

These minutes were approved at the March 26, 2003 meeting.

**DURHAM PLANNING BOARD MINUTES
FEBRUARY 26, 2003
7:00 P.M.
DURHAM TOWN HALL-TOWN COUNCIL CHAMBERS**

MEMBERS PRESENT: David Pease, Chair; David Watt, Vice Chair;
Amanda Merrill, Secretary; Rachael Rouillard;
Neil Wylie; Suzanne Loder; Julian Smith,
Alternate; Arthur Grant, Town Council;
Annmarie Harris, Town Council Alternate

MEMBERS ABSENT: Nick Isaak, Alternate

OTHERS PRESENT: Jim Campbell, Planner; John Harwood,
Temporary Planner; Walter Mitchell, Town
Attorney; Interested Members of the Public

MINUTE TAKER: Michael Bornstein

Chair Pease called the meeting to order at 7:05 P.M.

I. Approval of Agenda

Neil Wylie MOVED to amend the agenda to conclude item III at 7:45 P.M., items IV and V by 8:30 P.M., suspend the meeting to meet with Attorney Mitchell, and to conclude VI and VII by 9:30 P.M. The motion was SECONDED by Secretary Merrill and was unanimously APPROVED.

II. Report of the Planner

Jim Campbell reported on the following:

He has attended a Center for Integrated Regional Problem Solving meeting.

He met with the Administrator and the Department of Public Works to discuss phase II storm water and new State rules. Changes will have to be made to the subdivision regulations and that a management plan had to be submitted to the State by March 10.

The Traffic Safety Committee met with UNH to discuss the automation of the gate on the Mast Road Ext.; the roads of Main Street, Pettee Brook Road and Quad Way; traffic molding; Wildcat route changes; and where the new loop road will come into Main Street.

In response to a question from Neil Wylie, Jim Campbell stated the gate on Mast Road Ext. was there to block traffic.

Chair Pease stated Julian Smith would be a voting member until the arrival of Vice Chair Watt.

- III. Continued Public Hearing on 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 fifty 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-7:20 P.M.

Jim Campbell stated the application was accepted on January 8 and that the public hearing began on February 12. He stated the 65 days the Board has to decide on the application ends on March 14 but that the Board has received a letter from the applicant granting an extension of 60 more days. He stated the Board and the Council had approved a Conditional Use Permit and Planned Unit Development and that a condition was that the applicant must return to the Board for any other reviews.

Attorney Mitchell stated the last Council approval of the application was in 2000 and that the approval was a revision of an earlier approval. He stated the applications have been consistent and the only difference this time is that the application asks for different wetland soil delineation and that the change showed no effort to intensify the development and that the application did not have to return to the Council.

Suzanne Loder MOVED to reopen the public hearing. The motion was SECONDED by Secretary Merrill and was unanimously APPROVED.

Eric Wienrich, engineer, gave a presentation showing the road designs, grating, storm water management, utilities design, and wetland delineation. He stated noting except the wetland delineation had changed since the application was last approved.

In response to a question from Annmarie Harris, John Farrell stated the cul-de-sac and loop road would be public roads, and that the smaller driveways would be private. He stated the design was consistent with the original approval and that the stub was there to provide access to the remaining 126 acres but that none of it had been approved.

In response to a question from Annmarie Harris, Eric Wienrich stated that the Oyster River was 1,000 feet away from the property, and that there was no intention of connecting the property to Route 155A.

In response to a question from Suzanne Loder, John Farrell stated he had received a waiver for the original application to place 10 units on the cul-de-sac.

In response to a question from Malcolm Sandberg, 15 Langley Road, John Farrell stated the cul-de-sac began at Worthen Road and that its length was 850 feet.

In response to a question from Malcolm Sandberg, Chair Pease stated the regulation regulating the length and number of dwellings on cul-de-sacs is in the Town Road Regulations. He stated the regulations were made by the Board and can be waived by the Board. He stated ensuring architectural compatibility on the property was a part of the Planned Unit Development and should have been approved with the Planned Unit Development.

Neil Wylie stated the approval of the architectural compatibility was done when the Planned Unit Development was approved.

John Farrell stated he had the original plans that he had submitted as a requirement of the architectural compatibility.

In response to a question from Annmarie Harris, John Farrell stated access to the property is on Worthen Road and there was another access to the property from Packers Falls Road but that it will be closed when the changes to the property were completed.

Annmarie Harris stated another access should remain open for safety.

John Farrell stated the development had received approval to be built in the configuration it was in and that he did not want to have another access that would encourage traffic. He stated there would be another access for emergency personnel.

