

This set of minutes was approved at the August 13, 2008 Planning Board meeting

**DURHAM PLANNING BOARD
WEDNESDAY, JULY 9, 2008
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL
7:00 P.M.
MINUTES**

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

ALTERNATES PRESENT: Wayne Lewis; Councilor Jerry Needell (alternate Council member)

MEMBERS ABSENT: Kevin Gardner, Steve Roberts

I. Call to Order

Chair McGowan appointed Mr. Lewis in place of Mr. Roberts, and Councilor Needell in place of Councilor Julian Smith.

II. Approval of Agenda

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

III. Report of the Planner

Town Planner, Jim Campbell, provided the following report to members of the Planning Board:

- On Monday, July 7, 2008, the Town Council held a public hearing on the proposed amendments to the sign and parking provisions, and had passed them with some minor revisions. Mr. Campbell said resident Peter Smith would work on additional changes to the sign provisions, concerning time constraint language regarding political snipe signs. He said this would then come back as either a Council initiated or Planning Board initiated change to the Zoning Ordinance. The Council had also discussed the proposed Zoning district changes at this same meeting, but did not have a first reading on them. Mr. Campbell said this would be on the Agenda for the July 21st meeting. He also said the proposed Zoning change to allow stables as a conditional use in the MUDOR District, would be on the Council agenda for the July 21st meeting.
- If the Board finished its public hearing and discussion on habitable floor area at the present meeting, it too would be on the agenda for the July 21st Council meeting. Mr. Campbell said he

would not be at that meeting, and said it would be a good idea if some Planning Board members could be there.

- An Economic Development Committee meeting is scheduled for Friday, July 11, 2008. Mr. Campbell said members of the Durham Business Association had been invited. He said there would be discussion on tools available to municipalities to further economic development. He said there would be discussion on the inclusionary zoning implementation grant that had been applied for, which had been endorsed by both the Planning Board and the EDC. He said the EDC would also be reviewing its action plan, and would discuss a possible change in the process of allowing a change of use.
- Some interesting GIS maps have been prepared by administrative assistant Karen Edwards which Mr. Campbell said he had to show members.
- The Technical Review Committee had met concerning the 44 Main Street application, involving a change of use from retail to professional office.
- Mr. Campbell has been appointed to the MPO Technical Advisory Committee.

Chair McGowan said Councilor Julian Smith and Steve Roberts had arrived, and would be voting members.

IV. Public Hearing on an amendment to Article II, Section 175-7 of the Zoning Ordinance to change the definition of “Habitable Floor Area.”

Mr. Campbell said this was a Council initiated change. He provided some history on this, noting among other things that the idea of changing the definition had been discussed in detail by the former Housing Task Force and the EDC. He said its purpose was to promote redevelopment of properties and to increase their taxable value. He said this change would help remove the “cloud” over such properties, whose owners were afraid to come in for permits, because they had too many people living in them according to the Town’s present regulations, although this had been considered to be ok in the past. He said the change would include bathrooms and bedroom closets as habitable area, but would exclude circulation areas (stairways, hallways, corridors.).

Richard Kelley MOVED to open the public hearing on an amendment to Article II, Section 175-7 of the Zoning Ordinance to change the definition of “Habitable Floor Area.” Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 7-0.

Robin Mower, 11 Faculty Road, said the public had expressed strong views about the potential changes to the density on Church Hill. She said this proposed new definition and the proposed amendments to minimum habitable floor area did relate to this issue. She urged the Planning Board to consider the concerns of the residents who abutted areas where density might increase as a result of these changes.

She said she believed there might be some talk about a possible amendment to the Zoning Ordinance that would require a lower amount of density for a nonresidential development within a certain

number of feet of a residential property. She said it was the kind of concept that could diffuse some of the anxieties that had been expressed by residents.

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

- V. **Public Hearing** on an amendment to Article VII, Section 175-54 of the Zoning Ordinance to change the Minimum Lot Area Per Dwelling Unit in the Central Business (CB) Zoning District.

