

These minutes were approved at the June 6, 2007 meeting.

**DURHAM PLANNING BOARD
WEDNESDAY, APRIL 25, 2007
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL
7:00 P.M.**

MEMBERS PRESENT: Steve Roberts; Bill McGowan; Lorne Parnell; Councilor Needell

ALTERNATES PRESENT: Susan Fuller; Annmarie Harris; Doug Greene; Wayne Lewis;
Councilor Diana Carroll

MEMBERS ABSENT: Chair Richard Kelley; Richard Ozenich

I. Call to Order

II. Approval of Agenda

Bill McGowan served as Chair in place of Richard Kelley. Mr. Campbell said Mr. Kelley hoped to arrive at the meeting by 9:00 pm. Chair McGowan said Susan Fuller, Annmarie Harris and Wayne Lewis would serve as voting members.

Susan Fuller MOVED to approve the Agenda as submitted. Councilor Needell SECONDED the motion, and it PASSED unanimously 7-0.

III. Report of the Planner

- Mr. Campbell said the Mill Plaza Study Committee had met on April 18th, and had discussed the Vision statement. He said Committee Chair Dave Howland and Vice Chair Julian Smith had met with the AIA, and also said a facilitator had been hired from the Cambridge Consensus Building Institute and would attend the Committee's next meeting on May 2nd.
- He said the Town Council had reappointed Mr. Parnell and Mr. Ozenich as regular members on April 23rd, and had moved Susan Fuller up as a regular member, to replace Art Grant who had recently resigned. He also said the Council had adopted two resolutions, one to create a Churchill Rink Advisory Committee, and another to create a steering committee for the Energy Committee that had been created as a result of the recent warrant passed concerning global warming. He said members would be appointed soon for the steering committee, and also noted that there would be no official Planning Board members on that committee, although they were welcome to attend the meetings.
- Mr. Campbell said the Economic Development Committee would meet on April 26th to discuss Tax Incremental Financing (TIF) the 2007 Action Plan, and the wording needed in order to formalize the Committee.

- He said there would be no new applications heard at the May 9th Planning Board meeting.

IV. **Public Hearing on a Site Plan Application** submitted by David E. Hills, Hills Family Trust, Durham, New Hampshire 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.

Annmarie Harris MOVED to open the public hearing. Steve Roberts SECONDED the motion, and it PASSED unanimously 7-0.

David Hills spoke before the Board, and noted that he owned Emery Farm, which had been in his family for 11 generations, going back to 1655. He noted that he leased the farm to Bill and Brad Cole. He said things had come to the point where the existing farm stand needed to be improved and expanded.

He provided the following details on what was planned:

- The building will be a maximum of 82 ft x 46 ft, and will orient more to the south than the present building. Green building materials will be used in construction, and energy will be renewable to the extent possible.
- The first 50-60 feet coming into the site will be paved, and the driveway width will be expanded a bit for safety reasons. There will be expansion and reconfiguration of the existing parking spaces, which among other things will allow school buses to pull in and turn around more easily.
- The northwest edge of the parking lot will be paved, and designated as a handicap parking spot.
- The petting barn will stay where it is.
- There will be a dumpster behind the new farm stand.
- The expansion will extend a bit into the blueberries, but those plants that are displaced will be replanted elsewhere on the site.
- There will be a deck on about 2/3 of the front side of the building.
- Across the front of the building, the idea is to expand the number and quantity of products that are currently offered. There will be ice cream with seasonal fruit on top, and coffee available at three windows across the front of the building.
- A greenhouse may be used for retail sales, which would involve improving the present greenhouse at its present size and location. The greenhouse also might be replaced with a poll barn or similar building.
- The footprint of the building has been moved, so there will be half as much of the footprint in the wetland setback as is the case with the present building.
- There will be low flow composting toilets, which will result in the least possible impact on the environment.
- Work will be done on the parking lot this year, when weather permits, so that it will be in place before construction of the building starts in November. The new building will open next year.
- Lighting will be provided around the parking lot.
- The farm stand will be open until later in the season.

- The yard area in front will be landscaped to make it more attractive. The perennial beds will be built up a bit higher in order to make the yard more level.

Mr. Parnell asked if there were any substantial changes from what Mr. Hills had provided to the Board before, during the design review phase.

Mr. Hills said the size of the building would potentially be a bit bigger, and said the building had also been moved back about 10 ft. He provided details on this.