In response to a question from Beth Olshansky, Packers Falls Road, John Farrell stated except for placing dwellings into a different area and the elimination of a loop road every thing else on the application was the same as it was on the original.

Vice Chair Watt MOVED to close the public hearing. The motion was SECONDED by Neil Wylie and was unanimously APPROVED.-7:35 P.M.

- IV. Public Hearing on an Application for Conditional Use Permit submitted by Michael J. Sievert, PE, Newmarket, NH on behalf of Fall Line Properties, Portsmouth, NH 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, 52-0 & 53-0, is located off of Dover Road/Main Street, and is in the Limited Business Zoning District

AND

- V. Public Hearing on an Application for Site Plan Review submitted by Michael J. Sievert, PE, Newmarket, NH on behalf of Fall Line Properties, Portsmouth, NH for the construction of a hotel. The property involved is shown on Tax Map 4, Lots 50-0, 51-0, 52-0 & 53-0, is located off of Dover Road/Main Street and is in the Limited Business Zoning District

Neil Wylie MOVED to open the public hearing. The motion was SECONDED by Vice Chair Watt and was unanimously APPROVED.-7:40 P.M.

Paul Berton, applicant, stated the application was for a 68 unit hotel that was an allowed use in the LBD and was recommended in the 2000 Master Plan. He stated the project would enhance businesses in Town, meets a need, and would help the tax base.

Michael J. Sievert, engineer, stated the proposal included an 800 square foot function room and that four of the existing lots would be combined into one. He stated there were five buildings on the property used for student housing but that three of them would be moved to make room for the hotel. He stated there would be three accesses to the property, a new parking lot would be built, and the building has been pulled up to the sidewalk. He stated the plumbing would remain the same and that the application meets all State Department of Transportation requirements and those from the Department of Public Works.

Roger Brown, architect, displayed elevations of the proposed hotel building. He stated the end of the building in the right end of the top elevation was the end closest to the street and that the building would be in Colonial style.

Paul Berton stated he had completed a market analysis. While he would not show it to the Board as it was proprietary, Mr. Crawford, market researcher would summarize the findings.

Bob Crawford, market researcher, stated the hotel would serve people in a 6 mile radius and that there was not a large supply of places to stay in the surrounding area given the size of the market. He stated people that wanted to see Durham had to stay out of Town. He stated the hotel would serve 27,500 people a year if it was operating at 70 % capacity and would increase the flow of money in Town. He stated the project was designed to succeed and was different from the other hotels in Town, would not have a restaurant, and 14 people would be working there. He stated the franchise brand might be Best Western.

Ron Peterson, owner of the Three Chimneys Inn, stated the hotel would allow the Inn to sell its conference rooms to more businesses, would increase its restaurant use, and would bring in more tour groups.

Paul Berton submitted to the record two traffic studies. Copies were distributed to the Board.

Paul Berton stated the hotel and the student housing would be tightly managed.

Chair Pease read a letter from John Harwood that reads that Attorney Mitchell recommends the applicant receive two variances before developing the property, and one variance would be to allow the nonconforming student housing to continue and the other would be to allow the moving of the duplexes.

In response to a question from Secretary Merrill, Neil Wylie stated there was no precedent that would show the Board how to proceed.

In response to a question from Rachel Rouillard, Paul Berton stated he preferred the Board wait until the variances are approved.

In response to a question from Malcolm Sandberg, Paul Berton stated lots 53-0 and 52-0 were in the Historic District and those lots would be used for parking and lighting.

Jim Campbell stated those lots would have to be approved by the Historic District Commission.

Malcolm Sandberg stated the parking lot was a structure and would impact the Historic District Commission.

Jim Jelmsberg, 29 Park Court, stated the applicant had promised him a buffer but he did not see it on the application.

In response to a question from Johanne Jelmsberg, 29 Park Court, Michael J. Sievert stated the front setback was 20 feet from the road. He stated there would be an elevator and that the windows in the building would not open

Jim Jelmsberg stated he wanted to see a 20-foot setback for the parking lot.

In response to a question from Cari Moorehead, 4 Bayview Road, Bob Crawford stated the breakeven option for the hotel was 50%. He stated the hotel would provide limited service but that the market shows the hotel would achieve an occupancy of 63%, opening above the break-even occupancy.

In response to a question from Al Pemberton, 25 Bayview Road, Bob Crawford stated there would be a departure from the hotel every three minutes during peak hours and that the meeting rooms would be used only by people staying at the hotel.

In response to a question from Al Pemberton, Michael J. Sievert stated the traffic study only took into account the peak traffic hours and that maintenance services could arrive at different times throughout the day.

