

This set of minutes was approved at the Planning Board meeting on October 10, 2007

**DURHAM PLANNING BOARD
WEDNESDAY, AUGUST 22, 2007
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL
7:00 P.M.**

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

ALTERNATES PRESENT: Wayne Lewis; Doug Greene

MEMBERS ABSENT: Annmarie Harris; Richard Kelley (arrived at); Councilor Diana Carroll

I. Call to Order

Chair McGowan said Doug Greene would be filling in for Richard Kelley

I. Approval of Agenda

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

II. Report of the Planner

Mr. Campbell first noted the items for the Planning Board that had come in after the packets had gone out

- A memo from Richard Kelley drafted in response to the administrative appeal to the ZBA concerning the Stonemark application. Mr. Campbell said the Planning Board would discuss this under Old Business
- Information concerning the Paine application
- A memo on the Salas site plan review application; also the FOF and COA for the Salas application
- A request for continuance to the Sept 26th meeting from Joe Caldarola; also an extension letter from him
- Report from MJS Engineering reviewing the Rivers Edge application information
- A property management plan from Mike Davis for the Rivers Edge application; also a memo from Police Chief Dave Kurz regarding management of student rental apartments
- An update from Ambit Engineering regarding the Kimball drainage analysis, and another set of plans

Mr. Campbell said the Council had met on Monday and had discussed the most recent draft of the TIF district document. He said there would be a special Council meeting on September 4th to discuss this further, and a public hearing later in September if all went well.

He said there would be a Zoning Rewrite meeting on August 15th to review possible Zoning changes.

He said the ZBA met on August 14th to hear the Administrative Appeal concerning the Planning Board's decision on the Stonemark application. He said the public hearing closed that evening, and said deliberation on the appeal would take place on August 28th, also noting that the hearing might be reopened. He said it would be useful if some Planning Board members could attend this meeting.

Mr. Campbell said the next scheduled Board meeting was September 26th. He said he would prefer not to

wait that long, so would be requesting that a special meeting be held on August 29th. The Board agreed to do this additional meeting.

- IV. **Public Hearing on an Application for Subdivision** submitted by Arnet Taylor Jr., Durham, New Hampshire, on behalf of Katharine 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.

Attorney F. X. Bruton spoke for the applicant. He said this was a fairly straightforward subdivision request, and explained that the applicant wished to subdivide the lot with the duplex off of the rest of the property. He noted that three variances had recently been granted by the ZBA for the property, and also said the Board had granted some waivers at its July meeting. He said a site walk was recently held with the Planning Board.

Attorney Bruton said that at the previous Board meeting, there was a vote to release an email sent by the Board's attorney to Mr. Campbell. He said this opinion was clear that the right of way issue with the abutter was a civil matter, and not a matter for the Planning Board. He said Attorney Mitchell had suggested that there should be a condition that should the access way subsequently not be considered valid by a Court, the subdivision should be considered invalid. Attorney Bruton said he and his client could not accept that, because it would create an issue with the title. He said Attorney Mitchell was supposed to get back to him concerning this, but had not yet done so.

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

Katie Paine, 51 Durham Pt Road, said she and Mr. Taylor were also anxious to solve the issue of the driveway. She said she had made several offers concerning ways to solve the problem, but said she hadn't gotten anywhere. She said she couldn't afford to move the driveway, noting that it would involve a wetlands crossing, which would be expensive if the State would even allow it. She also said the driveway would benefit the Sandberg property more than her property.

Ms. Paine said there had been 5 dwelling units on the property for many years, and well before Ms. Sandberg bought the house. She said nothing would change with the properties if the subdivision occurred. She said she had to maximize the value of what she had, so had dwelling units with people renting them. She said the conditions that had been suggested would be onerous, and would mean she would have to go back to the drawing board. She said she had thought the subdivision was the solution, but said if it was not approved, she would be forced to sell the whole property. There was discussion by some Board members on where a new driveway could go.

Attorney Bruton said the access way had been deeded many years ago. He also said that doing a pork chop subdivision meant there could be no further subdivision of the property and no further dwelling units. He said approving this application would lock in the existing uses there for many years, and said this would be a win-win situation for the Town.

Councilor Needell said he was disappointed that there was no new information from the Board's attorney. He asked Attorney Bruton if he thought a compromise could be worked out concerning the right of way issue. He said he agreed that the right of way issue wasn't before the Planning Board, but said Attorney

Mitchell's suggestion was.

Attorney Bruton said the Board could tell the abutter that there could be an appeal concerning the right of way issue.

Councilor Needell said he would still like the Planning Board to get a response from its attorney.

Chair McGowan asked if any members of the public wished to speak for or against the application, and there was no response.

It was noted that the Board had received a letter from Betsy Sandberg, the abutter who had the right of way going through her property to the Paine property.

Chair McGowan read the letter from Ms. Sandberg. The letter asked the Board to postpone hearing this application until a later date, so she could be involved in the process. She described her concerns, and said that before approving the application, it was imperative for the Board to have a discussion where the parties involved were in attendance so the safety concerns and property rights issues could be addressed.

Councilor Needell said he didn't want the Board to take any action until it heard back from Attorney Mitchell.

The Board agreed that the hearing would be continued to the meeting on August 29, 2007.

Councilor Needell MOVED to continue the public hearing to August 29th, 2007. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

- V. **Acceptance Consideration and Public Hearing on a Site Plan Application** submitted by William & Carrie Salas, Durham, New Hampshire, on behalf of Bruce Mohl & Marian Tucker, Meredith, New Hampshire, for the change of use of a property from residential to a professional office. The property involved is shown on Tax Map 6, Lot 9-4, is located at 24 Newmarket Road and is in the Residence B Zoning District.