There was discussion on the loading zone, and whether large trucks would come there. Mr. Hills said pickup trucks would come to this area.

Ms. Fuller asked if Mr. Hills had considered using pervious pavement for the development.

Mr. Hills said it was a reasonable option, and said he would look into it.

Mr. Campbell said in this particular situation, there was a lot of dust from Route 4, so maintenance of pervious pavement would be more difficult.

There was discussion about why Mr. Hills wanted to use pavement for the driveway instead of gravel.

Councilor Carroll asked where the things that would be sold at the store would come from.

Mr. Hills said it would be a mix of things that grew at the farm and that were brought in, and he provided details on this. He noted that an acre and a half of the farm had recently been cleared, and said they were not sure yet what would be grown there.

Councilor Carroll said it sounded like the farm stand would be supporting the work of other farmers in the area, and Mr. Hills said that was correct.

Mr. Roberts asked how much someone looking at the property would think it had changed, as a result of these plans.

Mr. Hills said the roof line of the building would be taller, and it would be a bigger building. He said he hoped people would notice it when they went by on Route 4, and noted that the present building looked pretty beat. He said most of the farm would continue be fields. He said it would still look like a farm stand that had been there for awhile.

There was discussion that the 3 handicap parking spaces met the requirements.

Chair McGowan asked if any members of the public wished to speak in favor of the application

Beth Olshansky, Packers Falls Road, said she supported this proposal, as said the Town should do as much as it could to support local farmers. She said the use of green building practices and

energy conservation would make this development a model for other structures built in the community.

Mr. Hills said he was very aware that people in the room that evening had supported the farm, and said he and Katherine appreciated the support for the recent conservation easement on the property. He also said he thought the price of land for agriculture was as low as it was going to go. He said it would be very interesting to see what could be done to make the farm more productive. He described a fantasy of making ice cream from organic milk obtained from UNH cows, and said they would see how things went.

Robin Mower, Faculty Drive, said she supported this project. She said it provided another beautiful element to the Town's vistas, and was a real asset. She thanked the Town for continued efforts to provide this kind of thing.

Susan Fuller MOVED to close the public hearing. The motion was SECONDED by Annmarie Harris, and PASSED unanimously 7-0.

There was discussion that the Board would deliberate on this application on May 9th. Mr. Campbell said he would have the Findings of Fact and Conditions of Approval ready at that time.

- V. **Continued Public Hearing a Site Plan Application and a Subdivision Application** submitted by Cuthartes Private Investments, Boston, Massachusetts, on behalf of Stonemark Management Co. Inc., Stratham, New Hampshire 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.

Mr. Farrell said the applicants understood that building scale and height were components of this project, and could only be addressed within the context of the whole project. He noted that the reduction to 78 units had been less than what was allowed by the Zoning Ordinance. He said that 66 units were now proposed, in a smaller building that eliminated height in the center. He said the design elements that had been included were intended to mitigate the scale, and create more of a residential character.

He spoke about the existing conditions plan, noting that there were no wetlands on the site, and also indicating the amount of open, disturbed area that was presently on the site. He also pointed the number of large, existing trees that had been represented on the plan. He said they were trying to use the already disturbed areas as much as possible, in order to minimize the impact on existing vegetation. He said they would utilize the existing driveway, and said all of the vegetation around Madbury Road would remain. He said part of the reason this was possible was that because porous pavement would be used, no detention ponds were needed.

Mr. Farrell provided details on the setbacks that would be maintained and exceeded. He noted that in terms of impacts because of size and scale, this was a zone where buildings could be 20 to 40 ft apart, but the applicants were providing a distance of 100 ft, and in some cases 200 ft. from

abutting properties. He said these extremely wide setbacks should be included in the Board's evaluation of this application.

Mr. Farrell next showed the overall site plan. He said part of the reason that parts of the site could be conserved was that they were focusing on developing the already disturbed areas. He said this conserved land would be perpetual open space, which would be open to the public and could be used for passive recreation.

He next showed a series of photos that were taken from 35 ft in the air in order to determine buffering that existed on the site, and that needed to be enhanced. He said the greatest area of weakness was where the berm was proposed, and provided details on the site work and landscaping that was proposed there, as well as at other locations, to provide appropriate buffering.

Ms. Harris noted that the slide Mr. Farrell had shown of the berm, stone wall and plantings was not a view from 35 ft. up.

