

AGENDA ITEM: _____

DATE: February 15, 2016

COUNCIL COMMUNICATION

INITIATED BY: The Historic District Commission with the assistance of
Town Planner Michael Behrendt

AGENDA ITEM: **CONTINUED DISCUSSION AND POSSIBLE TOWN COUNCIL ACTION
TO REFER A PROPOSED ORDINANCE AMENDING DURHAM'S
HISTORIC OVERLAY DISTRICT ZONING TO THE PLANNING
BOARD FOR REVIEW AND COMMENT.**

CC PREPARED BY: Jim Lawson

PRESENTED BY: Jim Lawson and Michael Behrendt

AGENDA DESCRIPTION:

This agenda item is to continue the review and to consider referring a Town Council initiated zoning amendment to the Planning Board. The amendment will modify the Chapters of Article XVII "Durham's Historic Overlay District." The Council held an initial discussion on the numerous changes in the proposed ordinance at the January 11, 2016 meeting, and the attached ordinance has been revised based on councilor feedback and further HDC review. Michael Behrendt will be joining the February 15th meeting and available to the council for questions. It is requested that the Town Council vote on referring the amendment to the Planning Board after this meeting or the first meeting in March.

There have been changes to the draft ordinance since the Council's initial review on January 11, 2016. The changes were the result of initial comments by Council Katrak and further review of the proposed sign ordinance after the 2015 U.S. Supreme Court decision in the matter of Reed v. Town of Gilbert. The following summarizes major changes incorporated into the attached draft Ordinance since January 11th:

- The proposed HDC temporary sign ordinance is deleted and the proposed ordinance refers to the sign standards in Article XXIII. Durham's Temporary Sign zoning will require review in light of the Reed v. Town of Gilbert decision.
- Section 175-95 requires site plan topological diagrams to be provided to the HDC, and allows the HDC to require a fixed elevation benchmark on elevation diagrams near, but not on the site, of large or more complex projects.
- Section 175-96:G allows freestanding signs when the HDC determines there is an appropriate location on the site and the freestanding sign is harmonious with the character of the district.

BACKGROUND

The purpose of the Historic Overlay District ("District") is to protect and preserve structures, places and properties that reflect elements of the cultural, social, economic and political heritage of the town while promoting the preservation, restoration, rehabilitation and adaptive reuse of structures (Durham Zoning Ordinance, Section 175-43).

The purpose set forth in the Ordinance remains consistent with the purposes outlined in the new Historic Resources chapter of the Master Plan adopted by the Planning Board on November 18, 2015. The proposed zoning amendments address some of the key conclusions and recommendation of the new Historic Resources chapter related to the District, including:

- Amending the ordinance relating to signs within the District and providing greater detail about appropriate signage.
- Removing unintended impediments to the rehabilitation of historic properties.
- Progress toward resolving the conflict between poorly maintained student housing and the preservation of historical resources in the District.

The District is shown in Figure 1 with Tax Maps and Lots specified in the Ordinance that have become outdated – one of the issues addressed in the proposed ordinance. Figure 2 shows the district with the current Tax Maps and Lot numbers, and the proposed Ordinance updates the lots accordingly.