In response to a question from Scott Knightly, 25 Park Court, Paul Berton stated he would have to come back before the Board if he wanted to change the use of the hotel.

Jim Campbell stated the hotel could become mixed use of housing on the upper floors but the change would have to be approved by the Planning Board.

Annmarie Harris stated the Board could make it a Condition of Approval that the hotel never becomes student housing.

In response to a question from Malcolm Sandberg, Chair Pease stated a deed restriction was irreversible and a Condition of Approval was reversible.

Attorney Mitchell stated it might be an issue to have the Board impose a condition now that does not allow a use that is permitted to others.

Noreen Pemberton, 25 Bayview Road, submitted for the record a letter to the Board from Barbara Mullins and C.H. Mullins, 16 Bayview Road, opposing the application. Copies were distributed to the Board.

In response to a question from Noreen Pemberton, Paul Berton stated the hotel would have laundry services but would not affect Town plumbing.

In response to a question from Steve Harvey, 11 Bayview Road, Paul Berton stated the hotel would be sheet drained and that the sheet would drain into a detention pond that was fenced and four feet deep. He stated parking for the student housing would coincide with the hotel parking. He stated none of the curb cuts could be completely eliminated and that there was a retaining wall that was four feet high and guard railed.

In response to a question from Sally Oatgraf, 9 Old Landing Road, Paul Berton stated no one that worked at the hotel would live there and that he would be hiring the most qualified people to work at the hotel.

In response to a question from Suzanne Loder, Paul Berton stated there would be trees on the property next to the hotel but they may not be in the same place as shown on the design. He stated the snow would be removed and places on the property would be used to store the snow.

In response to a question from Amanda Merrill, Roger Brown said that the wooden siding of the building would be stained and a strip of siding between the first and second floors would be wooden, most likely painted.

In order to allow the applicant time to make his variance requests to the Zoning Board of Adjustment, Neil Wylie MOVED to continue the public hearing until April 23. The motion was SECONDED by Rachel Rouillard.

In response to a question from Jim Campbell, Paul Berton stated he would grant the Board a 90-day extension to discuss the application.

The motion was unanimously APPROVED. 9:00 P.M.

Chair Pease suspended the meeting at 9:01 P.M.

Chair Pease reconvened the meeting at 9:27 P.M.

- VI. Deliberations on an Application for Subdivision submitted by David Garvey, Garvey & Co., Ltd., Durham, NH, and Stonemark Management Co. Inc., Stratham, NH, 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

- VII. Deliberation on an Application for Boundary Line Adjustment submitted by David Garvey, Garvey & Co. Ltd., Durham, NH, and Stonemark Management Co. Inc., Stratham, NH 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 - 9: 28 P.M.

Vice Chair Watt MOVED to extend discussion on these items until 10:00 P.M. The motion was SECONDED by Secretary Merrill and was unanimously APPROVED.

In response to a question from Neil Wylie, Jim Campbell stated he wanted to know where the applicant would be putting the driveways on lots 8-9 and lot 3 and that there were wetland crossings on these lots. He stated the Board had to look at the requests and decide if they meet the ordinance requirements and the issue would have to go to the Conservation Commission and the Wetland Bureau.

Arthur Grant stated the Conservation Commission had issues with "invasion of significant wetland habitat," "lots 3, 8, and 9 are surrounded by wetland and would require a significant amount of wetland to be crossed to gain access," "the proposed utility right-of-way extending to Madbury Road would significantly impact the headwaters of Little Halebrook," and that the property was "the most significant habitat for land protection and conservation." He stated none of these issues had been addressed.

In response to a question from Rachel Rouillard, Jim Campbell stated it was not a road that was being used as a wetland crossing but was driveways and access to lots.

Suzanne Loder stated the access to the property was not safe or in the public interest and should be discussed.

Vice Chair Watt stated the property began at the stub and should be discussed first.

Rachel Rouillard stated the property began with the cul-de-sac.

Vice Chair Watt stated the applicant did not have the right to use the land to gain access to the property and that permission would be needed from the Council.

Arthur Grant read part of a letter from Attorney Mitchell that read that the applicant does not own the stub of property at the Fairchild Drive cul-de-sac and has no right to build a road over town land.

Jim Campbell stated the Council could give the applicant the right to build the road.

Rachael Rouillard stated the applicant could come back with a different plan.

Chair Pease stated the Board could make Council approval of the use of the stub for access a Condition of Approval but that the way the stub was used to access the property in the application backs up into the treatment of the cul-de-sac. He stated if the Council approved the use of the stub, it might impose conditions or restrictions in a way that was different from the application.

