

**DURHAM PLANNING BOARD MINUTES
WEDNESDAY, JUNE 12, 2002 – 7:00 P.M.
DURHAM TOWN HALL – TOWN COUNCIL CHAMBERS**

MEMBERS PRESENT: Dave Pease, Chair; Suzanne Loder, Annmarie Harris, Town Council Representative; Amanda Merrill; Neil Wylie; David W. Watt; Rachel Rouillard, Vice-Chair; Julian Smith, Alternate; W. Arthur Grant, Alternate Town Council Representative

MEMBERS ABSENT: Tracy Wood, Alternate

OTHERS PRESENT: Jim Campbell, Town Planner; Interested Members of the Public

Chair Pease called the meeting to order at 7:02 PM.

Jennie Berry, Administrative Assistant, welcomed Darlene Dumais as the new Minutes Secretary for the Town.

I. Approval of Agenda

Chair Pease noted that Board members had before them the agenda, which was included in their packets, and also a revised agenda. He explained since the agenda that was sent to the Board members had already been posted, he would go through the process of amending that agenda to the revised version, and did so as follows:

- I. Approval of the Agenda
- II. Report of the Planner
- III. Public Hearing on petition submitted by Public Service of New Hampshire
- IV. Deliberation on an application for a site plan review Phase II submitted by Spruce Wood Realty
- V. Deliberation on request to amend the Spruce Wood Planned Unit Development CUP
- VI. Continued deliberation on an application for boundary line adjustment submitted by Smithfield Construction.
- VII. Continued deliberation on application for site plan review submitted by Smithfield Construction
- VIII. Deliberation on an amended application for a CUP submitted by MJS Engineering on behalf of EPB Properties and Fall Line Properties
- IX. Deliberation on an amended application for Site Plan Review submitted by MJS Engineering on behalf of EPB Properties and Fall Line Properties
- X. Continued public hearing on application for a CUP submitted by MJS Engineering on behalf of Charles and Susan Gonet
- XI. Continued public hearing on application for a subdivision submitted by MJS Engineering on behalf of Charles and Susan Gonet
- XII. Discussion on request for Zoning Ordinance change submitted by David Garvey

David Watt MOVED to approve the agenda, as amended. Neil Wylie SECONDED the motion and it PASSED unanimously.

Julian Smith, Alternate, arrived @ meeting 7:12 pm.

II. Report of the Planner

Jim Campbell reported on the following:

- The Town of Durham received a Brownfields grant from DES through the Environmental Protection Agency for \$80,000.00 to complete studies and to start the Remedial Action Plan on the Craig Supply property.
- The State Liquor Commission has granted a license to Cumberland Farms. Jim is still attempting to set up a meeting with Aidan Moore of the Liquor Commission. Planning Board members requested that a meeting be arranged to discuss further issues.
- He and Doug Bencks discussed issues relating to UNH and the Town. They will begin meeting regularly on the first Monday of each month. Doug Bencks will provide the Planning Board with a letter in response to questions that were raised during the Police Station application, which is still an inactive project. He and Doug Bencks discussed the Main Street Enhancement project from Pettee Brook to the railroad station, in which a CMAQ fund has been received and is being split with UNH. They also discussed the intersection of College Road and Main Street and the new fueling station, in which a CMAQ grant was also given.
- He has one new application to bring to the next meeting for a Pork Chop Subdivision of the Sawyer Property off Durham Point Road.
- There will be a presentation from Randall Arendt on the Conservation Subdivisions on Thursday, June 13, 2002 at the Dover Middle School.
- The Capital Improvement Plan (CIP) should be coming to the Board in the near future.
- A special meeting of the Town Council has been scheduled for June 24, 2002 in order to continue the public hearing on the Allen Farm CUP/PUD.
- Through the Planning and Environmental Quality Legislative Policy Committee, the Town has submitted a proposal to tighten the regulations under 674:54, Governmental Uses. The Town submitted a version requesting the Legislature to look into requiring the UNH system fall into site plan under Subdivision review.