Mr. Farrell summarized that given the long distance between the building and the abutting properties, and considering what was allowed in this zone and what was proposed in terms of buffering, the project would result in a better situation than what was there at present. He provided details on this. He noted among other things that the site was blessed with mature trees.

He showed the architectural cross-section of the structural elements of the building. He noted the underground parking garage that would contain 108 parking spaces, which would allow the area above ground to remain open space.

He noted that the building would actually have a flat roof, but said a false roof plane was being used to simulate a residential appearance with a pitched roof, which would be consistent with other houses in the area. He noted the parapet wall, which was required for safety. He also said the utilities on the roof would be hidden as a result of this architectural design, and said this would also help with noise suppression.

Mr. Farrell provided details on how the building height was kept as low as possible by essentially building it as close to the ground as possible. He also provided other details on how the building height was arrived at.

He said Bagdad Woods was not actually in the same zone as the proposed building, but made an interesting comparison. He said Bagdad Woods was an attractive building, but was in a residential area, and was a much higher building as designed than this building would be. He said the height of the building, at the highest peak, was 49 ft. He provided further details on this. He also said Bagdad Woods contained 46 units on 2 acres, and had no significant buffers.

He said the applicants were asking the Board to approve the building as proposed, with 33 ft, 10 inches in height, and some leeway on this. He said the Board was empowered to do this.

He said this proposal was high-end residential design, due to the design elements that had been included and the choice of materials. He said the provision of open space needed to be considered in terms of whether the building made sense.

He said the proposal went a long way to mitigate impacts on the neighborhood, with voluntary reductions in scale, and buffers. He said there would be an improvement over the existing, substandard buildings on the site, noting that these buildings were closer to abutters than the building that was proposed.

He said the site plan met or exceeded the Zoning Ordinance requirements, and would incorporate a state of the art stormwater treatment system. He said this system would cost more than conventional stormwater treatment options, but would result in a reduction in erosion and sedimentation. He noted that there would be 7% impervious cover on the site, while the Zoning Ordinance allowed 30%. He stated again that there would be underground parking for 108 spaces, which would otherwise have been put above ground.

Mr. Farrell said this project needed to be looked at as an integrated whole. He said the Town and the community would be the winners if the project was approved, and he urged the Planning Board to approve the plan as presented.

There was detailed discussion about the building height measurements, based on a question from Councilor Needell concerning the parapet wall.

Chair McGowan asked if any members of the public wished to speak.

Pam Shaw, 101 Madbury Road, said she was a direct abutter, and showed a model of her house next to the proposed building. She noted the east wing of the building relative to her property, and showed that the proposed road would be located 45 ft from her property line. She said that with 66 units, that road would carry 297 cars/trips per day, and said the number would be even more now that 20% of the units could be occupied by people 30 years of age and over. She said this would create undue noise, exhaust pollution, and nuisance from headlights.

She said the east wing would be directly behind and uphill from her house, and she provided details on the dimensions involved. She also said that given the uphill position, and the height of the proposed building, the east wing was actually 47 ft high relative to her property. She also said the parapet height raised the height of the east wing to 53 ft plus.

Ms. Shaw said a structure of this size and height would create an enormous wall, which would block the sun from her property for several months of the year. She said this would result in the need for more electricity, and would also result in a psychological effect. She said that no landscaping could negate the darkness that this building would cast her into. She said the noise and auto pollution would result in a loss in the quality of life that she had enjoyed for the past 30 years.

Ms. Shaw noted what the Zoning Ordinance said about the purpose of the RA district, which among other things was to maintain the residential character and quality of the district. She asked

whether this proposed complex was consistent with that purpose. She said this was an architecturally offensive structure, and said the activities that went with such structure would transform the neighborhood into a city overnight. She said the development couldn't help but encroach unfairly on the neighborhood. She said the proposal did not represent a fair balance of competing interests, and she urged that the Board deny the application. She asked that the letter she had read from, and her pictures, be entered into the record.

Attorney Scott Hogan noted that he represented the residential abutters group. He said a few additional issues had recently come up, and said it was a bit of a disadvantage for the abutters to see new, substantive information at the meeting. He explained that he tried to review any new information before the meeting, so he could then come to the meeting and make his comments on it. He said with this new information appearing at the meeting itself, he then had to ask for more time to review it in order to be able to provide comments.

Attorney Hogan said that at the last public hearing, Chair Kelley had noted that he felt there was still a lot of information missing from the application. He said he had hoped to see what that was, at the present meeting, and to discuss this. He said he understood that that list of missing information was not available. He asked the Board for the opportunity to see it, and comment on it if there were issues of substance, beyond technical review issues.

