

This set of minutes was approved at the July 23, 2003 meeting

**DURHAM PLANNING BOARD
WEDNESDAY, JUNE 11, 2003
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL
7:00 P.M.**

MEMBERS PRESENT: Dave Watt, Chair; Stephen Roberts, Nick Isaak, Richard Ozenich, Alternate; Kevin Webb, Alternate; Annmarie Harris, Arthur Grant, Neil Wylie

MEMBERS ABSENT: Rachel Rouillard, Amanda Merrill

OTHERS: Jim Campbell, Planner; John Harwood, Assistant Planner; Barbara Stoddard, Minute Taker; Interested Members of the Public

Chair Watt called the meeting to order at 7:06 p.m.

I. Approval of Agenda

*Neil Wylie **MOVED** to approve the agenda. The motion was **SECONDED** by Nick Isaak and **PASSED** unanimously.*

II. Report of the Planner

Jim Campbell, Planner updated the Board on his meetings with Tony Federer, Doug Bencks and with the Traffic and Safety Committee. The report was attached to the Board packets. In addition, the school Board has requested use of the council chambers on July 16, August 6 and August 20. The Board will be able to use a meeting room at the police station for its zoning rewrite.

John Harwood stated that the abutters to the proposed hotel would like to see the public hearing continue into the second week of June.

Chair Watt stated that alternate members Richard Ozenich and Kevin Webb would be voting members this evening.

III. **Public Hearing on an Application for Conservation Subdivision** submitted by Peter M. Ejarque on behalf of the Peter M. 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, is located off of Hampshire Avenue and is in the Residence A Zoning District. **(7:15-7:45 p.m.)**

Neil Wylie and Kevin Webb recused themselves from the public hearing.

*Arthur Grant **MOVED** to open the public hearing. The motion was **SECONDED** by Richard Ozenich and **PASSED** unanimously.*

Mr. Ejarque presented material to the Board regarding the driveway on the property. He stated that he is requesting a waiver to open a new driveway for 3 or 4 lots instead of

having 2 separate driveways. There is no wetland property, no trees to cut, and less conservation land to be used with this method.

John Harwood, Assistant Planner, stated that he spoke with the fire department's requirements for a turn around. The fire department responded that no more than 10 feet is required. There is no requirement for a turn around but they would like to see gentle corners. If there were sharp corners, they would like no trees in the corners. The engineering department requires 12 feet.

Speaking in favor of the application:

Jane Grotta, 4 Lundy Lane, stated that she has known this was Mr. Ejarque's plan for the land since he bought it 30 years ago and is in favor of the application.

Larry Vannata, 5 Wood Road, stated that Mr. Ejarque has taken excellent care of the land and that he has the best integrity for the land.

There was no one speaking in opposition to the plan.

Kevin Webb, 22 Davis Avenue, spoke not in opposition to the plan but with some neutral technical comments for the Board's attention. Mr. Webb had recused himself from this petition due to his involvement in opposition to the Craig Meadows application, which involved Mr. Ejarque's other parcel of land. Mr. Webb's area of concern involves the dam and pond that forms the central feature on Mr. Ejarque's property. He stated that this area might not be designed to withstand the pressure from heavy construction equipment. He encouraged that the dam be approached with great caution. He further stated that he would provide to Mr. Harwood the name and contact information for Stephen Doyon of the Dam Safety Bureau for NHDES. Mr. Webb stated that Mr. Doyon should be contacted to seek information regarding how to proceed on this project as well as providing a list of qualified engineers to address this issue. He further stated that the dam might not constitute a legal dam under the laws of New Hampshire. Mr. Webb stated that this is an earth filled embankment, water retaining structure which can fail and is subject to other stresses, and that he would provide written information to Mr. Harwood.

In response to a question from Stephen Roberts, Mr. Webb stated that if the dam should fail, you would lose the driveway and roadways and you would silt out a substantial portion of Littlehale Brook, which would impact the wetlands.

In response to a question from Mr. Grant, Dr. Ejarque stated that the depth of the pond is 10 ft. at one end about 1 ft. deep at another end.

Dr. Ejarque stated the dam was on the property when he bought it 38 years ago in response to a question from Richard Ozenich. He further stated that he had no drawings or specifications of the dam.

