

D-R-A-F-T

DURHAM PLANNING BOARD MINUTES WEDNESDAY, JULY 28, 2004 TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL 7:00 PM

MEMBERS PRESENT: Stephen Roberts; Amanda Merrill; Richard Kelley; Kevin Webb; Karen Bishop

MEMBERS ABSENT: Annmarie Harris; Nick Isaak; Arthur Grant; Richard Ozenich

OTHERS PRESENT Jim Campbell, Director of Planning and Community Development; Victoria Parmele, Minute Taker

I. Call to Order

Chair Roberts called the meeting to order at 7:05 PM.

II. Approval of Agenda

Amanda Merrill MOVED to approve the agenda as submitted. The motion was SECONDED by Richard Kelley, and PASSED unanimously.

III. Report of Planner

Mr. Campbell noted he would be on vacation the following week.

He said the Zoning Rewrite committee would be meeting the following week, and would be discussion the Wetland and Historic Overlay Districts as well as the changes to the Personal Wireless Services facilities ordinance.

He noted the Site Plan Application for 66 Main Street had been withdrawn.

Mr. Campbell said the Strafford Regional Planning Commission Regional Master Plan looking out toward 2015 was complete, and said a copy was available in his office.

He said he had received a notice from the Workforce Housing Coalition that invited Board members and municipal officials to join them in a tour of a new cooperatively owned community development in Barrington, designed to meet the region's demand for energy efficient and affordable homes, on Friday, August 6th, Hall Rd, 8:30 am. He said the project was developed by the NH Community Loan Fund.

- IV. **Acceptance Consideration for a Site Plan Application** submitted by Christopher P. Mulligan, Bosen & Springer, Portsmouth, New Hampshire, on behalf of Gamma Theta Corporation, Portsmouth, New Hampshire. The application is to obtain formal recognition of the parking area in the southwest corner of the property. The property is shown on Tax Map 2, Lot 14-2, located at 66 Main Street, and is within the Central Business Zoning District. **(The applicant has requested that this application be withdrawn)**

It was noted again that this application had been withdrawn. There was discussion about the grandfathering of the parking on the property, and the possible precedent that the ZBA's decision to grant their administrative appeal would set.

Mr. Campbell said that Code Administrator Johnson would be bringing this back to the Board for reconsideration, because he was not at the meeting where the appeal of administrative decision had been granted, and had some things to say about the situation. But he said it boiled down to the fact that as long as they could bring the Board a plan that showed all the parking, this and the ZBA decision would allow them to park there.

- V. **Acceptance Consideration of an Application for a Boundary Line Adjustment submitted by Christopher Terry W. & Lynda E. Zych, Durham, NH and Alan Baker, Durham, New Hampshire. The properties are located**

The surveyor, Kevin McEneaney presented background information on the application. He described the 3 lots involved located on Wiswall Road, to the west of the Wiswall Bridge, and provided details with a plot plan of how the parties involved wanted to adjust the boundary lines of the properties.

He explained that the purpose of the boundary line adjustments was to adjust the lines so that the Baker parcel would slide east, and eliminate a 50 ft section, which would center the house better on the lot. He noted there was a circular driveway with the house, and by moving the property lot line to the east, both cuts of the driveway would then be on the Baker lot. He said the acreage of the property would remain the same.

He said that on the Zych parcel, the house had been built very close to the easterly lot line, and they wanted to eliminate the tight setback and wanted to add 1.83 acres, for a total of 3.9 acres. He said the larger, surrounding parcel would thus lose 1.83 acres.

He noted there was a road that cut across the Terri and Linda Zych's parcel that was used to access a camp on the larger Zych property, and said this road would be moved so it would be totally on the larger property. He explained that there was no need for state subdivision approval for any of the changes that were proposed.

Mr. Kelley asked if the 50 ft strip was a right of way, or part of lot 27-2.

Mr. McEneaney said it was part of that lot, but on the recorded subdivision plan it's been listed as a right-of-way. He said that with the boundary line adjustment, the rights of access

from the larger, back lot were being extinguished, leaving it with two other accesses to Wiswall Road.

Mr. Webb asked if the camp on the larger property was used much, and Mr. McEneaney said it received limited use. It was also clarified that lots had previously been subdivided in 1977, and the property owners were a mother and her son.

Chair Roberts noted that there was another lot on the tax map along the river, which cut into lot 27-2 and it was clarified that it had been merged with the bigger lot. He also asked if there were any wetlands, or driveway accesses affected by this adjustment.

Mr. McEneaney said the relocation of the driveway would avoid any wetland impacts.

