

These minutes were approved at the February 3, 2003 meeting.

**DURHAM PLANNING BOARD MINUTES
WEDNESDAY, JANUARY 8, 2003
OYSTER RIVER HIGH SCHOOL CAFETERIA**

MEMBERS PRESENT: *David Pease, Chair; David Watt, Vice Chair; Amanda Merrill, Secretary; Neil Wylie; Suzanne Loder; Rachel Rouillard; Arthur Grant, Town Council; Annmarie Harris, Town Council Alternate; Nick Isaak, Alternate*

MEMBERS ABSENT: *Julian Smith, Alternate*

OTHERS PRESENT: *Jim Campbell, Planner; Walter Mitchell, Town Counsel; Interested members of the public*

MINUTE TAKER: *Michael Bornstein*

Chair Pease called the meeting to order at 7:00 P.M.

I. Approval of the Agenda

Vice Chair Watt MOVED to approve the agenda. The motion was SECONDED by Rachel Rouillard and was unanimously APPROVED.

II. Report of the Planner

Jim Campbell reported on the following:

The Planning Board retreat is set for January 25, 2003 but that some members could not make it and the retreat may have to be rescheduled.

The Planning Board has begun posting sections of the new draft Zoning Ordinance and has begun public hearings on the Administrative Provisions and it will continue on January 15, 2003 at 7:00 P.M. in the Town Hall. Following that meeting, the Zoning Re-write Committee will be meeting to work on the subdivision regulations for conservation subdivisions. The next public hearing will be on January 29, 2003 at 7:00 P.M. in the Town Hall and will include the conservation subdivision and its definitions, and the residential zoning district provisions.

The posting of a public hearing for the table of uses and table of dimensional requirements needs to take place.

He will be changing the way he gives reports to the Board on applications with separate reports given for each application.

- III. Public Hearing on 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

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

Joe Caldarola, Smithfield Construction, stated Perley Road was a public road that has not been constructed and has 7-single family lots, four of which qualify as duplexes. He stated the application leaves the road itself unchanged but it was requested by the Department of Public Works that it be changed to a private road. He stated the application would divide the seven lots into two larger lots and construct seven buildings each with two elderly units.

In response to a question from Arthur Grant, Joe Caldarola stated the applicant would be responsible for maintaining the road.

In response to a question from Gerald Needell, 36 Bagdad Road, Jim Campbell stated the application was a permitted use in that 11 dwellings are permitted on the property and while the applicant was requesting 14 dwellings it was not doubling the size of the development but was combining lots. He stated the Department of Public Works had some worries about maintaining the road and that was why the Town requested the road be private. He stated during the Fellows Lane application there was some question as to whether or not a previous Planning Board had set a limit to the amount of units allowed on Perley Road but that no limit has been found in the record.

Jan Nisbet, 9 Woodside Road, stated there was a record of negotiations among the applicant, Board and citizens that should be consulted, and that the original plan should not be changed.

Beth Olshansky, Packers Falls Road, suggested that Peter Smith, who was on the Planning Board during the process of putting the plan together for the property, speak to the matter.

Chair Pease stated that he himself and Neil Wylie were on the Planning Board at that time.

Peter Smith stated that when he was on the Board the final approved plan did not match the original plan that was first presented and that there was strong opposition to the plan and that negotiations took place between the developer and the Board. He

stated the arguments included a belief that the plan would negatively affect the school system, among other concerns.

Jan Nisbet stated her neighborhood has took the Town to court to protest the decision to allow the wetlands and property protected by the Shoreland Protection Act to be used for the plan. She stated the Board has a right to make decisions based on process, boundaries and by using the Zoning Ordinance.

Vice Chair Watt MOVED to continue the public hearing until the next meeting. The motion was SECONDED by Amanda Merrill and was unanimously APPROVED.

- IV. Public Hearing on an Application for Subdivision submitted by Jones & Beach Engineers, Inc., Stratham, New Hampshire on behalf of J.R. Collier Corporation, c/o Sophia Collier, Portsmouth, New Hampshire, for a 25 lot subdivision. The property is located on Packers Falls Road, is shown on Tax Map 17, Lots 39-0, 39-1, 39-3 through 39-6 and 39-8 through 39-20 and is located in the Rural Zoning District

Vice Chair Watt MOVED to postpone the public hearing until the first meeting in March. The motion was SECONDED by Suzanne Loder and was unanimously APPROVED.

- V. Continued Public Hearing on an Application for Subdivision submitted by David 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 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

AND

- VI. Deliberation on an Application for Boundary Line Adjustment submitted by David 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

Arthur Grant MOVED that the Planning Board request the Town Attorney to conduct a thorough and comprehensive examination of the issues raised by Attorney Charles Griffin at the December 11, 2002 Public Hearing on the development application for the Craig Meadows property.

