

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

**DURHAM PLANNING BOARD  
WEDNESDAY, DECEMBER 10, 2008  
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL  
MINUTES  
7:00 P.M.**

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

**ALTERNATES PRESENT:** Councilor Jerry Needell

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

**I. Call to Order**

Mr. Parnell served as Chair of the meeting until Agenda Item VI. Chair McGowan arrived at 8:10, during deliberations on Agenda Item V.

**II. Approval of Agenda**

*Richard Ozenich MOVED to approve the Agenda as submitted. Susan Fuller SECONDED the motion, and it PASSED unanimously 5-0.*

**III. Report of the Planner**

Mr. Campbell said the December 1<sup>st</sup> meeting with University planner Doug Bencks had taken place, and noted the memo he had provided for Board members.

He said the EDC meeting had been rescheduled for December 19<sup>th</sup>, at 7:30 am.

He said that on December 2<sup>nd</sup>, he and Code Administrator/Enforcement Officer Tom Johnson had met with Mathew Craig regarding his plans to demolish the Houghton Hardware building and replace it with a mixed-use building. He said Mr. Craig hoped to have an application before the Planning Board in January, and would like to begin construction on June 1<sup>st</sup>, 2009.

Mr. Campbell said that on December 3<sup>rd</sup>, he had met with Roger Roy of MJS Engineering and Peter Murphy, owner of the 22 Rosemary Lane property. He said Mr. Murphy was ready to move forward with a site plan application, having already gone through a conceptual consultation regarding the project with the Planning Board, and received the required variances. He said there would also be a conditional use application for the project because of shoreland and wetland issues.

He said he had attended the HDC meeting on December 4<sup>th</sup> to discuss EDC efforts to move forward locally with enabling legislation under RSA 79-E, the community revitalization tax relief incentive

program. He said that if the Council adopted the enabling legislation, property owners could then apply to this program. He said there would be discussion on this under New Business.

Mr. Campbell said that on December 5th, he, Mike Lynch and University planners Doug Pesci and Doug Bencks had gone to the Transportation Enhancement Committee meeting in Concord, to request additional funds for the Main Street West project. He explained that \$491,000 had originally been approved, and said that with the additional funds the Committee had voted to grant Durham, there would be \$970,000. He said 80% of this would come from the federal government, and said the match would be \$194,000, with Durham paying \$49,100 of this and UNH paying \$98,200.

He said the additional money would be used for landscaping, lighting, as well as installation of a roundabout at Loop Road and Main Street. He said NHDOT would make sure that the requirements of the Transportation Enhancement program would be met, and said if they weren't met, \$120,000 would be removed from the grant.

He said the location for the roundabout was where the UNH plan for the Loop Road came up from the new southern underpass, and he explained that it would come across Main Street at the roundabout, and head up the Mast Road extension. He said it was good news that these extra funds had been received, and said hopefully there would be drawings at 100% within the next month that could be provided for a meeting where input could be obtained from the Planning Board, the Council and the public.

There was discussion about how this project coordinated with other transportation related projects in that area, including those in the Bryant project. There was discussion about density related issues in that part of Town, and how this related to the roundabout. Mr. Campbell said a signalized intersection would probably be needed there in the future.

Councilor Needell noted that the planned location of the roundabout was where A lot emptied out.

Mr. Campbell said the prior evening, the ZBA had approved the variances requested by Xemed, and he said that early in 2009 the owner, Bill Hersman, would be submitting a site plan review application for his project.

He said the next regularly scheduled meeting of the Planning Board was January 14, 2009.

- 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 public hearing. Richard Ozenich SECONDED and PASSED unanimously 5-0.***

Mr. Doucet said there had been meetings with Town Department heads to make sure everyone was satisfied with the plan details, and also said they continued to meet with UNH on a regular basis. He

also said there had been a transportation charrette with the UNH Energy Group. He said there had been a meeting the previous with Mr. Bencks to go over easement language, noting that at some point in the future, the entrance to the development might be shared with UNH. He said the only change to the plan was to show conifers on the street side, noting this had been requested at a site walk some time ago.

There was discussion on the stormwater plan that had been submitted. Mr. Doucet said Mr. Cedarholm had provided comments that he wanted to see where the roof drains were, and said that information had been added to the plan.

Mr. Campbell noted that Appledore Engineering had indicated that the footprint had increased by 260 sf. He also said grass pavers had been included on either side of the 18 ft drive to provide the full 20 ft width, and said this had been done to address Fire Department concerns.

Mr. Ozenich said he recalled that grey water would be collected off the roof, but didn't see this in the plans.