He noted that the Board had released two pieces of correspondence from its attorney at the previous meeting, and said this went to the heart of the density issue. He said there had been additional letters on this issue recently. Attorney Hogan said the fundamental density question was still there, concerning the fact that two parcels of land had been found by the Board to be contiguous because they were connected by a 20 ft right of way. He noted that he had asked what the legal authority was that allowed the applicants to leverage the square footage on one property to build on the other.

He said the fact that there had been no conceptual review of the project was especially important with this particular project, where the fundamental legal threshold didn't exist concerning the contiguous lot issue. He said it had been said that there was a transfer of development rights, but he said there needed to be such a provision in the Zoning Ordinance in order to do this. He said Durham didn't have such provisions, and said there was no legal authority for non-adjoining, non-contiguous lots to be joined in this way.

Attorney Hogan said that even if this were one lot, no one had yet addressed, when looking at the requirements concerning usable area, that areas isolated by a strip of land less than 50 ft in width had been excluded.

He also said that even if the Ordinance allowed such land to be used, the abutters would still argue that there hadn't been an improvement in the current configuration, because of light, noise and aesthetic considerations.

Attorney Hogan said that as a process matter, the initial step of conceptual review usually addressed these kinds of issues, and was critical to the planning process. He said that kind of process would have caused the Planning Board to ask what the basis was for the 78-unit density

figure, and to consider the idea of combining the two lots. He said the Board would also have asked why the height was needed, and would have said that when the application was formally presented, the Board would be looking for details on this.

He said these various issues should have been discussed at that level, and said this would have helped everyone involved. He said the abutters were now, out of necessity, in the uncomfortable position of having to defend the sanctity of their homes. He said in the midst of this process, when the abutters had already expressed fundamental concerns about the project, it was revised to 66 units. He said he wished this had not been done, because the abutters' comments were still the same, that there was still no legal difference, in their minds, from the previous proposal.

Attorney Hogan said the Board had the authority to reconsider its decision on the fundamental density question. He asked that the Board do this, not just for the abutters, but in terms of the precedent being set for a lot of other decisions. He also asked that at the next meeting, he have the opportunity to address the information that had been presented.

Attorney Ari Pollack, representing the applicants, said they were there that night to explain how the height calculation of 33 ft 10 inches worked for the building. But he said there was now another discussion about previous issues that had been presented and decided on. Concerning the combined density issue, he noted that he had been disturbed that this issue was taken up by the Board at the last meeting when it was not listed as a matter to be discussed at that meeting.

Concerning the density issue, Attorney Pollack said he understood that some members of the Board, and the abutters disagreed. He said he was quite pleased to hear that during the discussion, there were several members of the Board who said this issue had already been decided. He asked how many more legal opinions the Board would need, and said it didn't make a lot of sense to get yet another opinion. He said the Board had already taken the time to thoughtfully review this issue, and said that will all that the Board had to do, it was time to move on.

Concerning the conceptual review issue, Attorney Pollock said there was nothing to stop the Board from waiving this. He said he considered that this issue had been resolved. He said the abutters had the right to appeal this, but he said it wasn't right to continually be asking the Board to dig back into issues that had already been resolved.

Attorney Pollock said that concerning the building height issue, Ms. Shaw had made the point that the building would block some of the sun exposure to her home. He said the reality was that there were trees along her western and southern boundary that already blocked the light, and he noted that the applicants were preserving those trees. He said it had been assumed that she wanted as many trees there as possible.

He said the courts were fully able to resolve the density issue and the conceptual consultation issue. He said the Board had an obligation to the applicants and others to move forward with review of the application. He said the presentation that evening on height was meant to address the Board's request for more information on this subject.

Ms. Shaw said that regarding the trees Attorney Pollack had spoken about, the sun filtered through them and provided a lot of sun, depending on the time of year. She said there was no way the sun would come through the wing of the proposed building, and she showed photos of this.

Robin Mower, Faculty Road, said she did not feel the conceptual review phase was waived at the proper time, and she provided details on this. She also said that having seen the slides, it was always easy to be seduced by the look of a building. But she said it was important to resist the visual appeal of a fundamentally flawed project. She asked that her written comments be entered into the public record. (A copy of Ms. Mower's letter is available at the Town Hall).

Attorney Hogan spoke in some detail about the fact that comments had been made by the Board concerning the density issue outside of the public hearing process.

