

**These minutes were approved at the PB meeting of August 29, 2007**

**DURHAM PLANNING BOARD  
WEDNESDAY, JULY 11, 2007  
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL  
7:00 P.M.**

**MEMBERS PRESENT:** Chair Bill McGowan; Vice Chair Lorne Parnell; Secretary Susan Fuller; Richard Kelley; Richard Ozenich; Councilor Needell

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

**MEMBERS ABSENT:** Steve Roberts; Councilor Diana Carroll; Annmarie Harris

**I. Call to Order**

**II. Approval of Agenda**

*Richard Kelley MOVED to approve the Agenda as submitted. The motion was SECONDED by Richard Ozenich, and PASSED unanimously 7-0.*

**III. Report of the Planner**

Mr. Campbell said as the Planning Board had agreed at the recent quarterly planning meeting, anything that came in after Friday, the week before a meeting, would be put in a white envelope and provided to Board members at the meeting itself. He reviewed the contents of the envelope, some of which related to current applications before the Board, and others that related to various planning issues the Board was considering.

He said that on July 2<sup>nd</sup>, the Council had passed the proposed forestry changes to the Zoning Ordinance on first reading, and said the public hearing on these proposed changes would be held on July 16<sup>th</sup>.

He said he had met recently with Conservation Commission Chair Cynthia Belowski, and they had agreed that there would be a joint meeting with the Planning Board. He suggested some possible dates for this, and said the Board should decide on this. He noted that he had received the conservation subdivision movie, which could be shown at the joint meeting.

Mr. Campbell said that Scott Hogan, the attorney for the abutters to the Cuthartes development property, had been given the authority to appeal the recent Board decision on this application. He said he was currently providing Attorney Hogan with information relating to the application.

Councilor Needell said there had been discussion at the recent Council meeting regarding working out a process between the Planning Board and the Conservation Commission concerning reviewing conservation subdivision applications. He said the Council had passed along a recommendation to have

the Planning Board work with the Conservation Commission on a way to deal jointly with the conservation subdivision process.

Chair McGowan said the Board had a busy agenda, and said he would like to stay within a definite time frame. He said if they ran out of time for specific agenda items, these items would be continued to future meetings.

**IV. Continued 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.

Ms. Fuller and Mr. Ozenich recused themselves for this agenda item. Chair McGowan said Mr. Greene would fill in for Ms Fuller.

Engineer Reuben Hull spoke before the Board, and said he was there to update the Board on the status of the application, and to explain the plans that had been submitted at the present meeting. He said he didn't expect the Board to review these plans in detail that evening.

He said an ecologist had walked the site and had done an ecological assessment/natural resources inventory. He said the information from this was on the two updated plans that had been submitted, and in a report. He said the assessment showed that the environmentally sensitive, significant items such as wildlife corridors, specimen trees, etc. were outside of the area where the development was proposed.

Mr. Hull said plan S2 showed primary and secondary open space areas, and he provided details on this, noting among other things that he had previously misspoken in saying there were some steep slopes on the property. He said there were some moderately steep slopes on the property, and said these were used correctly in the calculation of usable area. He said this did have an effect as to how the applicant applied the primary open space. He said S2 now also contained the ecological information.

He next went through the four step process laid out in Section 9.08 of Subdivision Regulations that was used in designing the conservation subdivision. He said that because of the nature of the lot, and the way the primary and secondary areas were overlaid on the site, the applicant was still requesting a waiver in order to allow two areas of somewhat poorly drained soils to not be included in the primary open space area. He noted that no wetlands or wetland buffers were impacted by this design.

Mr. Hull said the areas for which the waiver was being requested were close to the road, and away from the primary conservation areas and more ecologically sensitive areas of the lot. He also said that when all the common open space area was added together, what was proposed was 58,000 sf more than the minimum that was required. He said what was being proposed was a mitigation of taking 22,000 sf of somewhat poorly drained soils that it was felt were less ecologically sensitive, and replacing them with the same amount of land that was not within the primary conservation area.

He said if the Board chose to allow this waiver, conditions could be crafted so that not everyone could ask for this kind of exchange in the future. He said this was a unique situation, due to the configuration of the lot and the way the somewhat poorly drained soils lay on the land as compared to the better ecological

areas of the site.

Mr. Hull said a second issue where there had been a difference of opinion had to do with the disposition of the open space on the property. He said they were now proposing that anything in the common open space area would be a single separate parcel or two parcels, and would not be attached to the individual lots.

Mr. Hull said another issue to be resolved related to the fact that as part of recently reviewing the Subdivision Regulations again, it had been determined that there were two proposed lots on Canney Road that would have to conform to RB zoning because they would be located on an existing road. He explained that the other proposed lots would be on a private road, so did not have to conform in this way, based on the conservation subdivision provisions. He said the applicant would therefore either have to change the access, with a private stub or loop road, or increase the lot size to 40,000 sf, which resulted in having a portion of the conservation area within a private lot. He provided details on this, and said the applicant would like to address this that evening.

Mr. Hull next went through how the secondary open space was determined, including the prioritization that had been done, based on the ecological assessment. He said it was expected that the Conservation Commission and the Planning Board would go through the list the applicant had developed.. He said the following areas had been identified on the site:

- 1 Wildlife corridors and habitat on the northwest portion of the parcel
- 2 Abutters to the rear, which represented a cultural resource. Mr. Hull said the applicant felt a buffer for those neighbors was at the high end in terms of prioritization
- 3 Stonewalls, - perimeter and interior
- 4 Specimen trees
- 5 Buffer to the front on both sides
- 6 Interior hardwood groves
- 7 Ledge outcrop in middle of road location.

