

Approved at the Planning Board meeting of August 13, 2003

**DURHAM PLANNING BOARD MINUTES
TUESDAY, JULY 9, 2003
TOWN COUNCIL CHAMBERS - DURHAM TOWN HALL
7:00 P.M.**

MEMBERS PRESENT: David Watt, Chair; Amanda Merrill, Kevin Webb, Alternate;
Arthur Grant, Richard Ozenich, Alternate; Nick Isaak,

MEMBERS ABSENT: Rachel Rouillard, Neil Wylie, Stephen Roberts, Annmarie Harris

OTHERS PRESENT: Jim Campbell, Planner; John Harwood, Assistant Planner; Barbara Stoddard, Note Taker; and Interested Members of Public

Chair Watt called the meeting to order at 7:00 p.m. Both Richard Ozenich and Kevin Webb will be voting members this evening.

I. Approval of Agenda

Amanda Merrill MOVED to approve the agenda. The motion was SECOND by Nick Isaak and PASSED unanimously.

II. Report of the Planner

Jim Campbell's report was attached to the Board packet. Mr. Campbell stated for the benefit of the audience that he meets monthly with Doug Bencks, Campus Planner and Architect for UNH. Mr. Campbell stated that he met with Doug Bencks on July 7, 2003. On June 25, 2003 he attended part of the Scoping Meeting for the Newington-Dover Spaulding Turnpike Project and on July 1, 2003 he met with Amanda Merrill to discuss changes to the Planning Board rules of Procedure.

John Harwood, Assistant Planner stated that there were 2 items before the Board for the Fall Line Hotel and the Baker Subdivision. He stated that nothing new has been received from Baker Subdivision but that he has a map to accompany that presentation. In relation to Rules of Procedure, Mr. Harwood suggested that the Board talk about the order of review when an applicant has to appear before Historic District Commission.

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. (7:15-8:30 p.m.)

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.

Chair Watt opened the public hearing at 7:10 pm.

Chair Watt explained the procedures to be followed will be that the Board will continue to hear from members of the public that have not spoken yet, members of the public with something new to say, the applicant gets 5 minutes of rebuttal and a member of the opposition will also get 5 minutes. Gwendolyn Howard will represent the opposition in rebuttal.

Beth Olshansky, Packers Falls Road, Durham, read a letter that was presented to the Board and is attached to the packet. She stated that according to 175-10, Item K: "A Conditional Use Permit may be granted only if the proposal, as submitted, is of benefit to the town. Section L states the "burden of proof for satisfying the criteria considered for approval shall rest with the applicant." The section reminds us that "The granting of a conditional Use Permit is a matter of grace." Ms Olshansky also requested an independent market analysis to insure that this project is viable. She further asked that Peter Loughlin be included in development of Conditions of Approval.

The applicant, Paul Berton stated that Michael Sievert would address the technical issues raised. Mr. Sievert stated that some changes had been made to the plans. The lighting has been re-labeled on the existing plans. The fire department has no problem with the fire lanes as presented on the plan. The duplexes have been moved back to make more accessibility. A street light has been removed. Parking spaces have been adjusted for additional handicapped accessibility. Made changes of width as requested by the DPW. Mr. Sievert stated that the traffic studies they have done have been approved by the DOT and the Durham DPW. Traffic will decrease during the morning and evening peaks.

Mr. Sievert explained that environmental issues – it has been proven that the site is within the OG funds under control of the State of NH. The consultant likes the pavement over the site. Drainage has been reviewed and approved by the NH DOT and by the Durham DPW and additional controls have been put into place to meet the EPA standards. There is a decrease in runoff on the easterly side. The site plan requirements building coverage requirements and parking requirements have been met. The maximum height of the building is 30 ft. and we meet that.

Paul Berton stated that the Board needs to focus on the regulatory documents and not focus on personal hearsay but stay focused on the regulation. The project being presented is a hotel. Any change in use comes back before the Planning Board. The Board cannot deny or accept the application based on speculation. The Police Department, the Fire Department and The Department of Public Works have no problem with the project. The residents of Durham will benefit from the project and it meets all the regulations.

Inge Valentine, 17 Dear Meadow spoke to the issue of traffic and that there is one traffic light at this corner.

