

*These minutes were approved at the June 27, 2007 meeting.*

**DURHAM PLANNING BOARD  
WEDNESDAY, MAY 9, 2007  
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL  
7:00 pm**

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

**ALTERNATES PRESENT:** Doug Greene; Annmarie Harris; Wayne Lewis

**MEMBERS ABSENT:** Richard Ozenich; Susan Fuller; Councilor Carroll

**I. Call to Order**

Chair Kelley said Mr. Greene would be a voting member in place of Mr. Ozenich, and that Ms. Harris would substitute for Ms. Fuller. He also said Mr. Lewis would serve in place of Mr. McGowan until he arrived.

**II. Approval of Agenda**

*Councilor Needell MOVED to approve the Agenda. Wayne Lewis SECONDED the motion.*

There was discussion that Agenda items VII and VIII involving the Kimball applications would be moved up to occur after the Cuthartes application (IX), so that the applicant's engineer could be present.

*The motion to approve the Agenda, as amended, PASSED 7-0.*

**III. Election of Officers**

*Annmarie Harris MOVED to appoint Councilor Needell as Chair of the Planning Board.*

Councilor Needell said that while this was permissible, he would not be comfortable being the Council Representative and also being Chair of the Planning Board.

*Lorne Parnell MOVED to re-nominate Richard Kelley as Chair of the Planning Board.*

Chair Kelley said he would do this if no one else was interested.

There was discussion that Mr. McGowan could make a good Planning Board Chair, and might be interested in the position. The Board agreed to table this matter until Mr. McGowan arrived at the meeting. There was discussion that Ms. Fuller had said she would be interested in serving as Secretary if she were reappointed to the Board.

Mr. Campbell noted that the Board had representation on the Mill Plaza Study Committee, the Economic Development Committee, and the Housing Task Force. He said Mr. Parnell was presently

serving as the representative to the Mill Plaza Study Committee, and Ms. Fuller was the Board representative to the other two. It was noted that Councilor Stanhope was presently filling one of three possible positions on the Strafford Regional Planning Commission.

Ms. Harris asked if it was possible some of these committees would be meeting at different times than they had historically. She noted that the Economic Development Committee met at 7:30 am, and said now that it was an official committee, it should probably be moved to a time that was more accessible to the general population.

There was discussion about this, - that the present time worked for members of the committee, but that some people had expressed the desire to have it at a different time so members of the public would be more likely to be able to attend. Ms. Harris said this was particularly important now that the TIF ordinance had passed.

Mr. McGowan arrived at the meeting.

***Annmarie Harris MOVED to appoint Bill McGowan as Chair, Lorne Parnell as Vice Chair. Steve Roberts SECONDED the motion, and it PASSED unanimously 7-0.***

***Richard Kelley MOVED to nominate Susan Fuller as Secretary of the Planning Board. Councilor Needell SECONDED the motion, and it PASSED unanimously 7-0.***

**(The actual final vote was on both motions together. The motions were not voted on separately)**

Mr. Campbell said Chair McGowan would now be a voting member.

#### **IV. Appointment of One Member to the Historic District Commission and One Member to the Conservation Commission**

***Richard Kelley MOVED to appoint Richard Ozenich to continue as the Planning Board representative to the Conservation Commission. Doug Greene SECONDED the motion, and it PASSED unanimously 7-0.***

***Councilor Needell MOVED to appoint Annmarie Harris as the Planning Board representative to the Historic District Commission. Wayne Lewis SECONDED the motion, and it PASSED unanimously 7-0.***

***Richard Kelley MOVED to reappoint Lorne Parnell as the Planning Board representative to the Mill Plaza Study Committee. Doug Greene SECONDED the motion, and it PASSED unanimously 7-0.***

Mr. Campbell said Ms. Fuller had expressed interest in continuing as the Planning Board representative to the Economic Development Committee and the Housing Task Force. In answer to Mr. Greene, he said the Housing Task Force met on an as needed basis.

***Councilor Needell MOVED to reappoint Susan Fuller to the Housing Task Force. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.***

There was discussion that there were two Strafford Regional Planning Commission positions open. Mr. Greene said he would consider the idea of serving on the Commission.

## **V. Report of Planner**

- Mr. Campbell said he had met with Doug Bencks, and provided details on some upcoming projects on the UNH campus, noting that the Board might be seeing some public hearings concerning these in June. He also said they had discussed private student housing projects coming before the Planning Board, and said he had also shared information with Mr. Bencks on the ongoing study of possible redevelopment of Mill Plaza.
- Mr. Campbell said he had recently provided an extensive amount of Town information to the American Institute of Architects (AIA) representative. He also said the next meeting of the Mill Plaza Study Committee would be held on May 23<sup>rd</sup>, at 6 pm in front of Durham Market Place. He said AIA people would be present.

Mr. Parnell said members of the public, Planning Board members, etc. were all invited to this site walk. He also noted that it had been requested that the Planning Board meeting start at 7:30 that evening in order to accommodate this site walk.

- Mr. Campbell said the Technical Review Committee had approved the temporary tents for the recent Mill Pond event.
- He said two new applications had been received by his office, but said only one of them, the Lonsinger application, would be moving forward right now. He said the second one involved a conditional use permit requested by Gail Teeri. He explained that a variance request involving this property had just been postponed until June by the ZBA. He said there were some issues that needed to be worked out concerning this application.
- Mr. Campbell recommended that there be two additional Board meetings, one on May 30<sup>th</sup> and the other on June 6<sup>th</sup>, in order for the Board to be able to keep up with the large volume of work presently in front of it.

Councilor Needell asked for a status report on the Main Street Project.

Mr. Campbell provided some details on this, and noted among other things that work would start soon after commencement, and was expected to be completed before UNH started up again in the fall.