Mr. Salas said he currently had a purchase and sale agreement on this property. He said he had received a variance recently for a change of use from single family to professional office, but during that process found out that the property had to meet the parking requirements. He said in doing a plan that included an increase in parking for the site from 5 to 8 spaces, he found that he needed a variance because the side yard setback was exceeded. He said he received this variance,

Mr. Salas also said noted that he thought he had applied for technical review rather than a full site plan review. He described the proposed increase in parking, which would include a handicap parking space adjacent to the building, along with a ramp. He said the existing gravel parking area would be expanded so that it would allow three parking spaces, and said this was the location where the setback was exceeded.

Ms. Fuller asked if they would have to disturb any trees along the side setback, and Mr. Salas said no, although noting that some shrubs would be removed.

There was further discussion on this, and there was also discussion about the turning radiuses for cars in

gravel parking area.

There was discussion that the customer base for Mr. Salas's business was not such that there would be many people coming and going on the property. It was determined that the parking spaces would mostly be for the 4 employees who worked there.

Mr. Campbell said the application was complete.

Steve Roberts MOVED to accept the Site Plan Application submitted by William & Carrie Salas, Durham, New Hampshire, on behalf of Bruce Mohl & Marian Tucker, Meredith, New Hampshire, for the change of use of a property from residential to a professional office, for the property located at 24 Newmarket Road, in the Residence B Zoning District. Richard Ozenich SECONDED the motion.

Mr. Roberts said some conditions would be needed for this application, but he said these things could be discussed as part of the deliberations.

The motion PASSED unanimously 7-0.

Steve Roberts MOVED to open the public hearing on the Site Plan Application submitted by William & Carrie Salas, Durham, New Hampshire, on behalf of Bruce Mohl & Marian Tucker, Meredith, New Hampshire, for the change of use of a property from residential to a professional office, for the property located at 24 Newmarket Road, in the Residence B Zoning District. Susan Fuller SECONDED the motion. PASSED unanimously 7-0.

No members of the public came forward to speak on this application.

Lorne Parnell MOVED to close the public hearing. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

There was discussion as to whether the Board needed to grant a waiver for the gravel parking lot. Mr. Campbell said the Site Plan regulations called for paved parking, but he said the Board could waive this. He also noted that the ZBA had discussed the issue of the turning radiuses of cars that would come out of the parking area.

Mr. Salas said the ZBA had said it wanted to know how the applicants envisioned entering and exiting the site, and he said they had decided to leave this issue to the Planning Board.

Councilor Needell said the Board needed to check the requirements concerning this. He also said he was happy to see the parking area would still be gravel, but he asked whether if the Board granted a waiver concerning this, it should get an opinion as to why anyone should be concerned about having a gravel surface there.

Mr. Campbell said Town Engineer Dave Cedarholm had said many times that the less paved parking there was, the better.

It was noted that the handicap parking space would be paved.

Mr. Roberts said a letter from the Town Engineer and a technical review report should be required.

Councilor Needell asked who would look at the plan to see that the turning radius was adequate, and Mr. Campbell said Code Enforcement Officer Tom Johnson would do this.

Mr. Ozenich asked how snow plowing would be handled, and Mr. Salas said it would probably be best to store it at the back part of the lot.

Chair McGowan said given the questions the Board had about the application, it would request that Mr. Johnson and Mr. Cedarholm provide some input concerning having a gravel versus a paved parking area. He said they might also be able to provide some insight concerning the required distances for entering and exiting.

Mr. Roberts asked if there was an existing technical review report, and Mr. Campbell said the Police Department, the Fire Department and the Department of Public Works all had no comments concerning the application. Mr. Campbell said he had a few issues with the final site plan, but said he was willing to tell the Board that the surveyed site plan requirement could be waived. He listed the details he would, however, like to see on the site plan.

The Board agreed that it would continue to deliberate on this application at the August 29, 2007 meeting.

Steve Roberts MOVED to continue deliberations on the Site Plan Application submitted by William & Carrie Salas, Durham, New Hampshire, on behalf of Bruce Mohl & Marian Tucker, Meredith, New Hampshire, for the change of use of a property from residential to a professional office to August 29, 2007. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

Councilor Needell MOVED to swap Agenda Items VI (Caldarola) and VII (Northam Builders) . Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

WHEN DID MR KELLEY ARRIVE AT THE MEETING - CHECK DVD

- VII. Continued Public Hearing on a Site Plan and Conditional Use Permit** submitted by Northam Builders Inc., Durham, New Hampshire, on behalf of Joyce Terrio 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.

Mr. Kelley arrived at the meeting during the course of discussion on this application.

Susan Fuller MOVED to continue the public hearing on a Site Plan and Conditional Use Permit submitted by Northam Builders Inc., Durham, New Hampshire, on behalf of Joyce Terrio to build a multi-unit dwelling structure consisting of 48, 2-bedroom units, at the property located at 53 Old Concord Road, in the Office, Research and Light Industry Zoning District. Councilor Needell SECONDED the motion, and it PASSED unanimously 7-0.

Barry Guy, of Tritech Engineering said the property management plan had been provided, and also said the Police Chief had sent a letter stating that he had no problems with it. He said he hadn't heard from the Fire Department on this yet. He said an updated drainage plan had been provided on August 13th, and had gone to MJS Engineering for review. He said a letter had been received back from them, and said he felt that most of the issues raised in it were subjective in nature. He said the things from it he thought were appropriate would be incorporated into the drainage plan.

Mr. Guy said there were two outstanding issues, and said one of them was the proposed recreation area. He said this had been provided although it was not required by the Town's regulations. He said the applicant could go either way on this. He said the second issue was UNH bus service. He said there had been continuing discussion with Wildcat Transit, and said he was hopeful that UNH would approve bus service to the apartment building by the time it was available to renters.

Mr. Parnell noted that the Board had just seen the MJS engineering report. He asked if there was anything in that report that Mr. Guy disagreed strongly with.

Mr. Guy said he didn't see anything blatantly wrong, but said some of the things in it were the opinions of that firm.

There was discussion that there was a discrepancy concerning the sizes indicated for the storage tank, and Mr. Guy said he would look into this.

