



Town Of Durham

Planning Board Minutes

Fire Station Meeting Room, 6:30 pm

July 10, 2024

1. Roll Call & Determination of a Quorum

In attendance: John Talbot (Chair), Allan Purinton, Brian Lanoie, Marc Derr and George Theborge (Town Planner).

Absent (excused): Juliet Caplinger (Vice Chair), Tyler Hutchison and Anne Torregrossa

Guest(s): David Berringer

2. Amendments to the Agenda: None

3. Informational Exchange on Non-Agenda Items:

a) Town officials (George Theborge, Town Planner)

- Working on arrangements for who will be responsible for the PB meeting minutes.
- The Selectboard appointed a Steering Committee for the community facilities vision planning.
- Resource Protection working group met and started initial work, next scheduled meeting will be July 31, 2024.
- The Selectboard sent out an invitation to the Historic District Commission and the Code Enforcement Officer, Town Planner and Planning Board Chair to look at the potential overhaul of the historic preservation regulations. Meeting will be held on August 13, 2024.
- The Town Planner will attend the Maine Municipal Association Planning Board and Board of Appeals Workshop on July 30, 2024 in Freeport.

b) Residents: None

c) Non-Residents: None

4. New Business:

a.) Maintenance Agreement Review for a Back Lot Access Easement at 470 Auburn-Pownal Road, Map 9, Lot 26

Applicant – David Beringer

- The applicant would like to create two lots out of our one large lot, one of those lots to be a back lot and will have an easement for access.
- Working on a road to meet Town requirements – it has been surveyed and developed a maintenance agreement for the road.

Town Planner – George Theborge

- Like many Maine communities, Durham allows the development of “back lots” that lack frontage on a road. To create the needed 300 feet of frontage, an easement or deeded strip 50 feet in width is extended back into the parent parcel to create required road frontage for the back lot.
- If that access serves two or more homes, a maintenance agreement is required to clarify the individual property owner rights of access and responsibilities for maintenance.
- Under Section 5.7, the Code Officer has responsibility and sole authority to approve back lots and their access if a single back lot is involved.
- Under Section 5.23, the Planning Board has responsibility and sole authority to approve road maintenance agreements.
- The specific requirements for road maintenance agreements are as follows:
 1. Statement of ownership interests;
 2. Statement that subsequent lots that are created must be parties to the maintenance agreement;
 3. Acknowledgement that the Town has no responsibility for maintenance;
 4. Statement that responsibilities transfer to all subsequent owners of the lots with Planning Board notification;
 5. Requirement that all deeds for the lots reference the maintenance agreement;
 6. If the private way is an extension of an existing road, an offer must be made for participation by the existing lot owners;
 7. Authority to place liens for non-payment of maintenance costs; and,
 8. Requirement that the maintenance agreement be recorded and no building permits issued for new lots until that happens.
- An application for Planning Board review of the maintenance agreement is posted separately on the Planning Board calendar web page. A draft maintenance agreement and survey plan of the back lot access are posted with the application.
- The maintenance agreement appears to meet all requirements of Section 5.27 except for the requirement that all deeds reference the maintenance agreement.
- A simple motion to approve the maintenance agreement per the Board’s review of the documents and the Ordinance provisions of Section 5.23 will provide a sufficient record of the decision that will be included in a notice of decision.

John Talbot motioned to approve the maintenance agreement for back lot access easement at 470 Auburn-Pownal Road, Map 9, Lot 26 with the condition that there be a requirement that all Deeds reference the maintenance agreement. **Marc Derr seconded**; motion carried 4 – 0.

b.) Conditional Use Review for Expansion of a Home Day Care at 706 Hallowell Road, Map 7, Lot 35

- The applicant seeks conditional use approval to expand an existing home daycare with 12 children to a daycare facility with 20.
- The project includes construction of a building addition and expanded septic system and parking. A separate site plan review application will be required under Section 8.2 of the

Land Use Ordinance for the construction. That review will look at the design of the building, parking, lighting, and landscaping.

