

*These minutes were approved at the June 26, 2024 meeting.*

**TOWN OF DURHAM  
DURHAM PLANNING BOARD  
WORKSHOP**

**Wednesday, May 29, 2024**

**Town Council Chambers, Durham Town Hall  
7:00 pm**

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

**MEMBERS ABSENT:** Peyton McManus

**ALSO PRESENT:** Town Planner Michael Behrendt, via Zoom

**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 Robert Sullivan for the vacant seat, Erika Naumann Gaillat for Peyton McManus, and Heather Grant as Council Rep.

**III. Approval of Agenda**

***Vice-Chair Tobias MOVED to approve the Agenda for May 29, 2024 as written; SECONDED by Tom DeCapo; APPROVED 6-0, Motion carries.***

**IV. Lot Line Adjustment – 33 Back River Road and Lot in Madbury.** Application for Extension to Record Documents submitted by Lisa Beaudoin

Chair Rasmussen said Lisa Beaudoin is not in attendance; documents were prepared but lawyers thought they had until end of May to submit instead of end of April.

Mr. Behrendt said this is just the applicant meeting their conditions before they record documents and finalize the lot line adjustment; gives more time for attorney to submit draft deed to our department. Chair Rasmussen said June 30, 2024 is the new deadline date.

***Chair Rasmussen MOVED that the Planning Board approve the extension as written in our packet; SECONDED by Tom DeCapo; APPROVED 6-0, Motion carries.***

**V. Workforce Housing Discussion.** Discussion with Ryan Pope, Dover Housing Navigator, about Dover's approach to workforce housing and projects in Dover.

Ryan Pope said he is the Housing Navigator for the City of Dover, one of 5 new positions created through Invest NH Program using a portion of ARPA money set aside. He said he is Vice President of Workforce Housing Coalition and Vice President of Fair Trade in Kennebunk, ME moving homeless people into housing.

Mr. Pope said the City of Dover is 50/50 renters/homeowners, with average age of 36.2 years and getting younger. The city is experiencing a cost-of-living crisis in housing with 1-BR apartments ranging \$1,700-\$1,950, 2-BR apartments \$2,300-\$2,400, and average income of residents in Strafford County \$52,000; spending well over half their income on housing with some people making 60%-80% of median income per HUD rates. The City of Dover wants to maintain its residents and vibrancy by providing units at an affordable metric.

Richard Kelley arrived at the Planning Board Meeting at 7:12 pm.

Mr. Pope said they took HUD fair-market rent rates, calculated yearly, and are looking at 40% of market rates with deed restrictions in perpetuity, the metric changes with inflation, no stipulation made as to who can live there, and trust to the developer to negotiate affordability through density; density is key as well as having existing infrastructure. People are concentrated in the downtown core for walkability and access to transit options, using our Transfer of Development Rights Ordinance.

Mr. Pope said the Ordinance is an overly complicated and cumbersome tool in its true form, and as a municipality we have tweaked it substantially. It is an effort to focus development where there is existing infrastructure and capacity for development in exchange for conservation of areas we do not want to develop. Dover has a pay-per-unit structure allowing developers to purchase units from the Conservation Commission with a fee tied to the cost of conserving land.

For the Cottages at Back River Road, all 44 units are deed restricted at HUD Fair-Market metric in perpetuity with restriction recorded with parcel at Registry of Deeds as means of enforcement; HUD fair-market rates can never be exceeded. Dover does not have a workforce housing ordinance per se and uses this mechanism applied broadly throughout the city on a context basis, focused on decreasing urban sprawl and on infrastructure. Pay-per-unit structure is zero dollars for a unit above and beyond allowed density if deed-restricted at HUD fair market; the Randolph's have 44 1-BR cottages all priced in perpetuity at \$1,582 rental for this year.

