

These minutes were approved at the June 25, 2008 meeting.

**DURHAM PLANNING BOARD
WEDNESDAY, APRIL 23, 2008
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL
7:00 P.M.**

REGULAR MEMBERS PRESENT: Chair Bill McGowan; Vice Chair Lorne Parnell; Secretary Susan Fuller; Steve Roberts; Richard Kelley; Councilor Julian Smith

ALTERNATES PRESENT: Kevin Gardner

MEMBERS ABSENT: Richard Ozenich; Doug Greene; Wayne Lewis

I. Call to Order

Chair McGowan welcomed Kevin Gardner, a new alternate member of the Planning Board.

II. Approval of Agenda

Chair McGowan said they hadn't heard back from Mr. Christie regarding Agenda Item IX, concerning an amendment to his Site Plan for 12 Jenkins Court, so the Board wouldn't deal with this Item that evening.

Richard Kelley MOVED to approve the April 23, 2008 Agenda as amended. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

III. Report of the Planner

- Mr. Campbell said the Board would elect officers for the Planning Board, and make appointments to committees at its May 14th meeting.
- He said the last days of traffic modeling would take place the following week, and said a few volunteers were still needed for this.
- He reviewed the proposed changes to the Zoning Ordinance regarding the Central Business District up Church Hill; an extension of the MUDOR district in the area of Madbury Road to include the Perry Bryant properties; and incorporation of some properties that were now Residential B in the area of Spruce Wood into the ORLI district. He said the Council would continue discussion on these proposed changes at its next meeting, and said he would keep the Planning Board up to date on this.
- He said the next quarterly planning meeting would take place in June, and said Town

Engineer Dave Cedarholm would like to discuss impervious surface ratios with the Board at that meeting, especially in relation to the stormwater ordinance being drafted.

- He said that at its April 21st meeting, the Council had passed the Zoning change to include fitness center in the definition of Personal Services.
- He noted the Agenda item that evening concerning possible Zoning changes for passive recreation trails.
- He said the Planning Board would have a public hearing on the amendment to the Zoning Ordinance recommended by the Town Council concerning the definition of wholesales sales at its May 14th meeting. He said at that same meeting, the Board would also have a public hearing on a Council recommended amendment to Article III, Section 175-9 (A)(13) of the Zoning Ordinance to change the enforcement duties of the Zoning Administrator.
- He said the Traffic safety committee had met on April 17th to discuss a number of important issues and proposals.

- 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. (The applicant has requested that this application be postponed until May 14, 2008.)

Mr. Campbell said Mr. Caldarola and Rob Roseen had been ready to attend the meeting, but the applicant's engineer, Rubin Hull, couldn't get the new plans completed in time. He said the plan should be available for the May 14th meeting, and also said there was a letter from Mr. Caldarola agreeing to extend the application until June 26th.

Richard Kelley MOVED to continue the public hearing on a Conservation Subdivision Application submitted by Joseph Caldarola Portsmouth, New Hampshire for subdivision of one lot into 9 lots, per his request, to May 134, 2008. Lorne Parnell SECONDED the motion and PASSED unanimously 7-0.

- V. Public Hearing on a Site Plan Application** submitted by Henderson Properties, Durham, New Hampshire to build a mixed-use structure with 14 apartments on the upper two floors and office/retail space on the first floor. The property involved is shown on Tax Map 4, Lot 1-0, is located at 1 Madbury Road and is in the Central Business Zoning District.

Roger Roy, MJS Engineering spoke before the Board. He noted that there had been a site walk the past Friday, and said he had provided a response to comments previously received from the Planning Board. He then provided details on the mixed use structure that was proposed.

He said the Main Street portion of the building was at grade, while the Madbury Road portion was 30 inches or so higher than that. He said there would be two residential stories above the commercial space on the first floor, and said there would be a total of 46 residences, with 14

units on each floor.

Mr. Roy said that at the previous Planning Board meeting, the Board had accepted a waiver for underground utilities, and he provided details on this. He then provided a response, in verbal and written form, to comments from the sitewalk. He first noted that the issue of construction staging, and said the applicant would coordinate directly with the municipal departments, particularly the Building, Police, and Fire Departments prior to and during the construction period. He said Henderson Properties would accept this as a condition of approval.

He said there were two trees close to the northeast corner of the Ballard building, and said the preference was to remove them, explaining that the development would require most of the site, and that the trees would which likely be impacted by the construction. He said there were two other mature trees on the lot that were diseased, and would also be removed and replaced with three new red oak trees that would provide an appealing perspective to the new building.

Concerning the issue of possible traffic-pedestrian conflicts, Mr. Roy said it had been shown on the plan that because the gable end of the building on Madbury Road sat 6 ½ ft back from the sidewalk, this would give cars the opportunity to see pedestrians, up and down the sidewalk, and exiting the garage.

He said the plan showed that there was adequate room for three vehicles to stack up on Madbury road and still provide for greater than 60 feet of bypass zone. He also said it indicated that the sight distance was greater than 35 ft from an existing vehicle to a pedestrian in the sidewalk.

