

These minutes were approved at the October 25, 2006 meeting

**DURHAM PLANNING BOARD
WEDNESDAY, AUGUST 23, 2006
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL**

MEMBERS PRESENT: Chair Kelley; Arthur Grant; Bill McGowan; Councilor Needell

ALTERNATES PRESENT: Susan Fuller Lorne Parnell

MEMBERS ABSENT: Kevin Webb; Stephen Roberts; Richard Ozenich; Councilor Carroll

I. Call to Order

Planning Board member Arthur Grant said he would fill in as Chair until Chair Richard Kelley arrived at the meeting. He said that alternate Lorne Parnell would be filling in for Kevin Webb, and Susan Fuller would be filling in for Richard Ozenich.

II. Approval of Agenda

Councilor Needell MOVED to approve the Agenda as submitted. Susan Fuller SECONDED the motion, and it PASSED unanimously 5-0.

III. Report of the Planner

Mr. Grant said that Town Planner Jim Campbell had recently had surgery, and was recuperating at home.

IV. Public Hearing on an Application for Site Plan Review submitted by Van Rich Properties, LLC, Durham, New Hampshire for the construction of 4-unit apartment building and a 2-bedroom apartment addition. The properties involved are shown on Tax Map 9, Lots 20-0 & 20-1, are located at 277 and 279 Mast Road respectively, and are in the Multi-Unit Dwelling/Office Research Zoning District. (The applicant has requested that this application be withdrawn.)

Mr. Grant asked if there were any questions regarding the withdrawal request, and there was brief discussion.

Arthur Grant MOVED that at the request of the applicant, Van Rich Properties, LLC, Durham, New Hampshire, the Application for Site Plan Review submitted by for the construction of 4-unit apartment building and a 2-bedroom apartment addition is withdrawn. Bill McGowan SECONDED the motion, and it PASSED unanimously 5-0.

Chair Kelley arrived at the meeting.

V. Public Hearing on an Application for Conditional Use Permit submitted by Van Rich Properties, LLC, Durham, New Hampshire for the construction of a duplex. The property

involved is shown on Tax Map 9, Lot 20-0, is located at 277 Mast Road, and is in the Multi-Unit Dwelling/Office Research Zoning District.

There was discussion by the Board that no site plan review was required for this application, because only two units would be involved.

Arthur Grant MOVED to open the Public Hearing on an Application for Conditional Use Permit submitted by Van Rich Properties, LLC, Durham, New Hampshire for the construction of a duplex. Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.

Mrs. Gottschneider, wife of the applicant, Richard Gottschneider, said she was present in place of her husband. She said they were proposing to build one duplex, with 3-4 bedrooms. She said there were ample on-site parking, and a recently dug well on the property. She said their initial application had been modified because they had realized site plan review was required when more than 2 units were built.

She said the appearance of the building would be essentially the same as that of the building on Lot 20-1, the adjacent lot, and said no other changes to the application were anticipated. She said it was believed the application was consistent with the intent of the MUDOR district. She said the existing building would likely remain an office building, and said it was believed the property would provide a positive fiscal impact on the community, with no adverse impacts to the neighborhood. She noted they had been landlords in Durham for 26 years.

David Potter, partner in the Ursula Hoene Trust, an abutter to the property in question, said he had a few questions about the application. He noted the current extent of pavement on the lot in question, and the fact that the property behind it was a poorly drained woodland area. He said drainage problems there were exacerbated by current runoff from the Van Rich property.

He said he believed the paving was done around 1995, and said although he was an abutter, he was not aware of having been notified about this. He said he had questioned the paving at that time because of the extent of it. He said only 25 parking spaces were required, yet there were 55 spaces, and said this seemed excessive. He noted that the changes to the topography of the site over time had changed the runoff pattern.

Mr. Potter said he hadn't seen the plan for the duplex project, but said he still had concerns about what existed on the site presently, and was concerned that stormwater runoff issues had not been addressed in the applicant's previous application.

He asked for clarification as to why site plan review was not needed for the current application, and it was explained that site plan review was only required for the development of 3 units or more.

Mr. Potter noted that any stormwater drainage system that created additional flow over the properties required an easement from the landowner that was impacted, and he said this certainly hadn't occurred. He said the issue of drainage and what it did to his family's property was of

paramount importance to him and other family members. He noted that some other family members were present at the meeting.

