

These minutes were approved at the January 9, 2008 meeting.

**DURHAM PLANNING BOARD
WEDNESDAY, NOVEMBER 14, 2007
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL
7:00 P.M.**

MEMBERS PRESENT: Chair Bill McGowan; Richard Kelley; Steve Roberts; Richard Ozenich; Lorne Parnell;

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

MEMBERS ABSENT: Susan Fuller; Councilor Needell

OTHERS PRESENT: Town Engineer Dave Cedarholm; Code Administrator/ Enforcement Officer Tom Johnson

I. Call to Order

Chair McGowan said Ms. Harris would be a voting member in place of Mr. Roberts, Mr. Lewis would replace Ms. Fuller, and Councilor Carroll would sit in for Councilor Needell.

II. Approval of Agenda

Richard Kelley Moved to approve the Agenda as submitted. Lorne Parnell SECONDED the motion, and it PASSED unanimously 7-0.

III. Report of the Planner

Among documents at the table for Board members that evening, Mr. Campbell noted the following:

- Updated Findings of Act and Conditions of Approval for the Teeri application; also a letter from the Teeri's attorney
- An updated memo from Joe Caldarola concerning the Sophie Lane subdivision application; a letter from David Frankfurth regarding that same subdivision application; and copy of the drainage report from engineer Rubin Hull concerning the application

Mr. Campbell said the Town Council had recently formalized the Economic Development Committee. He said there was one citizen volunteer position still available on the Committee.

He noted that the Planning Board has set November 28th as the date for the quarterly planning meeting. He said there would be a discussion on energy issues. He also said that Councilor Carroll would like to have a discussion about extending conservation subdivision to commercial

developments in Town. He said he would also like the Board to have further discussion on the proposed Zoning amendments it had addressed at the October 17th meeting.

Mr. Campbell noted that he had been a speaker at a recent community breakfast held at UNH.

Councilor Carroll said she had attended the breakfast, and said Mr. Campbell had given an excellent speech.

Mr. Campbell said that he and consultant Don Jutton were working on the draft agreement for Stone Quarry Drive. He said once the changes were made to it, this would be forwarded to the Council.

He said the Council's 2008 Budget process had started on Monday, and would be continued at the Council's November 25th meeting.

Mr. Campbell noted that Code Administrator/Enforcement Officer Tom Johnson and Town Engineer Dave Cedarholm were present to speak and answer questions regarding the applications before the Board that evening.

Mr. Roberts arrived at the meeting at 7:10 pm

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.

Mr. Ozenich recused himself, and Chair McGowan said Ms. Harris would replace him as a voting member.

Joe Caldarola spoke before the Board, and said he would provide a quick update. He said engineer Rubin Hull was not present that evening. But would be present at the next Board meeting. He said Mr. Hull had completed a precondition plan and post condition plan, and a grading and drainage plan, including a detailed sheet to show the drainage chambers, etc. He also said there was an updated drainage report that went with that plan, but said it was not quite available yet. He explained that Mr. Hull had moved to Albany NY but was still working on it.

Mr. Caldarola said one of the details not completed yet was the design of the drainage swale for the Bradley lot, but said this would be completed soon. He explained that one of the things that was holding this up was that the neighbor across the street had extended the culvert without a permit. He explained that this culvert ran underneath Ambler Way, and drained the yards between Ms. Bradley's yard and the neighbors. He said they needed to get the grade and location of the end of that culvert. He said it wouldn't change the design on Ms Bradley's lot, but was an important part of the analysis in order to make sure the culvert could handle the flows.

He also said Mr. Cedarholm had requested an analysis concerning infiltration of the receiving soils. He said this would be done promptly.

He said the resource impact and conservation plan had been updated to include the format of prioritized natural resources. He said that concerning the open space and stewardship plan, the homeowner association was listed now as the owner of the open space. He said in terms of having teeth in this document, it seemed logical for the homeowner association to submit a letter once a year concerning activity regarding the common open space. He also said it seemed reasonable to have an ecologist, as an outside party, do a site visit every three years.

Mr. Caldarola provided details on a sample deed for transferring a lot, which stated that the owner of a lot “shall not make any use of the open space without the approval of the homeowners’ association.” He also said the homeowner association declaration including wording on ownership of the open space, and the third party report that would be done every three years.

Mr. Parnell noted previous discussion that UNH would review the drainage plan that was developed.

Mr. Caldarola said he had been trying to reach Rob Roseen of the UNH Stormwater Center over the past three weeks, but had not been successful.

Ms. Harris asked what would happen if the homeowners’ association, which would be in charge of the open space, didn’t want to confront a property owner concerning the use of the open space. She asked who would enforce the association’s rules, and if the community would wind up paying for enforcement.