Councilor Needell said that given the letter from Chief Kurz and Mr. Davis, the Board couldn't ask for a better property management plan. Mr. Campbell agreed that Mr. Davis was an excellent landlord.

Councilor Needell asked if Mr. Davis's company would be providing the property management service, or if the applicant had simply used Mr. Davis's property management document as a model.

Mr. Guy said he wasn't sure about this, and there was discussion.

Councilor Needell noted that for a different application, the Board had recently discussed the idea that a property management plan could be subject to review by Town officials. He asked if a condition like this would cause a problem with this application, and Mr. Guy said he didn't think so. Councilor Needell asked what options the Town would have if there was some dissatisfaction with the management of the property once the plan was approved,

There was discussion about this.

Concerning the recreation area issue, Mr. Campbell said he had suggested that the applicant provide one, but had not said it was required. He explained that the MUDOR district, the Zoning Rewrite process had envisioned that multi-unit buildings would go in there, but he said they hadn't been envisioned for the ORLI district. But he said he thought it would be unrealistic to think there would be 96 students living out there and that they would not congregate.

He said the proposed location for the recreation area was probably a good one, noting that an abutter was NHDOT. He also said the applicant had changed the lighting scheme to make sure there would be enough light. He said no keg parties would be allowed, and said this would be enforced. But he said the Board could certainly decide that there would not be a recreation area, if it wanted to.

Ms. Fuller said the idea of a recreation area was a good one. But she said she could envision recreational activities out there moving from the recreational area to the river, including beer parties in the woods. She said it would be good if as part of the property management plan, the site could be patrolled. She noted that the property went all the way to the river.

Mr. Kelley said he agreed with Ms. Fuller.

Councilor Needell said he had been somewhat taken aback by the concerns of the neighbors about the recreational area. He noted that there was a noise ordinance, and said violations could be reported. He said a recreation area was a nice thing to offer the residents of the apartment building.

Mr. Guy noted that the lease precluded beer parties and organized sports without the written consent of the property manager.

Board members agreed that since they had just received the storm water material that day and hadn't really had the time to review it, the public hearing should be continued.

Lorne Parnell MOVED to continue the public hearing on a Site Plan and Conditional Use Permit submitted by Northam Builders Inc., Durham, New Hampshire, on behalf of Joyce Terrio to build a multi-unit dwelling structure consisting of 48, 2-bedroom units property for the property located at 53 Old Concord Road, in the Office, Research and Light Industry Zoning District to August 29, 2007. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.

Mr. Campbell said there weren't many outstanding issues left for this application.

Mr. Guy said he had a letter from Town Engineer Dave Cedarholm concerning the drainage plan, which indicated that he didn't have a problem with it.

Mr. Campbell noted for Mr. Guy that the parking spaces on the north side were labeled wrong.

Chair McGowan noted that Mr. Kelley had arrived at 8:00 pm, and would now be a voting member.

VI. 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.

Mr. Ozenich and Ms. Fuller recused themselves. Chair McGowan appointed Mr. Greene in place of Mr. Ozenich, and Mr. Lewis in place of Ms. Fuller.

Mr. Caldarola said he had submitted another plan the previous Friday, but had later requested a continuance, explaining that he and Mr. Hull hadn't had enough time to fine tune this plan. He said he shouldn't really have submitted it, and said he would like to continue the hearing to the meeting at the end of September.

Chair McGowan asked at what point the application process got too cloudy to continue it.

Councilor Needell said he shared the same concern. He said the Board was currently working through what was essentially the conceptual design phase, yet they were actually in the middle of the application process. He said he wondered if it would be better for everyone if the slate was wiped clean and they started over. He noted that Mr. Caldarola was trying hard to accommodate the Board, but he said there had been a mutual lack of attention to the details of how this process should be done. He said he thought it might expedite the process rather than prolong it if the Board were to deny the

application and recommend that the process start over, and then move through the process the way the Board had learned it should move through it.

Mr. Kelley said he thought that if the Board did this, they would end up with something similar to what they had now with this application. He said there was the vernal pool issue, the lots on Canney Road, and the issue of weighing the buffers against the somewhat poorly drained soils. He said he was ok with this tradeoff, and for the most part was ok with the way the resource areas had been prioritized. He said if the applicant wanted to go the route that Councilor Needell had suggested, he could support that, but if he didn't want to go that route, he could definitely support that.

Chair McGowan said the Planning Board and the applicant had gotten to this point mutually, and said the question now was how to continue the process

Mr. Roberts said he supported Mr. Kelley's statement. He said this was a complex area to develop, but he said the applicant had the right to develop it. He said there was a complex engineering layout involved, and said the more one looked at it, the more things could be changed around.

Councilor Needell said Mr. Kelley's statement was right on concerning the prioritization process, but he said the Board didn't have a plan in front of it. He said what Mr. Kelley had described was the conceptual design phase, and said that was what they all had been involved with. He said the application had changed tremendously over time, and he said that constant evolution might be appropriate for the conditional use process. But he said he wasn't sure it was appropriate for a permitted use and a conservation subdivision. He said he would rather say that they were just about done with the conceptual design phase.

Mr. Parnell said the Board had seen the application and a plan, and then there was the public hearing where people raised some issues. He said the applicant made some revisions as a result of this, and said he thought this was the way things should work. He said he would go along with what Councilor Needell had said if what the Board was seeing now was significantly different, but he said if it was not, he didn't want to have to start over.

Mr. Kelley agreed, and said he felt the Board could move forward with this application.

Mr. Campbell said the Board had recently gone through the complete, 4 step design review process concerning this conservation subdivision application. He said it might change a bit more, but not much. He noted that there were quite a few details that needed to be updated, and said he thought the Board would be ready to look at the formal application on August 29th, even if this was happening after it should have happened.

It was determined that Mr. Caldarola was ok with an extension of the deadline on the application.