Gwendolyn Howard, 5 Bayview Road, Durham provided rebuttal from the public. She stated that people are genuinely concerned about the effect of the project on the pocket neighborhoods. According to Section 175-10 of the Durham Zoning Ordinance, that the granting of a conditional use permit is a matter of grace and a refusal is not a denial of a right. Ms. Howard asked the Board to consider if a 3 story, 68 room hotel a viable business for Durham. She further stated that most people her group has asked do not think so, including local hotel experts. Ms. Howard stated that there have been many requests for independent market analysis.

Ms. Howard asked if the project would cause traffic problems and that there have been requests for an independent traffic study. There is also great concern for the children that are not bussed and walk on the road during the school year. She further stated that there is a concern over the size and scale of the hotel and the impact to neighborhood as is the lot density. She stated that the site is already overbuilt and has been established by both the Town Attorney and by Attorney Peter Loughlin. To add a hotel to a site that is already overbuilt is to set a density precedent that would be problematic for the future of the zoning district. Eliminating the third floor would go along way to addressing the traffic and open space problem. Ms. Howard stated that the Board must be very careful approving a building that may in fact be turned into student housing because deed restrictions may not be enforceable.

Ms. Howard asked the Board how the concerns of the Historic District Commission would be taken into consideration and used in the Board's evaluation. She further summarized the concerns as benefit to the community, traffic, size, density, neighborhood impact and the legal opinion on deed restrictions. Many residents have come before the Board and an expert legal opinion was provided. The Board was thanked for its time and patience.

Arthur Grant MOVED to close the public hearing. The motion was SECONDED by Kevin Webb and PASSED unanimously.

Chair Watt closed the public hearing at 7:44 p.m. The Board began deliberations.

Kevin Webb stated that this was a difficult proposal. He understands both points of view. He stated that the approval process under the conditional use gives the Board a fair amount of leeway. He believes that it is in the Town's interest to consider economic viability. It is not in the Town's interest to have an empty facility, to have a business go bankrupt, or to have student housing provided at that intersection. Mr. Webb stated that he does agree in general concept with the conclusions that Mr. Berton has presented in regards to traffic. A hotel will generate sporadic traffic. He also agrees that this is not a matter of right but a matter of grace.

Richard Ozenich stated that he feels much the same way as Mr. Webb. He stated that he has traveled a lot and finding a place to stay in a small town can be frustrating. He is still vacillating and trying to make up his mind.

Nick Isaak stated that he was not on the Planning Board when the original proposal was made for retail shops. He stated that he felt Mr. Berton is making every effort to make this parcel of land viable within the current zoning regulations. Mr. Isaak further stated

that if we want to create a “gateway” to the town that we need to tell the developer what that is so the developer doesn’t keep trying and the Town keeps saying no. There needs to be some work up front to determine what that is. Mr. Isaak stated that one way that Mr. Berton may alleviate some of the speculation about the height of the building would be to show the proposed hotel in relation to the town hall accurately drawn. The protocol issue with the Historic District Commission is important. Mr. Isaak stated that he is trying to weigh the pros and cons.

Amanda Merrill stated that in terms of a commercial proposal, that a well-maintained attractive hotel is a reasonable option. She stated that she hopes this would be a special building and not look like a chain. She hopes that signage would be modest and that there would be vegetative buffering. Ms. Merrill stated that she had looked at the master plan and found suggestions that parking be in the back or side of buildings with appropriate vegetative buffer. She further stated that it would be helpful to see something easier to see to consider how the structure would look. Ms. Merrill stated that she is concerned about viability and would like some type of independent analysis done.

Arthur Grant stated that at the application hearing many months ago, he proposed that an independent marketing analysis be done. The applicant objected to that request. Mr. Grant stated that the applicant injured himself by objecting to the request. At the original application hearing, Mr. Grant stated that he had proposed that the Historic District Commission review be conducted simultaneously with the Board’s review. Mr. Grant stated that if that had happened, we would now know what the landscaping plan and lighting plan was going to be and we would know the concerns of the HDC. He believes those things are important because the Board had considered a previous proposal from the applicant and denied that conditional use request primarily on the grounds of density.

Mr. Grant stated that the building itself is attractive, but it is of a scale that is extremely hard to picture. Mr. Grant made some comparisons of the data for the Durham Crossing proposal, (the one the Board denied) and the current hotel proposal. The impervious area has increased under the hotel proposal by 6,800-sq. ft., which is basically the footprint of the building to be built. The green space is reduced by 6,500 sq. ft. The building coverage the hotel will occupy is 3,900-sq. ft. more. The hotel proposal calls for a maximum roof height of 35 ft.; Durham Crossing was 30 ft.