Chair Kelley said that during the recent site visit, family member Ebberhardt Hoene had explained that there was ponding occurring in the vicinity of the existing culvert along the north side of the property. He asked if there were other areas of concern.

Mr. Potter said there was ponding to the west side of the property, and problems with some culverts, and asked if these existing problems could be looked at as part of the present project.

Chair Kelley provided details on how Town staff would address this and other concerns raised that evening. There was detailed discussion about the culverts in the area.

Councilor Needell expressed concern that Mr. Potter had apparently not seen the new plan for the Van Rich property.

There was discussion between Board members and Mr. Potter regarding the parking lot. Mr. Potter explained that the parking area extended across both lots, and contained a total of 55 spaces if the gravel corner in the southwestern portion of the lot was paved. He said the area had been gravel parking prior to about 1995, but was not as large as the parking area now was. He said even with the reduction in the overall project, the parking was still in excess of what was required. He said the Trust's issue was not so much to modify what was there other than fixing the drainage.

In answer to Chair Kelley, Mr. Potter said that a hard rain would cause stormwater problems on the site that would affect abutting properties. He said it could be anywhere from few days to a few weeks before the water was absorbed, and said the problems were changing the topography and ecology of the area. He said if his family chose to do further development on its 15 acre parcel in the future, the drainage problems would have to be taken into consideration, as an existing condition.

Max Owen, a family member, said he needed clarification regarding the fact that no formal site plan review approval was needed for duplex. He also asked whether, if the applicant came back to the Planning Board in the future and wanted to develop another two apartment units, if this could be done, and without site plan review approval.

Chair Kelley said he would get back to Mr. Owen on this.

Mr. Potter asked for clarification on how the conditional use application would be handled, procedurally.

Chair Kelley provided details on this, among other things explaining that if the Board agreed the application should be approved, conditions of approval would be included in the approval that could address the drainage issues and other issues.

He noted that the Board had received a letter from abutter **Ursula Hoene** during the site visit.

Arthur Grant MOVED to close the Public Hearing. Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.

Mr. Grant said that in view of the technical questions that had been raised concerning this application, the absence of the Town planner, and in fairness to the Gottschneiders, he recommended deferring deliberation on this application. He recommended that Mr. Campbell should consult with Town staff regarding the drainage issues that had been raised.

Arthur Grant MOVED that deliberation on the Application for Conditional Use Permit submitted by Van Rich Properties, LLC, Durham, New Hampshire for the construction of a duplex be postponed, and that the Town Planner be requested to seek technical information regarding the drainage issues on this site, and to provide a response to the question regarding future development potential. Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.

VI. Deliberations on a Site Plan Application submitted by Douglas H. Wilkins, Anderson & Kreiger, Cambridge, Massachusetts, on behalf of New Cingular Wireless PCS, Cambridge, Massachusetts and the University of New Hampshire, Durham, New Hampshire. The application is for a Personal Wireless Service Facility located on Williamson Drive on the University of New Hampshire campus. The property is shown on Tax Map 13, Lot 7-2, is located on Williamson Drive and is within the Residence A, Rural and Multi-Unit Dwelling Office Research Zoning Districts.

Mr. Grant said Town Planner Jim Campbell had presented the Board with draft Findings of Fact and Conditions of Approval. He said there had been a number of discussions by the Board on the application, as well as a site visit. He recommended proceeding with the FOF and COA.

Findings of Fact

1. The applicant submitted a Site Plan on June 28, 2006 entitled “Cingular Wireless LLC, 6CC.UNH Durham Relo” prepared by OEST Associates, Inc., So. Portland, Maine. The plan is dated June 26, 2006.
2. The applicant submitted an Application for Site Plan Review on June 28, 2006.
3. The applicant submitted a letter of intent on June 28, 2006.
4. The applicant submitted a Report of Cingular Radio Frequency from Specialist Randy Howe on June 28, 2006.
5. The applicant submitted an owner’s consent letter from the University of New Hampshire on June 28, 2006.
6. The applicant submitted a copy of Cingular Wireless’ FCC licenses on June 28, 2006.
7. The applicant submitted equipment brochures and a photo showing antenna mount sleds on June 28, 2006.
8. The applicant submitted a RF Emission Report on June 28, 2006.
9. The applicant submitted a photograph on the existing conditions of the site as well as photo-simulations of proposed conditions on July 11, 2006.