He said the traffic assessment had concluded that current traffic patterns reflected 140 trips per day, which would be reduced to 66 trips per day with this development, a 50% reduction. He said the applicant felt that the potential traffic and pedestrian conflicts had been addressed with the plan, and that the design was safe.

Mr. Roy said the existing drainage ran to the north, across the lot. He said the new building would dam that water off, and he said a catch basin had been added at the property line, which would channel water to a swale and then into the Town's closed drainage system. He said the catch basin would be on the property, and he provided details on this, noting that an easement from Campus Convenience would therefore not be needed.

Regarding the site access issue, he said Mr. Henderson didn't want to restrict access, but would like to reserve the option to restrict access in the future, depending on how the area was used.

Councilor Julian Smith asked whether this referred to restricting access at night or all of the time, and Mr. Roy said it depended on how the site was used. He said the restriction would be designed around this use, and explained that Mr. Henderson didn't want to restrict access during day because it provided exposure for the commercial area.

Ms. Fuller received clarification that all of the trees would be removed, as part of this plan.

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

Chair McGowan asked if there were any members of the public who wished to speak for or against this application. There were no members of the public who came forward.

Susan Fuller MOVED to close the public hearing. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 7-0.

The Board agreed to deliberate on the application that evening.

Mr. Kelley said he had no issues with the development that was proposed, but said he was not in favor of handing off the construction staging to Town departments, without the involvement of the Planning Board. He said perhaps the applicant had some suggestions concerning this.

He said he still had some questions regarding the lane closure, and about whether there would be room for traffic coming around the corner, which would be pushed further to the right. He also noted that the sidewalks would be closed down, and said there would need to be provisions for that. He said there might be a sidewalk closure on Main Street as well, and said he wanted to know how that would be handled.

Mr. Kelley asked how materials brought to the site would be stored, whether there would be security fencing, and where the workers for the project would park. He also said he would like to know the timeline concerning when construction would occur. He summarized that he had a lot of questions regarding how this project would be constructed, not regarding what would be constructed.

There was detailed discussion about these issues, and about whether they could be handled with the Conditions of Approval. Mr. Parnell said Mr. Kelley had brought up some good points. There was discussion on how the Planning Board could be involved, regarding the construction staging issue.

Mr. Roberts noted that Mr. Johnson had been involved with the construction aspects of the Irving station and the Hotel project.

Mr. Campbell said Mr. Johnson would be on the site frequently, regarding safety issues, the building code, dust and dirt from the site, etc. He also said there would be someone from the Police Department on site, and said the Fire Department would do inspections. He asked Mr. Kelley if he wanted the applicant to come up with a plan for these kinds of things.

Mr. Kelley said yes. He noted that in the Board's approval of the 99 Madbury Road application, the applicant was required to address quality of life issues, concerning blasting, security fencing, traffic, dirt, etc. He said these issues were even more important for this property, given its prominent location in Town.

Mr. Roberts noted that this was an especially busy location, and said he appreciated the points

Mr. Kelley had made.

Mr. Roy said Mr. Henderson had offered to prepare a staging plan, and said that would be part of the building permit package, and would be approved prior to any work that was done. He also said work would start prior to the opening of UNH in the fall, and said it would be completely fenced in by early to mid August. He said the project was expected to be completed by the following fall. He said the issues of maintaining traffic flow, pedestrian access, where workers would park, etc. would be included in the staging plan, and said Town departments would enforce this.

Mr. Campbell suggested possibly having those departments, and a representative from the Planning Board ok the staging plan before there were any building permits issued.

Mr. Parnell suggested that there should be a condition that the construction plan would address the items Mr. Kelley had raised.

Mr. Campbell listed the following items: closing of the lanes; possible sidewalk closings; security fencing; employee parking; equipment storage; hours of work; control of truck traffic; blasting (when it would occur, pre-blasting survey.).

There was discussion with Mr. Roy about details as well as the timing of the installation of utilities. There was also discussion with him about which sets of plans were being approved that evening. It was noted that the utility sheet had been revised, based on the waiver the Board had granted.

There was discussion about the new catch basin to be installed on the property. Mr. Kelley noted that the catch basin would be on the applicant's property, but would be difficult to access without an easement.

Mr. Roberts asked if it would be appropriate that the staging plan to be approved by the Code Enforcement Officer, given that this was a centrally located site.

Mr. Campbell said the Board could make this a pre-signature condition.

There was discussion that the staging plan had not yet been prepared, and if the application was approved that evening, the staging plan would not have been approved by the Board.

Mr. Campbell suggested the following wording: "The construction and staging plan must be submitted and approved by the Code Enforcement Officer, Fire Chief, Police Chief, Director of Planning and a member of the Planning Board." He said if it would make the Board more comfortable, this could be a condition to be met prior to the signature.

After further discussion, Board members agreed that a construction and staging plan had to be approved as a condition to be met prior to signatures. There was additional discussion about traffic issues that had to be addressed during construction, and about the letter from the Police Chief concerning these issues.

Mr. Kelley said there should also be a traffic management plan required, given that they would be dealing with a lane closure.

Mr. Roy said the staging plan included that, but said it made sense to add the specific wording suggested by Mr. Kelley.

