

These minutes were approved at the July 13, 2005 meeting.

**DURHAM PLANNING BOARD MINUTES
WEDNESDAY, APRIL 27, 2005
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL**

MEMBERS PRESENT: Stephen Roberts; Amanda Merrill; Nick Isaak; Kevin Webb; Richard Kelley; Richard Ozenich; Bill McGowan; Councilor Gerald Needell

MEMBERS ABSENT: Councilor Diana Carroll

OTHERS PRESENT: Jim Campbell, Planner; Victoria Parmele, Minutes Taker

I. Call to Order

II. Approval of Agenda

Amanda Merrill MOVED to approve the Agenda as submitted. The motion was SECONDED by Kevin Webb, and PASSED unanimously 7-0.

III. Approval of Minutes

A. January 19, 2005

Page 3, 3rd paragraph from bottom, 4th line should say “Mr. Lord...”

Page 6, 2nd paragraph from bottom should say “Oyster River Watershed Association”; also same page, last paragraph, last four lines, should say “He said this was a joint proposal, and the Board was interested in hearing public comments on it. But he said they were between a rock and a hard place, given the rising tax rate, and the concerns that were found in any area considered for economic development.

Page 8, middle of page, Richard Gsottschneider, Durham Point Road, should be in bold; also last paragraph, third line from bottom, should read “...would be impossible to implement most of the proposed uses...” ; also

Page 10, 5th full paragraph, should read “Chair Roberts noted that the existing industrial development, Goss, was a good neighbor.....and said the Board was somewhat frustrated by the large amount of land.....” Same page, 3rd paragraph from bottom, should read “There was discussion by Board members that this change had occurred well prior to the 2000 Master Plan and Zoning Rewrite process.”

Page 13, 3rd line should say Cynthia, not Judith Belowski

Page 14, 7th paragraph, should read “...significant comments regarding the Ordinance’s reduction in available land, especially during...” Also, bottom of page, should say Virginia Mills, the Town Planner for Hollis.

Page 16 top paragraph, should read “...calculations for their properties, and discovered what they considered was a reduction in available land.” Also, 3rd paragraph, should read “.....1768 buildable lots. Even with the current changes, there was still a significant reduction in buildable lots, and the Board worried about whether.....” Bottom paragraph, should read “...was against allowing mixed commercial and residential use...”

Page 17, 2nd paragraph from bottom, should say Paul Berton, Fall Line Properties. Also, 3rd paragraph should read “He noted Attorney Loughlin’s report also explained why the Church Hill area...”

Adjournment time should be noted as 10:15 pm.

Nick Isaak MOVED to approve the January 25th, 2005 minutes as amended. The motion was SECONDED by Amanda Merrill, and PASSED, with Councilor Needell abstaining because he was not a member of the Planning Board at the time of the January 25th, 2005 meeting.

B. February 9, 2005

Minutes needs page numbers

Page 1, should read Spruce Wood Realty Trust

Page 10, 5th paragraph from bottom, should read “...hydraulic gradient.....flow relative to the ground service”

Page 13, 3rd paragraph from bottom, should read “He said a front lot with 300 ft. of frontage...” Also 4th full paragraph, should say “Duane Hyde of the Nature Conservancy...”

Page 14 and 15 check spelling of Chris Dane (correct spelling); also, Town Engineer’s name should be spelled Levesque.

Amanda Merrill MOVED to approve the minutes as amended. The motion was SECONDED by Kevin Webb, and PASSED unanimously.

C. February 23, 2005

Page 7, 5th paragraph from bottom should read “...went from two garages, to one garage. He said that...” Also, bottom paragraph, should read “He said if 75% of the residents said, let’s go to 80% of the units requiring 55+, this would require a zoning change. Mr. Kelley asked how the Board could ensure...”

Page 13, 2nd paragraph, should read “...boundary line adjustment was approved. 4th paragraph should read Andrea M. Parsons, Durham, New Hampshire. 5th paragraph should be spelled Chris Dane.

Page 14, Insert after motion opening the hearing, the sentence “There were no members of the public who wished to speak at the hearing.”

Page 16, top paragraph, should read “Andrea M. Parsons...” 4th paragraph, should read” ...was willing to accept less sight distance..... “Also 5th paragraph, should read “...was willing to accept less sight distance as well, because...”

