

*These minutes were approved at the October 15, 2008 meeting.*

**DURHAM PLANNING BOARD  
WEDNESDAY, AUGUST 27, 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; Steve  
Roberts; Richard Kelley; Councilor Julian Smith;

**ALTERNATES PRESENT:** Wayne Lewis; Kevin Gardner; Councilor Jerry Needell

**MEMBERS ABSENT:**

**I. Call to Order**

**II. Approval of Agenda**

*Councilor Julian Smith MOVED to approve the Agenda. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0,*

**III. Report of the Planner**

- Mr. Campbell updated the Planning Board on the Town Council's recent meeting. He said the Council had adopted the Zoning change regarding habitable floor area, and had also adopted the Zoning change that reduced the lot area per dwelling unit from 1200 sf to 900 sf in the Central Business District. He said the third proposed Zoning change, a reduction in the lot area per dwelling unit in the Church Hill district, was tabled, and would come up again at the September 8<sup>th</sup> Council meeting. He said there would also be a public hearing on the proposed Zoning district change from RB to ORLI at that meeting.
- Mr. Campbell said the recently scheduled EDC meeting was canceled for lack of a quorum.
- He said he had met with the Chair of the Conservation Commission on August 20<sup>th</sup>, and said that hopefully at their September meeting, they would be discussing the updated State Shoreland Protection Act. He said the discussion with the Planning Board on this would take place some time after that. He said it was hoped that the EDC would be at the September meeting with the Conservation Commission, to see if some kind of consensus could be reached regarding areas of the Town to be developed, and areas to be conserved.
- Mr. Campbell said he had recently met with Pat Sherman, regarding possible alternative Zoning ideas for the Church Hill district. He said she would provide on this a report to Administrator Selig, and it would be passed on to the Planning Board.

- Mr. Campbell said he had scheduled Sept 24<sup>th</sup> for the next quarterly planning meeting, and said at that meeting, the traffic model that had been developed for Durham would be demonstrated, using Mill Plaza traffic as an example of how it worked.
- He said that at the September 10<sup>th</sup> Board meeting, Administrator Selig and Business Manager Gail Jablonski would be present to introduce the CIP, and discuss it with the Board. He said there could also be discussion on the CIP in October.
- Mr. Campbell said that the previous day, 4 firms had been interviewed concerning the project to complete the Main Street West improvements. He said the McGuire Group had been chosen, and said the fee was presently being negotiated. He said there was an aggressive schedule, and said the hope was to complete the design by the end of 2008, and to see construction by the summer.

There was discussion as to whether there was some way for Administrator Selig to provide the Board with highlights of the CIP, before the September 10<sup>th</sup> meeting.

Chair McGowan said Mr. Lewis would be sitting in for regular Board member Richard Kelley.

**III. Public Hearing on a Site Plan Application** submitted by Stephen & Lori Lamb, Durham, New Hampshire for the change of use of a single family residence to a 10-room inn. The property involved is shown on Tax Map 14, Lot 34-1, is located at 90 Bennett Road and is in the Rural Zoning District.

Lori Lamb spoke before the Board, and briefly restated what she and her husband were proposing with this application.

***Councilor Julian Smith MOVED to open the public hearing on the Site Plan Application submitted by Stephen & Lori Lamb, Durham, New Hampshire for the change of use of a single family residence to a 10-room inn, for the property located at 90 Bennett Road, in the Rural Zoning District. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0***

**Beth Olshansky, Packers Falls Road** spoke before the board. She said she was first speaking on behalf of Dick Lord, who was not able to be at the meeting. She said Mr. Lord had lived across the street from the property in question for over 50 years, had seen it when it was an inn, and had seen the various other changes the property had gone through over the years. She said Mr. Lord was thrilled to see this renovation occurring, and she noted that he had written a letter to the Planning Board concerning the application.

Ms. Olshansky said she too was thrilled with this application. She said this was certainly an historic building that was worth saving, and said she was very pleased to see it being restored to its original use, and becoming a part of the neighborhood again.

There were no other members of the public who came forward to speak.