Sally Ann Heuchling said it was a shame that this issue had gotten so far, and said that as a result of this application, leveraging would work very well for anyone who had two separate parcels. She said if this proposal passed, a new precedent would be set. She said it would be horrific to see this project built.

Peter Flynn, 103 Madbury Road, said his property wouldn't be impacted as critically as others in the area. But he said he had provided a memo to Mr. Campbell that laid out questions that he still didn't think had been answered. He said the additional demand for water supply would require a comprehensive analysis, noting that the Department of Public Works had received complaints regularly concerning water pressure problems in this part of Town.

He said an issue that was critical for him was that his basement, as well as others, were in ledge, and when the applicants started blasting, this would impact him and others. He noted that the plan to use pervious surface to address stormwater runoff was excellent. But he said the applicant needed to calculate the increase in flow that would result from the project, with documentation on pre-existing flows. He said that Little Hale Creek went right by his house, and had limited capacity to accept additional stormwater volumes.

Mr. Flynn said that discharging stormwater to the existing catch basin on Madbury Road was unacceptable. He said this was the area where Little Creek went under Madbury Road, and said the culvert was undersized. He noted that there had been problems with it the previous year.

He said the entrance to the proposed development appeared to be located close to the intersection of Madbury Road and Edgewood Road, where there was increased congestion. He said a traffic analysis was needed, noting that he knew that the applicant had provided one, but said perhaps the Town needed its own professional analysis.

Beth Olshansky, Packers Falls Road, said she had watched the proceedings on this application at home with great interest, and had more and more concerns about it over time. She said she felt the drafters of the Zoning Ordinance never intended a building of that size for that area, which was reflected in the setbacks, which would have otherwise been larger. She said although there

were some large setbacks proposed as part of the project, this didn't address the concerns of the neighbors.

She said she hoped the Board members were thinking about the Zoning Ordinance, and how they would feel if this development were plunked down next to their homes. She said the lawyers had guided the Board that this was a matter of discretion, but she read through the purpose of the Residence A District in Section 175-38. She said this purpose was clearly stated, and said it was the obligation of the Board to adhere to that.

Ms. Olshansky also noted another section of the Ordinance, Section 175-11 – Scope and Interpretation, and she read from this “Where a provision of this chapter differs from that prescribed by any other applicable statute, ordinance or regulation, that provision which imposes the greater restriction or the higher standard shall govern”. She said she thought this language counseled the Planning Board that their obligation was to use a higher standard, and to apply the greater restriction, and said she thought Mr. Grant had raised this issue, concerning the density question.

She said that in cases where Section 175-11 didn't provide enough guidance, there was the option of going before the ZBA. She reviewed the variance criteria that were applied by the ZBA in that situation, including the criterion that there should be no decrease in the value of surrounding properties. She said that was a question here. She noted that another criterion was the spirit and intent of the Ordinance.

She said the spirit and intent of the Ordinance was to protect residences from uses that were not part of the purpose of the RA district. She said this was a lovely building, with great landscaping, but she said she wished it wasn't in peoples' back yards. She said she wished Stonemark would make the project more acceptable, and said it should be a win-win situation. She said she hoped the Planning Board would encourage a situation that would allow the Zoning Ordinance to do what it was supposed to do, for the residents and the landowners.

Jerry Gottsacker, Mad bury Road, noted that he was on the ZBA, and said some quotes he had heard residents use were from Supreme Court cases, and didn't relate to the Planning Board.

Councilor Needell moved to continue the public hearing until May 9, 2007. Steve Roberts SECONDED the motion, and it PASSED unanimously 7-0.

Mr. Campbell said the traffic analysis had been sent out for an independent review, and said the results should be available the next day. He also said that concerning the stormwater issues, the Town Engineer was very satisfied with the plan he had been given, and was excited about the idea that the applicants planned to use porous pavement. He said the water supply issue still needed to be resolved. He said some modeling had been done on this, but said the final report was not in yet.

Break from 9:00 – 9:15 pm

- VI. **Acceptance Consideration on a Conservation Subdivision Application** submitted by Joseph Caldarola, Portsmouth, New Hampshire for subdivision of one lot into 9 lots. 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.

VII.

Susan Fuller recused herself, and Chair McGowan said Mr. Greene would fill in for her as a voting member.