Mr. Caldarola said that was a hard question to answer, and there was discussion.

Mr. Campbell said there would be a stewardship account to pay for monitoring, and said an ecologist would check on things every three years

Mr. Roberts noted the Town had a plan for the Conservation Commission to do this, through a stewardship account to oversee the common open space of subdivisions. He said the intent was that the Commission would do the monitoring, through this account, but said this would be a lot to administer, and said the question was how the Commission could do this efficiently. He provided details on this, and said this issue was currently being actively worked on by Town staff and the Town Council.

Mr. Campbell noted that some emails had been received concerning covenant restrictions for clotheslines.

There was discussion about this, with Mr. Caldarola stating that with the previous subdivision he had developed, clotheslines had to be located in the back yard and not be visible from street.

Councilor Carroll said she had spoken with a resident of Fitts Farm concerning this, and was told the clothesline couldn’t be seen from the road or any other neighbor’s property.

Mr. Caldarola said he would be glad to take out the restriction concerning clotheslines.

Mr. Kelley provided minor corrections to the documents. He also asked a question concerning language in the documents concerning the granting of utility, drainage or other easements, and what happened after the lots were sold and the controlling interest was in the hands of the directors.

Mr. Caldarola said the homeowners' association could only grant the easement on the open space because that was all it would own. He said the water and sewer easement would be owned by the Town. He said there was typically a drainage agreement, where the Town was granted the right to maintain a drainage system if the responsible parties didn't do so, and to bill them for it if they were irresponsible. He said the responsible party in this case was the homeowners' association. He said as part of such an agreement with the Town, the homeowners' association would be charged with maintenance. He said this agreement was intended to protect the Town.

Mr. Kelley said a concern was that after the property was sold, the association could grant an easement to another utility holder if the votes carried the day.

Mr. Caldarola said he didn't know if that could happen, but said he would check on this.

Mr. Parnell asked whether, if Mr. Roseen was not available to review the drainage plan, there was someone else available who could do this job adequately.

Mr. Cedarholm said he didn't have an answer for that question, although stating that there were in fact other individuals working at the Stormwater Center. He noted that he had tried to reach Mr. Roseen himself over the past month, but had gotten no response.

Mr. Campbell said he would go over to the Stormwater Center to see if he could speak with Mr. Roseen.

Mr. Parnell said the drainage issue was a major issue that the Board had discussed before, and said it was impeding the ability to move forward with this application.

Mr. Cedarholm said he had spoken to Mr. Hull and had asked him to move forward with the mounding analysis. He explained that it was one thing to have drainage chambers to hold the stormwater, but said it was important to know that there wouldn't be breakout from these chambers when the soil was saturated. He said he needed to feel comfortable that the lateral extent of this area was adequate for accepting stormwater.

Mr. Roberts said he was always concerned about the price of nonconformance. He said that given what happened to some of the neighbors now concerning drainage, there could be quite an event. He asked if part of the analysis for this project was to show what the degree of non-conformance could be if the chambers failed. He also asked what damage could occur as a result of freezing and thawing of the water in the chambers.

Mr. Cedarholm said if the material under the chambers was not adequate to accept that volume of water, this would create channels and wash out areas piping through the soil. He said the chambers were intended to focus the stormwater infiltration, but he said he was not convinced

that they were adequate. He said the UNH Stormwater Center had first hand experience with these systems, and said he was counting on perspective concerning this, so the Town was not involved in an experiment. He said there needed to be some confidence that this would work.

He said the plan for the Bradley property was to install a swale on the edge of the grassy areas behind her house, where the septic system was currently located. He said the septic system would be removed and the house would be connected to the Town's sewer system. He also said Mr. Caldarola would be able to help her ditch around that area in order to prevent stormwater from approaching close to her house, and said this would give the groundwater a better outlet around her house. He said it was a good plan, and would carry the current swale around to the back of the house.

He said suggestions were also made to control water from downspouts on the house, noting that one of them was close to where there had been flooding in Ms. Bradley's basement. He provided details on this.

Mr. Kelley noted that the Board would be accepting the Minutes from the October 26th Board meeting, and he apologized to Mr. Cedarholm for the tone of his comments concerning him that evening.

Richard Kelley MOVED to continue the public portion of the public hearing on this application. Steve Roberts SECONDED the motion, and it PASSED unanimously 7-0.

Chair McGowan read the November 14th letter from David Frankfurter, 3 Briarwood Lane. In his letter, Mr. Frankfurter said it would be a profound disservice to the Town if the Board granted Mr. Caldarola's current application while the existing development site was not yet finished. He provided details on this, and said the devastation to the visual and social character of the neighborhood was indescribable.

