

**These minutes were approved at the Wednesday, December 11, 2002 meeting
DURHAM PLANNING BOARD MINUTES
WEDNESDAY, NOVEMBER 13, 2002
OYSTER RIVER HIGH SCHOOL LIBRARY**

PRESENT:

***David Pease, Chair; Neil Wylie;
Amanda Merrill, Secretary;
Arthur Grant, Town Council;
Annmarie Harris, Town Council
Alternate; Rachel Rouillard***

MEMBERS ABSENT:

***David Watt, Vice Chair; Julian
Smith, Alternate; Suzanne Loder***

OTHERS PRESENT:

***Jim Campbell, Planner;
Bob Levesque, Town Engineer;
Interested members of the public***

MINUTE TAKER:

Michael Bornstein

Chair Pease called the meeting to order at 7:03 P.M.

I. Approval of the Agenda

***Arthur Grant MOVED to adopt the agenda. The motion was SECONDED by
Amanda Merrill.***

Chair Pease suggested the agenda be amended to begin item X. no later than 9:30 P.M.

***Arthur Grant MOVED to amend the motion to approve the agenda by including the
designation of 9:30 P.M. as the time to begin item X. The motion was SECONDED
by Amanda Merrill and was unanimously APPROVED.***

II. Report of the Planner

Jim Campbell reported on the following:

UNH is planning to have its Master Plan kickoff meeting on December 9, 2002 from 11:00 A.M.-1:00 P.M. Facilities for the Fire Department and UNH Police Department will be discussed during the Master Plan process. There is a UNH consensus that the Police Department will be housed in a new building but things are still up in the air as to the location of the Fire Department.

UNH will be starting renovations on Congreve Hall. Students will be moved to Mills Hall.

He has discussed the proposed loop road Southern and Northern Tunnels, the CNG Fueling Station and the Craig Supply property with the UNH Planner.

The NH Department of Transportation will be having an informational scoping meeting at Oyster River High School on November 19, 2002 at 7:00 P.M. The project, intended for Route 108, will include four-foot bike shoulders from the Oyster River Bridge to Newmarket.

Nick Isaak has filed papers to become an alternate Board member to fill the vacancy left by Tracy Wood. Another person has picked up papers but has not returned them.

Last Thursday, he attended a Municipal Planning Organization Technical Advisory Committee meeting, which he is the Chair. The Committee discussed long-range transportation plans.

III. Public Hearing to consider two amendments to the Planning Board Rules of Procedure, two amendments to the Subdivision Regulations and two amendments to the Site Plan Regulations

Chair Pease stated the changes would make it so that the acceptance process would be scheduled only at the Board's first meeting of the month. He stated the time the Board has to act on the applications would change from 30 days to 40 days.

Annmarie Harris stated the public does not always understand "acceptance" as opposed to "approval." She would like to know if other, clearer, language could be used.

Amanda Merrill stated the language would have to be discussed when deliberating on the regulations.

Neil Wylie MOVED to open the public hearing. The motion was SECONDED by Rachel Rouillard and was unanimously APPROVED.

Kevin Webb, 22 Davis Avenue, read into the record a letter stating his opposition to the proposed amendments to the Town's Subdivision Regulations and recommended adopting language provided by the State, which he read into the record.

Brian Geiger, 13 Davis Avenue, stated the Board should adopt wording close to what the State law has recommends.

Neil Wylie MOVED to close the public hearing. The motion was SECONDED by Arthur Grant and was unanimously APPROVED.

Neil Wylie suggested before the Board voted, it receive legal advice from the Town's attorney regarding the proposed amendments.

The Board decided to postpone voting on the proposed amendments until legal counsel was obtained.

- IV. Acceptance Consideration of an Application for Site Plan Review submitted by Philip Noury, Portsmouth, New Hampshire, to change the current use of a property from religious use to professional offices. The property involved is shown on Tax Map 11, Lot 23-1, is located on 1 Morgan Way and is in the RC Zoning District

Jennifer A. Lemire, Portsmouth, representing the applicant, gave an overview of what Mr. Noury has provided for the application and what he was proposing to do on the property. She stated there would be no photographic chemicals on the property, the applicant would not change the structure of the sign located on the property and that none of the alterations done to the property would go against the 2000 Master Plan.

