

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

**DURHAM PLANNING BOARD  
WEDNESDAY, JUNE 25, 2003  
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL  
7:00 P.M.**

**MEMBERS PRESENT:** Dave Watt, Chair; Nick Isaak, Richard Ozenich, Alternate; Kevin Webb, Alternate; Arthur Grant, Neil Wylie, Rachel Rouillard, Amanda Merrill

**MEMBERS ABSENT:** Stephen Roberts, Annmarie Harris

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

Chair Watt called the meeting to order at 7:00 p.m.

**I. Approval of Agenda**

*Amanda Merrill MOVED to approve the agenda. The motion was SECONDED by Arthur Grant and PASSED unanimously.*

**II. Report of the Planner**

The planner's report is attached to the Board Packet of June 25, 2003. In response to a request from Arthur Grant, Mr. Campbell stated there were 27 conditions for pre-signature and 33 conditions of approval for post signature on the Findings of Fact and Conditions of Approval for Perley Lane.

**III. 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.

**IV. 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.

***Neil Wylie MOVED to re-open the public hearing on the above applications. The motion was SECONDED by Amanda Merrill and PASSED unanimously.***

In response to a request from Neil Wylie and with no objection, John Harwood, Planner read through his report outlining the conditions of approval, feasibility studies, conditional use permit, traffic, parking and history of the Park Court Apartments and Young Drive. This report is attached to the Board Packet of June 25, 2003.

Chair Watt opened the public hearing at 7:07 p.m. The hearing continued with those people speaking in opposition to the application.

Jim Jelmborg, Durham, stated that the experience of Young Drive gave all the more reasons for serious conditions of approval. He further stated that Attorney Peter Loughlin would be speaking to the Board regarding conditions of approval.

Attorney Peter Loughlin, Portsmouth, stated that he was speaking before the board at the invitation of Jim Jelmborg. Attorney Loughlin stated that the chief concern he was addressing was that of student housing. The concern with the hotel proposal is that it could become student housing. Attorney Loughlin prepared some draft findings of fact, which were passed out to the members of the board.

In response to a question from Chair Watt, Attorney Loughlin stated that the town could legally discriminate against undergraduate students. Attorney Loughlin further stated that there should be conditions against allowing extended stays in the hotel.

Amanda Merrill asked Attorney Loughlin if he had any examples of other towns that have used zoning ordinance language to essentially discriminate against undergraduate students and limit housing to non-students in as direct a way as the conditions he presented before the board. Attorney Loughlin stated he did not have any examples.

In response to a question from Kevin Webb, Attorney Loughlin stated that the first condition he listed under #14 would in fact take care of the issue of renting to undergraduate students.

Neil Wylie stated that Mr. Berton had distributed proposed conditions of approval at the last meeting which limits "all" hotel guests to no more than 10 days. Mr. Wylie asked Attorney Loughlin if this condition if it were adopted, would satisfy his concerns regarding undergraduate students. Attorney

Loughlin stated yes to some degree, but that the concern was that some students would find a way around the law.

Jim Jelmsberg, Durham, in response to a question from a member of the board stated that Hanover is tightening their ordinance for rental housing. He further stated that rental housing in any university town means student housing because almost all multiunit housing becomes student housing.

Stephen Harvey, 11 Bayview Road, Durham, stated that he felt there were two issues - one how to limit student housing and two should the structure be built as proposed. He stated that many people do not want such a large-scale project in the area. He presented a chart showing the traffic accidents in the area for 10 months from 7/1/02 to 5/15/03. There were 25 accidents in the area during that time and there have been 40 police complaints in the area during the same time period, which included Young Drive.

Susan Harold, Durham stated that she brought a letter from Sam Flanders, Durham. Mr. Flanders could not be at the hearing. Ms. Harold stated that Mr. Flanders was concerned with a 3-story structure at the location, financial viability of the plan and future property use. In addition he proposed some alternative uses for the property including a Library, casual restaurant, professional office park, or medical professional building.

Ms. Harold stated that there have been many instances of inebriated students in the area and is concerned that the developers just think that the building of the hotel will make everyone rational and the drinking will stop.

Jay Conner, Durham, stated that he has a concern with the wetlands between his land and the proposed property development. He is concerned with the drainage of the property and who would be responsible for drainage. He also was concerned with the size of the building.

Johanne Jelmsberg, Durham, presented a letter from Phyllis and Hans Heilbronner, long time residents of Durham. The letter stated that they do not believe the proposal is in conformity with the goals of the town. The Heilbronner's were also concerned with the traffic patterns and that elderly people would not wish to live in the area if the structure were to become elderly housing in the future.