Richard Kelley MOVED to open the public hearing on an amendment to Article VII, Section 175-54 of the Zoning Ordinance to change the Minimum Lot Area Per Dwelling Unit in the Central Business (CB) Zoning District. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

Bill Hall, Smith Park Lane, said his comments related to this proposed amendment as well as the proposed amendment to change the minimum lot area per dwelling unit in the Church Hill district. He said that having lived on Church Hill almost all of his life, he'd had a good view of what went on there. He spoke in detail about the bad behavior of students there, and said working people had gradually moved out of the area in part because of this behavior.

Mr. Hall also spoke in detail about the limited parking available in the area, and said some of the people who lived in the properties which didn't have enough parking wound up parked in front of his house. He said if the Red Tower property was densified, there wouldn't be enough places to park, and said all that would do would be to push the parking onto neighboring properties. He spoke about students living in that area who had jobs, and needed their cars to get to work but had trouble getting out on some mornings because of the parking situation. He also said the noise that would be generated by increased density as a result of these proposed Zoning changes would make it difficult for them to study.

Mr. Hall said he didn't want to see lot sizes less than 5,000 sf for Church Hill, and said the Town needed to plan for what happened around the buildings, not what happened in them. He said if Board members and others had to deal with what he had to deal with, they would be out of their minds.

Councilor Needell asked if the number of parking spaces per resident had been changed, and Mr. Campbell said one parking space was allowed per resident, for those areas that allowed more than 3 unrelated people. It was noted that that Church Hill did not allow more than 3 unrelated, and that where the 3 unrelated provisions did apply, 2 parking spaces were allowed per dwelling unit, for single family, duplex, or multiunit dwellings.

Councilor Needell said to be clear, if this change were adopted for Church Hill, any redevelopment would have to provide this kind of parking.

Mr. Hall spoke in great detail about the parking problems as well as behavioral issues he had to contend with on a regular basis, living on Church Hill.

Robin Mower whether it perhaps made sense to think about a plan concerning living near students, and said this really was a bigger issue than changing the square footage allowed per person. She spoke in some detail about this, and asked whether this was something the Board had discussed on a broader basis. She said she would like to get a sense of this before there was deliberation on these Zoning changes.

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

VI. Public Hearing on an amendment to Article VII, Section 175-54 of the Zoning Ordinance to change the Minimum Lot Area Per Dwelling Unit in the Church Hill (CH) Zoning District.

Richard Kelley *MOVED to open the public hearing on an amendment to Article VII, Section 175-54 of the Zoning Ordinance to change the Minimum Lot Area Per Dwelling Unit in the Church Hill (CH) Zoning District. Councilor Julian Smith* **SECONDED the motion, and it PASSED unanimously 7-0.**

Dick Lord, Bennett Road, said he was the President of the Durham Historical Association, and said Church Hill was very much in the Historic District. He asked if this proposed Zoning change had been run by the Historic District Commission, and also asked what its position was on these changes and whether it had approved them.

Mr. Campbell said nothing had come up in the last couple of days, and he noted this idea had been discussed for a long time.

Mr. Lord said he saw this as a serious procedural error. He said that during this long period of time, the HDC should have had the opportunity to weigh in on this proposed change.

Ms. Fuller said the HDC may not have been meeting on a regular basis. She said this issue had not been on the HDC's most recent agenda.

Councilor Needell said apparently no attempt had been made to contact the HDC.

Mr. Lord said that concerning what was considered to be a prime part of the Durham Historic area, the body responsible for understanding how to best manage it had been bypassed.

Mr. Campbell said the HDC would still have to review applications concerning properties in the Historic district.

He said the HDC should have the right to comment on these proposed Zoning changes, given the fact that most of Church Hill was located in the Historic District. He said the Mill Plaza report recommended the removal of the Grange Hall, and said he was concerned that Durham would be losing some of its heritage. He also said the Council Chair had suggested selling the Courthouse building. He said it didn't seem that the Historic District was considered to be important, and that the Town planned to increase the density in the downtown area.

Councilor Julian Smith said the scary thing in the room was the fact that if the area on Church Hill, including the Kyreages properties and the Red Tower, was rezoned as the Central Business District, and the minimum lot area per dwelling unit was lowered, there would be a great likelihood that someone would buy the Red Tower property and find it economically profitable to bulldoze it, in order to put more student housing there.

