

D-R-A-F-T

DURHAM PLANNING BOARD
WEDNESDAY, FEBRUARY 23, 2005
TOWN COUNCIL CHAMBERS – DURHAM TOWN HALL
7:00 PM

MEMBERS PRESENT: Chair Stephen Roberts; Councilor Arthur Grant; Nick Isaak; Amanda Merrill; Richard Kelley; Bill McGowan; Richard Ozenich (came late)

MEMBERS ABSENT: Kevin Webb; Annmarie Harris

OTHERS PRESENT: Jim Campbell

I. Call to Order

II. Approval of Agenda

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

IIIS. Report of Planner

- Mr. Campbell noted the upcoming Zoning Rewrite meeting, scheduled for Monday, Feb. 28th.
- He said that on February 21st, Bruce Mayberry, a Planning consultant, gave a presentation to the Town Council on the draft Impact Fee Ordinance, and noted that the presentation went very well. He said the Council had recommended that work on this project should continue.
- Mr. Campbell said the Conservation Commission had completed its draft of the Shoreland overlay draft, and had developed a number of comments for the Board. He said their review of the Wetland Overlay would take place at their first meeting in March.
- He said the Board had received one new application for the March 9th meeting, from Courthouse Ventures LLC, for an Irving Station with a coffee/donut shop on the current “Smitty’s” property. He also said the University would be presenting two projects for public hearing at the meeting, one for the Southern Tunnel and the other for the Gables addition.
- Mr. Campbell noted he would be out of town for the March 23rd meeting, attending an American Planning Association conference. He said this could conceivably be a good time to have the quarterly planning meeting, to discuss setting up a clear process for amending the Master Plan and future Zoning Ordinance amendments. He noted that the Board bit off more than it should have for this current process.

- He said he had met with Crawford Mills, Chair of the Historic District Commission to discuss the Commission's desire to assume the responsibility for a Heritage Commission, while keeping their official duties as the HDC. He said the existing district would remain, but said the Heritage Commission would be able go beyond the district to designate certain buildings and sites that were historic. He said the Commission would play an advisory and educational role, but not a regulatory one. He also noted he had drafted some language which the HDC would review and then recommend that the Board adopt as part of the Historic District Overlay draft.

Chair Roberts noted that in exchange for the understanding reached with the Commission that the Historic District would not being extended, he had promised that the Board would integrate architectural standards into its regulations.

- Mr. Campbell said he had met with UNH Professor Mary Robertson about a project for her class, Applied Community Development. He said she would like her students to work in a neighborhood, on issues that could help build a better neighborhood. He said the project would involve meeting with a focus group from a specific neighborhood that had been chosen. He said he looked forward to working with Ms. Robertson and the students.
- Mr. Campbell said he had met with Tom Johnson, Jack Farrell and Dave Garvey on a project that Jack and Dave would be proposing on behalf of Stonemark Management for an elderly housing project off Madbury Road. He said it involved the Craig Meadows property as well as a property on Madbury Road. He said the project was conceptual at this point, and the applicants would probably be bringing it before the Board as a conceptual review.
- He said Chair Roberts, himself and Dale Abbott of Strafford Regional Planning Commission would be giving a presentation on the buildout analysis to the Town Council on March 7th. He urged Board members to attend if possible.
- He noted that the Technical Review Committee met on February 17, 2005 and approved, with conditions, application for the expansion of the kitchen at the Hickory Pond Inn. He said the Findings of Fact and Conditions of Approval for the application would be provided in the next packet.

IV. Public Hearing on an Application for a Conditional Use Permit submitted by Sandy Brook Corporation, Durham, New Hampshire, to change the age restriction on elderly housing from 62 to 55 and older. The property is located at the intersection of Mill Road and Packers Falls Road, is shown on Tax Map 13, Lots 14-14 & 14-15, and is located in the Residence B Zoning District, as a Planned Unit Development.

Chair Roberts advised that the Board include some of the data the applicants had collected, and that were included in the packets. He asked Mr. Campbell if there were any matters to discuss concerning this application, before opening the public hearing.

Mr. Campbell said he had a letter from the Town Attorney, which the Board should discuss, but which also would need to be voted on in order to make it public.

