

*These minutes were approved at the December 11, 2024 meeting.*

**TOWN OF DURHAM  
DURHAM PLANNING BOARD MEETING**

**Wednesday, November 13, 2024  
Town Council Chambers, Durham Town Hall  
7:00 pm**

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

**MEMBERS ABSENT:** Tom DeCapo (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 Erika Naumann Gaillat for the vacant seat and Heather Grant as Council Rep until Emily Friedrichs arrives.

**III. Approval of Agenda**

***Chair Rasmussen MOVED to switch the order for Items XII and XIII on the Agenda for November 13, 2024; SECONDED by Erika Naumann Gaillat; APPROVED: 7-0, Motion carries.***

*Councilor Friedrichs arrived at the Planning Board Meeting at 7:02 pm and was seated as Council Rep.*

**IV. Town Planner's Report**

Mr. Michael Behrendt said Item IX was taken off the agenda for tonight and moved to December 11, 2024, needs more information; 2 new items added to agenda for individual houses on a scenic road where property owners wanted to remove trees in right-of-way and rebuild a stone wall needing Planning Board approval; Town Attorney confirmed that because abutting property actually owns the right-of-way, they have the right to cut trees without Town approval. For rebuilding a stone wall, Town Staff can approve, and I approved this plan to move the stone wall at 561 Bay Road; applicant already removed the stone wall at 361 Durham Point Road while blasting for the house and stones were stockpiled.

He said the Board is meeting in one week on November 20, 2024: conversion for a duplex on Young Drive; Public Hearing for amendment to Site Plan Regulations re parking; Public Hearing on definitions; continuing discussion of PUD.

Councilor Friedrichs asked that the Board combine other site plan regulations already discussed with the Site Plan Updates and consider reducing parking spaces to 1 space per unit rather than 1.5 spaces. Mr. Behrendt said this arose because of a State Law passed last year, but he could bring more forward to an upcoming meeting.

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

Reporting from the Town Council: Councilor Friedrichs said the Council discussed the Workforce Housing Overlay District; had Climate Action Plan update from UNH Sustainability Intern, looking at 30% emission projected path reduction by 2030 with 50% being asked of us, equivalent to a 1.5-degree warming assuming a 5% electrification turnaround from fossil fuels. Approved November 30, 2024 as Small Business Saturday; Audit Report presented; adopted amended Solid Waste Ordinance; set Public Hearing for Workforce Housing Overlay District and general amendments; intro to this year's Budget.

Reporting from Conservation Commission: Richard Kelley said the Commission met October 28, 2024 with guest Ellen Synder, Chair of Newmarket Conservation Commission, looking to update their prime wetland mapping and do vernal pools as well and looking at Durham-Newmarket grant opportunities. Turtle Fest is scheduled for May 10, 2025; Jackson Lab presented reconstruction of existing dock structure, but materials not yet ready for prime time; continued work on Wetland-Shoreland Overlay District.

Reporting from IWMAC: Chair Rasmussen said IWMAC met October 30, 2024 and are in the middle of the compost challenge; devising an activity at Hannaford re outreach to reduce plastic bags.

Reporting from the Energy Committee: Councilor Friedrichs said the Energy Committee did not meet because of Election Day and will be meeting in December. Ze attended a local Energy Solutions Conference by Clean Energy New Hampshire as a Durham representative, and attended a session on energy in housing.

## **VI. Public Comments**

No Public Comments.

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

**VIII. Public Hearing - 65 Durham Point Road – 2-lot Subdivision/Adjustment of Right-of-Way line.** Former owners of the subject lot made an agreement with the Town of Durham in 1985 for the Town to relocate a portion of Durham Point Road onto the subject lot in order to remove a tight bend in the road. The land underlying the newly located road was never

conveyed to the Town nor was the right of way line moved. A new plat has been created to correct that omission. Sarah Ford Trust, property owner. Map 115, Lot 6. Residence Coastal District. Recommended action: Final action.

Mr. Behrendt said this was presented last week by Valerie Shelton representing Sarah Ford Trust.

***Erika Naumann Gaillat MOVED to open the Public Hearing for 65 Durham Point Road; SECONDED by Richard Kelley; APPROVED: 7-0, Motion carries.***

***Richard Kelley MOVED to close the Public Hearing for 65 Durham Point Road; SECONDED by Erika Naumann Gaillat; APPROVED: 7-0, Motion carries.***

Mr. Behrendt suggested listing notarizing the deed under precedent conditions adding: “applicant will finalize the deed and the plat in coordination with the Town Attorney and have it notarized”.