Ms. Merrill asked if there were implications for the developability of 27-2 with the proposed changes.

There was a detailed discussion on how the frontage of the different lots would change as a result of this application, and would affect the conformity of the buildings.

Mr. McEneaney said that the frontage of the larger lot was being reduced, from 300 to 250 ft. Mr. Webb noted that because this was a subdivision action, one nonconforming lot was being eliminated, but another one was being created. There was discussion about this.

Mr. Campbell said he did not think there was a problem with one nonconforming lot being eliminated and one not changing because the degree of nonconformity would not change. But he also noted that the minimum road frontage was 300 ft. for this zone that would be a problem.

Mr. Webb asked if the same logic concerning nonconformity could be used concerning frontage.

There was a detailed discussion as to how to address this. It was agreed that the lines would have to be adjusted somewhat to avoid the nonconformity of the frontage for Lot 27-2.

Chair Roberts suggested continued the hearing to the next meeting, so Mr. McEneaney could work this out with the applicant.

Mr. Campbell also noted that the applicant would need to reference the correct Flood Hazard Maps in their application.

Kevin Webb MOVED to continue further consideration of the Application until the next Planning Board meeting on August 11, 2004. Richard Kelley SECONDED the motion, and it PASSED unanimously.

- VI. **Acceptance Consideration for a Conditional Use Permit Application** submitted by Michael S. Davis, Sumner Properties LLC, Durham, New Hampshire. The application is to change the conditional use of the property from fraternity/sorority use to general apartment

use, and to change from a five apartment with one common room building to a six apartment building. The property is shown on Tax Map 2, Lot 8-13, located at 33 Madbury Road, and is within the Residential A Zoning District.

Michael Davis spoke before the Board, and provided background information on his application. He said he would like to change his building from 6 apartments, consisting of 5 one-bedroom units and one common room back to 6 one-bedroom units, with no common room. He noted that this configuration was the same as the property had been before 1999.

He said the previous conditional use permit was written so that a lot of people could pile into that sixth room. He said he wanted to eliminate the fraternity status, where the building had to be occupied by a recognized fraternity, and wanted to rent it as an apartment building to individual students. He explained that the reason for this was that at present he had no control over who lived there, and had difficulty with the activity that went on there. He noted that at present he had to rent to fraternity people because if he didn't, after one year, the property reverted back to only 3 people being able to live in the whole building.

Mr. Davis noted that he had no problem with inspections by the Fire Department, Police Department or Code Administrator Johnson, and provided details of his property management philosophy.

Chair Roberts provided clarification that the Board at this point was considering whether to accept the application. He also noted that Mr. Campbell had suggested the possible need for a site visit to understand the site plan better.

Mr. Campbell noted there were no written comments from the Public Works Department concerning the application, but said he had spoken to the department that day, and they had no problems with it.

Chair Roberts noted that Code Administrator Johnson had made some comments about conditions that should be attached to the application.

Mr. Campbell said these were generally things that could be put in the Conditions of Approval, and related to quality of life issues. There was some discussion about these conditions.

Mr. Kelley asked Mr. Davis if he was aware of Mr. Johnson's conditions, and if so, if he thought that any of these seemed unreasonable.

Mr. Davis said he knew of them. He was given a copy of the list of conditions, and said he did not have a problem with the items on it.

Amanda Merrill MOVED to accept the Application submitted by Michael S. Davis, Sumner Properties LLC, Durham, New Hampshire to change the conditional use of the property from fraternity/sorority use to general apartment use, and to change from a five apartment with one common room building to a six apartment building. Karen Bishop SECONDED the motion.

Mr. Davis said he had talked with Public Works Department Director Mike Lynch about issues concerning the site. He noted that the dumpster issues for the building were being worked out, and said he would put them where the Town wanted them, and where the dump trucks wouldn't tear up the parking lot.

Board members agreed they had no problem with accepting the application that evening.

The motion PASSED unanimously.

Mr. Webb asked if any of the abutters to this property were residences, and was told there was one. He said his biggest concern was that any residential abutters were fully aware of this application, since they would be most directly impacted.

Mr. Campbell noted that because this was an application for a Conditional Use Permit, the applicant would need to post a sign about the hearing on the property, 10 days before the hearing.

It was agreed that the Board should do a site inspection of the property on Tuesday, August 10th, at 4:00 pm, and the public hearing date for the application was set for August 11th.

Mr. Kelley asked what would occur if the next year there were no tenants and was occupied by a fraternity or sorority.

