

**These minutes were approved at the January 14, 2009 meeting.**

**DURHAM PLANNING BOARD  
WEDNESDAY, NOVEMBER 12, 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; Steve Roberts; Richard Ozenich; Richard Kelley (arrived late); Councilor Julian Smith

**ALTERNATES PRESENT:** Councilor Needell;

**MEMBERS ABSENT:** Wayne Lewis; Kevin Gardner

**I. Call to Order**

**II. Approval of Agenda**

*Councilor Julian Smith MOVED to approve the Agenda, Susan Fuller SECONDED the motion, and it PASSED 6-0.*

**III. Report of the Planner**

- Mr. Campbell said there had been a letter from Park Court Properties asking that the public hearings on their conditional use permit application and site plan review application be continued to the December 10<sup>th</sup> meeting. He also said there were letters from the Public Works Department and the Fire Department concerning the applications.
- He said he and Code Administrator Tom Johnson had met with the owner of the Hickory Pond Inn regarding the idea of putting in a miniature golf course on the property.
- He said he had recently met with University planner Doug Bencks, and said a memo on the meeting had been provided to Board members.
- Mr. Campbell said he and Administrator Selig had met with Chinburg Builders regarding the fact that they were having trouble finding businesses that wanted to locate there. He also said he thought NHDOT was giving the company somewhat of a hard time regarding traffic issues, and also said some possible tenants had issues with the fact that the wastewater treatment plant was located next door.

Mr. Roberts asked for elaboration on what Mr. Campbell meant by his comment that NHDOT was giving Chinburg Builders a hard time.

Mr. Campbell said that several years back, NHDOT had given Powerspan an access permit for a 35000 sf entrance, but would not give a permit for that size building to Chinburg Builders. He

also said NHDOT seemed to be saying that Old Piscataqua Road should be used for the entrance to the park instead of Route 4.

Mr. Campbell said Chinburg was looking at some alternative development approaches, such as a co-housing development where there would be smaller homes, centralized parking, a community center, community gardens, a boat house, etc. He said the buildings would be energy efficient and probably LEED certified, and said he would send Board members a link to a development like this in Peterborough.

He said allowing this type of use on the property would require a Zoning change, because housing was currently not allowed in that zone. He said he would keep the Board updated on this issue, and said if a plan was ready in December, he would try to get Chinburg to come to the Planning Board meeting to discuss it.

- Mr. Campbell said he had met with Dick Gsottschneider regarding the idea of adding some apartments to his duplex located on the Mast Road extension. He said this would involve a conditional use permit application.
- Mr. Campbell said the EDC would be meeting on Friday, and among other things would discuss a marketing research study that would be done by UNH's Whittemore Business School. He said the UNH Survey Center might be involved in this as well. He said the EDC would also discuss its Strategic Plan for 2009, as well as the tools it might want to use to focus on economic development. He provided details on this.

**IV. Continued Public Hearing on a Site Plan Review Application** submitted by Park Court Properties Inc., Durham, New Hampshire for the construction of a mixed-use, multi-unit building which would create 32 units with 124 beds. The property involved is shown on Tax Map 13, Lot 5-0, is located at 262 Mast Road and is in the Multi-Unit Dwelling/Office Research Zoning District.

**V. Continued Public Hearing on a Conditional Use Permit Application** submitted by Park Court Properties Inc., Durham, New Hampshire for the construction of a mixed-use, multi-unit building which would create 32 units with 124 beds. The property involved is shown on Tax Map 13, Lot 5-0, is located at 262 Mast Road and is in the Multi-Unit Dwelling/Office Research Zoning District.

*Councilor Julian Smith moved to continue the Site Plan Review Application and the Conditional Use Permit Application submitted by Park Court Properties Inc., Durham, New Hampshire for the construction of a mixed-use, multi-unit building which would create 32 units with 124 beds at the property located at 262 Mast Road in the Multi-Unit Dwelling/Office Research Zoning District. Richard Ozenich SECONDED the motion, and it PASSED 6-0.*

**VI. Conceptual Consultation** submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of Peter Murphy, Newburyport, Massachusetts, for the demolishing of the current building and shed and the construction of a 4-unit apartment building. The property involved is shown on Tax Map 2, Lot 12-8, is located at 22 Rosemary Lane and is in the Central Business Zoning District.

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

Mr. Campbell said he and Code Administrator Tom Johnson had met with the applicant and MJS Engineering. He said with the conceptual consultation, the Board would provide feedback on how what was proposed fit with the Zoning Ordinance and the Master Plan.

Mike Sievert of MJS Engineering spoke before the Board. He first noted that the plan he had contained surveyed information, so was a bit more precise than the plan in Board members' packets. He said the existing property was used as a boarding house, although it was really a single-family home. He said there were 5 occupants right now, and he described the parking available on the site, including a few regular spaces and also 5-7 unofficial parking spaces at the front portion of the property.

