

These minutes were approved at the September 11, 2024 meeting.

**TOWN OF DURHAM
DURHAM PLANNING BOARD MEETING**

Wednesday, August 14, 2024

Town Council Chambers, Durham Town Hall

7:00 pm

MEMBERS PRESENT: Paul Rasmussen (Chair), Sally Tobias (Vice Chair), Richard Kelley, Heather Grant (Alternate Council Rep), Peyton McManus, Tom DeCapo; Emily Friedrichs (Council Rep) arrived late

MEMBERS ABSENT: Robert Sullivan, Erika Naumann Gaillat (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 and seated Heather Grant as Council Rep until Emily Friedrichs arrives.

III. Approval of Agenda

Chair Rasmussen said the Board may not get to Amendments to Zoning Definitions depending on the Public Hearing and wanted to reserve some time for other business.

Richard Kelley MOVED to accept the Agenda for August 14, 2024 as written; SECONDED by Peyton McManus; APPROVED: 6-0, Motion carries.

IV. Town Planner's Report

Mr. Behrendt said he had nothing to report.

V. Reports from Board Members who serve on Other Committees

Reporting from the Housing Task Force: Vice-Chair Tobias said HTF met Monday; Town Administrator Selig talked about how to best use Friday updates for outreach, and brought a concern about downtown vibrancy and how to add housing to downtown; shared ideas with 2 Planning Board members working on that; discussed progress of outreach and went over proposed Housing Overlay District amendment.

Emily Friedrichs arrived at the Planning Board meeting at 7:02 pm.

Reporting from the Town Council: Councilor Friedrichs said the Council met new Superintendent of Oyster River School Dr. Robert Shaps, and new UNH President Elizabeth Chilton. Discussed West Edge and what the development might look like; Councilor Burton may join that committee. Parks & Rec is interested in receiving a copy of the Strafford County Planning Commission's active transportation plan for information on connectivity on bike trails and sidewalks.

Reporting from the Energy Committee: Councilor Friedrichs said the Energy Committee had a presentation from the Housing Task Force, then worked to send some public comments to the Planning Board around the Workforce Housing Ordinance.

Reporting from the AG Commission: Mr. DeCapo said the commission met this past Monday; two main topics were: finalizing planning for Farm Day this Saturday; and impact of Workforce Housing amendment on parcels in town with high quality soil, resulting in memo to Planning Board from AG Commission presented to Paul Rasmussen.

VI. Public Comments – None not related to Workforce Housing Ordinance.

VII. Review of Minutes (old):

VII. Recognition of Bill McGowan, longtime Planning Board member

Chair Rasmussen said Mr. McGowan has been on the Planning Board for ages and the Town appreciates all the time given. He presented Mr. McGowan with a plaque expressing deep gratitude from the Durham Planning Board to Bill McGowan for sharing his time and insight over many years of service as a member of the Planning Board 2005 – 2024.

IX. Public Hearing – Workforce Housing Zoning Amendment. Amendment for a proposed new Article XVIII.1 – Workforce Housing Overlay District for the purpose of providing opportunities for the development of workforce and affordable housing and to ensure the availability of a diverse supply of rental housing. The article includes provisions regarding density, rent levels, types of dwelling units, other allowed uses, open space, infrastructure, and other matters. The overlay district includes two areas: 1) most of the Office Research District and a large parcel in the Residence Coastal District; and 2) the entire Office Research Light Industry district located north of Mast Road. Related changes are made to several other articles including the density allowances for workforce housing in conservation subdivisions. *Recommended action:* Hold public hearing.

Vice-Chair Tobias MOVED to open the Public Hearing for Workforce Housing Zoning Amendment; SECONDED by Councilor Friedrichs; APPROVED: 6-0, Motion carries.

John Carroll of 54 Canney Road, member of the Land Stewardship Committee and AG Commission, said he applauds the letter from Town Administrator Selig to Town Planner Behrendt, emphasizing the need to create more lodging in the downtown central core, with less

destruction of good agricultural land, and to preserve the productivity of good soils by bringing diverse populations into downtown.