Amanda Merrill MOVED to approve the minutes as amended. The motion was SECONDED by Nick Isaak, and PASSED unanimously, with Kevin Webb abstaining because of his absence from the February 23rd, 2005 meeting.

IV. Report of the Planner

- Mr. Campbell said he had some CD's on Housing NH's Workforce, prepared by the NH Workhouse Housing Council. He also said he had some CD's of a session that The Exchange, a program on NH Public Radio, had done on workforce housing. He said these tapes were available for Board members.
- Mr. Campbell said the University's Committee on Real Property Acquisition and Disposal had recently met. He said the discussion on the Highland House was on hold, but would be put out to bid rather than going with one owner.
- He said he was continuing to work with Professor Mary Robinson and her community development students on the project “Working in Neighborhoods.” He said the students had held a focus group session with representatives from the Faculty Neighborhood, had gotten good feedback, and said data on the session would be compiled. He said the students would be making a presentation to the Board on this information on May 11th. He said it was hoped this approach could be used as a model around Town, and that much of the discussion from these work sessions into the Master Plan.

Chair Roberts asked if Planning Board members should be present at these focus group sessions, as a courtesy.

Mr. Campbell said that was a good idea, noting there might be a better response from the focus groups if the Board was represented as part of this process.

Mr. Campbell said Ms. Robinson wanted to have these sessions every semester.

Mr. Kelley suggested Board members could each participate in focus groups in their own neighborhoods.

- Mr. Campbell said the public hearings on the amendments to the Shore land, Wetland, and Aquifer Protection overlay district provisions would be held the following Wednesday. He noted that the Council had passed on first reading the Floodplain overlay district provisions and Impact Fee Ordinance, and said public hearings on these provisions were scheduled for May 25th. He said he hoped Board members would attend this meeting.
- He said the Board would hold its second quarterly planning meeting on May 18th, and said the focus of the meeting would be a discussion on the University Master Plan

with Doug Bencks. He said he hoped members of the public would attend this meeting as well.

- Mr. Campbell said the previous Thursday; representatives from Town departments, Tie Crossman of the Strafford Regional Planning Commission and Doug Bencks had met to begin a process of developing an emergency mitigation plan for the Town. He noted this was separate from the emergency operations plan the Town already had, and explained that Durham could no longer get FEMA or Homeland Security grants unless a mitigation plan was in place. He said the Town applied for these grants quite often, and also said it would take some time to develop this plan.

V. Public Hearing on 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 motor fuel 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.

Chair Roberts said that this agenda item would be postponed. He said the Board had received a letter from the applicant's Attorney, which said that the applicant, Mr. Mitchell was requesting that the hearing be continued to May 11th, 2005, because his engineer would be on vacation on April 27th, and because it was clear from comments of the Board that some attention would need to be paid to the architecture of the building. Mr. Saari indicated that because they were dealing with an oil company, it would be almost impossible to get the changes made and agreed to by April 27th.

Mr. Webb noted that the public hearing on these applications had been advertised, so there might be members of the public present to speak on them.

Chair Roberts asked if there were any members of the public who wished to speak on the applications, and there was no response.

Kevin Webb MOVED TO postpone the Public Hearing on an Application for Site Plan Review and 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 motor fuel outlet which includes a 2,992 square foot convenience store with an attached 1,100 square foot coffee/donut shop, and to continue it to the May 11th meeting. The motion was SECONDED by Richard Kelley, and PASSED unanimously 7-0.

VI. Public Hearing on 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 motor fuel 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.

(Continued to the May 11th Board meeting; see discussion and motion under Agenda Item V)

VII. Deliberation 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 6 & 4 Hampshire Avenue respectively and are in the Residence A Zoning District.

VIII. Deliberation 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 Councilor Needell would abstain from discussion on these applications because he was not on the Board when the applications were first heard. Chair Roberts then read a letter into the record from Councilor Diana Carroll.

Councilor Carroll said she had been unable to identify any passive solar features on the house built on Lot 36 from photos, and provided details on this. She also said the photos Mr. Geiger presented to demonstrate that the house he built with the garage facing the street was similar to another house in the neighborhood was misleading.

Councilor Carroll said the proposed subdivision, in her opinion, went against the spirit of the neighborhood. She said the general impression of the neighborhood was very favorable, and said the vacant lot the Geiger's purchased and the house they built on it did not add to this favorable impression. She said there was concern that with a subdivision of the Geiger's land, there could be another subtraction of the favorable quality of the neighborhood.