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

Mr. Campbell noted that he had developed Findings of Fact and Conditions of Approval for this application, and that they had been provided to the applicants.

There was discussion that three waivers had been approved at the July 23<sup>rd</sup> meeting: a waiver concerning the sight distance; a waiver concerning the use of an updated subdivision plan, as the official plans being presented for the application; and a waiver concerning the need for a professionally engineered stormwater drainage analysis.

Some additions needed to the FOF were noted: that the dormitory building was considered by the Board to be an accessory use, and that this was acceptable to the Board; that comments speaking in favor of the application, including Mr. Lord's letter, had been received; and that no members of the public had spoken against the application at the public hearing.

There was discussion on drainage issues concerning the driveway, and that something on this would be included in the conditions of approval. Mr. Campbell said Condition of Approval #6 would state that a plan would be submitted for approval

The applicant, Steve Lamb said he was going to draw up a drainage design for the driveway that would be used. He noted that the existing western driveway was dangerous, and he planned to block it off so it couldn't be used.

Chair McGowan noted an email from Code Officer Tom Johnson, and Mr. Campbell said the only outstanding issue from the email was that a variance might be needed for the septic system, and that this had been added to the Conditions of Approval. He said the parking issues had been addressed, noting that the plan showed ADA parking, and a ramp to provide accessibility. He said the parking ordinance allowed parking within the setbacks as long as there was a 5 ft buffer, which the applicant did show on the plan.

There was discussion about the UNH AIRMAP station located near the applicants' property, and that Mr. Johnson had expressed concern that if the accessory building was used frequently and created traffic, this could create trouble for the AIRMAP station.

Mr. Lamb said he had discussed this with the University. He explained that the concern was that the car traffic could impact the data taken at the station, and said he had been asked to inform the AIRMAP station when there was going to be a function, so any data taken during that time would be removed from the overall air quality data being collected.

It was noted that the University had its own driveway now, so there would be no more use of the applicants' driveway.

There was discussion about comments made by the Fire Marshall, and Mr. Lamb said the issue was that there needed to be a galvanized steel pipe to connect the fire pump to the plastic piping to be used on the property. He said the concern was that this connection was needed because when the pump started, the initial torque would stress the plastic pipe, and without the steel connection, it might fail. He said he had proposed a solution to this issue, but said there had been no ruling on this yet.

Mr. Roberts asked Mr. Lamb if he was working on this with certified fire safety organizations, and Mr. Lamb said he was. He also said all the equipment he was using was certified for the specific purposes it was intended for.

Mr. Campbell noted the language in the Conditions of Approval regarding this, - that the Durham Fire Department and the State Fire Marshall had to approve the system. There was discussion on this wording, and whether it was sufficient.

There was discussion on the outdoor lighting that was planned for the Inn. Mr. Lamb said the lighting would primarily be for the paths, the porch area, and the parking off to the side. He noted that the area would be lit when there were people staying at the Inn, but would not be lit when no people were staying there.

Mr. Campbell said there could be a Condition of Approval that a lighting plan would be provided.

Mr. Roberts asked Mr. Lamb if he supported the Police Chief's perspective regarding onsite parking, and Mr. Lamb said yes.

Mr. Campbell noted that the Lambs had provided more parking than was required by the Ordinance.

## **WAIVERS**

The applicant requested a waiver from Section 4.16, Street Construction Standards, of the Road Regulation. The applicant requested waivers from Section 7.02(D), Formal Application Content and Section 9.03, Storm Water Drainage, from the Site Plan Review Regulations. The Planning Board has reviewed the requests and hereby approves the waivers.

## **CONDITIONS OF APPROVAL**

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

1. The applicant shall supply one mylar plat and one paper copy for signature by the Planning Board Chair.
2. If the septic system is within the 50 foot setback for the side or rear yard, then the applicant must receive a variance from the Zoning Board of Adjustment.
3. The applicant must receive the Durham Fire Department's approval for the sprinkler system.
4. The applicant must receive the New Hampshire State Fire Marshal's approval for the sprinkler system.
5. Total impervious coverage must be calculated and given to the Department of Planning and Community Development.