Mr. Lord said if it became part of the Central Business District, the permitted uses would include hotels, restaurants, etc, so there could be a lot of changes.

Councilor Smith noted that he had been on the HDC for a year, and said the Historic District Overlay Ordinance stipulated that that demolition of buildings should be avoided where possible.

Mr. Campbell pointed out that the Board couldn't tell a property owner not to tear down a building in the Historic District.

Councilor Smith said there was the possibility that something was going to happen to several historic properties in the Church Hill District, including Mr. Hall's house.

Mr. Campbell noted that Crawford Mills had represented the HDC on the Housing Taskforce, which had come up with some of the Zoning change recommendations.

Bill Hall, said he didn't appreciate the densifying of his neighborhood. He said he was the only person living in his neighborhood who actually owned his house, and said he didn't want the conditions in the neighborhood to get any worse.

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

Richard Kelley MOVED to recommend to the Town Council the adoption of the amendment to Article II, Section 175-7 of the Zoning Ordinance to change the definition of "Habitable Floor Area." Councilor Julian Smith SECONDED the motion.

Councilor Smith said he liked some of this proposed change, but wanted to suggest some things. He said he had spent a good part of his childhood in a house that had a hall from the front to the back of the house. He said what this definition change didn't address was the fact that in some case, stairways, hallways, and corridors would be located entirely within a living unit. He noted that he had lived in a one-room apartment at one time that was very large, and the stairway was integrated into the room. He said the proposed definition didn't allow for the possibility that these areas might be part of a dwelling unit's habitable space.

There was discussion about why the Council had voted not to include stairways, hallways, and corridors as habitable floor area.

Mr. Campbell said the Council had been persuaded not to approve Councilor Peter Stanhope's motion to include these areas as habitable floor area because it had been noted that there had been lengthy discussion by the EDC and the Housing Task Force on this issue over a period of time,

which had resulted in the more conservative definition that included bathrooms and bedroom closets. He said after Councilor Stanhope's motion failed, the Council went back to vote on the original recommended language from the EDC.

Councilor Smith noted that some members of the Council had been ready to include rather than exclude stairways, hallways, and corridors.

There was detailed discussion on the Council's recent vote on this proposed change.

Mr. Roberts provided details about the fact that his concern was not with this language, stating that it was commonly used. He provided details on this, but said he was concerned about the idea of increasing the density, in areas where there already wasn't enough parking, and where there were some times student behavior problems..

In answer to comments from Councilor Smith, Mr. Campbell explained that using the 70% rule, it was likely that the interior stairways and hallways were included in this 70%. He said it was only when an exact measurement was done that the circulation areas were taken out.

Councilor Needell said a lot of the conversation about this provision of the Ordinance had revolved around the "cloud" issue, and he provided details on this. He said the question was whether it was because the rules were changed that people found themselves in violation.

Mr. Campbell spoke about how the thinking may have been concerning habitable floor area in the past.

Ms. Fuller noted that when the Housing Taskforce had met, some landlords were complaining that buildings were underutilized because Mr. Johnson was going by the strictest interpretation of the Ordinance.

Councilor Needell considered how much of an increase in usable square footage would result from this proposed change, for a typical multiunit dwelling unit. There was discussion.

Mr. Kelley said he liked the fact that the work on this had been done by the Housing Taskforce. He said he also personally liked the fact that the circulation areas were not included in this proposed definition, stating that there was more variability in them than there was with bathrooms. He said he could appreciate Councilor Stanhope's argument that these circulation areas were heated, but said he was not ready to make the leap, in terms of their effect on density.

Ms. Fuller said the purpose of this proposed change was to provide a definitive way for Mr. Johnson, the Town and property owners to figure out habitable floor area.

Councilor Smith questioned the inclusion of the word "occupant" in the provision, concerning allowing inspection and measurement of interior floor areas. There was discussion, and it was noted that perhaps this was an issue to take up with the Council. Councilor Smith said there were some other edits to the definition that were still needed.