Councilor Carroll noted that by law, Planning Boards could not make their decisions based on the spirit of the neighborhood. But she said whatever the Board's decision was on these applications, there would be work to do. She said that first and foremost, it was her hope that the Geiger's and the neighbors would work together to make this more of a win-win situation.

She suggested that the house to be built might be in a price range that would be affordable to town or school employees. She also said it might be helpful to add back trees that were removed between the road and the house; add design elements to the garage and end view of the house; line the driveway with trees; and put utilities underground.

Chair Roberts asked Mr. Campbell to read the Findings of Fact, Waivers and Conditions of Approval for the Subdivision application, and Mr. Campbell did so.

Mr. Campbell noted that an additional condition of approval had been added, as recommended by Code Enforcement Officer Johnson, that the driveway for Lot 35 would have only one entrance/exit, and the second curb cut must be removed, loamed and reseeded.

Mr. Webb spoke about #4 under Conditions to be Met Subsequent to the Signature of Approval on the Subdivision Plan, "that the front of the new house located on Lot 36-1 shall face Hampshire Ave". He said he believed what was intended was that the gable end of the house would not face Hampshire Ave., and asked for clarification on this.

There was discussion by the Board on what wording might be more appropriate.

Mr. Ozenich said he had looked at the property, and said the idea of a shared driveway for the two lots in the new subdivision looked like a bit of stretch. He asked what the Town engineer had said about this.

Mr. Campbell said the applicants had been granted the curb cut for the shared driveway.

Mr. Ozenich said he was concerned about the elevation for the driveway, and about the trees that would have to be removed.

Mr. Campbell said there was concern about the slope of the driveway, but said that ultimately this was not the Board's decision; it was the decision of the Public Works Department. He said the Board could discuss this, and could make some conditions relevant to the issue.

Mr. Ozenich said he felt this issue should be discussed in more detail by the Board.

Chair Roberts said it was in the Board's purview to discuss this.

Ms. Merrill noted that the driveway permit issued in July 2004 was for the existing house under construction on Lot 36. She asked whether, if another house was built on 36-1, if another driveway permit would be required.

Mr. Campbell said yes, and provided details on the things the Public Works Department would have to look at in order to issue the second driveway permit.

Mr. Ozenich asked Mr. Kelley what he thought of the second driveway.

Mr. Kelley said they would have to cut into that hill in order to do the driveway, and provided additional details on what would be involved. There was discussion about the grade of the property and how this related to the driveway construction.

Mr. Ozenich asked other Board members who had attended the site walk what they thought.

Mr. Isaak noted that the current excavation on the site made the change of elevation look even more dramatic.

Ms. Merrill said she did not believe the issue of the elevation was discussed at the site walk.

Mr. Isaak asked if approval of the subdivision application was contingent upon approval of the boundary line adjustment application.

Mr. Campbell said it would be. He said he had intended to read both sets of Findings of Facts and Conditions of Approval together, but then the Board had gotten into the discussion.

The Board agreed they should vote on the Lot Line Adjustment application before deliberating on the Subdivision Application.

There was additional detailed discussion about the driveway.

Mr. Kelley said a residential driveway could be steeper than 5-8% (the slope allowed for a commercial driveway). He said a driveway would theoretically be going back about 125 ft. before it day-lighted, but said this would depend on what the lay of the land was, so the driveway might day-light earlier than that. He noted it was hard to tell because the applicants had not been required to provide a topographical map as part of the application.

Mr. Kelley said the Board had faced this kind of situation before, where it got into deliberations on an application, and driveway issues were critical in rendering a decision, yet the driveway permit hadn't been done. He said the Board needed to find a solution to this.

Chair Roberts said it was intended that Town Engineer would provide report that was complete enough for the Board, but said there might not be as complete a report as was desired.

Mr. Kelley asked if the driveway permit approved in July 2004 for Lot 36 was for the location where it now existed, and there was discussion about this.

Chair Roberts said the Board would deal first with the Lot Line Adjustment application.

Mr. Campbell read through the Findings of Fact and Conditions of Approval for the Boundary Line Adjustment Application.

