

D-R-A-F-T

DURHAM PLANNING BOARD MINUTES WEDNESDAY, APRIL 13, 2005 TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL

MEMBERS PRESENT: Stephen Roberts; Amanda Merrill; Nick Isaak; Richard Ozenich; Richard Kelley; Bill McGowan; Councilor Diana Carroll

MEMBERS ABSENT: Kevin Webb; Councilor Gerald Needell

OTHERS PRESENT: Town Planner Jim Campbell

I. Call to Order

Chair Roberts said that bill. McGowan would be filling in for Kevin Webb, and Councilor Carroll would be filling in for Councilor Needell.

II. Approval of Agenda

Richard Kelley MOVED to approve the Agenda as submitted. The motion was SECONDED by Richard Ozenich.

Richard Kelley MOVED to amend the Agenda, so approval of the first set of minutes would be moved to Item XIII. Nick Isaak SECONDED the motion, and it PASSED unanimously 7-0..

The Agenda as amended PASSED unanimously.

III. Approval of Minutes

(moved to Item XIII)

IV. Report of the Planner

- Mr. Campbell said he had met with University planner Doug Bencks for their monthly meeting, and said as expected, the conversation was dominated by the northern and southern connector issues. He said that as requested, Mr. Bencks would be back at that evening's meeting for more discussion on the Gables and the southern connector. He also said he and Mr. Bencks had discussed the Highland House, and said the sale of the property was on hold until some internal issues were resolved.

- He said he had had conversations with UNH students and professor Mary Roberts about a program they were involved with called “Working in Neighborhoods”. He explained that the goal of the program was to get neighbors to talk to one another and town decision makers about neighborhood concerns. He said the students would be holding some focus group sessions with a sampling of residents from the Faculty Neighborhood, and said it was hoped this process could become a model for working with other neighborhoods in Durham. He noted this information would also be useful as the Town moved forward with amending the Master Plan.
- He said the Economic Development Committee had met on April 1st, and continued its discussions on the Durham Business Park, covering such issues as the restraints of the site, general market conditions, uses of the Business Park that could serve the community, possible public use of part of the property, and creation of a master plan for development of the site. He said representatives from the Kane Company were present at the meeting and participated in the discussions.
- Mr. Campbell reviewed the Zoning rewrite schedule, noting that on April 20th, the Planning Board would meet to review the final edits to the Shoreland Overlay, Wetlands Overlay, Aquifer Overlay, and Wetland Definitions, and to take one more look at 175-55(F), Calculation of Useable Area, to see if the Board would like to change anything
- He said the Board would hold its second quarterly planning meeting for the year on May 25th, and said Doug Bencks had agreed to give a presentation to the Board on the Campus Master Plan on that date.

Chair Roberts noted there would be upcoming presentations before the Town Council on the proposed Zoning Ordinance changes. He said Mr. Campbell would be present for this, but also urged Board members to attend these meetings as well.

- V Acceptance Consideration of an Application for Site Plan Review** submitted by Courthouse Ventures, LLC, Hampton Falls, New Hampshire to demolish the current motor vehicle service facility and replace it with a retail outlet which includes a 2,992 square foot convenience store with an attached 1,100 square foot coffee/donut shop. The property involved is shown on Tax Map 5, Lot 4-2, is located at 2 Dover Road and is in the Limited Business Zoning District.

Mr. Campbell suggested that the Board might like to run both the site plan review application and conditional use permit application concurrently.

Chair Roberts asked if this was acceptable to the applicant, and it was determined that it was.

- VI. Acceptance Consideration of an Application for Conditional Use Permit** submitted by Courthouse Ventures, LLC, Hampton Falls, New Hampshire to demolish the current motor vehicle service facility and replace it with a retail outlet which includes a 2,992

square foot convenience store with an attached 1,100 square foot coffee/donut shop. The property involved is shown on Tax Map 5, Lot 4-2, is located at 2 Dover Road and is in the Limited Business Zoning District.

Frank Montiero, the engineer representing the applicant, spoke before the Board. He said the applicant was not requesting any waivers, and also noted they were presently before the ZBA requesting a variance concerning a free-standing sign. He said the hearing on this application had been continued to the May ZBA meeting.

He said the traffic consultant, Stephen Pernaw, had completed the traffic study, and said this had been submitted to the Town and was being reviewed by the Town's consultant.

He described the existing use of the site, and explained that the applicant was proposing to demolish the existing facility on it and build a state of the art convenience store and retail motor fuel outlet, with a coffee/donut shop attached to the convenience store.

He said the site was being designed to conform to the requirements of the Limited Business District as well as those of the proposed Courthouse District. He noted that a conditional use permit was required under the old Zoning Ordinance, but said if the new Ordinance were in place, the proposed development would be allowed by right, and the permit wouldn't need to be applied for. He said there were some differing setback and dimensional requirements for each district, and said the project had been designed to accommodate the more stringent of the two.

Mr. Montiero said the fueling area would be located in the center of the site, where the building presently was, and noted the new building would be somewhat smaller than the current building. He said there would be a 3000 sq. ft. convenience store, and a 1100 sq. ft. coffee/donut shop with twelve seats. He said there would be no drive thru. He described the parking spaces that were planned, and said there was a proposed loading area that would service both uses. He provided details on this, and also described the proposed trash enclosure, and a customer service area that included a vacuum and air hose.

Mr. Montiero noted that the Historic District overlay was located in this general area, 75 ft. from Newmarket Road. He said no structures for the facility would be located within the overlay, but said the overlay was shown on the site plan.

He said in terms of access to the property, three driveways were proposed, noting that at present the access was open pavement. He said circulation on the site would be improved through channelized, curbed driveways, and said 2 access ways had been proposed on Dover Road, and 1 access way had been proposed on Newmarket Road.

He said traffic consultant Stephen Pernaw had done the traffic studies based on the three full access driveways, and said the report had made several recommendations on driveway access. He said Mr. Pernaw was recommending that one driveway be entrance only, and another be a right in right out only, and he providing some details on this. He

said the current site plan didn't reflect these recommendations, and said he wanted to have some dialogue with the Board and the traffic consultant on this.

He said there would be extensive landscaping on the perimeter of the site, including street trees along both streets, and landscape screening adjacent to the Town Hall. He provided details on landscaping that was planned. He noted that at the back of the building, the grade dropped off 6-7 feet, so instead of filling it in and building a retaining wall, they would use the back of the building as a retaining wall. He provided details on this, and on how it would affect the layout of equipment on the site. He noted the loading area had to be elevated to the first floor for access purposes. He said a chain link fence would be put on top of the retaining wall for safety purposes, and also said a guard rail would be put in.

Mr. Montiero said that instead of proposing wall signs, they wanted to put one freestanding sign up instead, with price signs as well as identification for the different uses of the store. He said a free-standing sign of 30 sq. ft., which was currently permitted by the Ordinance, was not an adequate size to safely display gasoline prices, and said they wanted to make the prices signs obvious to drivers. He said the proposed location for the freestanding sign was in front of where the pumps would be located, near Dover Road. He said putting the sign there wouldn't force people to crane their necks when looking for the price of gasoline.

