

*These minutes were approved at the February 28, 2007, meeting.*

**DURHAM PLANNING BOARD  
WEDNESDAY, JANUARY 10, 2007  
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL  
7:00 P.M.**

**MEMBERS PRESENT:** Chair Kelley; Arthur Grant; Richard Ozenich; Stephen Roberts; Councilor Needell; Bill McGowan; Lorne Parnell

**ALTERNATES PRESENT:** Annmarie Harris; Susan Fuller; Wayne Lewis;

**MEMBERS ABSENT** Councilor Carroll

**I. Call to Order**

**II. Approval of Agenda**

*Councilor Needell MOVED to approve the Agenda as submitted. Arthur Grant SECONDED and the motion PASSED unanimously 7-0.*

**III. Report of the Planner**

- Town Planner Jim Campbell noted recent correspondence and memos concerning the 97-99 Madbury Road application, the Hills site plan application and other matters of interest to the Board. He announced that Wayne Lewis had been appointed as an alternate Planning Board member at Monday's Town Council meeting.
- Mr. Campbell said he had met with Doug Bencks, and had discussed the following issues:
  - methane pipeline issue – which would come before the Planning Board January 24<sup>th</sup> .
  - the Main Street project, from the railroad bridge out to the west ramp off of Route 4.
  - traffic modeling the University wants to do in cooperation with the Town, which is a step up from the Synchro model, and involves more real time data..
  - A train rider-ship survey the University did. Mr. Campbell said he would send the results to Board members.
- Mr. Campbell said the Town Council had passed the proposed changes to the Historic District Ordinance, and opened the public hearing on the proposed forestry related changes to the Zoning Ordinance. He said the hearing was continued to January 22<sup>nd</sup>, and asked Planning Board members to try to attend that meeting.
- Steve Whitman, from Jeff Taylor Associates, has completed the first draft of the revised Sign Ordinance. Mr. Campbell and Tom Johnson will review it. He also said Mr. Whitman hopes to have the parking regulations ready for the Board by February.
- He said there were no new applications.

- Mr. Campbell said the Main Street Design committee had met, and noted that Councilor Needell also attended the meeting. He said there had been discussion on the width of bike lanes in the corridor, and on handicap ramps at the crosswalk.
- Mr. Campbell said the Traffic Safety Committee met recently, and discussed buses that had been traveling on Edgewood Road. He explained that they were not supposed to travel there, but were given direction by the UNH Athletic Dept. to do this. He said the Police Chief had taken care of this matter. He also said the Committee had discussed a request for possible speed reductions on some roads in Town.

Ms. Harris, noting she had attended the Traffic Safety Committee meeting, said there had been discussion about having a speed limit of 25 mph in neighborhoods throughout Town, including Madbury Road. She said the request itself was for outlying areas, and said the Committee passed a motion to have a 25 mph speed limit on Stagecoach Road.

- Mr. Campbell said he would not be present at the January 24<sup>th</sup> meeting. He said the hearings on the Caldarola applications have been postponed until February, at the request of the applicant. He noted that at the ZBA meeting the previous night, the ZBA had passed two of Mr. Caldarola's variance requests: the first was to permit the inclusion of moderate depth to ledge soils (20-40 inches) in useable area calculations; the second was to permit a reduction of the 100 ft. buffer to 30 ft. as per the Site Plan regulations in order to allow the construction of a shared driveway and buildings. The ZBA continued a third variance application hearing (to permit soils with slopes between 15% and 24% to be included in useable area calculations) at his request.
- Mr. Campbell said there would be a public hearing on the proposed methane pipeline at the January 24<sup>th</sup> Board meeting.. He noted that the Board would also have a discussion on proposed regulatory changes concerning excavation.
- He said the Cuthartes applicants (97-99 Madbury Rd.) had agreed to continue the hearing on their application to February 14<sup>th</sup>, so would not be at the January 24<sup>th</sup> Planning Board meeting.

**IV. Continued Public Hearing on a Site Plan Application and a Subdivision Application**  
submitted by Cuthartes Private Investments, Boston, Massachusetts, on behalf of Stonemark Management Co. Inc., Stratham, N.H., to build a 78-unit, age-restricted condominium development. The property involved is shown on Tax Map 1, Lot 6-8, is located at 97-99 Madbury Road and is in the Residential A Zoning District.

