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3 **TOWN OF DURHAM**  
4 **DURHAM PLANNING BOARD**  
5 **WORKSHOP MEETING**

6 **Wednesday, October 23, 2024**

7 **Town Council Chambers, Durham Town Hall**

8 **7:00 pm**

9 **DRAFT MINUTES**

10  
11 **MEMBERS PRESENT:** Paul Rasmussen (Chair), Sally Tobias (Vice Chair), Peyton McManus, Robert  
12 Sullivan, Heather Grant (Alternate Council Rep), Erika Naumann Gaillat (Alternate); Richard Kelley  
13 (arrived late)

14 **MEMBERS ABSENT:** Emily Friedrichs (Council Rep), Tom DeCapo (Alternate)

15 **ALSO PRESENT:** Town Planner Michael Behrendt

16  
17 **I. Call to Order**

18 Chair Paul Rasmussen called the meeting to order at 7:00 pm.

19  
20 **II. Roll Call and Seating of Alternates**

21 Chair Rasmussen called the roll and seated Erika Naumann Gaillat for the vacant seat and Heather  
22 Grant as Town Council Representative.

23  
24 **III. Approval of Agenda**

25 Chair Rasmussen asked that VII. Other Business: Housing Champions Program be moved to be  
26 first item, and item VI. State Planning Law be training time for all present.

27  
28 ***Chair Rasmussen MOVED to adopt the Planning Board Workshop Agenda as modified;***  
29 ***SECONDED by Vice-Chair Tobias; APPROVED: 6-0, Motion carries.***

30  
31 **VII. Other Business: New Hampshire Housing Champions Program**

32 Mr. Behrendt said the State is trying to create more housing, much is legislative but also deals  
33 with infrastructure and financing programs like 79-E. The Housing Champions Program aims to  
34 provide incentives to cities and towns to create more local housing. If a municipality meets 80  
35 points on the list of criteria, they can be designated a Housing Champion and be eligible for up  
36 to \$5 million in State Aid for infrastructure improvement or assistance creating workforce  
37 housing. The Town is now at about 40 points.

38  
39 Chair Rasmussen said the Town Council will take a few months before they make a decision on  
40 this, but the Board currently has a lot in process to start positioning themselves to get more of  
41 the zoning points they are currently not getting. The Board should take a quick look at the first  
42 14 points and sort them into 3 or 4 buckets: will not pursue-not obtainable, easily attainable,

1 pursue but not sure obtainable; absolutely pursue, and keep those in mind while drafting other  
2 agenda items. Mr. McManus said the initial applications were due November 15, 2024 for 2025.  
3 Mr. Behrendt said the State funded \$5 million for this coming year with \$10,000 per each deed-  
4 restricted unit; state will need to refund the program next year.

5  
6 1. Workforce Housing: Allow by right across entire town; current Workforce Housing Overlay  
7 District is too small to qualify for land area: Not attainable.

8  
9 2. ADUs: Allow by right in all zoning districts; allow detached ADUs in all residential districts;  
10 currently not allowed in RA and RB districts: Attainable.

11  
12 3. Cluster Development Ordinance/Conservation Subdivision: Allow by right in majority of zones;  
13 current Conservation Subdivision does not meet criteria. Chair Rasmussen said if the density  
14 bonus were changed from “age restricted” to extra conservation land it could qualify: Attainable.

15  
16 4. Form Base Code: Allow a diverse range of housing types with minimum 5 dwelling units per  
17 building or adaptive re-use of existing buildings into residential buildings downtown by matter of  
18 right: Attainable by tweaking Table of Uses, making most **CU**s in Central Business District **Ps**.  
19 Councilor Grant asked about mixed use, and Chair Rasmussen said that would qualify as a housing  
20 type as long as allowing 5 units by right, now only allowed by CU. Attainable.

21  
22 5. Inclusionary Zoning Ordinance: Not attainable for Durham.