In response to a question from Arthur Grant, Jim Campbell stated the applicant was requesting a waiver from having to provide a new design for sewerage on the property as there is a system currently in place and the applicant's use of the system would be a less intensive use.

In response to a question from Amanda Merrill, Mr. Campbell stated the applicant was asking for a waiver from the site plan, requirements for streets and access, storm water drainage and non-municipal utilities. He stated none of these requirements would be changed and the only changes done to the building would be the removing of the steeple and cross and the sign would be resurfaced.

Arthur Grant stated the Board needed a site plan and suggested using the plan given to the Board when the building was first developed.

Jim Campbell read from the Zoning Ordinance regarding professional offices.

Chair Pease stated it was unclear in the 2000 Master Plan if the application was a permitted use in the RC Zone and he was unclear if the application would be a permitted use after the rewriting of the Zoning Ordinance.

Jennifer A. Lemire stated the use did not clearly fit into any of the Zoning Ordinances but that it fit the most into "professional offices." She stated the use would have little impact on the property and its surrounding area.

In response to a question from Annmarie Harris, Ms. Lemire stated the applicant has no plans to sublet the building.

Arthur Grant stated without a site plan the application should not be accepted as there is nothing in the record that ties down what the Board has approved.

Chair Pease stated when the change on a nonresidential property is a change of use, the Board has not been reluctant to approve waivers needed for reconstruction of the property.

In response to a question from Arthur Grant, Jim Campbell stated there was no layout design in the applicant's files and that the site plan for the current building would be in the Planning Office.

Gerard Roy, 1 Morgan Way, stated there was a site plan in the Town Hall.

In response to a question from Arthur Grant, Mr. Roy stated the parking lot has not been enlarged since the original construction of the current building.

Mr. Grant stated he would be comfortable using the existing site plan for the property to vote on accepting the application but asked that Jim Campbell or the Code Enforcement Officer check to make sure the site plan is current.

Arthur Grant MOVED to grant the requested waivers with the stipulation that the current validated site plan be provided. The motion was SECONDED by Neil Wylie and was unanimously APPROVED.

Neil Wylie MOVED to accept the application and require that the current validated site plan be provided by the public hearing. The motion was SECONDED by Amanda Merrill and was unanimously APPROVED.

Chair Pease stated the public hearing was scheduled for the Board's next meeting and that the site walk was scheduled for next Wednesday at 8:00 A.M.

- V. Acceptance Consideration of an Application for Site Plan review submitted by Smithfield Construction, Portsmouth, New Hampshire for 14 units of elderly housing on the seven lots on Perley Lane. The property is shown on Tax Map 1, Lots 16-22 through 16-28, is located on Perley Lane and is in the RA Zoning District

Rachel Rouillard recused herself from the discussion.

Jim Campbell gave an overview of the application and stated he believed the Board could accept the application.

Arthur Grant MOVED to accept the application. The motion was SECONDED by Neil Wylie and was unanimously APPROVED.

Chair Pease stated the public hearing on the application will be on Wednesday, January 8, 2003 and the site walk will be on Tuesday, January 7, 2003 at 8:00 A.M.

Rachel Rouillard returned to the meeting.

- VI. Discussion on the submitted changes to the Accepted Subdivision Application for David M. Garvey & Co. Ltd., Durham, New Hampshire on behalf of Calibogue Ltd., Hilton Head Island, South Carolina, to create 14 new residential lots

Chair Pease stated the applicant has submitted a number of new documents submitted that would constitute changes in the site plan the Board accepted from the applicant on September 25, 2002.

Jim Campbell stated the applicant wished to show the Board what has been done in response to Board concerns and that what was done has changed the site plan. He stated the Board would have to agree to consider an amend site plan to include a boundary line adjustment, which will provide more open space connected to the property, will provide access for looping water and provide a gravity feed for the sewer.

Mr. Campbell stated the applicant has addressed the concerns of site distance and safety regarding the cul-de-sac by making it one way, placing a stop sign on the development and selectively clearing the cul-de-sac to provide for the required site distance.

Mr. Campbell stated all of the utilities will be underground, within the required right-of-way and the applicant has submitted a traffic analysis.

Chair Pease stated the statutory 65 days the Board has to act on the application will run out before the next meeting and that the Board had to act on the application now or seek an extension of time from the applicant or an extension of time from the Town Council.