Chair Roberts explained that the Board had requested an opinion from the Town Attorney on the age related housing issue, which had been provided.

Councilor Grant MOVED that the Town Attorney's letter of Feb 8th, 2005 be made part of the public record. Amanda Merrill SECONDED the motion, and it PASSED unanimously.

Chair Roberts designated Bill McGowan as a voting member for the meeting, since regular Board member Kevin Webb was absent.

Mr. Campbell said the first question he asked the Town Attorney was whether the Board could treat the application as an amendment to the previously approved conditional use permit approved for the development. He noted there was no specific language in the Zoning Ordinance to this effect, but said the Town Attorney had said the Board had the ability to do this. But he noted the potential with or without a regulation of questions arising as to whether something was simply an amendment, or something so different that a full review was required. He said the Board would have to decide whether the changing the age restriction required a new application.

Mr. Campbell noted that the application was originally called an amendment to a conditional use permit, and it had then been questioned at the Board meeting whether this could be done. He said he asked him whether the Board would be on shaky ground, accepting it, and then not considering it an amendment. He said the Town Attorney tended to think the Board would be, and if had accepted it as an amendment, should carry it through as such.

Mr. Campbell said he also asked the Town Attorney about the Town's ability to go beyond its definition of 55 or older, or the federal definition, which required that only one person in the household be 55+, and only 80% of development needed to be age restricted. He said Mr. Mitchell's opinion was that the Town didn't have specific authority to do this. He said the Town had heard from the applicant that their attorney said they did have the power to do that. Mr. Campbell said the Town Attorney suggested that if the Board wanted to restrict further, it should go to the definition of 62.

Chair Roberts asked if there was any conflicting evidence as compared to what the applicant had provided, concerning impacts of 55+ elderly housing in the Seacoast area, in terms of school age children.

There was discussion about this. Chair Roberts notes some information from Maine that Mark Eyerman had previously provided that said there wasn't an impact from children for these developments.

There was discussion on whether this discussion should be held later at the meeting.

Mr. Campbell provided details on the fact that this project had already been amended once, in May of 2000, and noted that it went through both the Planning Board and the Town Council at the time.

Mr. Kelley asked what these amendments involved.

Mr. Campbell said they involved changes to the phasing plan, the roadway layout, water service, maintenance facilities, and walking trail layout.

Ms. Merrill asked if before going any further, the Board needed to make a decision on whether this application was an amendment or not.

Mr. Campbell said the memo from the Town Attorney indicated the Board was on shaky ground to now say this was not an amendment to a conditional use permit. But he said that if the Board felt the change in the age requirement was significant, it could be treated as a full-blown conditional use permit.

Chair Roberts said the only other commentary he found from other communities on this issue of elderly housing related to affordability for the housing applicant, and he provided details on this.

Mr. Kelly said he shared Ms. Merrill's concern about the Board calling this an application for a conditional use permit.

Mr. Campbell said the notices to abutters, the notice to the papers, and previous agendas called it an amendment.

Mr. Kelley said he would be more comfortable going back to calling the application an amendment to a conditional use permit.

Chair Roberts noted the scope of the application was limited, but said he was open to the will of the Board on this matter.

Richard Kelley MOVED to amend the wording of Agenda Item IV to say "...Amendment to a Conditional Use Permit...". Richard Ozenich SECONDED the motion, and it PASSED unanimously.

Nick Isaak MOVED to open the Public Hearing on an Application for a Conditional Use Permit submitted by Sandy Brook Corporation, Durham, New Hampshire, to change the age restriction on elderly housing from 62 to 55 and older. Amanda SECONDED the motion, and it PASSED unanimously.

Attorney Tanguay spoke for the applicant, and said he generally concurred with what Attorney Mitchell had said, with the exception that he believed the Zoning Ordinance did allow the Planning Board to make amendments to Conditional Use Permits.

He provided background information on federal law concerning elderly housing, among other things explaining that the 62+ standard required that both members of a couple had to meet this age requirement, while the 55+ standard said that at least one person had to meet the requirement, and only 80% of the units had to meet that requirement. He noted that the applicant was willing to have 100% of the units meet the requirement of having at least one member of the couple be age 55+.