23  
24 6. Manufactured Housing Ordinance: Mr. Behrendt said State Law requires that all municipalities  
25 allow manufactured housing on individual lots in 51% of residential areas, which the town meets.  
26 The rural zone allows manufactured housing on individual lots; however, this is saying  
27 opportunity must be provided for a manufactured housing park. Ms. Naumann Gaillat said people  
28 in Durham are very much against that; Chair Rasmussen said opinions could be changing, but it  
29 is probably not attainable.

30  
31 7. Missing Middle Housing Ordinance: Mix of residential and commercial in same building or lot  
32 by right or allow multi-use housing with 5 or more dwelling units by right in mixed-use zones;  
33 allow conversion of space in existing buildings or structures to residents by right in mixed-use  
34 districts: Table of Uses modification, highly attainable; key is commercial space.

35  
36 8. Mixed Use Zoning: Allow mix of residential, commercial, retail by right; Board did not  
37 understand difference between items 7 and 8; Councilor Grant suggested light industrial for  
38 commercial.

39  
40 9. Multi-family Housing Ordinance: Allow non-age-restricted by right in all zoning districts that  
41 encourage higher density mixed-use multi-family or overlay district; no restriction on number of  
42 units in a multi-family building. Challenging as it has to be all the districts where we allow mixed  
43 use.

44

1 10. PUD: Allowing a planned unit development by right in a PUD base or overlay district that  
2 encourages higher density mixed-use developments, missing middle, cluster developments.  
3 Discussing tonight; probably would qualify.  
4

5 11. Minimum Lot Size: Not attainable for Durham.  
6

7 12. Tiny Homes: Allow by right as small as 220 sq ft as long and fire and building codes are met;  
8 400 sq ft with foundation. Vice-Chair Tobias said they need to be allowed on private property;  
9 Chair Rasmussen said tiny homes are meant to be a step to ownership that is affordable.  
10 Attainable, but not there yet.  
11

12 13. Parking: In most zones that permit residential use, no more than 1 off-street space per  
13 housing unit. Attainable, but do not know amount of risk involved.  
14

15 14. Transfer of Development Rights: Designate sending and receiving zones: Complicated, will  
16 not pursue.  
17

18 Richard Kelley arrived at the Planning Board Workshop meeting at 7:25 pm.  
19

20 Mr. Kelley asked what the benefit is to getting enough points to be designated a Housing  
21 Champion. Chair Rasmussen said it is \$10,000 per deed-restricted residential units from the State  
22 and puts Durham on a priority list for other funds for related programs; need to apply yearly and  
23 state needs to fund every year. He explained that the Board wanted to go through these points  
24 before discussing other zoning issues.  
25

26 Chair Rasmussen said some points are for ongoing infrastructure work; Mr. McManus asked  
27 about water/ sewer infrastructure upgrades and public transportation/walkability infrastructure.  
28 Chair Rasmussen said the Madbury Road project will qualify for some of that, and potentially  
29 Riverwoods though it is age-restricted; allows the town to create TIFs. The Board discussed 79-E  
30 projects in Durham.  
31

32 **IV. Amendment to Zoning Definitions.** Review of revised set of Definitions for posting for  
33 public hearing. Recommended action: Schedule public hearing if draft is acceptable.  
34

35 Chair Rasmussen said the Board has what they feel is a final draft and asked if there were any  
36 definitions that needing to be reworked again or were left out. Mr. Kelley asked if “abutter”  
37 needed to be redefined to be in agreement with the new House Bill; Mr. Behrendt said abutter  
38 is not listed under definitions. Chair Rasmussen said since it has to be the state definition, just  
39 use the RSA and the Board agreed.  
40

41 Chair Rasmussen suggested the Board take a look at Table of Uses on page 45 to address Town  
42 Council comments; Mr. Behrendt recommended sticking to the definitions to get them done.

1 Councilor Grant said one thing that came out of all the Town Council feedback was that Church  
2 Hill is still shown as allowing a parking lot with **CU** on the Table of Uses and needs to be **X**.