Mr. Kelley asked if the site plan Chair Roberts would be signing would be for both the boundary line adjustment and the subdivision applications, and if so, whether there could be any problem with this.

Mr. Campbell said it had been done this way in the past. He said if both applications were approved, there wouldn't be a problem with this, and also noted that if the boundary line adjustment wasn't approved, the subdivision application wouldn't be approved anyway.

Chair Roberts said he thought it would be better to have both plans recorded together to avoid confusion in the future.

Ms. Merrill noted Finding of Fact #8, and asked if anything more should be said on why the application was previously denied without prejudice. There was detailed discussion about this.

Chair Roberts said the submissions made by the applicant showed the deed reference trail was complete, and said all other details concerning the boundary line adjustment application appeared to be in order.

Mr. Isaak asked about the circular driveway for Lot 35.

Mr. Campbell said a condition of a ZBA approval was that if any change was made to the frontage of that lot, the second driveway had to go.

It was agreed that language concerning this should be added to the Conditions of Approval. There was discussion about which driveway cut would be abandoned.

Mr. Kelley asked whether, if the Board approved the lot line adjustment application but denied the subdivision application, the applicants would be given the liberty to forget about the lot line adjustment.

Mr. Campbell said they could make it go away.

Mr. Webb said the Findings of Fact for the Lot Line Adjustment application and the Subdivision Application both failed to mention when these applications were finally accepted by the Board. He noted they were accepted on Feb. 9th, 2005.

Richard Kelley MOVED to approve the Application for Boundary Line Adjustment submitted by Brian and Armida Geiger, Durham, New Hampshire to change the boundary line between two lots, along with the Findings of Fact and Conditions of Approval as amended. The motion was SECONDED by Amanda Merrill and PASSED unanimously 5-0-1, with Councilor Needell abstaining because he had not been on the Board during some previous meetings on this application.

Chair Roberts noted that Mr. Campbell had read the Findings of Fact and Conditions of Approval for the Subdivision application earlier in the meeting, and the Board had then begun discussion on these. He said there now would be further deliberation on the Findings of Fact and Conditions of Approval for the Subdivision Application

Chair Roberts said the driveway cut did not change. He said the subdivision plan showed only one driveway, going to an easement on the lot whose creation had just been accepted by the Board. He said he didn't believe it was the same driveway cut that currently existed.

Mr. Kelley said the driveway permit submitted on July 16th 2004 by the applicant showed it was approximately 100 ft. from the boundary line. He said the graphic in the permit showed the location of the proposed drive for Lot 1-9-36. He said it was the same along road frontage, etc, as the site plan, although noting the curvature on one was sharper than the other.

There was detailed discussion on what the exact location of the driveway cut was supposed to be, based on the drawing in the building permit as compared to the site plan.

Chair Roberts said the subdivision plan showed the driveway cut that would remain, but said what was not shown was the cut for where the driveway went onto Lot 36-1. He said in a sense this wasn't known yet, because the location of the future house hadn't been located yet.

Mr. Geiger said the driveway was currently dug up so water and sewer could be put in, but said it closely matched the subdivision plan, which was the same location as indicated on the driveway permit.

There was detailed discussion on this.

Mr. Ozenich asked if the Fire Department had to provide comments on the driveway for the new lot.

Mr. Campbell said they had commented on the subdivision plans, but said the driveway would be permitted by the Public Works Department. He said if it didn't meet the

requirements, the applicants would not get a permit. He said the only issue for the Fire Department would be whether the driveway would be 12 ft. wide. He said once the Public Works Department was satisfied with the design, including how the slope issues were addressed, it would issue the permit.

Mr. Isaak said the burden of proof would be with whoever developed the property.

Mr. Ozenich said his concern was that a lot of trees and dirt would be removed as a result of the driveway, and said it wasn't going to be the treed neighborhood that it had been.

Chair Roberts said to put the current driveway into the current house on Lot 36, the main excavation would already have been done. He said when the new house came in on Lot 36-1, only a small stub of driveway off the main driveway would be needed. But he noted he would prefer to have this driveway shown for Lot 36-1. There was discussion about this.

Ms. Merrill said for the new driveway to Lot 36-1, it was assumed that the Public Works Department would address drainage issues before issuing a permit. But she asked whether, if the Board had concerns about the aesthetics of the driveway, language could be put in specifically concerning landscaping related to the driveway, to limit the aesthetic assault from the excavation.