He said the parcel size was about 4300 sf, but noted that there was not a boundary survey yet, so the exact size of the parcel wasn't known. He said it was the only private parcel on Rosemary Lane, and said it was surrounded by UNH property. He noted that Pettee Brook was directly behind the parcel, and said the parcel was located within both the wetland and shoreland overlay districts.

He said the proposal was to demolish the building, and build a 3 story, 4-unit residential townhouse style multi-unit building. He described the layout that was proposed, and said there would be a total of 16 bedrooms and 32 occupants. He said the basement might be used for a combination of additional living area, storage, a coin operated laundry, an office and a workshop for building maintenance.

Mr. Sievert said they were attempting to push the proposed building up closer to the front of the lot, and get it further away from Pettee Brook, which would gain 4-5 ft as compared to the existing building. He said this could be done by eliminating the two regular parking spaces. H said there would be a 10-11% change in impervious area, but said there would be less parking area runoff, and more roof runoff.

He noted the architectural design that had been provided to the Board. He said this was not the exact building that would be built, and also said they would try to make the architecture fit with the architecture of buildings in the area, which varied.

Mr. Sievert said 4 variances were needed, two of them use variances, to allow a multi-unit building that did not include office/retail on the first floor, and to allow the accessory use of the basement for maintenance, storage, and property management. He said the area variances were being requested because of shoreland and wetland setbacks that were not met.

He explained that a conditional use permit was also required from the Planning Board because of the proposed residential use within the wetland setback. He also noted that the height of the proposed building might be an issue, since it would be over 30 ft. In addition, he said the applicant was allowed to remove some spaces with Planning Board approval, and said that currently, the expectation was that two legitimate parking spaces would be removed, and that no parking spaces would be provided.

He provided details on the proposed accessory use of the basement in response to a question from Chair McGowan.

There was discussion about the fact that student housing was presently not allowed on the first floor in the Central Business district. Mr. Sievert said the applicant was trying to say that the proposed use was appropriate for that specific area of the district, where there were no other private parcels.

Mr. Campbell noted that if the Planning Board approved the applications with no parking, the applicant would have to pay a fee of \$750 per parking space.

Councilor Needell said possible stormwater drainage issues appeared to be the biggest possible impact from the development, and he asked if the drainage would be manageable.

Mr. Sievert said it was hoped it would be, and he noted that with the change in the use of the site, there would be less parking lot runoff and more roof runoff. He said this runoff was easier to deal with, and said it would be captured and put into the ground. He also said the idea was to move the building back a bit further from Pettee Brook than the present building, thus providing a bit of a buffer.

Councilor Julian Smith asked if the runoff from the roof would be put into a filtration chamber, and Mr. Sievert said some kind of basin would be used, possibly one that was underground, or perhaps a rain garden, although he said he didn't know if this was the site for this. He noted that the soils on the site weren't that good.

Mr. Campbell said there would perhaps be a stormwater management approach similar to the one discussed by Town Engineer Dave Cedarholm in regard to the Christie project on Jenkins Court.

There was discussion that currently, drainage on the site went into Pettee Brook.

Mr. Sievert noted that floodplain information was not currently on the plans, and would be included with the next set.

Ms. Fuller asked about the office proposed for the basement, and also asked about possible property management on site.

The applicant, Peter Murphy, said he did plan on having on site property management, and would be personally involved with this. He said he planned to become a member of the Durham Landlords' Association. He noted that he owned another property at 15 Main Street, and said he would put together a security plan, as part of his plans to manage both properties. He provided details on this, and said given the investment he was making in these properties, keeping an eye on what was going on was a priority. He also said he wanted to be a good neighbor. He said he didn't expect to live at the property, although noting that he would like to be able to have a half bath in order to be able to stay there if he wished.

Mr. Campbell said it looked like the 25 ft setback from Pettee Brook had been measured back from the top of the stream bank, not from the stream the reference line, which was the centerline of Pettee Brook. He said there therefore might be more room there than had been thought.

Mr. Sievert said he would take a look at this.

Mr. Campbell also asked if the overhead utility issue had been considered.

Mr. Sievert said there was a utility pole in the corner, but said it didn't necessarily have to stay there. He said it wouldn't be that expensive to have 10 ft of underground utilities.

There was discussion about the frontyard setback, and whether the building could be moved forward any further. Mr. Campbell noted that the development standards for the Central Business District said the building could be located within 15 ft of the street, and the setback could be 0..

Mr. Sievert said they were proposing that the street setback be 5.7 ft. He said it was hoped that there would be some landscaping on the site, and also an area for temporary parking to allow loading and unloading. He also said it was hoped that room could be found to allow for storage and hauling out of trash, using a narrow pathway.