Peter Ejarque stated that he has noticed that the pond dries up in the summer.

Dr. Ejarque stated lot # 1 is conservation land and no possibility for development, in response to a question from Arthur Grant asking if he would object to a condition of approval that there would not be further subdivision of the lot #1.

There was no further testimony.

Arthur Grant MOVED that the public hearing be closed. The motion was SECONDED by Nick Isaak and PASSED unanimously.

The public hearing was closed at 7:30 p.m.

Chair Watt stated that this item would be scheduled for deliberations at the next meeting of the Planning Board.

Kevin Webb and Neil Wylie returned to table at 7:30 p.m.

- IV. **Continued Public Hearing on an Application for Conditional Use Permit** submitted by Michael J. 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, 52-0 & 53-0, is located off of Dover Road/Main Street and is in the Limited Business Zoning District.

and

- V. **Continued Public Hearing on an Application for Site Plan Review** submitted by Michael J. 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 & 53-0, is located off of Dover Road/Main Street and is in the Limited Business Zoning District.

Stephen Roberts MOVED to open the public hearing on Items IV and V. The motion was SECONDED by Nick Isaak and PASSED unanimously.

Paul Berton, President of Fall Line Properties, Inc. gave a review. He stated that the 68-room hotel project is an allowed use in the limited business district and is also called for in the town's master plan. The hotel has been designed to meet a hospitality need in the community. Mr. Berton presented a letter from Mr. Peterson, the owner of the Three Chimneys Inn stating the hotel was compatible with his inn and restaurant. Mr. Berton further stated that his company has completed a strategic market analysis that will be shared with the financial community that will build the hotel.

Mr. Berton stated that the business venture would accomplish many things in the community. It will fill a hospitality need in the community, expand and diversify the property tax base of the community, and it will strengthen the retail base of the business district. He further stated that the traffic report completed by his company fits into the peaks and valleys of the Route 108 intersection.

Mr. Berton addressed the fears of the public that if the hotel were to fail it would be converted to student housing. He stated that the facility has been designed for conversion to an assisted living, elderly facility. He stated that the banks approve of this back up plan.

Mr. Berton submitted a proposed Condition of Approval that would limit occupancy to no more than ten consecutive days.

Mike Sievert, engineer, reviewed the site plan. He stated that the applicant, Mr. Berton, has been granted a variance from the Zoning Board of Adjustment, to intensify and extend the non-conforming use on the lot. No variance is necessary to move the duplexes. The proposal is to relocate the 3 duplexes to the northwest corner of the property. Other improvements to the property include parking lots, (ingress and egress) landscaping, lighting, screening, utility upgrades, adding fire hydrants and upgrading sewer and drainage. The DOT has issued a verbal permit pending signal timing. The DES and consultants have recommended paving the area is due to environmental issues (contamination due to the gas station). Building placement has been pushed away from the entrance of the building.

Roger Brown, Portsmouth, spoke about the design of the building. He stated that the building has been designed to compliment the courthouse and other buildings in the area. There would be wood trim, no vinyl. There will be a café, for hotel guests only, an area for business meetings and some luxury VIP suites for gatherings such as weddings. He stated that he understood that there was discussion regarding increasing the pitch on the roof. Currently, they are 30 ft. high which is the regulation, but that the planning Board could grant a waiver for 5 more feet. Mr. Isaak stated that would be his recommendation.

In response to a question from Mr. Grant, Mr. Seivert stated that PVG refers to “proposed vertical granite curve.” He further stated that “intensification of use” refers to intensifying the lot with the new use and bringing any non-conformity into conformity. Two variances were granted; one to relocate the duplexes and make it a single unit building, and another to remove the lot lines and intensify the use with a new building.

In response to comments from Mr. Webb, it was stated that the axis of the building was changed due to the concerns raised by DES with disturbing the contaminated soil. It was explained that the easiest solution was to cap the area with pavement and reorient the building.

Mr. Sievert stated that there are a total of 126 parking spaces in the area, 68 for the hotel, 12 for the function rooms, 4 for employees, and 42 for the existing apartments. He further stated that the function rooms are intended for small functions.

A brief discussion was held regarding lighting in response to questions from Nick Isaac and snow stacking in response to a question from Annmarie Harris.