Mr. Doucet said water off the roof was not considered grey water, and was considered clean. He noted that there had been discussion about putting this into a cistern, but said the details on this hadn't been worked out yet. He spoke about possible green roof solutions, and said it would have to be decided which approach was the right one.

Councilor Needell asked if the intent was to seek a waiver from the school impact fee.

Mr. Doucet that was the intent, and said he would provide the waiver shortly.

Vice Chair Parnell asked if there were any members of the public who wished to speak for or against the proposal.

Mr. Campbell said there was a letter from David Sanborn, an abutter, and he read the letter.

In his letter, Mr. Sandborn said he had written to the Planning Board in March 2008 requesting that careful consideration be extended to abutters of the project in general, and specifically in terms of the buffer requirements. He said he had had several conversations about this with Mr. Bryant and landscape architect Robbi Woodburn, and said that as a result of those discussions, Mr. Bryant had decided that conifers would be planted to provide a buffer to his property.

Mr. Sandborn said he was greatly encouraged about this, and therefore did not wish to oppose the project. He asked that the Board remain aware of the understanding that had been reached with Mr. Bryant, and that it support its full implementation, as well as implementation of the existing regulatory requirements.

There was discussion that the plans dated November 5<sup>th</sup>, L-1, did not show this change.

Mr. Doucet said he and Ms. Woodburn would ensure that the correct version showing 6 to 8 conifers would be provided. He also said the applicant was in agreement with what Mr. Sandborn had said in his letter.

Mr. Roberts asked if the Fire Department and the Police Department were in agreement with the most recent plans.

Mr. Campbell said the Fire Department was fine with the most recent plans. He said the Police Department had been fine with the plans from the beginning, including the reduction in onsite parking, as long as there was proper management. He noted that the Police Chief would have to approve the management plan.

Mr. Roberts asked if there was an agreement from the University about having a bus stop on the site.

Mr. Doucet said the latest idea was that the bus stop would be at the Channel 11 property.

Mr. Campbell said that as part of the Main Street West project, there was talk about putting a bus stop off of Old Concord Road, near the intersection with Mast Road.

Mr. Roberts noted there would be a path from the property to the University.

Mr. Campbell reviewed the letters from the Fire Department regarding the grass strips that would be provided on both sides of the road, and regarding the importance of providing sufficient open space in the landscaping plan to allow fire apparatus to be able to fight fires on the property.

Mr. Roberts received clarification that a passive recreation area had been provided for the development, and was included in the plans, on sheet C-2. He noted that this area was forested, and there was discussion.

Mr. Parnell said the public hearing had been open for some time now, but there had not been much in the way of further input from the public. He recommended that the hearing could now be closed.

***Councilor Julian Smith MOVED to close the public hearing. Richard Ozenich SECONDED the motion, and it PASSED unanimously 5-0.***

Councilor Needell noted that the intended occupants were students, and asked if there was any possibility that there would be other kinds tenants, and also if there was anything inherent in the development that would preclude this.

Mr. Doucet said the cost for a family to live there would be prohibitive, and said the intent was to have student housing.

Mr. Ozenich asked if students would have to move out in June, and Mr. Doucet explained that there would be 12 month leases, although typically students would live there for 9 months. He said only about 20% of students would live there in the summer.

Mr. Bryant said subletting was allowed, but said there was a written approval process, and said subletting done in the past on his properties had been pretty minimal. He said most of his leases started in June, so people ended up paying for the additional 3 months in the summer. He said in the summer, there might be one or two people in the apartment.

Mr. Parnell suggested that the Board could start deliberations.

Mr. Campbell said the waiver of the impact fee had already been added to the conditions of approval. But he said he had just received the waiver request, and would like to look it over. He said the application could be approved conditional on this.

Susan noted that an additional condition was that 6 to 8 hemlocks and pines would be added to the landscape plan along the northwest border of the property.

Mr. Doucet said the conifers that were proposed were actually on Mast Road, and would be intermixed with the reforested area.

Mr. Campbell suggested that site plan application condition #8 could be changed to say “revised landscape plan” rather than “revised site plan”.

Councilor Needell asked if was within the purview of the Planning Board to waive the recreational requirement, or if this would require a variance.

Mr. Campbell said a variance would be required for this, noting it was one of the requirements for the MUDOR district.

Councilor Needell said the requirement in the Ordinance spoke about improving the area, and being appropriate for the intended occupancy. He noted that the intent was to provide a wooded area for passive recreation.