Mr. Campbell noted Conditions #2-6 which dealt with these concerns.

Ms. Merrill asked if something could be added specifically concerning the driveway.

Mr. Kelley said Lot 36 was presently a mess, and said it was important that the driveway that was finally constructed be placed as shown on the subdivision plan. He said the driveway permit plan was not clear, and said one might even infer that the driveway as shown on permit was actually on the other side of the bound. He provided additional details on this.

Mr. Isaak said a condition of approval should therefore be verification of the driveway location for the subdivision plan.

Mr. Kelley said based on the driveway permit, he would put the driveway on one side of the lot line, and said this was the side without the easement.

Mr. Isaak said the key was that once the NPA monument was set, the driveway had to be set to the right of it.

Mr. Kelley provided additional details on how the driveway permit conflicted with what was on the subdivision plan.

There was detailed analysis and discussion about this.

Mr. Kelley said if out in the field the driveway was in the right spot that was fine, but said there was a problem if it was built according to the driveway permit.

Chair Roberts said the permit plan was incorrect, and provided details on this.

There was discussion about which dimensions, on which plan were correct.

Mr. Kelley said a Condition of Approval could be included which said that the applicant was to make sure that the driveway was within the easement, as shown on the subdivision plan. He said because the monument had to be set as a condition, they would know.

Mr. Campbell noted an additional condition he had added, #11, - that the easement language for the shared driveway be placed in the deeds for Lots 36 and 36-1, and the deed would show 36 was granting the easement to Lot 36-1.

Mr. Webb asked who was going to enforce condition #3.

Mr. Campbell said Mr. Johnson, the Code Enforcement Officer, would ensure that erosion control took place. He noted that this would occur after the tree warden visited the site to determine which trees would be cut and which would be saved.

Mr. Webb asked if this was something Mr. Johnson usually did, and whether he had the expertise to evaluate this kind of thing. He said the Conservation Commission seemed to be needed for something like this. There was discussion about this.

Ms. Merrill said the language “enhance quality of the proposed parcel” was somewhat general, and said she took it to mean something aesthetic.

Chair Roberts noted this kind of issue was addressed for Fitts Farm, and provided details on this.

Mr. Webb said the Fitts Farm application was pretty tightly controlled, noting a professional forester, etc. was required.

Mr. Campbell said Mr. Johnson enforced the conditions, and had already done some enforcement actions concerning Fitts Farm concerning wetlands, etc.

Mr. Kelley said #3 went with #4, 5 and 6, but said #3 referred to something that should occur following approval. He suggested that it should be moved down to “Subsequent to Approval...”

Mr. Webb said that # 2 and 3 should stay together. There was discussion about this.

Mr. Kelley noted that for Lot 36, the Conditions of Approval were asking for new trees, but for Lot 36-1, were just saying, let’s be careful, let’s not take anymore out than necessary.

Ms. Merrill said she would like to see language that said more clearly that there would be minimal removal of trees on Lot 36-1. She said the language at present was somewhat general.

Mr. Campbell said the language was taken directly from the Ordinance.

Mr. Ozenich asked what happened if the property wasn’t developed, and yet there was this big driveway cut on the site. He said it wouldn’t be good to just walk away from it.

Mr. Kelley noted that construction standards said the site had to be stabilized.

Mr. Ozenich asked what happened if there wasn’t construction on Lot 36-1.

Chair Roberts said the question was who would fix 36-1, when Lot 36 was the only lot being served.

Mr. Kelley said maintenance provisions could be outlined in the easement agreement, which included sharing of maintenance. He said even if no one was living on Lot 36-1, the owner would still be required to contribute to the maintenance of that area. He said if the applicant were not putting in an access to 36-1 at present, the Town's regulations would require Lot 36 construction to stabilize the slope going onto Lot 36-1, prior to completion. He said this would result in stabilizing the cut slope going onto Lot 36-1.

Mr. Ozenich said that was his concern, - who would stabilize this area, if Lot 36-1 wasn't built on.

Chair Roberts said the question is whether they covered for the raw side of the construction of the driveway on lot 36-1/lot 36, and would it be landscaped during the while the property awaited development. He said there should be a condition that the applicant would landscape the driveway cuts serving lot 36..."

Mr. Kelley said he would prefer that the condition said "all areas will be stabilized whether on lot 36 or 36-1."