10. The applicant requested waivers on June 28, 2006, to the following sections of the Site Plan Review Regulations: Section 7.01, 7.03, and 9.11 through 9.16.
11. The Planning Board conducted a Site Walk on August 9, 2006.
12. A Public Hearing was held at the August 9, 2006 Planning Board meeting, and no members of the public were in attendance to speak for or against the application.

Two additional Findings of Fact were added.

13. The applicant submitted additional materials under Appendix 1-5. (Chair Kelley had noted that additional materials on the application had been received at the public hearing, and were not referenced in the Findings of Fact. Mr. McGowan noted that this was in response to questions raised at the previous Planning Board meeting.)
14. An email was received from Jonathan McNeill of Cingular, answering questions raised at the public hearing regarding placement of the antennas, and the question of whether they could be set further back from the parapet.

Waivers

Waivers that were not granted were as follows:

- 7.02 4-f This has been addressed by the applicant
- 703 A-2 Mr. McNeill said the letter had been submitted to Mr. Campbell.
- 703 B-2 & 3 This has been received from the applicant.
- 703 C-1 This was done
- 9.11 B & E Mr. McNeill said this information had been provided.

Councilor Needell said it had been recommended that the other waivers should be granted.

Conditions of Approval

Conditions to be met prior

1. An authorized representative from Cingular Wireless and an authorized representative from the Town of Durham shall sign the plan in an appropriate place indicating their approval of the plan as presented.
2. The applicant shall submit one mylar copy and one blue print copy of the Site Plan. The Site Plan shall be stamped with the plan preparer's professional seal.
3. The applicant shall provide a security for removal of the cellular facility in the form of a bond. The amount of the security must be equal to the cost of removal plus 15%. The owner shall provide the Planning Board with an updated cost estimate every five years from the date of approval. If the amount has increased more than 15%, the owner of the facility shall provide additional security.
4. Cingular Wireless shall agree to post a maintenance bond in accordance with Section 11.03 of the Site Plan Regulations in an amount of two percent (2%) of the estimated project cost, which shall remain in force for two (2) years after site improvements are completed.

5. A note shall be added to the plan referencing the maintenance of the facility.
6. The additional information not waived needs to be on the final plan.
7. The independent review must be received by the Department of Planning and Community Development and must prove FCC guidelines are met and the Durham Noise Ordinance is met.
8. A statement of proof must be received from the applicant that the Personal Wireless Service Facility meets the Durham Noise Ordinance. The statement must explain the anticipated noise and compliance.
9. A letter from the University of New Hampshire must be submitted authorizing the Town of Durham to enter the property for RF and noise measurements.
10. The applicant must review the PCS licenses and submit the correct one.

Conditions to be Met Subsequent to the Signature of Approval on the Site Plan

1. These Findings of Fact and Conditions of Approval shall be recorded with the Strafford County Registry of Deeds, at the applicant's expense, within ten (10) days of the Planning Board Chair's signature on the Site Plan.
2. As per 9.11(G)(3) of the Site Plan Regulations, any further co-location on this site will need Site Plan approval.

Chair Kelley asked Mr. McNeill if he was in agreement with the Conditions of approval.

Mr. McNeill said Cingular could provide the security and maintenance bonds. He said he still needed to provide Mr. Campbell with the PCS license, and said everything else that was required seemed reasonable and acceptable.

Arthur Grant MOVED to approve the Findings of Fact and Conditions of Approval, and that the Planning Board grant approval for the Site Plan Application submitted by Douglas H. Wilkins, Anderson & Kreiger, Cambridge, Massachusetts, on behalf of New Cingular Wireless PCS, Cambridge, Massachusetts and the University of New Hampshire, Durham, New Hampshire, for a Personal Wireless Service Facility located on Williamson Drive on the University of New Hampshire campus. Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.

VII. Acceptance Consideration of an Application for Boundary Line Adjustment submitted by Judith Ward, Durham, New Hampshire, and Vincent Todd Jr. & Cheryle St. Onge, Durham, New Hampshire to change the boundary line between two lots. The properties involved are shown on Tax Map 14, Lots 16-0 and 18-1, are located at 235 Packers Falls Road and 8 Wiswall Road respectively and are in the Rural Zoning District.