Mr. Davis said that as an apartment, even though fraternity members might be in there, he would have more control over what went on there. He noted that individual tenants could be fined if they didn't follow the apartment rules, and said this could be used to control problem behavior. He noted again that by getting rid of the gathering room, this would also help to control behavior.

Mr. Kelley thanked Mr. Davis for his commitment to the community.

Mr. Davis noted that he had offered this building for construction of a library, noting it was a good location.

VII. CIP Discussion

Mr. Campbell said he wanted to offer the Board one more chance to suggest projects to include in the CIP. He said he had been spoken with the Public Works director about getting the figures regarding the upgrade of Beech Hill Road with sewer and water. He also said there would be money for studying the Spruce Hole Aquifer.

Chair Roberts asked about funding for updating the Master Plan.

Mr. Campbell said this could be done as part of the operating budget, not the CIP. There was discussion about this, and Mr. Campbell said he could include a line item in the budget for consulting regarding the Master Plan update.

Chair Roberts asked if roadway expansion and water and sewer capacity issues had been covered.

Mr. Campbell said yes, and also said he had talked to PW about taking more from Wiswall and dredging more of the reservoir. He said a number of people felt they should be able to take more from the Lamprey River.

There was discussion about economic development, as it related to the CIP.

Mr. Campbell said he would have to talk more with Administrator Selig about this, and noted that the Economic Development Committee had been started up again. He said he expected that some CIP projects could come out of this.

Chair Roberts noted the build-out analysis that the Board wanted to undertake, and asked if it could be in the budget. Mr. Campbell said it could be.

Chair Roberts asked if there was anything in the budget for the continuing purchase of open space. There was discussion about current use money and other money put in that had accumulated, which had not been used, for the most part.

Mr. Kelley asked Mr. Campbell what was on his wish list, if money were no object.

Mr. Campbell said the projects in there were what he saw as important, noting that the work on Main Street for the area between Pettee Brook and RR bridge, was high on his list. There was discussion on the work planned on Main Street.

Chair asked about the Southern connector project, and Mr. Campbell said he was still waiting to hear on the grant. He said there was money for this next year, regardless of whether the Town received the grant.

Chair Roberts noted that the recommendation from the Master Plan concerning the purchase of Smittys was presently being discussed by the Town Council. There was discussion about this, including the possible land swap idea. Mr. Campbell noted that there was money in the CIP for this purchase.

Mr. Kelley asked if there were some things the Planning Board could do to assist the Economic Development Committee.

Mr. Campbell said the biggest way the Board could assist was regarding rezoning. He said the Board had laid out what it wanted, and it was important to make sure that the Economic Development Committee and the Board were on the same page about this. He also noted that if the Committee suggested changes to the Master Plan, the Board could provide assistance in this area.

Chair Roberts noted that the wetland buffer had been extended in the Business Park, limiting the development capability even more than had been the case before.

There was additional discussion about the Economic Development Committee.

Mr. Kelley asked if the committee would be receiving funds for economic planning, and there was discussion about this.

Chair Roberts noted that Mr. Campbell was a permanent member, and there was discussion about other member categories, and possible funding for the committee.

Ms. Merrill asked if the Committee would have a status that was similar to the status of the Integrated Waste Committee and the Parks and Recreation Committee, so that it would essentially be a permanent committee.

Mr. Campbell said he hoped it would be a permanent committee, but said that at present, it was not.

There was discussion about the importance of connecting with the Pease Development Authority concerning economic development possibilities.

Discussion of Budget

Board members and Mr. Campbell had a detailed discussion about Items that were and were not in the budget for the Planning Board for the coming year.

Chair Roberts said it seemed that the ingredients needed for planning should be in the Planning Board budget, and said otherwise they had to beg for money from other places. He said money for the Master Plan update especially should be included in the budget.

Mr. Campbell said money could be put in for contracted services – mapping, housing research, minutes, Master Plan updates, etc.

Ms. Merrill asked where the money for Strafford Regional Planning Commission for the build-out analysis would come from. There was discussion about this.

Chair Roberts noted that Mr. Campbell would amend the Planning Board budget proposal to show the line items within planning.

Mr. Campbell asked if the Board members planned on taking any professional development courses, noting that some money could be put in the budget for this.

Chair Roberts spoke about the usefulness of the State Planning conferences, as well as other opportunities from the Office of Energy and Planning for new Board members.

Mr. Campbell noted that the American Planning Association had audio conferences available. He also described planning education at a distance courses that were available from Ohio State University.

There was discussion about the amount of money that was available for all of these educational opportunities, and whether more should be put in the budget for it.

Town Council Feedback on Ordinance

Mr. Campbell updated Board members on progress that had been made on working to address feedback from the Council concerning the revised Zoning Ordinance.