- The conditional use review focuses on the proposed use of the property for non-residential purposes. The current home daycare with its limit of 12 children is a permitted use. The proposed expansion pushes it into the conditional use category.
- Under Article 7, the Board must review the application and supporting documents to determine that the proposed business expansion at the project site will not cause significant problems per the following criteria:
 1. Public Health Impacts;
 2. Traffic Safety Impacts;
 3. Public Safety Impacts;
 4. Environmental Impacts;
 5. Scale & Intensity of Use; and,
 6. Noise and Hours of Operation.
- In addition to these reviews of potential negative impacts, the Board must also determine that the applicant has right, title, or interest in the property and has the financial and technical ability to meet the Ordinance requirements.
- The Land Use Ordinance currently has no specific standards for daycare centers.
- To assist the Board in reaching a decision on the conditional use application, the packet includes a set of draft findings and conclusions.

Applicant – Andrea Nash

- Currently have a licensed home daycare for 12 children, which is the maximum for a home daycare and a home business on my property.
- The applicant would like to build an addition onto my home to extend my capacity to 20 children.

Section 7.4 CONDITIONAL USE REVIEW CRITERIA – Kids Next Door Daycare

A. Review Criteria: Before it issues a conditional use permit, the Planning Board shall find, a matter of fact, that the proposed use meets the following criteria:

- 1. Public Health Impacts:** The proposed use will not create unsanitary or unhealthful conditions by reason of sewage disposal, emissions to the air or water, or other aspects of its design or operation.

Findings:

- a. The applicant stated in their application that increased waste for the expansion per the 8 new children will be accounted for with a new septic design that accommodates the additional use.
- b. The applicant submitted a subsurface wastewater disposal system design showing that the expansion would meet the Maine Subsurface Wastewater Rules.
- c. The Board received public comment questioning whether the well should be considered a public water supply requiring a 400-foot separation between the septic system and well.

- d. The Board received public comment on the adequacy of bathroom facilities for the daycare center.
- e. The applicant has stated that there will be a maximum of 24 people using the well.

Motion made by Brian Lanoie: The applicant has satisfied a reasonable burden of proof of compliance with the criterion for public health impacts.

Motion seconded by Marc Derr: Votes to approve: 4 Votes to deny: 0

2. **Traffic Safety Impacts:** The proposed use will not create unsafe vehicular or pedestrian traffic conditions when added to existing and foreseeable traffic in its vicinity.

Findings:

- a. The applicant stated that there will be an increase in traffic during drop off and pick up times of 4 to 6 vehicles.
- b. The applicant proposed widening the driveway to add parking spaces and prevent vehicles from backing onto Hallowell Rd. A concept was submitted showing the location of the proposed driveway and parking expansion.
- c. The project requires site plan review for the building and parking expansion and the parking and access will need to meet the safety and parking standards of Article 8.
- d. Sight distances on Hallowell Rd. have not been measured, but appear to be adequate looking north and south on Hallowell Rd. The project engineer can measure and establish safe sight distances in the site plan review application.
- e. Hallowell Rd. is a State route with adequate capacity to accommodate the increase in traffic.
- f. The applicant stated that a parking policy section will be added to the daycare policy handbook so that patrons will know the expectation around maintaining a safe and efficient traffic pattern.
- g. The Board received public comment questioning the safety of the existing driveway access, pointing to potential conflicts with vehicles dropping off children at the nearby elementary school, and available safe sight distances for the entrance.

Motion made by Allan Purinton: The applicant has satisfied a reasonable burden of proof of compliance with the criterion for traffic safety impacts.

Motion seconded by Marc Derr: Votes to approve: 4 Votes to deny: 0

3. **Public Safety Impacts:** The proposed use will not create public safety problems which would be substantially different from those created by existing uses in the neighborhood or require a substantially greater degree of municipal services than existing uses in the neighborhood.

Findings:

- a. The applicant stated that due to the size of the proposed capacity increase, this project will not create any public safety problems.
- b. The applicant stated the daycare building and the sign for the daycare will not be visible from the road. The property will still appear to be a single-family residence.
- c. The applicant stated that the proposed use will not require any additional degree of municipal services than the current use.

- d. The Board received public comment on the potential difficulty of access to the site by emergency vehicles.
- e. The Board received public comment on the need for fencing to protect the safety of children at the daycare.
- f. The applicant stated that the backyard is fenced in.

Motion made by Marc Derr: The applicant has satisfied a reasonable burden of proof of compliance with the criterion for public safety impacts.

Motion seconded by Brian Lanoie: Votes to approve: 4 Votes to deny: 0

- 4. Environmental Impacts:** The proposed use will not result in sedimentation or erosion, or have an adverse effect on water supplies.