Ellen Karelitz, AG Commission Member, read a paragraph from the Durham AG Commission letter to the Planning Board expressing its strong opposition to the Workforce Housing Overlay District proposal and underscoring the importance of preserving fertile lands, as the Town has already sacrificed significant agricultural soils for development, and It is antithetical to Town Goals and Master Plan.

Chair Rasmussen said the Board did take it into consideration with 60% open space. Ms. Karelitz said any building on that land will impact the fertility and structure of the soil. Chair Rasmussen said all the plots are open now for residential development. Mr. McManus asked several questions about the possibility of anyone farming the area.

Robin Mower of Britton Lane thanked everyone who worked on this rough draft for their work so far and said she felt an inclusionary approach would better serve Durham, and HTF is closely aligned with inclusionary zoning. She said this clearly presents a sense of urgency with the Keefe property, but in trying to select criteria to suit a specific piece of land, it is harder to extrapolate to a broader application. She said mentioning Churchill District in the Ordinance does not seem to make sense, and it would be helpful for the Board and/or Town Planner to take the time to explain key features before another public hearing.

Ms. Mower asked 8 questions: 1) which other town codes were consulted; 2) Master Plan vision statement on demographics and housing states new housing stock should be environmentally conscious and Durham-compatible; 3) Board seems to simply accept the RKG housing needs assessment despite conflicting data; 4) all our workforce housing opportunities use the terms realistic and reasonable; 5) senior housing not being part of this development and prohibiting construction of single-family homes are short sighted; 6) why do we need to allow 3-BR units; 7) Rural Areas: portions of RKG Report emphasized as opportunities are not appropriate for intense development and ignore land suitability and gateways; 8) does the ordinance meet the specific terms in Workforce Housing Opportunity RSA 674:59.

David Langley of 234 Longmarsh Road, representing the AG Commission, said workforce housing should be located in built-up areas. He said by 2050 the baby boom generation will have aged out. He said with more elderly people moving out and fewer young people moving in, there will be a lot more housing available; something to think about.

John Churchill of Old Piscataqua Road said he has several objections to the proposed zoning ordinance but said he would like to be able to welcome people with something to buy as well as rent and asked why people cannot purchase affordable housing in this community. He said he also objects to the scale which is outrageous with 200 units. He said transportation is a huge cost and it makes more sense to keep workforce housing central.

Mr. Behrendt asked that he keep in mind that 200 units is a maximum, and the board could approve more with CU. He said the 0.33 numbers would not apply here as they are for Senior Housing. Chair Rasmussen said the Board is saying that the senior housing bonuses do not apply here and asked that he keep in mind that the road to ownership is through renting.

Councilor Friedrichs said this is a great opportunity to speak and it is a great idea to have a document that explains all their concerns, but recommended the board have deliberations later.

Timothy Horrigan of 7A Faculty Road said he is a State Representative, and in last session dealt with Section 8 Housing vouchers: a good program but too small to be effective. He said Section F about Fair Market rents is a good thing and said the rental market is far from the ideal free market and needs some regulation of rates. He said another issue is the disincentive for communities to attract families with children; he applauds the Board including sections G and F, but said more work is needed.

Beth Olshansky of Packers Falls Road said she would first like some clarification about the Conservation Subdivision and density incentives 0.33, etc. and how that interfaces with the Workforce Housing Overlay District.

Mr. Behrendt said in the Ordinance affects a few different articles: Article 18.1-3 Workforce Housing Provisions, and Article 19 Conservation Subdivision, which had to be addressed. Changes to Conservation Subdivision: 1) it needed to be clear that this workforce housing overlay is totally separate and complex; 2) current incentive in Conservation Subdivision for workforce housing is 20% bonus, to comply with State Law we are changing that 20% bonus to the same language as Senior Housing; that piece is separate from this main ordinance, mostly driven by statute.

Ms. Olshansky asked if the mention of Churchill District was accurate. Mr. Behrendt said is because we had to have a default for the dimensional standards in this overlay district and Churchill standards seemed the best fit with a few exceptions noted. Chair Rasmussen said using Churchill gave us the ability to take a piece of undeveloped property creating residential units on it while maintaining the maximum amount of open space.