Attorney Tanguay explained that it was easier to meet the age 55 test than the age 62 test, and said that being able to discriminate about housing in this way had led to towns liking the idea, and zoning for it. He also said to his knowledge, Durham had never had a 62 requirement in its ordinance, and noted the 55 definition was the only one in the ordinance. He said that therefore, although the original conditional use permit for the development said 62, there was nothing in the Town's Ordinance that required that it be 62. He said the applicant was not asking for a waiver for anything, and said to his knowledge, no projects in Town had been approved on that basis, so this request was not coming out of the blue. He said it came out of federal and state law that provided these standards, and the fact that Durham has always used the 55 standard, not the 62 one.

He spoke about a concern previously expressed that it would be going down a slippery slope, if 55+ units were allowed at the development, possibly leading to the market becoming saturated, resulting in empty units, and requests for relief. But he said by lowering the standard to 55+, there would be less discrimination and a bigger population of people to buy the units, resulting in better opportunities to sell, at higher price, so there would be less likelihood of empty units. He also said it was a slippery slope, noting that the applicant couldn't ask for a lower age standard to, say, 45+.

Attorney Tanguay said the applicant was only asking that the 55+ standard in the Town's Ordinance apply because the market had changed.

Steve Schuster, Vice President of Development for Sandy Brook Corp and Chinburg Builders provided background information on the original master plan for the entire Planned Unit Development. He explained the different parts of the development, and noted the different age categories they were suitable for. He explained that providing a continuum of care was an important element of the development, and spoke in detail about the active adult – 55+ category as part of this.

Mr. Schuster noted that the applicant was willing to require 100% of units to be age 55. He said also noted an impact sheet had been provided to Board members. He also noted a survey provided which indicated that with the restriction to age 55, in conjunction with how it was marketed, the people living in such a community did not generate children. He also said he had included a summary of compliance with Section 175:23, c as it related to the request change from age restriction 62 to 55. He noted this was requested by the Board, and provided some detail on this.

Councilor Grant said it would be helpful if Mr. Schuster could walk the Board through the projected impact sheet.

Mr. Schuster provided details on this, and said the net tax generation per unit for the Town, after considering revenues and expenses, would be \$6,800. In answer to a question from Chair Roberts, he said they did not include school expenses because there were not students. He also said sewer and water was not included because they were billed separately.

Ms. Merrill asked if these numbers would vary if they were based on 62 as compared to 55.

Mr. Schuster noted the only difference was that the 62 units would be of greater value, so the revenue would be higher. But he said there was greater value in the 55 market and the market was larger, and he provided details on this. He noted there were a number of couples that had come to look at the project, where one person was 62, but the other was younger so they didn't qualify.

Ms. Merrill received clarification that the numbers in the impact sheet were based on the 55 proposal.

Chair Roberts said it seemed as though if the development were marketed to age 62, the numbers wouldn't change.

Mr. Schuster said that was true, but he said there would be less market for the units, and the absorption rate would go down.

Chair Roberts said the numbers appeared to be based on the assumption that there would be no financial difference to the community, going from 62 to 55, other than the size of the market. There was additional discussion about this.

Chair Roberts noted there were other communities where residents had asked about considering even higher density bonuses for less expensive units for elderly housing.

Mr. Schuster noted that his company was doing elderly affordable housing project in Exeter, which would get a density bonus for this.

Mr. Kelley asked how the anticipated assessed value per unit figure was calculated, and Mr. Schuster said this was done with the assistance of the Town Assessor. Mr. Kelley asked if the other active adult complexes in the area were all 55+ facilities, and if none had any occupants under the age of 18.

Mr. Schuster said for these facilities, if there were, it was because they fell under the 20% of the development that didn't have the age requirement. He said for all residents subject to the 55 age requirement, there were no children.

Chair Roberts note that the condominium rules would include the 100% 55 age requirement.

Mr. Kelley noted the condominium bylaws B.4, concerning a situation where at least 75% of residents voted to eliminate the restrictions concerning all units having to have at least one of the occupants be 55. He asked why this language was put in.

Attorney Tanguy said this was language that had been taken from Fitts Farm, and was simply language that had already been approved by the Planning Board. He said it was used because it was thought that the Board was ok with it. He noted that the wording in the regulation said this could only take place if there were a Zoning Ordinance change that eliminated age restricted housing, and said even then, it was only a possibility.