## **VI. Public Hearing 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.

***Richard Kelley MOVED to open the public hearing on a Conservation Subdivision Application submitted by Joseph Caldarola, Portsmouth, New Hampshire for subdivision of one lot into 9 lots. Councilor Needell SECONDED the motion, and it PASSED unanimously 7-0.***

Mr. Caldarola reviewed the proposed development:

- He said 9 lots were proposed, with 7 of them served by a proposed private loop road off Bagdad Road, and the 2 other lots located around the corner on Canney Road.
- He explained that 2 variances had been received for the property, one allowing 20-40 ft. depth to ledge to be counted in the usable area, and the other allowing the buffers around the property to be less than 100 ft (required by the Conservation Subdivision regulations.) He explained that having to meet the 100 ft. buffer requirement would have meant that another design would have had to be developed. He noted that most of the abutters had supported this variance request, and that it had passed.
- He said public water was already available at the intersection, and said he was waiting for a test of the hydrant on Ambler Way. He said all the paperwork on this had been submitted. He also said a flow test was expected soon, and noted that this had been requested by Town Engineer Dave Cedarholm.
- Mr. Caldarola said town sewer for the development was available at Bagdad Road, near Peterson Woods, and was to be extended up to the site. He said it had been determined that there was plenty of capacity.
- He said a private, 22 ft. wide road was proposed for the development.
- Mr. Caldarola said the project would be done in two phases, with the first involving extension of water and sewer to the first entrance on the private road, and the development of the two lots on Canney Road. He said the second phase would be the rest of the development.
- He explained that Mr. Cedarholm had requested that there be on site retention of water, rather than hookup to the Town storm water system. Said Dave requested on site retention of water Mr. Caldarola said a goal of the project was to reduce water flow to the houses on Ambler Way, which had water problems. He said a series of detention chambers were proposed on the property lines for the lots, which would receive water from the driveways and most of the roof areas.
- Mr. Caldarola explained that offsite flow was currently coming onto the site from culverts located across the street. He provided details on the fact that water meandered along Canney Road and then passed near but missed an existing culvert, so instead got directed into the woods and wound up in the backyards of the homes on Ambler Way. He said the plan was to redirect this flow to the existing culvert.

There was discussion about this. Ms. Harris said it would be helpful if the engineer could discuss this at a future meeting, and Mr. Caldarola agreed.

**Tom Merrick, 7 Canney Road** said he recalled that the former owner of the property, Mr. Fosse, had hoped that it would be preserved in some fashion. Mr. Merrick said the plan identified unsuitable areas, and then simply carved out 9 lots out of the buildable area. E said in so doing, the developer had made a hodgepodge of the usable space. He noted especially the lot where the exchange was being requested, and said he wouldn't want to have that lot.

Mr. Merrick spoke about the flooding problems experienced on adjacent lots, and said this

development would clearly exacerbate the existing problems. He provided details on the water issues. He also said there was a conservation component to the project, but said there was essentially no common area or public access, and said he didn't think inspections would be done to insure that the conservation features would be kept. He said that invoking the conservation subdivision name for this development denigrated the process the Town had in mind.

Ms. Harris said she was having trouble with this layout as a conservation subdivision, as originally conceived in the ordinances and regulations. She asked Mr. Merrick to explain his view of a conservation subdivision as compared to this proposed development.

Mr. Merrick said he was no expert on this, but noted that he had recently placed a conservation easement on his own property, which included public access, some public parking areas, fields, some wetlands, streams and woods. He said a conservation subdivision development would include cluster zoning and a common area of significant proportion, public access, and some kind of restrictions on what could happen on that common area.

Councilor Needell noted that in this proposal, the only areas where building construction could take place was within the white area. He said the rest of the site was designated as open space, and there were restrictions on what could take place there.

**Pam Bradley, 4 Ambler Way**, provided details on water issues she faced on her property. She noted that there had been a huge lake all the way across her front yard during the recent flooding. She asked Mr. Caldarola for details on what was planned to control runoff that impacted her property.

Mr. Caldarola said the infiltration chambers were still planned, and would be located on every lot line. He said those would reduce the water flow to the rear of the site, at both outlet points, including the area near Ms. Bradley's backyard. He also noted the offsite water that would be redirected. He said the infiltration chambers were essentially leach fields, providing details on this, and said there would be a maintenance program to keep them cleaned out.

Mr. Kelley noted two storm pipes on the plans that showed no outlets, and asked whether they were on located on the site to be developed.

Mr. Caldarola said they were. There was discussion that the runoff conveyed by these culverts did not currently enter a third culvert down Canney Road, but instead went into the wetland area and onto Ms. Bradley's property.

Mr. Caldarola said he had asked the engineer to design the additional culvert, but hadn't seen the design yet

Mr. Kelley said that the contours on the Bradley property were shown, due to the drainage issue. He noted that Ms. Bradley had said that the land to the east of her property conveyed water to her property as well, but he said the contours were not shown on the lots to the east. He asked if the water there did cross onto the Bradley property, and Mr. Caldarola provided details on this

Mr. Greene asked if there had been any discussion about the idea of having a vegetative retention area.

Mr. Caldarola said no, and provided some history on the development of the present drainage system.

Ms. Bradley said there still seemed to be confusion as to where the water that came to her property came from, and she provided further details on this. She spoke again about the large quantity of water she had recently experienced, and questioned what would happen when the infiltration chambers filled up.

Mr. Greene spoke again about the idea of having some kind of vegetative retention area.

Mr. Caldarola said he would ask Mr. Hull, the engineer, discuss various aspects of the drainage issue at the next meeting.

**Joe Johns, 90 Bagdad Road**, said he agreed that this proposed development looked like a hodgepodge, and said he didn't think it was consistent with the neighborhood. He questioned the need for Sophie Lane, and asked why there couldn't be individual driveways for the properties instead of the one, shared road. He also asked about the design and the price of the homes that were planned.