Mr. Pope said another 7.79-acre project just off Bellamy Road zoned in Rural/Residential, uses some rentals, some sales, some size-restricted, and ended up with 31 total units with 13 single-family residences, all size restricted at 1,400 sq ft; cost of size-restricted unit is one-half that of a non-size-restricted unit; preserved an already existing duplex on site and built four 4-unit town homes in

back of lot at HUD fair-market in perpetuity; home ownership, rentals at market rate, and rentals at HUD fair-market rent with mix of incomes and housing stocks; get to see a lot of creativity from developers and get a lot of buy-in.

Mr. Pope said this developer is working on another project on Old Rochester Road with 64 units; Increased density allows them to make the project buildable, finding a balance between affordability and profitability. He said they do not have the mechanism yet to key in affordable homes for purchase and are looking to modify the affordability ordinance, trying to balance the need of developers to make money with our need for affordable housing.

Vice-Chair Tobias said with Transfer of Development Rights, the Conservation Commission would like to conserve land and developers would like to build properties, so you build an incentive for increased density. Mr. Pope said with affordability component the fee is \$0 which does nothing for the Conservation Commission. He said \$2.7 million has been raised in TDR fees and hundreds of acres put into permanent conservation over the last 3 years.

Mr. Sullivan asked if the TDR comes from an RSA somewhere; Mr. Pope said it is one of the land use techniques modified significantly and has worked in our community. Chair Rasmussen said RSA is rather vague and leaves a lot to the creativity of a local community. Mr. Kelley said it is RSA 170-27.2. Ms. Naumann Gaillat asked about breakdown regarding number of bedrooms; Mr. Pope said there are a lot of 1-BRs so far but definitely a need for 2-BR and 3-BR with developer allowed to determine the number.

Mr. Behrendt said the Dover Ordinance is fascinating, offering density bonuses for affordable housing and waiving the fee; the general price-per-unit a developer would pay to buy a unit in the core area or preserve land in outlying areas. Mr. Pope said price is currently \$15,000 per additional unit unrestricted: 1,400 sq ft is \$7,500 and HUD fair-market is zero dollars. Also, none of these projects required a variance process, a nice way to concentrate development where it makes sense in order to preserve the environment where development is not wanted.

Mr. DeCapo asked about not having specific requirements as to the nature of inhabitants and only basing on price. Mr. Pope said they fluctuate with the market and rent is fixed to a metric constantly changing; keeps things in proportion with next to no municipal oversight. Councilor Grant asked about an area one Route 108 with several properties having older homes and bigger lots; Mr. Pope said a lot of those properties were merged by the municipality due to common ownership, but the State decided that was no longer valid and many lots were reduced to original size. He said in places like that with infrastructure, density can be absorbed; Dover also allows a property to have 2 ADUs if one is priced at HUD fair market rate, except in our Rural Zone.

Mr. Behrendt asked about incentives for developers and how to make a workforce housing project happen. Mr. Pope said it comes down to give and take between a developer and the municipality, finding a balance of what incentives your community is willing to offer, balanced with factors like

cost of development. He said in both cases of 100% HUD Fair Market the developer was allowed to build to the point of profitability, where it worked on site plan and met all requisite setbacks, and was willing to apply the discretionary increase units; the base zoning is followed but we have tools to modify it, and it takes trust in the developer.

Chair Rasmussen asked if there is a limit to how many TDRs can go into a lot, and Mr. Pope said not currently. Ms. Naumann Gaillat asked where these conversations take place. Mr. Pope said conversation starts with city staff, then talk with developers about planning, policies available, tools for increased density; developers come back with a mock-up, submitted to technical review process to determine what has to happen for changes before planning board submission as a complete packet; planning board determines whether excess units are justified.

Mr. Sullivan asked if the Dover community expressed any fears that seemed in opposition that lessened over time. Mr. Pope said with the Randolphs there were questions about what is affordable and who is going to live there, but because the town washed their hands of who would live there, abutters have since walked through and seen the value of the development. He said Dover also has 79-E projects and they have the right to inspect the leases but take no part in selection of tenants themselves. Vice-Chair Tobias said in essence you are building denser units so you can create more units total in a smaller footprint.