There was no one from the public to speak in favor of the application.

Speaking in opposition to the application included:

Jim Jelmsberg, Park Court, stated that one of the main concerns is that the hotel will fail and that the property would be converted to student housing.

Steve Harvey, 11 Bayview Road, stated that he felt the scale of the building is inappropriate for the residential scale of the neighborhood. He showed several sketches he had prepared. He stated that the building is 11,000-sq. ft. per floor and that other buildings in the area are approximately 2000 sq. ft. each. He also stated that other

problems with the site included that there were only four ADA parking stalls and that there should be five.

Mr. Harvey also stated problems with area available for snow removal. He had determined there was 2000 sq. ft. area for snow removal, but that 40,000 sq. ft. would be needed for just one 12-inch snow. He also believed that the parking area needed to be revisited, as there was no access for emergency vehicles and other problems he identified.

Gwendolyn Howard, 5 Bayview Road, asked a question about drainage which was explained by Mr. Sievert. She further asked questions of Mr. Berton about financial plans if the hotel failed and he needed to convert the property to an assisted living site. Mr. Berton stated he did not have any plans at this time. She stated a concern that a Board member had talked about increasing the height of the structure and the overall size of the structure. In addition, she cautioned the Board about the relocation of the duplexes and noise complaints and police reports in the area. Ms. Howard also read a letter to the Board from the abutters and neighbors about the drawbacks and benefits of the proposal. The items requested in the letter included: a time line for the process of the application, a third party marketing analysis of the viability of the hotel, a professional traffic study during the school year, a lighting impact report, a historic district review, duplex relocation, and environmental impact.

Tim Ashwell, 15 Bayview Road, asked a question about a café. Mr. Berton stated the café would be only for continental breakfast and would not be open to the public. Mr. Ashwell stated that the planning Board needed to review the issues of fire lanes, ADA requirements and size of the building for the location. He expressed concern for future use if hotel fails and asked if there was a way for the Board to mandate future use so that the building does not become an auxiliary dorm for UNH.

Kari Moorehead, Bayview Road, asked a question about branding. Mr. Berton stated that he is still studying the issue. She asked about the hours of operation and if there was enough parking for staff. Mr. Berton stated the hotel will operation 24/7 and that parking needs for staff would fluctuate. In response to a question about barriers, it was stated that there would be a barrier similar to what is currently behind Dunkin Donuts. She further expressed concern about the size of the project and that views will be distorted. She mentioned criminal activity on her street due to student parties and that other facilities were not designed initially as student housing but have become student housing. She stated that it was important that the Planning Board consider the concerns.

Johanne Jelmburg, Park Court, stated she wanted to see an independent marketing analysis, and an independent traffic study. She stated concern with impact on neighborhood as well as scale of project. She stated there are many projects that would be allowed on the property but that are not site suitable. She further stated that this building cannot become student housing.

Chair Watt stated that the hearing had gone beyond 8:30 p.m. and that the public hearing would be continued to June 25, 2003.

Mr. Grant stated that the Board could answer some of the questions contained in the letter from Gwen Howard. Mr. Harwood stated the project would go before the Historic Commission on July 1, 2003.

Chair Watt stated that the process would be that the next public hearing would be held on June 25 then closed and the Board would deliberate. The project would then be approved, denied or amended. If there were amendments a new public hearing would be necessary.

Neil Wylie stated that he would like to see a history of the conditions of approval for properties in the neighborhood that were approved for elderly housing and other properties that were converted to student housing.

Arthur Grant MOVED that the public hearing be continued to June 25, 2003 and that discussion not be closed after the motion. The motion was SECONDED by Richard Ozenich and PASSED unanimously.

Mr. Grant requested that the Planner consult with the Fire Department in respect to fire lanes. He also asked the Planner to consult with the Town's legal counsel to ascertain the legalities of the Planning Board to attach conditions to prohibit student housing if the project were approved as a hotel.