III. Public Hearing on a petition submitted by Public Service of New Hampshire, Rochester, New Hampshire, to remove trees along Durham Point Road which is considered a scenic road in accordance with RSA 231:158.

Suzanne Loder MOVED to OPEN the public hearing. The motion was SECONDED by Amanda and PASSED unanimously.

Brian Salas introduced himself as an Arborist for the Public Service of New Hampshire. He also introduced Gary Howard, contractor for Asplundh Tree Service, who would be performing the tree removal.

Mr. Salas said that PSNH is requesting tree removal along Durham Point Road to improve reliability over the area and that tree related outages are the reason why reliability is poor in that area. He said the homeowners along those lines are in favor of the project and have no reservations.

Ed Valena, Durham Point Road, asked what area would actually be affected by the tree removal. Mr. Howard responded that it covers from Sunnyside Drive to just past the Durham Solid Waste Facility.

Bill Hall, Smith Park Lane, asked what restrictions were being placed on cutting. Mr. Salas replied that unhealthy and hazardous trees would be removed first, then PSNH would remove any other trees at the request of the customers.

Annmarie Harris asked if there would be tree markings designating the trees slated for removal. Mr. Salas replied there would be red markings on specified trees for elimination. He said some of the lumber from tree cutting would be donated to Durham Point resident, Craig Welch, to offset the restoration of a historic barn on that property.

Neil Wylie asked about landowners needing to give written permission on this project and he was advised by Mr. Salas that all communications were done verbally beforehand.

Chair Pease asked Mr. Salas if the trees to be cut down were on Town property. Mr. Salas responded in the affirmative. He said he thought the Town Zoning Ordinance was clear that the Town has jurisdiction over all the trees in the area.

Chair Pease said that RSA 231:158, subsection 4, states the Town does not have jurisdiction over trees on private property unless the trees have been acquired by the municipality. Requirement of the Statute is that prior written consent of the Planning Board be presented. Mr. Salas added that all trees on Town property are essentially the ones being removed, ranging between 50-60 different species and sizes which are marked according to the Director's Plan.

Bill Hall pointed out that residents in the Durham Point Road area would not be able to manage their daily routines if a power loss would occur due to the tree cutting.

Chair Pease stated there was no opposition to the necessary cutting of trees. However, he had difficulty giving any written consent until the Board knew exactly what it was consenting to.

Suzanne Loder suggested conducting a site walk for the Board and residents to view the area where trees are to be removed before the Board made a decision.

Gary Howard said he would like to see the Town Arborist be actively involved with the tree cutting process.

Bill Hall addressed an issue discussed by Ed Valena and further commented that the Town has no Forest Management Plan for any of its properties with regards to the tree trimmings. He also suggested having Forester, Charlie Morina, look at all Town property for selective cutting.

Town Planner, Jim Campbell, stated the Town has a Tree Warden, Mike Lynch, Director of Public Works, but not an Arborist. He indicated that Tom Black, UNH Extension Services, could be used.

Annmarie Harris MOVED to close the Public Hearing, David Watt SECONDED the motion and it PASSED unanimously.

Suzanne Loder MOVED to approve to the request from Public Service Company of New Hampshire and its contractor, Asplundh Tree Service, to perform the tree removal on the portion of Durham Point Road for which it has applied, contingent upon the oversight of the Town Tree Warden and upon permission of the property owners. The Board also agreed to have the Planning Board Chair sign the letter to PSNH. Councilor Harris SECONDED the motion, and it PASSED unanimously.

- IV. Deliberation on an Application for a Site Plan Review Phase II**, submitted by Spruce Wood Realty Trust, c/o John Farrell, Gowdy & Farrell, Inc., Dover, NH, for an additional twenty-seven (27) dwelling units to be built in the Spruce Wood Development. The property is located at the intersection of Mill Road and Packers Falls Road, is shown on Tax Map 13, Lots 14-14 & 14-15, and is located in the Residence B Zoning District, as a Planned Unit Development.
- V. Deliberation on a Request to Amend the Spruce Wood Planned Unit Development Conditional Use Permit**, submitted by Spruce Wood Realty Trust, Durham, NH. The amendment to the 140-unit Planned Unit Development pertains to changes to the Phase II portion of the development. The property is located at Mill Road and Packers Falls Road, and is shown on Tax Map 13, Lots 14-13 , 14-14, 14-15, and 14-2, and is located in the Residence B Zoning District, with a Planned Unit Development designation.