There was discussion that the perceived height of the new building would be continuous with the Ballard Building. Chair McGowan noted that the applicant had requested a waiver concerning height, and reviewed the criteria that had been developed by Mr. Campbell for granting such a waiver.

The Board agreed that all of these criteria were met.

Richard Kelley MOVED to grant a waiver that the height of the building will be no more than 40 ft. Steve Roberts SECONDED the motion, and it PASSED unanimously 7-0.

There was discussion that the Board could only include requirements concerning a rental agreement with a conditional use application, which this application was not.

Mr. Campbell noted that the Police Department had an exceptionally positive relationship with Mr. Henderson.

Ms. Fuller said she considered Mr. Henderson to be one of the professional landlords in Town.

Mr. Kelley asked what grade difference there was between the sidewalk and the ADA entrance, and Mr. Roy provided details on this. He said he would add these details to the grading plan.

Mr. Kelley asked if there had been any changes to the erosion plan that had originally been submitted, and Mr. Roy said there had not.

Findings of Fact

1. The applicant submitted an Application for Site Plan Review with supporting documents on March 19, 2008.
2. The applicant submitted on March 19, 2008, a Site Plan entitled "Site Plan for Henderson Properties, 1 Madbury Road, Durham, New Hampshire." prepared by MJS Engineering PC, Newmarket, NH, dated November 19, 2007.
3. The applicant submitted a letter of intent on, March 19, 2008.
4. The applicant submitted copies of deeds for the property on March 19, 2008.
5. The applicant submitted a Drainage Analysis prepared by MJS Engineering PC on March 19, 2008.
6. The applicant submitted a letter of authorization on March 19, 2008.
7. The applicant submitted a copy of the flood map showing that the property is not in a flood zone on March 19, 2008.
8. The applicant submitted an elevation plan on March 31, 2008.

9. The applicant submitted a Utility, Grading, Drainage and Erosion Control Plan on April 3, 2008.
10. The applicant submitted a waiver request from Section 9.6(B) of the Site Plan Regulations on April 3, 2008.
11. The applicant submitted an updated elevation plan on April 9, 2008.
12. A Site Walk was conducted on April 18, 2008.
13. A Public Hearing was held on April 23, 2008 and no members of the public were present to speak to the application.
14. The Planning Board has approved a height of no more than 40' for the new building.

Waiver

The applicant has requested a waiver from Section 9.6(B) Design Standards of the Site Plan Regulations. The Planning Board has reviewed the request and hereby grants the waiver.

Conditions of Approval - to be Met Prior to the Signature of Approval of the Site Plan:

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. The applicant must secure water and sewer permits.
4. A guarantee or performance bond or escrow account must be posted in an amount to be determined by the Department of Public Works and approved by the Town Administrator to ensure satisfactory completion of landscaping.
5. A note needs to be added to the plan stating that the parcel is not in the flood hazard overlay district according to the most updated FIRM (May 17, 2005).
6. A Construction and Staging Plan and a Traffic Management Plan must be submitted and approved by the Code Enforcement Officer, Police Chief, Fire Chief, Director of Planning and a member of the Planning Board.

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. As-built construction drawings must be submitted as per Site Plan Regulations Section 11.02.
3. A maintenance guarantee shall be provided as per Section 11.03 of the Site Plan Regulations.
4. All signs shall be approved by the Code Enforcement Officer.

Steve Roberts MOVED to approve the Findings of Fact and Conditions of Approval on a Site Plan Application submitted by Henderson Properties, Durham, New Hampshire to build a mixed-use structure with 14 apartments on the upper two floors and office/retail space on the first floor, at the property located at 1 Madbury Road in the Central Business Zoning District., as amended. Councilor Julian Smith SECONDED the motion, and it PASSED 5-1-1, with Richard Kelley voting against it, and Kevin Gardner abstaining.

- VI. Continued Public Hearing on a Site Plan Review Application and a Conditional Use Permit Application** submitted by the Durham Public Works Department, Durham, New Hampshire for renovations to the Jackson's Landing Recreational Area. The properties involved are shown on Tax Map 11, Lots 9-2, 11-3 and 11-4, are located on Old Piscataqua Road and are in the Coe's Corner and Residential A Zoning Districts.

Mr. Campbell provided details on the process involved with this application. He said due to the sensitive nature of the grant received for this project, the Town Council had pulled the exemption option, which exempted the Town from Zoning requirements. He said the Town Council had held a public hearing, had approved the plan, and had approved the bids for erosion control work to be done. He noted that the Planning Board had opened the public hearing at its previous meeting, and would be continuing it now and providing advisory comments to the Council concerning the plan.

Councilor Julian Smith explained that he had asked at a recent Town Council meeting whether approving the bids that same evening would prevent any changes in the design to accommodate some of the objections and concerns of members of the public who were boaters. He said the answer to this had been no, and that it would still be possible to make some changes. He noted that the design had already been changed several times, and said this was an evolving plan.