Nancy Sandberg, Langley Road, Durham, stated that she has served on the Master Plan 2000 and the 1995 community development plan for this area, and on the Route 108 design committee that looked at this intersection. She stated that a hotel on the site would not be in the interest or of benefit to the town. It would have a negative impact on the intersection. The Route 108

Design Committee met with the State DOT, which concluded that the intersection would be in failure even once it was complete. The DOT also concluded that this should be a "T" intersection and that a crossroads intersection was not part of the design committee. The timing and flow of the corner would be negatively impacted.

Ms. Sandberg further stated that the Master Plan 2000 Committee felt professional offices would be of better service to the community. There is a need to allow for economic development without creating a negative impact on the neighborhood. There also needs to be a better transition into the historic district by bringing buildings closer to the street. A parking lot would not be in accord with that vision. The history of the area should not be ignored.

Karen Horn, Durham, expressed concern for safety and traffic flow. She stated that children use this area to walk, when snow is present, to the middle school and that the proposed structure would force the children to walk on the street. She was also concerned with the increased noise at night due to deliveries.

Joie Harvey, Durham, stated that this is a protected pocket neighborhood and as such the board should not allow anything to be built that would ever become student housing in the area.

Gwendolyn Howard, 5 Bayview, Durham, read a letter from Al and Noreen Pemberton as they were unable to attend. The letter stated support of the proposed hotel contingent that it not be accompanied by the three freestanding student occupied duplexes. There should be provisions that preclude subsequent conversion to student occupied residences or elderly housing. Planning for the long term is essential for this project.

Ms. Howard stated that she wants to encourage the Planning Board and the Town Council to help the neighborhood to keep up the vigilance in the area. She also stated that she appreciates the work and public involvement of everyone. She feels that the proposal is problematic. The parcel of land is too congested for the project and that the scale of the building is too large. She also believes that the traffic and safety are major issues in the area. The planning board needs to think about what the town wants this area to look like in the future. She encouraged the board to revisit the fire lane. She also requested that the board be mindful of the residents' and developers' interests.

Sally Hochgraf, 9 Olde Landing Rd., Durham, stated that the proposed structure would overshadow the historic courthouse and the historic Durham community Church. She presented the Board with a written report on the

purpose of the Durham Historic District. In addition, she expressed concern regarding safety and traffic flow.

***Arthur Grant MOVED that the public hearing be continued to July 9, 2003 and that the chair call a 5-minute recess. The motion was SECONDED by Neil Wylie and PASSED unanimously.***

Chair Watt called for a 5-minute recess at 8:31 p.m.

Chair Watt called the meeting back to order at 8:40 p.m.

V. **Public Hearing** on a petition submitted by Public Service of New Hampshire, Manchester, New Hampshire, to remove trees along a portion of Packers Falls Road which is considered a scenic road in accordance with RSA 231:158.  
**(8:40 p.m.)**

David Crane, Arborist for Public Service of New Hampshire stated that they are planning to trim and remove trees and brush adjacent to and beneath some of its power lines. The area in question was trimmed in 1999. On average this type of maintenance is done every six years, but due to the large number of outages in this area it is necessary to remove and trim trees sooner. Because this is a scenic road a letter of approval is needed from the planning board. Mr. Crane met with both Mike Lynch and Jim Campbell prior to the hearing.

In response to a question from Arthur Grant, Mr. Crane stated that at this time all they have found is ground level brush beneath the lines, which they will trim and that they are only taking down three trees at this time. If more than a third of the crown needs to be taken off a tree or the limb, then the tree or the limb would be removed entirely as there would be a good chance that it would not survive trimming. Landowners in the area are contacted to inform them of the plans.

Mr. Crane stated that the statute gives the Board jurisdiction over the cutting of any trees that are greater than 15 inches in circumference at a point 4-ft. above the ground.

Neil Wylie requested that Jim Campbell get the letter of approval for Durham Point so to provide a framework for action to be completed.

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

Ernst Linder, 379 Packers Falls Road, was in attendance to hear what would be cleared away on the property.

***Arthur Grant MOVED to close the public hearing. The motion was SECONDED by Nick Isaak and PASSED unanimously.***

In response to a question from Arthur Grant, Mr. Crane stated that if the owner of the property does not want the wood chips, then Public Service would dispose of them off-site.

In response to a question from Amanda Merrill, Mr. Crane stated that while Public Service has the authority to remove more than the three trees identified so far, he does not anticipate the number removed being significantly greater than three.