Mr. Caldarola spoke before the Board, and said the application was essentially the same as it had been for the design review phase. He noted that one change that had been made was a lot line adjustment, based on a wetlands issue. He also noted that the additional language requested by the Planning Board had been provided. He said he believed the application was complete. He noted that his engineer, Ruben Hull, would be available on May 9th.

There was discussion about the open space management plan that had been submitted, and whether it was sufficient.

Chair McGowan asked if the Board needed to vote on the waivers being requested.

Mr. Campbell suggested that the Board should vote on these now so there wouldn't be problems with them later. There was discussion on this.

Councilor Needell said there was some sense that the waivers had to do with the overall plan, and said he would like the public to have the chance to comment on this, unless other Board members didn't agree with this.

Mr. Parnell said he thought that one of the things the public would have a problem with was the setup of the open space. He said he thought that voting on the waivers after hearing from the public, and before the hearing was closed, was the proper way to handle this.

There was further discussion about this, and the Board concluded that it made sense to deal with the waivers after hearing comments at the public hearing.

Chair McGowan asked if the application was complete, and Mr. Campbell said it was. He suggested that the Board could do another site walk of the property, and also noted that the decision on the application needed to be made by June 29th.

Steve Roberts MOVED to accept the application for Conservation Subdivision Application submitted by Joseph Caldarola, Portsmouth, New Hampshire for subdivision of one lot into 9 lots, and to set a public hearing date for May 9th, 2007. Doug Greene SECONDED the motion, and it PASSED unanimously 7-0.

The Board agreed to do a site walk on May 5th at 9:00 am.

- VIII. **Acceptance Consideration on a Site Plan Application** submitted by Steven F. Kimball, Auburn, New Hampshire for the building of a 16-unit residential and a 4000 square-foot

commercial, mixed-use building on a piece of property. The property involved is shown on Tax Map 2, Lot 6-0, is located at 20 Strafford Avenue and is in the Professional Office Zoning District.

Ms. Fuller came back on the Board. Chair McGowan said that Mr. Greene would not remain the voting member.

John Chagnon, from Ambit Engineering, provided a brief overview of the project. He noted that Mr. Kimball had come before the Board the previous year, and the Board had expressed concerns about the idea of having 4 bedroom units. He said the applicant was now proposing 3 bedroom units. He also said a concern of the Board had been providing a safe sidewalk and crosswalk access to the building site, and he said these had now been included in the plan.

Mr. Chagnon next spoke about a previous wetland delineation concern, and said the delineation had been redone, and re-flagged. He also said the applicant was working with the University parking department, and said the proposal was to retain some of the parking spaces in order to provide additional access to the building. He said that curbing of the entrance and crosswalk would result in a reduction of one parking space. He noted that some of the parking meters would have to be relocated.

Mr. Chagnon provided details on plans for the loading zone. He also discussed the fact that a portion of the new building would be a covered, 10 space parking area at the same level as the first floor, which would be accessed by the driveway.

He provided the following additional details on the project.

- The development will be dark sky friendly, and will result in zero emissions off site.
- The Public Works Department has been contacted concerning water and sewer, and there is a pending application. The applicant has worked with the Public Works Department to inventory the sewer shed, and has provided mapping assistance to the Town concerning this.
- A buffer has been maintained on the north side of the lot, as requested.
- The applicant has worked with the Planning Department to develop some porous pavement for the site.
- There is one waiver requested, - to go from 30 to 35 ft in building height.

Councilor Needell noted the fact that the amount of impervious surface on the site would be 50%, and asked how the amount of porous pavement that was planned fit with this. There was discussion on this.

Councilor Needell asked whether, if the Board accepted this application, it was prepared to resolve this issue before having further discussion on the application.

Mr. Roberts said he agreed with this concern.

Mr. Chagnon said this was an Ordinance question, which was separate from the actual engineering issues, and the ability of the system to accept stormwater.

Mr. Campbell said he and Town Engineer Dave Cedarholm had requested that the applicant work with the UNH stormwater center, in part to assure the Town that the system that was developed for the site would be successful.

There was further detailed discussion on this issue.

Councilor Needell said he assumed that since this was a Conditional Use application, the Board could request an outside opinion. He also noted that maintenance of the system would be critical. He said he was new to this subject, and was not going to personally be able to evaluate the system.

Mr. Chagnon said he had no problem with having that kind of outside review of the porous pavement system. In answer to a question from Mr. Roberts, he also said there would probably be a condition that the design engineer or other engineer would monitor the construction of the system, in part to avoid soil compaction during construction.