He said there would be pedestrian access, - a sidewalk along the length of the building, with a link to the current sidewalk system. He said the existing "landscaping" would be removed and replenished with sod.

Mr. Montiero showed a rendering of the architecture that was proposed. He noted that the convenience store had a colonial design, with cement board siding having a wood grain texture. He said this would be painted colonial yellow with white trim. He said the roof would be a hip treatment, with blue-brown architectural shingles, with a cupola on the top. He said the entrance to the convenience store would be on the left side of the building, and the name of the Irving convenience store was Blue Canoe. He said the coffee/donut shop would be located to the rear of the building, and said the applicant didn't yet know who the tenant for the shop would be. He described the proposed overhead canopy proposed to cover the gas pumps.

Chair Roberts received clarification that the traffic information from the applicant's consultant was available at the meeting, and he asked that a condensed overview be provided to the Board.

The consultant, Stephen Pernaw, said they had started the process with a scope meeting with NHDOT in November, and had gotten 2001 traffic count data and more recent traffic count data from 2004. He said this data had been used to do traffic projections for the signalized intersection and the site driveways for 2006 and 2016, as requested by NHDOT.

He said he then estimated how many trips the planned use of the site would generate, and said this had allowed development of future projections with the site fully occupied. He said this had then allowed them to analyze intersection capacity, level of service, etc. and he said that based on this, recommendations had been developed concerning the site driveways.

Mr. Pernaw said the intersection was fine as it was, and said the impact on it from this proposed development would be minimal. But he said the site plan he was given showed three full access driveways, and said he had recommended cutting that back. He noted Mr. Montiero had briefly described his recommendations. He said the traffic study had been sent to NHDOT.

Chair Roberts asked Mr. Pernaw if he had gotten any feedback on potential traffic issues from NHDOT and he said no.

Councilor Carroll asked when NHDOT would be coming back with information on driveway permits.

Mr. Montiero said he had submitted the documents a few weeks ago, and said he hoped to hear a preliminary response in a few weeks. He said he'd try to have some information on this for the Board at the next meeting on the application.

Mr. Campbell noted that NHDOT was looking to get any information from the Town on the traffic plan by April 31st, which gave some idea of when a response from the State could be expected.

Mr. Kelley said he had numerous questions, specifically on technical issues, and said perhaps he should wait to get into these. He said generally speaking, his questions concerned: the proposed drainage system; the traffic recommendations; excavation support for the proposed detention structure; and a soil management plan, or some way to address potential contamination of the excavated soils on the site.

Chair Robert asked Mr. Kelley if he could perhaps type out this list, and Mr. Kelley agreed to do this.

Chair Roberts noted his own request that the applicant show the surrounding neighborhood on the plans, but said he didn't see this in them. He explained that the conditional use permit provisions in the Ordinance dealt with the issue of compatibility of proposed development with neighborhood features. He said the hotel being built in this neighborhood had provided considerable detail on fencing, etc, and had tried to mirror the architectural elements of the Courthouse.

He said this was something the Board could discuss later on, but said it was his primary comment, in looking at the presentation. He said the Town was trying to create a gateway to the community in this area, noting that the Master Plan recommended certain things, and the Zoning Ordinance tried to implement them. He said both the Gibbs station and

the Hotel had tried to implement these things at their own expense, and said he thought Gibbs had found this paid off handsomely.

Mr. Isaak asked if the service station would be a standard Irving design, or a custom design.

Mr. Montiero said it was a newer design, - a colonial version of their convenience store. He said the applicant would work with the Board on additional changes and comments, noting this was a starting point, and said they had tried to consider the Courthouse view.

Chair Roberts noted the Hotel project had done some hand drawn perspective views showing the Courthouse, and said there ways to incorporate photos into graphical drawing programs to get at this. He said the Board was not asking that a lot of money be spent on this, but he said there were some design issues, some of which might violate the current Ordinance. He said the track record was that businesses that did this kind of well benefited the business as well as the Town's gateway. He said the public would probably have further comments on this, but said the Board was noting this as a leg up for the future public hearing.

Ms. Merrill noted that a Town traffic consultant was looking at the traffic report, and asked what the timeframe was on this.

Mr. Campbell said he was supposed to get back to the Town on it by the end of the week

Ms. Merrill asked about the completeness of application. Mr. Campbell said he would address this in a few minutes.

Mr. Ozenich asked if any cooking would take place at the donut shop He noted a lot of cooking went on at the Irving station in Wells, Maine, and said he hadn't seen an exhaust fan designed as part of the current application.

Mr. Montiero said it would be a satellite facility so the donuts would be made off site. But he said the point was well taken, and said he would provide more information on this.

Mr. Ozenich noted letters from senior citizens that with Smittys gone, there would be no place in Town that pumped gas for senior citizens. He asked if there was a chance that this could be accommodated, noting that senior housing was one of the main developments taking place in Town.

Mr. Montiero said self-serve gas was planned, but said he could talk with Irving about this.

Mr. Kelley noted that snow storage was planned adjacent to the back of the Courthouse, and said he was concerned with how much snow would build up back there. He said there was a door in back, on the west side of the building, and said if that door was used for an emergency exit, and snow was piled up there, this could be a problem.

Mr. Montiero said the plans for snow storage could be changed.

Mr. Kelley said the lighting of the facility was a concern. He noted lighting on Route 108 at the Sunoco station, on the way to Newfields, which was not recessed, and said the lighting could be seen for miles.

Mr. Montiero said the lenses for the lighting would be flush with the canopy, and would be recessed so there would be no glare.

Mr. Kelley asked if the lighting plan would be stamped before it was submitted and Mr. Montiero said it could be if that was requested.

Mr. Kelley said another concern was the refueling operations, and said he wanted to make sure the WB50 turning radii for trucks was accommodated.

Mr. Montiero described the plans to accommodate this.

Mr. Kelley asked for table or something similar to grade out the wheelchair ramps, noting if this wasn't provided, the ramps that resulted were not ADA compliant.

Mr. Montiero provided details on what was planned, and said if the Board wanted something more, to let him know.

Ms. Merrill noted that on the landscape plan, it said that trees and shrubs would be guaranteed for one year from acceptance. She asked for clarification on what that meant,

Mr. Montiero said this was Irving's language, and didn't mean one year from acceptance by the Board.

Mr. Campbell noted a performance bond could be requested for the landscaping, requiring a guarantee for one from approval of the plans. He said this would be in the conditions of approval.

Chair Roberts noted there was a pocket neighborhood in back of the hotel at a higher elevation than the applicant's site, and said he was assuming the lighting, signage, etc. plans were such that they would not be intrusive to that neighborhood.

Councilor Carroll noted that some service stations had lighting on 24 hrs a day, and asked how long the lights for the facility would be on.

Mr. Montiero said the lights would be on when the facility was open, also noting some lights would be kept on for security purposes.