Mr. Kelley asked for additional details on the fact that the original conditional use permit was set at the 62 standard.

Mr. Schuster said he had spoken with Jack Farrell, the original developer who did the master plan for the property, and said Mr. Farrell told him the 62+ was accepted as a condition of approval. He said the developer also had said that his experience with the project was that much older people were coming anyway. Mr. Schuster said a lot seemed to have been driven about what the Inn was doing.

Chair Roberts asked what Mr. Farrell's understanding was of what was now being presented, and there was discussion about this.

Mr. Ozenich asked how, architecturally speaking, things changed with 55, as compared to 62 housing.

Mr. Schuster provided details on this. He said this type of building was not aiming at families, and said there were no school children going into these kinds of units. He said what the market had shown was that buyers where one person was 55 and the other was considerably younger were not buying into that community.

Mr. Ozenich asked how many people, in downsizing, went from two garages to one garage, in order to put in more units. He said that in his experience, it was not realistic to have one-car garages for the units.

Mr. Schuster said there would be some two-car garages in this development, and there was discussion on this. He noted there would be additional parking available.

Mr. Isaak said the key issue was whether there would be any increase in units, as a result of the change in design for a 55 as compared to a 62+ development. He said he didn't think there would be.

Mr. Schuster said that nothing in the site plan would change as a result of the proposed age change.

Mr. Campbell referred to Mr. Kelley's comments about the language in the development's condominium regulations. He said if 75% of the residents said, let's go to

80% of the units requiring 55+, this wouldn't require a zoning change. He asked how the Board could ensure that this wouldn't happen.

Attorney Tanguay said the applicant had no stake in the wording, and could take it out, noting again it was put in because the Board had previously approved such language.

Chair Roberts noted that the Board would have to approve this language anyway, if it stayed.

Mr. Kelley said the previous owner of the development was asked to accommodate the 62+ standard, and did so. He asked whether, in order to deal with the tax impact, language could be put in that there would be a surcharge tax to cover tuition if it turned out that children lived in the development.

Mr. Schuster said the \$6,800 surplus he had spoken of would cover this.

There was discussion about Mr. Kelley's suggestion.

Attorney Tanguay said he didn't think that what Mr. Kelley was asking for could be done, noting it was not consistent with how towns taxed for schools.

Mr. Campbell said this might be double dipping, since the school tax would have already been collected from the residents, even if they didn't have kids.

Mr. Kelley asked if there were Town roads in the development, and Mr. Schuster said there were.

Ms. Merrill asked if there was any experience with the existing developments listed, in terms of residents deciding to change the condominium documents. There was discussion about this, and Ms. Merrill concluded that there wasn't enough history on this yet.

Beth Olshansky, Packers Falls Road

- Ms. Olshansky asked how many units had been built so far, and Mr. Schuster said there was one building, with two units.
- Ms. Olshansky noted when she looked at the new Ordinance, she didn't see where there was a procedure for amending a conditional use permit. She questioned whether this could be done.
- She noted that the development was originally approved under a previous Zoning Ordinance, that allowed PUDs, didn't have conservation subdivisions, or HISS mapping, and said a lot had changed in the Ordinance since that time.
- She questioned whether this application could truly be called an amendment, or if it was something that was so different than the original proposal that a full review was required.
- Ms. Olshansky said with changing demographics, if one person was 55+, this didn't eliminate the likelihood of children. She said a fiscal analysis that didn't look at the impact of school age children was therefore not a complete analysis. She said that

even if some of the money would go to the schools, houses with children cost the Town money.

- She said she was glad to hear the discussion about changing the wording in the condo regulations.
- She said it was not clear why if the Town was not allowed to require it, why a developer could require a change from the federal standard. She said she didn't think the Town Attorney had addressed that.
- Ms. Olshansky said she did think there was a difference in the fiscal analysis in going from 62+ to allowing 55+, with one person not having to be that age. She said she wondered if it would be possible to say that 100% of people in units need to be 55, if the developer was truly selling this as Active Adult.
- She said she was concerned that units marketed to 55+ were different than those for 62+, and asked whether when the 55+ people get older, they would be comfortable staying in those units.
- She said he had talked with Mr. Farrell, and said he had said that one reason he volunteered the 62+ age limit was that he was selling to that age range anyway, and also thought that was what elderly housing was truly all about.
- Ms. Olshansky said whatever the Board decided that evening would impact not just this development, but also others coming along. She said this would become the standard for Durham, so she hoped the Board would consider the fiscal impact of this proposed change.
- She asked if the application was considered complete at this point.