Mr. Caldarola said driveways would be possible, stating there could be 4 driveways, with 3 of them each serving 2 properties, and one serving one property. He said doing this would pretty much disturb the same amount of area, and in addition would result in several driveway cuts. Regarding the prices, Mr. Caldarola said it was hard to say, but he said single family homes in Durham that were 2500-3000 sf were going for \$350,000-500,000.

**Ben Getchell, 12 Ambler Way**, said his primary concern was drainage. He provided details on the drainage problems toward his site, located near Gerrish Way, and said any increase in runoff due to the development would put his property in serious jeopardy.

He said that regarding the waiver, it looked like what it accomplished was concentrating the development at a higher elevation, in such a way that the management of the drainage could be maximized. But he implored the Board to do everything it could to insure that the drainage issues were in fact addressed.

Mr. Getchell also pointed out that there was a tremendous amount of wildlife traveling through the back portion of the site. He provided details on this, noting that deer and turkey were especially numerous.

He asked what the homeowner association function was, and what it would do to prevent the cutting of trees and other gutting of the open area. He noted that every tree that was taken down lessened the moisture retention potential on the site. He suggested the idea of providing a 100 ft buffer at the back of the property, for drainage and other purposes.

Mr. Parnell asked Mr. Getchell if he saw anything in the proposal that would make the drainage problems worse.

Mr. Getchell said no, if there was no tree dropping, and land other than what was in the white area

was not disturbed. He said that the increase in impervious surfaces was a concern, but noted that the infiltration areas were supposed to result in a small improvement in the drainage. But he said that this all depended on the maintenance of the system.

***Richard Kelley MOVED to continue the public hearing until May 23, 2007. Doug Greene SECONDED the motion.***

Councilor Needell recommended that Mr. Caldarola check section 9.08 of the subdivision regulations, step 2, to make sure he was in compliance with it. He also asked, whether step 4 of that section, concerning consulting with the Conservation Commission, had been followed, and there was discussion.

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

IX. **Public Hearing on a Site Plan Application and 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 the Residential A Zoning District.

**Jack Farrell**, representing the applicant, first noted that what was currently proposed was 66 units, not 78 units at this point. He noted the checklist information requested by Mr. Kelley, and had proposed to submitted revised plans based on that checklist the following day.

- He said in addition to addressing issues raised in the April 30<sup>th</sup> letter, the applicant's revised plans had added some other things, including details on the porous pavement system, and a separate subdivision plan that outlined the conservation area.
- He said the independent review of the traffic study, had been completed by Don Rhodes of Norway Plains, and concurred with Mr. Pernaw's findings.
- He said updates had been made to the condominium documents that reflected the current state of the proposal, including utilization and management of the open space. He said these documents would be submitted the following day.
- He said a splash plan and other details had been added to the lighting information that had been provided.
- He said the water modeling undertaken for Underwood Engineering for the Town was completed, and said Mr. Cedarholm had indicated that the system had enough pressure to support this development. Mr. Farrell said there were some issues concerning water pressure, and what would be needed to address this. He noted that the development would have a separate pump station and a booster pump to provide sufficient pressure, and said this would be subject to the appropriate fire and other codes.
- He said Mr. Cedarholm had confirmed that there was sufficient sewer capacity, so the final application had been submitted to the Water and Sewer Committee, which would then send it on to the Town Council. He said the applicant would implement the final recommendations, and he suggested this could be a condition of approval.

Mr. Farrell said they were looking forward to the Board's review of the amended plans, and said if

there were any further issues that needed to be addressed, they would like to know this so they could prepare for them.

Mr. Kelley noted that one of the things he had requested was a site prep plan, which included staging areas and that addressed various quality of life issues during construction.

Mr. Farrell said these things would be included in the revised plan, and provided details on this.

Councilor Needell noted that the letter from Mr. Kelley was part of the public record, but asked him to summarize any important things that were missing from the plan.

Mr. Kelley said the site prep plan was the key thing he had said needed to be addressed.

Mr. Farrell said the plan had always been to include this. He said they had added a provision to the site prep plan that before any trees were cut, they had to be marked by the landscape architect, and reviewed and approved by the timber warden (Public Works Director Mike Lynch).

Mr. Campbell noted that the Board had made requests concerning this before, as part of conditions of approval.

Mr. Farrell provided further details on the site prep work that would be done, and there was discussion with Mr. Kelley. Mr. Kelley said most of the things on the list he developed were specifics that the public wouldn't have much interest in. He asked if this list had been shared with the neighborhood group and members of the public.

Attorney Hogan said he had received a copy of the list.

**Jerry Gottsacker, 107 Madbury Road** said his property was across Little Hale Creek from the conservation area portion of the site. He described the extensive public hearing process that had taken place concerning this application, and said one thing there hadn't been much talk about was property rights. He spoke in detail about property rights, and said he believed in them. He said property owners like him had a handbook, called the Zoning Ordinance, and said it was a book or rights for landowners, not for townspeople, neighbors, or abutters.

He said the way he understood it, abutters had two rights, - to be noticed, and to be heard at a public hearing. He said abutters did not have the right to veto, design a project, etc. He said property owners had the right to use their property the way they wished, in accordance with the Zoning Ordinance, and he provided further details on this. He said the Zoning Ordinance said nothing about liking what someone else did with their property, and said case law protected property owners.

Mr. Gottsacker said the Zoning Ordinance was necessary for managing development and growth, and could be a useful tool, describing it as a legal infringement on property rights. He noted that State law provided several levels of protections that were available to protect property owners, though the ZBA, the Planning Board, etc.

He said the Planning Board was there to protect the rights of landowners, and to ensure that the Zoning Ordinance was followed. He said the Planning Board didn't have the ability to change the



rules after the train had left the station. He said that otherwise, it was a taking, and he noted that bad decisions cost the taxpayers, providing details on this.