Ms. Ward said this request for a boundary line adjustment was the result of the fact that she wanted to construct a garage for her property in a suitable location. She explained that her land wrapped around the Todd/St. Onge property, and said what was being proposed was that some of their land close to her house would be traded to her in exchange for some of her land further away from her house.

Chair Kelley noted that there seemed to be a small parcel to the north on the survey that was not described in the deed.

Ms. St. Onge said she had spoken with Mr. Campbell about the application on a number of occasions, and was not aware of this.

There was discussion as to whether they may have been a subsequent conveyance of the parcel.

Chair Kelley said that given the question about this, he was reluctant to pass the boundary line adjustment that evening. He suggested that the Board accept the application, and then pass on these questions to Mr. Campbell and the surveyor.

Ms. St. Onge asked for clarification as to whether this issue was pertinent to the application itself. There was discussion about this.

Chair Kelley also noted that the surveyor had not shown the boundary marker for the relocated boundary line, and said this should be shown on the plan, subsequent to signing.

Mr. Todd asked if any of these matters could be conditions of approval, in order to move things along.

There was discussion about this, and Chair Kelley agreed that they could be. He said a 4th condition of approval should be added, which required that relevant deeds dealing with the undescribed northern segment of Lot 16-0 be submitted. He asked if the applicants were clear on what the Board was asking the surveyor to provide.

There was discussion about this. Ms. St. Onge said they had assumed that they only had to survey the areas that were relevant to the boundary line adjustment application.

Chair Kelley explained that his concern was that he and the surveyor would be signing this application, and if it was not right, there could be a problem in the future.

He said a 5th condition of approval should be that the surveyor would indicate on the plans the placement of the proposed bound.

Findings of Fact

1. The applicant submitted an Application for Boundary Line Adjustment with supporting documents on August 2, 2006.
2. The applicant submitted on August 2, 2006, a Boundary Line Adjustment Plan entitled "Lot Line Relocation, Tax Map 14, Lots 16-0 & 18-1, Property of Judith D. Ward and Vincent E. Todd Jr. & Cheryl St. Onge, 235 Packers Falls Road/8 Wiswall Road, County of Strafford, Durham, New Hampshire" prepared by Ames MSC, Portsmouth, dated July 31, 2006.
3. The applicant submitted a letter of intent on August 2, 2006.
4. Copies of the deeds for the properties were obtained from the Assessor's Office on August 2, 2006.

Conditions of Approval

Conditions to be met prior

1. The applicant shall supply two mylar plats and one paper copy for signature by the Planning Board Chair.
2. A certificate of monumentation must be provided to the Planning Board & Community Development office.
3. The final plans must be stamped by all appropriate professionals.

Conditions to be met subsequent

1. The reference Boundary Line Adjustment Plan and these Findings of Fact and Conditions of Approval shall be recorded with the Strafford County Registry of Deeds, at the applicant's expense, within seven (7) days of the Chair's signature on the Plan.

Arthur Grant MOVED to approve the Findings of Fact and Conditions of Approval, including the two additional conditions to be met, and to approve the Application for Boundary Line Adjustment submitted by Judith Ward, Durham, New Hampshire, and Vincent Todd Jr. & Cheryle St. Onge, Durham, New Hampshire to change the boundary line between two lots. The motion was SECONDED by Susan Fuller, and PASSED unanimously 6-0.

VIII. Acceptance Consideration on a Site Plan Application submitted by Joseph Caldarola, Portsmouth, New Hampshire for the building of 21 multi-family units of elderly housing. The property involved is shown on Tax Map 10, Lot 7-0, is located at the corner of Bagdad Road and Canney Road and is in the Residential B Zoning District.

Mr. Caldarola said he was present to provide an overview on the project, and said he believed the application was complete. He said the current plan was similar to what he had provided to the Board during the conceptual consultation phase, with the same number of units, and same layout, which was now fully detailed. He said he had tried to address the concerns that had been brought up at that time. He said he thought that what was now being proposed would be acceptable.