Chair Kelley said the applicant had requested discussion about the concept of a change from a 100% age-restricted development to an 80% age restricted and 20% non-age restricted development.

Dave Garvey, representing Cuthartes and Stonemark, said that Jack Farrell was unable to be present this evening. He noted that Mr. Farrell had indicated at the last meeting that, based on comments that had been received, the age restriction issue had been looked at again. He said Mr. Farrell had then proposed an 80/20 rule, which fits with state and federal guidelines (80% of

units must be occupied by someone age 55 or older, and 20% of units can be occupied by someone under 55). He said an allowance for children as a result of this had been included in calculations on impacts.

Mr. Harvey said Mr. Quinn, who had spoken as a member of the public at the public hearing, was astute in noticing that the apportionment formula had not been included in the applicants' previous calculations. He provided details on this. He also said Mr. Quinn had discussed the footprint of the WalMart in Newington (120,000 sf), as being comparable to the footprint of the proposed development. He said the footprint of the proposed development was about 40,000 sf, therefore actually about a third of the WalMart footprint.

Mr. Garvey explained that federal and state law allows developers to discriminate on the basis of age. He said when this project had been proposed, it was thought that there would be strictly residents who were 55 and older. But he said since that time, given the comments that had been received, and looking at national market trends in detail, it had been found that having greater age diversity resulted in a better community environment for those living in such a development.

He said they had also gotten feedback from Mr. Campbell, and from members of the public who were concerned about changing the age restriction to include some residents who were younger than 55. He said the developers' response was to propose that the development allow 15% of units to be occupied by residents between the ages of 30 and 55. He said it was felt this proposal addressed both Town and abutter concerns about having college students living nearby, and having more kids going to local schools.

Chair Kelley asked if state and federal law allowed this further restriction, and Mr. Garvey said that was correct.

Mr. Grant said he objected to this concept on the basis that the density bonus was provided regarding elderly housing. He said the Town had already lowered the age restriction to 55, and said it would be an extreme change in the applicants' proposal if the age went down to 30, even though there was still restricted occupancy. He said the original application that was submitted said there would be no one under age 62, and said he felt they should stick with this.

Councilor Needell said federal and state law allowed a developer to do an apportionment of 80%/20%, and said he wasn't sure what the Board's purview was concerning what the developer did with the 20%. He asked whether the breakdown of which units would fit within the 80% apportionment and which would fit within the 20% could vary from year to year.

Mr. Garvey said a census would be done to determine this, noting that there was nothing in the deeds of the individual condominiums that had the restriction.

Mr. Campbell explained that with Fitts Farm, Mr. Caldarola had to have a company do a survey every year to determine the ages of people living in the units.

Councilor Needell asked for guidance on the Board's purview, in terms of decision making on this issue, especially regarding the density bonus and whether it applied only to the 80%. There was discussion about this. Mr. Campbell said he felt the density bonus would apply to the whole development.

Mr. Roberts asked whether, if someone age 35 moved into one of the condos, they could have children. Mr. Garvey said according to the condominium documents, the owner would know that they would not be able to have children living there.

Mr. Roberts said this seemed terribly unrealistic.

Ms. Fuller said she was not sure she liked the age 30 restriction, and said it seemed unfair. She also said that in this day and age, age 55 was pretty young, and said she was struggling with the idea of further discriminating based on age. Mr. Garvey said the applicants were trying to address the concerns of the community regarding college students and school age students.

Mr. Parnell asked if this was now the proposal. Mr. Garvey said yes, stating again that the applicants were responding to concerns expressed in Town, and also to the marketplace. He said there was a movement throughout country to have more and more people included under 55 in age-restricted developments in order to make them more diverse and vibrant communities.

Mr. Parnell said it seemed that it would be difficult to enforce the age restrictions that the applicants were proposing. Mr. Garvey said in most communities, this was handled through documentation, censuses, etc. but he agreed this would not be an easy thing to track.

It was clarified that the Town would have secondary enforcement concerning these restrictions, after the condominium community itself.

Mr. Grant said the Board had embraced elderly housing, perhaps overly so, but said it had followed the Master Plan on this. But he said the Master Plan did not talk about mixed-age housing. He recalled that most of the talk had been about age 62-plus housing, and said he felt the Board had been generous in lowering the age to 55. He said what Mr. Garvey was suggesting was not elderly housing, and if the applicant wished to proceed on this issue, he would suggest that the application should be withdrawn and revised.