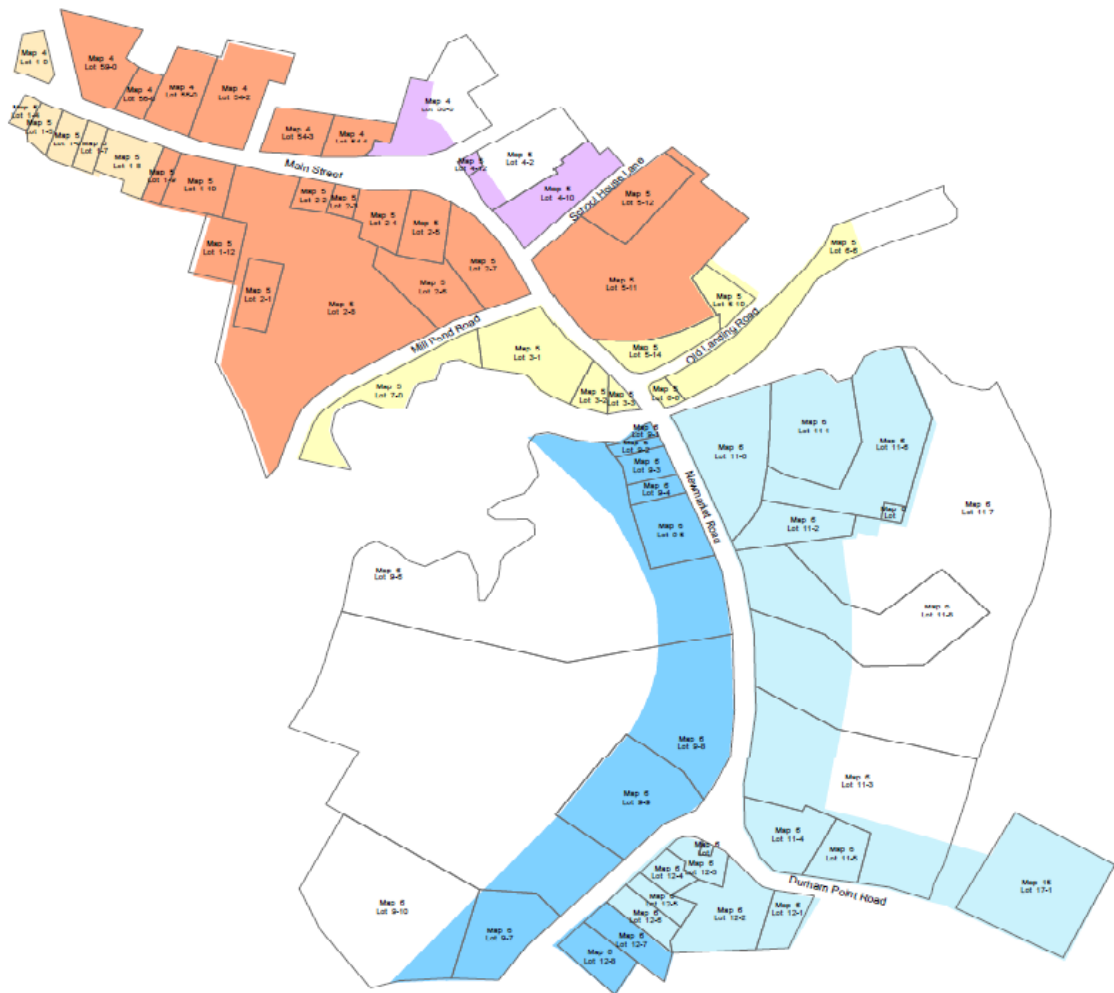


Figure 1 - Current Historic Overlay District map with outdated Tax Map and Lots

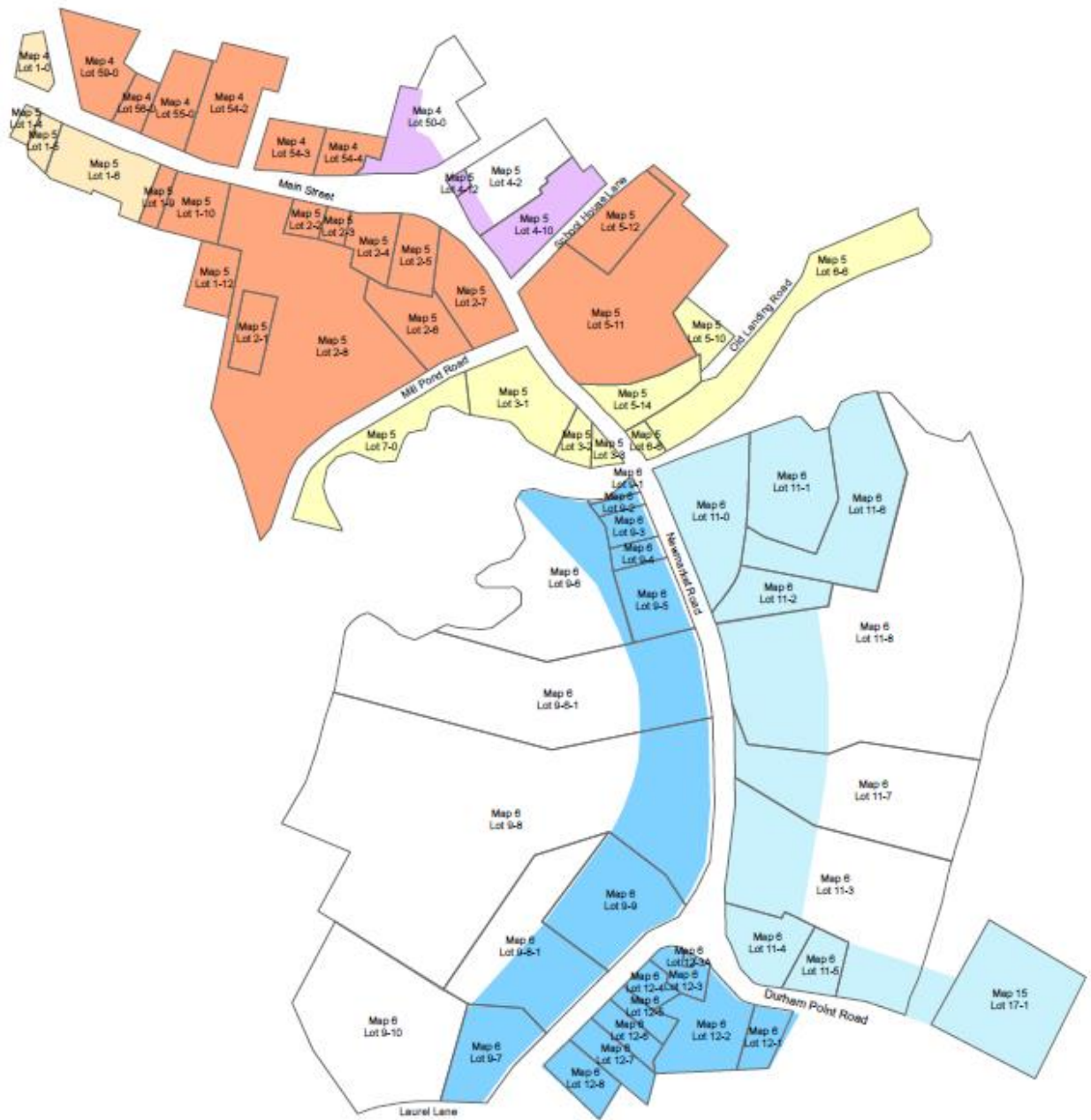


Figure 2 - Current Historic Overlay District map with correct Tax Map and Lots

During 2014 and 2015, the Historic Overlay District experienced unprecedented redevelopment with the Orion project at 25-35 Main Street and the Henderson project at the corner of Main Street and Madbury Road. While the efforts of the Historic District Commission, Planning Board and town staff ensured that the projects fulfilled the purpose of the District, they brought to light areas of the zoning that can be improved to benefit the town, its residents and District property owners. Some of these

improvements were identified by the Town Administrator in his Orion Project Review memo dated June 11, 2016. In addition, the HDC is recommending further zoning changes to: i) correct the delineation of the District, ii) clarify various parts of the zoning, iii) incorporate recommendations of the Historic Resources chapter, and iv) clarify and expand maintenance activities that may be undertaken in the District without the HDC's approval.

Town Planner Michael Behrendt was the primary author of the amendment using input and feedback from the HDC. Durham is fortunate that Mr. Behrendt was one of the primary authors of the current Historic Overlay District zoning, and has extensive experience with historic district zoning in other communities.

The following is a high level summary *of only some of the changes* incorporated into the amendment. Councilors need to review the entire amendment with its numerous corrections, clarifications and changes. Any changes should be discussed and incorporated into the amendment before it is referred to the Planning Board.

Examples of Zoning clarifications

- Clarifies the Historic District Commission and Heritage Commission roles and the procedures for the combined commissions. (175-91)
- Clarifies that the HDC's authority is only within the Historic Overlay District. (175-91:B)
- Clarifies that plans approved by the HDC and subsequently altered by the Planning Board or Zone Board of Adjustment must be brought back to the HDC for approval. (175-95:A-2)