Mr. Hull said that on the basis of the prioritization that had been done, there was 10% more secondary open space (36,000 sf more) than the minimum required. Concerning the ledge outcrop, Mr. Hull said there was physical evidence that in developing the site, ledge outcrops would be created that would make up for the one located in the middle of the road that would need to be removed. He also noted that some remnant sheds still on the property, which were planned for removal, had no historic significance.

Mr. Hull next reviewed the proposed layout of the lots and the roads for the development. He said all accesses had been designed to respect topography, minimize cut and fill, cul de sacs, and minimize impacts on sensitive environmental areas. Concerning the drawing of lot lines with this layout, he said the smallest was 15000 sf., and said the regulations allowed lots as small as 10,000 sf, with Town septic. He noted that the applicant was proposing to use public sewer. He stated again that the open space would be owned in common, with the possible exception of the two lots to the west.

Mr. Hull spoke about additional issues with the application. He noted the issue regarding the culvert crossing Canney Road, and said having talked to the Town Engineer, the applicant would take back its previous offer to reconstruct the ditches. He said Mr. Cedarholm thought this might increase the flow going to the properties on the west side of Canney Road, and said the culvert itself needed to be looked at.

He said Mr. Cedarholm felt that as long as the applicant's lot could deal with the drainage on his site appropriately, the drainage patterns would be left the way they were.

Mr. Hull said the flow tests had been done by the Town, and a letter had been received that there would be no adverse impact from the proposed development on the Town water system. He provided details on this, and said an 8-inch water main had been recommended, which the applicant had done.

He also said he had asked the Town Engineer to prepare a letter that would speak about the proposed subsurface drainage plan. He said the final details weren't worked out yet, but said he would like Mr. Cedarholm to agree the applicant was taking the right approach, and that there could be appropriate engineering for the site.

Chair McGowan asked what the amount of square footage was for the two lots to the west, and Mr. Hull said it was between 15,000 and 20,000 sf.

Mr. Campbell asked that this information be put on the plan. He also noted that the Town Engineer would be away until August 17<sup>th</sup>.

Mr. Kelley noted the plan to minimize cuts and fills, and the overall grading the applicant proposed, and asked if the Board should assume that the road would be constructed before the lots were developed.

Mr. Caldarola said he hadn't thought about that, noting that the normal mode of operation was to post the bond for the improvements, and then proceed with constructing the road and the houses on the road. He said he didn't think he could say that the road would be completed before the construction of the houses.

Mr. Kelley asked what assurances there were that the proposed contours shown on the plan and the associated impact would be what would happen in the field.

Mr. Caldarola said that was a good point, and said he would somehow have to provide a more specific answer. He provided an example of some possible wording for this.

Mr. Parnell said that in the original proposal, the common area included the drainage areas between the houses. He asked if there would now be a different way that those drainage areas would be administered.

Mr. Hull said there would still be drainage easements, which would be the responsibility of the homeowners' association.

Julian Smith said he was the Town Council representative to the Conservation Commission, and had a letter from Beryl Harper concerning the application. He noted that the fourth paragraph of this letter dealt with the issue of nine separate property owners owning the land of the conservation easement. He said what was now proposed was a tremendous improvement, and he thanked Mr. Caldarola for making this change. He said it would be very helpful if Mr. Ozenich, the Planning Board representative the Conservation Commission, could show this plan with the common open space to the Conservation Commission.

Councilor Needell asked if it was the intent of the Conservation Commission to review this and to offer

feedback.

Mr. Smith said this was not on the agenda for the Conservation Commission the following day, but said the agenda could be amended to review this material if the Planning Board wished. He said he would like the Commission to get both documents if that was the case.

Councilor Needell said he would welcome this response from the Conservation Commission, and other Board members agreed.

Mr. Kelley asked Mr. Smith if he had been part of the discussion that produced this letter and Mr. Smith said he had been. Mr. Kelley noted that the last bullet point on the first page of the letter from the Conservation Commission suggested the elimination of the buffer zone along Bagdad Road, and he asked what the thought had been concerning this. He noted that this would seem to contradict Section 175-154 of the Zoning Ordinance regarding dimensional standards, and he read from this table.

Mr. Smith said part of the culture of Durham as these roads were developed was to have individual curb cuts. He said one of the things that was discussed by the Conservation Commission was the idea that it might make more sense to have the houses closer to the road, noting that many of the houses on the road didn't have the buffering. He said the Commission had discussed the necessity of the loop road, which would require considerable infrastructure, as compared to a more conventional driveway layout. He said this was not a key issue for the Commission, but just something it was asking Mr. Caldarola to consider.

Mr. Kelley said the streetscape buffer was required by the Zoning Ordinance.

Mr. Smith noted that the pattern in the past was to build closer to the road, for all kinds of reasons.

Mr. Kelley said the letter from the Conservation Commission also spoke about the idea of placing one house lot behind another, where there were soils that were more appropriate for building. There was discussion that this was proposed to avoid building on one of the areas of land with somewhat poorly drained soils.

There were no members of the public opposed to the application who came forward to speak at the hearing.

***Richard Kelley moved to continue the Public Hearing on a Conservation Subdivision Application submitted by Joseph Caldarola, Portsmouth, New Hampshire for subdivision of one lot into 9 lots to the July 25<sup>th</sup>, 2007. Councilor Needell SECONDED the motion.***

Mr. Campbell noted that the application would run out on August 28<sup>th</sup>.

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

I.

**V. Public Hearing** on amendments to the definition of Home Occupation, Article II, Section 175-7 of the Durham Zoning Ordinance.

Ms. Fuller and Mr. Ozenich returned to the table, and Mr. Greene became a non-voting member.

***Councilor Needell MOVED to open the public hearing. Richard Kelley SECONDED the motion, and it PASSED unanimously***

Mr. Campbell said this was a Town Council initiative, and explained that the Board could only send the Council a recommendation of what it thought of these proposed changes that the Council had developed, and how they might be changed. It was noted that the time limit for this was July 19<sup>th</sup>.