He said the Zoning Ordinance was rooted in the Master Plan, which encouraged infill, in order to achieve various purposes. He said the Master Plan also encouraged elderly housing and the importance of tax relief. He noted the public sentiment about tax relief at the most recent Town elections, and said this project would offer approximately \$300,000 in tax relief. He also said the Master Plan talked about the importance of land protection, but said this issue hadn't been mentioned much during the public hearing process.

Mr. Gottsacker summarized that this was a simple project. He said the site was located in the RA zone, the Table of Uses said elderly housing was a permitted use; conservation subdivision was required, and with this development, the Town gets almost 12 acres of conserved land; no variances are needed.

Mr. Gottsacker said the Zoning Ordinance clearly gave the owner the right to develop elderly housing on that property. He said he and the neighbors looked forward to having seniors live there, and said they would add to the viability of the Town.

**Hillary Scott, Davis Ave.** provided a hand out, and said she had a few comments to make. She said the first point concerned the abutters' loss of their quality of life as a result of this project. She said that at the April 11<sup>th</sup> Board meeting, Mr. Roberts had said it would hurt him to think abutters' property values and enjoyment of their property was affected. She said that Durham the public hearing, the abutters had clearly articulated that this development would negatively impact their quality of life.

She said the abutters as well as others had referenced sections of the Zoning Ordinance and Master Plan that provided the Board with sufficient backing to deny the application. She noted that her letter included references to section 174-11 and 174-38 of the Zoning Ordinance, and sections from Chapters 1 and 2 of the Master Plan.

Ms. Scott said that at the April 11<sup>th</sup> meeting, former Chair Kelley had said that one of the reasons he had requested reconsideration of releasing to pieces of information was due to the public outcry over this matter. She asked the new Planning Board Chair to respond to the public outcry for a motion to reconsider the vote on the one lot/two lot issue. She said there were a lot of people who had spoken on this issue.

She said that at the February 11<sup>th</sup> meeting, Mr. Grant had said he could find no provision in State law or the Zoning Ordinance that allowed the combining of 2 noncontiguous lots. She said Mr. Grant had asked Board members in favor of the motion to show where in the Zoning Ordinance their position was supported, but he was not provided with an answer.

Ms. Scott said that at the end of the April 11<sup>th</sup> Board meeting, there was discussion on the definition of "contiguous". She asked if Board members had the same understanding of this word when they voted on the one lot/two lot issue. She also said new questions, related to the easement, were presented by Robin Mower at the April 25<sup>th</sup> meeting. Ms. Scott requested that Board members

indicate where in the Zoning Ordinance there vote was supported.

She said Attorney Pollock said at the April 25<sup>th</sup> meeting that the February decision was made thoughtfully and he encouraged the Board to move forward, also noting that the neighbors had the right to appeal if they chose to do so. She said that before saddling neighbors with this financial responsibility, she would like the Chair to respond to the public outcry on this matter.

Mr. Kelley said as in order to reconsider the motion, one of the 4 people who supported it would have to make the motion to reconsider it. He said that after hearing everything that had been said, he personally was not prepared to make that motion. He also said that he had hoped that when the hearing closed, he would have the opportunity to address this concern and others.

Ms. Scott asked if it was now appropriate to ask other Board members who had voted in favor of the motion if they would be willing to reconsider their vote.

Mr. Kelley said this was the first question he had planned to ask the Board when it went into deliberations, if he has still been Chair.

Mr. McGowan said there were a number of issues that needed to be deliberated on. He said right now, the Board needed to hear new information, and then could close the public hearing and deliberate on these things.

Ms. Scott said another issue was the application checklist. She said it was her understanding that these were not placed in the public folder, and asked why this was so.

Mr. Campbell said the checklist was used to make sure things were complete enough for the Board to make a decision on, but he said members of the public were welcome to look at it.

Ms. Scott provided details on why the abutters and members of the public should have the opportunity to see the checklist.

Ms. Harris said she remembered that a copy of the completed checklist used to be provided to the Board, and she said it would be useful to do this again.

Mr. Kelley and Mr. Campbell provided details on the process that was currently followed.

Ms. Scott said making this checklist available for members of the public to look at would allow other eyes to see that those things were taken care of by the applicant. She said this was a quality assurance matter, and noted that the Planning Board currently had a lot going on.

After further discussion, it was agreed that this information would be available for members of the public.

Ms. Scott said that regarding the idea of wrapping things up with the application, it had been mentioned that there were some things that were still missing from the site plan. She provided details on this, and asked that the public hearing stay open until these things were addressed.

She also asked what the purpose of the sign-in sheet was, and when Mr. Campbell explained this, she asked that members of the public attending meetings be told it was there for them to sign.

**Attorney Scott Hogan**, representing some of the abutters, spoke about the fact that when he and the abutters were present at the previous Board meeting, the applicants had presented new information, which had put them at a disadvantage in terms of being able to respond to it. He said this had now happened again, so the abutters would now have to have the opportunity to provide thoughtful, useful comments on this information.

Attorney Hogan said he was not sure where the Board was concerning the density, height and other issues. He said he appreciated it that Mr. Kelley's had recognition his request that there be an indication of whether there were Board members who wished to reconsider the density issue. He noted that he and the abutters had said that they didn't feel combining the two lots was legally permissible, however many units were proposed.

Attorney Hogan said they were not trying to duplicate information, noting that he had been criticized for bringing up the density issue again. He explained that what he had responded to had been presented at the previous meeting, which had required him to come back at the next meeting to address it.

He said he had heard that evening that the review of Mr. Pernaw's traffic study had been completed, and that this review had basically agreed with this study. He said one of the primary issues was whether the driveway location was too close to the intersection. He said one of the issues Mr. Pernaw's study had not addressed was the mysterious cuing that occurred at the Madbury Road/Edgewood Road intersection. He provided details on this issue.