He said it had been at least two years since the application for this development was approved, but Mr. Caldarola had yet to build the homes, and said as far as the Town knew, he had no plans to complete them in the near future. He said the housing market decline to which Mr. Caldarola appealed had no relevance to the facts. He said it was self destructive in the extreme to grant him one blank check after another to devastate a forest for a hypothetical project. He asked that the Board withhold building permits for the current project until Mr. Caldarola had completed the Edgewood Road development.

Robin Mower, Faculty Road, thanked the Board for reading the letter from Mr. Frankfurter, who was unable to be at the meeting. She said it was realized that everyone was struggling with the process of this first conservation subdivision the Town of Durham had done. She said she was concerned that the proposed oversight of the common open space every three years might not be adequate, and she asked the Board to consider another alternative. She provided details on how the Town of Hampton dealt with this, and said the Board needed to figure out something that would work well to protect the open space.

Richard Kelley MOVED to continue the public hearing to the next regularly scheduled Planning Board meeting.

Mr. Kelley noted that the Board hadn't yet received the critically important peer review concerning the drainage plan, so the public hearing should be left open.

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

There was discussion as to what options the Town had regarding the situation with Mr. Caldarola's previous development that Mr. Frankfurter had referred to.

Mr. Campbell said that Mr. Caldarola had moved trailers, rocks, and construction debris from the site. He explained that a path had previously been cut for a roadway, and said some site clearing had been done, but said the houses weren't put up. But he said the Board couldn't not approve Mr. Caldarola application based on the fact that he hadn't completed another development that had been approved.

There was discussion about this.

Mr. Campbell said the Board didn't have the option to do anything concerning the previously approved development on Edgewood Road if it hadn't defined the phasing and completion of that project, which it hadn't. He also noted that if the Town subsequently outlawed elderly housing in that location, Mr. Caldarola was vulnerable to that.

Ms. Harris said there were circumstances in the community where projects had been continued year after year without final completion. She said this was an area the Board needed to address, so that developers needed to have projects completed by a certain amount of time.

Mr. Campbell said he would add this to the list of items for the Board to look at.

Mr. Campbell asked if there was a time limit in terms of when the Board would like Town staff to stop trying to get in touch with Mr. Roseen, and to try to get in touch with someone else concerning the drainage plan.

Mr. Parnell asked if Mr. Roseen was a unique individual in terms of his capability to evaluate the drainage plan.

Mr. Kelley said if Mr. Roseen was unavailable, perhaps there were others at the UNH Stormwater Center who could serve in that capacity, and said if not, perhaps they could advise the Board as to others who could. He said he would be fine with whomever Mr. Caldarola, Mr. Cedarholm and Mr. Campbell agreed on between now and the next regular Board meeting.

Mr. Roberts said he agreed with this, stating that he was sure there were other engineers who could do this.

Mr. Kelley noted that an extension letter was needed from the applicant, and Mr. Caldarola said he was fine with this.

Councilor Carroll said that concerning the letter from Mr. Frankfurter, it sounded like there needed to be some give and take, and that something positive needed to be done. She said it sounded like the neighbors were frustrated. She also noted that the current subdivision application had started out as a proposed elderly housing development, which had switched to a single-family housing development. She said this made the other neighborhood, where the elderly housing project had been approved, somewhat anxious. She suggested that something might be done to ameliorate this situation.

- V. Public Hearing on a Conditional Use Permit Application** submitted by Attorney Christopher A. Wyskiel, Dover, New Hampshire on behalf of Robert S. & Gale S. Teeri Living Rev. Trust, Durham, New Hampshire to expand a non-conforming use as per Article IX, Section 175-28(D) of the Durham Zoning Ordinance. The property involved is shown on Tax Map 5, Lot 2-2, is located at 15 Main Street and is in the Church Hill Zoning District.

Richard Kelley MOVED to open the public hearing. Wayne Lewis SECONDED the motion, and it PASSED unanimously 7-0.

Attorney Tom Ferrini from the law firm of Wyskiel Boc Tillinghast and Bolduc said he represented the Teeris. He said the applicants had initially filed for a conditional use permit based on the idea that the property was perhaps a boarding house. He said the Planning Board had denied this, not wanting to overturn a decision of the Town's Code Administrator. He said the applicants then appealed to Superior Court and the ZBA, but then postponed this because they thought about the situation and took the advice of Town staff concerning how to turn this situation around.

He said they agreed that this was a single-family home, which provided some certainty to the Planning Board. He explained that if they had gone forward with the boarding house approach, they thought this might have the unintended consequence of allowing 13 residents. He said they felt it would be a more streamlined process to go with the currently proposed approach. He said their concern all along was to provide code compliance and safety for the residents, and said they had worked extensively on this with Mr. Campbell and Mr. Johnson. He provided details on the upgrades that had been done to the property. He said this current project would provide certainty concerning the property that would be carried forward.