Chair Kelley said he would prefer that the Board refrain from deliberating on this issue at present. But he said Mr. Grant had raised a valid point, which the Board would need to resolve. There ensued detailed discussion as to whether the Board needed to deliberate on this issue now, or could do so later in the process of reviewing the applications.

Mr. Campbell provided details on the Zoning Ordinance regarding elderly housing. He also noted that state and federal law said there could in fact be an 80/20 split. He said if the Board said elderly housing could only be age 55 or older, it would be violating these laws. He said that a developer could choose to be more restrictive than this, but said the Board's attorney had said that the Planning Board could not require this.

There was further detailed discussion on the possible application of the 80/20-age restriction apportionment.

Councilor Needell noted that in a previous elderly development in Town, the 80/20 apportionment had been applied. There was discussion that there was no density bonus involved with this development, and that the present application was the first time the density bonus would be involved in such a situation.

Ms. Harris asked if it was discretionary to apply the density bonus, and Mr. Campbell said no.

Councilor Needell said he didn't feel the Board needed to wait until the end of deliberation on the application to make a determination on this, but also said he didn't think this issue could be resolved this evening. He said he personally would be unable to vote either way on it this evening. He recommended that the Board take the matter under advisement, do some homework, request an opinion from the Board's attorney for guidance, and take the matter up at the next meeting.

Chair Kelley said that opinion might already exist, but said he agreed with Councilor Needell, stating that he personally wouldn't know which way to vote at the moment

Mr. Garvey said he had wanted to suggest what Councilor Needell had suggested, and said perhaps the Town attorney and developers' attorneys could speak together on this.

The applicants' attorney, Ari Pollock, of Gallagher, Callahan & Gartrell, spoke, noting that he actually had been asked by the applicants to come before the Board to address the density issue. But he said that taking the time to educate itself on the age restriction issue was a smart move on the part of the Board.

He said his own opinion was that the Zoning Ordinance provided the opportunity for elderly housing, and that a project either qualified as a whole, or didn't. He said federal and state laws required that there be age 55-plus for 80% or more of a development, to qualify as elderly housing. He said that while 20% of the development could be unrestricted, the project as a whole would remain elderly housing.

He said the applicant proposed that even the 20% have an age restriction of no less than age 30, and said if that were something that satisfied the Board, it would be addressed further. He said the applicants had come up with an approach they thought addressed concerns that had previously been expressed.

Chair Kelley noted the Board had received a February 8 letter from its Attorney on this issue. He said the letter did not state that it was a privileged communication, and he read it. The letter said that for developments that were age 62-plus, 100% of residents had to be at least that age, while for developments that were 55-plus, there could be an 80/20 mix.

Mr. Grant said he would value having the Board's attorney present, to advise concerning this complicated issue.

Chair Kelley asked if it was the will of the Board to put this issue aside until it received an opinion from its attorney.

Councilor Needell said the information he would like from the Board's attorney was not necessarily related to the present application. He said what was needed was an understanding of how the 80/20 rule coincided with the Town's Ordinance, in two respects. He said the first concerned whether the Board was bound by the 80/20 rule when it spoke of elderly housing, and said he didn't believe this was in the Ordinance. He said the second question was whether the density bonus applied to the entire parcel or only to 80% of it.

Chair Kelley noted that the Board had gotten a legal opinion as to whether it could require everyone to be over 55, and the Town Attorney had said “no”. It was noted that this opinion pertained to a development at Spruce Wood. There was further discussion on this issue.

Attorney Pollock said that once a project qualified for one of the exemptions, the other 20% was regarded as unrestricted, whether the Zoning Ordinance treated it that way or not. He said he felt the whole project was entitled to a density bonus, but said that if the Board felt it needed a legal opinion on this, it should by all means get one. In response to Chair Kelley, he also explained how the 20% could be unrestricted regarding age.

Mr. Grant noted section 175-107 E of the Zoning Ordinance, “Maximum Development Density” concerning conservation subdivisions. He said he was startled at the initial presentation on this proposed development that there were going to be 78 units on a 5-acre parcel. He read the third sentence of this section: “If the subdivision involves only part of a parcel, the Useable Area shall be calculated for that portion of the parcel proposed to be included in the subdivision and the determination of the maximum number of dwelling units within the subdivision determined based upon that Useable Area.”