6. The western driveway will be closed and the applicant will submit a plan dealing with the drainage to the Town Engineer for approval.
7. A copy of the lighting plan shall be provided to the Department of Planning and Community Development.

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.

***Steve Roberts MOVED to approve the Findings of Fact and Conditions of Approval, as amended, for the Site Plan Application submitted by Stephen & Lori Lamb, Durham, New Hampshire for the change of use of a single family residence to a 10-room in, for the property located at 90 Bennett Road, in the Rural Zoning District. Councilor Julian Smith SECONDED the motion and it PASSED unanimously 7-0.***

- V. Continued 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 left the table, and Chair McGowan said Kevin Gardner would fill in for Mr. Ozenich.

Mr. Campbell noted that the updated Findings of Fact and Conditions of Approval had been provided to the Board. He also noted the memo received from the Public Works Director on the road paving issue, as well as a memo received from the Town Engineer regarding the drainage easements, etc. He said Mr. Lynch was present to answer questions the Board might have.

Chair McGowan suggested that Mr. Lynch should first speak to the Board concerning the memo he had written.

Mr. Lynch provided some background on the Public Works Department's perspective on the work that needed to be done on Bagdad Road. He explained that this work had been deferred over the past few years, because the thought at the time was that the Sophie Lane subdivision project would move forward in a timely fashion. He said this had not happened, and in the meantime, the condition of the road had gotten worse.

He said the bottom line was that now, after the construction trucks drove back and forth on Bagdad Road, a full reclamation of that road would be needed, and the cost difference for doing the road now as compared to a few years ago was about \$30,000. Mr. Lynch said he didn't feel the taxpayers should be burdened with this, and said he was requesting that the developer pay for this.

Mr. Roberts said he had read Mr. Lynch's letter, and had been confused as to what engineering judgment was involved in determining normal wear and tear resulting from the enterprise, and whether this wear and tear was because of the unique nature of the road or the enterprise itself. He also said it was confusing as to what portion of the road repair was Mr. Caldarola's fair share to pay.

Mr. Lynch provided details on this, and explained that while the cost previously to repair the road would have been \$18,000, it would now cost \$48,000 to do a full reclamation of the road. He clarified for Mr. Roberts that Mr. Caldarola was being asked to pay \$30,000, which was the difference between the first and second estimates. He also noted that the \$30,000 amount was a discounted amount because the Town's discount was built into the cost figure.

Councilor Needell asked if 2010 was a reasonable prediction of when the private road would be in place.

Mr. Caldarola said probably not, being realistic. He said his hope was that the first house would be built in the fall of 2008, and that the next house would be built within a couple of years.

Councilor Needell asked if the Town could wait until 2012 or 2013 to pave this road.

Mr. Lynch said he didn't know. He said it had been hoped that after the application had been in process for three years, the work would get going, but he said it didn't sound like that would happen. He said he wouldn't want to set a specific date on when the road would be done, but would want to say that the road would be done when a certain percentage of the development was completed. He noted that this could be several years out, and the question was what to do in the meantime. He suggested that the Public Works Department could work with the developer to keep the road safe, and passable, if it knew that the proper fix would be applied at some time, and that there would be funding assistance for this.

Chair McGowan noted that there had been multiple parties involved with the delays in the completion of the application process for this project.

Mr. Lynch explained that his goal in this instance was to protect the taxpayers.

Mr. Parnell noted that the memo from Mr. Lynch spoke about the deterioration of the east end of Bagdad Road. He asked if this was the reason for the increase in cost, or if it was because of the projected impacts of heavy trucks during the construction process.

Mr. Lynch said if he had thought that the application process would take so long, he probably would have done the road sooner. He stressed that the Public Works Department was not against this project, but had thought it would have moved along more quickly.

There was further discussion on whether the \$30,000 figure was a reasonable number, given the variables involved.

Mr. Lynch said plan B would be to do a quick shim of the road to smooth things out, and get by for a few years.

There was discussion as to whether there could be a condition of approval concerning this issue.

Councilor Julian Smith said he would like to hear Mr. Caldarola's response concerning Mr. Lynch's statement that the taxpayers should not have to pay for the increase in the cost of the road, and that this was the developer's responsibility.