Mr. Grant stated that the density issues he is concerned about relate to the parking and impervious coverage of the zone. The hotel proposal calls for 126 parking spaces. Mr. Grant feels that it would help greatly if the number of parking spaces could be reduced by 25 spaces. He stated that this would open up more green area. He further suggested that the added green area be at the tip of the parking zone.

Mr. Grant stated that the abutters and citizens have expressed concerns about the traffic. The reports presented have no indication of previous numbers.

In response to concerns expressed by Mr. Grant about meetings with various departments, Mr. Campbell stated that the applicant was referring to pre-application meetings with police, fire, public works, planner, zoning administrator, and code officer.

These groups meet to discuss codes and ordinances. Mr. Harwood stated that memos from the police chief, the fire chief, and public works get forward to the Board and that he can get that information to the Board.

Mr. Grant stated that he has concerns about the traffic flow as well. In addition, he stated that when and if the Board votes to approve the project, he has prepared thoughts as to conditions of approval. He stated that the applicant has agreed to a stipulation that the hotel guests will be limited to short term consecutive stays of not more than 10 days duration. He suggested that it be made clear to future planning boards that it is the decision and intention of this planning board that the hotel not be used for any form of student housing as defined in the zoning ordinance. He also suggested that the board add the parenthetical phrase "that the Board adopts this condition in light of the density of student housing in and surrounding the zoning district and the resulting impacts upon property values and the quality of life in the residential neighborhood surrounding this district.

Mr. Grant further suggested a condition that is specified in the zoning ordinance that any proposed future change in the approved uses of the hotel property shall require review, public hearings and approval of the planning board. He also suggested a condition that the removal of snow and road sand and salt must be trucked from the property and disposed of elsewhere whenever the snow piles in the designated storage areas on the site plan exceed 5 ft. in height, or when the snow piles extend into the designated parking areas or come within 10 ft. of an adjoining apartment building.

Mr. Grant also suggested that one condition should be that the planning board reserves the right to assess and review on an annual basis the traffic pedestrian impacts generated by the hotel and the apartment complex at the approaches leading to and within the intersection of route 108. If such reviews raise issues in regards to vehicular or pedestrian traffic safety in the area, the planning board shall insist that remedial steps be taken to correct unsafe traffic conditions.

Chair Watt stated that the issues of the impervious area and green space are issues that the applicant will have to manage. He stated that any new use of the building would have to come before the board. Chair Watt further stated that he is not sure of the need for an independent market analysis, as it is the applicant's ability to market and sell that will influence the success of the project. He also stated that he believed the benefits of the hotel to the Town are significant.

Chair Watt stated that a picking a use that would generate less traffic than a hotel is difficult. He further stated that he does not believe that the project is out of scale with the rest of the downtown area. He stated that he would feel better about the project if the duplexes would go but that he was not sure whether that should be a condition of approval.

Richard Ozenich and Kevin Webb agreed with the statement that they would like to see the duplexes gone.

Chair Watt further stated that the presence of the hotel makes the applicant a neighborhood ally against rowdy student behavior. Denying the project does not relieve

the Town of coming up with measures to curb the excesses that occur in neighborhoods with student housing.

Amanda Merrill stated that the Board should make a decision as to whether it wants an additional marketing analysis, traffic analysis and a 3D replica of the project.

In response to a question from Richard Ozenich, Mr. Berton stated that he has not decided to "hang a flag" of a particular hotel chain.

Mr. Grant requested that there be an exploration as to what might be done to reduce the number of parking spaces and to open more green space. Mr. Harwood stated that any reduction in the minimum requirements for parking would require zoning board approval.

Mr. Grant further stated that he would have no problem with this project if it were 2 floors but that he understands it might not be financially feasible without 3 floors.

Mr. Ozenich stated that if the applicant were part of a hotel chain the nationwide reservations via computer would generate business.

Ms. Merrill and Mr. Webb both stated that they felt this project would generate less traffic than other types of projects.

Nick Isaak stated that a two dimensional drawing would be adequate if it shows comparison to surrounding buildings and the street.

Chair Watt stated that the Town attorney should be asked about how the Simplex decision would affect the eventuality of the hotel not succeeding and the claiming of hardship by the applicant to convert property to something besides a hotel. Chair Watt stated that a hotel is a permitted use in the Master Plan.