He said the way he had read this sentence was completely different from the way the applicant did, and said he would like the Board’s attorney to be present for the discussion on density, because of that paragraph. He said that without him, he did not feel comfortable getting into this complicated issue.

Chair Kelley said given that the applicant’s attorney was present, he saw no harm in hearing what Attorney Pollack had to say.

Mr. Grant said he wanted the Planning Board’s attorney to be present, stating that he had questions he would like him to answer. He said he did not want the applicants’ attorney telling the Planning Board what its Zoning Ordinance said.

Councilor Needell said he thought it was appropriate to discuss whether there was an issue to pursue. He also said he agreed with Mr. Grant that making a decision on this issue at the moment was unlikely because of its complexity.

Chair Kelley said he had thought the applicant was present to discuss the deeds, and whether this was one lot or two. He said he would like to hear from the applicant concerning the one-lot/two lot issue, and noted that the Board had gotten an opinion from its attorney on this matter.

There was further discussion on how to proceed. Mr. Roberts said the Board needed to hear from the presenters, and said their information could be provided to the Town attorney, which would help with future discussion on this issue.

Councilor Needell said before deciding whether there were one or two lots, the Board needed to discuss what it meant in terms of going forward with the application if it was decided there were two lots. He asked if it was the consensus of the Board that there would be a fundamental problem if there were two lots.

There was detailed discussion about this between the Board and Mr. Campbell, with Board members generally indicating they thought there would be a problem if there were two lots.

In answer to a question from Mr. McGowan as to whether this issue had been addressed by the Town Council, Chair Kelley said not to his satisfaction. He said he would like to hear from the applicants' attorney, noting that he had questions about some of the specifics in the deeds the Board had been given. He also said it was really an "existing conditions plan" that had been provided to the Board to date. He said he had questions regarding this, and said he hoped to get at least some answers this evening.

Mr. Roberts said he felt this issue was very important and needed to be resolved, and he and other Board members agreed it would be advantageous to hear from the applicants' attorney.

Councilor Needell said if there was a claim that there was some legal history that made this one lot, he wanted to hear this, but he said whether the Board could or could not choose to treat it as one lot was a different issue, and would have to be decided.

Ms. Harris said she felt this issue required specialized listening skills, and said she hoped the Board listened carefully.

Mr. Grant read a letter from the Board's attorney regarding the previous Craig Meadows subdivision application (in 2002-03) by Stonemark Management, dated February 12, 2003. He said the issue of one lot/two lots was fundamental in that application, and said the letter provided guidance that "the property "consisted of separate, non contiguous parcels, and should be treated as such for the purpose of administering and applying the Town's land use requirements." He said he would be comfortable if the applicant's attorney wished to speak to this issue.

Attorney Pollock said the point of the section of the Zoning Ordinance concerning conservation subdivision Mr. Grant had referenced was that density should not be combined from areas of land that were not part of the project. He said he thought that section referred to the notion that a developer might own 50 acres and want half of it to be part of a development, and half excluded. He said this project was completely different. He said this project has 17 total acres, and all of it was being considered part of the project. He said the acreage was being combined for determining the density of allowable units, based on the calculation method laid out in the Zoning Ordinance.

He said the Board was welcome to obtain an opinion from its attorney regarding this, but said he felt it would get the opinion that the applicant was not trying to leave land out of the project. He said there was a rear area of 12-plus acres that was consumed for the density the applicant wished to locate on the front area of the site. He said because this back acreage had been consumed, it would be preserved as perpetual open space, and said its development potential would be exhausted.

Attorney Pollock said it would be good if Town Attorney Mitchell could be present to discuss this issue. He also said that regarding the idea of combining density, he didn't feel the applicants' position was that there was one legal lot, but that it was their position that there were two lots, but that the density could be combined for a single project.

He said that was the exact issue that Attorney Bates had addressed back in March 2005. He said the applicants had thought this issue had already been examined and resolved, and were surprised that the Board wanted to dig so deeply into it. He stated that they were simply there to present their approach for developing the site, and were not trying to put something over on the Board.

Chair Kelley questioned what had led the applicants to believe this issue had been resolved.

Attorney Pollock summarized what was proposed with this development. He stated that although 90 units were permitted by the Ordinance, the applicants were proposing 78 units, to be put on the front of the site, with no development taking place on the backland area. He noted that the front and back areas were connected by a right-of-way, roughly 20 ft in width, and said both areas were combined to calculate the allowable density.