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 lot, for the property located at the corner of Bagdad Road and Canney Road, in the Residential B Zoning District to Aug 29, 2007. Doug Greene SECONDED the motion.

Mr. Kelley said one of the things the Board had previously discussed was the idea of having Town Engineer Dave Cedarholm weigh in on the drainage issues.

Mr. Campbell said Mr. Cedarholm was aware of this.

The motion PASSED unanimously 7-0.

Ms. Fuller and Mr. Ozenich returned to the table.

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

IX. Continued Deliberation on a Conditional Use Permit Application submitted by Steven F. Kimball, Auburn, New Hampshire for the building of a 16-unit residential and a 4000 square-foot commercial, mixed-use building on a piece of property. 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 drafted Findings of Fact and Conditions of Approval for the application. He noted that he hadn't been at the previous meeting, where this application was discussed. He said he had learned that the Board had discussed the property management issue in detail at that meeting, and that Mr. Davis had spoken on this issue as well at that meeting.

He said the Board needed some clarification on the security issue, in terms of the days and times when it would occur. He said he wanted to see if he had captured what the Board wanted in the draft Conditions of Approval. He also said he had provided Mr. Kimball with a copy of the lease used by Rivers Edge apartments.

Mr. Campbell said he had discussed the impact fee issue with Mr. Kimball. He said a waiver could be requested for this, and said he would go over this issue with the Board. He said he didn't see a problem with waiving the school impact fee, mainly because this was going to be a student housing complex. But he said a condition could be developed that said if it turned out that apartments were rented to families, the impact fee would be assessed at that time.

Mr. Campbell also discussed with Mr. McGowan the idea of continuing the fence along the Dimambro property, which had been discussed at the previous meeting.

Councilor Needell said he didn't see a condition concerning the limitation on the hours that a retail establishment could be open.

Mr. Kelley suggested that #4 of the Conditions of Approval (concerning property management) could say that if problems persisted, the conditional use permit could be revoked. There was discussion as to whether there had to be an explicit statement concerning this.

Councilor Needell said he had talked with Administrator Selig regarding the idea of a review process concerning property management that involved Town staff. He asked who would facilitate this process, and who would arbitrate if there was disagreement between the Police Chief, the Fire Chief and the Code Enforcement officer at some point.

There was discussion about this, and it was agreed that the plan would be approved by the Town Planner,

after receiving advice and consultation with the other staff members. Board members agreed that it made more sense to have the Town Planner do this than to have the Town Administrator do this, because the planner would generally be more familiar with the situation.

Mr. Ozenich said the Conservation Commission had asked whether the Planning Board would reconsider its decision on the number of parking spaces that would be provided.

Planning Board members who had voted in the majority on the motion concerning this said they were not interested in reconsidering this vote.

Mr. Kimball said he had an update to provide to the Board concerning the project that might be relevant to that issue. He said he had delivered a revised plan that day, which reflected the fact that an engineer for the project had tried to address as many outstanding issues as possible. He said one of the things that had come out of this was a change to the rear parking area. He said because of the previous reduction in parking, it turned out that the island structures were no longer required, which brought the rear lot line another 6 ½ ft out of the wetland buffer, and away from the neighbors. He said this also meant there would be several hundred feet less of disturbance of the buffer.

Mr. Kimball said another fact that was relevant to parking was that he had found out that the University's parking regulations didn't allow anyone living within a mile of Thompson Hall to get a parking permit from the University. He said the question therefore was where students living at the apartment building could keep their cars. He asked who he needed to check with to find out about this, and there was discussion.

Mr. Kimball also said he had additional material to provide concerning impact fees and property management.

Chair McGowan said the Board had received a revised drainage analysis, and Mr. Kimball noted that there were no significant findings. He said the engineer had re-run the analysis based on the change in parking. He also said the material from Rob Rozine had been included.

There was discussion about what the square footage of pervious pavement was now, with the change in parking, and it was noted that this information needed to be put on the plan.

Councilor Needell asked whether a future owner of the property could potentially see 24% impervious on the site plan, and say he/she was allowed to use 50%, given the Zoning Ordinance. He suggested that perhaps there could be a condition that there would be no increase in impervious surface in the future.

Mr. Kelley said he supported that idea, and the Board agreed this condition would be included for the site plan and for the conditional use permit.

Mr. Kimball noted that the pervious pavement was part of the conditional use, so to ask for a change in this would invalidate the permit.

Chair McGowan asked if Board members were ok with the condition concerning security.

Councilor Needell noted that the way this was worded, the owner could request a change to the plan, but it didn't say the Town could request a change.

Mr. Kelley asked if Mr. Kimball had requested waiver concerning impact fees, and Mr. Campbell said yes. Mr. Campbell said the project didn't involve any capital outlay for the Town. He noted that Mr. Kimball couldn't discriminate and not rent to people other than students, and said if there was in fact a family that moved in, the impact fee could be assessed at that time.

Mr. Kelley noted that the letter Mr. Kimball had provided concerning waiving the impact fee had referenced a 6 year time limit concerning the fee, and he said this related to the provisions in the Town's impact fee ordinance.

Mr. Parnell asked if the condition Board members were proposing concerning the impact fee could be considered discriminatory, and there was discussion about this.

Councilor Needell said he had researched the meetings where the idea of an impact fee ordinance was discussed, and said it didn't look like student housing had been taken out of the equation.

In answer to a question from Mr. McGowan, Mr. Campbell said impact fees were usually assessed at the time of approval of an application, and were collected at the time of the certificate of occupancy. Chair McGowan asked how it was known when a family with kids moved in, there was discussion on this.

Mr. Roberts spoke about declining birth rates, and increasing tax rates in New Hampshire. He questioned the idea of having to hunt after children living in Durham.

Councilor Needell noting that an analogy had been made concerning the waiving of impact fees for the Stonemark application, but said that was a different situation, given the 80/20 split. He provided details on this. He said he wondered if a condition concerning the impact fee was appropriate or in any way enforceable in this case. He said there was nothing in this situation that required that these would be student apartments, and said he just wanted to be sure that the Board would not be defeating the purpose of the impact fee.