He said all the units were for age 55 and older, and he provided details on the way the various one and two bedroom units had been laid out as part of the development. He said there was a separate application for extension of water up from the intersection. He also said Underwood Engineering was doing modeling of water flow, which was not yet complete. He noted there was a concern about the capacity of the sewer infrastructure, going beneath Route 4, and said he had arranged to have flow through the pipe monitored. He said there appeared to be plenty of capacity in this system. He also said he had been concerned about ledge on the property, and said test borings were done to well below where the sewer extension would need to be, which indicated that there might actually be no ledge at all on the property.

Mr. Caldarola said he had met with some, but not yet all of the neighbors concerning the proposed development, especially residents on Amber Way, and noted the drainage concerns they had. He provided details on engineering plans to reduce flow off of the property.

He said he was proposing to construct the development in two phases, and provided details on this.

Mr. Grant said Mr. Campbell had indicated that the application was complete, and read for acceptance by the Board.

Arthur Grant MOVED the acceptance of the Site Plan Application submitted by Joseph Caldarola, Portsmouth, New Hampshire for the building of 21 multi-family units of elderly housing at the corner of Bagdad Road and Canney Road, in the Residential B Zoning District, and the scheduling of a public hearing on Sept 13, 2006.

Ms. Fuller said she would abstain from voting on the motion.

Lorne Parnell SECONDED the motion.

Councilor Needell said he had been asked to relay a question from missing Board member Councilor Carroll, who was ill, concerning the latitude the Board had in terms of accepting the application. He said Councilor Carroll's concern was the amount of things the Board already had on its schedule

Chair Kelley said he didn't see a problem with accepting the application, and said if necessary, the Board could delay its quarterly planning meeting until October.

Mr. Grant said the Board could also ask for a continuance if necessary.

Chair Kelley said that if Mr. Campbell had said the application was complete, he personally would like to keep the process moving for the applicant.

There was discussion on what questions should be asked of the applicant that evening.

Chair Kelley recommended that the Board should indicate that evening the additional information that should be included in the application, but said that given the other Items on the agenda, there should be no questions for Mr. Caldarola.

The motion PASSED 5-0-1, with Susan Fuller abstaining.

Chair Kelley said the Board would like to see a complete set of plans by the date of the public hearing, including the output of a hydrocad model. He noted a memo from the Town Engineer that had been received by the Board that day, and said he would provide Mr. Caldarola with a copy of it.

Councilor Needell noted the reference to Bellamy Road rather than Bagdad Road in the application documents. He also said there were some minor errors in the condominium documents that should be checked.

Chair Kelley asked if comments from the Durham Police Chief were shared with Mr. Caldarola, and Mr. Caldarola said they were.

Chair Kelley said the Board would like to see a sewer capacity test, conducted in dry or wet weather.

Ruben Hull, of Civil Design Engineering Consultants, said the testing that was done had spanned both dry and wet weather, and said he felt the numbers were very representative of both conditions.

Chair Kelley asked to get the test results for both sets of conditions.

It was agreed that a site walk would be done on September 13th, at 5 pm, prior to the Planning Board meeting.

Mr. Grant suggested that the Board move on to **X. Other Business/New Business** for the sake of the two applicants who had requests for Technical Review, before taking up Item IX. Members of the Board agreed to do this.

X. Other Business

B. New Business:

1. Request for Technical Review of additional parking area at 66 Main Street, Map 2, Lot 14-2.

Dean Outhouse, Financial Advisor for Gamma Theta Corporation, explained that he wanted to create 14 gravel parking spaces on the property, in addition to the 45 spaces currently there. He said his company was trying to reduce the amount of area on the property where students congregated, and said rather than having the land sitting there not doing anything, the parking area made sense. He said what was involved was actually more of a reconfiguration of the existing lot, and noted that what was planned would make snow plowing easier. He noted that the hope was to pave the parking area in the future when funds were available.

Mr. Grant said he would like it if this were kept a gravel parking area.

Mr. Outhouse said that would be his preference as well, noting there was bedrock under the ground where the gravel was. He said that Code Enforcement Officer Tom Johnson had said he would like the area to be paved eventually. He provided details on some other proposed changes to the property to improve it.

Arthur Grant MOVED to approve the request for technical review of the additional parking area at 66 Main Street, Map 2, Lot 14-2, and to forward it to the Technical Review Committee. Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.

