



# Town Of Durham

## Planning Board Minutes

Town Offices, 6:30 pm  
November 2, 2022

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### 1. Roll Call & Determination of a Quorum

**In attendance:** John Talbot (Chair), Juliet Caplinger (Vice Chair), Allan Purinton, Tyler Hutchison and George Thebarga (Town Planner).

**Absent:** Ron Williams and Anne Torregrossa

**Guests:** Jonah Fertig (Applicant for Celebration Tree Farm)  
Charles Burnham (Applicant for Deer Creek Project)

### 2. Amendments to the Agenda: None

### 3. Acceptance of the Minutes of prior meeting (September 7, 2022)

Allan Purinton moves to accept the minutes from October 5, 2022 meeting as presented. Tyler Hutchison seconds; the Board approves 4-0.

### 4. Informational Exchange on Non-Agenda Items:

#### a.) Town Officials

- The Town Planner will meet with the Board of Selectmen on November 8<sup>th</sup> to discuss Ordinance Amendment Process for the next Town Meeting.
- Invitation to the board to participate in the Planning Board Training, conducted by the Maine Municipal Association, December 13, 2022, Zoom Meeting from 4pm to 7pm.

#### b.) Residents – None

#### c.) Non-residents – None

### 5. Continuing Business

- #### a.) Public Hearing on Conditional Use Application of Celebration Tree Farm for Camping, Public Workshops, & Events at 125 Bowie Hill Road, Map 10, Lot 43. (Public Comment will not be taken)

Town Planner Comments:

- The Planning Board conducted a substantive review of the application on August 3, 2022.
- The application was tabled on September 7<sup>th</sup> at the applicant's request.
- The Planning Board conducted a site walk at 5pm on October 5<sup>th</sup>.
- The Planning Board continued substantive review of the application at the October 5<sup>th</sup> meeting.
- The Board tabled the application to allow the applicant to prepare formal parking and lighting plans meeting the requirements of Article 8.
- The Board also directed the applicant to seek permits or input from the Road Commissioner to verify sight distances from the driveway entrances onto Bowie Hill Road.
- The applicant submitted a computer-generated diagram of the proposed parking showing thirty parking spaces with dimensions of 9.5 feet by 18 feet with an aisle width of 24 feet and an overall parking area width of 60 feet to the left of the main entrance.
- The applicant submitted a computer-generated diagram of a second, overflow parking area showing eighteen parking spaces with dimensions of 9 feet by 18 feet with aisle widths of 24 feet and 46 feet on either side of the tree farm entrance.
- The applicant submitted computer-generated lighting diagrams for both parking areas showing solar lights at the entrances, wall mounted fixtures on the garage, barn, and yurt, and a line of lights along one side of the two parking areas.
- No specifications were provided for the lighting plans indicating fixtures to be used or illumination levels to be provided.
- The Road Commissioner determined that the sight distances on Bowie Hill Road meet the Ordinance standard of 305 feet for a 35-mph speed limit except for the main parking area access drive looking east, where vegetation must be removed to achieve the specified sight distance and a mailbox must be moved.
- The Town Planner drafted findings of fact and conditions of approval for the Board.

After the agenda packet was posted the applicant submitted additional information. An email was submitted giving more details on their plans for lighting. And they responded to the draft conditions of approval that the Town Planner had provided to the Board requesting some modifications to those.

### **Jonah Fertig (Applicant)**

Notes on the parking map:

- After the site walk visit, we decided to take out a section of the garden, to allow us the 60 feet.

Board Comments:

- Asked about the driveway with the minimal concern from the Road Commissioner (rotary driveway).

Applicant's response: We need to remove vegetation between the two (2) driveways and past that driveway and identify some trees and shrubs that we can take out and move the mailbox to the west side of the driveway.

- Asked about how far from the road the parking spaces are, was not labeled on the drawings. 20 feet – Ordinance 25 feet
- After discussion with the Road Commissioner, the Board was concerned with not having gravel in the parking area. Muddy conditions, flowing onto Bowie Hill Road, possible solution, having a section of stone at the entrance of the driveway.

### **Conditional Use Review 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 applicants propose to install a leach field to handle wastewater from the proposed sink and outdoor shower.
- b.** The applicants propose to install composting toilet outhouses and will compost all human waste.

Allan Purinton moves that the applicant has satisfied a reasonable burden of proof of compliance with the criterion for public health impacts. Juliet Caplinger seconds, 4-0 approve.