Susan Fuller MOVED to continued the Public Hearing on a Site Plan Review Application and a Conditional Use Permit Application submitted by the Durham Public Works Department, Durham, New Hampshire for renovations to the Jackson's Landing Recreational Area, at the property located on Old Piscataqua Road, in the Coe's Corner and Residential A Zoning Districts. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.

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

Sarah Wilson, member of the Parks and Recreation Committee, said she was speaking as a representative of the Committee. She said it supported the plan the Council had approved, and would like to see it go forward.

Peter Frid, Great Bay Rowing, said he was a member of the Board of Great Bay Rowing, as well as an interested parent, and was speaking on behalf of the Board. He said they supported this project because they appreciated the existence of Jackson's Landing for their own use, as well as the opportunity for more individuals to share this resource. He provided details on aspects of the plan, and said he appreciated the planning that had gone into it. Mr. Frid noted

that 70% of the adult rowers in the organization were Durham residents.

Robbi Woodburn, member of the Jackson's Landing Committee, thanked the Board for their patience at the recent site walk. She noted among other things that there had been some discussion after the site walk regarding the space conflict between the rowing shells and motorized boats, and about a suggestion that the doors to the boathouse could perhaps be put on the opposite side of the building. She provided details on the fact that this design would not work.

Dwight Baldwin, member of the Jackson's Landing Committee, provided a detailed history of the development of the plan, and noted among other things that the plan had been modified in response to good suggestions that had been provided. He said he strongly supported the approval of this plan by the Planning Board.

George Frick, Edgewood Road, said he was a boater, and said this plan was a great achievement, and included a nice launching ramp. He said he had no problem launching boats at the Landing, and said the plan looked like a win-win for boaters and others.

Denny Byrne, member of the Jackson's Landing Committee, noted that he was also the Director of UNH Campus Recreation, and said they totally supported this project, from a number of perspectives.

Mr. Kelley noted that the Board had heard about conflicts between boaters and the UNH rowers.

Mr. Byrne provided details about the UNH rowing program, and about the program's responsiveness regarding problems that might occur at the site. He said they would respond if there were any future problems, and wanted to be good neighbors.

Mr. Kelley asked if someone who did encounter these kinds of problems should direct them to Mr. Byrne, and Mr. Byrne said yes.

Bruce Bragdon, Colony Cove, said he was a past member of the Parks and Recreation Committee, and also was familiar with the original plans for the site, based on discussion with Herb Jackson. He said Mr. Jackson had wanted to see a hockey rink built that would be used year round, and also wanted the site to be a multi-use area. He said his vision for the site was a lot more robust than simply leaving some open space, and said he had wanted it to be a park for residents in all seasons, and wanted the site to be used as much as possible.

Chair McGowan asked if there were any members of the public who wished to speak against this application.

Bill Hall, Smith Park Lane, noted that the Town had given up some of the parking for the boat launching people in order to get the funding for the whole project. He also noted the memorandum of agreement from Herb Jackson that boat launching was to be provided on the site for the people of Durham. He reviewed the history of the use of the site, and the issues that

boaters had faced there. He then described in great detail the problems he saw for boaters as a result of the present design for Jackson's Landing.

Clifford Zetterstrom, 80 Dover Road, said he saw congestion at Jackson's Landing now, especially when the rowers were around, and said boaters felt as though they were interfering at these times. He said Durham already had 4-5 parks, and he questioned the current plan.

Lorrie Potter, Deer Meadow Road, noted that she had been part of the committee that had been involved with the installation of the playground at Jackson's Landing, in 1998. She said she had spoken with Mr. Jackson about conflicting uses at the site, and said that among other things, he had said kids should have access to this resource.

She said the Jackson's Landing Committee had tried to accommodate the various uses, and had come up with a plan that coalesced with Mr. Jackson's vision. She said the plan also addressed erosion issues, and said if it wasn't dealt with now, the Town would be asked to address in the future. She asked that the Planning Board support the democratic process that this plan represented.

There was discussion about a rowers club referred to in documentation from the 1970's.

Susan Fuller MOVED to close the public hearing, and Steve Roberts SECONDED the motion.

Bill Hall noted that Mr. McGowan had recused himself concerning this application when the public hearing had been opened at a previous Board meeting.

Mr. McGowan explained that the Planning Board would not be voting on this application.

Mr. Campbell asked Board members if they had comments to send on to the Town Council concerning this application.

There was discussion on the issue of whether the grant for this project would be put in jeopardy if it was changed at this point.

In response to a question from Mr. Kelley regarding how much above the grant was required in order to do the work on this project, Mr. Lynch said the grant for the project was \$250,000, and the total cost of the project was \$315,000. He said the difference would be made of from funds from the Conservation Commission's conservation fund.

He also noted that when the boathouse was built, one third of the building had been designated for Durham use, which at that point was a person who lived in Durham and stored his boats there. He said this had later evolved into a formal rowing club.

There was discussion on the capacity of the boat ramp area, and the wetlands issues involved with increasing this capacity.

Mr. Parnell suggested that the 50 ft radius circle delineated on the plan be continued around to whatever was appropriate for a boat launching area, and that this be sign- posted accordingly, to give priority to boat launching. He said this wouldn't mean that no other uses would be allowed there, but that the area should be kept clear, as a priority area for boat launching.