2. Request for Technical Review of outdoor tent at 1 Stagecoach Road, Map 18, Lot 12-1

Jane Sparks, owner of the Hickory Pond Inn located at 1 Stagecoach Road, explained that she wanted to be able to put up some large tents at the Inn for a large wedding party for approximately 125 people at the end of September. She noted that the golf course on the property was no longer used, and said the portion of this area that she owned was where she wanted to put the tents. She provided details on what she wanted to do, noting there would be a 40 ft. by 80 ft. main tent, and another 30 ft. by 60 ft. tent.

She explained that most of the parties at the Inn were indoors, but said she would like to have the ability to do outdoor functions occasionally.

Chair Kelley asked Ms. Sparks if she had held such large events in the past, and Ms. Sparks said she had not. He asked whether there was sufficient parking for such events, and Ms. Sparks provided details on what was planned for this. Chair Kelley noted that the intersection of Stagecoach Road and Route 108 was a dangerous one, and there was discussion about this with Ms. Sparks.

Councilor Needell asked for clarification on what the actual request was for.

Ms. Sparks explained that she was a commercial business in a residential zone, so had to get approval for the tents.

There was discussion about the fact that the tent would be put up by professionals. There was also discussion as to whether Ms. Sparks was looking for a blanket approval for future use of tents on the property.

Ms. Sparks said she was. She said she wasn't sure how many of these larger functions she would be doing in the future, but said she would like to have the ability to use the tents.

Councilor Needell said he assumed this was something for the Code Enforcement Officer to look at.

There was discussion about whether the tents might be left up for a longer period of time if there were more than one large event scheduled.

Arthur Grant MOVED to approve the request for technical review of an outdoor tent at 1 Stagecoach Road, Map 18, Lot 12-1, and to forward it to the Technical Review Committee. Councilor Needell SECONDED the motion, and it PASSED unanimously 6-0.

IX. Discussion with Zoning Board of Adjustment on Spirit and Intent of Article XIV, Shoreland Protection Overlay District.

ZBA Chair Jay Gooze noted that he had given his presentation on this topic to the Town Council on Monday of that week. He said the ZBA had no agenda to specifically change the Zoning

Ordinance. He provided details on the fact that because of Court rulings in the past few years, variances were now easier to get than they had previously been. He explained that the hardship criterion was now easier for landowners to meet, and he provided details on this. He said the public interest and spirit of the Ordinance criteria were therefore now much more important for the Board to consider, when looking at variance applications.

He spoke about the shoreland provisions of the Zoning Ordinance, and said the ZBA was having some difficulty in interpreting the spirit and intent of these provisions. He noted that he tried to ask ZBA members to be as specific as possible when saying they didn't think an application met the Zoning Ordinance. But he said the shoreland buffer preamble was pretty vague, in speaking about beautification of the shoreland, and was therefore hard to interpret.

He noted that there were a number of residents with small houses in the shoreland zone, who wanted to enlarge them. He said unlike the situation with sideyard setbacks, where abutters might contest proposed variances concerning these setbacks, there were no actual abutters involved concerning shoreland setbacks.

Dr. Gooze noted the Town's 125 ft. shoreland setback, while the State shoreland setback was 50 ft. He said the Zoning Ordinance stated that the Town was expanding upon the State Shoreland Protection Act, which meant that the Town wanted to be stricter. He said applicants brought in letters from NHDES saying an application was ok because it would be located outside the 50 ft. setback. He asked how important the 125 ft. setback was, and noted that this hadn't been looked at in awhile. He said if it was important, he would like the purpose statement in the Ordinance to provide more detail on this, so the ZBA could reference this, especially when cases went further in the Courts.

He stressed that he was not asking the Board for a specific Ordinance change.

Dr. Gooze provided details of a variance case involving the shoreland area of a NH town that the Supreme Court had had difficulty with, and had ruled that incremental changes to an area could make a big difference. He said he was not sure how the incremental aspect of development, where houses in a neighborhood were gradually expanded over time, could be addressed in the Ordinance, but said the ZBA was seeing a lot of this in the shoreland zone.

There was discussion with the Board about the present wording in the shoreland provisions of the Zoning Ordinance.

Dr. Gooze said one thing the ZBA tried to do was to get something for the public interest in the shoreland, for example, removal of an old shed near the water that stored gasoline, in return for giving up something in by allowing a variance from the Ordinance. He said the Board wrestled greatly with these kinds of applications.