Mr. Kelley arrived at the meeting, and became a voting member. Chair McGowan said Mr. Lewis would fill in for Ms. Fuller.

Mr. Caldarola noted the letter on this subject from his lawyer, and said his own understanding was that a developer was responsible for repairing damage to a road during construction but was not responsible for repairing the road to a better state than it was before construction started. He said he understood Mr. Lynch's situation, and also said he would repair any damage to the road that resulted from construction of his project.

He noted that with the Fitts Farm project, where there were 67 houses involved, there had never been an issue with the Public Works Department concerning road damage. He provided details on this, and said he therefore didn't understand concerns that this proposed 9 lot subdivision would destroy Bagdad Road, unless there was something wrong with the road. He also said he was concerned that if the road was patched now, he would be held responsible for the state of the road later on.

There was discussion by the Board as to how to proceed concerning this issue.

Mr. Roberts said he felt the evidence presented didn't match the damage that would be caused by the developer. He said the reason Bagdad Road had to be repaired had nothing to do with the Mr. Caldarola. He said he understood the pressure the Public Works Department was under, but said he didn't think what was proposed was fair.

Chair McGowan said he agreed. He said he realized that Mr. Lynch had done the best he could, given the delays in the application process, but said in hindsight, perhaps this had not been the best thing to do.

Mr. Parnell said this was the kind of situation where an impact fee was relevant, but he said doing this on a one shot basis was not reasonable. He said the Board had received an opinion from its attorney on this, and also said there would be tax benefits from this project. He said the project had been delayed and the road had deteriorated, and so be it. He said he didn't think there needed to be anything in the Conditions of Approval other than addressing damage to the road caused by construction.

Mr. Kelley said he supported what Mr. Parnell and others had said, stating that he didn't know how the Town could expect Mr. Caldarola to fix a situation with the pavement condition that he had nothing to do with. But he said the Board did expect him to return the road to the condition that existed when construction began, which was a road in need of repair. He asked for clarification on what exactly the Board did expect concerning this.

Councilor Julian Smith said perhaps the Board could recommend that the state of the road be documented at the start of construction, and that Mr. Caldarola would be expected to pay for the return to that condition.

Mr. Campbell said the surety would address this, and he provided details on this.

Mr. Caldarola said he had never heard of a bond including potential damage to existing streets, and Mr. Campbell said this language had been in Durham's regulations for at least as long as he had been employed in Durham.

Mr. Caldarola questioned how the cost numbers would be arrived at.

There was detailed discussion on various aspects of this issue, and on what wording was therefore appropriate to include in the Conditions of Approval. The wording "Repair of damage to existing roads, from construction activities or equipment" was found to be acceptable to the Board and to Mr. Caldarola.

Mr. Campbell noted that as part of the upcoming Budget development for 2009, the Board might recommend moving up the reclamation of Bagdad Road to 2009.

The Board then discussed remaining editing changes needed to the various documents for the application.

Councilor Needell said the language under 5.2 and 5.3 in the "Declaration of Sophie Lane Homeowners Association" was confusing, concerning the declarant having to approve certain things. There was discussion that Article I provided clarification concerning the declarant issue. Councilor Needell said perhaps there should be some language that the Homeowners Association would succeed the declarant.

Mr. Caldarola said he was fine with this, and also said the language in 2.2 regarding conveyance when all of the lots had been sold was fine with him.

Mr. Campbell noted Attorney Mitchell's concern that Article 8, section 8.2 indicated that Article 3 and Appendix B were the only things the Board was concerned about not being changed. Mr. Campbell said a question was whether there were other things the Board wanted to come back to it for review, such as architectural control, if something changed.

Councilor Needell asked if there should perhaps be a provision for a stewardship plan since this was going to be a conservation subdivision.

Mr. Campbell noted that there was a Condition of Approval, to be met prior to signatures, which stated that a stewardship account must be opened on the date of the establishment of the Homeowners Association, to ensure the management of the open space. He said there was also a Condition of Approval to be met subsequent to signatures that required monitoring of the open space at least once every two years.