**Richard Lord, 85 Bennett Road**, said he was not currently self employed, but had been, and might be again in the future. He noted that he had worked with Hewlett Packard, which itself had been started in a garage. He said it was important to keep this in mind, and noted that Durham was a college town. He said they wouldn't want to create a Zoning Ordinance that impeded this kind of commercial endeavor.

He also noted a recent application before the ZBA that had highlighted the problems with the current Zoning Ordinance regarding the home occupation provisions. He said there were several things that remained to be clarified in them, and said it was perhaps better to deal with them now rather than later.

He noted specifically that the definition of "premises" had been discussed by the ZBA. He said the proposed changes clarified this somewhat, and he provided details on this.

Mr. Lord said another thing that needed some thought was the fact that the provisions didn't address home occupations where mail order sales were involved. He said he would also like clarification regarding the wording "employed by..". noting that a lot of people these days worked with contract employees. He said the question would be, if there were five employees that each were on site only once a week, whether this would be the same as one employee being on site five days a week. He also asked whether gathering all employees on site once a month would constitute an illegal act. He noted that this had been an issue with the recent ZBA application.

Mr. Lord said his last point was that as part of the same ZBA application, there was some question regarding code compliance because one of the mechanisms used concerning enforcement was the counting of desks. He said it would behoove the Planning Board to give serious thought as to how to provide the kind of wording that made things that were a problem enforceable, but didn't include arbitrary things like this. He said he would like to make sure the Ordinance encouraged college students to become actively involved in small business development

**Hillary Scott, Davis Ave**, said she was not sure whether she was for or against these proposed changes, noting that there had been no mention of what the actual proposed changes were. She said perhaps in the future, copies could be printed of these kinds of things so members of the public could look at them. After looking at the proposed changes, she asked for clarification concerning Section 175-7 1 e.

Councilor Needell said this was an attempt to balance the impacts of traffic in and out of residential areas, especially in the RA and RB districts, if residents of accessory apartments and employees of home occupations were both going to be allowed for a residential dwelling.

Ms. Scott said this was a more restrictive condition, and said she would be in favor of it.

Mr. Lord said he felt this passage needed a bit more work, to make it easier to understand.

***Lorne Parnell MOVED to close the public hearing. Councilor Needell SECONDED the motion and it PASSED unanimously 7-0.***

Mr. Kelley said he supported the concept.

Ms. Fuller said the wording in Section 175-7 1 e seemed too restrictive, noting they were only talking about the impact of one additional person. There was discussion on this. Ms. Fuller said if a property had 1200 sf, the chances were it would need to be rented to two people.

Councilor Needell said a single family residence could have an accessory apartment, and could have a home occupation. But he said the point of this provision was to not give a particular property extra rights and allow it more traffic than other properties created.

Mr. Kelley said he agreed, and said otherwise they were turning residences into mixed uses. He said there was a place for this, in the downtown area.

There was further discussion on this.

Councilor Needell said the general point with these proposed changes had to do with providing appropriate provisions for virtual businesses. He said the numbers issue the Planning Board was discussing might need to be addressed by the Council, and he said Board members' comments would provide valuable feedback.

There was discussion that the wording "on site.... of products" needed to be clarified. There was also discussion that delivery services and the potential for increased traffic because of this was an issue, and it was not clear how it was handled with these provisions.

Mr. Campbell said the Council's point in developing these changes was not to make the Ordinance more restrictive for business, but to make it easier, with changing times.

Mr. Ozenich noted large parties in town resulted in traffic too.

Councilor Needell said the issue Mr. Lord had raised concerning 5 employees being at the home occupation site once a week, and one person being there for 5 days needed to be clarified.

Mr. Greene said he agreed with Ms. Fuller that if a single family residence had one employee, and there was also the potential for two unrelated persons, there was no need to penalize the property owner.

Ms. Fuller said that was true especially if the goal was to encourage home businesses in Durham.

Chair McGowan noted that the maximum number of people, if there wasn't this restriction, would be 3 people outside the family unit, with 2 unrelated and 1 employee. He said it didn't seem like a big difference from 2 people.

***Susan Fuller MOVED to request that Section 175-7 A-1 e be stricken, under First Class Home Occupation. Lorne Parnell SECONDED the motion, and it FAILED 1-6, with Ms. Fuller voting in favor of it.***

There was discussion that Section 175-7 A-1 e needed to be tweaked a bit more.

***Richard Kelley MOVED to endorse the proposed Ordinance relative to the changes to the definition of home occupation, for inclusion in Section 175-7 of the Durham Town Code, with clarification of some of the language. Lorne Parnell SECONDED the motion, and it PASSED unanimously 7-0.***

**VI. Public Hearing Presentation by the University of New Hampshire on a proposal for the relocation of the AIRMAP air monitoring station at the Thompson Farm off of Bennett Road and for the 7,500 sf addition to the Chase Ocean Engineering Building.**

AIRMAP Air Monitoring Station

University Planner Doug Bencks said the proposal was to relocate the existing facility and enlarge it on an undeveloped portion of University land. He explained that while the air monitoring program was very successful, the program continued to grow. He said the goal was to find a location near the current location but in an area that was more remote and that had certain characteristics that were not necessarily available in an open field.

He said there had been vigorous discussion by the University about an appropriate place for the facility, explaining that the particular research involved required this kind of location. He noted that the University had instituted a land advisory committee because it realized it needed a more rigorous process when talking about new uses of undeveloped University land.