Mr. Behrendt asked what if in future someone wanted to convert the rental units to condos and sell them. Mr. Pope said that would be a hard no until deed restrictions were lifted on those rental units in discussion with city attorney. Mr. Sullivan asked about consideration of higher building structures; Mr. Pope said it would depend on the zone, with height in central business district set at 5 stories, and said developers can get an extra story if priced at HUD fair market rates.

**VI. Appointment of Planning Board members to other Boards and Commissions.**

**Boards & Commissions Appointments for 2024-2025:**

*Agricultural Commission – Tom DeCapo*

*Conservation Commission – Richard Kelley*

*Energy Committee – Emily Friedrichs*

*Historic District Commission – Sally Tobias*

*Housing Task Force – Paul Rasmussen*

*Integrated Waste Management Advisory Committee – Paul Rasmussen*

*Minor Site Committee – Rob Sullivan*

*Technical Review Group – Rob Sullivan*

*Traffic Safety Committee – Peyton McManus*

*Emily Friedrichs arrived at the Planning Board Meeting at 7:59 pm.*

**VII. Review of Prior Year and Priorities for Upcoming Year.**

The Board reviewed the Town Planner's list of goals and priorities. Councilor Friedrichs asked about Planned Unit Development (PUD). Mr. Behrendt said it has been drafted and is waiting on UNH input; the PUD Ordinance is tailored to something like the West Edge, a large-scale, mixed-use development that needs its own zoning; Workforce Housing is more specific and needs its own ordinance. He said PUD is usually used in outlying rural suburban areas, for 20-100-acre parcels with a developer who wants to do something challenging but needs the flexibility of an ordinance.

Chair Rasmussen asked if the Town Council finished their goals for the year; Councilor Grant said they are hoping to be done on June 3<sup>rd</sup> meeting. Councilor Friedrichs said the Global Covenant of Mayors is striving to reduce our carbon footprint by 42.5% by 2030; Energy Committee is asking all committees and departments to think about how to contribute to that goal; UNH Sustainability Fellow is working on updates to climate reporting and a Climate Action Plan. Chair Rasmussen said he would first need to know where the numbers are coming from and how they are measured to ensure goals are attained.

Mr. Sullivan said one of the keys to energy consumption is the built environment and the role of the Planning Board is to make sure the built environment is sustainable and has the right infrastructure. Chair Rasmussen said building more energy efficiently drives up costs. Mr. Kelley said you can redeem costs at the same time by waiving the building permit fee as an incentive. He said you can also give density bonuses for building smart.

#### **VIII. Discussion of Planning Board Issues and Procedures.**

Chair Rasmussen said one issue would be more focus on energy and the carbon footprint. Mr. Kelley brought up the issue that the Planning Board currently does not have any business in front of them, no development or redevelopment occurring in Durham and found that concerning. Chair Rasmussen said he sees that as an issue and an opportunity, giving the Board plenty of time to go through and evaluate zoning.

Ms. Naumann Gaillat brought up the issue of convincing everyone of a projects' validity and said the process was tedious and almost specific to Durham, and the town should continue to keep an atmosphere of openness. Ms. Tobias said the Housing Task Force is working on the housing amendment and what building incentives could be provided, as there are only 2 areas for workforce housing overlay districts.

Chair Rasmussen said one of the best spots for workforce housing is a large brick building on the corner of Main and Newmarket/Dover Road, as an historic renovation; Historical District Grants are available for workforce housing. Mr. DeCapo said the goal is to identify incentives for energy efficiency and for development the Board wants to promote. Councilor Grant said it is very important that the Board really look at their documents and processes and simplify them as much as possible. Vice-Chair Tobias said the process is lengthy with a conceptual design, a preliminary

design, and a site plan. Chair Rasmussen said you are describing the Subdivision Regulations which keep getting pushed further off.