Findings:

- a. The applicant stated that the project will not change the landscape of the property as it currently exists.
- b. The applicant stated that there is a watershed on the opposite side of the property that will not be impacted by the project. The small stream along the northern side of the property is far from where construction will take place.
- c. The applicant provided a screen shot of the web site GIS zoning coverage showing Resource Protection along a watercourse just north of the property boundary.
- d. The Board received public comment questioning whether the septic system expansion meets required setbacks from the Resource Protection District.
- e. The site plan should include Resource Protection boundary.
- f. Setback is required from the Resource Protection District.

Motion made by Allan Purinton: The applicant has satisfied a reasonable burden of proof of compliance with the criterion for environmental impacts.

Motion seconded by Marc Derr: Votes to approve: 4 Votes to deny: 0

- 5. Scale & Intensity of Use:** The proposed use will be compatible with existing uses in the neighborhood, with respect to physical size, visual impact, intensity of use, and proximity to other structures.

Findings:

- a. The applicant stated that the project is designed such that it will not be visible to the community as it will be built on the back of the existing structure.
- b. The surrounding uses are residential with the exception of the Durham Community School, which is very similar to the proposed use only on a much larger scale.
- c. There is fencing around the yard to ensure that everyone stays safe.
- d. The new parking area will be aesthetically landscaped to look like a large driveway instead of a parking lot.
- e. There will not be any signage visible from the road so that the daycare remains discrete and private.

- f. Any additional noise from children playing outside will continue to be masked by the dense tree line around the property- and blend in with the sound of children playing at the Durham Community School.
- g. The applicant submitted a photograph of the home and proposed driveway expansion as documentation.
- h. The Board received public input arguing that the proposed daycare center is out of scale with surrounding residential properties.

Motion made by Brian Lanoie: The applicant has satisfied a reasonable burden of proof of compliance with the criterion for scale and intensity of use.

Motion seconded by John Talbot: Votes to approve: 4 Votes to deny: 0

- 6. **Noise & Hours of Operation:** The proposed use will be compatible with existing uses in the neighborhood, with respect to the generation of noise and hours of operation.

Findings:

- a. The applicant stated that the business will be open from 7:00 am to 4:30 pm, Monday through Friday, the same hours as the existing business.
- b. The proposed use may add a small amount of noise as children play in the outdoor space of the property, but it is expected to be a minor increase.
- c. Sounds of children playing at the Durham Community School can already be heard in this area of Hallowell Road.

Motion made by Marc Derr: The applicant has satisfied a reasonable burden of proof of compliance with the criterion for noise & hours of operation.

Motion seconded by Allan Purinton: Votes to approve: 4 Votes to deny: 0

- 7. **Right, Title, or Interest:** The applicant has sufficient right, title or interest in the site of the proposed use to be able to carry out the proposed use.

Findings:

- a. The applicant is the owner of the property.

Motion made by Allan Purinton: The applicant has satisfied a reasonable burden of proof of compliance with the criterion for right, title, or interest.

Motion seconded by Marc Derr: Votes to approve: 4 Votes to deny: 0

- 8. **Financial & Technical Ability:** The applicant has the financial and technical ability to meet the standards of this Section and to comply with any conditions imposed by the Planning Board pursuant to subsection 7.5.

Findings:

- a. The project is estimated to cost \$250,000, including the new septic system and parking plan.
- b. The applicant has applied for a loan to cover the cost of the project through CEI and is currently working with an underwriter on that application.
- c. The applicant has also applied for grant money through the Maine State Childcare Infrastructure Grant Program which is distributed by CEI.
- d. The Board received public comment questioning the financial and technical ability of the applicant.

Motion made by Allan Purinton: The applicant has satisfied a reasonable burden of proof of compliance with the criterion for financial & technical ability.

Motion seconded by Marc Derr: Votes to approve: 4 Votes to deny: 0

B. Compliance with Land Use Ordinance Standards: The proposed conditional use shall meet all applicable criteria and design or performance standards in all articles of the Land Use Ordinance.

1. Article 5 - Performance Standards: The Project conforms with the following applicable standards for specific uses and issues:

- a. The Board received public comment on the application not meeting the definition of a home-based business, that the 20 vehicle trips per day would be exceeded, and that no more than 30 percent of the floor area can be dedicated to the nonresidential use.

Motion made by Brian Lanoie: The proposed conditional use meets all applicable criteria and design or performance articles in all articles of the Land Use Ordinance.