Attorney Hogan said he had heard that the revised plans would be submitted the following day, and said he assumed that he and the abutters would see them. He then noted that his clients had taken considerable time to respond to what they had previously heard from the applicants. He said there were some serious issues that needed to be reconciled, and said the Board would need to address them. He said that as a matter of process, there was a lot of new information, which the abutters needed to respond to, and which they would like to hear Board comments on.

Attorney Hogan said he had just heard that the Durham Zoning Ordinance was not for abutters, and was not for existing property tax paying residential property owners in Durham. He said he had repeatedly stated here that if Board members were ultimately going to vote to approve this application, each of them needed to be able to say that this proposal maintained the integrity and residential character of the neighborhood.

He said the purpose of the RA zone was to protect existing residential property owners, and said the Zoning Ordinance was for the abutters to a property as well as the owner of the property. He said abutters' perspectives were always marginalized as being NIMBY. He also noted that it had been said again that evening that this proposal complied with the Zoning Ordinance, but he said he asked several times to be shown the provision that allowed noncontiguous lots to be added together. He said he had looked for this but did not see where it was, and said this

was why he had argued that combining the two lots was unlawful.

Attorney Hogan provided additional details on his perspective concerning this, as well as some details of the history of the properties in question. He said there was no legal basis for combining the lots, and said the Zoning Ordinance didn't allow it. He also said the Ordinance didn't allow the proposed height. He said the abutters had no sense of where the Board was on these issues. He said if Board members felt that what was being asked for was excessive, or that the standard of review was not met, the project needed to be redesigned.

Attorney Hogan said the abutters had no desire to stretch this process out. He noted that he had previously said that they wished that the applicant had not revised the number of units from 88 to 66, because the same illegal premise for the project still existed. He said the fact that there would be conservation land involved was appreciated, but said this development needed to be done with some legal authority and practical purpose.

He said he and the abutters would have to come back to speak after having looked at a substantial amount of new information. He said it was understood that at some point, the public hearing would close, and the Board would then deliberate on all of these issues. He said many of these would be fundamental, threshold issues. He said he felt these issues should have been resolved at the beginning of the process, and said if this had been done, there then would have been a different process and application.

Attorney Hogan questioned whether this now was the same application that the Board had determined was completed some weeks back, and provided details on this. He said the abutters really were trying to give the Board useful, timely information, but said this had been an extraordinarily difficult thing to because of the particular process involved.

Councilor Needell stated that there had been no deliberation yet on what the Board thought about the application, and said this would not happen until the public hearing closed. He said this was the way the process worked. He also said there had been no suggestion about closing the public hearing, and said he would argue against this if there was.

He said a vote had been taken by the Board to resolve one of the critical issues, -concerning considering the two lots to be one lot. He said this decision had been made, much as he disliked that outcome. He noted that that evening was the first time he had heard that the Board might later reconsider the one lot/two lot issue. He agreed that this and other issues should have been resolved sooner, but said the situation was what it was.

Councilor Needell said he agreed that the Board should address the issue of the requested waiver concerning the building height, in order to provide notice of changes that might therefore be needed. But he said the Planning Board wasn't purposely not responding to the public because it didn't care, but because this was not appropriate at present.

Attorney Hogan said he understood this. He also said the reason the Zoning Ordinance existed was in part to protect the situation his clients were in. He said people made various decisions concerning their property based on what they expected from the Zoning Ordinance, and said he didn't think that

people making a reasonable reading of the Ordinance could have ever expected that they would potentially have this proposed development next door to them.

He said he appreciated what had been said about the process, and said he agreed that some of these issues would have been taken off the table if there had been pre-conceptual consultation concerning the project. But he said the reason these issues were still here was that there were some people who wanted predictability based on the Zoning Ordinance. He said this application was so outside of what could have been expected, based on the Zoning Ordinance, that he felt compelled to take the time to say that the Zoning Ordinance was there to protect residential property owners as much as it was there to protect someone who was before the Board with a development proposal.

**Janet Doty, 12 Adams Circle,** reviewed Mr. Farrell's slide presentation before the Board at the April 25<sup>th</sup> meeting. She then provided a detailed response, noting that she would also submit these comments in writing.(available at Town Hall)

She said Mr. Farrell had indicated that the original proposal was for 78 units, which was fewer than the 94 units allowed under the Ordinance. She said this implied that the size could have been much larger than what was proposed, but didn't say that opting for several two bedroom units resulted in a number less than 94 yet the size of the building was not reduced proportionally.

Ms. Doty referred to the fact that the proposed development would use the existing disturbed area, and said there seemed to be the assumption that the neighbors would prefer having a huge building in a disturbed area rather than setting the new development further back, leaving the neighbors to deal with disturbed areas. She said this assumption was incorrect.

She said Mr. Farrell had emphasized that the setbacks to the side and rear far exceeded what was required, but she said the abutters could not believe that those who had created the Zoning Ordinance had envisioned a project of this magnitude, so closely abutting residential neighborhoods on three sides.

She said photos taken from the boom truck showed how high the building would be, but also distorted the distance from the project to the abutters. She invited Planning Board members to visit the property in order to see first hand the scale of the proposed project.

She said Mr. Farrell had said the site was blessed with natural vegetation, but said there were mature pines, which meant that the tree canopy was well above the line of sight, so the visual screening came only from the tree trunks. She also noted that as mature pines, they were subject to falling down.

Concerning the underground parking garage, she said Mr. Farrell hadn't mentioned that if 108 spaces were planned for above ground instead, the building would have had to be reduced to accommodate the parking spaces. She also noted that Mr. Farrell had stated that there were other instances of using bathtub areas for a roof, but she asked if they were in buildings of this size in middle of a residential neighborhood. She also said it wasn't fair to compare this project to Bagdad Wood, which was located in a different zone.