He said the idea was to put everything close to where people lived, as part of an easy living concept, and said it was also proposed that the backland area be preserved as perpetual open space. He said providing age-restricted housing within walking distance to the downtown and the University, and conserving a substantial piece of open space close to the downtown was quite consistent with the concept of “smart growth”. He said the right of way would be dedicated in the deed for pedestrian passage, and said there was no question that it connected the two parcels.

Attorney Pollock said this was not the first application to propose combining lots, stating that this was not a new concept. He said this was thought to be a good planning concept because it allowed more things to be accomplished, including preserving a larger portion of open space. He said this was a concept in case law that was sometimes called a “zoning” lot, where two or more lots of record were combined for a particular use that required more area than one could find in a single lot. He said the Supreme Court had clearly embraced the concept, stating that the Court saw it as providing flexibility in zoning.

He said the concept was also embraced in NH statutes, under “transfer of density and development rights”, which is listed as an innovative land use under RSA 674:21, “Innovative Land Use Controls. He said the inclusion of this provision by the Legislature was offered as a means of providing flexibility in zoning, so that good projects didn’t have to be turned away when they didn’t fit on one piece of land. He said in many ways, this project would be like projects where the two pieces of land were actually connected. He said whether there was fee ownership or just the perpetual right to come and go, the front and rear areas would be linked forever.

Attorney Pollock provided details on previous advisement provided by the Board’s law firm on the properties in question.

He said the applicant was not trying to create more units than were permitted, and was just looking to add up the available rights in front and back, and build the development in one place, which allowed them to put the units in a single building, and preserve a chunk of open space that any other proposal would deprive the Town of.

He said this would offer future residents of the development low maintenance living, proximity to downtown, and other amenities. He also said it would be a good thing for the area to eliminate

a nonconforming use by upgrading these properties, and to provide a desirable form of housing, which would provide a net tax benefit because of minimal use of municipal resources.

He said the 30-plus age restriction spoke to that, as did the substantial amount of open space that would be preserved. He said every project involved striking a balance, and said he felt this project struck more than an acceptable balance. He said the applicants wanted to continue the discussion on the application, and said they were open to discussing whether the building needed some revisions, whether buffering needed to be bolstered, and whether there were some other creative ideas as to how impacts to the immediate abutters could be mitigated.

Attorney Pollock asked that the Board not let a perceived difference between fee ownership and easement ownership interrupt what was “a pretty good story for this town”. He asked that the Board make a determination on this issue and move forward.

There was discussion between Chair Kelley, Mr. Campbell and the applicants regarding the deeds of the parcels involved in the application. Mr. Garvey provided some details on the issues involved, and said the surveyor would get the answers to these questions to the Board.

Councilor Needell said over the last few months, the one-lot/two lot issue had been discussed in various forums, and said he saw now that the applicants were not claiming that this was one lot. He said this was a very important distinction, and said if they could dispense with the concept of this being one lot, they didn’t have to talk about it anymore.

He said the second issue then became that the Board had received opinions that consistently said these were two lots, but that the Board had discretion as to how to treat the two lots.

Attorney Pollock said that was his view of the situation.

Councilor Needell said it was this second part that he had concerns with, and said the Board had to discuss how to deal with this. He said this was a by-right development, and said there were only a few areas of discretion the Board had as to what was permitted and what was not. He said the Board needed to discuss how to exercise that discretion regarding the two lots.

Attorney Pollock said he saw this exactly the same way. He said Attorney Bates had said essentially the same things, that discretion could be exercised to combine the lots for the purpose of a zoning lot concept for the project, and there was sufficient basis for the Board to resolve it that way.

Councilor Needell noted again that the Board had discretion on this.

***Councilor Needell MOVED to release the privilege on the letter from the Planning Board Attorney, dated January 5, 2007. Chair Kelley SECONDED, and the motion PASSED unanimously 7-0.***

Mr. Grant said this has been an informative and interesting presentation. He also said that up to this point, in three meetings on this project, the Board had been told it was a 78 unit project, but was told tonight that it was up to the Board’s discretion as to whether it was a 78 unit project, and whether the conservation lands were to be included in the density bonus calculations. He said that was exactly the question he had in mind – whether the Board was obligated by law to

accept this configuration, or whether it had the discretion to say this was not what was intended in the Ordinance.