Mr. Campbell noted that there would be criteria the project would have to be met, as part of the conditional use process.

Robin Mower, Faculty Road, said she didn't know a lot about this application, but said this appeared to be a single family home. She said she didn't feel that just because it had been used a certain way in the past, it should be allowed to be used that way going forward into the future.

Richard Kelley MOVED to close the public hearing. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.

Councilor Carroll asked if there had been any discussion about property management for this property.

Mr. Kelley said he had planned to propose the boilerplate property management plan that the Board had discussed in recent months, and he provided details on this.

There was discussion about this.

Mr. Ferrini said the applicants would use whatever the Board felt was appropriate from an enforcement perspective.

Mr. Kelley said regarding to Attorney Ferrini's November 14th letter, his understanding was that the stairwell still needed to be completed. Attorney Ferrini said that was correct.

Mr. Kelley also asked Mr. Johnson to speak on the status of the building, and the work that still needed to be done.

Mr. Johnson said if the Board was inclined to approve this application, conditions of approval should be that the rest of the renovations to the basement needed to make it habitable, as well as the stairway, and the final inspections needed to be completed before the certificate of occupancy was granted for a single family home, for whatever occupancy the Board allowed. He provided details on the work that had been done so far. He noted among other things that the renovation of the basement hadn't been done yet because it hadn't been determined yet what the occupancy there could be.

Councilor Carroll suggested that Town staff should review the work once it had been completed to make sure that nothing had been left out.

Mr. Kelley noted #2 under the conditions to be met subsequent, regarding permits to be obtained for the work to be done in the basement. Mr. Johnson said that would work, and provided details on this.

Mr. Campbell suggested an addition of a 3rd condition, concerning inspections by the Code officer and the Fire Department before the certificate of occupancy was issued.

Mr. Johnson said there would be a certificate of occupancy for a single-family home with an occupancy of x. He said the use was not changing, but said it was going from a single-family occupancy to an unrelated household.

Mr. Kelley said his understanding was that occupancy of x means occupancy of 10.

Ms. Harris said she understood that the applicant needed to be in compliance concerning the bedroom and living space square footage, and she asked about the requirements for bathrooms for 10 people. She said what was there now seemed to be insufficient.

Mr. Johnson said this was covered by the State building code, and he provided details on this.

Ms. Harris asked if this was something the Board needed to address, and Mr. Johnson said he didn't think so. He said this was basically an apartment building, and said there were two showers.

Ms. Harris noted that this property was considered a single family building that was grandfathered for 10 occupants, and asked if there was a continuing requirement that the kitchen, dining room and living room had to remain, or if the property owner had the option to delete the conventional single family residence design. She said she thought that providing more bathroom area was important.

There was discussion about this. Mr. Johnson said he didn't know of any student rentals in town that had a formal dining room. He noted that the stairway would be in that room. He said there had to be a kitchen and a bathroom, but there didn't need to be a dining room.

Mr. Greene asked if there were square footage requirements for bedrooms, and Mr. Johnson said no.

Mr. Ozenich noted that the ceiling in the basement would be raised, and asked at what point the wiring, etc. would be inspected. Mr. Johnson provided details on how the process would work.

Ms. Harris said she saw a lot of emphasis in this application on upgrades to meet fire and safety codes, but said again that in terms of livability, it would be appropriate to make some effort to at least upgrade the bathrooms.

Mr. Parnell asked if there were concerns about people living there while the code concerns still needed to be addressed.

Mr. Johnson said the basement units had been vacated when the code violations were found 2-3 years ago.

There was discussion that the parking on the site, located behind the building, was adequate for 10 people plus guests.

Chair McGowan next went through the Conditional Use checklist for this application.

There was discussion on the character of the site development, and whether there was a need for screening of off street parking. Ms. Harris suggested it would be a good idea, but Mr. Kelley said he was leery of this because such screening might block the view of cars going by.

There was also discussion on issues with garbage disposal on this site, with Ms. Harris noting that there had been problems with this property in the past.

Mr. Johnson said that complaints concerning this had occurred in 2003-2004, but said there hadn't been such complaints within the last two years. He noted that the Solid waste ordinance had been modified to address those kinds of things.

FINDINGS OF FACT

1. The applicant submitted an Application for Conditional Use Permit with supporting documents on October 3, 2007.
2. The applicant submitted a deed for the property on October 3, 2007.
3. The applicant submitted additional information on October 18, 2007.
4. A Site Walk was conducted on November 14, 2007.
5. A Public Hearing was held on November 14, 2007. Public testimony was received.
6. This application is for the expansion of a non-conforming use as a single-family home with up to and not to exceed 10 individuals.
7. A floor plan, living area plan, was submitted by Atlantic Survey on November 14, 2007, dated January 2006 and revised on November 12, 2007.
8. The applicant's attorney submitted a letter on November 14, 2007.