- He said Mr. Isaak was still working on revising the Community Center definition.
- Government facilities – Mr. Campbell said the Zoning Rewrite Committee had changed the wording to government facilities instead of governmental facility, and would introduce the definition that Ms. Merrill had put together.
- He said he and Ms. Merrill were working on the passive/active recreation definition. Chair Roberts described the key aspects of this issue, and Ms. Merrill said she would put on paper what had been agreed on.

Mr. Kelley suggested revising the Zoning Ordinance to provide provisions for active recreation in the common land, for example, saying it could take up no more than 10% of that area, and could not have an impact on resource areas.

He said the Zoning Rewrite committee had keyed upon the modification of the land dictating an active use of the land, while the passive use utilized the environment in its natural state.

Ms. Merrill said she had referred back to Randall Arendt's information on recreation, and saw that he made reference to use of the common space for recreation, including the potential inclusion of active recreation. She said she could put together something on this. She said it was key to identify that open space was not all the same in terms of its suitability for various kinds of recreation. She noted that areas meant for continuous greenway or wildlife habitat would not be suitable, but other areas would be, provided there was enough land for this.

Chair Roberts said it would be a shame to restrict recreation on common land if there was enough land available for it in a particular development.

- Mr. Campbell said the definition of somewhat poorly drained soil had been added.
- Mr. Campbell noted General Dimensional Requirements 175- 55-E and F-10 on page 77, and said that Mr. Eyerman would be looking at these again. He said that E said that lots created for conservation subdivisions shall consist of a rectangle that ranges in shape from square to at least one half as wide as it is long. He said that F-10 said if contiguous area was less than 10,000 square ft or narrower than 50 ft, it was proposed to take it out of the calculation of useable area. He noted that the Council had asked some questions about these provisions.

Discussion of Useable Area

Mr. Campbell said the main question was whether the Planning Board intended useable to be considered for non-conservation subdivisions. He said it was confusing in the Ordinance at

present, noting it was listed under general dimensional controls. He said he had been assuming that whether a lot was exempt or not, useable area would have to be calculated.

He said at present if the Board got an application, this would set the precedence for this. He said this should therefore be clarified, because it was not clear to him what was intended here.

Mr. Webb said it was his opinion that it should not apply, noting the whole idea for exempted subdivisions was for someone who wanted to cut his land in half and give a piece of it to his family, etc. He said the concept of useable area was meant for larger, commercial subdivisions, where one needed to calculate how many lots there could be and how much conservation land should be set aside.

Mr. Campbell said he had no problem with this, but said the Board needed to make sure that the wetlands section of the Ordinance say that only 25% of poorly drained soils could be counted toward the lot size.

Ms. Merrill noted that this provision had been taken out of the Ordinance because the useable area language had been put in elsewhere. She asked if other issues besides wetlands, for example steep slopes were addressed with the useable area calculation.

Mr. Kelley asked if HISS maps would be required for an exempt subdivision. There was discussion about this, and it was generally agreed that it shouldn't be.

Mr. Kelley said that when he had been a member of the public, he had thought that useable area did not come into play when talking about exempted lots. But he said that once he became a Board member, he looked under general dimensional controls, and saw that useable area applied to all subdivisions. He said that if they didn't want to change the general dimensional controls, they should change the wording under exemption criteria, so that these exempted lots were exempted from the calculation of useable area.

There was discussion about the fact that the exemption had been developed so that property owners who wanted to do a small subdivision would not be penalized. There was also discussion about how difficult it was to combine the concepts of conservation subdivision and affordable housing.

Mr. Campbell spoke about 175-56 A Special Situations Affecting Dimensions, "minimum lot area for elderly housing may be varied by the ZBA by Special Exception", as it related to minimum useable area, if a conservation subdivision was proposed for elderly housing. There was discussion about this.

Chair Roberts said it made sense to allow a reduction in useable area for elderly housing.

Mr. Kelley said the Ordinance should then say "minimum useable area of lots", because it did not at present.

There was discussion about the use of density bonuses for elderly housing in order to encourage this kind of housing, and other ways that perhaps this could be accomplished. Mr. Campbell said the Board had determined that the concept of density bonuses didn't belong with the conservation subdivision approach.

Mr. Kelley said that if the intent was to allow elderly housing in districts the Town was trying to keep open, there shouldn't be density alterations such as what this provision provided for.

It was agreed that the Board should recommend to the Council that this provision be eliminated. Mr. Campbell said the affordable housing issue would be looked at when the Master Plan was updated.