Chair Rasmussen agreed with Mr. DeCapo that the Board has the goal of identifying incentives for appropriate things they want to incorporate and asked everyone to email a list of incentives to Mr. Behrendt to start putting them together. Mr. DeCapo asked if they should include the priorities to incentivize or what we think should be used as incentives; Chair Rasmussen said both.

The Board discussed the central business district: Mr. Kelley said Durham's CBD is very limited and small in comparison to Central Avenue in Dover and the mixed-use occurring along there, with Route 108 a major transportation corridor. Chair Rasmussen said the true RA zones abutting the CBD do not belong there and the areas should be in transition to something more appropriate. He said the advantage of West Edge is UNH is giving a property to allow us to have a downtown extension. Vice-Chair Tobias said Durham's downtown is focused on students and lacks the vibrancy needed.

**IX. Workforce Housing Ordinance.** Continued discussion of proposed Workforce Housing Ordinance.

Chair Rasmussen asked that the Board go through enough of Mr. Behrendt's notes so that he could begin working on a draft ordinance; the Board started where they left off:

**10. Percent Workforce Housing**

Chair Rasmussen said the ordinance does not have to require 100% workforce housing to get 100% workforce housing, and proposed 50% for flexibility to allow a variety of housing. Mr. Behrendt said he would not go that low and said the whole ordinance is a great density that is a special allowance; he proposed 75%. Vice-Chair Tobias agreed they should be getting as much workforce housing as they can. Chair Rasmussen asked Mr. Behrendt to get the size of the lot for the 64-unit project being developed in Dover at 100% workforce housing.

Mr. Behrendt reiterated that he would not go below 75% considering the major changes being made to the Zoning Ordinance allowing great density and multi-family in RC, and did not think 50% was in balance. Councilor Friedrichs said having a more mixed society is healthier and said ze supported 60% or lower. Vice-Chair Tobias said there would be a mix of people with all workforce housing with a good mix of incomes and said this is not low-income housing. Ms. Naumann Gaillat said she felt 75% would still be a good mix for a neighborhood. Councilor Grant said it is the mix of housing types that will help the development be diverse.

Board members offered percentages and agreed to a placeholder of 65% Workforce Housing.

**11. Housing Types**

Councilor Grant said the Board had a lot of conversation on rental vs sales at the last meeting. Vice-Chair Tobias said sales could also be duplexes or garden-style townhomes, not necessarily single-family. Mr. Behrendt said units for rental are set at HUD rates and will be kept at those affordable rates in perpetuity; with 65% rentals workforce housing, 35% can be market rate for sale or rental.

12. Perpetuity – Already discussed.

13. Income Threshold

Councilor Friedrichs said the Board should try to create more ownership opportunities and it makes sense to have an income threshold. Mr. DeCapo said he would argue for income threshold for the workforce portion and/or some requirement that it really is workforce housing. Councilor Friedrichs said ze would favor both a minimum and a maximum income threshold as well as a work requirement if the Town Attorney is comfortable with it. Chair Rasmussen said a maximum threshold does not keep retirees out.

Mr. Kelley said he sees the advantage of both programs and what is being proposed and would go along with it; Vice-Chair Tobias agreed as well as Councilor Grant. Mr. DeCapo said it is an obligation of property developers. Mr. Behrendt said this would be for the 65% workforce housing units where occupants must meet the rental requirements through their work, with responsibility of landlord to qualify them and making sure their work income covers the rent.

14. Fulltime Students/Source of Income

Chair Rasmussen said source of income for #13 resolves #14. Vice-Chair Tobias added that student work should cover rent with no guarantors.

15. Sustainability

Councilor Friedrichs said with energy costs a significant part of housing costs the Board could have some EV requirements and requirements for viable connectivity with a multi-use path. Mr. Kelley said the ordinance should look at and encourage various sustainability measures and the Board should look at incentives for that. Mr. Sullivan said it could simply be a list of smart things to do to incentivize developers. Ms. Naumann Gaillat said she agreed with the concept of giving more units but also giving breaks on taxes with children going to school.