Mr. Roberts said he felt the present language as proposed should be left as it was. He said the issues he had were with the other proposed Zoning amendments, and said he would have appreciated it if the ideas had been given to the Zoning Rewrite Committee to work on, and then were presented to the Council. He said instead, people were writing ordinances all over the place, and he said he thought this was totally wrong.

Councilor Julian Smith said this proposed change was not quite ready for prime time.

Councilor Needell said this was a Council- initiated change, and said there was no reason why it would be coming back to the Planning Board. He said he agreed with Mr. Roberts about the process, and said there had been very little documentation about the deliberations that had lead to this proposed Zoning change. He said he didn't like this process.

Ms. Fuller said the landlords, Administrator Selig, Code Administrator/Enforcement Officer Tom Johnson, the Police Department, the Fire Department, and others met with the Housing Taskforce over the summer and fall. She said she understood what Mr. Roberts was saying, but said she wasn't sure the Planning Board could handle all of the Zoning Ordinance changes.

There was further discussion about the Council initiated process to amend the Zoning Ordinance, and the amount of documentation of the proposed changes. Chair McGowan noted the documentation provided by the EDC in the Council packet.

Councilor Julian Smith said he was ready to vote for this, but he asked if the Planning Board would be agreeable, as part of voting for this definition, to vote for the spirit of it, and to allow Mr. Campbell and himself to tweak the punctuation. He said this would not change the substance.

Mr. Parnell said he thought it should be up to the Council as to whether it wanted to make further changes.

Chair McGowan said he felt the proposed change to the definition of habitable floor area provided consistency in terms of what was excluded and included.

Mr. Campbell said he and Councilor Julian Smith could do a bit more work on the definition before the Council meeting.

The motion PASSED unanimously 7-0.

Richard Kelley MOVED to recommend to the Town Council the adoption of the amendment to Article VII, Section 175-54 of the Zoning Ordinance to change the Minimum Lot Area Per Dwelling Unit in the Central Business (CB) Zoning District from 1200 sf to 900 sf. Susan Fuller SECONDED motion.

Mr. Parnell said he opposed this proposed change. He said the reasons as to why this should be done had not been given, and he said there were several public comments as to why it shouldn't be done. He said the idea that the interiors of the buildings in this district could be changed to allow more people in them seemed counterproductive.

Mr. Campbell said that lowering the lot area per dwelling unit enabled a property owner to have more apartments, instead of squeezing people into already existing apartments.

Councilor Needell asked how this kind of density compared to densities in Portsmouth and Dover. There was discussion.

Chair McGowan asked about the potential impacts to the actual buildings in the Central Business District.

Councilor Needell said a building there that now was allowed to have 4 units would be able to have 5 units, assuming that there was enough square footage in the building. He said the same amount of square footage per person would still be required, based on the fire code. He said if a building was already at maximum density, this would simply mean shifting the same number of people around.

Mr. Campbell provided details on how this would work.

Ms. Fuller said she supported this proposed change because it was a way to help revitalize the Central Business district, and she provided details on this.

Mr. Ozenich said if the density of students downtown increased, the situation there would deteriorate further.

Councilor Julian Smith asked what the Council had done with the Planning Board's recommendation that the Central Business District not be extended into the Church Hill District, at the July 7th Town Council meeting.

Councilor Needell said it was discussed briefly, and had not yet been moved on first reading.

Councilor Smith said the decision on the proposed minimum lot area change would be colored in large part by the possibility that a portion of Church Hill might become a part of the Central Business District. He spoke about the fact that he had lived close to the campus in another college town, Ithaca, NY, where he and his family had been surrounded by students. He said it had been a wonderful place to live, and had been worth putting up with raucous students.

He said he was extremely sympathetic to Mr. Hall, and to what others had said regarding the proposed change from Church Hill to the Central Business District. But he said Durham was a university town, and said it made sense to provide good housing near the University for college students.

Ms. Fuller said the University was working hard to change its image as a party school, and she said the professional landlords were working on this as well. She spoke about the importance of revitalizing the downtown area, with retail downstairs, and apartments upstairs, and she noted this kind of development in downtown Dover. But she said she was sympathetic concerning the issue of disruptive students.