Mr. Kelley suggested that there should be a lease agreement with the University and any rowing organization using the site, and that the Town should be compensated. He provided details on this, and asked if the University had paid anything to use the property.

Mr. Lynch said there was a memorandum of understanding concerning the site that the Town owned the land, the University built the structure on it and owned it, and the Town could use a third of the building. He said no money was exchanged concerning this.

In response to a question from Mr. Kelley, Mr. Lynch provided details on the logistical reasons why the proposed overflow boat trailer parking had been removed from the plan. He said it was one of several compromises made during the process of developing this plan.

There was discussion on the change in the parking for the site as a result of this plan. Mr. Kelley asked if it would be possible for UNH boat trailers to use the parking lot for the hockey rink in the summer, and Mr. Lynch said yes, providing details on this.

There was discussion on the agreement with UNH that tied the University's use of Jackson's Landing to Durham residents' ability to park near the UNH pool.

Mr. Lynch provided details on work the University did to help maintain Jackson's Landing, noting among other things that it installed and removed the docks, which otherwise would be an expense for the Town. He said UNH didn't get a free ride with Jackson's Landing, but he said it certainly was a good deal for them.

Bill Hall said the UNH trailers were 65 ft long, with a vehicle, and said the idea that they would use the parking in the upper area wasn't realistic. He then provided further details on the issue of parking down by the boat ramp, and the problems boaters encountered there. He said he didn't want to lose the parking down by the water so UNH users of the site would have a place to go, so the boaters wouldn't trip over them when trying to launch their boats.

Mr. Campbell summarized the comments made by the Planning Board concerning the application:

- Signage for boat launching, - that the area must be cleared.
- Lease agreement with the University and Great Bay Rowing - look at compensation
- Possibility of extending the length of the boat launching area - 75 ft vs. 60 ft

The Board stood in recess from 8:51 to 9:08 PM.

VII. Public Hearing on amendments to Article XXI, Off-Street Parking and Loading and Article XXIII. Signs and Utility Structures of the Durham Zoning Ordinance.

The Board agreed that these were important changes that were proposed, so in order to get more input, the hearing would also be continued to the May 14th Planning Board meeting.

Susan Fuller MOVED to open the Public Hearing on amendments to Article XXI, Off-Street Parking and Loading and Article XXIII, Signs and Utility Structures of the Durham Zoning Ordinance. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.

Bill Hall said the Mill Plaza entrance didn't have a placard type sign., as other plazas did. He said he hoped there would be a provision in the Sign provisions to address this, and said people didn't know the businesses at the back of the Plaza were located there.

Mr. Hall also provided details on off street parking issues with the property next door to him, and how the proposed changes to the Parking provisions related to this.

There was discussion on this by the Board.

Susan Fuller MOVED to continue the Public Hearing to the May 14, 2008 Planning Board meeting. Richard Kelley SECONDED the motion.

Mr. Campbell said he wanted to make sure comments from the Public were heard at the Planning Board level/ He also said he would have the consultant create a memo for the public on the differences between the old and the new regulations.

Mr. Kelley said perhaps Mr. Campbell could get some input from reputable developers in this area, as well as from downtown business owners.

The motion PASSED unanimously 7-0.

VIII. Continued Conceptual Consultation on a Subdivision and Site Plan Review Application submitted by JLB Partners, Irving, Texas, on behalf of Louise Tecce Rev Trust, Durham, New Hampshire to subdivide a lot into two lots, with the possibility of more lots being included, and to build a multi-family housing development consisting of approximately 210 units. The property involved is shown on Tax Map 13, Lot 6-3, is located at 236-240 Mast Road and is in the Office and Research & Light Industry Zoning District.

Developer Jack Farrell, representing JLB, noted that the Board's first meeting concerning this application had taken place two weeks ago, and said since that time, the applicant had also met with the Conservation Commission to discuss the conservation areas on the site. He noted that there had been a site walk on Saturday. He said the Commission was in general agreement with the concept, especially with respect to the conservation areas that had been discussed previously with the Planning Board.

He also said there had been a meeting with the EDC where members were very encouraging about the project, and voted to move on to the Town Council some possible Zoning changes.

He then reviewed the preferred layout for the project. Mr. Farrell said the traffic study was

being prepared, and was expected to be available at the next meeting. He described the access options for the project, either from Mill Road, or from Mast Road, which would involve crossing the Oyster River.

He said 210 units of managed student housing was proposed, and he also noted that the Master Plan goal of getting student housing out of the neighborhoods would be met with this project. He then explained that the applicant was proposing to do a creative land swap so the portion of the property adjacent to College Woods wouldn't have to be developed, and more land could be added to it. He said this portion would be "replaced" with land from the Spruce Wood property, and he explained that the design would have no impact on density, but would require a change to the Zoning map.

He said the land to the east was an obvious conservation area, and said an idea being discussed was to increase the wetland setback from the river in this area from 125 ft to 250 ft. He noted that much of this area was otherwise usable land, and said the Conservation Commission was generally supportive of this idea. He noted that not building on the eastern portion of the property would eliminate the need for a wetland crossing as part of putting in an access road.