Councilor Carroll noted the lights at some service stations were very inhospitable. She said because people lived near the proposed facility, this kind of thing would not add to

the quality of life there. She also commented that the dumpster was proposed to be placed in full view of the road, and questioned this location.

Mr. Montiero said they had tried various places for this, and explained that accessibility for garbage trucks was the issue. He said these trucks were getting bigger and bigger, and the site design had to allow them to come in and out safely. He provided details on this, and said the hours the enclosure would be serviced could be limited. He also said aesthetics concerning this could be addressed.

Mr. Campbell said this area would have to be screened. There was discussion about arborvitae planned as screening.

Mr. Montiero asked for more detail on the concerns regarding the dumpster visibility.

There was discussion on possible enclosures for the dumpster area.

Chair Roberts summarized the key comments from the Board so far: the application might be in violation of architectural standards; there were issues with visibility and lighting; there were questions about traffic; and there were concerns that the facility would be located directly adjoining the Historic District and historic buildings. He asked Mr. Campbell what key issues he would like to point out at that time.

Mr. Campbell noted the applicant had updated the plans in response to Department head comments, and asked that the Board get a written response that addressed the concerns that were listed. He said the architecture needed to be looked at, and said the applicant would go far by introducing some brick to the building. He also spoke about the canopy for the fuel pumps, noting that Section 175-45 (F) in the Court House District provisions said the canopies were supposed to match the architecture and roof-line of the Court House building. He said the current design did not match that.

Mr. Campbell said if the Board went ahead with acceptance of the applications, it should add in the possibility of independent review of the lighting plan. He said the traffic issues needed to be settled, and also noted that the signage issue was presently before the ZBA. He said these were all issues the Board could settle as things moved forward.

Mr. Ozenich asked how Irving came to the conclusion that Durham needed another convenience store.

Mr. Montiero said they thought they had something to offer that others in Town didn't have, noting that the other facilities had inefficient use of space, were small, were poorly designed, and were hard to get in and out of. He noted that the Irving lot was larger, and said they saw a need in Durham. He said Irving wanted to be a good corporate citizen, and said customer satisfaction was important. He said he was sure the company would be willing to work with the Town.

Chair Roberts noted that the fascia of the buildings on that side of the street, including the Court House, was brick.

Mr. Kelley commented that the sign sizes at service stations were very site specific, noting that a sign at one Irving station might be small, while at another location it might be larger.

Mr. Montiero said sign location was very important. He said the applicant would rather have had signage closer to the intersection, but it was realized this was not appropriate because of the Court House. He said the center of the gas islands was a good location for the sign, noting the issue there was obtaining visibility. He said a low monument sign would block visibility, and said he thought what was currently required by the Zoning Ordinance was a hazard. He said location played a role in the height of the sign.

Mr. Montiero said they wanted to landscape the bottom of the sign, and said he thought they could find a satisfactory sign for the facility.

Mr. McGowan noted there would not be a sign at the other entrance.

Mr. Montiero said in lieu of some of the comments on driveway access, it was decided not to include this.

Mr. Isaak asked if they had considered flipping the donut shop to the front of the building, so the Route 108 side of the convenience store building would have windows.

Mr. Montiero said the portion of the site in back had more access to parking spots, so provided better accessibility for people coming in and out of the donut shop.

Mr. Isaak said his concern was the blank façade facing Route 108, and said it would help if there were windows on that wall.

Mr. Montiero said they could do some architectural treatments to break up that wall.

Chair Roberts said this was a neighborhood, and said some of the neighbors had tried to repeat the themes in the neighborhood, to their benefit.

Ms. Merrill said the scale of the canopy seemed overwhelming, and asked if there was any flexibility in terms of how big it would be.

Mr. Montiero said it was the size needed for accommodating customers, noting that as the roofline got higher, and more peaked, it got more top heavy. He said he understood they might not like a flat roof, and said they could look at different scenarios.

Chair Roberts noted that Gibbs had chosen to use a pitched roof over its gas pumps.

Mr. Montiero said he would develop some concepts on the canopy roof line.

Mr. Campbell said although there were some issues, he didn't think they were related to acceptance of the applications. He recommended that the Board accept the applications, and said if this happened, the Board would have 65 days from that date to make a decision. He suggested setting April 27th as the public hearing date, and said the Board would also have to schedule a site visit.

Richard Kelley MOVED to accept the Application for Site Plan Review and the Application for Conditional Use Permit submitted by Courthouse Ventures, LLC, Hampton Falls, New Hampshire to demolish the current motor vehicle service facility and replace it with a retail outlet which includes a 2,992 square foot convenience store with an attached 1,100 square foot coffee/donut shop, and to set the public hearing on April 27th, 2005. Nick Isaak SECONDED the motion, and it PASSED unanimously 7-0.

A site inspection date was set for Friday, April 22nd, 7:30 am.

Chair Roberts asked Mr. Montiero to bring the plans, including any proposed modifications they were willing to share at that time, to the site walk

Mr. Campbell also asked that proposed areas for the trash enclosure, etc, be staked as much as possible for the site walk.

VII. Continued Public Hearing on an Application for Boundary Line Adjustment submitted by Brian and Armida Geiger, Durham, New Hampshire to change the boundary line between two lots. The properties involved are 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.

VIII. Continued 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.

Chair Roberts noted that the two applications had been combined. He asked if the applicant had information to present to the Board first, and suggested that the second part of the hearing would allow additional input from members of the public.

Mr. Geiger provided a description of his plans for his property. He said he had two lots, each with a house on it, and 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 into two separate lots, creating a new building lot. Mr. Geiger noted he had a handout to provide, as rebuttal to previous public comments.

Chair Roberts said a review of the Geiger's drainage analysis had been done by Michael Sievert of MJS Engineering. He said Mr. Sievert had concluded that the stormwater

analysis was adequately performed and that the results appeared reasonable and correct, based on an analysis using the HydroCad stormwater modeling program.

Nick Isaak MOVED to open the continued public hearing. Amanda Merrill SECONDED the motion, and it PASSED unanimously.

Mr. Geiger said he would provide his rebuttal after the public comments.

Richard Ager, 2 Scotland Road said he was an abutter, and said this development would create a lot so narrow and close to him that the new house would be on top of his home. He said nowhere in the neighborhood were homes so close together as this would be. He said their property values and enjoyment of their property would suffer, noting this had already happened as a result of the other house the Geigers had built in the neighborhood.

He said he also wanted to address the broader implications of the proposed subdivision. He said the neighbors had seen from Mr. Geiger previous choices what he planned for the neighborhood, noting he had the only rental home there, and that he hadn't chosen to build a house in scale with the neighborhood. He said that most of the trees had been cut, exposing the property to noise from passing trains behind it, and said a prefab home slightly more than half the size of surrounding properties had been put in the rear corner of the lot, in order to leave room to cram another one on the property. He said the remaining lot was unsuited to development, noting it would not have its own driveway, and he said the likely tenants would be students.