Legal guidance is requested on “deed” issues relating to the Fairchild Drive-Davis Avenue properties and the proposed Craig Meadows development:

- A. Whether the Town has received “good title” to Fairchild Drive and whether required “street frontage” exists for the proposed Craig Meadows development;***
- B. Whether a binding “public-use reservation” exists for the stub of land at the Fairchild cul-de-sac now proposed as access to the Craig Meadows development;***
- C. Review of prior Planning Board actions and conditions-of-approval concerning the Davis Subdivision in the context of the 1980 “cluster subdivision” ordinances and their bearing on this Board’s evaluation of the current Craig Meadows application;***
- D. Any other pertinent legal issues raised by Attorney Griffin’s testimony, the Town’s zoning ordinances, or State Law which the Town Attorney may determine merit this Board’s attention;***

ADDITIONALLY, the Town Attorney is asked to provide the Planning Board with his findings regarding the question of whether or not the property at 99 Madbury Road, owned by Calibogue Ltd. And shown as Map 01 Lot 6-8, is one parcel or two parcels.

The motion was SECONDED by Neil Wylie and was unanimously APPROVED.

Secretary Merrill suggested amending the motion to have the Town attorney interpret the term “cul-de-sac.”

Arthur Grant and Neil Wylie both accepted the amendment.

- E. Examination of the interpretation of the term “cul-de-sac” and any implications related thereto was added to the motion.***

The motion was unanimously APPROVED by the Board.

Jim Jelmborg, Park Court, spoke against the application.

Paula Roy, 22 Davis Avenue, read into the record a letter from Len DiSesa and Erika Mantz, 31 Edgewood Road, opposing the application. Copies were distributed to the Board.

Scott Standley, 20 Davis Avenue, read into the record a presentation opposing the application. Copies were distributed to the Board.

Paula Roy read into the record a proposal opposing the application. Copies were distributed to the Board.

Chair Pease extended the public hearing 5 minutes to allow Paula Roy to finish her presentation.

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

Vice Chair Watt MOVED that the studies approved under agenda items IV. and V. be conducted under Section 5.03A of the Subdivision Regulations. The motion was SECONDED by Arthur Grant and was unanimously APPROVED.

VII. Deliberation on 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

Arthur Grant MOVED the application be approved with the Findings of Fact and Conditionals of Approval as amended. The motion was SECONDED by Neil Wylie.

Chair Pease read the findings-of-fact.

The following changes were made to the conditions-of-approval:

First sentence which begins “The following conditions” the words “Boundary Line Adjustment” were changed to “Site.”

Under condition three the word “remain” was changed to “retain” and the word “dimensions” was added at the end of the first sentence.

Under condition four the word “external” was added before the word “structural.”

Under condition five the words “approved by the Director of Planning and Community Development” were added after the word “Plan.”

A condition six was added that read “No expansion of buildings is permitted under this approval.”

The motion was unanimously APPROVED.

Chair Pease called for a 5 minute recess at 8:57 P.M.

Chair Pease reconvened the meeting at 9:02 P.M.

- VIII. Acceptance Consideration of an Application for Conditional Use Permit submitted by Mike Sievert, PE, Newmarket, New Hampshire on behalf of Fall Line Properties, Portsmouth, New Hampshire for the construction of a hotel in the Limited Business District. The property involved is shown on Tax Map 4, Lots 50-0, 51-0 and 53-0, is located off of Dover Road and Main Street and is in the Limited Business Zoning District.

AND

- IX. Acceptance Consideration of an Application for Site Plan Review submitted by Mike Sievert, PE, Newmarket, New Hampshire on behalf of Fall Line Properties, Portsmouth, New Hampshire for the construction of a hotel. The property involved is shown on Tax Map 4, Lots 50-0, 51-0, 52-0 and 53-0, is located off of Dover Road and Main Street and is in the Limited Business Zoning District

Paul Berton, the applicant, stated that the application was a preferred use, that it would benefit the Town and that he has a record of well managed student housing.

Jim Campbell stated that the application was ready to be accepted but to be approved it would have to go before the Town Council as it is for a Conditional Use Permit.

Vice Chair Watt MOVED to accept the application. The motion was SECONDED by Secretary Merrill.

Jim Campbell stated his office needed the updated traffic report from the applicant.

The acceptance of the application was unanimously APPROVED.

In response to a question from Suzanne Loder, the applicant stated that the property was not in the Historic District.

Jim Campbell stated the property was not in the Historic District.