16. Environmental Standards – All provisions apply.

17. Perimeters Buffers

Chair Rasmussen said a 200-ft buffer from roads is pretty huge. Councilor Friedrichs said ze is not convinced it is needed and said there are different ways to buffer. Chair Rasmussen said it should be whatever the side buffer is for the zone and should not be more than what the underlying zone requires; normal side and rear setbacks are 20 ft-25 ft. Mr. Kelley said they are putting in dense

development and felt the setback was warranted if just for peace and quiet. Chair Rasmussen said RC is 50 ft.

Mr. Behrendt said the development will be dense, and people are sensitive to “gateways” like Route 4 and are more comfortable with deep setbacks. He said the Board could set them wherever they want or to underlying zoning and set specific buffers to roads; could say buffers may be increased on per case basis. Chair Rasmussen asked that the Board circle back to this after looking at what properties are in the overlay district. Councilor Friedrichs said in the current Table of Dimensions the minimum setback is 15 ft to a maximum of 50 ft in any zone, except MUDOR with arterial streets up to 100 ft.

#### 18. Open Space

Chair Rasmussen said #17 and #18 could go together, with a large setback becoming your open space. Mr. Behrendt said in some ways these are similar to Conservation Subdivisions with larger parcels and a fair amount of development, including wetlands, shorelands, and other sensitive areas, and it is reasonable for development to be compact with important lands preserved. He said it should not be burdensome to have 50% of gross area as open space, as well as wetland and shoreland buffers, and an analysis would be done of optimal area to be preserved.

The Board discussed the percentage and agreed to 60% of gross acreage.

#### 19. Support Facilities

The Board discussed the idea of allowing non-residential uses within the development area. Mr. Kelley said it would depend on the size of the development. Chair Rasmussen said the property could be subdivided with an area carved out for a small store separately. Mr. Kelly agreed it was the safest way. Vice-Chair Tobias felt the only logical support facility is a childcare center for residents only; Mr. DeCapo disagreed with it being for residents only to keep it viable and integrate it into the community.

Chair Rasmussen suggested keeping it on the edge near the entrance for the commercial piece to be more viable and said anything open should be open to the public, unless the development is run by a Homeowners Association. Mr. Behrendt said if it is allowed in the underlying zone, it can be done anyway. He said any commercial establishment would only go in if it could be right on the main road, and they could specify no commercial activity within the site. Mr. Sullivan suggested putting it in as an option and let the market decide.

The Board discussed the location of a convenience store and agreed to do it internally; Mr. Behrendt recommended 200-ft setbacks. He said a daycare would be freestanding, as well as office if you require mixed use. Chair Rasmussen said it would probably not be worth doing; simplicity of the design will be key, and we are making it complicated. Mr. Behrendt said a store would not happen and it would be on Route 4.

20. Workforce Housing Statute

Mr. Behrendt said the Board is writing this ordinance as the town deems appropriate, different from State Statute. Vice-Chair Tobias added it would be at HUD fair market. Chair Rasmussen said the ordinance would need to specify building height and other zoning parameters.

21. Zoning Standards

Mr. Behrendt asked that the Board tentatively consider Office Research and said he would write that in.

22. Site Plan Review

Mr. Behrendt said the development would be reviewed under Site Plan Regulations, multi-family and any condos; single-family houses on their own lots would be reviewed under subdivision but not under conservation subdivision. He said he could have a very rough draft for the next meeting.

Chair Rasmussen said there will be an update of lot numbers to Historic District Ordinance, the Workforce Housing Draft, and Table of Uses as next zoning rewrite at the next meeting.

**X. Other Business**

**XI. Adjournment**

***Richard Kelley MOVED to adjourn the Planning Board Meeting; SECONDED by Tom DeCapo; APPROVED 7-0, Motion carries.***

Chair Rasmussen adjourned the meeting at 10:10 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker

Durham Planning Board