WAIVER

The applicant requests a waiver of Section 7.02(D) of the Site Plan Review Regulations regarding the submittal of a Site Plan. The Planning Board has reviewed the request and grants the waiver. The Planning Board will require the submission of floor plans in lieu of a Site Plan.

CONDITIONS OF APPROVAL

The following conditions shall be met prior to the Signature of Approval on the Conditional Use Permit. 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 provide the Department of Planning & Community Development with a set of floor plans for the building for signature by the Chair of the Planning Board.
2. A Property and Security Management Plan shall be submitted to include, but not limited to, the following: Rules and regulations of the 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; if problems persists on the property, as determined by the Police Chief, 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 Conditional Use Permit:

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 floor plan.
2. The applicant shall obtain permits for any work done by the applicant or as required by the Code Enforcement Officer or the Fire Department prior to the commencement of the work.
3. Prior to the issuance of the Certificate of Occupancy, all repairs and inspections shall be completed and approved by the Code Enforcement Officer and the Fire Department.

Mr. Kelley asked if the Findings of Fact and the Conditions of Approval met with the approval of the applicant and Mr. Johnson, and they both said yes.

Richard Kelley MOVED to approve the amended Findings of Fact and Conditions of Approval for the Conditional Use Permit Application submitted by Attorney Christopher A. Wyskiel, Dover, New Hampshire on behalf of Robert S. & Gale S. Teeri Living Rev. Trust, Durham, New Hampshire to expand a non-conforming use as per Article IX, Section 175-28(D) of the Durham Zoning Ordinance, for the property shown on Tax Map 5, Lot 2-2, located at 15 Main Street and in the Church Hill Zoning District. Richard Ozenich SECONDED the motion.

Mr. Kelley said he didn't think there was a chance of this being a single family home again, and said he felt this proposed use was quite fitting with the surrounding area.

The motion PASSED unanimously 7-0.

VI. Acceptance Consideration and Public Hearing on an Application for Site Plan Review
submitted by Thomas Christie, Slania Enterprises, Durham, New Hampshire, to build a mixed-use, three-story building with three units and commercial space. The property involved is shown on Tax Map 4, Lots 9-0, is located at 12 Jenkins Court, and is in the Central Business Zoning District.

Mr. Campbell said that since there was only one regularly scheduled meeting in November, the Town had posted this application for acceptance and the public hearing at the present meeting. He said Mr. Christie had made great efforts to speak to the neighbors, so they were aware of what was going on.

Tom Christie spoke before Board, and noted that he had also noticed Fosters Daily Democrat in order to adequately inform the community. He said this was an infill project. He noted that a memo received from Mr. Campbell summarized a meeting Town staff had concerning the application. He said he had directed his engineer to make changes to the plan that addressed the issues that had been raised at the meeting. He noted that the current plan reflected those changes.

He reviewed these issues:

Trash containers He said Note #20 should reflect that the individual trash containers wouldn't exceed 1 ½ cu yards each. He also said the trash enclosure would be per Chapter 118 of the Durham Ordinance.

Gas hookup He said that the current building at 12 Jenkins Court didn't have a gas hookup, and ran on electricity. He said the original plan showed a gas line drawn between the two buildings for gas to come in, in the future, but said the plan now showed that the gas would come in from the face of the buildings at both 12 and 14 Jenkins Court.

He also said there were concerns about freezing gas lines if the line that was put in was too shallow. He said he had therefore added under note #15 that all proposed utilities shall be installed to code.

Drainage issues – Mr. Christie said concern had been expressed by Town staff regarding drainage of the property. He said the design had therefore been changed, and said what was proposed was to direct stormwater to the existing two catch basins on the eastern side of the property. He provided details on this. He said he didn't have a problem with drainage on the site at this time, but noted that an underground conduit had been put in, so there was a small depression left in this area that had been identified as a possible area of concern. He said he had addressed this in the updated plan.

Mr. Christie said he had amended note #5, to reflect that the intent was to construct a 3 story building, with a 1st floor that was non residential, and 2nd and 3rd floors that would contain three 4 bedroom residential units. He said note #5 also now indicated that he was also proposing a 10 ft by 32 ft addition at the end of 12 Jenkins Court, which would allow ADA entry. He explained that it had been on his mind to something with the existing wooden deck at 12 Jenkins Court, and said it seemed to be an opportunity to clean that area up as part of this application.