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 applicants submitted a parking diagram showing a parking lot for 34 cars with parking space and aisle width dimensions meeting the standards of Section 8.6.E to the west of the main entrance parallel to Bowie Hill Road with an existing forested buffer between the parking area and public roadway.
- b. The applicants submitted an overflow parking diagram for 18 cars accessed by the easterly entrance that meets the parking space and aisle width dimensional requirements of Section 8.6.E.
- c. The applicants submitted lighting plans for the main parking and overflow parking areas showing locations of solar lights.
- d. The applicants have testified that the substrate of the proposed parking areas is adequate to support the weight of vehicles without construction of gravel parking areas and access aisle.
- e. The Road Commissioner has reviewed the existing site entrances and determined that the easterly entrance (overflow parking) meets the minimum sight distance requirement for a 35-mph speed limit (305 ft) of Section 1.4 of Appendix 1 of the Land Use Ordinance (Street Standards).
- f. The Road Commissioner has determined that the westerly entrance (main entrance) does not meet the minimum sight distance requirement for a 35-mph speed limit (305 ft.) unless existing vegetation is cleared in the road right of way and the mailbox is relocated.
- g. A condition of approval is needed to ensure that once trees are removed, the increased sight distance will be maintained by the applicants.

**Board Discussion:**

Board asked to change trees to plant material on letter (g). The board also requested that once the changes to the vegetation have been made, a review from the Road Commissioner be done to make sure that it meets the requirement.

Juliet motions that the applicant will not create unsafe vehicular or pedestrian traffic conditions when added to existing foreseeable traffic in its vicinity. Tyler seconds, 4 - 0 approve.

- 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 applicants have testified that they will limit maximum site occupancy during the annual craft fair to 100. The occupancy limits will be monitored and enforced by staff.
- b. The applicants have testified that they will post no parking signs on Bowie Hill Road. Staff will enforce the no parking areas.
- c. The applicants have testified that they will work with the Fire Chief and Code Enforcement Officer to address life safety code requirements for public assembly.

**Board Discussion:**

Strike out site occupancy on (3a) during the Annual Craft Fair.

Allan motions that the applicant has satisfied a reasonable burden of proof of compliance with the criterion for public safety impacts. Juliet seconds, 4 - 0 approve.

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

**Findings:**

- a. The applicants testified that the substrate of proposed access aisles and parking spaces are adequate to support vehicles. No construction will be involved in those areas which are currently vegetated (per site walk observation) and show no signs of sedimentation or erosion.
- b. Water requirements for the water and wastewater services will be minimal.

- c. The applicants have testified that all wastewater and composting will comply with public health standards.

**Board Discussion:**

Board recommended adding (d) - that all facilities have been moved outside of the Resource Protection District.

Tyler motions that the applicant has satisfied a reasonable burden of proof of compliance with the criterion for environmental impacts. Juliet seconds, 4 – 0 approve.

- 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 applicants are requesting conditional use approval to expand activities to include a yurt and camper and community events.
- b. The applicants have testified that they will limit maximum site occupancy for the annual craft fair to 100 and will enforce those attendance limits.
- c. Up to 2 (two) monthly events will occur between April and October and will be limited to 50.
- d. No weddings will be hosted.

**Board Discussion:**

Board discussed the adding of more than two (2) monthly events. Applicant stated, originally it was going to be just two monthly events (amplified music) and have other events and workshops that can occur with limited acoustic or recorded music.

Town Planner – There needs to be clarification of events. The applicant is trying to find the right balance between flexibility and also being able to have the clarity with the code enforcement officer.

What is the intensity for weekly workshops, monthly events and the annual craft fair event?

The applicant proposed:

- One (1) Annual Event up to 100 people.
- Two (2) Monthly Events with amplification up to 50 people.
- One (1) Monthly Event without amplification up to 50 people.
- Unlimited Events/Workshops under 25 people without amplification.

Town Planner summarized the applicant's proposal: Applicant is proposing an unlimited number of weekly events with a maximum occupancy of 25. Three monthly events with the maximum occupancy of 50, two of which can have amplified music and one annual event up to 100 people.

Tyler would like to propose that the Board add a condition to maintain the vegetative buffer between the main parking lot and the road in hopes of keeping the headlights down in that parking lot.

Allan moves that the applicant has satisfied a reasonable burden of proof of compliance with the criterion for scale and intensity of use. Juliet seconds, 3 – 1 approve.

- 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. There will be a 9 pm cutoff for all events.
- b. Only recorded or acoustic music, no amplified bands.

**Board Discussion:**

The music cutoff for all events is 9pm to 9am. Amplified music will be allowed only twice a month, then all other times recorded or acoustic music is permitted on a limited basis at lower volumes per the event limits.

Allan moves that the applicant has satisfied a reasonable burden of proof of compliance with the criterion for noise and hours of operation. Juliet seconds, 3 – 1 approve.

- 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 applicants submitted a copy of a warranty deed conveying the property from Brian and Patricia Milliken to Jonah Thayer Fertig and Elizabeth A. Armentino-Burd.
- b. The Durham 2022 Tax Commitment lists Jonah T. Fertig and Elizabeth A. Armentino-Burd as the owners of record for Map 10, Lot 43.