3

4 **Changes to Table of Uses/Definitions:**

5 *Abutter*: See RSA.

6 *Daycare Center*: Residence A and Residence B are X, with P everywhere else.

7 *Daycare Home*: For more than 6 and not more than 6, P across the board.

8 *Parking Lot*: Church Hill X, Courthouse CU, Central Business CU with the rest X.

9 *Parking Garage*: Central Business CU with all the rest X.

10 *Residence, Multi-unit Complex*: Residential Zones X; Core Commercial Zones X in Courthouse, P  
11 for the rest; Research Industry Zones P for MUDOR and X for the rest.

12 *Student Housing*: X everywhere except CU in Professional Office.

13 *Self Storage Facility*: X across the board.

14 *Caretaker Apartment*: P across the board.

15

16 Mr. Behrendt said he would correct all alignment issues in the Table of Uses. No changes were  
17 made to *Animal Care* or *Motor Vehicle Gas Station*.

18

19 Board agreed to meet November 20, 2024 for Public Hearing: Amendment to Zoning Definitions.

20

21 **V. Planned Unit Development Ordinance.** Beginning the discussion about proposed Planned  
22 Unit Development (PUD) ordinance. PUDs are special zoning tools which allow for flexible  
23 and innovative planning for large-scale mixed-use projects. A draft ordinance has been  
24 prepared to accommodate the potential development of The Edge project at UNH, located  
25 westerly of the intersection of Main Street and Mast Road. Recommended action: Start  
26 discussion.

27

28 Chair Rasmussen said this draft is to set the groundwork for the Edge project, with secondary  
29 possibility as a means for workforce housing. Mr. Behrendt said it is State property and UNH will  
30 probably retain ownership of the land and do land leases but is subject to Town Zoning and town  
31 taxation (the buildings, not the land).

32

33 Mr. Kelley brought up the comment by DRG that this draft is very discretionary on the part of  
34 the Town and the Planning Board, which adds uncertainty and risk to density. Councilor Grant  
35 said the Board has heard that before and said the Town Council should be involved from the very  
36 beginning and say if they want this in their community. Vice-Chair Tobias said there will need to  
37 be guidelines everyone will be following as politics is not always rational; Mr. McManus agreed  
38 and asked how it could be structured.

39

1 Vice-Chair Tobias said because the Council is not following along on the process, they do not  
2 necessarily trust the people doing it. Chair Rasmussen said based on this conversation the Board  
3 should start on page 6 with F. Process and do the first 5 pages later; Section E. Allowed Uses is  
4 extremely helpful. Mr. Kelley said if the form-based code layout is followed, it has to look good;  
5 the initial money is on the embellished renderings and not on the engineered drawings where  
6 the cost comes in.

7  
8 Section F. Process: Chair Rasmussen said they will not qualify as Housing Champions with the  
9 current process as points are for “allowing a PUD by right in a base already established”; a plan  
10 will be submitted, and the Board will basically do site management it. Councilor Grant said they  
11 first need to define what zones they would want to be a PUD Overlay District. Mr. Kelley  
12 suggested just having a PUD Ordinance townwide to get the points.

13  
14 Mr. Behrendt explained that this is a negotiating process and there is no way around that. Chair  
15 Rasmussen said it needs to be a negotiated process where the Board has taken their hands off  
16 some of the controls, tell them how to do it, then it is just a matter of Site Plan review to manage  
17 it. Mr. Behrendt said once this ordinance is in place there are really 2 steps: (1) present a PUD  
18 application (general plan), design (not engineered), and go through a negotiated process with  
19 the Board and the Town Council.

20  
21 Mr. Behrendt said applicants have to come up with a plan the Board approves and is approved  
22 by engineers who bring in their site plan. He said there is no such thing as a by right PUD as it is  
23 a complex, detailed negotiations process. Steps include: (1) have the ordinance in place and  
24 hopefully adopted within a year; (2) UNH will then go through the process to get PUD Plan  
25 approved (with general drainage and infrastructure) by Board and Town Council; (3) once the  
26 plan is approved the 35 acres for the Edge is shown on our Zoning Map as PUD-The Edge then  
27 bring in the Site Plan.