Fencing - Concerning fencing, Mr. Christie proposed to add fencing with gates at the owner's option, for access and security purposes, to be worked out with Town staff. He explained that what had prompted this was concern that there might be a spot for inappropriate loitering. He said fencing was suggested, but said this had turned up access and egress issues. He said there was currently no adequate resolution of this issue.

He noted that he didn't have to provide any fencing between the buildings, but would like to, and said if he could find a way over the hurdles, he would provide this. He said he had spoken with Police Chief Kurz, who had said he had no problem with any fencing, and said his only concern was that there would be adequate lighting. Mr. Christie said he had indicated that there would be lighting there.

Landscape plan Mr. Christie said he had submitted labeled sheet # C2. He said he proposed to leave an ash tree on the site, and also proposed to move two trees forward, one in front of 14 Jenkins Court, and the other currently in front of 12 Jenkins Court. He said he also proposed to add two trees on either side of the entryway at 14 Jenkins Court.

Water supply – He said a water study of this area of Town had been done by Underwood Engineering, and had calculated that there was sufficient water capacity to supply the site.

Mr. Christie said the only area left to address that he was aware of was regarding drainage on the site. He said his engineer had prepared a drainage analysis, and said the study basically suggested that the two catch basins currently in the area were significantly underutilized. He said the engineer had estimated that the development would result in a maximum of a 14% increase in flows, and had said that the square footage of the site was relatively small, so allowing the water to go flow to the storm drains was the correct course of action, and would not cause any problems.

He said his engineer had concluded that construction of an additional building would increase the flow a minor amount, and would have negligible effects on downstream properties, since this area was part of a large watershed.

Building height – Mr. Christie said the building itself was proposed to be almost identical to the building currently on the site, although noting it would be slightly narrower. But he said he was requesting that the Board allow an increase in height from 30 to 35, for aesthetic reasons, and he provided details on this.

Mr. Christie said he didn't know yet who would be occupying the commercial space. He asked if the application could be approved for all of the allowed uses in the Central Business District. He said he believed that this project was responding to the infill concept, and would be a much better use of the existing space.

In response to a question from Mr. Parnell, Mr. Christie said the layout would be the same as that of the current building, which was like a townhouse, with the living room and kitchen downstairs, and the bedrooms upstairs. He said each apartment would occupy space on the second and third floors, and said each of the three apartments would have 4 bedrooms, with 4 people. He said the existing building currently had a total of 6 apartments, 4 with 3 bedrooms, and 2 with one bedroom. He said the layout had worked well with the existing building, so they felt it would work with the new building. He said there was no proposed onsite parking.

Mr. Lewis asked if parking would be needed for the office or retail space on the first floor.

Mr. Campbell said no, stating that a variance was obtained for this.

Mr. Christie noted that a variance was also received concerning the number of dwelling units allowed on that size land mass.

Ms. Harris asked where the loading area would be for the commercial space.

Mr. Christie said a variance was received so no loading area was needed for the property. He explained that there was an existing area on the other side of Jenkins Court. He said it didn't make sense to have valuable downtown space on the site used as a loading zone.

Mr. Kelley asked Mr. Christie to point out the sewer easement.

There was discussion on language in a previous deed of the property concerning drainage easements to get to Pettee Brook.

Ms. Harris asked whether at one point this land was supposed to remain as green space in perpetuity.

Mr. Christie provided some history on this, noting that although there were some people who felt there should be green space there, there was never anything that had required this. He said having infill here was a natural progression of the property.

Mr. Kelley noted the ZBA decision to grant relief from the 1200 square footage requirement, and asked to what degree this relief was granted.

Mr. Kelley said the ZBA decision hadn't been specific, but he said that clearly what he had proposed to the ZBA then, and now, was to do three 4 bedroom units. He said he had now added this specifically to the plan that there would be three 4 bedroom units, to avoid concerns about this.

Mr. Campbell noted that the applicant was requesting 4 waivers:

1. Site Plan Regulations section 7.02 D 4-d – existing and proposed contours at 2 ft intervals for the entire site, and where a change in grade is proposed, existing contours shall be dotted lines and finished elevations solid.
2. Section 7.02 D 4-i - location and layout of all on-site parking and loading facilities
3. Section 7.02 D -4-q – location of all buildings, wells and leach fields within 150 ft of the parcel
4. Section 75-9 C of the Town Code, regarding School impact fees

Mr. Campbell said he didn't have a problem with these waiver requests, and said other than this, the application was complete.

Mr. Kelley noted that a variance had been received concerning the loading dock, so the waiver request wasn't needed concerning this.

Mr. Campbell pointed out that if a family moved in to the building within six years of completion, school impact fees would be imposed at that time. He said this was how the Board had handled other multiunit developments that had come before it in recent years.