The public hearing for the application was set for February 26, 2003,

Arthur Grant MOVED that the Board direct Jim Campbell to provide the Board with independent studies, findings and recommendations of the economic, feasibility and viability of the proposal now before the Board with developing an operation of a 68 bed hotel in Durham; giving due consideration to, among other factors;

A. Occupancy rates and general financial expenditures existing for public accommodation facilities in this community and in nearby Towns; and

B. The trends in the State's hospitality industry which may impact the long-term feasibilities of the proposed project.

The applicant stated a study had been completed and that the application meets all the regulations.

The motion was SECONDED by Suzanne Loder.

Rachel Rouillard stated the Board should first look at the applicant's study and see if the Board needs more information to make a decision.

Vice Chair Watt stated the Board should look at the applicant's study first.

Secretary Merrill stated the Board should look at the applicant's study first.

Annmarie Harris stated the Board should look at the applicant's study and that the study should cover every thing in Arthur Grant's motion.

Chair Pease stated the Board should look at the applicant's study first.

Jim Campbell stated the Board could look at the applicant's study at the next meeting.

The applicant granted the Board a 90-day extension to decide on the proposed project.

The applicant stated that an untimely Board process will make the application non-viable.

Arthur Grant WITHDREW his motion. Suzanne Loder WITHDREW her second.

The Board set the site walk for February 25, 2003 at 8:30 A.M.

- X. Acceptance Consideration of an Application for Boundary Line Adjustment submitted by Mike Sievert, PE, Newmarket, New Hampshire on behalf of G. Douglas and Gwendolyn Ross, Durham, New Hampshire and Steve and Molly Wade, Portsmouth, New Hampshire to change the boundary line between two properties. The properties involved are shown on Tax Map 18, Lot 18-1 and Lot 19-1, are located between Ross Road and Stagecoach Road and are in the Rural Zoning District

Mike Sievert, engineer for the applicant, stated the adjustment would move half an acre from the Ross property to the Wade property and nothing else on the property would change.

Vice Chair Watt MOVED to accept the application. The motion was SECONDED by Rachel Rouillard and was unanimously APPROVED.

- XI. Acceptance Consideration of an Amended Application for a Site Plan Review Phase II submitted by Spruce Wood Reality Trust, c/o John Farrell, Gowdy &

Farrell, Inc., Dover, NH, for an additional 50 condominium 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

John Farrell, applicant, presented the application to the Board.

Jim Campbell stated the application was ready to be accepted and that the applicant would have to keep coming back to the Board if he decided to keep subdividing the property.

Neil Wylie MOVED to accept the application. The motion was SECONDED by Vice Chair Watt and was unanimously APPROVED.

The Board set the public hearing for February 12, 2003 and the site walk for February 11, 2003 at 8:30 A.M.

The applicant granted the Board a 90-day extension to decide on the application.

XII. Acceptance Consideration of an Application for Subdivision submitted by Gowdy & Farrell, Dover, New Hampshire on behalf of the Heirs of Bertha Moriarty, Durham, New Hampshire to create 8 lots from 1 lot. The property involved is shown on Tax Map 15, Lot 26-0 and is located off of Longmarsh Road and Newmarket Road and is in the Rural Zoning District

FX Bruton, attorney for the applicant, presented the application to the Board and stated it should have been accepted on December 11, 2003 when it was first presented.

John Farrell, engineer for the applicant, spoke in favor of the application.

Jim Campbell stated the application would be affected by the proposed Zoning Ordinance in the Conservation Subdivision Section and that the proposed Ordinance rendered the application incomplete.

Chair Pease stated that when the application was first presented some parts of it had not been received by the Board in a timely manner and that was why it was not accepted.

Counsel Mitchell stated if the application was accepted on the date of this evening's meeting it should be in compliance with the Zoning Ordinance and the proposed Zoning Ordinance.

Arthur Grant MOVED that the application be accepted as of this evening's meeting.

Neil Wylie stated the application was not complete.

Arthur Grant WITHDREW his motion.

The applicant granted the Board an extension to allow it to confer with Counsel Mitchell to decide if the application should be accepted under the date of December 11, 2002 or this evening's meeting.

XIII. Acceptance Consideration of an Application for Subdivision submitted by Peter Ejarque on behalf of the Peter Ejarque Revocable Trust, Durham, New Hampshire to create 4 lots from 1 lot. The property involved is shown on Tax Map 1, Lot 9-27 and is located off of Hampshire Avenue and is in the Residence A Zoning District

Herman Ejarque, applicant, presented the application to the Board and stated he would like it accepted under a December 11, 2002 date. He stated the application was on the December 11, 2002 agenda and it was complete but that it was pushed back by the Board and that the proposed Zoning Ordinance would negatively affect the application.