There was further discussion about maintenance of the system, and about water flow that would occur beyond the porous pavement area itself.

Mr. Roberts noted concerns expressed by the Board in the past regarding retail proposed for the development.

Mr. Kimball said this was going to be leased space. He said he had had inquiries, and had done market research. He said there was not a trend toward convenience stores as being economically viable. He said he was looking at concepts like a video game parlor, a skate board/roller blade store, and other college Town oriented boutiques. He said the idea was to have something that was complementary with the surrounding area.

Mr. Kimball said he couldn't get commitment from a retailer concerning the site until the applications were approved and some real dates were in hand. He said that retail was only a portion of the development, and said an anchor kind of store wasn't needed. He said there would be smaller scale businesses there, and said the plan was to divide the bottom floor into three bays, with one of them being larger than the other two.

Mr. McGowan asked if there would be on site management of the apartments.

Mr. Kimball said he was reviewing this idea, and would speak with the Board about this at subsequent presentations.

Ms. Harris asked what the sf would be of the leased spaces, and Mr. Kimball said the total amount of space would be slightly more than 4,000 sf.

Councilor Carroll asked where things had ended up with the convenience store discussion.

Mr. Campbell said the Board had discussed what it needed to do to change the fact that the Ordinance allowed convenience stores as part of retail commercial uses.

Councilor Needell noted that this was a conditional use application, and asked whether as part of this, the Board could see floor plans and exterior drawings of elevations for architectural and other elements that might impact the project. There was discussion on what an appropriate allocation of the pervious pavement would be included in the amount of the impervious surface area on the site.

Mr. Chagnon said they could present the floor plan and architectural renderings at the May 9th meeting.

Chair McGowan asked if the site plan was complete.

Mr. Campbell said it was, although there were still some issues to be resolved. He recommended that the public hearing date be set for May 9th, and that there be a site visit.

Councilor Needell said the Conservation Commission should be included in the site walk, since there were wetland impacts from the project. He noted that this was a requirement in the Ordinance, under Conditional Use.

Mr. Campbell said the Board had touched on some of the key issues, - such as having a resident manager, and the need for elevations drawings. He said he would like to see some information on estimated trips generated by the development. He said it was a question for the Board as to whether it would want to send this information to an independent consultant.

Mr. Campbell also asked the Board to keep mind the waiver requested for building height, and the incursion into the wetland buffer for the access drive and a few parking spaces. He also noted the reference to flood maps had to be updated, and that the utilities would need to be located underground. He noted his memo to the Board concerning these things.

Mr. Chagnon said there would be no problem with locating the utilities underground. He asked if Mr. Campbell would like to see the revised plans before the next Planning Board meeting. After some discussion, he said they would wait for public comments before making more changes to the plan.

Councilor Carroll noted that there would be 48 parking spaces, and asked how this number was arrived at.

Mr. Chagnon said there would actually be 53 spaces.

Councilor Carroll noted that there had been discussion during the design review phase that students could walk, and didn't need a car to get to campus or to Town from this location. She said the Town was trying to discourage paving over the center of Town and to shrink the amount of parking needed, and was trying to provide more green space there. She asked if a waiver could be granted, if the applicant would like to have fewer parking spaces.

Mr. Campbell said because this was a conditional use application, the Planning Board could do that.

Councilor Carroll said she had been thinking about why someone who didn't have a car had to subsidize those who did. She said if someone had a car, he needed to be responsible for housing it as well.

Ms. Harris suggested that secure, sheltered parking could be provided for bicycles. She said this was a location where a lot of people would walk and use bikes. She noted some other locations in Town where this kind of parking was available for bicycles. There was discussion about this.

Ms. Harris said it would be great if the applicant looked into the possibilities for green construction with this development.

There was further discussion about the traffic analysis that would be needed for the project.

Chair McGowan said the traffic that would be generated by the development would probably be dependent on retail uses, and there was discussion.

Councilor Needell said the applicant would provide an interpretation of the traffic situation, and the Board could then decide whether it was comfortable with this, or needed an independent analysis.

Mr. Chagnon noted that they would be providing a trip generation analysis, but not a traffic analysis.

Councilor Needell noted that Strafford Ave. was a street that seemed to be either empty, or bumper-to-bumper traffic.

Mr. Chagnon noted that there were adjacent traffic generators.

Councilor Needell asked how many of the parking spaces would be dedicated to retail, and was told that this number of dedicated retail spaces was 18.