Chair Pease called for a one minute recess at 8:24 P.M.

Chair Pease reconvened the meeting at 8:25 P.M.

Chair Pease stated the public hearing regarding the application will most likely continue for several meetings.

Arthur Grant stated a motion should be made to rescind the Board's acceptance of the September 25, 2002 site plan and to consider the application with the boundary line adjustment as a new application. He stated he believed the changes to the application made it a new application.

Bill Tanguay, attorney for the applicant, stated the applicant wished to proceed with the accepted plan and that he believed the applicant has addressed all concerns from the Board regarding the application, which included the cul-de-sac, looping of the water and finding an alternative to the pump station by negotiating an easement with

an abutter, surveying the other property of the applicant, remapping the soils by reconfiguring the lots from 14 to 12 and moving the cul-de-sacs away from the setbacks.

Mr. Tanguay stated his applicant did not see a need to amend the application as a result of the changes but that they were revisions that took place during any subdivision proceeding. He stated the Town regulations make it clear that the Board may ask for revisions and that was what the Board did and that was what the applicant responded to.

In response to a question from Neil Wylie, Bob Levesque, Town Engineer, gave an overview of how the gas and water systems would work on the property. He stated that the section of Durham served by the Madbury Road water pump would not be negatively impacted by looping the water line.

In response to a question from Arthur Grant, Mr. Levesque stated the clearing of the cul-de-sac would impact vegetation in that circle. He stated with the vegetation, anyone using the intersection is blindsided.

Bill Tanguay stated the applicant wanted to open the public hearing using the 12 lot subdivision application without the Board first considering the boundary line adjustment. He stated the boundary line adjustment added open land but did not affect any other part of the site plan.

Annmarie Harris stated she was uncomfortable considering the changes to the site plan after the Board accepted the previous site plan on September 25, 2002.

Neil Wylie stated he believed the Board needed to consider acceptance of the boundary line adjustment before opening the public hearing to better understand what was being discussed.

VII. Acceptance Consideration of an Application for Boundary Line Adjustment submitted by David M. Garvey, Garvey & Co. Ltd., Durham, New Hampshire and Stonemark Management Co. Inc., Stratham, New Hampshire on behalf of Calibogue Ltd., Hilton Head Island, South Carolina, to change the boundary line between two properties. The properties involved are shown on Tax Map 1, Lot 6-8 and Lot 7-6, are located between Fairchild Drive and Madbury Road and are in the Residence A Zoning District

Bill Tanguay gave an overview of what was involved with the boundary line adjustment.

In response to a question from Arthur Grant, Keith Weston, American Engineering, stated with the adjustment on the 12 lot subdivision, the application meets the Board's requirements regarding open space and wetlands.

Jim Campbell stated the boundary line adjustment could be accepted and that he believes all of the abutters have been notified.

Neil Wylie MOVED to accept the application for a boundary line adjustment.

Jim Campbell stated the public hearing would include both the boundary line adjustment and the site plan but during deliberations the Board would discuss the items as two different issues. He stated if the boundary line adjustment is approved, the Board should make it contingent on the approval of the site plan.

Amanda Merrill SECONDED the motion.

Neil Wylie MOVED to amend his motion to include that the boundary line adjustment be an integral part of the application. The motion was SECONDED by Amanda Merrill and was unanimously APPROVED.

VIII. Public Hearing on an Application for Subdivision submitted by David M. Garvey, Garvey & Co., Ltd., Durham, New Hampshire on behalf of Calibogue Ltd., Hilton Head Island, South Carolina, to create 12 new residential lots. The property involved is shown on Tax Map 1, Lot 6-8, is located off of Fairchild Drive and is in the Residence A Zoning District

Neil Wylie MOVED to amend the agenda to not move on to item X until 9:50 P.M. The motion was SECONDED by Arthur Grant and was unanimously APPROVED.

Arthur Grant suggested the applicant give the Board another 90 days to act on the application.

Neil Wylie suggested the applicant give the Board another 60 days to act on the application.

Bill Tanguay stated the applicant would give the Board another 90 days to act on the application and that the extension would be provided in writing.

Arthur Grant MOVED to open the public hearing. The motion was SECONDED by Rachel Rouillard and was unanimously APPROVED.