Ms. Olshansky said this is a very complex document and hoped a presentation would be provided as how a lot of the decisions were made is unclear, and questioned adding 4/5 of ORLI to the overlay map. Chair Rasmussen explained that because of legalities, an overlay district could not just be the initial space and more of the town needed to be included; ORLI was chosen as the infrastructure is already there. Ms. Olshansky said the area was too big and asked that the Board focus on downtown, and said Durham has a history of smart development. Chair Rasmussen said 51% of Durham's land should be open to workforce housing, and our Rural Zone is 51% of this town.

Mr. Behrendt said the Board has been working on this since January and there has been a lot of discussion, wrestling with complex and challenging issues, and has come up with some hard-vetted and debated points for very good reasons ultimately.

Councilor Friedrichs called Point of Order and said ze is wary of the Board answering questions for the public, without there being a consensus among members. Mr. McManus said it was very interesting to hear responses from public speakers and said he did not want to shut down the back and forth. Chair Rasmussen said the responses can be clarifying as well, and said Section F, dealing with the way price levels are set is important and might be interesting to discuss in a Public Hearing.

Mr. Kelley asked Ms. Olshansky why she specifically called out the 20% discretionary incentive and asked if the concept in its entirety is or if the percentage is too big. Ms. Olshansky said the maximum buildout of 200 units is huge and emphasized shifting the focus back to downtown and away from ORLI; landlords are experiencing 80% occupancy at this time and buildings could be renovated; school capacity could be overwhelmed. Vice-Chair Tobias said the Board has to look carefully at conditions on the ground in downtown and create a different type of housing opportunity.

Maggie Randolph of Harmony Homes said she appreciates all the work of putting this overlay district together and appreciates these are the “bones” of a project giving parameters for which designers and engineers can use them to create something from that. She said regulations tend to kill a project and she appreciates the flexibility in this ordinance which allows for traditional neighborhood development to happen. She said she appreciates what Durham is trying to do to support workforce housing and the opportunity this ordinance offers.

Joshua Meyrowitz of 7 Chesley Drive said this is a very big proposal and he is concerned about it going beyond the Keefe property into the rural gateways, and if it moves forward, we need to find ways to make it better. He said he understands the enthusiasm about this project and said it seems promising to allow for more young people. He said it is very much a concern not to let the developer dictate the plan and said this is about adding a new Durham neighborhood.

Mr. Meyrowitz asked if the property owner would allow public access for connectivity, and recommended a mix of units so young faculty can move and stay in the same neighborhood. He suggested connecting the development to Harmony Homes waterfront property, adding a recreation room to attract graduate students, adding green space and benches, connecting with Riverwoods, and creating a community garden on the farmland. He said he would like some new engaged neighbors who feel connected to a new neighborhood in Durham and said answering the public questions was a refreshing change.

Chair Rasmussen said a big difference here is we are talking about zoning as opposed to an application. Mr. McManus said he agrees with a lot of the things Mr. Meyrowitz brought forward

and agrees with connectivity and neighborhood and diversity. He said there are 2 things in Section F: 1) as a totality the development would be 100% capped at HUD Fair Market value; 2) diversity is built in there because 20% of units have to be at 80% or less of HUD fair market, leaving a 40% range there.

Anmarie Harris of Oyster River Road said she participated in the Master Plan and zoning revisions and said this concept has been driven by our change in lifestyle since Covid, and downtown has not flourished because of changes of habit. She said it is important to consider revitalizing downtown through renovation, particularly on the north side of Main Street, and making downtown more affordable for businesses. She said she would favor just the Keefe property with 60% of land protected, but the gigantic increase was not right for Durham. Based on her experience with zoning changes, she felt it was premature to have a final version and urged patience with more work and public information.

Vice-Chair Tobias pointed out that the original proposal by the Board was for just the Keefe property but were told it could not just be one change and created an overlay district instead. Chair Rasmussen said originally in January the Board brought forward to public hearing a suggestion to move the Keefe property from Residence Coastal to Office Research, which would be spot zoning, and feedback at that point was for an overlay district.