Mr. Parnell asked if the area delineated would look any different than the area beside it, and Mr. Doucet said it would not.

Councilor Needell said the real question was whether passive recreation was appropriate for the intended occupancy.

Mr. Doucet said the strong preference was to have this type of recreation.

Councilor Needell said he didn’t disagree, but also said he would be happy to waive the requirement if requested, stating that it was perhaps misplaced.

Mr. Campbell agreed this was something the Board should look at.

Mr. Doucet said a preliminary letter had been received from NHDOT concerning the driveway permit, and said the formal application had been submitted. He said the sight distance was great, and noted that the State had not required any turning lanes.

Mr. Roberts noted that a reduction in parking spaces was proposed for the development, and that transportation demand management would be used to justify the offset. He noted the bus stop and the trail that were proposed, and said the transportation plan should be noted in the Findings of Fact and Conditions of Approval.

Mr. Campbell said this would be put in the conditions of approval for the conditional use permit, which was where the reduction in parking was being allowed.

Mr. Ozenich asked what type of sedimentation control was proposed behind unit #3, and Mr. Doucet said silk socks would be used. He noted that initially, silt fences had been proposed.

It was noted that the opening and continuing of the public hearing should be included in the Findings of Fact.

Mr. Roberts asked if the footpath was a condition of approval, and Mr. Doucet said this was a cooperative project with UNH, and was in the early discussion phase. He said it wasn't specifically a part of the transportation plan.

Mr. Roberts said he thought it should be part of the transportation plan, and provided details on this.

There was discussion that a variety of options for the path had been looked at. Mr. Doucet said there had been discussion about a boardwalk over wet areas at Channel 11, and also said there had been discussion that the students themselves might create the path on their own.

Councilor Needell noted that the property would include a significant amount of pervious pavement, and asked if a maintenance plan for this would be included as a condition of approval.

Mr. Campbell said yes, and said the specifications for this were in the drainage plan. He said there should be a pre-signature condition for the maintenance plan for porous asphalt or concrete, and said a subsequent to signature condition should be that a qualified engineer would be on site during preparation and installation of the pervious pavement.

Mr. Roberts noted that the extension of the 18 ft width to 20 ft with pervious pavers was acceptable to the Conservation Commission.

Mr. Campbell said some additional Findings of Fact were that the applicant had submitted a copy of the sewer application on December 5<sup>th</sup>, and that the applicant had also submitted an additional set of site plans on December 3<sup>rd</sup>. He said the letter from Mr. Sandborn should also be noted, and also said it should be noted that the public hearing was continued on December 10<sup>th</sup>, and no members of the public wished to speak.

Mr. Roberts noted that the waiving of the parking requirements would be included for the conditional use permit. There was discussion on what the wording for the waiver should be.

Mr. Campbell said another condition to be met prior to signatures was the plan for monitoring and maintenance of the wetland area on the property as it grew out. He noted that any invasive species that grew in could be removed. There was discussion that there would be time for the grass to grow up during construction.

The Board next went through the checklist for the Conditional Use application. There was discussion that the sewer and water permits were in process. Mr. Campbell said a letter was received that day from the applicant regarding a betterment payment for infrastructure problems near the property.

Councilor Needell asked if there was anything to preclude the applicant from adding parking in the future. There was discussion about whether the ZBA would have problems with this, and also about whether this would have to come back to the Planning Board.

Mr. Doucet said the philosophy from the beginning had been that this wouldn't happen, and said doing this would therefore be a steep hill to climb.

There was discussion as to whether the design of the structures was compatible with the established character of the neighborhood. Councilor Julian Smith said no, and noted that it would be better if the other structures were consistent with it. There was discussion that the answer on the checklist was NA (not applicable).

After further review of the Conditional Use checklist, the Board agreed that all of the items on it were met.

Mr. Parnell asked if the Findings of Fact and Conditions of Approval had been reviewed by the applicant, and was told yes, except for the changes that evening.

Mr. Doucet he and the applicant were in agreement with the conditions of approval as stated for the Conditional Use permit. He said there were some questions regarding the conditions in the site plan application conditions of approval regarding bonding. He said what the applicant envisioned was bonding for any work done that was of a public nature, such as the sewer, and for whatever would be necessary to ensure that the site was environmentally sound. But he said having to bond something like the parking lot would be very expensive, and seemed far-reaching, given that this was private property.

Mr. Campbell said the Town had bonded for public and private aspects of a project in the past. He said the only thing he saw that the Public Works Department would want bonding for was the sewer and water, and possibly for stormwater drainage and erosion control. He said there should also be a performance bond for the landscaping, but said outside of that, he didn't see anything that needed to be bonded.