Mr. Ager said when he moved from Lee, he and his wife thought they had left the student rental issue behind. He said he was not alone in having these concerns, and noted the children in the neighborhood were vulnerable to increased traffic. He asked the Board to spare the neighborhood the impacts of the proposed development. He quoted from the most recent Town Report, and said the question concerning growth was not whether it would occur, but how it could occur, in a way that didn't destroy community.

Corina Zimack, 41 Emerson Road read a letter to the Board on behalf of Patrick and Jane Shannon.

The Shannons asked that the Board listen only to the facts provided concerning the Geigers' applications. They described the Geigers as hardworking members of the community, and provided details on their work and way of life. The Shannons also said that from their own experience, it was highly unlikely that the properties in question would become rental properties in the future.

They said the Geigers maintained their properties beautifully, and said the request before the Board was for reasonable, acceptable use of their property. They said the Geigers should not be subject to the barrage of statements that had occurred, so many of which were untrue and unfounded, and asked the Board to approve their applications.

David Giroux, 8 Hampshire Ave., said he had no issues with the Geigers personally. He noted he had spoken before the Board previously, but said he had three additional concerns to speak about. He said he had reviewed the water report, and noted the March 8th report said there would be a 5% increase in runoff to the wetlands, and the March 17th report said there would be less, after construction, assuming gutters were installed, and water was piped into a swale next to the railroad tracks. He said he wondered if the railroad knew about this.

Mr. Giroux said Mr. Geiger's property at 6 Hampshire had a sump pump near his driveway, and said he (Mr. Cheroux) had flooding and undermining of his own driveway because of this. He said the water report didn't prove or disprove anything, but asked the question of where the runoff should go, to the natural wetlands or to a swale on railroad property. He Also said water pressure at his property was currently low, and said he didn't don't think two more homes could be sustained on the water line.

He said he felt the house at 4 Hampshire Ave was not in character with the neighborhood, and said another house should not be stuffed onto the other lot. He asked that the Board reject the applications.

Kathy Brunet, 7 Hampshire Ave. reminded the Board of neighborhood opposition to this project expressed at the February meeting. She noted that a petition of 26 signatures was presented at the meeting, 5 residents spoke in opposition to the applications, and 3 letters of concerned citizens were read. She noted 9 neighbors were present at the current meeting.

She read the summary of the neighbors' concerns:

- The current construction at 4 Hampshire is aesthetically unpleasing, and it is felt that construction on the additional lot wouldn't be any better than that.
- The nature of the current construction leads one to believe that the additional house is to be used as rental property.
- Concerning wetland issues, a solution for stormwater runoff was proposed in the March 17th report, but more needs to be known about the mechanics of a proposed drainage system.
- Construction of two homes means the loss of many trees, which affects the visual appeal of neighborhood
- A waiver of underground utilities would further affect the aesthetics of an already oddly configured development

Ms. Brunet said the neighbors were asking the Board to deny the application, but she asked that if the Board decided to vote in favor of it, that it consider the following issues:

- A request for waiver of underground utilities should be denied. She said that although most of the neighborhood was built with above ground utilities, there were aesthetic concerns.
- A request that the applicants be required to conform to the aesthetic requirements of a conservation subdivision, although it is not one. She said the house being built was

situated so the garage door faced the street, but noted that under conservation subdivision, the building would need to be shifted so the garage was not a prominent feature.

- In the spirit of the Master Plan, the applicant would share the construction plans with the neighbors prior to construction.
- There would be a written agreement between the two lots concerning the upkeep and appearance of the shared driveway.
- The subdivision would be contingent upon the applicant getting a certificate of occupancy for the current house at 4 Hampshire Ave., since there are remaining code issues, including possible damage to the wetlands.

She said this property had been purchased fairly recently, which was a different situation than when there were long term owners, and where changes in zoning would create hardship. She said all the issues the applicants faced could have been explored when they purchased the property. She said the neighbors were not necessarily opposed to development, noting they had not opposed a recent proposed development on Madbury Road because it appeared to be a reasonable request.

Corina Zimack said she hoped hard feelings concerning this application would be healed. She described some of her previous experiences concerning land use conflicts, most specifically regarding Fitts Farm, and said things had turned out pretty well, despite neighbors' fears of change, and the possible loss of quality of life.

She said people living in this area were in reality located in Town, and therefore couldn't expect to have a rural environment, as much as this would be desired. She said with that in mind, she hoped the Board would look at whether this application was within the Geigers' rights.

Armida Geiger said she would like to respond to some of the public comments in order to clear up falsifications stated by some abutters.

She said she and her husband were presently renting to professional adults, and said they were responsible property owners. She said if one passed by the property on 6 Hampshire Ave, he would never know the property was not owner occupied. She said they had met with harassment from the neighbors about this issue, and said those who passed judgment on the occupants at 6 Hampshire Ave. were prejudiced against all renters, not just students.

She noted comments from neighbors about cars parked in the driveway, and coming and going. She said there were more cars parked on the street attending neighborhood parties than cars at the 6 Hampshire Avenue property.

Mrs. Geiger said unlike what had been said, she and her husband had made attempts to meet with the neighbors to see what their concerns were. She provide details on this, noting she and her husband had said at one point in a meeting with Kathy Brunet that

they thought it would be great to build themselves a home, but had decided against this due to the friction in the neighborhood.

Mrs. Geiger said the house under construction had a well laid out floor plan, and could easily accommodate a growing family. She provided details on this, and said the house was not designed to be a rental house. She said they planned to sell it once it was completed. She said that if they received permission to subdivide the property, they planned to either sell the lot or put a house on it.

She asked the Board to review the Town's regulations as they related to the applications, and to determine if the applications met the requirements.

Jenny Broda 4 Lundy Lane, said she had lived in this neighbor for over thirty years. She said she didn't know the Geigers, and said this issue had gotten far too personal. She said the house being built at 6 Hampshire Ave. was fine, and could be fixed up to look nice, but she said she didn't think another house should be put in, in that area.

Gretchen Brown, 8 Hampshire Ave, said she felt the issues were getting clouded, and said the important thing was to walk the property in order to be able to understand the neighborhood's concerns.

Brian Geiger said he would like to address the abutters' concerns.

Chair Roberts asked Mr. Geiger to briefly summarize this information, given the length of the evening's Agenda.

Mr. Geiger said he would stick to the facts of the proposal, and noted the various exhibits he had provided to the Board that evening. He said he would go through these.

Mr. Geiger spoke in detail about the issue of whether the lots and buildings he and his wife owned were out of character with the neighborhood.

He described the specifics of the lot line adjustment and subdivision that were proposed, and the resulting lot sizes, and noted that the lots on the other side of Mr. Ager's property were all smaller than the lots he was proposing. He also noted that Mr. Ager's lot also was smaller than the lot he was proposing. He said this was evidence that the lot sizes resulting from the subdivision were not out of character with the neighborhood.