Mr. Gardner said there was also wording concerning this in Article 3 of the Declaration.

There was further discussion about Attorney Mitchell's comments.

Concerning whether there were other aspects of the approval that the Board might be concerned about not being changed, Mr. Caldarola said he wouldn't mind adding additional wording to Article 8 that indicated that no changes could be made that were in conflict with the approval by the Town.

Councilor Needell said he thought wording in 8.2 should also be in 8.1.

There was discussion on Mr. Cedarholm's letter. Mr. Caldarola said he didn't have a problem with recommendation #4 concerning the drainage easement. He said this had been a holdover because the Town had wanted it a few years ago, but he said it could be taken out.

There was discussion on Mr. Cedarholm's comments regarding the Town having to put utilities in on a private road, and that the Town shouldn't have to pay for problems caused to the road as a result of this.

Mr. Kelley said he thought this was pretty harsh. He also said it was going to be hard for him to approve another project with a private road, because it complicated things greatly. He said Mr. Cedarholm's language suggested that the Town could make a utility repair and then leave the road as it was.

There was discussion on the public road/private road issue, and that this was something for the Planning Board to put on its Zoning rewrite list.

Mr. Campbell said it did complicate things that the road itself was part of the drainage system. He said a question was whether, if the Town were going to ask developers to do this kind of system, the Town would take any responsibility after it was put in.

Mr. Parnell received clarification that the water pipes as well as some of the sewer pipes would be placed under the porous pavement.

It was noted that the way things were currently written, it was the responsibility of the Town to make the road repairs after utility work was done, and that Mr. Cedarholm was suggesting that the Town not take on this responsibility. There was further discussion as to how the Planning Board wanted to handle this issue. It was noted that the utilities would only service the subdivision and possibly two other properties on Ambler Way.

Chair McGowan said he felt that the Board should not follow Mr. Cedarholm's recommendation concerning this, and Mr. Kelley said that with all due respect to Mr. Cedarholm, he agreed with Chair McGowan.

Mr. Campbell received clarification that Mr. Caldarola was fine with Mr. Cedarholm's first two recommendations.

There was discussion about recommendation #4, regarding the easement language. Mr. Caldarola described his understanding of the history of this language. Mr. Kelley noted that the resolution to this issue was that the Town could go in and do maintenance if needed, and would charge the Association, without needing specific language concerning this. He said this was covered under the Town's ability to enforce the Conditions of Approval.

There was discussion on Exhibit B, the "Maintenance Specifications for Porous Pavement", and on whether there was anything there concerning inspection. Mr. Kelley noted that the applicant's Stormwater System Inspection and Maintenance Plan addressed this, and Mr. Campbell said this was covered in the Conditions of Approval, to be met prior to signatures.

Mr. Campbell summarized that the applicant needed to address #1, 2 and 4 of Mr. Cedarholm's comments, but not #3. He then reviewed the additions to be made to the draft Findings of Fact and Conditions of Approval, based on the discussion that evening.

## **WAIVERS**

The applicant has requested a waiver from Section 3.28, Primary Conservation Area, from the Durham Subdivision Regulations to swap useable and unusable areas. The Durham Planning Board hereby approves the waiver.

## **CONDITIONS OF APPROVAL**

The following conditions shall be met prior to the Signature of Approval on the Subdivision Plan. These conditions shall be met within six months of the signing of these Findings of Fact and Conditions of Approval by the Chair of the Planning Board. If these conditions are not met within six months, the applicant must come before the Planning Board for review of the conditions:

1. The applicant shall supply two mylar plats and one paper copy for signature by the Planning Board Chair, and the plans must be stamped by the appropriate professionals.
2. A certificate of monumentation shall be provided to the Planning and Community Development Department.
3. The Town Attorney and the Department of Public Works shall review and approve the final Declaration of Sophie Lane Homeowners Association with Covenants, Restrictions and By-Laws and the easement language for the roadway, utilities, drainage, water and sewer.
4. A stewardship account must be opened on the date of the establishment of the Homeowners Association to ensure the management of the open space. It shall be held and managed by the Homeowners Association. The purpose of this account shall be to pay the costs of the biennial monitoring. The account shall be opened with \$2,500 and original payment shall be made by the developer.
5. All State and Federal permit numbers shall be listed on the final plan.
6. A road opening permit must be approved by the Durham Public Works Department.