- VI. **Public Hearing on an Application for a Pork-chop Subdivision** submitted by Douglas L. Baker, Durham, New Hampshire, to create 2 lots from 1 lot. The property involved is shown on Tax Map 18, Lot 12-6, is located on 263 Newmarket Road and is in the Rural Zoning District. **(The applicant has requested that this item be postponed to July 9, 2003) (8:45 p.m.)**

and

- VII. **Public Hearing on an Application for Subdivision** submitted by Douglas L. Baker, Durham, New Hampshire, to create 2 lots from 1 lot. The property involved is shown on Tax Map 18, Lot 17-2, is located on Stagecoach Road and is in the Rural Zoning District. **(The applicant has requested that this item be postponed to July 9, 2003) (8:45-9:00 p.m.)**

Arthur Grant suggested that he intended to move to deny the application without prejudice and that he would ask the Planner to run the notice of denial before the Town's legal counsel.

Arthur Grant MOVED to deny the application without prejudice.

John Harwood stated that there was a letter to continue which the Board should act on before acting on the motion to deny.

Chair Watt recognized Attorney Francis Bruton representing the Bakers. Attorney Bruton stated that he believed the applicant would be prejudiced as they had agreed to not proceed and provide the planning department additional information. He stated the applicant was 99% prepared with the additional information. He stated that this was not a situation in which the applicant was not ready to proceed. In response to a question from Chair Watt as to how the motion would prejudice the applicant, Mr.

Bruton stated there were rewrite changes that occurred after the R application was accepted.

Mr. Grant stated that the application has been on the agenda since December and that the applicant canceled site walks.

John Harwood stated that the applicant is vested in that the application has been accepted. He further stated that there is nothing in new Zoning Ordinance that would affect the application. In a new application the Board would request a waiver that was previously granted (to not be subject to the conservation open space subdivision requirement) and then proceed with the pork chop and conventional subdivision.

Mr. Harwood also stated that the planning office was notified by the Attorney General's office that the property is subject to litigation involving restoration wetlands. Because the wetlands on the property dictate the location of the building area and the roadways being proposed on the subdivision, the Board felt that what they were looking at may not be accurate if indeed the application would be required to restore some of the wetlands. The applicant responded saying the restoration would not affect any roadway or building area. Mr. Harwood requested evidence from the applicant and was told that the Board could not proceed until they had the proof. He stated that the applicant was not ready to proceed because they did not have information on the plat.

In response to a question from Chair Watt, Mr. Harwood stated that the planning office was aware of the problem before the Board approved the application and that the applicant was going to be required to restore some of the wetland. Therefore, any of the wetland drawn on the plat in front of the Board would not be correct and could affect the location of the building areas and the roadways.

Arthur Grant MOVED that in accordance with the recommendation made by the Planner, that the Board inform Attorney Bruton on behalf of his client Douglas Baker that the Board does not grant the request for a 30 day postponement. Neil Wylie SECONDED the motion.

Stephen Roberts asked the Planner if the applicant could get a clouded area sign off from the appropriate state Board that the area would not be affected by any change in wetland re-mediation. John Harwood stated that they do not know and that they had requested evidence that what was shown on the subdivision plat was accurate.

Attorney Bruton stated that the Board discussed the issue when they accepted the application. The DES action was discussed and that the planning department's recommendation to the Board was that in order to accept the application, the information was not needed. He further stated that a plan to show the restoration is to be presented as requested.

In response to a question from Jim Campbell, Attorney Bruton stated that a waiver was granted on February 12, 2003 and that the application was accepted on March 26, 2003.

Kevin Webb stated that he felt there was confusion over what information was required to accept an application and what information is required to perform an adequate technical review. He further stated that the best and latest wetlands information is not needed to accept a wetlands application. It is clear in the regulations what constitutes a complete application and that it has to do with permission and deeds and specifications for plat maps. He stated that it was his opinion that for the Board to review the wetlands issues on this application, that the Board needs the best and latest and final information on the wetlands and where the wetland boundaries will be. Mr. Webb stated that he believed the wetland boundaries and setbacks as shown on the plat are pushed to the limit.

Mr. Grant stated that if is motion to not continue were passed then he would be making a motion to deny without prejudice.

Stephen Roberts stated that he supported the current discussion that without a plat that shows the wetland boundaries, the Board cannot apply the terms of the ordinance.

Neil Wylie asked Attorney Bruton if he could guarantee that the plat before the Board would be the same once the litigation is settled. Attorney Bruton stated that it was his understanding that the wetland survey would not change.