Mr. Doucet said the applicant was not strongly opposed to bonding for the landscaping, but he noted that the Town already had a lot of leverage in term of saying that certain things had to be planted.

There was discussion that bonding for roads would be removed, and bonding for erosion control would be added. There was discussion on the wording "Any other improvements required by the Town", and that this was not meant to be all inclusive of everything shown on the site plan.

Chair McGowan arrived at the meeting at 8:10 pm.

There was discussion on condition #10 to be met subsequent to signatures for the site plan application, regarding acceptable financial surety for each new phase of construction.

### **Waiver – for Site Plan Application**

The applicant has requested a waiver from Section 9.02, Streets and Access, of the Site Plan Regulations. The Planning Board has reviewed the request and hereby approves the waiver.

**Conditions of Approval – Site Plan Application** 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. All final plans must be stamped by appropriate professionals.

3. The applicant shall post an acceptable financial surety for the initial phase prior to the signature of the final Site Plan that is approved by the Planning Board. The financial surety shall be in an amount sufficient to ensure the completion of water service, sewage disposal, drainage, and erosion control. The financial surety shall be effective until work is completed on the initial phase by the applicant. 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. The construction guarantee shall be released in phases as the portions of the secured improvements or installations are final.
4. 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 landscaping plan as submitted and approved.
5. Water and sewer permits must be approved by the Town Council.
6. The sewer system downstream of the proposed development is currently capacity challenged and is being reviewed and investigated by the University and the Town of Durham. An offsite exaction may be needed from the developer and the cost of the exaction is being investigated, but will be a proportional share for the developer. The exaction necessary will be determined by the DPW, UNH, and the applicant.
7. As a result of a recent review of the sewer line that provides exclusive service to the Channel 11 Public Television facility, it was revealed that the service line is actually owned by the University of New Hampshire. The University will need to provide their approval regarding the proposed connection for this project.
8. A revised landscape plan, adding coniferous trees (6-8 white pine/hemlock) as per the verbal agreement between the applicant and an abutter, shall be received by the Department of Planning and Community Development.
9. A Property and Security Management Plan shall be submitted to include, but not limited to, the following: Rules and regulations of the Bryant Park West Apartments; 24 hour/7 day a week primary contact person to resolve security or other issues in a timely and appropriate manner; a secondary contact person in case the primary contact person is not available; all contact information updated with the Police Department, Fire Department, and Code Enforcement Department on an as-needed basis; and night time security for the site from Thursday night through Saturday night from 9 PM - 2AM. If problems persist on the property, as determined by the Police Chief, full time security will be needed 7 days a week from 8 PM - 6 AM until the problems are rectified. The plan shall be approved by the Town Planner with the advice and consultation of the Police, Fire, and Code Enforcement Departments and can be reviewed, modified, and updated by the owner with the approval of the above departments.
10. All federal and state permit numbers shall be listed on final plan.
11. A formal written request for the waiver of the impact fee will be provided to the Planning and Community Development Department.



- 12 The applicant will need to be approved for the driveway permit from the NHDOT and evidence of such approval shall be provided to the Department of Planning & Community Development and shall be listed on the final site plan.
- 13 A plan for the maintenance and monitoring of the wetland area shall be submitted to the Department of Planning & Community Development.
- 14 A maintenance plan for the porous asphalt and/or concrete shall be submitted to the Department of Planning & 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.
2. 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 (2) 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.
3. 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 to ensure this occurs.
4. Preservation of Natural Features and Amenities - Grading and clearing should be minimized so as to avoid creating undue erosion or interruption of natural drainage ways. Particular attention should be given to natural features suitable as buffer strips between residential subdivisions abutting commercial or industrial areas. Similar natural features that provide buffers between lots, or sections of a development should be preserved to enhance privacy and attractiveness. Provision for clearing may be made for southerly exposure for solar access to dwellings or buildings. Developers shall use construction methods which cause the least disturbance to the environment possible. No cut trees, stumps, debris, junk, rubbish, or other waste materials of any kind shall be buried in any land, or left or deposited on any lot or street at the time of issuance of a certificate of occupancy, and removal of same shall be required prior to issuance of any certificate of occupancy. Nor shall any debris be left or deposited in any area of development at the time of expiration of the performance bond or dedications of public improvements, whichever is sooner.
5. 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.
6. During the development and construction process, wooded natural and non-wooded natural areas will be manipulated to maintain a healthy vegetative cover to maintain the soil structure, minimize soil erosion and enhance the quality of the proposed community. In wooded natural areas, the healthy forest cover will be retained to reduce the amount of stormwater running across the ground surface.
7. All utility piping and wiring shall be located underground.
8. As-built construction drawings, plan and profile, of all infrastructure improvements shall be submitted in electronic and paper copy at a scale of 1" to 20', including, but not limited to:
- Underground Utilities (sewer lines, storm drains, water lines, electrical, phone, cable, natural gas lines, etc.)
  - Drainage ways, ditching, impoundments, swales, etc.
  - Road construction
9. The applicant shall continue to work with the University of New Hampshire to have a bus stop scheduled at the Bryant Park West Apartments. Progress reports on those discussions should be provided to the Planning and Community Development Department.
10. The applicant shall post an acceptable financial surety for each new phase of construction. The financial surety shall be in an amount sufficient to ensure the, water service, sewage disposal, drainage, and erosion control. The financial surety shall be effective until work is completed on the phase by the applicant. 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. The construction guarantee shall be released in phases as the portions of the secured improvements or installations are final.
11. A qualified engineer shall be on site during preparation and installation of porous asphalt and/or concrete to ensure proper installation, to inspect the site, and to provide progress reports to the Code Enforcement Officer. The developer is required to follow specifications for the installation and maintenance of porous asphalt. This shall be done on a schedule as agreed upon by the developer and the qualified engineer.