These 2 deliberations were conducted jointly.

Arthur Grant noted that at the last meeting he recused himself from the vote at the table. He had asked the Town Administrator to consult with the Town Attorney regarding roles of the Alternate. He said the Town Attorney has advised that Alternates can participate in general discussions. However, when deliberations occur on specific actions the Board is to take on applications, Alternates should remain silent until they are designated to replace a regular Board member.

Jim Campbell added that he had a discussion with the Attorney and noted that Alternates can participate in discussions, but it is not a good idea for Alternates to be in deliberations or make motions.

Chair Pease read each of the thirteen conditions of approval for this project. The Board made the following changes to the Findings of Fact and Conditions of Approval:

- Change the title to “Findings of Fact and Conditions Recommended for Approval”.
- Change date to the revised master plan on page C1 to April 4, 2002 and eliminate the “and further revised on” language.
- Under the second bullet, the word “an” should be “a copy”. Change the word “Retirement” to “Realty”.
- Change the word “will” to “shall” in item #9 of the Conditions of Approval.

Neil Wyle MOVED to approve the draft Findings of Fact and Conditions Recommended for Approval, as amended. The motion was SECONDED by Suzanne Loder and PASSED unanimously.

Chair Pease stated that the Planning Board would refer the Recommend Conditions of Approval of The Revised Master Plan to the Town Council.

Chair Pease read the nine Findings of Fact and Conditions of Approval for the site plan review for Phase II.

Relative to Item #9 pertaining to the letter submitted by the applicant on follow-up questions that had been raised by Town Planner, Jim Campbell, Art Grant asked if the Board could have some explanation on the type of questions that the Planner had raised. Chair Pease replied it was follow-up to questions regarding area and density calculations.

The Board included a tenth Findings of Fact as follows:

Councilor Harris MOVED to approve the request for a waiver, as indicated in the applicant's letter to the Planning Board dated April 5, 2002, to allow the maximum building height to be increased to thirty-five feet pursuant to Chapter 175-26 of the Durham Zoning Ordinance. The motion was SECONDED by Rachel Rouillard and PASSED unanimously.

Regarding the Conditions of Approval, Chair Pease explained that conditions must be met prior to signature of approval on the site plan, which must be met within six months of the signing of the Findings of Fact and Conditions of Approval. If they are not met within that time, approval may be revoked. He said approval of the Phase II site plan is conditional upon the Town Council's approval of the amendment to the Conditional Use Permit.

Consensus of the Board was to allow nine (9) months for the conditions to be met.

David Watt MOVED to adopt the draft Findings of Fact and Conditions Recommended for Approval, as amended. Amanda Merrill SECONDED the motion, and it PASSED unanimously.

- VI. Continued Deliberation on an Application for Boundary Line Adjustment** submitted by Smithfield Construction, Portsmouth, New Hampshire. The properties involved are located on Edgewood Road, are shown on Tax Map 1, Lots 16-20, 16-21, 16-5 and 16-6 and are located in the Residence A Zoning District.
- VII. Continued Deliberation on an Application for Site Review** submitted by Smithfield Construction, Portsmouth, New Hampshire, for the purpose of constructing 12 elderly housing units. The properties involved are located at Edgewood Road, are shown on Tax Map 1, Lot 16-20 and 16-21 and are located in the Residence A Zoning District.

These 2 deliberations were conducted jointly.

Arthur Grant asked if the number of units could be listed on the project because the numbers had changed from the original request. Chair Pease replied there were changes made in the original request, but there were no reductions negotiated. He said the only change in density that the Board made was to deny an application for a waiver for three-lots to a driveway.