Examples of Zoning corrections

- The delineation of the District is, in part, by Tax Map and Lot. The Overlay District is not being expanded, however, the Tax Maps and Lots need to be corrected to reflect changes in the District that have occurred such as the combination of lots. (175-93:B)

Examples of Zoning changes clarifying and expanding maintenance activity

- Property owners can replace or repair roofs using a similar material and color without HDC approval. (175-94:A-5 and 175-94:B-9)
- Painting or staining of buildings (other than a single family house) with the same color will not require HDC approval. (175-94:B-7)
- Colors and paints applied to a single family house will not require HDC approval. (175-94:B-7)
- The changes that can be made without HDC approval when not visible from a public street are expanded. (175-94:B-4)
- The use of alternate materials, as pre-approved by the HDC, can be used for maintenance without further HDC approval. (175-94:B-2)

Examples of review and process changes

- Measurements, including building heights, must be provided in a clear manner on plans. (175-95:A-2)
- Revised plans are required to clearly show changes from previous plans. (175-95:A-2)
- For projects involving demolition, the HDC may hold an additional public hearing after the start of construction to allow for concerns to be identified. (175-95:A-2)
- The HDC may require an architect to oversee construction of the elements and details that are part of the HDC's approval. (175-95:C-5)

Example of new requirements

- The ordinance section for signage in the District is added as recommended by the new Historic Resources chapter of the Master Plan to provide clearer guidance on sign design, size, materials, colors, typefaces and illumination. (175-96:G)

LEGAL AUTHORITY:

RSA 674:16, RSA 675:2, and 175-14 of the Durham Zoning Ordinance

LEGAL OPINION: n/a

FINANCIAL DETAILS: n/a

SUGGESTED ACTION OR RECOMMENDATIONS:

Suggested Motion:

The Durham Town Council hereby refers to the Durham Planning Board for its review and study the proposed ordinance (attached) to amend the Chapters of Article XVII "Durham Historic Overlay District".