Neil Wylie recused himself from the matter at 10:10 P.M.

Arthur Grant MOVED to ask the applicant for an extension of time to decide on the application until Counsel Mitchell could help the Board decide if the application should be accepted under the date of December 11, 2002 or under this evening's date. The motion was SECONDED by Suzanne Loder and was unanimously APPROVED.

The applicant granted the extension.

XIV. Acceptance Consideration of an Application for Subdivision submitted by Ann Faucy, Durham, New Hampshire to create 8 lots from 1 lot. The property involved is shown on Tax Map 10, Lot 7-0 and is located off of Bagdad Road and Canney Road and is in the Residence B Zoning District

Neil Wylie returned to the meeting at 10:25 P.M.

Bill Tanguay, attorney for the applicant, stated a complete application was submitted and placed on the December 11, 2002 agenda but was pushed back but should have been accepted.

The applicant granted the Board an extension of time to have Counsel Mitchell help the Board decide if the application should be accepted under the date of December 11, 2002 or under this evening's date.

- XV. Acceptance Consideration of an Application for Boundary Line Adjustment submitted by Paul and Ann LaFortune, Durham, New Hampshire on behalf of themselves and Cynthia Dunn, Durham, New Hampshire to change the boundary line between two properties. The properties involved are shown on Tax Map 3, Lot 3-1 and Lot 3-4 and are located at 31 and 35 Bagdad Road and are in the Residence A Zoning District

Paul LaFortune, applicant, presented the application to the Board.

Jim Campbell stated the application was complete.

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

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

Jen Powers, applicant, stated she would like a waiver from the Conservation Subdivision Ordinance.

Jim Campbell stated the application met the waiver standards under the proposed Zoning Ordinance but the applicant did not provide a request for the waiver 21 days before this evening's meeting and suggested granting the waiver and accepting the application at the next meeting.

The Board decided to take this approach.

- XVII. Discussion for a request to the Town Council for a 90-day extension on all applications

The Board decided this item was not needed.

XVIII. Other Business

A. New Business

Discussion of Request for Extension on Conditions of Approval for Fellows Lane Site Plan, Smithfield Construction

Jim Campbell stated the applicant needed more time to fulfill the condition that requires the applicant to complete the sewer extension permit process within six months.

Arthur Grant MOVED to grant a 90 day extension. The motion was SECONDED by Suzanne Loder and was APPROVED on a vote of 6-1 (Vice Chair Watt voting against.)

Jim Campbell stated the Board needed to post a public hearing for the proposed Table of Dimensional Requirements and the Table of Uses.

Rachel Rouillard stated she made a mistake by not including them in her motion made at her last meeting to post hearings for the ordinances and that Jim Campbell would have caught her on it had he been in attendance.

Neil Wylie MOVED to post a public hearing on the proposed Table of Dimensional Requirements and the Table of Uses for the January 29, 2003 meeting. The motion was SECONDED by Secretary Merrill and was unanimously APPROVED.

B. Old Business

The Board decided the retreat would be moved to February 4, 2003 in the Town Hall at 8:00 A.M.

XIX. Approval of Minutes

The following changes were made to the December 11, 2002 minutes:

Page 2, 4th paragraph which begins “Neil Wylie suggested” the words “proposed loop road” were inserted before the word “North.”

Page 3, 1st paragraph which begins “Bill Tanguay, attorney” the word “[Accepted]” was inserted every where in the paragraph after the word “approved “

Page 6, 11th paragraph which begins “Neil Wylie MOVED” the words “as amended” were inserted at the end of the sentence.

Page 6, 11th paragraph which begins “Neil Wylie MOVED” the numbers “6-0-2” were changed to “5-0-2.”

Suzanne Loder MOVED to approve the minutes as amended. The motion was SECONDED by Secretary Merrill and was unanimously APPROVED.

The following changes were made to the December 18, 2002 minutes:

Page 2, 12th paragraph which begins “Jay Gooze, 9” the word “intergal” was changed to “integral.”

Page 5, 5th paragraph which begins “Suzanne Loder MOVED” the words “and was unanimously APPROVED” were inserted at the end of the sentence.

Page 7, 6th paragraph which begins “Annmarie Harris stated” the words “explain the implications of posting new ordinance language” were inserted at the end of the sentence and the words “that effect” were stricken.

Suzanne Loder MOVED to approve the amended minutes. The motion was SECONDED by Secretary Merrill and was APPROVED with a vote of 6-0-1 (Neil Wylie abstaining.)

Suzanne Loder MOVED to adjourn the meeting. The motion was SECONDED by Vice Chair Watt and was unanimously APPROVED.

The meeting ADJOURNED at 11:00 P.M.

Amanda Merrill, Secretary