7. The applicant will need to update the note on the plan reflecting the FIRM dated May 17, 2005. The current note references a previously dated FIRM.
8. The Stormwater System Inspection and Maintenance Plan shall be made part of the Declaration of Sophie Lane Homeowners Association, with Covenants, Restrictions and Bylaws.
9. The Stormwater System Inspection and Maintenance Plan shall include language that the gutters and downspouts will be maintained as part of the stormwater system.
10. The Warranty Deed shall state that the lot owners have the responsibility to maintain the gutters and downspouts as part of the stormwater system.
11. A phasing plan will be submitted to the Department of Planning & Community Development. In addition, at the completion of each phase, a close-out plan will be submitted so that construction material will be removed from the entire site within 90 days.
12. The applicant will extend the sewer force mains for Map 10, Lots 6-2 and 6-3 up to the location of the sewer pump chamber. A note shall be placed on the final Subdivision Plan indicating this.
13. Any editorial changes to deeds, Declarations, etc. shall be approved by the Director of Planning and Community Development.

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

1. The referenced Subdivision Plan and 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. The open space shall be monitored at least once every two years and shall be performed by a person or organization that is qualified in land conservation and resource management, shall have an established record in land management or the oversight of conservation easements or restrictions, shall be willing to assume the review obligation and shall be subject to approval by the Director of Planning and Community Development.
3. The Homeowners Association shall provide a letter to the Town once a year describing any activity that has occurred within the open space as provided for in Section 175-107(I)(3) of the Durham Zoning Ordinance.
4. Trees targeted for harvest/removal shall be clearly marked. Trees to be protected during clearing operations and construction shall be clearly marked to caution operators. The developer is required to notify the Tree Warden who shall ensure this occurs.
5. An independent, qualified engineer shall be on site during preparation and installation of porous asphalt to ensure proper installation, to inspect the site, and provide progress reports to the Code Enforcement Officer. The developer is required to follow specifications for the installation and maintenance of porous asphalt. The specifications are hereby incorporated by reference in these

Findings of Fact and Conditions of Approval. This shall be done on a schedule as agreed upon by the developer and the independent, qualified engineer.

6. Yearly records of the maintenance of the porous asphalt and the entire stormwater system shall be supplied to the Town of Durham by January 10 of the following year.
7. Two sets of record construction drawings, plans and profile of all infrastructure improvements shall be submitted in electronic and paper copy at a horizontal scale of 1" to 20' and a profile vertical scale of 1" to 4', including, but not limited to, underground utilities (sewer lines, water lines, storm drains, electrical, phone, cable, natural gas lines, etc.), drainage ways, ditching, improvements, swales, roadway, driveway and access. These construction drawings shall be signed and sealed by the professional surveyor or engineer who prepared the plans.
8. The applicant shall post an acceptable financial surety for each phase of construction. The financial surety shall be in an amount sufficient to ensure the completion of all roads (public or private), repair of damage to existing roads (Bagdad & Canney) from construction activities and equipment, water service, sewage disposal, drainage, landscaping and/or any other improvements required by the Town. The financial surety shall be effective for a period mutually agreed upon by the Planning Board and the applicant, but shall not end earlier than 60 days following the final completion date. The financial surety shall be approved by the Town as to the form and type. The Town will accept cash, pass book savings in the Town's name, letter of credit or a construction surety bond. At its discretion, the Planning Board may require approval of the construction guarantee by the Town Attorney.
9. Maintenance Guarantee--a financial surety to guarantee that all site work was properly done shall be posted by the applicant with the Town. Such maintenance guarantee shall be in an amount of two percent of the estimated project cost and shall remain in force for two (2) years after site improvements are completed. If such repairs are needed and are not satisfactorily installed by the developer, then such guarantee shall be used to complete and/or install such improvements.
10. A guarantee or performance bond or escrow agreement must be posted in an amount to be determined by the Director of Public Works and approved by the Town Administrator to ensure satisfactory completion of the landscape plan.
11. If the owner of Map 10, Lot 6-2, 4 Ambler Way, hooks up to the Town sewer system, then the applicant shall perform drainage work as specified on the plan, see Sheet C121, Grading & Drainage Plan.
12. Prior to the issuance of a Certificate of Occupancy for a building or structure on any lot within a subdivision, at a time determined by the Code Enforcement Officer, three (3) copies of a certified plot plan shall be filed with the Zoning Administrator. The plot plan shall be prepared by a professional surveyor, engineer, or architect and shall be signed and sealed by the professional(s) preparing the plan. The plot plan shall show the post development conditions of the lot including, but not limited to, the following information:
  - A. The actual lot layout, dimensions, and lot area.
  - B. The required setbacks for the zone in which the lot is located and the actual setbacks of the building(s) and structure(s) as constructed.