Mr. Campbell said under #2 which would be moved to Subsequent to Approval; it could say "The applicant shall plant new trees, .etc, for both lots 36 and 36-1".

Chair Roberts suggested the following wording under #2, "For Lot 36-1, the applicant shall landscape and stabilize all disturbed areas pending construction of the driveway into Lot 36-1.

Mr. Isaak asked if there was a minimum buildable area for a subdivision like this.

Mr. Campbell said yes, and said the applicants met it, including taking the wetland into consideration.

Mr. Kelley received clarification that Items #2 and #3 were being moved to "Conditions to be Met Subsequent...."

Ms. Merrill spoke about the drainage reports that had been received for the application. She noted that former Councilor Grant had asked about the need for an engineering study on possible drainage impacts on the lots across the street, including one with a vernal pool. She noted Councilor Grant had said an independent analysis should be done on the drainage impacts on those lots, at the applicants' expense, and asked if the reports that had been done addressed these concerns.

Mr. Campbell said drainage onto other properties had not been addressed in these reports.

Mr. Webb said the reports only addressed the rate of drainage, and noted that because there wasn't a dramatic change in the slope of the land, the Geiger properties weren't directing more water to the properties across the street. He also noted that runoff on Lot 36 and 36-1 would be going to catch basins, so would be decreasing.

Mr. Campbell said water would drain to the back of property, not the front, because it would be caught in roof drains. He said this was the case for both properties.

Mr. Kelley noted the stamp for the stormwater analysis, and asked if the Board should say the recommendations of that plan needed to be implemented. He said what the analysis was saying was that the roof drains need to be directed to the back of the property.

Chair Roberts said a condition on this could be put in the “Conditions to be met Subsequent...” That the stormwater analysis and plans shall be implemented, as recommended by the Town Engineer.” He said that was the key, concerning what Councilor Grant was talking about.

Ms. Merrill noted that the waiver request had been withdrawn concerning underground utilities for Lot 36-1.1. She asked if underground utilities would also be required for Lot 36.

Mr. Campbell said Lot 36 had a pole going to the existing house, but said it was entirely up to the Board whether the applicants would have to remove this and put the utilities for the property underground. He said he couldn’t recall an instance where the Board had required this kind of thing, and noted this had not been required for the existing lot for the Chase subdivision.

Ms. Merrill said there was a mix of overhead and underground utilities in the neighborhood.

Mr. Ozenich asked about the location of the pole relative to the shared driveway. There was discussion about this, and about the idea of requiring underground utilities for both lots, under the Waiver language.

Mr. Isaak said this might help to mitigate some of the abutters’ issues.

Mr. Kelley said he supported not granting a waiver of underground utilities for Lot 36.

The wording agreed on was the following: “and the Planning Board denied the waiver request for Lot 36. The existing pole on Lot 36 must be removed.”

Mr. Webb noted that roof drainage would be sent to the back of the lot, and asked where it went from there.

Mr. Campbell said it discharged to a drainage system along the railroad tracks, and flowed in a southerly direction.

Ms. Merrill noted that when the Board had discussed waivers before, it was assumed that this subdivision was exempt from the conservation subdivision provisions. But she said in the future, the Board might want to not exempt some aspects of these provisions, such as preliminary consultation. She said there might be an occasion, and these present applications might have been one such occasion, where informal discussion might have been helpful.

Chair Roberts said this had been a good discussion, with good ideas expressed by the Board.

Richard Kelley MOVED to Approve the Application for Subdivision submitted by Brian and Armida Geiger, Durham, New Hampshire to create two lots from one lot, along

with the Findings of Fact and Conditions of Approval as amended. Amanda Merrill SECONDED the motion.

Mr. Kelley said this had been a difficult application for the Board because of the emotional testimony on both sides. He said while he was sympathetic to both parties, the Board needed to look at the application in terms of the Town's Zoning Ordinance and Subdivision Regulations.

Mr. Webb said he agreed, and said he fully sympathized with the neighbors concerns about having student housing in residential areas. He said unfortunately this wasn't an area the Board could touch with its Ordinance in any reasonable way, within the bounds of State law. He noted he would be equally concerned about expansion of student housing in his own neighborhood.