Peter Smith, 100 Piscataqua Road, asked the Board if it was troubled by the fact that this application was advertised differently than what it was being treated as.

He also said he was somewhat interested in this issue, noting that when he was on the Planning Board, he went through the process of reviewing the Fitts Farm application, and provided details on this. He noted the development was not originally designed for 55+ or 62+, but went that way when the developer realized this would get him the support of the Town and the Planning Board. He said he knew why this present development had originally come in as 62+; it was because of the tremendous concern in Town that 2/3 of the tax base went to school funding.

Mr. Smith noted Attorney Mitchell's letter, and said if the Board gave the application a full review, perhaps this would take care of his concern. Mr. Smith asked the Board to consider whether changing the age requirement from 62+ to 55+ constituted a significant change. He noted that for the Fitts farm project, age was certainly viewed as the most significant factor driving the project, and said he was hard pressed to think of many other factors that would be of greater significance.

He also said he remembered when an amendment to the original application for Fitts Farm was requested - a change from 62+ to 55+, a variety of factors were weighed by the Board, many of them interrelated. He said he would be troubled if the Board didn't consider some of these factors in considering this application.

Mr. Smith noted the changing demographics, and said the difference between people 55 and 62 was now much more significant than it was 10-20 years ago. He noted the change in the average age of marriage, different family arrangements, etc. and said it was important for the Board to consider what age 55 actually meant these days.

He also said he was concerned about the peculiarities of Durham because of the existence of the University, and how this related to who would actually live in these units.

Mr. Smith said it was important for the Board to determine if a condition could be put in that was legally enforceable with respect to different maneuvers that could take place if there was only one person having to be 55 in a unit of this development. He said he thought this was a murky area, and asked the Board to look at it carefully, and not assume it had control.

Maureen Austin, representing the applicant, said her role was to market the property. She noted Fitts Farm had not impacted the community. She said she wouldn't call the properties in question conducive to raising families, explaining that they were geared to an older buyer looking for one level living. She said this kind of development is not one where families would come, noting they would prefer to live in family oriented neighborhoods.

Councilor Grant asked if the units consisted of a master bedroom and one guestroom, and Ms. Austin provided details on this.

Mr. Kelley noted a question had been raised as to whether the design would work when a 55+ age person was 20 years older.

Ms. Austin said some people planned to move to the Inn at Spruce Wood later, and also provided some details on how the 55+ units could be adjusted later on to allow accommodation for older residents.

Councilor Grant MOVED to close the Public Hearing. The motion was SECONDED by Amanda Merrill, and PASSED unanimously.

Chair Roberts thanked members of the public for their comments, and asked the Board whether it wished to deliberate.

Councilor Grant said he realized the expiration date was that evening. He asked that Chair Roberts ask the applicant for another extension, so the Board could have a proper deliberation on the application. The applicant agreed to this.

- V. Public Hearing on an Application for Boundary Line Adjustment submitted by Brian and Armida Geiger**, Durham, New Hampshire to create two lots from one lot. The property involved is shown on Tax Map 1, Lots 9-35 and 9-36, are located at 4 Hampshire Avenue and is in the Residence A Zoning District.

VI. Public Hearing on an Application for Subdivision submitted by Brian and Armida Geiger, Durham, New Hampshire to create two lots from one lot. The property involved is shown on Tax Map 1, Lot 9-36, is located at 4 Hampshire Avenue and is in the Residence A Zoning District.

It was agreed by the Board to combine both Agenda Items.

Councilor Grant asked if the Board had received any new materials on the application.

Mr. Campbell said the only new information was the site walk minutes, and noted that the stormwater analysis had not yet been received from the applicant.

Mr. Geiger provided a description of his plans for his property. He said he wanted to move the lot line between the two properties further to the south, creating a larger lot to the north. He said that lot would then be divided, and each would have 100 ft plus feet of frontage. He said a single driveway was proposed, and an easement would allow it to serve both lots.