He said this was a facility where the air monitoring equipment would be worked on, and he said the researches did not want to have a significant impact on the site. He said the proposed facility would be a sustainable designed building in order to protect things as much as possible, noting among other things that there would be a composting toilet, and a sink with drainage to a dry well. He said the road was a currently a trail that would be upgraded, and said they would try to limit it to a width of 10 ft. He said they had worked with the Fire Department to make sure there were pullouts if emergency access was needed

Mr. Bencks said they were not anticipating the need for security lighting to be on during non-operational hours. He also said there wouldn't be noise problems, stating that any motors would be located inside the facility. He said there would be no wetland impacts, and said the facility would be set back from the existing pond and the cemetery.

There was discussion about how electric power would get to the site, and Mr. Bencks provided details on this, explaining that no generator would be needed. He also said the tall tower on the site would not require lighting.

In answer to a question from Mr. Kelley, project director Kevin Carpenter described the sampling and maintenance there, and said no pollution would result from this.



Ms. Fuller asked if the plan was to replace the existing AIRMAP building with the new buildings, and Mr. Bencks said there was a possibility that there would be some monitoring equipment at existing site. But he said the intention was that it would be relocated.

Ms. Fuller asked whether all evidence of the facility would be removed if this site was totally abandoned in the future.

Mr. Bencks said one of the University's concerns, based on previous experience, was that equipment involved in exciting work sometimes got left behind. He said the committee had therefore asked for a commitment that this equipment would be taken care of when the project ended.

Ms. Fuller noted concerns about diesel engines running at the existing air monitoring site, and Mr. Bencks said that as long as research went on there, this would not occur.

In answer to a question from Mr. Kelley regarding cylinders that would be on the property, Mr. Carpenter said they would contain standard gases used for calibrating the air monitoring instruments. He provided details on this, and said they would be locked in a building in a way that was similar to how such cylinders were treated in other areas of the campus. He also said there would be a security system on the building.

There was detailed discussion about the proposed towers for the facility.

Mr. Kelley asked if a generator would be required if this fairly remote place lost power, and Mr. Carpenter said due to the nature of the science involved here, they didn't want to use generators. He said if they lost power, they would lose some data, and would quickly get back on line. He said this had happened before, but said they were used to operating in remote sites.

Mr. Kelley asked if the pumps and compressors for the new facility were similar to what was used at the present facility.

Mr. Carpenter said yes, but said at the new facility, they would be quieter because of the containment that was planned. He also said the equipment would be put on mats so it wouldn't resonate. He said there would probably be baseboard heating, but noted that the instruments generated enough heat so that cooling was usually the issue.

Mr. Ozenich asked how the height of the towers that were proposed related to the heights of existing personal wireless facilities.

Mr. Carpenter said there were some 100 ft trees out there, and said the towers would be just above that. He said a balloon had been sent up at the site at 128 ft to see if it could be seen from anywhere, and it could not be seen.

Ms. Fuller asked if with the new tower, the noise level at the old location would be reduced, and Mr. Carpenter said yes. He provided details on this.

Mr. Campbell noted the issue of emergency vehicle pullouts, and asked if there had been discussion with the Fire Department on this.

Mr. Bencks said yes, and said it had been determined that the facility was strategically placed, coming from both directions.

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

**Heather Harvey, 196 Packers Falls Road** asked where the access roads would be located.

Mr. Bencks said they would be located off of the existing driveway, coming in off of the open fields, on the existing pathway. Ms. Harvey asked if emissions regulations applied to the new site, and Mr. Bencks said no.

Mr. Lord said this operation had been a neighbor of his for about a decade. He said if one went to the end of his driveway and listened carefully, he could hear some noise from the pumps, which he said he guessed would go away now in large part. He said there had been some noise issues but they had tried to address them. He said they had been a good neighbor, and said he appreciated the interesting work they were involved with.

**Julian Smith, Packers Falls Road** said he lived about as close to the new location for the facility as Mr. Lord did. He said he was glad to have the AIRMAP station as a neighbor, and fully supported the move. He also said he hoped that in time, the University might clear a trail from the western end of the access road that would go over to the trail system that ran to Mill Road, by the railroad tracks.

#### Chase Ocean Engineering Building Addition.

Mr. Bencks said this program had been growing significantly, and said additional staff and computer capabilities were needed in order to support it. He said a presentation space was also needed in order to show the work that the program was involved with, and also said there was a need for more storage space. He said it would be a two-story facility, which would be attached to the existing building, and would hold up to 25 additional people. He said no additional parking was planned.

He said that over the past two years, even though there had been an increase in undergraduate enrollment, there had been a decline in the number of parking permits required. He said he believed that a lot of the transportation idea spoken about with the Planning Board, such as transportation demand management and alternative transportation modes, had been successful. He said that as a result, there were open parking spaces now on campus, so they could easily accommodate 25 people.

Mr. Kelley asked if the Planning Board could get some hard numbers on parking, noting that the Planning Board was looking at the Town's parking requirements, and Mr. Bencks, said he could provide these.

Mr. Kelley asked if it was anticipated that there would be some difficulty in getting a sewer permit.

Mr. Bencks said no changes were proposed concerning sewer hookup. He said there would be additional

staff, but said the numbers would be within the existing design capacity.

There was detailed discuss between the Board and Mr. Bencks on the issue of sewer hookup.

Councilor Needell asked how many people worked in the present ocean engineering building.

Mr. Bencks said he could get the numbers, but estimated that there would be about a 50% increase in staffing.

Mr. Parnell noted that there was an abandoned propane fuel line on the site, and asked if any environmental issues were anticipated.

Mr. Bencks said the plans concerning this were straightforward, but said the University would address any issues that came up.

Mr. Kelley said if the number of employees was increasing, one would expect that there would be an increase in flow in the sewers.

Mr. Bencks said the University wasn't going to be changing the capacity of the infrastructure in this instance.

Mr. Kelley said it might be a non-issue, but said he believed there was a bottleneck in the sewer out there.