There was further discussion on this issue.

Richard Kelley MOVED to accept the application for a waiver of impact fees for the proposed mixed use development at 20 Strafford Ave. Richard Ozenich SECONDED the motion.

Mr. Kelley agreed there was nothing that said this would be student housing, but said he felt this was the way things would go.

Ms. Fuller noted it wasn't a big project. But she said Councilor Needell did have a point.

Councilor Needell said the impact fee would be \$32,000. He said this facility probably wouldn't have an impact on the schools, and said he agreed with the concept that it shouldn't be subject to the impact fee. But he questioned whether a condition concerning the impact fees in this application made sense.

There was further discussion on this.

Susan Fuller MOVED to amend the motion to omit #2 as a condition of the waiver that the applicant accepts that should one or more of the units become occupied by children attending the local public

school within 6 years of initial occupancy, the impact fee will be assessed to those units at the time the occupancy begins. This 6 year time limit is consistent with Section 75-12 of the Durham Town Ordinance. Councilor Needell SECONDED the motion.

Ms. Fuller said she thought it was highly unlikely anyway that there would be children in the apartment building.

Councilor Needell said his concern was the enforceability of this condition.

The motion PASSED unanimously 7-0.

The original motion as amended PASSED unanimously 7-0.

Mr. Kelley said there should be a Finding of Fact that the impact fee had been waived.

Mr. Kimball passed out a revised lease agreement. He noted that he had received the property management documents used by River's Edge Apartments. He asked if it was the Board's intention that both the property management document and the lease agreement would be part of the plans that needed to be reviewed before changes could be made.

There was detailed discussion about this by the Board.

Councilor Needell said his understanding of what was being required was that the property would be managed by a reputable, dependable agency entity, and that there would be a plan that included details as to who was responsible for management of the property, and how this would work. He said he hadn't anticipated putting in the details of the arrangement between the owner and tenants concerning behavior and enforcement of the lease. He said he felt this went beyond what Town staff should be concerned with.

After further detailed discussion, it was agreed that the Board would not be requiring that Mr. Johnson enforce the lease agreement. Mr. Campbell said a model lease agreement was something that he could have on file, and suggest for rental property owners.

Mr. Kelley said Chief Kurz had mentioned the importance of the lease. He said he expected that the appropriate Town staff would at least read over the agreement, noting that it was an important piece of the security and management plan.

Ms. Fuller agreed, and said it could only help if Town staff had these documents in front of them.

Mr. Roberts said he was concerned about how bulky waste would be disposed of, and Mr. Kimball said the lease agreement stated that the tenants would coordinate with the building management for removal of those items. He said there would be a fee for this.

Mr. Kimball also explained the reason for having both a rental agreement and a set of rules and regulations. He said the lease was primarily a financial agreement, and could change, but he said the rules and regulations contained the standards of conduct. He said he didn't feel the enforcement language in the River's Edge agreement was strong enough, so he had added an provision that laid out the amount of time a tenant had to pay for a violation, and the consequences if the fine wasn't paid.

He said he was still looking at different options for providing security, and explained some of the things he was thinking of. He said he would bring this forth in the future subject to approval.

Chair McGowan said the language received that evening concerning this documentation definitely seemed to cover what the Board had asked for two weeks ago.

Mr. Parnell said the lease agreement was between the tenant and the landlord, but said he thought the rules and regulations should be part of the package, to be at least examined and approved by the Town Planner. There was discussion on this.

Mr. Kelley agreed that the lease agreement was between the owner and the tenant. He said he would like to see the Zoning Ordinance in the future spell out what should be in the security and management plan.

There was further detailed discussion on the process that would be involved, and whether the Board was requiring a review of the agreement by the Town if it changed. There was discussion that the Police Chief had mentioned the idea of having a parental signature on the lease.

Chair McGowan noted that there had been discussion on the fence issue.

Mr. Gooze said were still some logistical issues, but said there was agreement to work things out with the fence. He said he didn't think there needed to be a condition concerning this.

There was further detailed discussion about items that should be included in either the Findings of Fact or Conditions of Approval for the applications.

It was agreed that the Board would vote on the applications that evening.

Recess from 10:00 to 10:08

The Board next went over the Compliance checklist for the conditional use permit application, and found that the application complied with all of the items on the checklist. As part of this, there was discussion about the issue of impacts of the proposed development on property values in the surrounding area. Mr. Kelley said the Board didn't generally receive information on that kind of thing.

Councilor Needell also noted that the applicant still had to receive the approvals for water and sewer hookups.

Mr. Campbell said that the Public Works Department had been involved early in the application process. Mr. Kimball explained that the permit applications had been submitted, and said pending some minor work being done by the Town, it was expected that the permits would be received.

CONDITIONAL USE PERMIT APPLICATION- FINDINGS OF FACT

1. The applicant submitted an Application for Conditional Use Permit with supporting documents on March 23, 2007.
2. The applicant submitted on March 23, 2007, a Site Plan entitled "Mixed Use Development, 20 Strafford Avenue, Durham, N.H." prepared by Ambit Engineering Inc., Portsmouth, NH, dated March 6, 2007.
3. The applicant submitted a letter of intent on March 23, 2007.