Councilor Needell noted the significant amount of public comments, most of it quite negative, on the proposed Zoning changes. He said the question was where people wanted student housing to go in Durham, and whether private student housing was desired or not. He said these questions hadn't really been addressed directly, by everyone involved. He said a question was whether the proposed density with this Zoning change would be more likely to result in student housing than other types of housing, and whether that was the purpose, to create more student housing downtown.

He spoke of his experience in accompanying the Police Department on a busy evening downtown, and said it was really astounding to see what went on there, 3-4 times a week. He said most people in Durham were not aware of this. He said it was really difficult for someone to live downtown who was not a student. He said these proposed changes wouldn't help that, and said the question was what they would do to the people who lived in this area.

Chair McGowan said a lot of these things were happening now, and he said a question was how these dynamics would change by increasing the density.

Councilor Julian Smith said even if the minimum lot area per dwelling unit didn't change, there were opportunities to take down some buildings. He also noted that the Planning Board had approved Mark Henderson's project, and said changes like these were happening. He said there would be more students downtown, and said perhaps the Town and the University were at a tipping point, where things could be made better for the entire community. He said he was willing to go forward with that experiment, but said he realized that this was hard for some people who lived close to the downtown area.

Mr. Ozenich asked how this proposed change benefited people on the outskirts of Durham. He noted the closing of some retail stores downtown, and said he didn't think there would be more retail businesses downtown for residents.

Councilor Julian Smith said the disappearance of Houghton's Hardware had nothing to do with the students.

Councilor Needell said the benefit for outlying areas was an increase in the economic value of the downtown, and a lower tax rate.

There was discussion on what kind of increase in economic value was actually possible as a result of this proposed Zoning change. Councilor Julian Smith provided some specifics on this, noting that reducing the minimum lot area per dwelling unit made it financially attractive to demolish or renovate buildings, with shops on the first floor and student or other housing above them. He said there were some people who didn't mind living with college students, if the student housing was well managed.

The motion PASSED 4-3, with Chair McGowan, Richard Kelley, Susan Fuller and Councilor Smith voting in favor of it.

Recess from 8:45 to 8:53 pm.

Richard Kelley MOVED to recommend to the Town Council the adoption of an amendment to Article VII, Section 175-54 of the Zoning Ordinance to change the Minimum Lot Area Per Dwelling Unit in the Church Hill (CH) Zoning District from 4,200 sf to 3,000 sf. Susan Fuller SECONDED the motion.

Councilor Needell said the issues raised previously concerning increasing the density applied here as well.

Councilor Julian Smith said if this change wasn't made, he thought there would be more pressure to change Church Hill to the Central Business District. He said he could see all kinds of reasons why this change shouldn't be made, but said he would support it, and asked that he be forgiven for this.

Ms. Fuller said if this change went through, anyone bringing forward a development proposal would have to adhere to the current codes, concerning parking, etc. She said instead of 4 units per half acre, a bit more than 6 units per half acre would be possible, and said she didn't see this as a huge difference.

Mr. Campbell provided details on this.

Mr. Ozenich said he didn't see the advantage to changing this, and said he would rather see the minimum lot area per dwelling unit stay as it currently was, or perhaps increase. He said saving \$100 on his tax bill was not worth piling more aggravation on the abutters.

Councilor Julian Smith said he would speak in favor of this proposed Zoning change. He said he had lived in dense urban environments, and said this required patience. But he said there were advantages as well. He said it was recognized that the key to any downtown redevelopment in Durham was to include student housing, and said redevelopment would not occur otherwise. He said the rentals subsidized office and commercial development on the ground floor, making the rents more inviting to businesses. He said it was hard to do business in Durham, and said he hoped this change would assist with the redevelopment of the Town.

He said he recognized the demands on the Durham and UNH police departments to control the behavior of some students, but said he didn't think that should be to the detriment of Durham's downtown area. He said this proposal didn't represent a significant change, noting that there had been testimony that some of the existing units in buildings in the Church Hill District were already less than 4,200 sf. He also noted that the Church Hill District parking requirements had increased.

He also said that when this proposed amendment came back to the Council, it would be important to have some data on the number of student housing beds, in what now encompassed the Central Business District and the Church Hill District.

Mr. Campbell said he would try to obtain an estimate of this.