There was discussion about the possible height of the building. Mr. Sievert described the heights of other buildings in the area, and said the proposed building would not be as tall as the health center. He also noted that while it would be 3 stories in front, the plan was that in back, there would be 4 stories, because of the dip in topography and the basement that was proposed there. It was noted that the lot across the brook from the proposed building was vacant.

Councilor Julian Smith said the footprint for the proposed building pretty much filled out the lot. He asked how one would be able to access the basement area. Mr. Sievert again described a proposed narrow path that would be provided.

Mr. Campbell said Mr. Johnson and the Fire Department might be taking a serious look at that pathway.

Mr. Sievert said the building would be sprinkled, and he noted that there was adequate water and sewer available for the site, based on flow test data from a nearby site. He provided details on this.

## **VII. Other Business**

A. Old Business: None

B. New Business:

### **1. Request for Technical Review submitted by Chinburg Builders to amend a previously approved Site Plan for three duplexes to six single-family residences within the Spruce Wood Development**

Mr. Campbell provided background information on what was proposed.

Mr. Schuster said the reason for wanting to amend the site plan was to allow Chinburg Builders to offer more housing choices. He provided details on this, noting among other things that when the 55 and over market came on the scene, a lot of duplexes had been built. He also noted that some residents of Spruce Wood who had moved into duplexes had said they would have chosen a single-family residence instead if one had been available.

He said there was the flexibility to allow this amendment, in terms of the land area that was available, and he provided details on this. He also explained that the kinds of cottages they had in mind for the property had been marked in Kittery, Maine, and had done very well. He said he thought this was a minor site plan revision that was proposed, and said he would be happy to meet with Town staff concerning it.

Mr. Roberts asked if Chinburg Builders would be opposed to an expedited Planning Board site plan review instead, and he noted that such an expedited review could be done since the data was already available. He noted that there had been some public testimony by some current Spruce Wood residents regarding some concerns about living there. He also noted that there had recently been a Zoning change to an adjacent parcel, which among other things would prohibit single-family uses. He noted that the Spruce Wood development had been a major plan at one time, and said an expedited review of an amendment to the plan could look at what uses belonged where.

There was discussion with Mr. Schuster that the submission requirements would be the same whether the site plan application went to the Planning Board or the Technical Review Committee.

Mr. Schuster said he didn't see why he wouldn't be just as comfortable doing what Mr. Roberts was suggesting. He said he was interested in the concerns that the Board had heard, stating he hadn't necessarily heard them.

Chair McGowan asked what an approach involving the Planning Board would look like.

Mr. Campbell said it would be an amendment to the site plan. He said the entire parcel had been approved as a Planned Unit Development (PUD), and as a conditional use. He said that remained. He said there had then been site plans for both Phase I, the Inn at Spruce Wood, and Phase II, the 50 condominiums, and said the amendment would be to the Phase II site plan approval.

Mr. Roberts asked if the Board could perhaps accept the site plan application that evening.

Mr. Campbell said this wasn't possible because proper public notice hadn't been given. But he said that barring unforeseen circumstances, the Board could accept the application at one meeting, and could have the public hearing and deliberate on it at the following meeting.

After further discussion, including the fact that there was only one Planning Board meeting in December, Mr. Campbell said the Board could accept the application and have the public hearing on it at the same meeting.

Mr. Roberts said that this was more than an internal change that was being made with the application, and he recommended again that the Planning Board review it, for the applicant's benefit as well as the benefit to others.

There was discussion on which areas of the site had so far been developed and which hadn't been developed. Mr. Schuster showed the areas he wanted to develop as part of this present process to amend the original site plan, and also said he would like some flexibility in terms of being able to develop another area of the site as single family homes. He provided details on this.

Councilor Needell received clarification that all of the areas involved were within the RB district.

Mr. Schuster asked what it was hoped would be accomplished by having the public hearing.

Mr. Roberts said the purpose of the hearing was to inform the public and inform the Planning Board. He said the Planning Board was supposed to evaluate these kinds of things, and said this had never been the purpose of the Technical Review process. He said it was really a concept change that was involved, with this amendment to the application. He also said other people who lived in the existing Spruce Wood development should have the opportunity to be heard. He said while the Technical Review process was open to the public, it wasn't the same kind of thing. He noted that at the public hearing on the proposed ORLI Zoning change, the finance manager for the homeowners' association had expressed some concerns.

There was discussion that neighbors were notified about Technical Review meetings.

Mr. Kelley said he had sympathy regarding the concerns of people who lived at Spruce Wood, but said as part of this process, he didn't want to see unit owners pointing fingers at the developer. He also noted regarding the setback requirements that there was some flexibility because this was a PUD.

Mr. Roberts said the nature of the community was on the table. He noted that he didn't have any issues with the existing or proposed development, and also said that airing other issues had nothing to do with the application.

Mr. Ozenich asked for details on how many garages were proposed for the single-family units.