Mr. Farrell also explained that the desire was to avoid impacting an area that functioned as a vernal pool, in the design of an access road for development in the western portion of the Tecce property. He noted that this would require some filling of another wetland area on the other side of the access road, which the Conservation Commission might support in order to protect the vernal pool area.

He noted that the Conservation Commission had noted an area of black oak on the property which should be inventoried, and taken into consideration in the development of the plan. He also said the largest trees in that area had been identified, and would be worked around as much as possible in coming up with the building and road layout. He said the Conservation Commission had suggested hiring a wildlife/wetlands/woodland consultant to inventory of whole property, and he said this study would be undertaken.

Mr. Farrell next reviewed in detail the way in which usable area had been calculated, and density had been determined. He noted that the boundary for the Spruce Wood property was presently fuzzy on the plan because it wasn't presently known what it was, and said the Zoning change was needed in part to determine this.

Mr. Parnell received clarification that there would be a boundary line swap, and that some of the land on the eastern portion of the Tecce property that Mr. Farrell would receive, in exchange for some Spruce Wood land, would be land that wouldn't be built on because it was located along the Oyster River. It was explained that this land could be used by Mr. Farrell as part of future density calculations, but wouldn't be built on. It was also noted that this approach didn't involve a transfer of development rights.

Mr. Roberts noted that it had been said that some of the 250 ft offset from the Oyster River was usable area, and he asked if calculations had been done in terms of subtracting out soils with depth to ledge, more than 15% slope, somewhat poorly drained soils, etc. issues. He said he

wanted to be sure about this before the process went any further.

Mr. Farrell said these things had in fact been included in the calculations. He noted that depth to ledge was not an issue because water and sewer would be available, and said the somewhat poorly drained soils, etc. had been taken into consideration.

Mr. Roberts asked that Mr. Campbell be provided with a calculation sheet that showed this information, and also asked that the map be colored to show the areas to be deducted from usable area. He said he didn't want the Board to have to have a discussion on contiguous areas, and said it was better to know upfront what the calculations of usable area were based on.

Mr. Farrell said it had been intended to provide this information on the map that had been developed, and said really clear information on this would be provided with the next map.

There was discussion on the Mill Road access point, with Mr. Farrell noting that traffic consultant Steven Pernaw had done the traffic counts. He said the location met the sight distance requirements.

Mr. Kelley said that regarding the land swap idea, it was understood what the importance was of the land on the eastern portion of the Tecce property. But he noted that that to the west was the Spruce Hole aquifer,

Mr. Farrell said this was about 1500 ft from the proposed development area. He also noted the creek that flowed out of the aquifer area, as well as a band of wetlands. He said it had been determined that this was a drainage divide, with different soils on either side of the divide. He said land uses to the east of this divide were generally not considered to be a threat to the aquifer.

There was discussion on Mr. Farrell's plans for Spruce Wood, and where future development would take place relative to the drainage divide. There was also discussion on water and sewer infrastructure plans for this area of Town.

Mr. Farrell provided details on this, noting that among other possible approaches, there had been discussion on connecting a future well at Spruce Hole to the water treatment plant by running pipes right through the three properties involved with this project. He said he and the applicant advocated that the Town and the University look at this approach, and said they hoped to provide easements for this connection, as part of the review process. He provided further details on the advantages of this approach, and said it would be similar to the hardpipe project done in the past.

Mr. Kelley asked what would happen if Spruce Hole wasn't developed, and Mr. Farrell provided details on this.

Mr. Kelley asked where the sewer would go, and Mr. Farrell said it could go in the same easement area.

Mr. Kelley asked what the neighbors thought about the proposed project, and Mr. Farrell

provided details on this.

There was discussion on at what point the Planning Board would see comments from the Conservation Commission on the proposed development.

Mr. Farrell noted that developer Dave Garvey had gone to the Energy Committee to discuss some ideas regarding the design of the development.

Mr. Roberts said a concern was that a creative Zoning amendment needed to be invoked, as part of this development process.

Mr. Farrell said the EDC had heard the request, had brought it to the Town Council, and it was discussed by the Council on Monday. He said the only other regulatory issue was in regard to building the roadway in the wetland/wetland buffer, which might require a variance.

Mr. Kelley asked whether the proposed change from RB to ORLI had been discussed with the abutters.

Mr. Farrell said there had been some discussions, but they didn't want to go too far with this until feedback was received as to whether what was proposed was a good idea

Mr. Kelley said he thought the applicant was on the right track.

Mr. Garvey noted that the property to the left of Spruce Hole was Town owned land.

Mr. Parnell asked for more details on the idea of accessing the site from Mast Road.

Mr. Farrell noted that a river crossing would be involved, as well as a wetland crossing, and he provided some details on this.

There was discussion about this concept with the Board.

Mr. Roberts said there was a lot of grade involved, with such a crossing, and said areas where there wasn't slope contained wetlands. He said the access issue was a quandary for this project.