Arthur Grant read a letter from Attorney Mitchell that showed that the use of the Fairchild Drive cul-de-sac as access to the property violated the Town Road Construction Regulations and that the cul-de-sac does not meet design standards or the subdivision regulations. He read from a letter from Town Engineer Bob Levesque that showed that the cul-de-sac was not acceptable as an access and that the cul-de-sac be removed and that Fairchild Drive be extended. He read from the Conditions of Approval for the Chase subdivision of Davis Development from 1980 that showed that all cul-de-sacs were to be left alone and that no construction should disturb the cul-de-sac. He stated when the Board first began discussing the application it made it clear that the cul-de-sac was not to be disturbed.

Neil Wylie MOVED to make Attorney Mitchell's letter about the application become a part of the record. The motion was SECONDED by Arthur Grant and was unanimously APPROVED.

Chair Pease stated the 1980 Conditions of Approval that preserve the cul-de-sac on Fairchild Drive had no standing. He stated the cul-de-sac was owned by the Town and the Board had made a finding that the cul-de-sac be maintained a certain way but the Board could make changes and that the cul-de-sac was not sacrosanct.

Arthur Grant stated when the Board was discussing the conceptualization of the application, the Board told the applicant it considered the cul-de-sac sacrosanct.

Chair Pease stated the Board gave the applicant the impression that the cul-de-sac was sacrosanct but that did not be a reason for a Board decision.

Neil Wylie stated Attorney Mitchell has advised the Board that the application is in violation of the standards that show there must not be more than 10 lots on one cul-de-sac and that it must be a certain length.

Arthur Grant stated Fairchild Drive and Davis Avenue are neighborhood roads without sidewalks and have poor lighting. He stated there were people using the street at all times of the day and that the street could not be used efficiently for additional traffic.

Rachael Rouillard stated that the street was never approved as a town road. She stated the quality of the neighborhood would change if there was any more development off of it and that it would not benefit the community.

Jim Campbell stated the Board needed to make a decision on the application by March 26.

Neil Wylie stated the applicant has provided an access to the undeveloped land contiguous to it, but that it goes into a wetland setback and a better place for the access should be found.

Arthur Grant stated in the 2000 Master Plan it shows that the quality of the existing neighborhoods could be enhanced by reducing traffic.

Vice Chair Watt stated the 2000 Master Plan could only be used for guidance.

Chair Pease stated if the Town wanted to upgrade the road for development that would be an indication that the application was not premature but there was no evidence of Council intention to do this. He stated he found the testimony that the roads were adequate to support the application was unconvincing.

Suzanne Loder read from 175-03 (A) and 175-03 (B) of the ordinance that showed that regulations are there to protect the health, safety, and welfare of the people in Town.

Arthur Grant read from regulation 906(B) that shows that the Board could restrict development of a property that had poorly drained areas as defined in the wetland provisions of the ordinance.

Jim Campbell stated he would write a draft Conditions of Denial to be voted on by the Board at the next meeting. He stated the reasons for denial would include issues with the cul-de-sac, stub, and wetland crossings.-10:15 P.M.

VIII. Other Business

Vice Chair Watt MOVED that deliberations on a minor Site Review should be delegated to the Technical Review Committee. The motion was SECONDED by Neil Wylie.

John Harwood stated the review was for Benjamin's Restaurant. He stated the second floor was occupied by a fitness studio five years ago, but the owner came to the Board to change the use of the space into an office. He stated after a fire at the building it was found that the office was not being used and that the space was being utilized for religious purposes and that was another change of use. He stated there were no structural or landscaping changes made to the building, and that he was looking into the history of what parking variances had been granted and if the people utilizing the building were required to provide a parking fee.

Arthur Grant stated the religious use was allowed in the zone but that the Board should be careful to make sure it followed the correct procedures.

John Harwood stated it did not look like any parking requirements would be imposed and if there was the owners would be able to receive a variance. He supported sending the review to the Technical Review Committee.

The motion was unanimously APPROVED.

Chair Pease suggested voting to remand all of the information given to the Board during public hearings on proposed zoning ordinance changes.

Arthur Grant MOVED to remand to the Zoning Re-write Committee all of the information given to the Board during public hearings. The motion was SECONDED by Vice Chair Watt and was unanimously APPROVED.

Jim Campbell stated he was going to have a retreat for new Board members and wanted to have a session with New Hampshire Soils to see how they delineate wetlands.

IX. Adjournment

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

The meeting ADJOURNED at 10:35 P.M.

Amanda Merrill, Secretary