Richard Kelley MOVED to accept the Application for Site Plan Review submitted by Thomas Christie, Slania Enterprises, Durham, New Hampshire, to build a mixed-use, three-story building with three units and commercial space at the property shown on Tax Map 4, Lots 9-0, located at 12 Jenkins Court, in the Central Business Zoning District. Lorne Parnell SECONDED the motion, and it PASSED unanimously 7-0.

Richard Kelley MOVED to grant waivers to Site Plan Sections 7.02 D 4-d, 7.02 D 4-i, 7.02 4-q and Section 75-9 C of the Town Code. Lorne Parnell SECONDED the motion.

Mr. Kelley said he had no reservation about granting the waiver concerning the loading zone, given that a variance had been granted for this. He also explained why he had no problems with granting the waivers from the other listed sections of the Site Plan Regulations. He said he concurred reluctantly regarding the waiver for the school impact fee.

Concerning the impact fee waiver request, Mr. Ozenich questioned whether the owner of the property would have to provide an inventory on a yearly basis to support the fact that there were no children living there.

The motion PASSED unanimously 7-0.

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

Mr. Kelley asked if Town Engineer Dave Cedarholm and Code Administrator/Enforcement Officer Tom Johnson had comments to provide to the Board.

Mr. Cedarholm said he had taken some photos during the rainstorm the previous week, and said they spoke to the existing problem with drainage from 16 Jenkins Court. He said that currently there were no gutters on the building, and said rainwater hit the ground and puddles were created on either side of the building. He said the water then flowed across and down the walkway to Jenkins Court, and then into the catch basin on Pettee Brook Lane. He said very little stormwater actually appeared to be getting to either of the catch basins from the site, on the parking lot side.

He said the concern right now was that there was unmanaged stormwater, and said the future plan for 14 Jenkins Court was that there would be more unmanaged stormwater, with a total of about twice as much as there currently was. He said he had discussed this at length with Mr. Christie, whose feeling was that no stormwater management was stormwater management.

Mr. Cedarholm said the Town regulations required adequate stormwater management, and said he didn't think that what was proposed was anything close to being adequate. He said the Town required detention of stormwater on all projects in Town, and said this was also appropriate for this property. He said no basement was proposed for the new building, so there was the potential for a subsurface retention system that could be connected to one of the existing catch basins.

He said there were some pretty severe stormwater problems in this part of Town, and he provided details on this. He said a development like this would exacerbate the existing problems. He noted that the Town had a federal stormwater permit that it was required to uphold, and said the requirements concerning this would become stricter over time. He said this was a real challenge.

Mr. Kelley asked whether, given the fact that most of the site runoff would be from the roof, Mr. Cedarholm was in agreement that water quality treatment was not required, although detention/retention should be required.

Mr. Cedarholm said he was in agreement with this.

Mr. Greene asked how much detention was required for this situation.

Mr. Cedarholm said he wasn't talking about the need for a lot of detention and said a subsurface tank of a few thousand gallons would be sufficient. He said this wasn't an insurmountable problem. He noted that an enormous detention basin had been required for the Irving station nearby. He said that preferably, the roof drains would drain into the tank. He said the water in the tank would then be released in a controlled fashion, into the existing drainage system.

Mr. Greene asked Mr. Cedarholm if he was suggesting that the existing building on the site should also be hooked up to a detention tank.

Mr. Cedarholm said it was hard to require this, but he said it would be a good idea to manage the entire site. He said when the second building was built there would be two dark alleys that wouldn't get much sunlight, so in the winter, the stormwater would sit there and become a glacier, which would be problematic for the walkways. He also said it would be very damp in there during the wet seasons.

Mr. Kelley asked Mr. Cedarholm if he was concerned that the flow test concerning the water system had been done back in 1989, and if there were any changes that would warrant an updated flow test.

Mr. Cedarholm said he was ok with the existing test and provided details on this. He also said the analysis had looked at the existing service, and found that even a 4 inch service would be adequate. He noted that there was a 6 inch service there. He said things were in pretty good shape concerning the water supply for the site.

Mr. Kelley noted that the flow test had performed better than the model said it would , and he provided details on this.

There was further discussion about having a subsurface detention basin for the site. Mr. Cedarholm said perhaps there could even be an opportunity for some groundwater recharge on the site, but he said perc tests and test pits would need to be done to determine how well this would work.

Mr. Kelley said what the Town didn't want was roof leaders going directly into the municipal stormwater system, and said if the detention tank was placed under the new structure, the roof leaders could connect to the tank. He said he thought this could be done for both buildings. He said the tank could even be located between the two buildings. He said the approach could be relatively inexpensive. There was discussion on the soils on the site and their perc capability.