28  
29 Mr. Behrendt said DRG was looking for ways to have a process that includes a lot of dialogs with  
30 all partners, including the Town Council early on, so everyone comes along together. Chair  
31 Rasmussen stated that that could be done by having the Town Council make the decision first  
32 and not last. Mr. Behrendt said there are planning issues in which the Board is more  
33 knowledgeable; Councilor Grant said the Council is looking for the concept and the Board cannot  
34 go to the Town Council with all that zoning and have them question it all. Mr. Behrendt said that  
35 will be their role and suggested having a joint committee without looking at specifics in the  
36 general plan.

37  
38 Mr. Sullivan said there are gates you have to go through: you will have the site, show access and  
39 black boxes not defined by size showing massing and height; applicant has to spend 10%-15% of  
40 their budget designing which is pure risk, then have it approved before they spend the next 50%  
41 of their budget; Town Council needs to be on board at that level and then has to delegate the

1 authority to figure out the details. Mr. Kelley said that would be part of the Preliminary Review;  
2 Chair Rasmussen recommended Town Council get involved as part of the committee.

3  
4 Mr. Sullivan said there are market effects that will take place and this will not happen all at once:  
5 Town Council will have to sign off on the scheme, development could take 5-10 years, and  
6 approval has already happened long ago. Mr. Kelley said the PUDs he is familiar with are specific  
7 to an area like the West Edge will be. He said typically the owner would come to the table with  
8 something and that would be part of the PUD that would define some of those uses and massing  
9 requirements, and it is hands off after that; *or* we work with the University putting out an RFP  
10 which provides some parameters.

11  
12 Mr. Kelley said there are residential allowed uses and they will sell, and asked if the Board can  
13 specify that a certain amount need to be workforce housing. Mr. Behrendt said it will be mixed  
14 uses: retail, restaurants, research and development, light industry and multi-family residences.  
15 Mr. Sullivan said they need a good table of allowed uses and a good prohibitions table which  
16 should be good enough in the PUD because you have to make it attractive.

17  
18 Chair Rasmussen said per UNH Campus Architect Ken Weston: “UNH will likely have some  
19 industrial/quasi-industrial uses and specialized uses” and the “Prohibited Uses list needs to be  
20 carefully considered”. Mr. Sullivan said we can work on the gaps, but the approval gate has to  
21 be early for the Town Council. Mr. Behrendt said between (2) Preliminary Review, (3) Committee,  
22 and (4) Formal Application we need to require there also be Town Council preliminary approval.

23  
24 Vice Chair Tobias said the Council appoints members to this Board and at some point, the Council  
25 has to do its job by appointing people who are qualified and trained to do this work and trust  
26 them to do the work they are given. Mr. Behrendt said there are PUDs that are not Zoning  
27 Amendments that are CUs, and said this does not have to go to the Town Council, but they would  
28 have to be comfortable with Planning Board authority to approve a larger, mixed-use project.

29  
30 Ms. Naumann Gaillat asked if there was some way to get Council feedback before holding a  
31 public hearing. Chair Rasmussen said Mr. Behrendt can speak to Todd and give a short flow chart  
32 of the process and ask if they will accept it; Town Council needs to come in early on and approve  
33 the property guardrails; principals are Planning Board and Applicant, and third parties should not  
34 be able to interfere. Mr. Behrendt said the Town Council approves a preliminary scheme, then  
35 to the Planning Board for formal application and engineered site plan. He said there is concern  
36 about how this will affect the downtown and the Town’s fiscal situation.