Mr. Geiger noted that the concept of living area was not specifically related to the current subdivision application, but he said it spoke to the issue of whether his building was out of character with the neighborhood. He referred to a table of information, including living area, of properties in the extended neighborhood, obtained from the Assessor's Office. He said of 31 houses, 18 homes fell under the average amount of living space in that neighborhood (2,184 sq. ft.) and said he also did a chart on effective living area, which showed 19 homes were below the average for this (2,733 sq. ft.). He said in both cases,

his properties fell below the average, but he noted that many others houses in the extended neighborhood did as well, so his building was in keeping with the area.

Mr. Geiger also noted, concerning the issue of the character of homes in the neighborhood, that his house at 4 Hampshire Ave. was a raised ranch with a garage under it. He said the house across the street at 3 Hampshire Ave. was also a raised ranch, or split entry. He noted that the architectural front of his house did not face the street, but said a house at 4 Lundy Lane also had a gable end that faced toward Hampshire Ave.

Mr. Geiger said it was apparent that the residents were concerned about the issue of student housing, and said he understood their concerns, given the problems at Lundy Lane. But he said his houses would not be rental property. He said the house at 6 Hampshire Ave., which was currently rented, was for sale, and said as a single-family home, it was not priced for the investor market. He said they did not intend to get into the student housing market with the proposed subdivision. He said the current house was being built as a spec house, and would be sold once completed. He said if the lot could be subdivided, they would build a house similar to houses in the handouts he had provided, sell it, or keep it as an investment property.

Mr. Geiger spoke briefly about the increase in traffic that would be expected to result from one new house. He also said there were no obstructions to the view at the driveway entrance to 4 Hampshire Ave., so there were no safety issues there related to sight distance.

He also spoke briefly about economic impact. He said his realtor had suggested that the unfinished house at 4 Hampshire Ave. should list for about \$319,000, when completed. He said that based on this, he did not believe the abutters' concerns about negative economic impact on their property values were valid

Mr. Geiger explained that the house orientation chosen for the property at 4 Hampshire Ave. was intended to maximize the amount of natural sunlight it received, and to minimize energy loss on the side of the house, facing north. He said this orientation also gave the home a feeling of being very private even though it was located in the Residence A zone. He said he wanted to maintain the established character and integrity of the neighborhood with this subdivision, which was consistent with a purpose of the Residence A zone.

Mr. Geiger disputed comments made by Richard Bernard about the lot line adjustment, and by Neil Wylie concerning the proper placement of the house at 4 Hampshire Ave. on the lot.

Concerning the storm water runoff analysis done for the application, Mr. Geiger said he had reviewed this report with Mr. Campbell and Mr. Levesque. He said that based on recommendations he had received, he would provide the calculation for a 50-year storm, and would ask Norway Plans Associates to provide engineering for directing rainwater from the roofs of the houses to the rear of the lot via gutter drains placed below grade.

Richard Ager stated, in response to comments made by Mr. Geiger, that older homes in the area were on smaller lots, but he said most newer homes in the area had been built on larger lots. He also said the photos concerning building orientation were misleading.

Amanda Merrill MOVED to close the public hearing. The motion was SECONDED by Richard Ozenich, and PASSED unanimously 7-0.

Chair Roberts said the Board usually concluded a public hearing with some comments on the application in question, but he noted they had other matters that needed to be discussed at the meeting.

Mr. Campbell suggested that the Board hold off on this, and could do it later at the meeting if there was time. He said if there was not, the Board could do this at its next regular meeting on April 27th, noting an extension would need to be granted by the applicants in order to do this.

Mr. Geiger agreed to grant the extension.

Mr. Ozenich suggested that since the site walk had been done in the winter, another site walk should be done in order to get a good lay of the land, and to view the wetlands.

Chair Roberts said he was comfortable with having done the first site walk, but said he was open to the will of the Board on this.

There was discussion between Mr. Campbell and the Board on when to have the deliberation on the applications, and it was agreed this should be scheduled for April 27th, and that a site inspection would be done on Tuesday, April 26th, at 7:30 am. It was noted that the site walk was open to the public. Chair Roberts asked that personal issues should be kept out of the discussion.

Mr. Kelley said he could not make the site walk, but said he would drive through the neighborhood on his own time. He noted that some of the Findings of Fact had changed based on some comments made by Mr. Geiger that evening, and there was discussion about this.

Chair Roberts noted that deliberation by the Board on these applications would be done by members who had been present at meetings on the applications since the beginning.

IX Public Hearing Presentation on a proposal for the construction of a one-story 6,300 square foot Dairy Research Building on the campus of the University of New Hampshire

Chair Roberts explained that as part of the presentation on March 9th, the Board and public had commented on its understanding the alignment of the northern connect in relation to the Gables Apartments. He said since March 9th, the Town had provided the

University with its information on the northern connector, and the University had drafted another site plan that incorporated this information.

He said the Town had had a meeting of Department heads on this issue, and had reviewed the materials Mr. Bencks had provided. He said it was decided to have a separate discussion on the University Master Plan and transportation issues at the May 25th Board meeting. He said at the present meeting, transportation issues would be discussed as they applied to the specific proposals being presented.

Chair Roberts noted that University President Hart had sent a letter saying that she regretted that this had become an issue with the Town, and said UNH would not proceed with either the Gables or southern underpass projects until after the 60 day window passed, unless Town Administrator Selig allowed the University to proceed sooner.

Chair Robert asked Mr. Bencks to go through his presentation, and said there would then be opportunity for public comments.

Mr. Bencks said that since the University's research facility had been built, the desire had been to bring the dairy research space out there. He said the functions that would be performed at the Dairy Research Center had been done on campus for over fifty years, and said there would be no new employees at this facility.

He described the location where the building was planned, and said there were no plans to expand the parking there, because people and material coming to this building were already out here. He said the University would be submitting water and sewer permits for the facility, and noted that stormwater runoff related to impervious surfaces would be handled on site, and said the design for this would be according to state and federal regulations.. He said construction would not start before the end of May.

Mr. Kelley noted that residents sometimes brought their children out to this area to view cows, etc. and said as of now this was an unregulated parking lot. He asked if this would change.

Mr. Bencks said that the current parking situation would remain.

Mr. Kelley said it would be a shame if the status of the parking lot changed, because the nearest public parking lot was quite a ways away.

Mr. Bencks said no changes were planned concerning this, and also noted there were shuttle buses available to bring people out there.

Richard Ozenich MOVED to open the Public Hearing. The motion was SECONDED by Richard Kelley, and PASSED unanimously 7-0.

Bill Hall, Durham said he supported the construction of this building. He said his concern however had to do with the animal waste, not the sewer waste, for the attendant

complex. He said the Town had as resource for drinking water, - the Oyster River, and noted the University had not chosen to use it as a water source. But he said if there were a problem with the Epping wastewater plant, the overflow would go into the Lamprey River, and would end up in the reservoir behind the dam at Wiswall, which would be a serious problem. He said the Town had to be able to use the water in the Oyster River, and had to have assurances that the animal waste (about a million gallons a year) trucked out to Moore fields was handled in such way that it was not a threat to the potential drinking water supply. He said what the University did with Moore field could not be done in Rockingham County, and provided details on a previous situation which was a mess that went on for quite some time,

Mr. Hall said competent local people needed to make sure there was a comprehensive plan for the animal waste, and that the University was not violating Town practices. He said it was great to have the research facility, but said it should follow the same practices as anyone else in its operations.