***Richard Kelley MOVED that the Planning Board approve the 2-lot Subdivision and adjustment of right-of-way, 65 Durham Point Road, Sarah Ford Trust, property owner, Map 115, Lot 6 in the Residence Coastal District; SECONDED by Erika Naumann Gaillat; APPROVED: 7-0, Motion carries.***

**IX. Public Hearing - 4 Riverview Court – Conditional Use Application.** Conditional use in the Shoreland Protection Overlay District for an existing single-family house for structures to be located within the 125-foot setback line: freestanding garage, expansion of existing driveway, retaining wall, shed, and buried electric line that currently runs overhead. Arthur McManus, property owner. Chris Guida, Fieldstone Land consultants, wetland and soil scientist. Map 214, Lot 11. Residence Coastal District. Recommended action:

**\*\*\*POSTPONED TO DECEMBER 11, 2024**

(over)

**X. Public Hearing - 361 Durham Point Road – Application under the Scenic Road Designation.** Request for removal of trees and removal/replacement of stone wall along Durham Point Road, a scenic road. Al Graziano, Graziano Trust, property owner. Map 230, Lot 7-1.

**\*\*\*REMOVED FROM AGENDA**

**XI. Public Hearing - 561 Durham Point Road – Application under the Scenic Road Designation.** Request for removal of trees and removal/replacement/alteration of stone walls along Bay Road, a scenic road. David and Karen Della Penta, property owners. Robbi Woodburn, Landscape Architect. Josh Henry, builder. Map 239, Lot 9.

**\*\*\*REMOVED FROM AGENDA**

### **XIII. Other Business**

**STUDENT RENTAL, THREE-UNRELATED RULE, AND HABITABLE FLOOR AREA – Draft Ordinance**

Chair Rasmussen said our State Representative Al Howland is here to present a little background on this prospective ordinance.

Al Howland said he represents Strafford 20 and sits on the Municipal County Government Committee which tends to deal with zoning. Last session HB-1281 came before us to set an occupancy limit of no less than 2 occupants per bedroom, aimed at Durham and taking down the 3-unrelated occupant rule in place since 1986. Came before our committee in January; executive session in March ruled 12-6 it was inexpedient to legislate and was tabled in the House. The Senate had a bill and pasted the HB1281 language into it, bypassing the committee and sent it to a special housing committee, possibly to circumvent people with zoning experience, and made an amendment that blew up Hannover's zoning as well; a coalition of committee members got together and tabled it by 4 votes and the bill died.

Mr. Howland said our committee felt there was some need to reexamine the 3-unrelated rule, the intent of which was to put student housing where it belongs, but it needed to be refined. Looked at Nuisance Rule, not nuisance per se, just different student/family lifestyles. The question is how to provide access for Student Housing and show it is provided for while *not* allowing it in areas where it does not fit. He said despite building 2,000 new student housing units, it is fear of student housing being built that is preventing building missing middle housing in Durham.

Mr. Howland said a way to solve that problem is with Chapter 26 in the Fire Code, which says 5 unrelated people in one dwelling sharing a kitchen, transient by definition, is a Lodging House which must have a sprinkler system; this gives us an opening on how to define Student Housing and designate the unit a student rental. The Town has a right to say where those student rentals can be located, allow them in certain areas to show we have enough to meet demand; came down to the definition of Student Rental and we came up with: *"A student rental is a residential dwelling composed of one or more dwelling units on a single parcel that includes five or more undergraduate college students (total among the units) as defined by Federal law."*

Mr. Howland said by law you cannot limit occupancy by familial relationships, but students are not familial. Next step is where to allow these Student Rentals: change Table of Uses to allow in Professional Office, Church Hill, Courthouse, and Central Business District, where student rentals predominate; creates an opening for Workforce Housing outside of Student Rental Zones; houses already outside the zone will need to be grandfathered; trying to simplify this by saying what a student rental really is and allowing an opportunity to build housing outside student rental zones.

Mr. Howland said he strongly advises the Planning Board to work quickly on this now, as he will have an extremely difficult time defending Durham in the House. He said this change will provide a good rationale to defend ourselves and provide good fixes that will improve Durham's housing.

Ms. Naumann Gaillat said 5 or more sounds unlimited; Mr. Howland said the Fire Code determines occupancy by square footage at 200 sq ft per occupant (Durham is currently 300 sq

ft/occupant). Councilor Friedrichs stated that the number of students might be increased to offset the sprinkler cost; could modify dimensional standards for square-footage/occupant requirements. Chair Rasmussen said the first section is by zones, and a lot will be removed because they are not permitted in the zone at all.