There was discussion about this, with Mr. Bencks stating that the College Road interceptor bypassed the bottleneck.

Councilor Needell asked if this project would tie into the same sewer area that the new dorms would use (the College Road interceptor), and Mr. Bencks said yes.

**Brian Rains, Lee, NH** said he was involved with ocean research, and knew the impact that this information could have, including generating more interest in this subject in students. He said he was in favor of anything that could increase this level of interest.

Mr. Kelley asked if the abandoned fuel lines would be filled and left in place, and Mr. Bencks said yes. He also said he had heard that the building would have a security system, and said perhaps the University should consider putting door sensors on the cylinder storage and pump rooms. He asked that they make sure the pump room was quiet.

Mr. Kelley also noted the testimony the Board had heard regarding the trail system out there

Mr. Campbell said there had been discussion with the Department of Public Works regarding sewer for the Chase building addition, and also said the University would share the numbers on parking permits with the Board.

Chair McGowan said it was also understood that the equipment in the existing building would be removed, and that there would be a fence placed around the towers.

***Richard Kelley MOVED to close the public hearing presentation by the University of New Hampshire on a proposal for the relocation of the AIRMAP air monitoring station at the Thompson Farm off of Bennett Road and for the 7,500 sf addition to the Chase Ocean Engineering Building. Wayne Lewis SECONDED the motion, and it PASSED unanimously 7-0.***

**Recess from 9:15-9:25 pm**

- VII. Acceptance Consideration of an Application for Subdivision** submitted by Arnet Taylor Jr., Durham New Hampshire, on behalf of Katherine Paine, Durham, New Hampshire to subdivide a property into 2 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.

F.X. Bruton briefly described what was proposed, explaining that the applicant originally wanted to have a 3-lot subdivision, but went through the ZBA process and subsequently decided on having 2 lots. He said there were currently five dwelling units and three accessory structures on the property. He said the duplex building was intended to be segregated from the other structures on a separate lot. He said this was a development that had already been built out, and said each house had its own septic system, drainage, etc.

He said that by submitting to the porkchop subdivision process, there would be no further subdivision of the property, and no additional dwelling units allowed. He said that would mean there would be quite a large area that wouldn't be able to be further developed and would become a conservation area.

Attorney Bruton said the applicants had received three variances from the ZBA, one requiring 300 ft shoreline frontage because there was a duplex on the property. He said a condition of this approval was that the applicant couldn't build any accessory structures within 100 ft of the shoreland. He said a variance was also received concerning allowing a potential replacement septic system for the main house to be located within 75 ft of wetlands. He said this was needed in order to get State subdivision approval. He noted that Durham required 125 ft. He said the soils at the proposed location were good for septic systems.

He said the third variance received was concerning the Ordinance's requirement of the calculation of contiguous area of non wetlands area. He said the lots involved were so big that when the 50% requirement was applied, it was hard to meet this requirement.

Mr. Bruton said that during the ZBA hearing, an abutter brought up the issue of the use of the access road, and he said the applicant had contended that this was not an issue that was properly before the ZBA, and was a private matter if at all. He said he understood that the Planning Board had gotten an opinion from its legal counsel on this issue, and had suggested that the Board consider voting to release this opinion. He said no existing development was contemplated and said the restrictions in the porkchop subdivision provisions would severely limit what the applicant could do with the property.

**Bill Doucette, Doucette Survey**, provided details on the proposed subdivision of the existing lot

He said they essentially wanted to add a property line down the middle, and would not be changing the property itself. He reviewed the waiver requests that the applicant was proposing, from Sections 5.02, 7.01, 7.02, 7.04, 7.06, 9.01, 9.04 B, 9.06, and 9.08 of the Subdivision Regulations

Mr. Campbell said he had no problem with these waiver requests. He recommended granting them and said if the Board found the application to be complete, it could schedule the public hearing for the July 25<sup>th</sup> meeting. He said a site walk could be scheduled as well.

Mr. Kelley asked if it was correct that the four car garage was utilized by the lot one duplex. He noted there was a proposed parking easement, so vehicles residing in the duplex were allowed to park in front of the garage which was on lot two.

Mr. Doucette said that was correct.

Mr. Kelley also asked what the purpose of the proposed access and utility easement was coming off of Durham Point Road.

Mr. Taylor said early on there had been discussions about moving the driveway, which currently was a deeded right of way across another lot. He said he had decided to dedicate some land for another driveway in case it ever got to the point where it was needed. He noted that an initial review for the second driveway found there would be a significant impact to a wetland, and significant expense involved in putting it in.

***Richard Kelley MOVED to grant waivers from section 5.02, 7.01, 7.02, 7.04, 7.06, 9.01, 9.04 B, 9.06, 9.08 of the Subdivision Regulations. Lorne Parnell SECONDED the motion.***

Mr. Kelley said he concurred with Mr. Doucette, and agreed with Mr. Campbell's conclusions as well.

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

Mr. Campbell noted that the Board should consider the issue of whether to release the opinion from Town Attorney.

Chair McGowan said he didn't see any reason not to.

***Richard Kelley MOVED that the Planning Board release to the public the email from Attorney Walter Mitchell dated June 10<sup>th</sup> 2007 to Town Planner Jim Campbell in regard to the proposed subdivision reached by an existing right of way. Councilor Needell SECONDED the motion, and it PASSED unanimously 7-0.***

Mr. Campbell said the application was complete.

***Richard Kelley MOVED to accept the Application for Subdivision submitted by Arnet Taylor Jr., Durham New Hampshire, on behalf of Katherine Paine, Durham, New Hampshire to***

***subdivide a property into 2 lots, and to set the public hearing for July 25<sup>th</sup>, 2007. Wayne Lewis SECONDED the motion, and it PASSED unanimously 7-0.***

A site walk was scheduled for July 20<sup>th</sup>, 2007 at 7:30 am.