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

- 13. The Planning Board hereby assesses the Town of Durham School Impact Fee to the Sophie Lane Development. Impact fees shall be collected at the time a Certificate of Occupancy is issued. According to Model A of the School Impact Fee Methodology dated December 19, 2005, the impact fee per dwelling unit for single family detached structures is \$3,699 per dwelling unit. The total impact fee will be \$33,291.
- 14. Access to the development will be by Bagdad Road via Dover Road or as otherwise specified by the Department of Public Works.

***Richard Kelley MOVED to approve the amended Findings of Fact and Conditions of Approval for the Conservation Subdivision Application submitted by Joseph Caldarola, Portsmouth, New Hampshire for the subdivision of one lot into 9 lots, for the property located at the corner of Bagdad Road and Canney Road in the Residential B Zoning District. Lorne Parnell SECONDED the motion, and it PASSED unanimously 7-0.***

- VI. **Acceptance Consideration of an Application for Boundary Line Adjustment** submitted by Doucet Survey Inc., Newmarket, New Hampshire, on behalf of Park Court Properties Inc., Durham, New Hampshire, and the University of New Hampshire, Durham, New Hampshire to change the boundary line between two lots. The properties involved are shown on Tax Map 13, Lots 5-0 and 7-0UNH, are located at 262 and 260 Mast Road respectively and are in the Multi-Unit Dwelling/Office Research Zoning District.

Mr. Ozenich and Ms. Fuller came back to the table as voting members of the Board.

Mr. Campbell said this was a modified procedure, which meant that the Board could accept the application and also act on it at the same meeting, without a public hearing. He noted that members of the public could still comment on the application if they wished. He said he had not received any comments on the application.

Mr. Campbell noted that the applicant's documentation had not been signed yet by the University, and he explained the reasons for this. He said that neither Mr. Bryant or the University had any problems with the boundary line adjustment.

Bill Doucet of Doucet Survey represented Park Court Properties and explained that the applicant proposed to revise the common lot line between tax map 13, lot 5, owned by Park Court Properties, and tax map 13, lot 7, owned by the University of NH. He said this meant that one acre of land from lot 7 would be conveyed to and merged with lot 5.

Mr. Kelley noted that Arthur Grant and his wife were listed as abutters in the application, and Mr. Doucet said the issue before the Board didn't relate to that property. Mr. Kelley made reference to the note on the plan said that the Grant property was to be conveyed to the University, and there was discussion.

Councilor Needell said the conveyance to the University of the Grant parcel was not the Board's concern. He asked if a condition of approval for this application should be having the University sign the document.

Mr. Parnell asked about the grading easement referenced in the application, and Mr. Doucet said this addressed the desire to put an access road as close to the common boundary with the University as reasonably possible in order to allow the greatest potential for shared use of an access way in the future.

There was further discussion on the signatures that were needed.

Mr. Roberts said he had been at the site inspection with the Conservation Commission as part of the conceptual design phase, and had noted a culvert with a wetland progressing off of it.

Mr. Doucet said this information would be included in the site plan for the project.

It was noted that there had been one waiver requested by the applicant, regarding the location of property lines, since the University parcel was so large.