Questions: Mr. Kelley asked why just undergraduates were listed in the definition. Mr. Howland said graduate students do not have the money to pay the amounts undergraduate students do, and he tried to separate them to allow for more graduate student housing. Mr. Kelley asked why the definition states “as defined by Federal Law”; Mr. Howland said we are looking for an anchor to tie this to by using the definition of fulltime student in Federal Law. Councilor Friedrichs suggested tying this to FAFSA or some sort of financial aid.

Mr. McManus asked for clarification on the amount of time the Planning Board has to work on this; Mr. Howland said 2 months as the House will be back in session January 8, 2025, and he would be more comfortable if the Board had something before the bill is filed. He said you can always get something good enough in place that gives you some protection; definition says anything considered a new lodging house requires a sprinkler system. Mr. McManus asked what 4 students living together would be called; Mr. Howland said it would be permitted use.

Mr. Sullivan asked if he has a house with a sprinkler system, what is the cap control that prevents putting a lot of people in it? Mr. Howland said technically a lodging house caps out at 16, but the cap you would hit would be the 200 square footage requirement; also check on egress, and parking would become a problem as well. He said that is something the Board will have to work with, but if you are forming a cap, have a good solid rationale for why. Mr. Kelley said it sounds as if members of the State Legislature do not like what Durham is doing. Mr. Howland said they understood your intent but thought your tool was too broad and tangled with people who are not students.

Mr. Howland said all college towns are struggling with how to define student housing, how to control it, and how to make sure we have an adequate supply. He said it would be better to approach student housing in a Statewide, thoughtful way. Also, UNH is not sitting at the table with us. He said we are defining student housing and saying this is where it is and show there is enough. Mr. McManus said UNH is already the most expensive state university in the country, with exorbitant housing costs as well. Mr. Howland said the housing we need right now is impossible to build and we need the opportunity to build that to meet other needs than undergraduate student housing.

Chair Rasmussen said the 3-unrelated rule is the blunt weapon that effectively forced out all our workforce housing, and this allows workforce housing to potentially come back into areas where student housing is not allowed. Mr. Sullivan said the PO District is the only buffer zone that still exists between student housing and families, and he does not want to create nuisance properties along that PO area. Chair Rasmussen said PO is already 80%/90% student housing. Vice-Chair

Tobias said it is also professionally managed. Mr. McManus said there is a big development in ORLI; Chair Rasmussen said that it was discussed and the decision was made to leave it as non-conforming and leave it out. Councilor Friedrichs said you can expand up to 50% with non-conforming use.

Mr. Behrendt clarified that presently our standard is a maximum 3-unrelated in a dwelling unit, which applies in all 4 residential zones and 5 core commercial zones, but not Research Industrial Zone; this change would remove that and the new standard would be that Student Housing would be allowed only in 4 core commercial zones: CB, PO, CH, and Courthouse, 1 or more units with 5 or more full-time undergraduate students. Mr. Howland said it is unlikely there will be a mix of graduate and undergraduate students.

Chair Rasmussen said though the Board has many things to work through simultaneously, he felt this should be brought forward for a decision on whether to move this to the head of the list as it has a much tighter clock on it. Vice-Chair Tobias agreed it should be first; Ms. Naumann Gaillat said she needs more clarification and discussion first; Mr. Sullivan said they should work on it and move it up. Board agreed to insert "full-time" into the definition of Student Rental.

Mr. Sullivan said without a cap or control, we are setting up a community dynamic that will result in discontent in buffer neighborhoods. Councilor Friedrichs said they are already in place in Durham, and are creating a hostile community environment, which explains the move to professional management or on-site supervision. Vice-Chair Tobias recommended the Town have better access to property owners. Mr. Kelley suggested adding a clause requiring licensing of property owners; Chair Rasmussen said that is not allowed because the Town made an agreement with Durham Homeowners Association 20 years ago. Ms. Naumann Gaillat said she is concerned about the dramatic shift and asked if there was something more in the middle.

**Mark Henderson** said he is a local landlord and feels there are no longer student behavioral issues in Durham and Student Housing is about to die, leaving landlords strapped for the next 5-10 years, and we will be coming to the Town for abatements. He said he does not understand where the Board is going with this because it is really not affecting anything. If you take student housing out of CBD, deal with it under current zoning; if you go to 5 or more unrelated it will help some people go to 4-unrelated; labeling Student Housing as "undergraduate students" could be a nightmare.