Ms. Doty said she Mr. Farrell had noted that this was in fact a larger building, with a lot of impact,

and that the applicants understood the proximity to abutting properties. She said they were using landscaping to address this, but said Mr. Farrell's description indicated why the project did not meet the Zoning Ordinance requirement that the project be consistent and maintain the established character of the neighborhood.

She said if it were consistent, it would be a project where the sight line would extend beyond the backyard to view a reasonably permissibly sized building, without various impacts. She said Stonemark wanted to hide the development, and restrict the line of sight. She said the abutters currently didn't need to be closed off from their neighbors, and she said if the project were consistent with the neighborhood, the landscaping would be a complement, not a barrier.

Ms. Doty asked the Board to consider the project from various viewpoints. She said she believed Stonemark could earn a profit with a project of smaller scale, and less adverse impact, placed appropriately on the property, while providing open space.

**Beth Olshansky, Packers Falls Road,** said she was speaking not as an abutter or member of the neighborhood. She read a detailed letter she had written and submitted for the record (a copy of this letter is available at the Town Hall).

She said now that there was more information on the word "contiguous" and on who owned the right of way easement in the proposal based on information from the Tax assessor, she would like to request that the Board revisit the density issue. She said she believed the Board owed it to the neighbors to make sure this decision was based on full information, and she provided details on this.

She said any member who voted for the density had the right to ask for the vote to be reconsidered, and she asked that they reconsider this. She said if a vote was retaken, it would be good for each member to defend his or her vote with specific reference to the Zoning Ordinance, and she noted that this did not happen for the first vote. She provided details on this. She said to make such a vote without defending it relative to the Zoning Ordinance only caused distress among the neighbors and eroded the trust in the public process.

Ms. Olshansky then provided three references to the Zoning Ordinance that she said showed a clear rationale for voting against the application.

**Robin Mower Faculty Road,** asked if the site walk had included walking around the neighborhood, or only the land proposed for development.

Board members said the site walk had included just the property itself, but Mr. McGowan noted that he had seen the houses in the neighborhood as well.

Ms. Mower said this was a factor the Board might want to consider.

Mr. McGowan said that given the fact that there were new drawings, and that the Board and the abutters had not yet seen them, perhaps the public hearing should be continued.

***Councilor Needell MOVED to continue the public hearing to May 23<sup>rd</sup>, 2007. Doug Greene***

***SECONDED the motion, and it PASSED unanimously 7-0.***

Mr. Garvey asked if the Board would entertain the idea of having another Planning Board meeting before May 23<sup>rd</sup>. It was determined that this wouldn't work because it would be difficult to have enough Planning Board members present for such a meeting.

Mr. McGowan asked if the applicant would need to provide another extension, and Mr. Campbell said yes, because the current extension would end the following day.

Councilor Needell said he would like a sense of whether the Board would like a legal opinion concerning the idea of possible reconsideration at a later time of a prior action by the Board. He said that as much as he would like to see such a reconsideration, he was concerned about the amount of time that had gone by since that prior action was taken. He said he would like the Board to get some legal advice on this.

He said a second issue he would like a legal ruling on was whether it would be legitimate for a Board member to object to the project based in part on disagreement with that decision.

Mr. Kelley noted that Attorney Hogan had also brought up this issue.

There was discussion by the Board and Mr. Campbell on these two issues.

Mr. Roberts said the more conversations there were on these issues with the Board's attorney, the better. He said he would support getting the legal opinions. Mr. Kelley said he would support this as well. The consensus of the Board was to get these two legal opinions from the Board's attorney.

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

**5 minute break**

**VII. Public Hearing on a Site Plan Application** submitted by Steven F, Kimball, Auburn, New Hampshire for building of a 16-unit residential and a 4000 square-foot commercial, mixed use building 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.

**VIII. Public Hearing on a Conditional Use Permit Application** submitted by Steven F, Kimball, Auburn, New Hampshire for building of a 16-unit residential and a 4000 square-foot commercial, mixed use building 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.

John Chagnon, Ambit Engineering updated the Board on the status of the application

- He noted that the site was staked and the site walk was done with the Planning Board and the Conservation Commission on May 5<sup>th</sup>. He said the plans had also been sent to the Conservation Commission, which would be meeting with the applicant soon.
- He said the plans and the drainage analysis had been sent to Robert Roszinw of the UNH Stormwater Center. He summarized Mr. Rozine's response letter, which said the design appeared to be very solid. Mr. Chagnon said the letter included bullet points regarding construction and

maintenance issues, and he said a revised analysis would be sent to Mr. Rozine. He noted that Mr. Rozine had a question regarding the issue the Board had discussed with the applicant at the previous meeting, concerning the percentage of porous pavement. He provided details on this.

- Mr. Chagnon said traffic consultant Steven Pernaw had developed a traffic analysis, and said this had been provided at the present meeting. He said the report had concluded that a project of this size would not significantly alter the prevailing traffic conditions at nearby intersections. He noted that the complete report, with traffic counts, etc, had been submitted to the Planning Department.
- Mr. Chagnon said the architectural plans would be discussed by architect Jude D'Allaire.

Mr. D'Allaire first provided a satellite image which showed the neighborhood context within which the development was proposed, and noted that the site was in between an urban and residential area. He said a three story building was proposed, with retail or office uses on the first floor, and two upper floors containing housing.

He explained that the architectural design had tried to reference some of the urban area in the design of the storefront corner, and he provided details on this. He explained that this was needed in order to make this area stand out as being retail. But he said the predominance of the building would reference the materials used in the residential area behind it.

He said there would be a green, seemed metal roof which would include a 6 ft parapet. He also said there would be tan clapboard siding, as well as exterior wall areas that would contain a darker red stucco material. He said the base material would be natural stone, set in like brick. He said there would also be some bay windows to add to the residential look.

Mr. D'Allaire said elevations had been provided in the plans, as requested. He said the height of the building measured from the center of the roof would be 34 ft. He said the parapet would be 5 ft 9 inches in height, for a total height of 40-41 ft.