Rachel Rouillard recused herself from the deliberations because she is an abutter. Chair Pease declared that Julian Smith would be a voting member on this application.

Arthur Grant read from the March 1, 2002 Planning Board meeting minutes which explained the original description of the proposed number and types of units for this project.

Neil Wylie referred Board members to the minutes of March 29, 2002 detailing discussions of duplex lots in the Town.

Arthur Grant commented that he was absent from the meeting when Mr. Caldarola first presented the project. He noted that Board members had received a letter from a member of the community who said that Mr. Caldarola agreed to reduce the size of the development to preserve open space. Yet, the Board did not seem to have any documentation to that effect.

Jim Campbell noted the number of units as being 28 elderly units, 18 singles, 3 duplex (which is 6 units), totaling 52 units.

Joseph Caldarola, President of Smithfield Construction Company, Inc. went over the unit numbers and their history for the Board. He said that when the application was originally submitted, Smithfield had an entirely different plan that included age restrictions and a combination of duplex lots and single lots. They added up to 51 lots at that time. He explained what had been approved were lots 5, 6 and 7 which are the three big lots that have the elderly condominiums on them; and there are 28 elderly units on those lots. There are a total of 26 lots. He said that lots 1, 4, 20, 21, 23, 26 and 28 are over 35,000 square feet. Therefore, they qualify (if Smithfield Construction chooses) to build two-unit condominiums on these lots. He said the remaining 16 lots are less than 35,000 square feet, so they are single-family houses. He said that as a matter of practicality, Smithfield will be going to two-unit elderly condos wherever possible because that is what is selling.

Chair Pease said that the request before the Board for a boundary line adjustment is to take land from lots 5 & 6, which have more land than is required, and add it to lots 20 & 21 to create a parcel large enough for a 12-unit elderly restricted establishment.

Neil Wylie asked with land being taken from lots 5 & 6 in the original project, would there be enough open space left to meet the requirements. He also asked if there would be enough open space for a new lot. Jim Campbell replied that after looking at his calculations, lots 5 & 6 in their current existence, would have enough land space.

Chair Pease asked if the 24,000 square foot of open space is required for lots 5& 6, and new lots 20 & 21 under this application. Jim Campbell said that the open space should have already been calculated for lots 5 & 6 in the original application, and that open space should have been calculated on all of those lots. Mr. Caldarola explained that the open space for all 26 lots, except for one area, is untouched and nothing has been proposed and nothing to the corner of the creek has been impacted.

Jim Campbell commented that 30,000 square feet of open space is available according to the site plan with reference in Subdivision Regulations 4.03.

Arthur Grant expressed concerns regarding the boundary lines around the pond if there would be sufficient distance in terms of wetland setbacks. Jim Campbell replied that the Town hired NH Soils to recheck the soils classification and flag the wetlands in that area and had Smithfield Construction pay for the work. After that was completed, there was an attempt to survey those lots, which was never completed. He said on the new plan that was submitted, Mr. Caldarola put a 75-foot setback from the pond with the information available at the time

from the original survey. He said he could not verify whether or not that information is completely accurate. He said that DES does consider the pond as a very poorly drained area.

Arthur Grant asked if the 75-foot setback from a very poorly drained water area is the maximum that the State required. Jim Campbell stated that the minimum the Town Ordinance requires is a 50ft setback from poorly drained soils and 75-foot from very poorly drained soils.

In response to comments from Jim Campbell, Arthur Grant requested the Board discuss possibilities of moving lines back to 25-feet assuring minimizing and boundary implications.

Mr. Caldarola explained how close the structures come to the pond.

Annmarie Harris suggested reducing the project from 12 to 10 units, which would then make lots 7 & 9 single units not requiring large building envelopes. She said a concern of hers was if one occupant is required to be 55 years of age or older, then this project has the likelihood of generating children in an already overcrowded school system.

Suzanne Loder commented on increasing the age restriction from 55 to 62.