He explained that the stormwater plan was not yet complete because the conditions had been difficult. He said the data had been obtained, but the analysis hadn't been completed yet, and apologized for the delay.

Councilor Grant MOVED to open the Public Hearing. Nick Isaak SECONDED the motion, and it PASSED unanimously.

Steven Brunet, 7 Hampshire Avenue, provided a detailed presentation on the neighborhood's concerns about the Geiger's proposed plans. *He also provided a written version of this, which is available at the Planning Office.*

Richard Ager, 2 Scotland Road, provided additional detailed information on the neighborhood's concerns about the Geiger's proposed plans. *He also provided a written version of this, which is available at the Planning Office.*

David Giroux, 8 Hampshire Avenue, said he was a neighbor to the properties in question. He said the applicant had recently cut down some trees, and had stuck a house in the far corner of one of the lots, most likely in expectation that he would get subdivision approval and would be able to build another house. He said that although there was nothing that could be done about the existing house, another house like that would be wrong. He said he hoped it was clear at the site walk that another house, on a slope, with a shared driveway, was out of character with the neighborhood, and he said having 3 rentals in a row would be unfair to this residential neighborhood. He said the law regarding having no more than three unrelated people in house should be broadened to not being able to have 3 rental houses in a row.

Mr. Giroux also said there were water pressure and flow problems in the neighborhood. He provided details on this, and said putting up another house would do nothing but make that worse.

Councilor Grant asked that Mr. Campbell contact the Public Works Department and get a report on water pressure in that area. He recalled that over the years there in fact had been water pressure problems in that area, and said he had thought the situation had been improved.

Patricia Bedker, 5 Hampshire Avenue, said her property had a vernal pool, which was located directly across from the Geiger's lots 4 and 6. She said there was already a steady flow of water in that area, and said as a science professor, she understood the implications of this. She also provided details on the fact that she didn't feel it was the Town's responsibility to provide housing for students, it was the University's responsibility.

Mr. Brunet read a letter from Neil Wylie. The letter noted the waiver requested concerning underground utilities, and said this would set a bad precedent. Mr. Wylie also noted the orientation of the new house on the lot, and said that if it had been a conservation subdivision, this would not have been allowed. He provided details on this, and said to the extent that the Planning Board had discretion, it should ask the applicant to conform to the spirit of the conservation subdivision regulations.

Kathy Brunet read a prepared statement on additional concerns about the applicants' proposed plans. She also read a letter from the Kouros family, which had recently purchased the property at 10 Hampshire Ave., as well as a letter from Dick Bernard, who also lived in the neighborhood. *These documents are available at the Planning Office.*

Councilor Grant MOVED to continue the hearing. Amanda Merrill SECONDED the motion, and it PASSED unanimously.

Chair Roberts said the application wouldn't be closed until the stormwater runoff information had been provided. He also noted that it was the policy of the Board to give feedback to the public regarding their comments, and said it would have a response after it received the remaining data.

Councilor Grant said it seemed apparent to him that water data requested was an example of where the Board would need an engineering study on the water on those lots, including the parcel across the street with the vernal pool. He said he believed this should be an independent analysis, undertaken at the applicant's expense, to study water impacts on the two lots, and runoff into the vernal pool.

There was detailed discussion about the kind of engineering study that should be required.

Mr. Kelley said the applicants had been approved for two driveway cuts, only, with the condition that the frontage would not change, and asked if they would have to go back to the ZBA if they had to take a driveway out.

Mr. Campbell said if the boundary line adjustment approved, one of the entrances would have to go, and said that would have to be a condition of approval of the subdivision application.

Chair Roberts said the financial impact issue, concerning whether the subdivision might diminish property values, was difficult to handle under the general subdivision regulations. He provided details on this, and said the issue would have to be looked at more carefully. He thanked members of the public for their input.

VII. Public Hearing on an Application for Subdivision submitted by Eidos Builders, Inc., Durham, New Hampshire, on behalf of Andrea M. Parson, Durham, New Hampshire, to create two lots from one lot. The property involved is shown on Tax Map 1, Lot 13-4, is located at 114 Madbury Road and in the Residence A Zoning District.