4. The applicant submitted a HISS map with supporting documentation on March 23, 2007.
5. The applicant submitted a Drainage Analysis prepared by Ambit Engineering Inc. on March 23, 2007.
6. A copy of the flood map for the area was received at the Planning Board meeting of April 25, 2007.
7. A Site Walk was conducted on May 5, 2007.
8. The applicant submitted a trip generation analysis on May 8, 2007 prepared by Stephen G. Pernaw & Company Inc.
9. The applicant submitted a Review of Porous Asphalt Design for Mixed Use Development on May 9, 2007 prepared by Robert M. Roseen, Ph.D.
10. The applicant submitted an exterior architectural drawing on May 11, 2007.
11. The applicant submitted interior architectural drawings on May 11, 2007 prepared by Meehan Architects.
12. Notes from a discussion held on May 16, 2007 with Robert Roseen, Ph.D., were submitted on May 23, 2007.
13. The applicant submitted Draft Lease Provisions for Pine Ledge Apartments on May 23, 2007.
14. The applicant submitted a revised Site Plan and comments on June 1, 2007.
15. Cynthia Belowski, Chair of the Durham Conservation Commission, submitted comments on the project from the Commission on June 6, 2007.
16. The Planning Board is allowing less than the required number of parking spaces. The applicant shall not have more than 47 parking spaces.
17. The Planning Board received an opinion from the Town Attorney through an email dated Friday, June 15, 2007 regarding restrictions allowed by the Conditional Use Permit process.
18. The Planning Board held public hearings on May 9, 2007, May 23, 2007 and June 6, 2007 and heard from interested members of the public.
19. The Planning Board hereby grants a Conditional Use Permit under 175-61 (A)(5) to allow construction of the access and parking in the WCO due to the following: there is no alternative location on the parcel for the parking and access due to the layout of the parcel; the amount of soil disturbance will be the minimum necessary for the construction of the access and parking because of retaining wall and use of 4:1 slopes; the use of porous asphalt in connection with the use of existing drive, and the retention of the services of a professional during and after construction to ensure the proper installation and mitigation of impacts on the wetlands will be undertaken; and restoration activities will be undertaken to leave the site, as nearly as possible, in its existing condition and grade.
20. The project is showing 13,529 square feet of impervious surface coverage. Due to the use of porous pavement, the Planning Board accepts that the applicant has met the impervious surface ratio for the district. No future increases in impervious surface will be allowed.
21. At the August 22, 2007 meeting the Planning Board waived the impact fees.
22. The applicant submitted revised plans and a drainage report on August 22, 2007.
23. The applicant provided a copy of the Rental/Lease Agreement and Rules and Regulations on August 22, 2007.

CONDITIONAL USE PERMIT APPLICATION - CONDITIONS OF APPROVAL

The following conditions shall be met prior to the Signature of Approval on the Site Plan. These conditions shall be met within six months of the signing of these Findings of Fact and Conditions of Approval by the Chair of the Planning Board. If these conditions are not met within six

months, the applicant must come before the Planning Board for review of the conditions:

1. A note shall be added to the Site Plan stating that no beer or malt liquor sales will occur in any retail space.
2. A revised site plan shall be received by the Department of Planning and Community Development showing new parking numbers.
3. The Planning Board granted a waiver of the height requirement of 30 feet, allowing the building to be as high as 34 ¾ feet.
4. A Property Security and Management Plan shall be submitted to include, but not limited to, the following: Rules and regulations of the Pine Ledge Apartments; 24 hour/7 day a week primary contact person to resolve security , or other issues, in a timely and appropriate manner; a secondary contact person shall be identified in case primary contact person is not available; all contact information shall be updated with the Police Department, Fire Department, and Code Enforcement Department on an as needed basis; night time security will be used for the site from Thursday night through Saturday night from 9 PM to 2 AM, with spot night checks periodically Sunday through Wednesday; if problems persists on the property, full time security will be needed 7 days a week from 8 PM to 6 AM until problems are rectified; the plan shall be approved by the Town Planner with the advice and consultation with the Police, Fire, and Code Enforcement Departments and can be reviewed, modified, and updated by the owner with the approval of the above departments.

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

1. These Findings of Fact and Conditions of Approval shall be recorded with the Strafford County Registry of Deeds, at the applicant's expense, within seven (7) days of the Chair's signature on the Plan.
2. All permits must be obtained by the applicant from the Code Enforcement Officer/Building Inspector prior to the commencement of the work.
3. The hours of operation for any retail operations shall be 6:00 a.m. to 10:00 p.m.

Richard Kelley MOVED to approve the Findings of Fact and Conditions of Approval for the Conditional Use Permit Application submitted by Steven F. Kimball, Auburn, New Hampshire for the building of a 16-unit residential and a 4000 square-foot commercial, mixed-use building on the . property located at 20 Strafford Avenue, in the Professional Office Zoning District, as amended this evening. Lorne Parnell SECONDED the motion, and it PASSED unanimously 7-0.

SITE PLAN APPLICATION - FINDINGS OF FACT

1. The applicant submitted an Application for Site Plan Review with supporting documents on March 23, 2007.
2. The applicant submitted on March 23, 2007, a Site Plan entitled "Mixed Use Development, 20 Strafford Avenue, Durham, N.H." prepared by Ambit Engineering Inc., Portsmouth, NH, dated March 6, 2007.