Ms. Harris said that perhaps the red exterior could be something more substantial, - like brick, instead of stucco. There was discussion about this with Mr. Rozine.

Councilor Needell asked if Mr. Rozine was working for the applicant was told he was not.

Councilor Needell asked if they were planning to include all of Mr. Rozine's recommendations.

Mr. Chagnon said they didn't see anything they didn't want to include except the language recommended for the sign, which he said would distract from the commercial feel of the project. He said this could be discussed with Mr. Rozine.

He noted that the applicant had asked for a height waiver, and a waiver concerning the number of parking spaces. He said they were open to discussion on this.

He said a list of items had been generated, and said these things would be incorporated in the next set of plans.



Mr. McGowan asked Mr. Chagnon to go through this list to give the public an idea of the issues involved.

Mr. Chagnon provided a list of items that included the following and more:

- He said the applicant was looking at the idea of having a parking area for bicycles.
- He said the building would be serviced by underground utilities.
- He said the flood note had been changed to reference the current flood map.
- He provided details on the change of the entrance width to the parking area.
- He said sprinkler connection details had been provided.
- He said Mr. Cedarholm would be in communication with the applicant concerning structural sewer system improvements.
- He said there would be information concerning modeling of water usage.

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

**David Hills, Piscataquis Road**, said he didn't know about this application until that evening, but said it looked like a great project that would be a positive, attractive addition to the Town. He noted that he hadn't heard anything said about energy efficiency, and said it would be wonderful if this element was considered.

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

**Jay Gooze, Meadow Road**, said he was speaking in opposition, but not as someone who wanted to stop the project. He said he was speaking so the conditional use process would be put to good use, so the resulting development was good for Mr. Kimball and the neighborhood.

He said he had a copy of the 2000 Master Plan, and said this property and the one next to it were not in the Master Plan as being part of the Professional Office District. He read from the Master Plan concerning the purpose and objectives of this district. He noted that he had not come to the Zoning rewrite meetings when this district had been discussed, and then was surprised to see this project, and that this property was now in the Professional Office District. He said he had not received specific notification concerning this. He provided details on how Mr. D'Amambro's property had been directly impacted by the Zoning change.

Mr. Gooze said he and the neighbors had developed a letter that outlined their concerns. He said as disappointed as they were at this stage of the process, they were not asking that the project be stopped, but were asking that the Board keep this use compatible with the surrounding area.

He noted that he had gone to the Rental Housing Committee meeting that day, and Mr. Burton had said he was going to have to rethink his present professional property management system because he had been through a bad semester with the student renters.

He then read through the letter, which included special conditions that should be included in the site plan approval in order to address abutters' concerns. He said one was to make the building and outside parking area smaller so there would be less wetland encroachment and the neighbors would be better protected. He said that at the very least, the outside parking area should be smaller, which

would meet the pedestrian goals of the Professional Office district while still allowing expansion of the tax base.

Mr. Gooze then listed proposed minimum conditions the neighbors felt should go with the conditional use permit.

- Professional property management/security with continuous monitoring by the Technical Review Committee. Mr. Gooze said this would need to be sufficient to ensure compatibility with the neighborhood.
- Minimum 100 ft buffer from the rear property line, and giving up of six spaces at the back end of the lot.
- Minimum 6 ft stockade privacy fence, to surround the outside parking areas and driveway, which would provide noise and traffic protection, and would also discourage students from walking to or from residential properties. This would also prevent incursions into the wetland area.
- Adequate Town supervision of porous pavement installation, and review of maintenance procedures on a regular basis by the Town
- Consideration of the type of retail use, or perhaps no retail use, considering the purpose of the Professional Office district. No alcohol sales.

Mr. Kelley asked Mr. Gooze if he could cite the Court decisions he had referred to, and Mr. Gooze provided details on these.

Mr. Parnell asked what Mr. Gooze thought about the building height as proposed.

Mr. Gooze said it was hard to judge, but said it would be a visible site.

Mrs. Gooze said it was hard to say where the height was until a reference point was marked out. She said she would like to see things kept within the present Zoning. She also said that 6-7 months out of the year, there was a clear view through the woods, and said there would be a definite difference, given that the site was presently undeveloped.

Mr. Gooze suggested that some of the trees could be marked, for reference.

Councilor Needell said the permitted height is 30 ft, the applicant was asking for 34 ft, and the Board was allowed to authorize up to 50 ft at its discretion.

There was discussion of the sight line. Mr. Chagnon said the applicant would be willing to put up a balloon to provide reference concerning the height.

Mr. Gooze asked if the project could work at 30 ft, and Mr. Chagnon said they would lose a whole story.

There was discussion about how the parking structure requirements and the commercial space in front impacted the height issue.

Mr. Gooze said the neighbors were not trying to kill the project, and were just trying to see what else

could be done.

Ms. Harris asked Mr. Gooze to provide more detail concerning his recommendation that 6-7 parking spaces could be eliminated.

There was discussion that the Board had some discretion concerning this because this was a conditional use application.

Ms. Harris spoke about the advantages of having less parking on the site, and noted that the property was within walking distance of downtown and the UNH campus.

Mr. Gooze said he would like it if Mr. Kimball could respond to the items in the letter.

Mr. Kimball quoted a number of goals in the Master Plan regarding multi-unit housing, etc. , and said he didn't see this project as being inconsistent with them. He said the goal had been to be entirely consistent, and said it was understood that this was a boundary area.

He said the project had been laid out relative to other buildings in the area, using satellite imagery, etc. He said these properties included UNH buildings, multi-unit apartment buildings, the New England, Center. He said the property was not in the middle of a residential neighborhood, although it abutted one. He said the property only had access to Strafford Ave., so while the site did abut a residential area, it didn't have a direct connection to that area. He said none of the site traffic would go through that neighborhood. He noted that the development would include measures to discourage people from flowing through the residential area from the site.