**VIII. Acceptance Consideration on an Application for Boundary Line Adjustment** submitted by T.F. Bernier, Inc, Concord, New Hampshire, on behalf of the University of New Hampshire, Durham, New Hampshire, and Richard Lord, Durham, New Hampshire to change the boundary line between two lots. The properties involved are shown on Tax Map 14, Lots 34-0 and 35-1, are located on Bennett Road and are in the Rural Zoning District.

**Tim Bernier**, provided details on the need for the boundary line adjustment. He said the University proposed to transfer 2,659 sf of their property to Map 14 Lot 35-1, and said Mr. Lord was graciously agreeing that an equal area would be transferred from Map 35-1 to the land of the University. He said the purpose of this lot line was to give the University enough frontage on Bennett Road to build a new driveway access entirely on their own land. He explained that when the surveying for the former Highland House was done, it was found that the driveway of the site for the new Air Mapping facility cut across a portion of that property.

Mr. Campbell recommended that the Board accept the boundary line adjustment, and said the deliberations on this could take place that evening.

***Councilor Needell MOVED to accept the Application for Boundary Line Adjustment submitted by T.F. Bernier, Inc, Concord, New Hampshire, on behalf of the University of New Hampshire, Durham, New Hampshire, and Richard Lord, Durham, New Hampshire to change the boundary line between two lots. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.***

In answer to a question from Mr. Kelley, Mr. Bernier said he didn't find any restrictions in the deed to UNH From Ina Thompson, the former owner of the Highland House, that precluded the land swap.

Mr. Kelley asked if Mr. Lord was ok with the land swap, and Mr. Lord said he was, and said it seemed like a good solution.

Chair McGowan asked if anyone wished to speak for or against the application. There was no response..

Mr. Bencks and Mr. Lord reviewed the Findings of Fact and Conditions of Approval and said there were acceptable.

***Richard Kelley MOVED to approve the amended Findings of Fact and Conditions of Approval for an Application for Boundary Line Adjustment submitted by T.F. Bernier, Inc, Concord, New Hampshire, on behalf of the University of New Hampshire, Durham, New Hampshire, and Richard Lord, Durham, New Hampshire to change the boundary line between two lots. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.***

**IX. Acceptance Consideration on a Site Plan and Conditional Use Permit** submitted by Northam Builders Inc., Durham, New Hampshire, on behalf of Joyce Terrior to build a multi-unit dwelling structure consisting of 48, 2-bedroom units. The property involved is shown on Tax Map 9, Lot 8-2, is located at 53 Old Concord Road and is in the Office, Research and Light Industry Zoning District.

Engineer Doug La Rosa, representing the applicant, reviewed the process the applicant's design team had gone through so far with the Planning Board and Mr. Campbell concerning this project, noting that the design review phase had taken place at Board meetings on March 28 and April 11<sup>th</sup>.

He said the multi-unit housing development would be located on Route 155. He said two entrances were proposed, about 250 ft apart, and said the applicant was asking for a waiver from the 1200 ft requirement. He said having two accesses was safer, and allowed for smoother traffic flow. He said the two access points were sited to maximize the sight distance, while keeping them as far away from the wetlands, and from abutting properties to the west.

There was discussion that the Board should discuss the proposed waiver regarding the driveway.

***Richard Kelley MOVED to grant the waiver from Section 9.02 A of the Site Plan Regulations, which requires 1200 ft between the driveways. Susan Fuller SECONDED the motion.***

Councilor Needell received confirmation that the driveway cuts would have to be reviewed and approved by NHDOT, and said that if the applicant didn't get that approval, it was back to square one.

There was discussion on the reasoning behind the 1200 driveway separation requirement, with Mr. Campbell noting that these kinds of distances between driveways occurred on some of the Town's more scenic roads. But he said the Master Plan had called for reducing that distance.

Councilor Needell asked if the sight distances for the proposed driveway locations were appropriate.

Mr. LaRosa provided details to the effect that they were more than sufficient. He said one sight distance was 400 ft in one direction, and another was well over 800 ft in one direction.

Mr. Kelley said the Board had been made aware of the need for the waiver during the conceptual phase, and said he believed that in part what was driving this was the potential for public transport to access this facility. He said two drives would be more encouraging for such transport, and would also fire trucks to access all sides of the building.

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

Mr. Kelley asked if the application was complete and Mr. Campbell said yes. He said there would be a few other changes in the plan, but said they didn't affect the acceptance. He recommended

accepting the application, and schedule a public hearing for July 25<sup>th</sup>, 2007.

Councilor Needell said the issue of on site property management would come up for discussion as the process of reviewing the application continued. He said the more information the Board had on this, the better.

Mr. LaRosa said onsite management was planned, but not 24 hours a day.

Councilor Needell said the applicant should be ready to justify that this would be sufficient.

***Richard Kelley MOVED to accept the application for a Site Plan and Conditional Use Permit submitted by Northam Builders Inc., Durham, New Hampshire, on behalf of Joyce Terrior to build a multi-unit dwelling structure consisting of 48, 2-bedroom units, and to schedule public hearing for July 25. Fuller SECONDED and PASSED unanimously 7-0.***

It was agreed that the site walk would take place 9:00 am on Friday, July 20<sup>th</sup>.

**X. Continued Deliberation on Site Plan Application** submitted by Steven F. Kimball, Auburn, New Hampshire for the building of a 16-unit residential and a 4000 sf 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.

**XI. Continued Deliberation on Conditional Use Permit Application** submitted by Steven F. Kimball, Auburn, New Hampshire for the building of a 16-unit residential and a 4000 sf 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. Campbell said he had updated the Findings of Fact and Conditions of Approval and they were in Board members' packets. He also noted that letters were received from the Conservation Commission and the Board's attorney, and also said there had been further input from abutters. He said the big issue was that the Commission had requested that the project be reduced in size from what was proposed. He suggested that the Board start with discussion of the height issue.