Mr. Henderson said we landlords will be coming to the Town for abatements because we are no longer realizing the numbers we are being taxed on currently: numbers are down, money is down, students are down. He said it is a sobering situation for everyone now with vacancies in downtown, and all we are doing is restricting more. He said the Planning Board and the Town Council should look at things differently and decide what they can do to make things better.

Mr. Kelley said the Planning Board is trying to deal with this, but we cannot get more student rentals into anyone's apartments. Mr. Henderson said the Planning Board could start changing zoning to make downtown more vibrant, not just for student housing, and said the Town is going in the wrong direction and there are bigger issues now than 3-unrelated. Vice-Chair Tobias said the Board is trying to create more housing that is non-student centered and non-single family, and we hit this wall every time. Mr. Henderson said he has been in Durham 30 years and there is not a better time for this town to approach developers.

Mr. McManus said student housing has been an issue for a long time and the Board recognizes it needs to be addressed; the Planning Board will be somewhat easy; it will be public comment that will be challenging. He said there is a model student development in ORLI and asked why the Board was not considering ORLI. Councilor Friedrichs said it might make sense for the Board not to recreate what they already have and not be expanding uses at this time. The Board discussed related issues further and moved on to the draft document.

Chair Rasmussen said the definition has been reworked, and under Note 4 we need to put: "Student rentals are allowed in any legal single-family residence, duplex residence" in place of dwelling units. Councilor Friedrichs did not think Note 4 needed to be included at all. Chair Rasmussen said the definition includes everything with no restriction here in terms of size of unit. Mr. Behrendt asked to delete #4 and say "Student rental refers to the occupancy of 1 or more dwelling units"; single-family, duplex, multi-family are types of structures, and it would be allowed in any structure in the zone.

Ms. Naumann Gaillat said she would like clarification on what happens in the rest of the zones as student housing is going down, however, general affordable housing in other zones was a big factor and something she would like to discuss. Chair Rasmussen said on questions re general dimensional standards and square footage: if we want something stricter than Fire Code, we will need to put in general dimensions standards. Councilor Grant said it would be best to use Fire Code but should point to it here and maybe address parking. Councilor Friedrichs said ze would anticipate pushback from residents on that because of the density downtown.

Peyton McManus said when reading other towns when they make changes in the zoning ordinance itself, there is a link back to what is redacted or changed, and said he finds it difficult to roll back all the levers that were adjusted over the years to make change; a process for how we make the information available.

Chair Rasmussen said the whole idea of whether or not you are related is being removed from zoning. Councilor Grant said you could say "single dwelling" and leave out family, then reference the Fire Code. Mr. Behrendt said he would provide a clean draft for the next meeting.

**XII. Historic District Ordinance Zoning Amendment – Purview of HDC.** Review of changes to the Historic District Overlay District proposed by the Historic District Commission pertaining

to purview for tree removal and minor structures. Recommended action: Set public hearing date.

Chair Rasmussen asked the Board if there were any issues or they should set the Public Hearing. Councilor Grant asked if the HDC already has oversight over people's trees. Mr. Behrendt said they do, and this will make it easier; they have purview over any healthy tree greater than 12 inches in diameter; Rich Reine is a skilled forester so there is no need to go to HDC and he can make the call. Mr. Behrendt said for "removal of a healthy tree", delete the word healthy.

Chair Rasmussen set the Public Hearing for Historic District Ordinance Zoning Amendment – Purview of HDC for December 11, 2024.

Board agreed to hold PUD discussion for next meeting. Chair Rasmussen said the Downtown Zoning Subcommittee has a meeting scheduled for November 20, 2024 at 2:00 pm.

**XIV. Review of Minutes (new):** September 25, 2024; October 9, 2024

Meeting Minutes of September 25, 2024

Mr. Sullivan said on page 2, line 25, "muggy peat" should be *muddy peat*.

***Chair Rasmussen MOVED to accept the meeting minutes of September 25, 2024 as amended; SECONDED by Vice-Chair Tobias; APPROVED: 5-0 with 2 abstentions, Motion carries.***

Meeting Minutes of October 9, 2024

***Chair Rasmussen MOVED to accept the meeting minutes of October 9, 2024; SECONDED by Peyton McManus; APPROVED: 5-0 with 2 abstentions, Motion carries.***

**XV. Adjournment**

***Vice-Chair Tobias MOVED to adjourn the Planning Board meeting of November 13, 2024; SECONDED by Peyton McManus; APPROVED: 7-0, Motion carries.***

Chair Rasmussen adjourned the meeting at 9:18 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker  
Durham Planning Board