs said developers already do that as part of the application and will work with you to the degree they are comfortable and flexible.

Mr. Sullivan asked if actual rents will be listed or will be based on household income, and whether different incomes will get different rents. Chair Rasmussen said that depends on the manager. Mr. McManus said the model the Board has now, based on HUD Fair Market, is very simple and clear and was designed to avoid unintended consequences; he suggested the Board create 2 separate models. Mr. DeCapo said he does not see why 65% in the workforce at 80% AMI is incompatible with the current model.

A suggestion was made to add: "65% of units must be rented by households with at least one member employed and not exceeding 80% AMI" to H. eliminating the center sentence. Mr. Behrendt said the part about personal income is important. Vice-Chair Tobias said a person has to be listed on the lease to live there. Councilor Friedrichs said an extra line should be added that says "third parties do not live there" and perhaps mention something about "primary residence". Board agreed to use 85% AMI per household.

For "employment", Mr. DeCapo suggested "either full-time or income equal to or exceeding the rent or actively engaged in seeking employed. Mr. Sullivan said there needs to be some flexibility and recommended that the property owner/landlord make the judgment call. Councilor Friedrichs said the dictionary definition of gainfully employed is "a job that pays wages or salary". Mr. Behrendt said it is important that once people are in, they should *not* be re-qualified every year. Chair Rasmussen said the Board needs to go to Public Hearing and let the public and the Town Council decide. Vice-Chair Tobias said they will need some real understanding to see how all these numbers work.

Chair Rasmussen said there are two remaining questions: open space, and maximum height qualifications. Mr. Behrendt said under O. *Topography & Open Space*, 60% works with the current overlay district but not every zone will be the same; they could have a second paragraph for Overlay District II with a different set of rules. Councilor Friedrichs agreed it may be different for denser areas. Councilor Grant suggested using a minimum, and Mr. Behrendt said tiering it by size might make sense.

Mr. McManus said Durham has 16,000 acres of land and that more than half, or 8,000 acres, are enrolled in current use. He said requiring an added burden of 60% open space in a workforce district seems a little heavy. Mr. Behrendt agreed. Councilor Friedrichs said the new definition of open space is: "forests, fields, wetlands, and other undeveloped land that contributes to the rural and pastoral character of Durham". Chair Rasmussen said wildlife corridors are coming in now for ordinances with larger animals needing deeper space to get back and forth and recommended leaving Open Space at 60%.

Mr. Sullivan said in this case the desired density is conflicting with conserving some open space and suggested a compromise to definitions here that more buildable area is better. Councilor Friedrichs said the Board is already restricting the development to 200 units, and said with large parcels, there are a lot of reasons to require a lot more open space. Mr. DeCapo agreed and said with smaller parcels they can play with height and minimum square footage of units.

Chair Rasmussen moved on to *J. Density & Dimensional Standards*. Mr. Behrendt said currently they have a height limit of 3 stories. Chair Rasmussen said the Board should be playing with feet instead of stories, and asked if a basement is a story. After discussion, the Board agreed to allow 4 stories with a 100-ft setback.

Councilor Grant said she was wondering about the Board's use of Church Hill in terms of density. Mr. Behrendt said Church Hill is 4,200 sq ft per lot/per development unit. Councilor Friedrichs asked if the Board wants a lower density with some bonuses that go up to the Church Hill standard. Chair Rasmussen said at the last meeting he asked that anyone interested come up with an appropriate formula, most felt it was way too complicated.

Mr. Sullivan asked if the Board is keeping paragraph *T. Incentives* or just not defining it now. Chair Rasmussen said he prefers to just take it out for now, as he does not want to be in a Site Plan Review and negotiating incentives. Mr. Kelley said in the past the Planning Board did get away with some wheeling and dealing with the developer after public comments, and he thought it was a good process. Mr. Behrendt said the developer can go over 200 units with CU.

Mr. Kelley suggested targeting incentives to energy efficiency by offering a break on a building permit for adding solar panels. Councilor Friedrichs said it may require more upfront investment, but it pays off in tax credits for developers before 2030. Mr. Sullivan said under "T." it says the Planning Board *may* negotiate but does not have to.

Councilor Grant said the Board discussed Church Hill at a prior meeting and decided 4,200 sq ft was too high and they needed to go denser. Chair Rasmussen said 4,200 sq ft allows 10 units per acre. Mr. Behrent said a developer cannot build to that with 60% open space required. Councilor Friedrichs said the issue becomes parking and recommended the Board reduce the number of parking spaces per unit from two to one; the developer can do more. Mr. DeCapo recommended leaving the decision to the developer and the market.

Chair Rasmussen asked for a show of hands and the Board voted 4-3 to keep the 1 parking space minimum per unit. Mr. McManus asked what language was agreed on tonight that is different from this draft. Chair Rasmussen said a modification to H. requiring the workforce element over a percentage of units, and that it has to be within the lower AMI percentage of 85%; F. stays as it is.



Chair Rasmussen said the Board would have to schedule the Public Hearing for August 14, 2024, and would pick up with Zoning definitions at the next meeting. Councilor Grant asked that the Board make Table of Uses a goal.

**X. 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.

**XI. Other Business**

**XII. Review of Minutes (new): June 26, 2024**

Councilor Friedrichs said ze had substantive changes which were discussed by the Board and forwarded to Karen for correction.

***Richard Kelley moved that the Planning Board approve the minutes of June 24, 2024 as amended tonight; SECONDED by Emily Friedrichs; Roll Call Vote: Richard Kelley-aye, Peyton McManus-aye, Paul Rasmussen-aye, Sally Tobias-aye, Robert Sullivan-aye, Emily Friedrichs-aye, Tom DeCapo-aye; APPROVED 7-0, Motion carries.***

**XIII. Adjournment**

***Vice Chair Tobias MOVED to adjourn the Planning Board Meeting; SECONDED by Peyton McManus; Roll Call Vote: Richard Kelley-aye, Peyton McManus-aye, Paul Rasmussen-aye, Sally Tobias-aye, Robert Sullivan-aye, Emily Friedrichs-aye, Tom DeCapo-aye; APPROVED 7-0, Motion carries.***

Chair Rasmussen adjourned the meeting at 10:03 pm.

Respectfully submitted,

Patricia Denmark, Minutes Taker  
Durham Planning Board