Chair McGowan said a 30 ft building height was permitted by right, and what the applicant was proposing was 35 ft. He noted that Mr. Campbell had provided some height criteria as guidelines to refer to.

***Richard Kelley MOVED to grant the waiver on the height restriction. Richard Ozenich SECONDED the motion.***

There was detailed discussion about these building height criteria in relation to the proposed building height, in this particular location. It was noted among other things that it was hard to do a three-story building under 35 ft, without doing a flat roof.

Mr. Kimball said in order to accommodate a commercial space on the first floor, the 35 ft height was needed in order to be able to put the infrastructure on the roof. He said if this were purely a residential development, it might not need to be so high.



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

The Board next discussed the condition use criteria that needed to be met because of the location of the proposed parking area in the wetland overlay district

Mr. Campbell noted that these were the same criteria the Conservation Commission looked at when it went over the application.

Chair McGowan went through these 4 criteria, and provided details to the effect that 1, 2 and 4 were met. He said the applicant had said that criterion 3, regarding minimizing the impact on wetlands, could be accomplished, but said there had been some discussion by the Board as to whether the impact and extent of the parking lot relative to the wetland buffer could be minimized.

Councilor Needell said that right now, the applicant had asked for the condition that the Board reduce the required parking to 1 parking space per 2 occupants. He said minimizing the amount of newly disturbed area would be a good idea. He provided details on the fact that it was hard to argue that the 23 spaces that Mr. Kimball was asking for, for retail parking, should be reduced significantly, or at all. He provided details on this.

He said the plan currently had 47 parking spaces, so 24 spaces were allocated to residents. He said if the Board were to allow the parking to be 1 space per dwelling unit (1 space per three people), this would eliminate 8 spaces. He said he would like the Board to discuss where these spaces might come from, in order to disturb the site as little as possible. He said it wasn't known what the demand for this parking would be.

He noted that the ZBA had recently waived some parking requirements, and he also said there were opportunities to rent parking space beyond this site. He said he assumed, if parking were to be reduced, that one would want to take as many spaces off the back as possible to reduce the disturbance to the wetland buffer as much as possible. He spoke further about possible ways to reduce the number of parking spaces.

Chair McGowan asked if the applicant intended to rent the parking spaces.

Mr. Kimball said given that there were fewer parking spaces than residents in the proposed building, there needed to be an allocation system. He said the spaces would be given out on a first come first serve basis, and he said if there was a strong demand, a fee would be charged to cull out those people who didn't really need the spaces. He said he was not building a dormitory, but an apartment building. He said he was hoping to get graduate students and post graduates, and was not looking for freshman and sophomores.

Mr. Kelley noted that Councilor Carroll had sent an email requesting something similar to what Councilor Needell had requested concerning the number of parking spaces. He said she had asked that the Planning Board work with Mr. Kimball and the Conservation Commission to reduce the parking spaces in the most sensitive areas of the wetland overlay district.

Mr. Kelley also said it was interesting to see that the 3<sup>rd</sup> conditional use criterion for the wetlands overlay district did not talk about detrimental impact to the wetland overlay district or the wetland buffer, but to the wetland. He said there was no mention of the wetland buffer.

Councilor Needell said disturbing the buffer could impact the wetland, so by minimizing the impact on the buffer, the impact on the wetland itself could be minimized.

Mr. Kelley said a possible impact to the wetland buffer from this development was runoff from impervious surfaces that resulted in sedimentation and pollutants. He said the applicant had proposed a state of the art pervious pavement system to avoid. He said a second possible impact on the wetland buffer would be on wildlife habitat for wildlife that relied on that fringe area. He said this habitat would be impacted by the placement of the parking lot, but he said he felt the water quality of runoff into receiving wetlands would be improved, as compared to the existing condition.

Councilor Needell said he agreed there would be an improvement regarding the presently disturbed area, with the pervious surface that was installed. But he also noted that there was no way for the applicant to meet the impervious surface ratio without the pervious surfaces. He said the Board could try to protect the wetland buffer, and said a question was whether there was a compelling reason to allow the amount of parking that was requested.

Mr. Parnell said one space for 2 residents was already a reduction, and said the applicant had also included a pervious pavement system for the development. He said restricting the parking more could be a detriment to the project, and said he wasn't sure this would be offset by the benefits to the wetland area.

Councilor Needell said he was trying to get a handle on whether it was a detriment to the project to reduce the amount of parking, for example, whether it would mean the applicant would be unable to rent the apartments. He said the development would be located in the wetlands overlay district, and this was a conditional use, so it was not outside the Board's right to put conditions on it. He said the question was what the right balance was.

Mr. Kelley said reducing the parking in this way would mean basically chopping off the entire back parking lot, in an area where some of the better soils were located. He said the present plan preserved well the buffer on the northern edge of the wetland and the buffer to the east.

Councilor Needell provided additional suggestions for removal of some parking spaces based on the soil types, and asked what impact this would have.

Mr. Ozenich said the issue was whether the applicant had minimized the impact on the wetland, and said he said he felt he had.

Mr. Campbell said noted the conditions of approval that could be included, concerning pervious pavement.

There was further discussion about what an appropriate number of parking spaces would be.

Ms. Fuller left the meeting at 10:20 pm, and Mr. Greene became a voting member in her place.

***Councilor Needell MOVED that the Board restrict the development to 39 parking space, with one parking space per dwelling unit, (16) and retail spaces as the ordinance requires (23). Mr. Kelley SECONDED the motion.***

There was further discussion on which spaces might be removed, if the Board agreed on this, and whether this would need to be specified in the motion. The Board determined that this did not need to be in the motion and could be discussed after the motion was voted on.