***Arthur Grant MOVED to approve the petition with the provision that all the landowners be contacted and that any additional trees that need cutting will require the approval of Mike Lynch, Director of Public Works for the Town of Durham. The motion was SECONDED by Neil Wylie and PASSED unanimously.***

- VI. **Deliberation 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. **(9:11 p.m.)**

Neil Wylie and Kevin Webb recused themselves from the deliberations on this application.

John Harwood, Planner stated that he had made a few changes to the draft Findings of Fact and Conditions of Approval. His report was attached to the Board Packet.

In response to a question from Arthur Grant, Mr. Harwood stated that the width of the driveway would be 15 ft. as required by engineering. The fire department requires 12-ft.

In response to a question about the dam on the property, Mr. Harwood said that DES did a site visit and classified the dam as AA. This means that DES does not require mandatory maintenance and inspections and care as nothing is in jeopardy if a AA Dam fails.

Arthur Grant stated that in granting this waiver of 4 lots being served by a single driveway, the Board needs to make it clear that this is an exceptional action to preserve a wetland.

In response to a question from Mr. Grant, John Harwood stated that the police chief is aware of the Board's plan to grant a waiver to have only one access area to four homes. He further stated that the concern of the police department and the fire department's main concern is that the house lots are well marked for 9-1-1 purposes. The fire chief also mentioned that there be a number for the subdivision on Madbury Road and that the addresses on Hampshire Road be well marked.

Mr. Grant stated that he felt the Board include a condition of approval that there be clear identification at the entrance to the lane as to the house numbers located off that lane.

The Board reviewed the Findings of Fact and Conditions of Approval. for this application and made the following corrections and revisions.

Under findings of fact Items 1 and 11 change "a amended" to read "an amended."

The opening paragraph should be corrected to read Section 175-65 not 175-165.

Add that the application was accepted on Feb. 12, 2003 between items 8 and 9 on page 1.

Correct item 9 from "requesting a 60-day extension" to read "granting a 60-day extension."

Change the wording in item 12 from "approved the amended conservation" to read "approved the amendment to the conservation..."

Add 13a. stating date of the public hearing as May 11, 2003.

***Arthur Grant MOVED granting a waiver to section 9.03A of the Durham Subdivision Regulations pertaining to a requirement that a driveway shall not serve more than 2 lots, the Planning Board hereby grants the waiver as an exception to allow 4 lots to be served by a shared driveway. Clear identification of house numbers is required on Hampshire Avenue. It takes this action to minimize the impact and preserve the benefit of a wetland. The motion was SECONDED by Amanda Merrill and PASSED unanimously.***

Under the section on Waivers, Chair Watt stated that the above motion will be added after the sentence beginning "The Planning Board hereby..." In

addition the term four homeowners in the second sentence of the first paragraph will be changed to four lots.

The following changes were made to the Conditions of Approval.

Change Item #2 to read "The common driveway shall be..."

Add the following to Item #3, "...the Town Engineer and if appropriate by the Town Council."

Add the following to Item #4, "...the Director of Planning for approval and shall be recorded by the applicant with the county registrar of deeds."

Add the words "if necessary" to the end of the sentence on Item #5.

The following additional conditions were added.

"The paved width of the shared driveway should be at least 12-ft. There should be at least 12-ft. of clearance above the shared driveway to allow the passage of fire trucks and other emergency vehicles.

The following additions were made to the Conditions to be Met Subsequent to the Signature of Approval.

Add to # 1 "...Conditions of Approval and conservation deed restriction shall be recorded..."

Chair Watt requested John Harwood to include a 4th additional condition regarding signage on the property.

***Arthur Grant MOVED for the approval of the Findings of Fact and Conditions of Approval. Construction drawings will be provided to the Department of Public Works pursuant to Section 1102 of the subdivision regulations. The motion was SECONDED by Rachel Rouillard and PASSED unanimously.***

- VII. **Discussion on and 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.
- VIII. **Discussion on and 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.



Pursuant to a request by the Board on June 11, 2003, Mr. Baker's attorney, Francis Bruton presented the Board with the wetland restoration map and the Board scheduled a public hearing for the project on July 9, 2003.

IX. Adjournment

***Arthur Grant MOVED to adjourn due to the lateness of the hour and the heat. The motion was SECONDED by Amanda Merrill and PASSED unanimously.***

Chair Watt adjourned the meeting at 10:02 p.m.

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Amanda Merrill, Secretary

Date