Mr. Campbell stated that he and Mr. Harwood need clear direction from the Board as to how to proceed.

Mr. Harwood asked what the Board hoped to achieve from a market analysis. Chair Watt stated that he wanted verification of the numbers as stated by Mr. Berton.

There was continued discussion regarding feasibility of an independent market analysis.

Arthur Grant MOVED to move to Item V on the agenda. The motion FAILED for lack of a SECOND.

After discussion, the Planner will find an expert at UNH to review the applicant's market analysis and provide a letter that states whether or not the conclusions are reasonable. In addition a visual will be developed to show the scale of the hotel to the buildings in the area, and the Town Attorney will be approached regarding the claim for hardship as it relates to the simplex ruling. The Planner will also study the possible variances to request from the Zoning Board in order to reduce the parking requirements.

Amanda Merrill MOVED to continue deliberations on this application until August 13, 2003. The motion was SECONDED by Richard Ozenich and PASSED unanimously.

Chair Watt called for a 5 minute break at 9:00 p.m.

Chair Watt called the meeting back to order at 9:07 p.m.

- V. **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. **(8:30-9:30 p.m.)**
- VI. **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. **(8:30-9:30 p.m.)**

Francis Bruton, Attorney spoke on behalf of the applicant. In addition Adam Fogg, surveyor was present to answer questions from the Board. Attorney Bruton reviewed the plans stating that the first lot is now 7 acres and would be split almost in half. The second subdivision is 17 acres and will be split almost in half.

Attorney Bruton stated that there are some wetlands issues on lot 18-17-2. The applicant does not believe this issue affects any aspects of the subdivision. The current plan presented to the Board is representative of the restoration areas and will relate to some of the waiver requests that the applicant will be making. The restoration area will not affect the buildable areas. The shared driveway concept relates to impact on the wetlands. Attorney Bruton reviewed the 5 criteria for the shared driveway and the various waivers that the applicant is requesting.

Attorney Bruton stated that the Board might wish to schedule a site walk.

Amanda Merrill MOVED to open the public hearing. The motion was SECONDED by Richard Ozenich and PASSED unanimously.

Shawn Madden, 5 Ross Road, Durham stated that as an abutter he was at the hearing to gather information. He stated that he has lived on his property for 12 years and that the land used to fill up with water before it was dredged and that the access road would be going across the water.

There were no additional members of the public to speak.

Amanda Merrill MOVED to close the public hearing. The motion was SECONDED by Nick Isaak and PASSED unanimously.

Arthur Grant MOVED to deny both applications without prejudice and prescribe that the waiver from the conservation subdivision requirements will stand. The motion is made pursuant to the recommendations of the planner. The exception will persist as long as the applicant reapplies within one year including the waiver of fees. The motion was SECONDED by Nick Isaak and PASSED unanimously.

VII. Other Business (9:35 p.m.)

A. New Business:

1) Request for Extension of Conditions of Approval for Stone Quarry Drive Subdivision.

Arthur Grant MOVED to grant an extension of the Conditions of Approval for the Stone Quarry Drive Subdivision for a period of 90 additional days. The motion was SECONDED by Richard Ozenich and PASSED unanimously.

2) Discussion on posting draft ordinance sections including Part A, Part B, Part C, and the proposed changes to the Zoning Map.

Arthur Grant MOVED to direct the Planner to post parts A, B, and C and the proposed Zoning Map and to schedule the public hearings on the revised items for August 11 and August 25, 2003. The motion was SECONDED by Kevin Webb and PASSED unanimously.

Jim Campbell reported that UNH Representative for Student Affairs; Ann Lawing, met with Mr. Fisher, owner of the Young Drive Development Group and had discussions on ways to improve the situation.

Mr. Campbell further stated that there was a request from the Nature Conservancy to use a portion of Wagon Hill Farm for office space. They will be completing an application for the use and go before the planning board and the town council.

B. Old Business:
None

C. Next meeting of the Board: July 23, 2003

**VIII. Approval of Minutes - May 28, 2003
June 11, 2003**

Approval of Minutes was carried over to the next meeting.

IX. Adjournment

Arthur Grant MOVED to adjourn. The motion was SECONDED by Amanda Merrill and PASSED unanimously.

The meeting was adjourned at 10:04 p.m.

Amanda Merrill, Secretary