Juliet motions that the applicant has satisfied a reasonable burden of proof of compliance with the criterion for Right, Title or Interest, Tyler seconds, 4 – 0 approve.

- 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 applicants have submitted a cost estimate for improvements of \$47,500.
- b. The applicants have stated that they have \$20,000 in available cash and an equity line of credit of \$55,000 available and may apply for an additional loan from the Cooperative Fund of the Northeast.
- c. The applicants have stated that they have prepared 5-year cash flow projections showing that the project is financially sustainable.

Tyler moves that the applicant has satisfied a reasonable burden of proof of compliance with the criterion for financial & technical ability. Juliet seconds, 3 – 1 approve.

**Section 7.5 Conditions of Approval  
Site Plan Approval Findings of Fact – Celebration Tree Farm**

- 1. No more than one annual event with a maximum occupancy of 100.
- 2. No more than two monthly events with a maximum occupancy of 50.
- 3. Recorded and acoustic music only, no amplified bands.
- 4. Cut-off time for all events is 9pm to 9am.



5. “No parking” signs to be posted on Bowie Hill Road during all events.
6. Vegetation in the right of way of Bowie Hill Road to be removed and clearing maintained to achieve a sight distance of 305 feet or greater for the westerly main entrance driveway.

**Board Discussion:**

Add number 7 – Road Commissioner to verify a site distance once vegetation has been removed. This condition must be met prior to events.

Add number 8 – Maintain buffer between road and parking.

Add number 9 – Lighting of parking lots, limit to 11pm.

Juliet motions to apply the following conditions of approval to the permit for conditional use. Allan seconds, 4 – 0 approve.

**6. New Business:**

**a.) Completeness Review of Final Plan Application for the Deer Creek Crossing Subdivision Map 7, Lot 32A**

**Town Planner Notes:**

- The Planning Board granted preliminary approval of this 13-Lot cluster subdivision on September 7, 2022.
- The applicant submitted a final plan application on October 19, 2022.
- The Town Planner has conducted a review for completeness and identified the following items not included in the application:
  - a. Section 6.8.C.2 – DEP approval of the new stream crossing and removal of the existing stream crossing
  - b. Section 6.8.C.3 – ACOE approval of the new stream crossing
  - c. Section 6.8.C.4 – MDOT permit for the road entrance
  - d. Section 6.8.C.5 – Review comments by MHPC for historic resources
  - e. Section 6.8.D – Written approval of the street name by the Street Addressing Officer
  - f. Section 6.9.B.2 – Assessor’s map & lot number of the subject parcel in the Title Block
  - g. Section 6.9.B.16 – Proposed method of financial performance guarantee meeting Town Attorney requirements
  - h. Section 6.9.B.17 – Letter of commitment from lending institution for performance guarantee

- The Town Planner has notified the applicant of some of these deficiencies and the Board may receive additional submissions to address them.
- Pages 1 through 3 of the Final Plan Checklist contain the submissions needed for a determination of complete application.
- Under Section 6.8.F., the Planning Board must decide on completeness within 30 days of receipt of the application.
- The Town Planner has included draft letters of complete and incomplete application for the Board's consideration.

The code enforcement officer sent an email to the Town Planner and stated that there are no current violations that the proposed subdivision is not affected by any of the aquifer protection standards of the ordinance and finally that the proposed street name of Deer Creek Crossing is acceptable from an addressing standpoint.

The Town Planner received a memo from Will Haskell, the Town's Engineering Peer Reviewer, one relevant finding – Army Corps of Engineer approval is required for the Stream Crossing and that can be a very time-consuming process.

The applicant is still waiting for the DOT permit (the recent culvert failure in town has shifted priorities). The applicant has asked for a storm water plan and they sent that off to their engineer to review it.

#### **Board Discussion:**

Under the review for completeness, the Board found that items (a), (b) and (c) were incomplete. The applicant submitted items (d) and (e). Item (f) is still outstanding and items (g) and (h) were addressed by the applicant.

Juliet motions that the application is incomplete based on the four things that John (Talbot) just listed. Allan seconds, 4 – 0 motion carries.

#### **7. Other Business:**

- a) **Review of draft citizen survey on possible Durham responses to Maine's new affordable housing law requiring zoning changes to increase housing density (Public comment will not be taken)**

The survey will be posted on the Town's Website, Newsblast, and the Town's Facebook page. The Town Planner suggests keeping the survey up until January, giving the townspeople maximum opportunity to take the survey.

John Talbot motions to approve the draft survey, with a condition of a trial run, Juliet seconds. 4 - 0 motion carries.

#### **8. Adjourn**

The meeting adjourns at 8:27 pm. (4 – 0 Approve)