Mr. Bencks said he was not in a position to address how the animal waste from the dairy operations were handled.

Ms. Merrill asked what kind of research was done there.

Mr. Bencks said that various analyses were done regarding the digestive systems of cows

Mr. Kelley asked if any hazardous chemicals would be stored in this building.

Mr. Bencks said the lab fell under the same provisions as any other lab on campus, and provided some details on this.

In answer to a question from Mr. Kelley, Mr. Bencks said anything used for the processes conducted at the facility would be stored properly. He said nothing had been identified in these processes that was outside typical scientific activity.

Chair Roberts asked if there was any backup material that could give assurances to the public concerning whether this facility would in any way increase the opportunity for animal wastes to get into the Oyster River.

Mr. Bencks noted there would be no animals at this facility, so there would be nothing that would impact on how the dairy herd was managed

Councilor Carroll MOVED to close the Public Hearing. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.

Mr. Campbell asked if there was anything the Board would like him to include in written comments to be provided to the University.

Chair Roberts said the questions raised were regarding animal wastes, and the need for assurances concerning the handling of animal waste as this related to water supplies. He said the questions and answers on this were clear, and said this should be put in writing. He said the other issue concerned the handling of hazardous wastes, and said he assumed the facility would follow federal procedures.

There was discussion about this. Mr. Campbell asked if the University could provide a list of chemicals that would be used there.

Mr. Bencks agreed to do provide this.

Mr. Kelley received clarification that Mr. Campbell would be getting more information on the handling of animal waste. He said he recognized that this issue was unrelated to the present application, but said the Board wanted to respond to citizen concerns as to whether the water supply was protected. He said this issue had come up because of the presentation, and said he would like to understand how animal waste was being handled, outside of this project, and what precautions were being implemented.

Mr. Bencks said he understood what was being asked for, and that it was outside this particular project.

Ms. Merrill asked if anything else was being added to the facility besides the research facility, such as new laboratory space, and Mr. Bencks said no.

X. Pubic Hearing Presentation on a proposal for two projects on the campus of the University of New Hampshire. The first project is the construction of a 400-bed expansion of the Gables Apartments. The second project is the creation of a new pedestrian/vehicular railroad underpass between Gregg Hall and Forest Park

Mr. Bencks said he had been asked to bring back further information on the northern connector as part of these current projects, and said this is what had been done. He introduced Paul Chamberlin, Assistant Vice President for Facilities, and Steve Pesci, Special Projects Manager and Transportation Planner for the University to help answer any questions.

He said that as requested, the alignment for a future northern connector had been included in the site plan. He said as design work had been done for the Gables project, the University had looked more carefully at the larger buildout perceived for the future. He said the resulting design was somewhat different than what was in the Campus Master Plan, and said it showed where the future buildings were planned. He said the amended plan showed the 200 ft. northern connector going out to Route 4, and said in terms of where the University was concerning the existing Gables buildings design, it was well away from that area.

He said he was also asked by the Board to do a review of traffic impacts from the Gables project. He provided details on this, and said he saw the University having no more than 200 parking spaces as part of the project. He said existing conditions information had been included in Board members' packets on the intersection of Loop Road and Main Street. He noted the left hand turn at this intersection currently had a level of service rating of F.

He said they had used modeling based on industry standards, and had reviewed that with their transportation consultants. He said he would provide the level of service summary for the buildout, as he had indicated he would do.

He said given the additional traffic identified in the modeling, there was approximately a 3% increase during peak hours at that intersection, so there would be no significant impact in terms of changes to the level of service there. He said it would still be an F for left hand turns during peak hours, but noted that all of the traffic impacted was University traffic.

Concerning traffic issues related to the southern underpass, Mr. Bencks said this was an important piece for University, going forward, because it needed to have more connections across the railroad tracks. He said in the short term, the southern connector would replace the existing one lane underpass at Clovis Rd., which currently was not a safe place. He provided details about this.

He said there would be no additional traffic generation as part of this project, and said this would simply move existing traffic to another location. He acknowledged that by creating this two-lane road, this gave the University the capacity to do more development on the west side of the tracks. He noted he would talk in more detail about issues related to future growth in this area, and said that as these projects came forward, he would be back to talk to the Board about them, and the impacts they would have.

Chair Roberts said perhaps Mr. Campbell could provide details of the result of the departmental meeting on the UNH proposals.

Mr. Campbell provided details on this. Among other things, he said the Police Department was concerned that peak hour traffic in the area of Loop Road was already at unacceptable levels, and that there would be more traffic. He said the Department was also concerned about the number of buses that would be coming out of that intersection, which would make the traffic levels even more unacceptable. He said he realized the University was already well aware of this.

Mr. Campbell said the concerns he had expressed related to drainage at the Gables project. He also said he had discussed the shift in population at Woodside, which would become family housing, and the shift in traffic in the area of Edgewood Road as a result of this. He noted that when that project moved forward there would be apartments as well as daycare facilities, and said at that point the University would have to come before the

Board. He said they could talk about the traffic at that point. But he said he didn't see a lot of traffic impact as result of the presently proposed projects.

Mr. Campbell said the Board would be discussing campus master planning and future University projects with Mr. Bencks at the quarterly meeting on May 25th.

Chair Roberts asked if when Mr. Bencks had presented projects in the past, if Department heads been part of the site review procedure.

Mr. Campbell said no, and Chair Roberts said perhaps for projects of this significance, this could be done in order to reassure the public.

Mr. Campbell noted Mr. Bencks was welcome to attend those meetings, as an applicant, if he wished.

Mr. Bencks said that sounded reasonable. He then said he would like to address the various comments from Department heads concerning the Gables project. He said in terms of Code Officer Johnson's questions, the University complied with all State building codes, and he provided details on this.

He said concerning parking, the number of spaces required was different than what was in the Town ordinance. Concerning left turn lane at Loop Road, he said bus traffic was part of the analysis. He said the University was in agreement that there was a level of service of F at that location, and said that as a result of the Gables project it would get slightly worse. He noted that the University Master Plan had proposals for making that intersection better in the future, but said this was not feasible to do at the present time.

Concerning drainage at the Gables, he said the existing parking would be removed and made into open space. He provided details on impervious surface locations as part of project, and said drainage would be handled on site, with water being discharged to the wetland area, in compliance with state regulations.

He said the University was in the process of getting the required state environmental permits for the Gables project, and noted the Conservation Commission would be involved with the wetlands permitting process.

Mr. Bencks said the intention was to come back to the Board and present the second Gables project, including related issues such as moving childcare from Forest Park to Woodside. He said any traffic information related to this would be presented at that time.