3. The applicant submitted a letter of intent on March 23, 2007.
4. The applicant submitted a HISS map with supporting documentation on March 23, 2007.
5. The applicant submitted a Drainage Analysis prepared by Ambit Engineering Inc. on March 23, 2007.
6. A copy of the flood map for the area was received at the Planning Board meeting of April 25, 2007.
7. A Site Walk was conducted on May 5, 2007.
8. The applicant submitted a trip generation analysis on May 8, 2007 prepared by Stephen G. Pernaw & Company Inc.
9. The applicant submitted a Review of Porous Asphalt Design for Mixed Use Development on May 9, 2007 prepared by Robert M. Roseen, Ph.D.
10. The applicant submitted an exterior architectural drawing on May 11, 2007.
11. The applicant submitted interior architectural drawings on May 11, 2007 prepared by Meehan Architects.
12. Notes from a discussion held on May 16, 2007 with Robert Roseen, Ph.D., were submitted on May 23, 2007.
13. The applicant submitted Draft Lease Provisions for Pine Ledge Apartments on May 23, 2007.
14. The applicant submitted a revised Site Plan and comments on June 1, 2007.
15. Cynthia Belowski, Chair of the Durham Conservation Commission, submitted comments on the project from the Commission on June 6, 2007.
16. The Planning Board is allowing less than the required number of parking spaces. The applicant shall not have more than 47 parking spaces.
17. The Planning Board received an opinion from the Town Attorney through an email dated Friday, June 15, 2007 regarding restrictions allowed by the Conditional Use Permit process.
18. The Planning Board held public hearings on May 9, 2007, May 23, 2007 and June 6, 2007 and heard from interested members of the public.
19. The Planning Board hereby grants a Conditional Use Permit under 175-61 (A)(5) to allow construction of the access and parking in the WCO due to the following: there is no alternative location on the parcel for the parking and access due to the layout of the parcel; the amount of soil disturbance will be the minimum necessary for the construction of the access and parking because of retaining wall and use of 4:1 slopes; the use of porous asphalt in connection with the use of existing drive, and the retention of the services of a professional during and after construction to ensure the proper installation and mitigation of impacts on the wetlands will be undertaken; and restoration activities will be undertaken to leave the site, as nearly as possible, in its existing condition and grade.
20. The project is showing 13,529 square feet of impervious surface coverage. Due to the use of porous pavement, the Planning Board accepts that the applicant has met the impervious surface ratio for the district. No further increases in impervious surface will be allowed.
21. At the August 22, 2007 meeting the Planning Board waived the impact fees.
22. The applicant submitted revised plans and a drainage report on August 22, 2007.
23. The applicant provided a copy of the Rental/Lease Agreement and Rules and Regulations on August 22, 2007.

SITE PLAN APPLICATION - CONDITIONS OF APPROVAL

The following conditions shall be met prior to the Signature of Approval on the Site Plan. These conditions shall be met within six months of the signing of these Findings of Fact and Conditions of Approval by the Chair of the Planning Board. If these conditions are not met within six

months, the applicant must come before the Planning Board for review of the conditions:

1. The applicant shall supply one Mylar plat and one paper copy for signature by the Planning Board Chair.
2. All final plans must be stamped by appropriate professionals.
3. Maintenance specifications shall be provided for porous asphalt.
4. The applicant shall post an acceptable financial surety prior to the signature of the final Site Plan that is approved by the Planning Board. The financial surety shall be in an amount sufficient to ensure the completion of all roads (public or private), water service, sewage disposal, drainage, landscaping and/or any other improvements required by the Town. The financial surety shall be effective for a period mutually agreed upon by the Planning Board and the applicant. The financial surety shall be approved by the Town as to the form and type. The Town will accept cash, pass book savings in the Town's name, letter of credit or a construction surety bond. At its discretion, the Planning Board may require approval of the construction guarantee by the Town Attorney.
5. Maintenance Guarantee--a financial surety to guarantee that all site work was properly done shall be posted by the applicant with the Town. Such maintenance guarantee shall be in an amount of two percent of the estimated project cost and shall remain in force for two (2) years after site improvements are completed. If such repairs are needed and are not satisfactorily installed by the developer, then such guarantee shall be used to complete and/or install such improvements.
6. Trees targeted for harvest/removal shall be clearly marked. Trees to be protected during clearing operations and construction shall be clearly marked to caution operators. The developer is required to notify the Tree Warden to ensure this occurs.
7. A guarantee or performance bond or escrow agreement must be posted in an amount to be determined by the Director of Public Works and approved by the Town Administrator to ensure satisfactory completion of the landscaping plan as submitted and approved.
8. Water and sewer permits must be approved by the Town Council.
9. A note shall be added to the Site Plan stating that no beer or malt liquor sales will occur in any retail space.
10. A revised site plan shall be received by the Department of Planning and Community Development showing new parking numbers.
11. The Planning Board granted a waiver of the height requirement of 30 feet, allowing the building to be as high as 34 ¾ feet.
12. The snow storage areas shall be shown on the Plan.
13. The existing fence across the back of the property will be replaced with a 5' 11 ¾" stockage fence extending the limits of the property line. The fence shall be shown on the Plan.
14. A Property and Security Management Plan shall be submitted to include, but not limited to, the following: Rules and regulations of the Pine Ledge Apartments; 24 hour/7 day a week primary contact person to resolve security , or other issues, in a timely and appropriate manner; a secondary contact person shall be identified in case primary contact person is not available; all contact information shall be updated with the Police Department, Fire Department, and Code Enforcement Department on an as needed basis; night time security will be used for the site from Thursday night through Saturday night from 9 PM to 2 AM, with spot night checks periodically Sunday through Wednesday; if problems persists on the property, full time security will be needed 7 days a week from 8 PM to 6 AM until problems

are rectified; the plan shall be approved by the Town Planner with the advice and consultation with the Police, Fire, and Code Enforcement Departments and can be reviewed, modified, and updated by the owner with the approval of the above departments.