Mr. Schuster said with the existing duplexes, some units had one-car garages, and some had two car garages. But he said single car garages were being designed for the proposed cottages. He said one had to charge for that second garage, and said there wasn't the market for this.

After discussion, where Mr. Ozenich said two car garages made more sense, Mr. Schuster said he started to get a bit concerned that he would come before the Board, and there would be a debate about whether a concept within a building envelope in a PUD was subject to being turned down because it didn't have two car garages. Mr. Ozenich said he was just stating his opinion.

***Richard Kelley MOVED to support the request for Technical Review submitted by Chinburg Builders to amend a previously approved Site Plan for three duplexes to six single family residences within the Spruce Wood Development. Susan Fuller SECONDED the motion.***

Mr. Kelley said his concern about having a normal Planning Board review of the application was having to listen to one side make accusations at the public hearing on the quality of construction, utilities, etc. of the existing development.

Mr. Roberts said he believed in public input, and said whatever came out, came out. He said that was the purpose of the Planning Board. But he said when there was a Technical Review process, the Planning Board didn't get to hear all the issues, and said he vehemently opposed this. He said this diluted the effectiveness of the Board.

Councilor Needell said for him, there should be a fairly limited application of the Technical Review process, for essentially the internal kinds of things in a development that didn't show. He said the amended plan that was proposed would substantially alter what was being put there. He said he didn't see any technical issues with the application that the Board would have a problem with. He also said he didn't agree that a reason for doing this had anything to do with comments made at previous public hearings. But he said these were not insignificant changes being proposed, and said they therefore merited the full site plan review process.

Mr. Campbell noted that even though there was a public hearing as part of the Technical Review process, it wasn't televised.

Mr. Parnell said he didn't support sending this on to Technical Review. He said the existing residents had purchased their condos at Spruce Wood with a certain expectation, and now the development would be changing. He said the change itself would probably be positive or at least neutral, but he said he still thought the public should be invited to participate in the decision on the change.

Chair McGowan noted that Mr. Schuster had said that as part of having a full Planning Board review of the application, he would like to have more flexibility in terms of developing an additional portion of the property.

Mr. Schuster explained that because Chinburg Builders would be doing a full submission, this would make sense, and would be very workable.

There was discussion that when the development was originally approved, the Town allowed Planned Unit Developments (PUD's). Mr. Kelley asked whether within the regulations, there was anything about making an amendment to a PUD. He also said the bigger question was what happened based on the fact that the original development was approved under the PUD regulations, but these regulations now no longer existed. He questioned what regulations the developer then had to go by.

Mr. Campbell said the developer still had to abide by the original conditions of approval for the PUD site plan application. He noted that what was being requested was well under the requirements.

Mr. Ozenich said he agreed that what was proposed was a significant change to the approved site plan.



Ms. Fuller said she supported sending the application to Technical Review. She said the developer had to live within the PUD envelope, and she also said there were already single- family residences there, so she didn't see that it was a significant change to go from attached buildings to detached buildings.

Councilor Julian Smith said he agreed with what Mr. Roberts and Councilor Needell had said.

***The motion FAILED 0-7.***

***Steve Roberts MOVED to post and advertise the acceptance and public hearing for the amendment to the previously approved Site Plan for the December 10, 2008 Planning Board meeting. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.***

**2. Request for Technical Review submitted by Tom Richardson to convert three areas within 5 Dennison Road to different uses.**

Tom Richardson said he had submitted three separate proposals for alterations to his apartment property. He said one was to convert an unused basement office into a one person efficiency apartment; another was to convert a basement storage area into a one person efficiency apartment; and a third was to convert a portion of apartment C2 into a laundry room for tenants.

He said all of the proposed changes would be entirely internal, and said the only change that would be seen from the outside was a change to the cellar windows. He said there were 26 units in the building now, 25 of which were occupied with students, and the other which was used as an office.

Mr. Richardson said the building was approved for 93 tenants, and said currently, he had 81 tenants there. He said he wasn't particularly in the mood to increase the amount of tenants to 93. But he said the motivation for the proposed changes related to the massive recent increase in his property tax bill. He said he was having difficulty justifying the increase in the rental amount he was passing on to students.

***Richard Kelley MOVED to approve the Request for Technical Review submitted by Tom Richardson to convert three areas within 5 Dennison Road to different uses. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 7-0.***

**C. Next meeting of the Board: December 10, 2008 (Only meeting in December)**

Mr. Campbell said the sign ordinance would be on the Agenda for the December 10<sup>th</sup> meeting, He said the Park Court Properties applications would also be on that Agenda, along with the proposed amendment to the Spruce Wood site plan.

**VIII. Approval of Minutes – No Minutes**

**IX. Adjournment**

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

Adjournment at 8:20 pm

Victoria Parmele, Minutes taker