Mr. Kelley asked if the access options had been scoped out beyond the traffic study. Mr. Farrell described some of the things being considered, and said it was understood that this was a big issue for the project. He said he wasn't trying to minimize the issues that would be involved with a river crossing, but said it was doable.

Mr. Kelley said the applicants might benefit from incorporating some of their traffic information into the Town's traffic model. He also said that nothing stood out as a problem in terms of the proposed use of land for the project. He said protecting the vast stretches of land in the area and its natural resources, as proposed, was important, and said he didn't see anything wrong with that part of the design.

Chair McGowan asked what the next step was, and Mr. Farrell said he would like to come back to continue the discussion. He said the traffic information would be available then, and also said the information Mr. Roberts had requested would be provided.

Richard Kelley MOVED to continue the meeting until 10:30 pm. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

X. Other Business

A. Old Business: Discuss Extension Request for SAE, 28 Madbury Road.

Mr. Campbell explained that there were some issues with the phone system, and he provided details on this. He said the applicant had asked for a 2 month extension, just in case.

Richard Kelley MOVED to grant an extension until June 16th, 2008. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

B. Discuss Possible Zoning Change for Passive Recreational Trails

Mr. Campbell said there had been a meeting with Conservation Commission Chair Cynthia Belowski and Dea Brickner Wood trying to avoid the situation where existing trails in Town would have to go through the Conditional Use process, when changes to a property were proposed. He said his sense was that this would be a Council initiated change.

Mr. Roberts asked why what he had proposed wasn't considered an option.

Mr. Campbell explained that the majority of the land involved was not under the control of the Town.

Mr. Roberts said RSA 36-A:4 said this was not just for Town owned land, and was also for land the Town had an interest in for a particular reason. He said his big issue with this was that there were various entities involved with these properties, and this was a Council issue to arbitrate and make a political decision on. He noted how these things were done in Concord and Hanover, and said he couldn't find any other towns in NH that handled things the way Durham did.

He suggested that what Durham did should be better aligned with the rest of the State. He noted a memo he had developed on this issue that had not been circulated to Planning Board members.

Mr. Kelley asked what was proposed, in discussion with the Conservation Commission.

Mr. Campbell said the idea was to change the Table of Uses, and definitions, and to clarify that as long as no structures were involved, the process would involve notifying the Code Enforcement Officer and Conservation Commission. He said if structures were involved, the process would involve going before the Planning Board.

Mr. Roberts said this was outrageous, compared to what the rest of the State did, and Ms. Fuller

agreed.

Mr. Campbell said this had been passed on to the Town Attorney, and it was his opinion that an administrative approach wouldn't work if the Town didn't have an interest in the property. He said the majority of land involved here was not land the Town owned or had an interest in.

Mr. Kelley said the conditional use process would work in these situations, noting it didn't care about ownership.

Mr. Roberts said the conditional use process gave abutters power concerning a proposed land use, and he asked who represented the community in these situations. He said it was the Council and Town Administrator.

Mr. Kelley said he supported what Mr. Roberts was saying, and said the only drawback was what the Town Attorney said. He said he supported the conditional use process in these situations, given the problems that could arise for abutters as a result of the use of a trail in rural areas of Town.

Mr. Roberts said other towns had kept conditional use and the Planning Board out of the process, because otherwise, members of the public who were abutters could effectively stop these public trail networks.

There was discussion that what Mr. Roberts had submitted had been reviewed by the Town Attorney, and it had been determined that it wouldn't work in all cases.

Mr. Roberts said there were 23 trails in Town, and asked why the process should be different now, for this trail, than it had been for these other trails.

Chair McGowan asked Mr. Campbell to keep the Board updated on this.

B. New Business:

Mr. Campbell said the quarterly planning meeting would take place on June 11th.

Mr. Roberts said he was concerned about the pace of change in the community, and the planning issues that didn't come to the Planning Board until they were already agreed on events. He said he didn't recall seeing a memo to the Planning Board requesting advice regarding various planning related proposals. He gave as an example the proposed changes in Zoning districts. He said this was backwards, and said all of this discussion was going on at the EDC and the Town Council, without the Planning Board involved. He said he would think there would be a partnership with the Board so the planning perspective could be included.

Ms. Fuller said there had been comment on this at the EDC. She said all the EDC could do was recommend, and said the only action that could be taken was through the Planning Board or the Town Council.

Mr. Roberts said some pressure should be put on the Planning Board to address particular planning issues.

Mr. Campbell noted that the Zoning Ordinance allowed several different avenues to allow Zoning changes. He noted that the proposed Zoning map change had come from the Town Council Chair

Mr. Roberts said the planner, whether directed by the Town Council or the Town Administrator, should also look at what was in the best interest of the Planning Board, as a functioning body.

Chair McGowan noted that the Planning Board had a lot on its plate, and said a question was how to balance everything.

Mr. Roberts noted previous discussion by the Planning Board and property owners concerning possible changes to the Zoning district changes, but he said this discussion was now happening at the EDC and the Town Council. He re-stated that some heat should be put on the Planning Board to suggest the best course of action, rather than having that course already established before the Planning Board was involved.