Chris Daine of Doucette Survey provided details on the application. He said he was there with Alex Harris, president of Eidos Builders, on behalf of Ms. Parsons. He said the plan was to divide the existing parcel, containing 43,487 sq. ft., into two lots of approximately the same area. He said both lots conformed to existing Zoning regarding area and frontage. He said there was sewer and water to the area, and said the lot with the existing house was connected to both systems. He said the house that was planned would be connected to Town sewer, but said the plan was to develop a well for the property, and noted the upper lot would grant a well easement to the lower lot.

There was discussion about waivers the applicant had requested, a road waiver as well as an underground utilities waiver to get across Madbury Road. Mr. Campbell said the Public Works Department liked the proposed location of the driveway, and recommended waiving the 100 ft. separation. It was noted the proposed distance was just under 100 ft.

There was discussion among the Board about the proposed driveway location.

Mr. Kelley asked about the driveway to the south, and there was discussion about this.

Mr. Campbell also noted that if the applicant didn't get adequate water quality and quantity from his planned well, she would have to hook up to the Town's system.

Richard Kelley MOVED to extend the meeting for 20 minutes. The motion was SECONDED by Nick Isaak, and PASSED unanimously.

Councilor Grant MOVED to open the Public Hearing on an Application for Subdivision submitted by Eidos Builders, Inc., Durham, New Hampshire, on behalf of

Andrea M. Parson, Durham, New Hampshire, to create two lots from one lot. The motion was SECONDED by Richard Ozenich, and PASSED unanimously.

Councilor Grant MOVED to close the Public Hearing. Richard Ozenich SECONDED the motion, and it PASSED unanimously.

Councilor GRANT MOVED that the Board continue deliberations on this application at the next Board meeting. Richard Ozenich SECONDED the motion, and it PASSED unanimously.

VIII. Deliberation on an Application for Subdivision submitted by David J. Chase & Malcolm J. Chase, Jr., Hingham, Massachusetts, on behalf of the Estate of Charlotte Chase, Durham, New Hampshire to create two lots from one lot. The property involved is shown on Tax Map 12, Lot 10-4, is located at 177 Durham Point Road and is in the Residence Coastal Zoning District.

Chair Roberts noted the findings of the Town Engineer on the sight distance issue concerning this application, and asked the applicants if they had a copy of this.

Mr. David Chase said that they had, and he passed around plans that he said were a response to the Town Engineer. He noted that Mr. Levesque went back to the original opinion that there should be one driveway, at the location of the existing driveway serving lot one. He provided details on the plan.

Mr. Campbell noted that the road regulations said that at 35 mph, a sight distance of 455 ft. was required; the state driveway permit referenced in the regulations required 400 ft.; and ASHTO said 300 ft. He said this needed to be reconciled, and said that unless the corrections the applicants would be making would provide a sight distance of 400 or 455, they would need a waiver.

Mr. Chase provided details on how he had continually tried to respond to the Board's requests, and said he recognized the Board's responsibility in this matter. He said the Chases had lived in this area for many years, and noted the family had effectively given away 100 acres of land to the Nature Conservancy. He also spoke about significant tree planting the family had done in this area. He said what was being asked for was a modest subdivision, and noted the properties would be held for the present time in one title.

There was discussion about removal of trees that would be undertaken under the most recent site plan.

Mr. Kelley said he supported the Town Engineer's position, and also said he thought the data from the Public Works Department indicated that there were no significant accidents for the years that were reported.

Ms. Merrill said a formal plan that would show the improvements that were necessary would be very useful.

Chair Roberts said there should be an engineering plan that showed reasonable standards of care regarding landscaping, driveway construction, etc.

Mr. Chase said he would accept this as a condition of approval.

Mr. Kelley said he would support the subdivision with that condition.

Ms. Merrill said she would rather see the engineering plan first, and not do this as a condition of approval.

Councilor Grant said the Findings of Fact should reference the Town Engineer's report and the accident data, and Mr. Campbell said this had been included. Councilor Grant also said Mr. Levesque's letter should be part of the record, especially for the future if there was further subdivision planned for the property. He said he was troubled the Board was moving to approve something that was shy of the Town's regulation, and said the maximum possible should be done to improve the sight distance.