Attorney Pollack provided copies of his presentation to the Board.

**Recess from 8:40 to 8:49 pm**

Chair Kelley said the Board needed to resolve whether it accepted the proposal to combine the back and front lots for density purposes. He asked Board members if they felt they had enough information to vote on that issue that evening.

It was noted that the applicant had asked that they be put back on the agenda for January 24<sup>th</sup>, so the hearing could be continued on that date.

There was discussion as to whether there was time that evening to resolve this issue. There was also discussion as to whether the Town Attorney should be invited to attend the January 24<sup>th</sup> meeting.

Ms. Harris noted that the Board hadn't had the chance to digest this information relative to perspectives from members of the public. She asked if the Board would hear from the public on this before the hearing was re-opened at the next meeting.

Chair Kelley said that was a valid point, and asked if there were members of the public present at the meeting who wished to speak on this issue. He noted that there were, but determined that there was enough time to get all of their input this evening.

***Steve Roberts MOVED to continue the public hearing to January 24<sup>th</sup>, 2007. Richard Ozenich SECONDED, and the motion PASSED 6-1, with Councilor Needell voting against it.***

**V. Public Hearing on changes in Zoning District Map to Incorporate Tax Map 5, Lot 1-8, into the Central Business District.**

***Arthur Grant MOVED to open the public hearing on changes in Zoning District Map to Incorporate Tax Map 5, Lot 1-8, into the Central Business. Steve Roberts SECONDED ,and the motion PASSED unanimously 7-0.***

Mr. Campbell said the owner of the parcel in question, which was in the Church Hill District, also owned two other parcels right next to it, which were in the Central Business District. He said the owner was requesting that the lot in the Church Hill District be incorporated into the Central Business District.

Chair Kelley asked if there were any members of the public who wished to speak for or against this proposed change to the Zoning District map. There was no response.

***Arthur Grant MOVED to close the public hearing. Richard Ozenich SECONDED and the motion PASSED unanimously 7-0.***

***Chair Kelley MOVED to change the Zoning District Map to Incorporate Tax Map 5, Lot 1-8, into the Central Business District. Bill McGowan SECONDED the motion.***

Mr. Grant noted that the Board had previously discussed the desirability of expanding the Central Business District, and said this was the logical way to go.

Councilor Needell said that all the buildings involved were in the Historic District, and would remain so with this change.

Ms. Harris asked if the intention was to potentially redevelop these properties, and the owner, Mr. Davis, said “yes”.

***The motion PASSED unanimously 7-0.***

It was noted that this matter would now go to the Town Council, which would have a first reading on the proposed change, and if that passed, there would be a public hearing and then deliberation by the Council.

**VI. Acceptance Consideration on a Site Plan Application** submitted by David E. Hills, Hills Family Trust, Durham, N.H., to rebuild and enlarge a farm stand building. The property involved is shown on Tax Map 11, Lot 22-3, is located at 35 Piscataqua Road and is in the Residential C Zoning District.

Mr. Campbell recommended that the Board schedule the public hearing and site walk on this application. He noted his comments on the application, which had been provided to the Board, and also noted memos from other Town staff. He recommended that Mr. Hills do his presentation that evening, including an explanation of the variances he had received from the ZBA the previous evening.

Applicant David Hills explained that his plan was to make a number of changes to the existing building. He said he wanted to upgrade and expand the building on the site, and to make some additional changes to the site. He said the intention was to build a bigger building so they could do more of what Emery Farm already did, as a farm stand. He also noted that they wanted to orient the building more to the south for greater visibility and to get better solar access, in the hopes of putting solar electric cells on the roof.

He said he also planned to add a septic system, which would enable them to provide restrooms to replace the portable toilets and add washing facilities to the farm stand. He noted that a variance was required for this, because the proposed septic system would be located within the wetland upland buffer strip.

He said improvements were also proposed to the site drainage and the parking scheme, which would generally bring the site more into compliance with present regulations. He said the requested variance from the driveway and parking regulations would allow them to leave the lot largely as gravel, which was consistent with the seasonal use and agricultural appearance they hoped to maintain, while having the added benefit of reducing run-off.

He said a variance was also requested to allow the entrance drive in the front setback to be 24 ft wide instead of 22 ft, which was needed for the safety of vehicles in proximity to Route 4.