Mr. Roberts spoke against the proposed Zoning change, stating that there were dynamics downtown, concerning parking, etc that were not understood. He said he would rather see tax dollars from something like the proposed 1200 bed Teece development.

Mr. Kelley asked if there was an enforcement issue concerning student behavior in the Church Hill district. There was discussion on this, with Councilor Needell stating he wasn't sure how the behavior issues could be dealt with. He said whatever the reasons were, this was not an area that was conducive to non-student residency, and said it needed to be acknowledged that if this change was made, the area would be even less conducive to non-students.

Councilor Julian Smith described situations where parties downtown had been driven out of that area and into residential neighborhoods. He said it would be a good idea if the Town and the police could find a way to make the downtown area attractive to well-behaved crowds and to accommodate young people there inside buildings, rather than outside. He said he would support this motion.

The motion PASSED 4-3, with Chair McGowan, Richard Kelley, Councilor Smith and Susan Fuller voting in favor of it.

VII. Deliberation on a request for a waiver from Section 9.03 of the Site Plan Regulations, Stormwater, for the proposed building at 12 Jenkins Court, Map 4, Lot 9-0.

Councilor Needell recused himself, stating that he had not been present for discussion on this matter

Richard Kelley MOVED to deny the request for a waiver from Section 9.03 of the Site Plan Regulations, Stormwater, for the proposed building at 12 Jenkins Court, Map 4, Lot 9-0. Susan Fuller SECONDED the motion.

Mr. Kelley said there had been a lot of emails back and forth on this matter. But he said that in terms of what the regulations required, the Town Engineer's concerns had not yet been addressed. He said he was not about to cut the Town staff at the knees, and said there had not been a lot of effort on the part of the applicant to wrap this up.

Chair McGowan said he agreed. He said the Town was doing what it needed to do, and said it was important to support this.

The motion PASSED 6-1, with Lorne Parnell voting against it.

VIII. Deliberation on a Conservation Subdivision Application submitted by Joseph Caldarola, Portsmouth, New Hampshire for subdivision of one lot into 9 lots. The property involved is shown on Tax Map 10, Lot 7-0, is located at the corner of Bagdad Road and Canney Road and is in the Residential B Zoning District.

Ms. Fuller and Mr. Ozenich recused themselves, and Mr. Lewis was appointed in place of Mr. Ozenich. He said there would be 6 voting members of the Board.

Councilor Needell said he had watched the previous Board meeting on TV, and said he had been astonished that the public hearing was closed, given the fact that there was considerable new information. He said Mr. Campbell had recommended that the hearing not be closed. He said the issue he was most concerned about was that the Conservation Commission, to his knowledge, was

not given any opportunity to participate and comment on this innovative proposal for stormwater management, once it came forward.

Mr. Roberts said he had brought the appropriate materials to the Commission, and said they had felt somewhat rushed. But he said the fact that the applicant had accepted all of Dr. Roseen's comments had been considered somewhat definitive. He said the redesign was fairly persuasive. He said he agreed the Commission should have input.

Councilor Needell said the Conservation Commission was a partner with the Planning Board in the conservation subdivision process. He noted that the current regulations had formalized this process.

Mr. Campbell said the Commission's involvement was mainly regarding the primary and secondary open space issue, but not as much regarding the porous pavement issue.

Councilor Needell said he would like to leave the opportunity for the Commission to provide comments, if some people felt the hearing had been close in haste.

Mr. Kelley said he had made the motion to close the public hearing. He said his thinking had been that the Conservation Commission's involvement, and sphere of influence was over, with the designation of the primary and secondary open space areas, and the agreement regarding the swap of land that would be made.

He noted that it was the Planning Board that dealt with the various technical issues surrounding an application, and also noted that a leader in the field of stormwater management had commented on the proposed stormwater plan for the subdivision. He said that based on the information the Board had received concerning this, which he felt no one would question, it seemed useless to continue the hearing further. He also noted that members of the public were not present to speak on stormwater issues anymore.

Councilor Needell agreed that there had been ample opportunity for members of the public to provide input on this application. But he repeated that an abundant amount of new information had been provided at that meeting.