Ms. Merrill said she hoped the conditions of approval concerning landscaping would be taken very seriously, so that some of the perceived damage to the aesthetics of the area would be mitigated, and there would be minimal further deterioration of the aesthetics as well as the physical characteristics of the land from any new development.

Mr. Isaak said he agreed with previous points made by Board members. He said Durham was at a critical point where land which 10 years ago would not have been considered buildable was now being considered. He said if Durham was going to add dwellings to the Town, he would rather they be in the RA and RB districts, toward the center of Town and on water and sewer, rather than taking virgin land in the more rural districts. He agreed that the Board had to go by the rulebook as it presently stood.

Chair Roberts noted this was the third re-configuration of a neighborhood in recent months, and said he shared the neighbors' concerns.

The motion PASSED unanimously 6-0-1, with Councilor Needell abstaining from the vote because he was not on the Board for previous deliberation and discussion..

IX. Other Business

Old Business: - Discussion on Section 175-55 (E) of the Zoning Ordinance

Chair Roberts provided details on the Board's reasoning for amending this provision, and noted a related provision under 175-55- F(8), which was proposed to be amended slightly.

Councilor Needell said the way the 175-55 E was presently worded invited confusion, and said he was concerned with how to bring this forward.

Chair Roberts noted that Board members had received a long email from a member of the public on this provision. There was discussion on the letter, which mentioned that the provision could create a bowling alley effect. There was then discussion as to whether the proposed amendment to the provisions addressed that.

Chair Roberts noted that Section 175-09 was an elegantly written article to describe how a lot was constructed. He reviewed these provisions.

Councilor Needell said his concern was what would happen if someone came in with a plan that showed a really bizarre interpretation of these provisions, but which didn't violate any of the statements in it.

Mr. Isaak noted in the letter from Ms. Olshansky, that a 50 ft. wide lot was discussed, and said this couldn't happen. He said the buildable area had to be 50 ft, but the lot itself had to have sufficient frontage, etc. so would be larger.

Councilor Needell said so one could use a piece of property 50 ft. by any length desired to satisfy the 50% rule. He said if someone trying to create a buildable lot had 25% of the lot that made sense but didn't meet the requirement that 50% of the lot be useable without using some long spindly pieces of land, this provision said they could do that.

He asked if that was the Board's intent. He asked if the Board could stop someone from doing this kind of octopus shaped lot, and said he thought the original intent was to prevent that kind of lot from being created. He said he wasn't trying to argue that the Board needed to prevent that, but wanted to be clear whether this was what it invited.

Chair Roberts provided details on the intent of this language, and noted he had asked Mr. Eyerman what would happen if the wording were simply eliminated.

Councilor Needell said these provisions originally applied to regular subdivisions as well, and the Board was recommending taking this out, and they would only apply to conservation subdivisions. He said Mr. Eyerman was arguing that the provision was superfluous for conservation subdivisions, and actually was possibly needed for regular subdivisions.

Chair Roberts asked Mr. Campbell for his perspective on this.

Mr. Campbell said with a regular subdivision, the minimum frontage was 100 ft, so there couldn't be anything less than this on an existing road, anywhere, already.

Chair Roberts noted again that the language by which lots were set up under the conservation subdivision process was elegant.

Ms. Merrill said she agreed with Chair Roberts that with these provision, the chances of ending up with bad design of lots should be minimized She said she saw the language under discussion as a kind of backup.

Chair Roberts explained that the Board had broad discretion with these provisions, and with the four-step process, seemed to have the protection needed.

Ms. Merrill said the idea was to deal with these things in the early stages of the application, before the formal application.

Councilor Needell said when this was before the Council, the question was asked, why should there be a rectangle, and was it too arbitrary a definition. He also said he presumed the presently proposed dimension requirement could be waived.

Mr. Campbell said the Board didn't have the power to waive this, noting it was a dimensional requirement.

Chair Roberts said the more research he had done on this, the more the language the Board had put in the Ordinance back in 2004 concerning a rectangle of contiguous usable area didn't make sense.

Councilor Needell said the intent of this proposed amendment to that was to allow more flexibility, but said the language that was created didn't achieve that. He said it might make sense to take this language out completely.

Mr. Kelley said he wasn't sure about this, and said he agreed with Mr. Eyerman's concern that the provision was more important concerning conventional subdivisions.