***The motion FAILED 2-5. with Councilor Needell and Richard Ozenich voting against it.***

Mr. Kelley said that unless something radical was proposed, there would not be that great a benefit from the upland, given the configuration of lot and the proximity of the wetland soils. He said he wasn't about to make further reductions on the number of parking spaces.

***Richard Kelley MOVED that there be 47 parking spaces to coincide with the design in the plan in front of the Board. Lorne Parnell SECONDED The motion, and it PASSED 5-2, with Councilor Needell and Richard Ozenich voting in favor of it.***

Mr. Ozenich left the meeting.

Mr. Campbell asked that the applicant show the calculations for the number of retail and residential parking spaces on the plan. (48 residents; 1 parking space per 2 residents = 24 residential spaces.  $8+5 = 13$  retail spaces, for a total of 47 spaces.)

Chair McGowan recommended that the deliberations be continued to a future meeting. It was agreed to move further deliberations on this application to the beginning of the agenda for the July 25<sup>th</sup> Board meeting.

Councilor Needell asked if there would be separate deliberation on the wetlands conservation overlay conditional use, and Mr. Campbell said yes. Councilor Needell said he wondered if perhaps the Board should just finish that section at the present meeting.

The Board agreed to do this.

Mr. Campbell suggested that the Board answer the 4 conditional use criteria for the WCO, and said he would include them in the Conditions for the Conditional Use Permit application. He said he felt the Board needed to say why these criteria were met.

1. No alternative location: Mr. Kelley said the fact that criterion one was met was self evident, looking at the plan. Mr. Campbell noted that the Conservation Commission had agreed with this.
2. Amount of soil disturbance: Mr. Kelley said this criterion was met. He said that looking at the grading plan, the applicant had chosen retaining walls to limit disturbance, and had also

utilized 4:1 slopes for the parking lot.

3. Minimize detrimental impact on the wetland: Mr. Kelley said this criterion was met. He said the applicant had stated that he would perform mitigation activities, and state of the art storm water treatment. He said he believed that there would be no impacts on the wetlands. Councilor Needell said there should be a condition that there would be written maintenance procedures for the pervious surface, and that a wetland restoration specialist would be retained to restore portions of the driveway.
4. Restoration activities: Mr. Kelley said this criterion was met.

***Richard Kelley MOVED to continue the deliberations on the Site Plan Application submitted by Steven F. Kimball, Auburn, New Hampshire for the building of a 16-unit residential and a 4000 sf commercial, mixed-use building on a piece of property to July 25, 2007, early in the Agenda for that meeting.***

Mr. Kimball noted that he would not be able to be at that meeting. He said if there were site issues to be discussed, his engineer could be at the meeting, but he said if there were management issues to be discussed, he should be there.

It was agreed that site issues would be addressed at the July 25<sup>th</sup> meeting

***Lorne Parnell SECONDED the motion, and it PASSED unanimously 6-0.***

## **XII. Other Business**

### **B. New Business**

#### **Request for Technical Review, for property located at 24 Newmarket Road, Durham, NH**

Mr. Campbell explained that the stone house located at this address was for sale, and the person planning to buy it had obtained a variance to change the use from a single family home into a professional office, with a condition that there be no more than 9 employees in the building. He said if more parking was needed at some point, a variance would be required.

Councilor Needell said there were no exterior changes proposed, and said it appeared that the reason for the 9 employee limit was that there were 9 rooms. He said he didn't have a problem with this application going to technical review. He provided details on some of the parking issues involved.

Mr. Kelley said his concern was that if the property were sold, the parking demands might change.

Mr. Campbell said this would have to come back before the ZBA. He said a condition of the current variance received was that there could only be 9 employees.

***Richard Kelley MOVED that the Planning Board does not grant the applicant's request for technical review.***

There was no second.

***Lorne Parnell MOVED to approve the request that this application go for Technical Review. Doug Greene SECONDED the motion.***

Mr. Kelley said he was a big proponent for technical review when there was interior work being done, but said he was not when there were exterior issues involved, such as parking. He said he would like to see the Planning Board review this application under the site plan review process.

There was discussion that the ZBA would deal with the number of parking spaces, and the Planning Board would address where they went.

Councilor Needell said given that there were exterior changes, and that this was in Residential zone, he agreed that this should be treated as a site plan application.

Mr. Campbell said the reason he had suggested that this go to Technical Review was that the Board was busy with a lot of issues, and this application was a relatively easy one.

***The motion PASSED 4-2, with Councilor Needell and Richard Kelley voting against it.***

### **XIII. Minutes**

May 30, 2007

Page 3, paragraph 4, should read "...prepared by Mr. Roseen..."

Page 8. 3rd paragraph from bottom "Councilor Needell noted that it would have been better if this issue had been addressed before the application process had started, but recognized that this was not currently required."

Page 12, 3<sup>rd</sup> full paragraph, should read "Mr. Kelley said he heard what Councilor Carroll was saying..."

Page 12, 2<sup>nd</sup> paragraph from bottom, should read "Councilor Needell said he wanted to be sure the question raised during the public hearing concerning the potential for polluted soils was addressed."

Page 13, 2<sup>nd</sup> paragraph, should read "Mr. Kelley provided comments regarding a letter from Attorney Hogan which made reference to revisions to the design that he had been unable to read before the Planning Board meeting. Mr. Kelley stated that the Board didn't see the information either."

***Richard Kelley MOVED to approve the Minutes as amended. Lorne Parnell SECONDED the motion, and it PASSED unanimously 6-0.***

### **XIV. Adjournment**

***Richard Kelley MOVED to adjourn the meeting. Doug Greene SECONDED the motion, and it PASSED unanimously 6-0.***

Adjournment at 10:30 PM.

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Susan Fuller, Secretary