Chair McGowan said what had been provided was in part a result of previous input from members of the public. He then suggested that the Board should outline that evening the areas of the application where deliberation would be needed, and then should plan to come to the next meeting prepared to deliberate on them. He noted that there were some waivers that the Board had to decide on. There was discussion that a waiver was still needed to allow the applicant to swap some of the somewhat poorly drained soils and steep slopes on the site for some upland area (the upland area would be included as part of the primary open space, while some of the somewhat poorly drained soils and steep slopes would be excluded from the primary open space).

Richard Kelley MOVED to approve a waiver of Subdivision Regulations, Section 3.28, Primary Conservation Area and to allow the applicant swap some of the somewhat poorly drained soils and steep slopes on the site for some upland area. Steve Roberts SECONDED the motion.

Mr. Kelley said there was abundant reason to support this waiver: the fact that the applicant was putting more land into conservation land than what was required; the testimony of abutters beyond the back of the lot who said they would like to see the upland buffer there protected; the resource assessment that spoke about the wildlife corridor that would be preserved; etc.

Mr. Parnell said he supported the granting of this waiver. But he noted that this was what he believed to be the Town's first conservation subdivision, and said in changing the rules somewhat, a question was whether this would be setting a precedent.

Mr. Roberts said New Hampshire soils scientists didn't agree with Durham's strictures concerning somewhat poorly drained soils. He said these strictures were over the top. He said this application included conservation of more land than was required, and said the only thing the applicant was asking for was to be able to make a swap regarding a soil type that was included in the Zoning Ordinance but wasn't professionally supported.

Councilor Needell said he supported this waiver request, but he also said the requirements in the Zoning Ordinance concerning somewhat poorly drained soils were what they were. He said he would not support granting this waiver in order to circumvent the Ordinance. But he said the proposal before the Board concerning the land swap was very reasonable, and had been presented well. He noted that if the swap didn't occur, far more open space would have been disrupted, and he said he was glad the Planning Board had the ability to respond to the applicant's request. He also said he felt the applicant had made a real effort to find the best balance in the use of the property.

Councilor Julian Smith suggested that it would be appropriate for him to step away from the table to let Councilor Needell vote on this motion, because he had much more knowledge of the matter at hand. He then left the table for the vote.

The motion PASSED unanimously 6-0.

Councilor Smith returned to the table.

Mr. Campbell went through a list of things that still needed to be addressed. He said there should be a pre-signature Condition #12, regarding the stormwater inspection and maintenance plan. He noted that this requirement was in the stormwater report provided by the applicant, but said the requirement should also be in the declaration of the homeowners' association. There was discussion on whether the technical specifications for the impervious surface materials had been submitted.

Mr. Campbell said this information had been submitted, on March 21st, 2008. He noted other related documentation that was listed in the Findings of Fact. He said there were two conditions to meet subsequent, regarding the porous asphalt. He said this language was similar to what had been used in the Kimball application. He noted that the declarations had been sent to the Town Attorney and the Public Works Department for their review, including the wording concerning the easements.

Mr. Kelley said he was not prepared to vote on this application that evening, and others agreed.

Councilor Needell asked what the enforceability was if maintenance of the porous pavement didn't happen.

Mr. Kelley said he thought the Town would have the maintenance work done, and would bill the homeowners' association. He said legal steps would be taken if the association refused to pay for this.

There was discussion that it was important that maintenance be enforceable. It was noted that most homeowners didn't read the homeowner association documents. There was discussion about the process that would be followed 20 years from now, when the area needed to be repaved.

There was also discussion on the importance of keeping the gutters cleaned out, as part of the stormwater management system, and the need for enforcement concerning this as well.

Mr. Kelley noted that there was a lot of language regarding porous pavement in the various documents, including the warranty deed. He said there was really no excuse for someone not to see it.

Mr. Roberts recommended that maintenance and inspection of gutters and downspouts be put on the list of items Mr. Campbell was putting together.

Mr. Kelley noted that Mr. Caldarola had committed to run the force sewer main to the sewer pump chamber behind lot 1, and that the abutters would have to pay for anything beyond that to their properties. He said this should be noted somewhere in either the Findings of Fact or Conditions of Approval, and that the abutters had the opportunity to have this work done by a contractor who was going to be out there anyway. He said this would then be in the record, and said this would save the abutters a significant amount of money.