Motion seconded by Marc Derr: Votes to approve: 4 Votes to deny: 0

Section 7.5 CONDITIONS OF APPROVAL

A. Planning Board Approval Conditions: Upon consideration of the criteria listed in subsection 7.4, the Planning Board may by majority vote attach such conditions, in addition to those required by other provisions of this Ordinance, as it finds necessary to ensure compliance with those criteria and all other applicable requirements of this Ordinance. Violation of any of those conditions shall be a violation of this Ordinance.

Motion made by John Talbot : To apply the following conditions of approval to the permit for conditional use.

Motion seconded by Marc Derr : Votes to approve: 4 Votes to deny: 0

- 1. The project is to be constructed in accordance with the plans, maps, diagrams, specifications, textual submissions, and testimony presented by the applicant and approved by the Board.
- 2. The applicant shall apply for Planning Board site plan review of the detailed design of the parking, lighting, and landscaping.

PLANNING BOARD DECISION

Motion made by John Talbot: The Planning Board grants conditional use approval of the expansion of Kids Next Door Daycare subject to the adopted conditions of approval.

Motion seconded by Marc Derr: Votes to approve: 4 Votes to deny: 0

Date of Decision: July 10, 2024

5. Other Business:

a. Planning Board Discussion of Land Use Policy Issues for Next Town Meeting

- Based on the priorities set by the Select Board on May 14th, the Planning Board will be working with the Conservation Commission on revisions to the Resource Protection District.
- The Planning Board will also be looking at needed regulations to effectively respond to proposals to develop battery energy storage systems in Durham.
- In addition to collaborating with the Planning Board on Resource Protection amendments, the Conservation Commission will consider continuing work on solar energy systems locations now that the open space plan application was not approved for grant funding.
- The Select Board met with the Historic District Commission on June 25th to discuss the initiatives presented by the Commission at the joint workshop held in May (name change, program overhaul, funding for historic buildings survey). The Select Board will schedule a follow-up workshop in August to compare draft amendments prepared by the Town Planner with an alternative proposal of the Historic District Commission.
- The working group of Planning Board and Conservation Commission members met on June 18 to review a draft report showing needed changes to the Resource Protection District based on new Beginning with Habitat data.
- The working group also reviewed three options for granting relief to property owners for expansions of existing buildings in Resource Protection without a board review process and asked the Town Planner for detailed analysis of all potentially affected properties.
- The working group will review the detailed research on buildings in the RP District on July 31st.
- The Board of Appeals will be kept in the loop on possible amendments to the Resource Protection District to avoid needless appeals.
- General Code has commenced work on the digital codification of the Durham Land Use Ordinance. They will begin by reformatting the Ordinance into the standard template used by their software.
- Once the new template is completed, the Ordinance will be reviewed for errors and inconsistencies. Simple changes will be incorporated into a draft update that may be available for enactment at the April 2025 Town Meeting.
- The General Code Review will also include a list of more complicated policy issues that will need to be addressed with options for doing so.
- With General Code's assistance, the Town Planner was able to gain access to their database of more than 3000 ordinances from across the country.
- A search for ordinances related to battery energy storage systems produced 738 references.

- Of the most recent 21 local government actions, 90% were moratoria or outright prohibitions out of concerns for fire safety hazards associated with commercial battery storage facilities.
- The packet contains an overview of ordinances related to battery energy storage systems prepared by the Pacific Northwest National Laboratory for the U.S. Department of Energy.
- The packet also contains a draft report from the New York Interstate Agency Fire Safety Working Group containing 12 recommendations for addressing fire safety in battery energy storage systems.
- Based on this research, the Town Planner recommends seeking legal input on available options to address the scale and intensity of battery energy storage systems and the limited capacity of Durham to effectively regulate such intense commercial and industrial uses.
- Options for response could include:
 1. De facto prohibition per the conditional use criteria for public safety, public services, and scale and intensity of use;
 2. Express prohibition of battery energy storage systems in the Ordinance;
 3. Draft regulations to address design and fire safety issues and industry supplied resources to service such facilities; and/or,
 4. A temporary moratorium to develop a response.

The Board is leaning toward two of the four options, those being to consider an outright prohibition to present to the public as an option or a moratorium to do an in-depth study of this issue. In the meantime the Board will look at the conditional use ability to regulate these things as an interim step.

6. Adjourn:

Allan Purinton motioned to adjourn the meeting. **Marc Derr seconded**; motion carried 4 – 0.
Meeting adjourned at 8:38 pm.