Summary of variance requested and granted at the ZBA meeting the previous evening:

- Variance to permit the rebuilding and enlarging of a farm stand building within the wetland upland buffer strip
- Variance for construction of a driveway 24 feet in width within the frontyard setback.
- Variance for construction of a septic system within the sideyard setback
- Variance for improvement and expansion of an existing parking lot

Mr. Hills provided details on what was proposed for the parking areas, explaining there would be gravel paving, and no lines demarcating parking spaces. Ms. Harris asked if there were plans to screen the additional parking area, which would be getting closer to the road than what was now there. Mr. Hills said the area would look quite a bit like it presently looked. He said he didn't know the answer to Ms. Harris's question, noting that he could picture cars running over the screening plants. There was discussion on this, and Mr. Hills provided other details of the kinds of plantings that were proposed for the site.

Chair Kelley asked if some of the proposed changes to the site were located in the area that was now under conservation easement. Mr. Hills said the conservation easement allowed as much as 2% of the easement property to be something other than open land, but said their plan was to keep development as much as possible off the 68 acres that was protected.

Chair Kelley asked about lighting proposed for the site. Mr. Hills said he was opposed to having night lighting, and said the lighting on the property would be as source specific and innocuous as possible. He also said they would make the property as energy efficient as possible.

Dana Lynch of Civilworks, the engineer for the project, noted that the site plan said that architectural lighting would be provided, and was primarily to provide for pedestrian safety. He said he would provide a cut sheet on this. Chair Kelley asked what the pole height would be, and was told it would be 12-13 ft, - pedestrian level.

Mr. Walter Rous, the applicant's architect, noted the level of the parking area relative to Route 4, and said the pole might not even be visible from the road.

Ms. Fuller asked if there would be expanded hours when Emery Farm would be open, after the expansion was completed. Mr. Hills said "yes," noting it would be open later in the season – to the end of October, and would be open until 8 p.m. on summer nights.

Mr. Campbell asked that the applicant discuss interior and exterior lighting with Code Administrator/Enforcement officer Tom Johnson.

There was discussion of the proposed size of the expanded building, compared to the size of the current building on the site.

Mr. Lewis asked for details on signage.

Mr. Hills said there would be some down-lighting to illuminate the existing sign.

Councilor Needell pointed out that there was a note from Code Enforcement Officer Tom Johnson regarding the proposed loading zone. Mr. Hills said the area had to be big enough for dump trucks, but said there would be no tracker trailers back there.

Chair Kelley suggested it would be helpful for the Board at the site walk if the building corners and the edges of the parking lot were staked out.

There was discussion on the site-specific permit needed regarding the approximately 46,000 sf of the site that would be disturbed temporarily.

Mr. Hills said he hoped to start work on the expansion in November, noting that for the sake of the couple who ran the farm stand, he didn't want to disturb the operation of the farm stand the coming summer.

Chair Kelley said it would be helpful to see the routing of underground utilities on the site plan.

Mr. Lynch said NH Soils Consultants was doing the septic design, and the plans on this could be finalized now that the variance had been obtained. Mr. Hills said he was still exploring options concerning septic design, and noted that he would like to incorporate some alternative technologies into the design if possible.

Mr. Grant asked if the application was complete, and was told it was.

***Arthur Grant MOVED to accept the Site Plan Application submitted by David E. Hills, Hills Family Trust, Durham, New Hampshire to rebuild and enlarge a farm stand building, at the property shown on Tax Map 11, Lot 22-3, located at 35 Piscataqua Road, in the Residential C Zoning District; that the Board schedule a public hearing on the application for January 24<sup>th</sup>; and that the Planning Board conduct a site walk on January 13<sup>th</sup>, 2007 at 9 am, Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.***

## **VII. Other Business**

A. Old Business:

B. New Business: **Appoint one Planning Board member to the Mill Plaza Study Committee.**

Ms. Fuller said she was interested in the position, but noted that she was already on the Economic Development Committee and the Housing Subcommittee.

Ms. Harris said she was interested in the position, but would prefer to be an observer of the process.

Chair Kelley said he had reviewed the Committee's charge and had found that it was "very aggressive", noting that the goal was to have a report done in May. He said this would be a huge

task, especially if traffic elements were to be included. He suggested that perhaps there should be a regular member as well as an alternate member representing the Planning Board.