There was discussion that the Board would need to see signed and sealed plans.

Mr. Parnell noted that it had come up at the public hearings that some people had had problems with some of Mr. Caldarola's other developments, because they had not been completed and were unsightly. He asked if the Board would be requiring a schedule and construction plan for this subdivision development.

Mr. Campbell said the Board could include something in writing concerning this, and Mr. Parnell asked Mr. Campbell to draft some appropriate language.

Mr. Roberts asked if the full verbiage was in the Findings of Fact that the owner of the former Bradlee property concerning removing the septic system and installing the sewer connection to the sewer pump chamber, as a precondition for Mr. Caldarola to run the drainage line to Ambler Way.

Mr. Campbell said if the new owners decided they liked the septic system, the Board couldn't force them to hook up to the sewer system. There was further discussion on this.

Mr. Roberts noted that Mr. Caldarola had agreed to put in a ditch line for drainage purposes, and that this wouldn't be possible if the septic system remained in place.

Mr. Kelley agreed that the sequence of actions Mr. Roberts had spoken about was not spelled out yet in the documentation, and there was discussion.

It was agreed to continue deliberations on the application to the August 13th Planning Board meeting.

Richard Kelley MOVED to continue until the August 13, 2008 Planning Board meeting deliberations on a Conservation Subdivision Application submitted by Joseph Caldarola, Portsmouth, New Hampshire for subdivision of one lot into 9 lots, at the corner of Bagdad Road and Canney Road, in the Residential B Zoning District. Lorne Parnell SECONDED the motion, and it PASSED unanimously 6-0.

IX. Other Business

- A. Old Business:
- B. New Business:

Mr. Campbell said that currently, any change of use had to go to the Planning Board, or the Board's Technical Review Committee. He said the Planning Board could simplify this process by allowing simple changes of use to be approved by the Code Administrator/Enforcement Officer. He said the goal was to try to keep Durham's businesses vibrant, and to not allow too much lag time when there was a vacancy. He said this idea fit with the current analyses of Town processes through the Kaizan continuous improvement methodology, and said he would be discussing the idea with the EDC.

Mr. Roberts said he thought this could be considered as long as they were not talking about major changes in architecture, parking, traffic, etc.

Councilor Needell asked how this proposed change would be made.

Mr. Campbell said it would be a change to the Zoning Ordinance, and said he would recommend that it go through the Planning Board.

Councilor Needell asked if this change could apply to the trail change of use issue, and Mr. Campbell said it could, but also said that issue might be settled already.

Councilor Needell said he believed that Mr. Gottsacker could help improve some of the Town's processes, but he said he wasn't sure, about the change of use process.

Mr. Campbell said the process of evaluating this hadn't even started yet.

Mr. Campbell handed out some GIS maps that administrative assistant Karen Edwards had recently done, showing land in Durham in current use, University properties, Town owned land, and conservation land. There was discussion by the Board about how useful these maps could be, for various purposes.

Councilor Needell noted the idea previously discussed by the Board, of touring previously approved subdivisions and commercial developments in Durham.

It was agreed that Mr. Campbell would figure out a date when the Board could take such a tour.

Councilor Needell said at some point, the Planning Board should discuss the idea of possible changing the Zoning Ordinance amendment process. He said they were all seeing how it was being used right now, and he said he wasn't particularly happy with the process.

Mr. Campbell noted that the Board needed to be allowed more time to respond to Town Council initiated Zoning changes, in order to get into the issues involved. He also said he would like to see more options for the Board as to how to respond to a proposed Zoning change. He said right now, all the Board could do was comment.

Mr. Roberts described the process the Planning Board had gone through with planning consultant Mark Eyerman, in developing Zoning Ordinance change recommendations. He also said he would like to know how other communities handled this.

C. Next meeting of the Board: July 23, 2008 Highland House application.

X. Approval of Minutes – May 28, 2008
Postponed

XI. Adjournment

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

Adjournment at 10:11 pm

Victoria Parmele, Minutes taker