Chair Kelley asked if there could be wording in the Ordinance that discussed/required an exchange of some kind, such as described by Dr. Gooze.

Dr. Gooze said it would be helpful if there were something more formal in the Ordinance in terms of this process.

Chair Kelley noted that the Planning Board had a laundry list of Zoning Ordinance items to look at, and he said this issue would be added to the list.

Dr. Gooze suggested that perhaps a review of how the Zoning Ordinance was working could be done on a quarterly basis. He said the ZBA's rulings didn't go to court that often, but when it did, its decisions had to be based on fact.

Councilor Needell said he understood the reason for the request to make the preamble to the shoreland ordinance provisions stricter. But he asked whether, when there was a nonconforming lot in the shoreland zone, one looked at the spirit and intent of the shoreland protection provisions, or the spirit and intent of the nonconforming lot provisions of the Ordinance.

Dr. Gooze said this interpretation varied among ZBA members.

Councilor Needell said it was not clear where the emphasis was supposed to be.

Dr. Gooze noted that applicants with nonconforming lots were often able to show they could deal with drainage issues concerning the shoreline, but said it then came down to the fact that a development wouldn't look good from the water.

Mr. Grant said there was also the issue of visibility driving down Route 4, and noted that he had watched most of the recent ZBA meetings, and had said the large number of non-conforming lots in the shoreland area that had been coming before the ZBA.

Dr. Gooze said the number of nonconforming lots with waterfront concerns was taking up a significant portion of ZBA agendas.

Chair Kelley noted that Mr. Campbell shared the results of ZBA meetings with Board members.

Dr. Gooze said his point in speaking with the Planning Board was not to ask it to change anything specific, but just to explain what the ZBA was struggling with, and why.

Mr. Parnell asked what the outcomes generally were of these variance applications involving the shoreland, and Dr. Gooze said there were 3-2 votes, rehearings, court threats, etc.

Mr. Grant agreed that having to consider restrictions in different sections of the Zoning Ordinance was confusing. He said he had always wished that people could look in one place in the Ordinance, and understand what pertained to that matter. He suggested that perhaps the Shoreland ordinance should be expanded to include wording on non-conforming uses.

There was additional detailed discussion on possible approaches to take.

X. Other Business (continued)

A. Old Business: Discussion on Access Management—Determine whether to move forward or not

Chair Kelley said he had read through the Memorandum of Understanding document from NHDOT, and said he didn't see any harm in using it. He noted that with it, the State was required to notify the Town of any driveway cuts that were proposed on State roads, and said this would be good information to have.

Mr. McGowan said this was essentially what the Town did with the Irving application, and said the process made sense.

Arthur Grant MOVED to have Town Planner Jim Campbell move forward with the NHDOT Memorandum of Understanding (MOU). Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.

B. New Business:

3. Quarterly Planning Meeting scheduled for September 27, 2006

Arthur Grant MOVED to schedule the Planning Board's Quarterly Planning Meeting for September 27, 2006. Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.

There was discussion that this meeting would focus on setting a schedule to address the zoning changes that were needed, and would also be a time to consider whether the Planning Board would get back to the review of the Master Plan this year.

XI. Approval of Minutes

July 12, 2006

Page 5, 3rd paragraph, should read “..had seen the University grow all around them..”

Arthur Grant MOVED to approve the July 12, 2006 Minutes as amended. Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.

July 26, 2006

Arthur Grant MOVED to approve the July 26, 2006 Minutes as submitted. Councilor Needell SECONDED the motion, and it PASSED 5-0-1, with Chair Kelley abstaining because of his absence from the July 26, 2006 meeting.

Chair Kelley said he would be giving a report to the Town Council at its September 11th meeting. He said if Board members had anything they would like him to convey to the Council, they should send him an email on this.

Mr. Grant said he assumed there were funds available to engage consultant Mark Eyerman if the Planning Board needed his assistance with the Zoning rewrites. He said this was important, and said if Mr. Campbell said the money was not available, it would be a good idea to mention this to the Council. He said the Planning Board would need professional help with these rewrites.

XII. Adjournment

Arthur Grant MOVED to adjourn the meeting. Susan Fuller SECONDED the motion, and it PASSED 6-0.

Adjournment at 9:45 pm

W. Arthur Grant, Secretary