David Watt noted that in the report from the Town Planner, the Planner had urged the Board to separate the boundary line issues from the site plan issues. Jim Campbell said his reasoning was that if the Board was going to make a determination not to grant the boundary line adjustment, then the site plan was a moot point. However, if the Board was going to grant the boundary line adjustment it should do that first, then do the site plan. He followed up on Annmarie Harris' earlier comments about age restriction, saying that the Board could "request" that a requirement be age 55 or older, but cannot require it. However, in the future, the Board could change the ordinance and require that everyone be 55 or older.

Chair Pease said that he had spoken in opposition to the boundary line adjustment when this matter came before the Board a few months earlier. He said he regretted that the legal advice which was provided did not support the direction he had hoped to take. He did not feel that the argument he had against the boundary line adjustment was a viable argument at this point. He agreed with Dave Watt that the only real issues are the open space issues, and they appear to be satisfied.

Art Grant thought that the original premise taken by the Board members who were on the Board when the project was originally introduced, in writing the letter of denial, was correct and that the entire Board agreed on this point. He said he spent time looking in the files for any reference to negotiations, reduction in lots, etc. and could not find anything. However, there are past Board members and other people who recall such conversations, which are not in the minutes. He asked if anyone had reviewed the tapes of these past meetings. Chair Pease said there is an obscure piece in the minutes which is not terribly clear that relates to what Art Grant was referring to. He said the difficulty is, according to the attorney's advice, in order for the Board to have a viable basis to take denial action, there would need to be a verbal or written contract. He said he was on the Board at the time of the original application and there were no elements put in place that would have constituted a legal contract. His recollection was there was never a quid pro quo clear statement that Mr. Caldarola would reduce the number of units if the Board granted the wetlands crossings. Neil Wylie agreed with Dave Pease's memory on this matter, adding that there were no restrictions placed on the original approval, as was pointed out by the Town's attorney.

Jim Campbell reminded the Board members that Legal Council's Memorandum was privileged information and that a formal vote should take place to release information.

Jim Campbell read from a section of the June 2, 1999 minutes in which Vi McNeill had asked Mr. Caldarola if he would be willing to have fewer lots in exchange for making it a more livable subdivision. This was the only mention of reducing lots contained in the minutes. Art Grant said that Vi McNeill's comment was in reference to what was at that time 53 units. He indicated there was concern at that time over the number of 53 units and noted that the current request is higher than 53, which is what the abutters are objecting to. He said the abutters feel that the Board entered into an agreement and made concessions. He said at some point the Board must state this is the agreement that it felt was entered into.

Board members asked if the June 2, 1999 tape could be located for the Board to listen to.

David Watt MOVED to continue deliberations on this application to the next meeting . Suzanne Loder SECONDED the motion and it PASSED unanimously.

Chair Pease declared a 5-minute recess.

The meeting reconvened at 9:40pm.

VIII. Deliberation on an Amended Application for a Conditional Use Permit submitted by MJS Engineering, PC, Newmarket, NH, on behalf of EPB Properties, Inc., and Fall Line Properties, Inc., Portsmouth, NH, for the purpose of constructing a Planned Unit Development in the Limited Business District. The property is located on Main Street/Dover Road, is shown as Tax Map 4, Lots 50-0, 51-0, 52-0, and 53-0 and is in the Limited Business District.

IX. Deliberation on an Amended Application for Site Plan Review submitted by MJS Engineering, PC, Newmarket, NH, on behalf of EPB Properties, Inc., and Fall Line Properties, Inc., Portsmouth, NH, for the purpose of constructing a Planned Unit Development. The proposed area has been designed to support commercial units and multi-family housing units. The property is located on Main Street/Dover Road, is shown as Tax Map 4, Lots 50-0, 51-0, 52-0 and 53-0 and is in the Limited Business Zoning District.

Neil Wylie MOVED to continue deliberations on these two applications. The motion was, SECONDED by David Watt and PASSED unanimously.

Chair Pease opened the discussion of the issue of waiving the 20-acre minimum requirement for the Planning Unit Development.

David Watt MOVED to approve the waiver. Rachel Rouillard SECONDED the motion.