Mr. Kimball said the site was in a bit of a low spot, and said this meant that even though the building, from grade was 34 or 41 ft height, the effective sight line was 10-12 ft less than that. He noted that the lot was not currently totally undeveloped, and said there were some old single family structures there in need of replacement. He said his choice had been to renovate what was there, or to do something new that was consistent with the Ordinance. He said mixed use multi-unit development was a permitted use when he had first looked at the possibilities, and said this was subsequently changed to be a conditional use, which allowed additional oversight.

Mr. Kelley asked Mr. Kimball if he was a member of the Rental Housing Commission., and he said he was not.

Mr. Kimball said they were planning to locate the business office in the building, so there would be a manager person there during business hours. He said the plan was to have after hour issues handled by a resident supervisor, and he provided details on the responsibilities this person would have.

There was further discussion on property management options for the development.

Mr. Kimball said the lease he used was pretty comprehensive, and also noted that he had a history of enforcing lease provisions. He said he was well aware of these issues, and noted that he had managed properties on this site.

Mr. Gooze said that regarding security issues, it would behoove Mr. Kimball to speak with landlord Mike Davis. He provided details on this. He noted that he and his wife had previously experienced problems from a property nearby that had been used illegally, and in an unsupervised manner.

***Councilor Needell MOVED to continue the public hearing to May 23<sup>rd</sup>, 2007 Doug Greene SECONDED the motion, and it PASSED unanimously 7-0.***

***Annmarie Harris MOVED to extend the meeting past 10:00 to 11:00 pm. Wayne Lewis SECONDED the motion, and it PASSED unanimously 7-0***

- X. Acceptance Consideration on an application for Subdivision** submitted by Arnet Taylor, Durham New Hampshire, on behalf of Katherine Paine, Durham, New Hampshire, to subdivide a property into 3 pork chop lots. The property involved is shown on Tax Map 11, Lot 35-1, is located at 51 Durham Point Road, and is in the Residence C Zoning District.

***Richard Kelley MOVED to continue the Acceptance Consideration an application for Subdivision submitted by Arnet Taylor, Durham New Hampshire, on behalf of Katherine Paine, Durham, New Hampshire, to subdivide a property into 3 pork chop lots to June 13<sup>th</sup>, 2007, at the request of the applicant. Wayne Lewis SECONDED the motion, and it PASSED unanimously 7-0.***

- XI. Deliberation 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.

Mr. Kelley noted that he had not been at the previous Board meeting, and asked if when public testimony was taken at the public hearing, any concerns were raised.

Mr. Campbell said there were only members of the public who had spoken were in favor of the project. There was discussion on this, and it was noted that this should be added to the Findings of Fact.

There was discussion about the fact that there had been some discrepancy regarding the exact square footage of the building, and it was agreed this would be resolved before the final sign off.

***Richard Kelley MOVED to approve the Findings of Fact and Conditions of Approval on the Site Plan Application submitted by David E. Hills, Hills Family Trust, Durham, New Hampshire to rebuild and enlarge a farm stand building, as well as the accompanying site plan revised on April 18 2007 entitled "Site Plan for Emery Farm, Piscataqua Road, Durham New Hampshire". Wayne Lewis SECONDED the motion, and it PASSED unanimously 7-0.***

**XII. Other Business**

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

Mr. Parnell said there had been a minor change needed to the provisions, and Mr. Campbell had worked on them. He also noted that on page 14, at the bottom, one further change was needed. He said it should read “Shall use as guidance for best forest management practices ‘Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire’ DRED 2004 as amended.....” He said this same change needed to be made each time the wording occurred.

Councilor Needell said they should probably delete in that same sentence after DRED the wording “..and Basal Area Law, RSA 227-J:9” . Chair McGowan suggested that on page 14, in the same bottom paragraph, it should read “Basal Area Law RSA 227-J:9”.

There was discussion that these draft provisions would now have to go to public hearing, and then would go on to the Town Council, It was agreed that the public hearing would be held at the June 13<sup>th</sup> Board meeting.

***Councilor Needell MOVED that the public hearing be held on the Draft Forestry/Timber Harvesting provisions, on June 13, 2007. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.***

#### **C. Set date for upcoming Council meetings.**

It was agreed that extra Board meetings would be held on May 30<sup>th</sup> and June 6<sup>th</sup>.

## **XII. Minutes**

### March 28, 2007

**Page 6** - the motion in the third paragraph from the bottom should say Steve Roberts reopened the Public hearing.....”. Also remove wording “..to March 14, 2007 at the request of the applicant”

**Page 25**, The vote of the motion in the middle of the page should read “..FAILED 2-5..” Also, remove comments “PLEASE CHECK WHO VOTED HOW ON THIS MOTION”

**Page 27**, the first vote on the page should read “....FAILED 2-5.....”. Also, remove comments “PLEASE CHECK WHO VOTED HOW ON THIS MOTION”

***Lorne Parnell MOVED to approve the March 28, 2007 Minutes as amended. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.***

### April 4, 2007

Page 14, under February 21, 2007 Minutes, should read “... PASSED 6-0-1..”

***Councilor Needell MOVED to approve the April 4, 2007 Minutes as amended. Richard Kelley SECONDED the motion, and it PASSED unanimously 5-0.***

### April 11, 2007

Page 10, under Agenda Item V, - bottom of page, remove the wording “The motion PASSED 4-3,

with Steve Roberts, ....” That motion is, and should be on the next page.

***Councilor Needell MOVED to approve the April 11, 2007 Minutes as amended. Richard Kelley SECONDED the motion, and it PASSED unanimously 5-0.***

### **XIII. Adjournment**

\_\_\_\_\_ *Moved to adjourn the meeting. The motion was SECONDED by \_\_\_\_\_ and it PASSED,*

Adjournment at 11:10 pm

Victoria Parmele, Minutes taker