Nick Isaak stated that it was his understanding that if wetlands have been filled in or otherwise altered that they need to be restored to the original. Kevin Webb agreed and also stated that they can be moved and that a wetland can be created where one did not previously exist. Nick Isaak stated that the dilemma is between what exists today and the previous boundaries.

Attorney Bruton further stated that had the applicant not been asked to provide the courtesy, they would have been ready to make their presentation at this meeting.

In response to a question from Arthur Grant, Attorney Bruton stated that the information requested was not required in terms of the subdivision plan but as a courtesy the applicant is on the verge of getting the information.

John Harwood stated that Attorney Bruton is correct that the first postponement of the public hearing was at the request of the Board because the information from DES may have had an effect on the location of the wetlands. The applicant stated they would get the evidence but had to ask for an extension to complete their report. He further stated that Attorney Bruton is correct that a public hearing could be opened tonight without the information. Mr. Harwood stated he felt that the Board could not review without the final piece of information

Neil Wylie stated that he could agree to a 30-day extension if it was agreed that a final plat would be available by that time.

Annmarie Harris stated that there would not be a negative concern to deny without prejudice.

Neil Isaak stated he agreed with Neil Wylie.

Kevin Webb stated that if the final report on wetland restoration were not available by the next Board meeting then the application should be denied without prejudice

The motion to DENY the continuance FAILED on a vote of 1-7-0 with Mr. Grant voting in favor.

Kevin Webb MOVED that the public hearing for the 2 Baker Subdivision Applications be continued for 30 days until July 9, 2003 pending receipt of the requested wetlands information by the next regular planning Board meeting on June 25, 2003 with due public notice at the applicants expense. The motion was SECONDED by Neil Wylie and PASSED unanimously.

Chair Watt called for a 5-minute recess at 9:22 p.m.

Chair Watt reconvened the meeting at 9:28 p.m.

- VIII. **Continued Deliberations 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. **(9:28 p.m.)**

Richard Ozenich recused himself at 9:28 p.m.

The conditions of approval were reviewed and the following changes were made.

Page 2 - bottom - add the date of the site walk.

Page 3 - top – add the word abutters before their names.

Page 3 - mid page add dates April 24 and May 18 for site walks.

Page 4 – item 2. ...appropriate professionals licensed. (add s to professional)

It was noted that Item #12 has been moved to post construction.

Page 5 – Item 17 – the term “a not” should read “a note”

Page 6 – Item 27 – cross out the first sentence.

Page 6 - Item 23 – change to read “natural areas” not “natural trees.”

Page 10 – Item 28 – after the words sedimentation controls insert the words “and shall be”

Page 10 – letter A – change the word footers to footings

Page 11 – Item F – add bi-weekly basis or more frequently as required by wet weather.

Neil Wylie MOVED to approve the application as described in the Findings of Fact and Conditions of Approval, as amended. The motion was SECONDED Kevin Webb and PASSED unanimously.

Richard Ozenich returned to the table at 9:48 p.m.

IX. Other Business

- A. New Business: Jim Campbell suggested that the Board schedule one meeting quarter for planning and to begin this process in the fall
- B. Old Business:
- C. Next meeting of the Board: **June 25, 2003**

X. Approval of Minutes - May 14, 2003

Minute Taker add her name to Others Present

Page 1 no ‘ in name Grafts

Browne Center should have an “e” at the end of the name - Browne Center.

Page 3 – correct spelling of Neil Wylie

Page 4 - email from conservation commission Duane Hyde

Page 5 – elevation of foundation

Page 6 – Item 7 – 4th paragraph - strike the word “positive”

Correct spelling - Jelmberg

Page 7 – A. Other business – change “...and to tear down”

Change Sawyer Mill to Saw Mill area.

Change Neil Isaak to Nick Isaak on last page.

Richard Ozenich MOVED to approve the minutes of May 14, 2003 as amended. The motion was SECONDED by Kevin Webb and PASSED unanimously.

XI. Adjournment

Arthur Grant MOVED to adjourn the meeting. The motion was SECONDED by Stephen Roberts and PASSED unanimously.

Chair Watt adjourned the meeting at 10:01 p.m.