Mr. Campbell asked that the applicant stake out the proposed building corners and the upper edges of the parking lot for the site walk.

Ms. Harris noted that there had previously been a video game parlor in Durham, and it became a problem because of high school kids. She said this use wouldn't seem to be compatible with the more upscale ideas that Mr. Kimball had for the development.

Mr. Kimball said it would depend on whether there was monitoring, and he noted the fact that there would be management of the building, as well as other retail tenants, who would bring it to his attention if there were problems.

Steve Roberts MOVED to accept the Site Plan Application submitted by Steven F. Kimball, Auburn, New Hampshire for the building of a 16-unit residential and a 4000 square-foot commercial, mixed-use building on a piece of property located at 20 Strafford Avenue in the

Professional Office Zoning District, and to schedule a site walk for May 5 2007 at 10:00 am, and a public hearing for May 9, 2007. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

- IX. **Acceptance Consideration on a Conditional User Permit Application** submitted by Steven F. Kimball, Auburn, New Hampshire for the building of a 16-unit residential and a 4000 square-foot commercial, mixed-use building on a piece of property. The property involved is shown on Tax Map 2, Lot 6-0, is located at 20 Strafford Avenue and is in the Professional Office Zoning District.

Mr. Chagnon noted the buffer requirement concerning the adjacent wetlands, and said the development had been designed to pull as far away from the wetlands as possible. He said this limited the development options because the lot was long and skinny. He said the use of porous pavement would reduce runoff, store it and treat it before it got to the wetland. He provided further details on water flow on the site. He then noted that a description on how the conditional use criteria had been fulfilled had been included.

Mr. Campbell said the conditional use application was concerning the fact that this was a mixed-use development. He said the applicant had provided supporting materials, and said the application was complete.

Chair McGowan said the Board needed advice from the Conservation Commission on this application as well, and asked how that would occur.

Mr. Campbell said the applicant needed to contact the Conservation Commission, and it would provide the Board with its recommendations. It was noted that members of the Commission would be invited to attend the site walk.

Susan Fuller MOVED to accept the Conditional Use Permit Application submitted by Steven F. Kimball, Auburn, New Hampshire for the building of a 16-unit residential and a 4000 square-foot commercial, mixed-use building on a piece of property located at 20 Strafford Avenue in the Professional Office Zoning District, and to schedule a site walk for May 5 2007 at 10:00 am, and a public hearing for May 9, 2007. Councilor Needell SECONDED the motion, and it PASSED unanimously 7-0.

X. **Other Business**

A. Old Business: **Discussion on Forestry/Timber Harvesting**

Mr. Campbell said he didn't have the Board's comments on this from the previous week's meeting, so the discussion couldn't take place at the present meeting.

B. New Business: **Request for Technical Review for two temporary tents at 50 Newmarket Road, Map 6, Lot 9-8.**

It was noted that the Hickory Pond Inn had made a previous request for a temporary tent, and that this had been addressed by the Technical Review Committee.

Lorraine Murphy, on behalf of the Mill Pond Center Board of Trustees, explained that a fundraising event was planned for May 5th. She said they had gone ahead and put up the tent because it had not been realized that a permit was needed for this. She said they would be attentive to this process in the future.

Mr. Campbell noted that if the application was denied by the Technical Review Committee, the tent would have to be taken down. He explained that the issues involved here were code issues.

Councilor Needell MOVED to recommend that this application go to the Technical Review Committee. Lorne Parnell SECONDED the motion, and it PASSED unanimously 7-0.

Mr. Campbell said he and Mr. Johnson would work out some proposed language for the Zoning Ordinance for these kinds of temporary structures.

Councilor Needell said he appreciated the fact that Mr. Campbell had sent the Board copies of “Rigg’s Rules”, which had clarified for him that when someone recused himself, the reason for doing so didn’t have to be provided, although it was required if someone was abstaining from voting.

C. Next meeting of the Board: **May 9, 2007**

XI. **Approval of Minutes** – March 14, 2007

Lorne Parnell MOVED to approve the March 14, 2007 Minutes as submitted. Susan Fuller SECONDED the motion, and it PASSED 5-0-2, with Councilor Needell and Bill McGowan abstaining because of their absence from the March 14, 2007 meeting.

XI. **Adjournment**

Steve Roberts MOVED to adjourn the meeting. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

Adjournment at 10:30 pm

Victoria Parmele, Minutes taker

Susan Fuller, Secretary