Kevin Webb MOVED that the Board recommend striking the section A. Lot Area - from 175-56. The motion was SECONDED by Amanda Merrill, and PASSED unanimously.

Mr. Webb noted that 175-56 C 1 said the front yard setback could be varied, and said he thought there was no setback required there. There was a detailed discussion about this. Board members agreed that the words "along minor streets" on page 78, should be taken out, but asked Mr. Campbell to first verify that there would not be any unintended consequences of doing this before sending this on to the Council.

There was discussion about classification of roads in Durham, and Mr. Kelley noted that classification as "arterial road" open up more funding opportunities.

Minutes for June 23, 2004

Spelling of Richard Kelley should be corrected throughout the minutes.

Page 1, Karen Bishop should be listed as present at the meeting.
Page 6, 4th full paragraph, should read "Mr. Pagnotta said he..."

Page 10, 5th paragraph, should read "...on the site plan regarding the conduit and culverts,..."

Also, Page 10, 7th paragraph, should read "...planned to have the pipe encased..."

Page 11, 7th full paragraph, should read "...but was not received in the Planning Office until June 23rd,"

Amanda Merrill MOVED to approve the minutes as amended. The motion was SECONDED by Richard Kelley and PASSED 4-0-1, with Kevin Webb abstaining because of his absence from this meeting.

Discussion Regarding Build-out Analysis

Mr. Campbell provided a copy of the build-out map done for the Town of Lee.

Chair Roberts provided an update on the plans for the proposed build-out analysis, noting that Tony Federer, a volunteer for the Town was not available to help work on the project.

He said the Board had been challenged at the public hearing by a build-out map done by an individual, based on 1970s county soils data, which showed disaster in terms of substantial restriction of property development rights. He said his rebuttal at the time was that the Board had tested land that had come up for development before the Board, which had showed no catastrophic reduction in development potential or alteration of property rights. He said he wanted to get the information on AutoCAD for as part of the planning record as the Board moved forward, and as development proposals, they could improve the data.

He noted that the Strafford Regional Planning Commission had done the build-out analysis for the 2000 Master Plan, and this showed a significant build-out potential for the Town.

Mr. Webb asked if Mr. Campbell knew about Lee's Zoning Ordinance, and how this related to the build-out analysis that had been done. Mr. Campbell said he did not know this. Mr. Webb agreed they should go ahead with the build-out analysis, if they could find the funds to get it.

Mr. Campbell said if the Board did go ahead with this, there should be a disclaimer on the maps that said they were based on the best available data at the time, and were not based on HISS data, which might or might not take more lots away in a conservation subdivision.

Mr. Webb said at some point, they should get a soil scientist to get more intensive data on a few properties in order to get a few detailed snapshots in order to compare the development that could occur based on the old Ordinance and then on the new Ordinance.

Chair Roberts noted that it had been discovered while working on the conservation subdivision provisions that this approach in some situations actually allowed more lots to be built, because of the irregular shape of conservation lots.

Mr. Campbell noted that if one looked at what would be taken out as constrained land for the build-out analysis, they would get something more accurate than was presently available. He said it simply wasn't possible to get something extremely accurate because there was no way HISS mapping could be done for the whole Town.

Mr. Kelley said it was not clear how they were going to take the Ordinance and create a build-out map. He said it hadn't been clear to him how the regional planning commission was going to structure the process of doing the build-out.

It was clarified that based on the discussion with Mr. Campbell, they would develop a list of constraints, and would factor in different densities for the different zoning districts.

Mr. Webb said the results would be hazy compared to what could be done with a more intensive HISS analysis of selected parcels. He said ultimately he would prefer a snapshot of a few sites using hard data.

Mr. Kelley said he was concerned about how the soils data would be handled. He said he knew that accurate slope data could be obtained from topographic maps, but said that in using the County Soil Survey data, they would have to make assumptions about depth to bedrock and hydric soils, which would make the results uncertain.

Chair Roberts said time was of the essence, and said the proposed build-out would serve the purpose for the time being. He also noted that detailed tax map data was available on computer, to be used as part of the analysis.

Ms. Merrill said even with disclaimers, she was concerned the map might be misleading.

Ms. Bishop noted that the build-out map would only be a planning tool.

Ms. Merrill asked if there was a larger map of the build-out map that had been done for the Master Plan, and Mr. Campbell said he would ask the regional planning commission about this.

Kevin Webb MOVED to adjourn the meeting. The motion was SECONDED by Amanda Merrill, and PASSED unanimously.

The meeting ADJOURNED at 10:20 PM.

Amanda Merrill, Secretary