37  
38 Mr. McManus said core infrastructure information is also needed about the number of people  
39 water and sewer can support. Mr. Kelley said he is looking at PUDs in other towns where the  
40 governing body approves both preliminary and final plans and asked if UNH is putting the  
41 preliminary plan out on the street. Mr. Behrendt said UNH is still talking with consultants and

1 master developers, looking at how to pay for this and leverage their land to private developers,  
2 but they do have a concept plan.

3  
4 Chair Rasmussen said under G. Criteria for Review of PUD Proposals, paragraph 4 should be  
5 deleted, as there is no way anyone will come to the Planning Board after Mill Plaza to do a major  
6 project that is CU. Mr. Kelley suggested the Town Council be involved on the front end with the  
7 UNH plan; or say the sewer system cannot support the plan without UNH or a development team  
8 kicking in money; the details are here with guardrails decided by owners, UNH, and the Town  
9 Council before the plan is on the street; could have Planning Board and Council in preliminary  
10 and once during final.

11  
12 Chair Rasmussen said the Board can flesh out a process, but a flow chart might be helpful  
13 showing who is doing what and where decisions points are to use as a next discussion aid; also  
14 feedback from Ken Weston requested more detail. Mr. Behrendt said he would bring this back  
15 after November 20, 2024.

16  
17 **VI. State Planning Law.** Discussion about recently enacted and proposed state laws related to  
18 land-use planning. Recommended action: Discussion only.

19  
20 Chair Rasmussen said this is part training session to be updated on State Law.

21  
22 SB437: Adoption of any building code more stringent than State Code needs state approval.

23 HB1202: All driveway and DOT stuff.

24 HB1221: Solid Waste landfill; of regional concern.

25 HB1359: Abutters: should start using the official abutter definition; *only* abutters can appeal vs  
26 any aggrieved party formerly.

27 HB1361: Existing Manufactured Homes Statute: need to have reasonable and realistic  
28 opportunities for expansion.

29 HB1371: New Master Plan Chapter: allowing a chapter on waste reduction, then zoning. Chair  
30 Rasmussen said from the IWMAC Committee: do not have the industry support necessary to do  
31 the things we want to do; do not have industry-size composters.

32 HB1400: Zoning and Planning Regulations shall not set the required maximum number of  
33 residential workforce housing parking spaces to more than 1 parking space per residential unit;  
34 allows developer to go lower. Board agreed to 1.5 parking spaces per multi-family dwelling unit  
35 (non-workforce housing) and deleting the entire reference to 3-unrelated as a code amendment;  
36 Site Plan Regulations to be updated.

37  
38 Mr. Behrendt said this amendment will be also presented for Public Hearing at the November 30,  
39 2024 meeting.

40

1 **Discussion of local transportation:**

2 Chair Rasmussen said Durham has 2 bus services, Coast and Wildcat; Coast supports the region,  
3 Wildcat supports UNH and the public as a side thing. UNH schedules are focused on campus life  
4 so when school is not in session the bus service gets cut by 2/3; but because Durham has Wildcat,  
5 Coast will not come in; services Newmarket and Route 108 on a call basis. He said the Lodges and  
6 Cottages pay for a bus route to run, and Durham could, depending on cost. Councilor Grant said  
7 the state is caring about more room for housing, not increased public transportation; also need  
8 more flexible mid-sized buses with smaller routes for pockets of people  
9

10 Chair Rasmussen said he sent the 2023 New Hampshire Bike Plan Assessment study to Mr.  
11 Behrendt related to a pedestrian-biking infrastructure. He said you think of New Hampshire as  
12 rural but 63% of people live in a census-designated metropolitan area.  
13

14 **VIII. Adjournment**

15  
16 *Erika Naumann Gaillat MOVED to adjourn the Planning Board Workshop meeting of*  
17 *October 23, 2024; SECONDED by Richard Kelley; APPROVED: 7-0, Motion carries.*  
18

19 Chair Rasmussen adjourned the meeting at 9:44 pm.  
20

21 Respectfully submitted,

22 Patricia Denmark, Minute Taker  
23 Durham Planning Board