Mr. Cedarholm expressed concern about the sewer connection, which was old. He suggested that it should be videotaped to see the condition, and if it was poor, said it should be replaced. He said the existing sewer line there was 6 inches, and said it would be good to have an 8-inch line. He said since the new building was being built on top of an existing sewer line, this was the time to replace.

There was discussion that part of the lower building was basement, and part was ledge, and that the sewer pipe was located below the slab of the basement.

Mr. Christie provided details on the ledge on the property, and the historical development of the property based in part on this. He also described the proposal concerning hooking up to Town sewer. He said there hadn't been any problems with the existing sewer connection, but said he would look into this before putting a new building on top of it.

Concerning the drainage issue, he said if he had seen the photo Mr. Cedarholm had taken, he could have provided a better answer concerning this. He said the existing grading on the site was poor, and said if done properly, the water would flow gradually to the catch basin. He said his proposal was to do surface grading to contour the water better. He said this was on the revised plan. He repeated his drainage proposal in some detail. He also said that the roof contours were designed so rain didn't fall where there were entryways, at both ends of the building and on the sides as well.

There was discussion on the roof of the current building on the site, and of drainage off of it. There was also discussion about other elements of the building and site design.

Mr. Christie noted among other things that the plan was that there would be staggered windows horizontally and vertically. He noted that this was one of the reasons he wanted some additional height for the new building.

Mr. Johnson said the Board might want to go through the Table of Uses to see if there was see if there was any possible uses allowed in the Central Business District that it might want to either restrict in some way or have the applicant go to Technical Review for, for example, a club.

Mr. Christie said he would be happy to not be approved for a club.

Mr. Cedarholm received clarification that neither of the gas lines would go between the buildings.

Richard Ozenich MOVED to continue the public hearing to the December meeting. Councilor Carroll SECONDED the motion.

Mr. Kelley asked when Mr. Christie planned to start construction, if the approvals were received.

Mr. Christie said he would like to be able to start work during the Christmas break, because it would be easier to get the foundation and the water and sewer in when there wasn't as much

pedestrian traffic in the area. He said the goal was to have the building ready for a September 2008 occupancy.

There was discussion about what the applicant would need to supply for the next meeting when this application would be discussed, in December.

There was discussion on whether the drainage plan was sufficient, and whether the Board would require more than what had been presented.

Mr. Kelley said given the tight time schedule for this project, he would state now that he had serious reservations about the drainage system that was proposed. He advised that Mr. Christie sit down with his engineer and Mr. Cedarholm and explore the options.

Ms. Harris agreed, noting the increase in rain, and said Pettee Brook Lane had been closed twice the past year. She said she had some concerns about this. She also said that since there was so little green space in that area, she encouraged Mr. Christie to do some enhancement of the landscape on the Pettee Brook Lane and Jenkins Court sides of the buildings. She said it would be nice if this area were made more attractive.

Mr. Christie said the Town wanted to be able to remove snow, so in previous discussions with Town staff, he had been encouraged to leave the area as it was, with a grass strip. He said two trees were proposed on the northerly side of the property, and he noted that a portion of the site was already landscaped. He also noted that there was a sight distance issue with one of the corners.

Ms. Harris said a landscape architect could choose some plantings that could work on the site, given the various considerations, if Mr. Christie was open to this.

The motion PASSED unanimously 7-0.

- VII. Acceptance Consideration on an Application for Conditional Use Permit** submitted by James L. & Kathleen R. Adams, Durham, New Hampshire to construct a new driveway within the 100-foot wetland buffer. The property involved is shown on Tax Map 20, Lots 8-1, is located at 401 Bay Road, and is in the Residence C Zoning District.

The applicant requested that this application be withdrawn.

VIII. Other Business

A. Old Business

B. New Business:

C. Next meeting of the Board: November 28, 2007 (Quarterly Planning Meeting)

IX. Approval of Minutes –

September 26, 2007

Richard Kelley MOVED to approve the September 26, 2007 Minutes as submitted. Steve Roberts SECONDED the motion, and it PASSED 5-0-2, with Lorne Parnell and Annmarie Harris abstaining because of their absence from this meeting.

October 3, 2007

Page 5, 4th paragraph from bottom, should read “..to have at least one off road vehicle....”

Page 7, 3rd full paragraph, should read “He said it was difficult for them in Durham because they had to make way for more big trucks, and the roadway shoulders kept getting narrower.”

Page 9, should say “Crommet Creek”

Annmarie Harris MOVED to approve the October 3, 2007 Minutes as amended. Richard Kelley SECONDED the motion, and it PASSED 5-0-2, with Richard Ozenich and Wayne Lewis abstaining because of their absence from that meeting.

X. Adjournment

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

Adjournment at 10:20

Victoria Parmele, Minutes taker

Susan Fuller, Secretary