John Randolph of 1 Stagecoach Road said a lot of important concerns have been brought up tonight. He said the Oyster River Superintendent told him the number housing-insecure students had risen tenfold, and before building Harmony Place, 10% of my staff was housing-insecure. He said a storm is coming from the economic side and the reality is that people cannot afford to live in the seacoast. He said the largest generation is not the baby boomers but millennials, followed by Gen Z, and the demand over the next 2 decades for some level of reasonable, affordable housing will only skyrocket.

Mr. Randolph said for building in downtown Durham the math does not work; you cannot ask someone to buy a building now getting higher rents and have them turn it around and ask for workforce housing rates. He said he does not make money building affordable housing in this area. He said the Board has done an outstanding job in listening to people and putting a lot of pieces together; in our area senior care may not continue and childcare is already at a breaking point. He said there are homeless people among us, and I cannot grow my business as I cannot get people to come here.

Mr. Randolph said this will be a 5–6-year project, starting with roads the first year, then adding 50 units the following year, and it would have a phased impact on the entire community. He said the community needs housing and we need to come together and work together and continue to push this down the road.

Mr. Kelley asked Mr. Randolph what an individual family would need to make as salary to buy a house in the seacoast area. Mr. Randolph said the average priced home is over \$500,000 and with a 6% mortgage, someone making \$150,000 is struggling to afford that. Mr. Kelley asked him to speak about the development being all 3-bedroom. Mr. Randolph said he currently has a 200-person waitlist on his 1-BR Tiny Homes in Dover and felt there would be a fair amount of demand for 2-bedroom and 3-bedroom, and this ordinance would allow a developer to build 1-BR, 2-BR, and 3-BR units at some level of balance.

Mr. McManus said the Board tried to create a very simple model of a baseline of rents with 20% at 80% HUD Fair Market or less, and allow the developer some flexibility, and asked Mr. Randolph if he thought that was viable from a developer's standpoint. Mr. Randolph said he congratulated the Board because in Dover he used a cap of the HUD rate and could not go lower than that. He said the creative mechanism developed in this ordinance allows for a range of affordability.

Bryan Cassidy of 342 Dame Road said he is an 11-year resident and a member of the AG Commission. He said by the graciousness of his neighbor he can live in this town and said his peers who don't live in Durham are all leaving as no one wants to pay these rents. He said this is a complicated situation and he is glad the Board wants to help, but said his issue is the way we continually perpetuate the same violent system. So many people are hurting and there is no connection, people need homes and shelter, but there is a homeless mess still existing in communities. He said there are steps we need to take to address crises and urgency.

Councilor Friedrichs thanked Mr. Cassidy for his thoughts and asked if there were any projects the AG Commission could refer to the Planning Board and asked how Durhams's valuable soils compare to other communities. Mr. Cassidy said there are models in Vermont and Maine, but unfortunately New Hampshire does not do a great job around agriculture and said he would be happy to come back with more ideas.

Robin Mower said everyone is enjoying the discussion and asked if the Planning Board might consider creating an informational session where there could be more conversations for the larger community.

Malcolm Sandberg of Langley Road said everyone is aware of the need for affordable housing, but the mission before us is to develop a zoning ordinance that will meet those needs while protecting the integrity of the Town. He asked if the ordinance covers too wide an area, how many 200-units would fit in the ORLI and OR districts if built to maximum development, and asked that the Board put together an impact statement of the potential of maximum growth over time. He said the "by right" factor is a problem for him and the Board needs to have more control over that. He also recommended allowing units for sale for those looking to have equity in the property and the town. He said the ordinance is ambiguous and opens the avenue for a lot of negotiations, and a zoning ordinance should be clear and definitive. He said the ordinance is well-meaning but does not meet the needs of the objectives in the Master Plan.

Beth Olshansky asked for a point of clarification regarding the original plan for just the Keefe property and not this whole huge thing. Mr. Behrendt explained the original plan and said it would just rezone the Keefe property west of Johnson Creek as OR.

Councilor Friedrichs said the unknown at the time was whether the rezoning would open up the property to all other OR uses. Councilor Grant said there used to be a time when industrial land was more valuable than housing land but that is no longer true, and housing land is now more valuable than light industrial. Mr. McManus said there was quite a bit of discussion at the time and best practice was deemed to be an overlay district.