In response to a question from Chair Pease, Neil Slepian, 12 Fairchild Drive, stated the Fairchild Development Concerned Citizens Committee would like to wait to give its presentation until more time was allowed for the public hearing.

Neil Wylie MOVED to continue the public hearing until the next meeting. The motion was SECONDED by Rachel Rouillard and was unanimously APPROVED.

Chair Pease called for a five minute recess at 8:33 P.M.

Chair Pease reconvened the meeting at 8:40 P.M.

- IX. Acceptance Consideration of an Application for Subdivision submitted by Timothy and Jennifer L. Powers, Durham, New Hampshire, to create 2 lots from 1 lot. The property involved is shown on Tax Map 18, Lot 3-2, is located on 257 Newmarket Road and is in the Rural Zoning District

Jim Campbell gave an overview of the application and stated it was not ready for approval.

Neil Wylie MOVED to amend the agenda to remove item IX. The motion was SECONDED by Arthur Grant and was unanimously APPROVED.

- X. Other Business

A. New Business

Discussion of Interim Amendments, which include CUP, PUD, Accessory Apartment, Structure, Accessory Shed and non-conforming buildings & lots

Jim Campbell stated the Zoning Re-write Committee has stricken references to PUD in the revised Zoning Ordinances.

Chair Pease stated the Board did not want to strike the definition of a PUD from the Zoning Ordinance as there are some in Town that are vested.

Jim Campbell stated the Zoning Re-write Committee has struck “planning and development as a conditional use” from all of the districts and from section 175-32.

Arthur Grant stated when redoing the definitions that have the districts attached to them the references to alcohol need to be taken out.

Rachel Rouillard stated the Board should strike the exception to the definition of nonconforming buildings as it was hard to understand.

Jim Campbell stated what the exception was trying to do was to prevent an increase of accessory apartments and duplexes but allow the Town to issue permits to smaller homes making alterations.

Neil Wylie stated to require a variance to put on a deck on a house or a shed on the property puts a burden on the owner that may have not been intended but it was the law and that the proposed exception to nonconforming buildings makes it easier for these property owners and does not make it necessary for the Zoning Board to hearing these applications.

Chair Pease stated the changed language improves nonconforming buildings and nonconforming lots but there was still work to do on nonconforming uses.

Neil Wylie stated the second sentence under accessory apartments should be moved to the end of the paragraph as a note.

Arthur Grant MOVED to schedule a public hearing for January 8, 2002 and to have the Town Administrator form the language of the interim amendments with the Board's suggestions into an ordinance as required under 175 (E.) The motion was SECONDED by Neil Wylie and was unanimously APPROVED.

Jim Campbell stated he wanted to schedule a retreat with the Board to form a policy regarding his role on the Board.

B. Old Business

Mr. Campbell stated he asked the Town attorney about the subdivision of a nonconforming building, when the Board can ask someone to speak at a meeting and when they can't, permit parking, and the Allen Farm injunction. He will be providing the Board with the answers.

Chair Pease proposed the Board prepare a letter requesting the Town Council to extend the amount of time the Board can take action on the subdivision regarding Fairchild Drive. He stated the letter would be sent only if the applicant did not provide the Board with an extension before time ran out.

Arthur Grant MOVED to authorize Chair Pease to send the letter if needed and to ask for 90 days. The motion was SECONDED by Amanda Merrill and was unanimously APPROVED.

In response to a question from Arthur Grant, Jim Campbell stated the Town is making sure Colonial Plaza is complying with its 1978 Conditions of Approval but some may have to be reconsidered.

Annmarie Harris stated she believed the stop work order on the Plaza has been lifted prematurely.

Chair Pease stated the Board is limited in what it can enforce regarding the Plaza and that the follow up must be done by the Code Enforcement Officer.

Jim Campbell stated the site walk for Allen Farm will be on Saturday November 23, 2002 at 9:00 A.M.

XI. Approval of Minutes

Arthur Grant MOVED to adopt the October 23, 2002 minutes. The motion was SECONDED by Neil Wylie and was unanimously APPROVED.

XII. Adjournment

Rachel Rouillard MOVED to adjourn the meeting. The motion was SECONDED by Arthur Grant and was unanimously APPROVED.

The meeting ADJOURNED at 10:21 P.M.

Amanda Merrill, Secretary