IX. Discussion on Amendment to Thomas Christie's Site Plan for 12 Jenkins Court, Map 4, Lot 9

Mr. Campbell provided some background on the present situation with this site plan application. He said Mr. Christie wished to discuss it with the Board.

Mr. Christie updated the Board on what was going on. He said subsequent to the Farwell report, which was the storm water analysis originally generated for the project, he was told that did not contain a design system to go with the analysis. He said the Planning Board and Mr. Cedarholm had recommended that a system be designed, and he had hired Civil Consultants to do this, taking into account pre and post development flows as described in the Farwell report.

He said Mr. Cedarholm had found this system not to meet certain standards, and said Mr. Cedarholm had also taken the position that the system needed to be able to control the flows coming from 12 Jenkins Court as well, which was a pre-existing building on the lot. He said he was now on his fourth analysis, and third design, after he had thought that he and his engineer had pinned down what was needed.

He said he was concerned that Mr. Kelley had previously asked Mr. Cedarholm if he had reviewed the Farwell report and had found it to be reasonable, and the answer was yes. Mr. Christie said he had therefore believed that a system could be designed to go along with this report. He said he had had that system designed, but was then told that the Farwell report was not reasonable, with Mr. Cedarholm telling him the analysis in this report was considered a first cut. He provided details on this, and said this was just one of the issues that made this project very difficult for him to move forward with.

He noted that Mr. Kelley had asked if just the new building was being looked at, in terms of storm water flows, and the answer from Mr. Cedarholm had been yes. But he said Mr. Cedarholm's position now as that the new drainage analysis needed to be done to also accommodate the pre-existing building.

Mr. Christie noted that he had expressed concern early in the process that he didn't know what parameters Mr. Cedarholm was looking for, and said it had been his job at the beginning to provide technical advice on what he was looking for rather than saying go have an engineer design something.

He said the Board had the opportunity to straighten this matter out, in terms of questions asked, and answered by Mr. Cedarholm. He asked that the Board go back to the original request, to waive the requirement. He said they could also specifically delineate what flow area they were talking about, one or two, and amend the Conditions of Approval to reflect that.

Mr. Christie also noted that Mr. Cedarholm had asked him to prove that grass on the property could be sustained there. He questioned how this could be proved.

Mr. Parnell said asked if Mr. Christie had met the condition the Board had included in its approval of the site plan application.

Mr. Christie said he had done it three times. He reviewed again the analyses he had had done.

Mr. Campbell said the original Farewell submittal was an analysis but did not include a plan for storm water, and said the plan had progressed since that time. He noted that there were memos from Mr. Cedarholm that didn't agree with what Mr. Christie had said.

There was further detailed discussion between Mr. Christie and Board members about the process that had occurred, regarding the design of the storm water system.

Mr. Campbell said the letter from Mr. Cedarholm said the Farewell report included a drainage analysis for the whole site and all of the buildings, but the drainage plan later developed by Civil Consultants did not address all three buildings.

Mr. Christie asked the Board to amend the Findings of Fact and Conditions of Approval to remove the requirement regarding the drainage system.

Mr. Kelley asked whether, if this was done, a system would be put in. and Mr. Christie said yes. He said he would put in a system to address just one building.

Mr. Kelley they were looking at minimal increased flows here as a result of the development. He said there was an argument to be made that this site was so close to the end of the pipe, in that the distance from Pettee Brook to the ocean was not that far, that it would be better to release storm water flows quickly, in order to miss peak flows coming from upstream after a storm event. He said his concern for this site was handling drainage, and not the pre/post flow issue.

Mr. Christie noted that he had agreed to do onsite drainage, and the only hang-up was the detention aspect.

Mr. Parnell asked if the Board could get Mr. Cedarholm to be very specific about what his issues were concerning what had now been proposed by Mr. Christie. He said he should justify why he was asking that building #12 be addressed, when the Board had been told that #14 needed to be addressed.

Mr. Campbell noted again that the original analysis had included all three buildings.

Mr. Parnell said there was no reason to be doing a drainage analysis concerning a pre-existing condition. It was noted that all three buildings were located on the same lot.

Mr. Kelley said he didn't think addressing building #12 in the storm water design would change the results that much. There was discussion on this, and about whether drainage on the lot was being handled properly at present. Mr. Kelley said his concern was that a system be on this lot that handled storm water drainage properly. He noted that Mr. Cedarholm had two concerns, regarding puddling on the lot, and the catch basin issue.

Mr. Christie said the plan had noted that the property would be properly graded to help address these issues.

Mr. Campbell said he would ask Mr. Cedarholm to state what specific problems he had with the latest plan, and what could be done to overcome the problems with it.

Mr. Christie said Mr. Cedarholm wanted him to plan for the future in terms of possible drainage problems, and said a system needed to be designed and installed to address building #12. He said he was not willing to do that. He also asked the Board to inquire about Mr. Cedarholm's review, concerning whether it took place on the original Farwell plan, and why building #12 was now included.

C. Next meeting of the Board: May 14, 2008

XI. Approval of Minutes – March 12, 2008

Postponed

XII. Adjournment

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

Adjournment at 11:05 pm

Victoria Parmele, Minutes taker