15. Note #1 on Sheet C2 of the Site Plan shall list pervious pavement area.

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

1. These Findings of Fact and Conditions of Approval shall be recorded with the Strafford County Registry of Deeds, at the applicant's expense, within seven (7) days of the Chair's signature on the Plan.
2. An independent engineer shall be on site during preparation and installation of porous asphalt to ensure proper installation, to inspect the site, and provide progress reports to the Code Enforcement Officer. The developer is required to follow the installation and maintenance of porous asphalt. The specifications are hereby incorporated by reference in these Findings of Fact and Conditions of Approval.
3. As-built construction drawings, plan and profile, of all infrastructure improvements shall be submitted in electronic and paper copy at a scale of 1" to 20', including, but not limited to: Underground utilities (sewer lines, storm drains, water lines, electrical, phone, cable, natural gas lines, etc.); Drainage ways, ditching, impoundments, swales, etc.; Driveway and access.
4. Preservation of Natural Features and Amenities - Grading and clearing should be minimized so as to avoid creating undue erosion or interruption of natural drainage ways. Particular attention should be given to natural features suitable as buffer strips between residential subdivisions abutting commercial or industrial areas. Similar natural features that provide buffers between lots, or sections of a development should be preserved to enhance privacy and attractiveness. Provision for clearing may be made for southerly exposure for solar access to dwellings or buildings. Developers shall use construction methods which cause the least disturbance to the environment possible. No cut trees, stumps, debris, junk, rubbish, or other waste materials of any kind shall be buried in any land, or left or deposited on any lot or street at the time of issuance of a certificate of occupancy, and removal of same shall be required prior to issuance of any certificate of occupancy. Nor shall any debris be left or deposited in any area of development at the time of expiration of the performance bond or dedications of public improvements, whichever is sooner.
5. During the development and construction process, wooded natural and non-wooded natural areas will be manipulated to maintain a healthy vegetative cover to maintain the soil structure, minimize soil erosion and enhance the quality of the proposed community. In wooded natural areas, the healthy forest cover will be retained to reduce the amount of stormwater running across the ground surface.
6. All utility piping and wiring shall be located underground.
7. Vegetative cover planted by the applicant within the WCO in restoring the site after construction should be with native species that are consistent with a wetland buffer.
8. Prior to the issuance of a Certificate of Occupancy for a building or structure on any lot within a subdivision, at a time determined by the Code Enforcement Officer, three (3) copies of a certified plot plan shall be filed with the Zoning Administrator. The plot plan shall be prepared by a professional surveyor, engineer, or architect and shall be signed and sealed by the professional(s) preparing the plan. The plot plan shall show the post development conditions of the lot including, but not limited to, the following information:

- A. The actual lot layout, dimensions, and lot area.
- B. The required setbacks for the zone in which the lot is located and the actual setbacks of the building(s) and structure(s) as constructed.
- C. The actual location of the building(s) on the lot including the building footprint and any appurtenant structures such as decks, porches, basement entry door structures, sidewalks, driveways, and aboveground utility facilities.
- D. The actual location of underground utilities such as septic systems, wells, water, sewer, and gas lines, electric, phone, and cable facilities, and stormwater drainage systems.
- E. The location of any significant natural features on the lot such as wetlands or floodplains, any required setback or buffer from the natural feature, and the actual setback or buffer provided.

Richard Kelley MOVED to approve the Findings of Fact and Conditions of Approval for the Site Plan Application submitted by Steven F. Kimball, Auburn, New Hampshire for the building of a 16-unit residential and a 4000 square-foot commercial, mixed-use building on the property located at 20 Strafford Avenue, in the Professional Office Zoning District, as amended this evening. Lorne Parnell SECONDED the motion, and it PASSED unanimously 7-0.

Mr. Kimball thanked the Planning Board, and said he looked forward to bringing an excellent project to Durham.

Mr. Gooze thanked the Board for listening to the neighbors, and said it had made a good decision.

X. Other Business

a. Old Business:

Mr. Kelley noted that he was a Town representative to the Lamprey River Advisory Committee, and said that some time ago, Cynthia Belowski, a member of the Committee had made a presentation to the Planning Board concerning its recent update of the management plan for the Lamprey River. He said if the Board had any comments on the plan, they needed to get to the LRAC by the end of the month. He said that so far, no comments had been received from Durham.

Chair McGowan also noted that the Board was still looking for someone to replace Richard Ozenich as the Planning Board representative to the Conservation Commission.

Mr. Greene said he would consider doing this.

Councilor Needell suggested that in the future it would be useful if the various drafts of Findings of Fact and Conditions of Approval were dated.

b. New Business: Technical Review Requests:

1. Richard Gsottschneider.

Mr. Campbell said the first request for technical review concerned a property that had previously received site plan approval for the construction of a duplex. He said the abutter had had a wetlands delineation done, and as a result of this, Mr. Gsottschneider would be taking out four parking spaces, and moving the building somewhat.

Richard Kelley MOVED to send this matter to the Technical Review Committee. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

2. Mill Pond Center

Mr. Campbell said the Center wanted to be able to put up a tent for a wedding and five additional events for calendar year 2007. He said in each instance, the tent would be placed in the same location.

Mr. Kelley asked whether if this was approved, it would be a for a certain number of people.

Mr. Campbell said the Technical Review Committee would look at this when considering code issues. He noted that there was an occupancy limit based on the square footage of the tent.

There was discussion as to whether there would be checks and balances to make sure each event was managed properly. It was noted that this site was located at a tough intersection, and that the Board had concerns about the traffic there.

Mr. Campbell said that was an issue of concern to Chief Kurz as well.

There was discussion that an assembly permit would be needed and that the Fire Chief would also ensure that there was sufficient access for emergency vehicles. It was noted that even if the tents were approved by the Technical Review Committee, all of the appropriate permits would still have to be received.

Richard Kelley MOVED to approve the request for technical review for a temporary tent at the Mill Pond Center, and the request for the same technical review for five future events in the 2007 calendar year, dates to be determined, with the requirement for traffic control at the intersection with Route 108.

Mr. Campbell noted that the applicant had already addressed Fire Department related issues the last time it had requested permission to use a temporary tent.

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

The Board next discussed a letter Mr. Kelley had written concerning the Appeal of Administrative Decision brought by the abutters to the Stonemark development.

Mr. Kelley said the letter had initially been from him and Chair McGowan, but said the intent now was that it come from the whole Board, if consensus could be reached on this.

Councilor Needell said the discussion on this issue should take place at a Board meeting, not be email, and Mr. Kelley agreed.

There was detailed discussion by the Board on the content of the letter, and it came to agreement on some editing changes that were needed.

Richard Kelley MOVED to have the Town Planner make these edits, and to put the letter on letterhead for signature. Steve Roberts SECONDED the motion, and it PASSED unanimously 7-0.

XI. Approval of Minutes

XII. Adjournment

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

Adjournment at 10: 52 pm

Victoria Parmele, Minutes taker