Chair Roberts asked if discussion on this would be folded into the presentation in May as well, and Mr. Bencks said it certainly could be

Councilor Carroll said the cars vs. buses issue was interesting, and said in general, the Town would like to see students in buses not in cars. She said encouraging parking places would get the opposite of what the Town wanted as an end result. She said she was

curious what the University charged for parking spaces, and said this was something the Town needed to look at more, noting these things were essentially provided free of charge. She said it was great to see more shuttle busses, and said the cars vs. buses issue should be a subject for future discussion

Mr. Bencks said this would fit in well at the future Master Plan discussion. He said the University saw exactly the kind of relationships Councilor Carroll was talking about, as it did physical planning, including planning for the future of its transit system.

Councilor Carroll noted left hand turn concerning Loop Road, and asked if there had been increased accidents there.

Mr. Bencks suggested she should check with the police on this.

Richard Kelley MOVED to continue the meeting past 10:00 pm. The motion was SECONDED by Nick Isaak and PASSED unanimously 7-0.

Amanda Merrill MOVED to open the public hearing on the Gables and Southern underpass. The motion was SECONDED by Bill McGowan, and PASSED unanimously.

Bill Hall, Durham said in 1961, the bypass came to a vote twice before the Town, and was turned down because they didn't want University traffic on Edgewood and Madbury Roads. He said the Town was already at a level of service that was unacceptable in those neighborhoods. He said University President at that time came to Town Meeting and committed the University to cooperating in building the northern connector.

He said the Town voted for the bypass as laid out, including the northern connector, and he said the discussion was that the connector would be built within 5 years. But he said that as soon as the University got Town traffic off Main Street, where they didn't want it, they sabotaged the northern connector. He said the Town wasn't well represented by the Board of Selectman on this, and also hadn't been well represented by the Town Council on this issue.

Mr. Hall said that subsequent to that vote, an engineering firm was hired to show existing conditions on campus. He said this included a Dept. of Public Works right of way to the Durham Bypass, which was labeled right of way on the map. He said the drawing he had recently supplied to the Town labeled it repeatedly as a right of way. He said the University went behind the Town's back, without benefit of hearing, and requested that the state transfer the right of way back to the University. He said any deletion of the right of way to the bypass was fraudulent.

Mr. Hall said in the University's own analysis, the left hand turn onto Main St. was in failure. He said the things they were going to do to get the cars to go out west didn't work. He said the Town had a traffic report done in cooperation with the University in 1993, and said a part of the recommendation was that the University would build parking

lots on Route 108 north and south of the Town, and therefore the Town wouldn't need the northern connector, and that if they didn't do that within five years, the Town was to get the northern connector. But he said this didn't happen, and provided additional details on this.

He recommended that the Town require the northern connector, to mitigate the traffic impact on Edgewood Road. He said he was hoping the Board would take the ball and carry it to the Council, because this discussion on the northern connector had gone far enough. He said with \$100 million in building projects planned by the University, there would be more cars on campus.

Chair Roberts said on May 25th, the Board would discuss the larger transportation issues. He said he appreciated the amount of information Mr. Hall had provided on this subject.

Mr. Hall said the University Police department was also frustrated about the traffic problems, but he said this hadn't gotten into the University's planning process.

Concerning the southern connector, Mr. Hall suggested that when the University started constructing the buildings it had planned, the amount of traffic in that area would go up. He noted the significant amount of delivery vehicles that came on to campus to service these kinds of buildings. He said if the underpass was put there, it would put Mill Road right back to where it was, when it was regularly backed up to Faculty Rd. or College Road. **He said by not allowing McDaniel Drive to come out to Mill Rd., people would have to make the decision as to whether they would go down Route 108 or up Mill Rd.** He said hopefully in doing that, this would encourage people going east and north to take the northern connector, as a direct route to the intersection. He said this should have been dealt with by the Town long ago, and said if people running for office in Durham would take responsibility for some of these issues, he would be delighted to step back.

Richard Ozenich MOVED to close the public hearing. The motion was SECONDED by Richard Kelley, and PASSED unanimously.

Mr. Kelley asked why daily vehicle trips were dropped in half in the traffic information provided by the University.

University Transportation Planner Steve Pesci provided details on this. He said trips at the Gables were constrained by the number of on-site parking spaces, not the number of beds, and he said the new version of the information reflected this.

Mr. Kelley asked if it could be expected that these people had vehicles, but would be parking some place else.

Mr. Pesci said the parking ratio at the Gables was one space for two beds, which was typical at the University. He said resident parking was limited, was only valid in that lot, and students who didn't get these spaces were eligible to get parking at the West Edge

parking lot, where there were an excess of spaces. He said he didn't have reliable information on the number of students who didn't get on site parking, but said those students who did parking at the West Edge did tend to use these spaces as storage. He said realistically, the number of West Edge stored vehicles that would be driven at AM or PM peak hours would be very low.

Mr. Pesci said he didn't think there would be increasing number of cars on campus as a result of the project.

Mr. Kelley said he agreed, but said zeroing it out wasn't correct either. There was discussion about this.

Mr. Kelley a level F condition at Loop Road would become worse. There was discussion about the difference between traffic volume and the hourly traffic flow rate. He asked if when looking at level of service, this was looking at hourly flow rate, or was breaking it down further to shorter intervals.

Mr. Pesci provided details on how peak hour was calculated, and how the traffic figure for 2006 were obtained.

Mr. Kelley asked why there was reluctance to make any improvements to the Loop Road intersection, whether for a storage lane, etc.

Mr. Pesci said there was an 85 ft, storage lane, but said additional storage lanes gave additional stacking capacity, but didn't change the level of service. He said level of service was based on the delay experienced by drivers. He noted there were already dual stacking lanes.

Mr. Kelley said a queue length of 85 ft. fit about 4 cars, and asked if this could be impeding vehicles from making right hand maneuvers.

Mr. Pesci said there might be sporadic periods when that happened. But he said during peak hours, they were not seeing that. He said the number of vehicles added because of this project, as a percentage of cars going through the intersection, was very low, but he said the left turn was a critical location, and couldn't really be fixed without changing to a different kind of intersection.

Mr. Bencks said the fact that that left turn at this intersection was in failure should be encouraging people to turn right, and go away from the congestion. He said the intersection was not seen as something the University saw the need to address in the short term but he said it would be addressing it in the long term.

Mr. Kelly said he agreed with this, and said his main concern was whether enough queue lane was being provided so that the right hand turn was not impeded as well.

Mr. Pesci said in his opinion, this didn't appear to be the case, but said he could have the consultant look at this. In answer to a question from Mr. Kelley as to whether this could also be said for the 2006 build analysis, Mr. Pesci said he didn't believe so.

Chair asked if University employees had been inventoried about their impressions of the traffic delay.

Mr. Pesci said this had not been done.

Chair Roberts said the forum on the 25th could discuss this.

Mr. Kelley respectfully urged that University planners look at that intersection to make sure right turn maneuvers were not being impeded.

Mr. Kelley also asked whether the two structures located within the northern connector right of way were existing structures, or were part of the University Master Plan.