Chair Roberts noted that if this were a new driveway cut, it would not be allowed. He said it was hard to know if there would be more or less cars there, and said the neighbors had provided valid points. He also noted the applicants had bent over backwards to accommodate the Board's comments.

Mr. Isaak said he supported Mr. Levesque's recommendation, and said he was glad the driveway had been combined.

Ms. Merrill said the shared driveway had risen to the top of the list. But she said that given the safety concerns, and what would seem to be a deviation from the road requirements, even with improvements, she would feel more comfortable with a plan. She also said it was not clear whether the scenic roads provisions would come into play, and said it was important to know this.

Mr. Campbell said that before any cutting would be done within the scenic right of way, the applicants would have to come back for a public hearing on this.

Councilor Grant said he wondered if the Board could take action on this application while at the same time addressing the concerns that Ms. Merrill had raised. He said he felt the Chases should be given a clear indication of whether the application would be approved, noting they had been very cooperative. He asked if there was a way to establish a condition that the sight distance would be maximized to the extent possible, and have the applicants come back to the Board so this could be reviewed.

There was detailed discussion as to how to proceed with this.

Richard Kelley MOVED that the public be allowed to speak. Nick Isaak SECONDED the motion, and it PASSED unanimously.

Nancy Sandberg, 51 Langley Road, said she had received a copy of Mr. Levesque's letter, and noted that the fourth paragraph said the application clearly stated that it did not meet the road standards. She said that for public safety reason, if the application couldn't provide the minimum sight distance, it should be denied. She said she believed the accident level in this area did rise to the level of significance, and said one also had to assume that the property would be further subdivided and utilized, which would double the hazards from an already dysfunctional driveway. She said it was in the best interest of the Town to deny this application, to clearly limit future development of the property, but not present development.

Mr. David Chase said he would like to respond, because Mrs. Sandberg's comment was not accurate.

There was detailed discussion on how to proceed.

Mr. Isaak said he was willing to accept less mainly because the existing driveway had been there for a long time, and everyone who drove the road knew where the opening was. He said that perhaps there would be an extra car when the subdivision was complete, but said he didn't think this would make a drastic difference.

Mr. Kelley said he was willing to accept less as well, because the turning movement in the direction of the area of concern would be far less than the in the other direction, in other words, a vehicle coming out of the driveway would make a left turn much less often than a right hand turn. He asked other Board members whether, if the plan came back and the best efforts to improve the sight distance were much less than what was required for sight distance, the Board would be willing to approve it. He said he thought the applicants should be able to know this.

Nick Isaak MOVED to approve the Application for Subdivision submitted by David. J. Chase & Malcolm J. Chase, Jr., Hingham, Massachusetts, on behalf of the Estate of Charlotte Chase, Durham, New Hampshire to create two lots from one lot, contingent upon the following: 1) Adding to the existing Findings of Fact, two items - the police report and the Town Engineer's letter with attachments; 2) Waiver language, which would include 4.6 of the Road Regulations; 3) Conditions of Approval, to include the following:

Conditions to be met prior:

- ***the applicant shall supply two mylar plats and one paper copy for signing by Planning Board chair;***
- ***the plan shall show the driveway leading to the barn as being closed off, and the wall rebuilt;***

Conditions to be met subsequent:

- ***The referenced subdivision plan, Findings of Fact and Conditions of approval shall be recorded by the Strafford County Registry of Deeds at the applicant's expense within 7 days of the Chair signature on the plan***
- ***Before the driveway is approved and the permit granted by the Public Works Department, in order to maximize sight distance, the applicant shall develop a***

formal plan signed by a professional engineer, showing the necessary improvements to maximize the sight distance at this location. This would include any necessary grading, vegetation removal, and/or stonewall replacement, and must be reviewed and approved by the Town Engineer.

The motion was SECONDED by Councilor Grant, and PASSED unanimously.

IX. Other Business

**X. Approval of Minutes – January 5, 2005
January 19, 2005**

Postponed

XI. Adjournment

Councilor Grant MOVED to adjourn the meeting. The motion was SECONDED by Nick Isaak, and PASSED unanimously.

The meeting adjourned at 11:00 pm

Amanda Merrill, Secretary