David Watt felt the Board should approve the waiver. He said the Master Plan and Zoning Rewrite Committee have contemplated mixed residential and commercial uses in that zone, and the Zoning Ordinance allows the Board power to make consistent decisions of addressing and approving the Master Plan.

Neil Wylie expressed reservations and said he would vote against the proposal of the waiver.

Suzanne Loder said that residential aspects to the site were in excess and she would vote against the waiver.

The motion to approve the waiver as amended PASSED 4-3 (David Watt, Rachel Rouillard, Amanda Merrill and Dave Pease voting in favor; Neil Wylie, Arthur Grant and Suzanne Loder voting against).

Chair Pease said the Board would move on with discussion of the standards of development.

Chair Pease felt the conditions for approval on residential, apartment, and commercial residential use, as proposed, would be compatible and harmoniously incorporated into the interior design.

Neil Wyle stated aesthetics of the project versus traffic patterns; the design being the concept of blending commercial space with multi unit housings concerning the elevations.

Chair Pease said from determinations made, the Board cannot be relieved from its obligations and the need to make justifications should be derived within the basis of compatibility and harmony. David Watt added that a ratio between the retail space and housing did not seem disastrous. He explained that it is a matter of management and what mitigates behaviors.

Suzanne Loder commented to the issues relating on the long-term status of development changes. She said a major issue of the neighborhood impacts with the internal compatibilities and the Conditional Use Permit on Planned Unit Development.

Jim Campbell stated the distinct differences between neighborhood impacts and permitted uses allowed.

Rachel Rouillard indicated the reality that promotes mixed uses with student housing. She said multiple types of people that live together enhance the fabric of the community.

Suzanne Loder discussed Commercial and Residential Zoning compatibilities to the downtown areas where it was a separate and compatible entity to neighborhood zones.

David Watt MOVED that the apartment use can derive justification, and that it will be compatibly and harmoniously incorporated into the unitary design of the Planned Unit Development. Amanda Merrill SECONDED the motion and it PASSED unanimously.

Board members addressed issues regarding to the ordinances and zoning codes contained in Durham Zoning Ordinance, Section 175-32.

Rachel Rouillard MOVED to continue deliberation to the next meeting. Neil Wyle SECONDED the motion and it PASSED unanimously.

- X. Continued Public Hearing on an Application for a Conditional Use Permit** submitted by MJS Engineering, PC, Newmarket, New Hampshire, on behalf of Charles & Susan Gonet, Durham, New Hampshire, and SGH Development Company, Inc., Newmarket, New Hampshire, for the purpose of constructing a Planned Unit Development in the Rural District. The property is located on Dame Road, is shown as Tax Map 19, Lots 1-2 and 4-0 and is in the Rural Zoning District

- XI. Continued Public Hearing on an Application for Subdivision** submitted by MJS Engineering, PC, Newmarket, New Hampshire, on behalf of Charles & Susan Gonet, Durham, New Hampshire, and SGH Development Company, Inc., Newmarket, New Hampshire, for the purpose of constructing a 10-lot Planned Unit Development. The property is located on Dame Road, is shown as Tax Map 19, Lots 1-2 and 4-0 and is in the Rural Zoning District.

These 2 applications were withdrawn at the request of the applicant.

- XII. Discussion on a Request for a Zoning Ordinance Change** submitted by David Garvey, Garvey & Company, Durham, New Hampshire.

This item was tabled until the June 26, 2002 meeting.

XIII. Other Business

- A. New Business:
- B. Old Business:
- C. Next meeting of the Board: **June 26, 2002**

There was not other business to come before the Board.

XIV. Approval of Minutes

March 6, 2002
March 27, 2002
April 10, 2002
May 15, 2002
May 22, 2002

This item was postponed until the June 26, 2002 meeting.

XV. Adjournment

Neil Wylie MOVED to adjourn. Rachel Rouillard SECONDED the motion, and it PASSED unanimously

The meeting adjourned at 10:50 PM

Dave Watt, Secretary
Durham Planning Board