Mr. Kelley asked whether, if monument pins were put in now, they would be lost when work was done on the site, and Mr. Doucet said the pins would be placed now, and could be done again if needed.

It was noted that Findings of Fact for this application should include the letters received from the Chief of Police and the Town Engineer, and that a Condition of Approval should be the signatures of the applicant and the University of New Hampshire on the Boundary Line Adjustment Application.

## **WAIVERS**

The applicant has requested a waiver of Section 7.03(D)(8) of the Subdivision Regulations regarding the location of the property lines including the entire undivided lot. The Planning Board has reviewed this waiver request and has granted the waiver.

## **CONDITIONS OF APPROVAL**

The following conditions shall be met prior to the Signature of Approval on the Boundary Line Adjustment Plan. These conditions shall be met within six months of the signing of these Findings of Fact and Conditions of Approval by the Chair of the Planning Board. If these conditions are not met within six months, the applicant must come before the Planning Board for review of the conditions:

1. The applicant shall supply two mylar plats and one paper copy for signature by the Planning Board Chair.
2. A certificate of monumentation must be provided to the Planning & Community Development office.
3. All final plans must be stamped by appropriate professionals.
4. The application for Boundary Line Adjustment must be signed by a representative for Park Court Properties and by a representative for the University of New Hampshire.
5. The letter of authorization must be signed by a representative for Park Court Properties and by a representative for the University of New Hampshire.

Conditions to be Met Subsequent to the Signature of Approval on the Boundary Line Adjustment Plan:

1. The referenced Boundary Line Adjustment Plan and 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.

***Richard Kelley MOVED to approve the Application for Boundary Line Adjustment submitted by Doucet Survey Inc., Newmarket, New Hampshire, on behalf of Park Court Properties Inc., Durham, New Hampshire, and the University of New Hampshire, Durham, New Hampshire to change the boundary line between two lots, for the properties shown on Tax Map 13, Lots 5-0 and 7-0UNH, located at 262 and 260 Mast Road, in the Multi-Unit Dwelling/Office Research Zoning District. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.***

**VII. Other Business**

**A. Old Business:**

Chair McGowan noted that he had given the yearly report from the Planning Board at the most recent Town Council meeting the previous week. He provided details on this.

**B. New Business:**

Mr. Kelley noted the memo from Administrator Selig regarding the issue of trails. He asked if this was meant to be Administrator Selig's decision as to how the Zoning Ordinance was to be interpreted, and also asked whether this was in fact supposed to be Mr. Johnson's job.

Mr. Campbell said that ultimately it was Administrator Selig's decision, and said this had been discussed with the Town Attorney.

Mr. Roberts said a good job had been done of defusing the situation, and said he personally had come down strongly against what Mr. Johnson had said concerning the trails issue. He said what Administrator Selig had said was the best way to get the job done, while protecting the community.

Mr. Kelley asked if the Board was fine with this, noting that he had been an advocate of using the conditional use process because of the possible disruptions that trails could cause for abutters. He said opening up a public trail system could result in noise, litter and other problems, and said the conditional use process would allow the Board to impose conditions concerning this.

Mr. Roberts said he had researched this issue for the Conservation Commission, and had found that trails were generally treated like roads. He said with the approval of the Town Council, regulation was left up to the Conservation Commission. He said Planning Boards were generally only involved with scenic roads. He said the approach outlined for Durham was that the Conservation Commission should manage trail issues, but he said this was not saying that if there was a major issue with usage of a trail, there wouldn't be a more comprehensive look at how to handle the situation. He noted the Concord and Hanover trail regulations, and how elegantly they handled this issue.

Mr. Campbell said there were no new applications for the September 10<sup>th</sup> Planning Board meeting, and said the only thing on the Agenda so far was the CIP discussion.

Councilor Needell suggested that the Planning Board road trip to look at existing developments in Town still needed to be scheduled, and Mr. Campbell said he would move this up on his list.

C. Next meeting of the Board: **September 10, 2008**

VII. **Approval of Minutes** – No minutes

VIII. **Adjournment**

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

Adjournment at 10:30 pm

Victoria Parmele, Minutes taker

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Susan Fuller, Secretary