Councilor Needell recommended that instead, there should be one Planning Board representative appointed, and then other Board members could attend as members of the public.

Mr. Parnell said that although he was skeptical of the concept, he was willing to serve on the committee.

***Chair Kelley MOVED to nominate Lorne Parnell to the Mill Plaza Study Committee. Arthur Grant SECONDED, and the motion PASSED unanimously 7-0.***

Mr. Campbell said a letter had been received from Douglas MacLennan, 21 Newmarket Road, who had bought the General Sullivan House. Mr. Campbell explained that the property had a problem with an exotic weed species, Japanese Knotwood, which Mr. MacLennan was trying to get rid of as part of restoring the property. He said the Planning Board had to grant approval for this, under 175-71 B 9 of the Shoreland Protection Overlay District.

He said the owner had been working with Mr. Johnson and the Conservation Commission on this issue. He said Conservation Commission Vice Chair had written a letter signing off on the expedited, minimum impact application, regarding erosion control, etc. Mr. Campbell noted that Japanese knotweed was very difficult to get rid of, stating that it took at least eight years to accomplish this. He said the area in question was about 50 ft from the high water mark, and said after the eradication was complete, the property owners would allow the first 25 feet to re-grow naturally.

Ms. Harris asked whether there was any of the Japanese knotwood on adjacent properties, and there was discussion.

Councilor Needell asked if there was any urgency to this that required a decision by the Planning Board that night. He said he hadn't had the opportunity to look at the information on that had been provided at this meeting, so couldn't yet make a determination.

Mr. Campbell said it was fine if the Board wanted to wait to make a decision, and said he was just trying to expedite the process for Mr. MacLennan.

Chair Kelley said the application the Board was given did not indicate what erosion control practices/plan would be followed.

Mr. Grant said he was willing to let NHDES and Code Administrator/Enforcement Officer Johnson handle this.

Mr. Campbell noted that Mr. MacLennan had already gotten an okay from the Historic District Commission, noting there was a stone wall in the vicinity of the knotweed. He also explained that although the exotic weed provision was in the Zoning Ordinance, there was no real guidance as to how the Board was supposed to address it. He said he felt that allowing NHDES and Mr. Johnson to handle was appropriate, but said the issue was whether that meant the Planning Board was shirking its responsibility.

Chair Kelley asked if it were proposed that the native species would be re-established, and Mr. Campbell said “yes”, this eventually would be done.

***Arthur Grant MOVED to take this matter up at the Jan 24<sup>th</sup>, 2007, Planning Board meeting, as the first item on the Agenda. Councilor Needell SECONDED and the motion PASSED unanimously 7-0.***

C. Next meeting of the Board: **January 24, 2007**

## **VIII. Approval of Minutes –**

October 25, 2006

***Arthur Grant MOVED to approve the October 25, 2006 Minutes. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.***

November 8, 2006

***Councilor Needell MOVED to approve the November 8, 2006 Minutes. Lorne Parnell SECONDED the motion.***

**Page 4**, 4<sup>th</sup> paragraph from the bottom, should read “Mr. Farrell said he appreciated the interest in this...”

***The motion PASSED unanimously 7-0.***

Mr. Ozenich noted that Google Earth (available free online) was very useful in allowing one to better visualize local properties.

Chair Kelley spoke about the fact that there had been discussion about having applicants supply electrical copies of application plans. There was discussion about this.

Mr. McGowan asked what the procedure was, in order to move forward concerning the density issue with the Madbury Road property. There was discussion about this, and about whether the Board’s attorney should be asked to come to the next Board meeting.

Mr. Campbell said the Board didn’t have to close the hearing, and there was discussion that people would be able to speak on this issue.

Councilor Needell said from what he had heard that evening, there was not a legal issue anymore, and said he didn’t see the need for more legal opinions.

Mr. Grant said that based on what he had heard that evening: the concession by the applicants’ attorney that there were in fact two lots, and that it was up to the discretion of the Board whether the bonus density applied to both lots, the Board’s attorney did not need to be present.

## **VIII. Adjournment**

***Arthur Grant MOVED to adjourn the meeting. The motion was SECONDED by Richard Ozenich, and PASSED unanimously 7-0.***

Adjournment at 10:00 p.m.

Victoria Parmele, Minutes taker

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Jerry Needell, Secretary