Mr. Behrendt said we meet the statute, and the ordinance is legal because it is an additional thing we are doing. He said when we talk about a development of 200 units on the Keefe property of 117 acres, there are not lot of parcels that could be similarly developed, and most are built out already; potentially 121 Tech Drive. He said this would be difficult to do on a small lot, very few developers do workforce housing. He said Durham will not be overrun with projects and if we could just get one, we would be doing great.

Judith Spang of 55 Wiswall Road said she served on the HTF but is speaking as a citizen. She said we have done community surveys of organizations, attended housing presentations, and looked at developments of all kinds in the process of trying to decide what we can do. She said she has always been concerned about possibilities offered by the Keefe property, and said it seems trying to build workforce housing has involved a great deal of negotiating with the developer and the community to come up with a reasonable regulatory model.

Ms. Spang suggested going back to spot zoning to find a way to alter their regulations to suit the needs of a specific piece of property. She said there was talk about moving this into downtown, but Mr. Randolph raised a very valid point that properties downtown would be too expensive to allow affordable housing. She said this is not something the HTF should be undertaking and there should be a Downtown Development Task Force.

Chair Rasmussen suggested keeping the Public Hearing open until the next meeting and the Board agreed. Chair Rasmussen stopped comments at 9:30 pm and recommended skipping number 10 on the Agenda. Vice-Chair Tobias suggested the Board first go through all the comments. She said a lot were from a lack of understanding what some of this means or why the Board has chosen it, and the Board will meet the same thing with the Town Council. Chair Rasmussen said what is sent to the Council this time should include a cover letter with explanations and reasoning why we did not make changes based on comments. Mr. McManus agreed the Board should take this public comment time as an opportunity for discussion, education, and background on why certain decisions were made and certain language used. He also said discussion during Public Forum allows dialog and understanding.

Mr. Kelley said after what he heard tonight, he did not feel there is much revision that would be needed in this document because there is a great misunderstanding, and it is not that complex. Chair Rasmussen agreed that the Board just needed to tweak a few things.

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 consider additional changes to the Table of Uses
Recommend action: Ongoing review.

Not addressed.

XI. Other Business

Recommendation from the Durham Energy Committee to allow Small Group Net Metering in the Core Commercial Zoning Districts.

Councilor Friedrichs asked about the changes to the Site Plan to allow free-standing solar to be reviewed by Minor Site Committee; Mr. Behrendt said it had been approved.

Councilor Friedrichs said that the State recently adopted a new law, SB 437, prohibiting towns from using any energy code different from what the State has established without getting prior State approval, which was signed by the governor June 2024. As a result, on August 6 the Energy Committee unanimously made a recommendation that the Workforce Housing Overlay District include *current* requirements from Durham’s energy code for the density bonus to apply. Durham has had its own code since 2016, and density for workforce housing in the overlay district could be tied to what has been on Durham’s books all along and be worded into the Ordinance: A. less density but use State energy standards; B. high density with higher energy standards.

Chair Rasmussen said he would need to need to run this by the attorney first. The Board discussed the issue and Chair Rasmussen asked that Councilor Friedrichs come in with a new draft paragraph on density.

XII. Review of Minutes (new): July 10, 2024

Vice-Chair Tobias MOVED to accept the meeting minutes of July 10, 2024; SECONDED by Richard Kelley; APPROVED: 4-0 with 2 abstentions, Motion carries.

Board Comments: McManus suggested having the AG Commission participate with the open space and reintroduce language about percentage around 3-bedroom units. Councilor Friedrichs noted questions about why this proposal excludes ownership, that 200 units is too large a scale, and whether there is a smaller number that is still viable. Mr. Behrendt said the 200 is only for the Keefe property. Chair Rasmussen said the Board is 95% there already.

XIII. Adjournment

Richard Kelley MOVED to adjourn the Planning Board meeting of August 14, 2024; SECONDED by Peyton McManus; APPROVED: 6-0 with, Motion carries.

Chair Rasmussen adjourned the meeting at 9:54 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker
Durham Planning Board