Mr. Bencks said one was an existing house, built in the 1930's, and the other was a farm services building for storage. He said this second building probably didn't pre-date the establishment of the right of way. He provided additional details on what was out there before the right of way.

Mr. Kelley asked how accurate the University's establishment of the right of way corridor was.

Mr. Bencks said it was accurate in reflecting the drawing he was provided with.

Councilor Carroll noted that on the evening the University Master Plan was to be presented, it would be helpful to know what measures had been taken with these new buildings concerning water conservation and energy conservation. She said when a new building was planned, this was an opportunity to conserve as much as possible. She said it would be useful to see this information provided in summary form.

Mr. Bencks asked if this summary should be provided at the session.

Chair Roberts said utilities were a part of the Master Plan, and said although a detailed response wasn't needed, it would be good to get something on this.

Mr. Isaak thanked Mr. Bencks and Mr. Pesci for providing information, including the site plan with the northern connector on it.

- XI. Deliberation 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

Mr. Campbell noted there were quite a few Findings of Fact and Conditions of Approval for the previous application for this property, and said these had been copied for the Board's reference if needed. He read through the Findings of Fact, and noted that all waivers previously granted had been incorporated into the present application. He said there were not any new waivers.

Conditions of Approval Discussion

Mr. Kelley asked why, under C. Enforcement Rights, the condition set forth referred to 1,2, and 3, but not 4 (no unit may be occupied by any person 18 years of age or younger for a period of more than 1 month; no such occupancy shall occur unless at least one person age 55 or older shall also inhabit the unit at the same time)

Mr. Schuster provided details on how this might have been omitted, but said he agreed that it should be in there.

Mr. Kelley asked whether, if enforcement was going to happen, it was the Association that had to put the lien on the unit, not the Town.

Mr. Schuster said the Condominium documents gave it that right.

Mr. Kelley asked whether, if Board of Directors didn't want to do this, the action would come from the Town, and Mr. Schuster said that was correct.

Mr. Kelley asked, concerning the Proposed Additional Paragraph 4 B, changing the amendment of declaration, how enforceable the following provision in it was: "No amendments to the Declaration or By-laws may be adopted which would bring the identified elderly residential units into non-compliance....". - if the clear majority of unit owners voted to change things.

Mr. Schuster said that would be an invalid amendment to the Declaration.

Mr. Kelley said in other words, it was enforceable.

Mr. Campbell noted that the wording was in response to a previous section saying that the Association could change this.

Mr. Kelley noted that the wording in this paragraph went on to say an amendment could be made, upon approval of such amendment by the Planning Board. There was discussion about this.

Ms. Merrill asked if this kind of thing would require more than approval of the amendment, and asked if it might be considered a change of use. There was detailed discussion on this.

Ms. Merrill noted that the introductory paragraph to the Conditions of Approval referred to this application as a conditional use permit. There was discussion about this. She said she wanted to be sure it passed muster in how it was described, but said if others were comfortable with this, it was fine.

Mr. Campbell said the applicant gave the Board a full application, and had gone through the full process.

Ms. Merrill noted wording that said all previous Findings of Fact are hereby incorporated by reference.

Richard said providing Dates and Book and Page information would be a good idea. It was agreed that the wording would be: "The following Findings of Fact are hereby incorporated by reference....". - with Book and Page numbers added in. It was agreed that this information should also be included in the Conditions of Approval.

Ms. Merrill said concerning #2 under Conditions of Approval, the wording there sounded like it was saying that all the occupants had to be 55, but the language incorporated into the Condo declaration under (B) (1) said at least one person had to be 55. There was detailed discussion about this.

Mr. Campbell said he had put that language in, but suggested the wording in #2 could instead be "One of the occupants of all residential units shall be 55 years of age or older".

Mr. Kelley noted that requiring, as Condition #4 did, that one hundred percent of the units be for persons 55 or older, was stricter than what the federal regulations required, and he asked if someone could bring suit against the Association because of this.

Mr. Campbell said the law said at least 80% of the units had to be for persons 55 or older, but he said there could be more.

Mr. Schuster said he was ok with this. He said once a development qualified and got the exemption, it could be more restrictive, for example, - the 18 year old language.

Mr. Campbell asked Board members if they were ok with the revised language he had suggested. There was no disagreement on this language.

Ms. Merrill suggested that under 4, it would be clearer, in going along with the change in 2, to say something about 100% of the units meeting the requirement of one person being 55 or older. She said the present language seemed somewhat inaccurate. There was discussion about this.

It was agreed that Condition #3 should read, “As proposed by the applicant, one hundred percent of the units shall be for Elderly Housing.”

It was agreed that after Condition #1, what were now conditions 2, 3, 4 and 5 should be listed as A, B, C, D, and that Condition #6 would therefore become Condition #2.

Ms. Merrill noted under B, 1 c, starting “The occupants of any unit who shall claim entitlement to this exception.....”, it wasn’t clear to her what the exception referred to. There was discussion here, and it was determined that it referred to C, concerning abandonment, which was why the paragraph was indented.

It was agreed that Condition # 5. (changed to D) should read “As proposed by the applicant, the following language shall be incorporated into the Condominium Declarations and Covenants.”

Ms. Merrill asked about the policy discussed under (B) (3), that no guest(s) or other invitees(s) under the age of 55 years of age shall be permitted to occupy any unit for a period of more than one month. There was discussion as to what exactly this was saying.

Chair Roberts said to him this was somewhat extreme.

Mr. Kelley said perhaps that was what the applicant desired, since it was an elderly housing community, and he was respecting his clients wishes that they didn’t want children there all summer long. There was discussion about this.

Mr. Schuster said that a person could come and visit for more than a month, as long as there was a qualifying occupant there.

Mr. Ozenich said if a resident went to the Association and asked that the person be allowed to stay in certain circumstances, it would let the person stay.

There was additional discussion about this. It was noted the language came from Fitts Farm, and Mr. Schuster said it was appropriate. He said the key language was that there had to be a person who was 55 or older there.

Richard Kelley MOVED to approve the Findings of Fact and Conditions of Approval as amended, 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 motion was SECONDED by Amanda Merrill, and PASSED with Councilor Carroll abstaining because she had not been present for other meetings on this application.

Mr. Schuster said he appreciated the time the Board had put into this application, and said he appreciated that they had taken the time to complete the process that evening.

XII. Other Business

XIII. Approval of Minutes - February 23, 2005, March 9, 2005

It was agreed the minutes would be put on the next week's agenda.

Nick Isaak MOVED to approve the motion to modify the agenda by placing all the minutes on next week's agenda. The motion was SECONDED by Richard Kelley and PASSED unanimously.

Richard Kelley MOVED to adjourn the meeting. The motion was SECONDED by Nick Isaak.

Mr. Ozenich said the person from Irving spoke to him privately, and said that if someone requested that someone from the gas station pump the gas, by law, they had to do it.

The motion PASSED unanimously.

11:15 pm adjournment