Chair Roberts asked what business it was of the Board to say a lot wasn't legal, if a property had enough buildable area for a septic system, road, and house, and had the frontage and setbacks required.

There was discussion as to whether in the existing Ordinance, calculation of usable area applied to conservation subdivision and to regular subdivisions.

Mr. Campbell said the Board had made a specific motion that it didn't want the usable area calculation to apply to non conservation subdivisions.

Mr. Campbell noted that the usable area definition was one of the changes being made to the Ordinance, and referred to conservation subdivisions. He said that in addition, under the Table of Dimensional requirements, wording was put in concerning minimum useable area for dwelling units in conservation subdivisions, and minimum lot area for a dwelling unit in a subdivision. He said in addition, Section 175-107- spoke about exempt subdivisions, where the minimal useable area requirement didn't apply.

Mr. Campbell said if the Board was not going to apply 175-55 E to conventional subdivisions, the best thing would be to remove it. He said a public hearing would be required if this happened, and noted that if the Council decided it made sense not to change the provision, it would revert back to the original language, which talked about the rectangle of land.

Mr. Webb summarized the issue: Because the definition of usable area was changed so it only applied to conservation subdivisions, the Board wanted to delete Section 175-55 E altogether, which then made conventional subdivisions not subject to the calculation of minimum contiguous usable area. He noted that conservation subdivisions were safeguarded with the provisions in 175-55 - F –10 (as amended, F-8.)

There was discussion as to whether 175-55 F-10 (8) would provide sufficient protection from developers linking little strips of property, as long as they were fifty feet wide.

Mr. Campbell said this kind of land would only be used in the calculation of density, not for building, and would probably be used as secondary, if not primary

conservation land. He said it would not indicate what the lots would look like, and said the chances of building anything there were very slim. He noted there were also setbacks that would have to be taken into consideration.

Nick Isaak MOVED to amend the amended language, to remove Item E from Section 175-55. The motion was SECONDED by Councilor Needell.

Ms. Merrill asked if voting on this was appropriate, noting it was not an official agenda item, but just a topic of discussion. There was discussion on this.

Mr. Isaak said he agreed that the language in 175-55 E was redundant, and the issues of concern were covered by other angles.

Councilor Needell said he saw there were two options - to delete the amendment to the language in E, leaving the existing language, or to delete the entire provision. He said he agreed with the second option.

Ms. Merrill said she support getting rid of 175-55 E, because the language was confusing.

Councilor Needell asked if the Board was comfortable about removing the constraints on non-conservation subdivisions, which eliminated any usable area calculation for these subdivisions.

Chair Roberts said for these smaller subdivisions, wetlands would be taken out, which reduced the buildable area, and then the applications still had to satisfy setbacks, septic, etc. requirements.

There was additional discussion on this.

Councilor Needell asked whether, if the public hearing convinced the Board that some other change to 175-55 E was needed instead, if this would require another hearing.

Mr. Campbell said he would consider that would be a significant change so it would require another public hearing.

Mr. Kelley spoke against the motion. He said the present provision did serve a use in conventional subdivision, and said the Board was more apt to see conventional subdivisions come through where they would want some language like this. He noted that Mr. Eyerman had said this provision should apply to lots not part of a conservation subdivision because it was essentially an uncontrolled situation.

There was discussion about this. Mr. Campbell said if they were going to keep something like this in for conventional subdivisions, it needed to be called something else.

Mr. Kelley suggested they could say minimum contiguous usable area, which would be total area minus wetlands, so there would be two types of usable area.

Mr. Campbell said the Ordinance already covered conventional subdivision, because lot sizes had to be exclusive of wetlands. There was additional discussion on this.

Mr. Kelley noted that a lot of wooded wetland areas had mound and pool topography, and the mounds might go toward buildable area.

Councilor Needell said the developer would still be bound by having to find a place to put a house, septic, etc.

Mr. Campbell said perhaps what Mr. Kelley was describing could be called minimum contiguous upland area.

The motion PASSED 6-1, with Richard Kelley voting against it.

X. New Business

Next Meeting of the Board: May 11, 2005

Approval of Minutes

March 9, 2005 and March 23, 2005 (**postponed**)

XI. *Kevin Webb MOVED to adjourn the meeting. The motion was SECONDED by Richard Ozenich, and PASSED unanimously.*

Adjournment at 10:40 pm

W. Arthur Grant, Secretary