**Waivers – for Conditional Use Application:**

The applicant requested a waiver from Section 9.02 (A) of the Site Plan Regulations that requires a 1200' separation between driveways. The Planning Board hereby approves the waiver as requested.

**Conditions of Approval for the Conditional Use Permit Application** (to 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 and two paper copies for signature by the chair of the Planning Board.
2. All final plans and reports must be stamped by appropriate professionals.
3. A Property and Security Management Plan shall be submitted to include, but not limited to, the following: Rules and regulations of the Bryant Park West Apartments; 24 hour/7 day a week primary contact person to resolve security or other issues in a timely and appropriate manner; a secondary contact person in case the primary contact person is not available; all contact information updated with the Police Department, Fire Department, and Code Enforcement Department on an as-needed basis; and night time security for the site from Thursday night through Saturday night from 9 PM - 2AM. If problems persist on the property, as determined by the Police Chief, full time security will be needed 7 days a week from 8 PM - 6 AM until the problems are rectified. The plan shall be approved by the Town Planner with the advice and consultation of the Police, Fire, and Code Enforcement Departments and can be reviewed, modified, and updated by the owner with the approval of the above departments.
4. All federal and state permit numbers shall be listed on final plan.

**Conditions to be Met for the Conditional Use Permit Application, subsequent to the Signature of Approval on the Site Plan:**

1. These Findings of Fact and Conditions of Approval shall be recorded with the Strafford County Registry of Deeds, at the applicant's expense, within seven (7) days of the Chair's signature on the Plan.
2. The applicant shall continue to work with the University of New Hampshire to have a bus stop scheduled at the Bryant Park West Apartments. Progress reports on those discussions should be provided to the Planning and Community Development Department.

***Susan Fuller MOVED to approve as amended the Site Plan 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, for the property located at 262 Mast Road, in the Multi-Unit Dwelling/Office Research Zoning District. Richard Ozenich SECONDED the motion, and it PASSED unanimously 6-0.***

***Susan Fuller MOVED to approve as amended the conditional use 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., for the property located at 262 Mast Road in the***

***Multi-Unit Dwelling/Office Research Zoning District. Richard Ozenich SECONDED the motion, and it PASSED unanimously 6-0.***

- VI. **Acceptance Consideration and Public Hearing of an Application for an Amended Site Plan Review Phase II submitted by Sandy Brook Corporation**, Durham, New Hampshire, to allow for the building of single family homes instead of duplexes on the existing lots within the Spruce Wood Development. The number of units would remain the same. The property is located on Worthen Road, is shown on Tax Map 13, Lot 14-14, and is located in the Residence B Zoning District, as a Planned Unit Development.

Steve Schuster provided clarification that the same number of units were planned as before, only they would possibly be single family homes and not duplexes.

He showed the original master plan for the property, showing the building envelopes. He said this approved plan allowed for 23 duplexes and 4 singles, totaling 50 units. He said the plan now submitted would allow the flexibility to construct additional single family beyond the 4 units originally proposed, if the market demanded this. He said there would be the flexibility to do either singles or duplexes, and noted again that the number of units would remain the same.

He said one thing that would change on the plan was that the original plan had 32% of the allowable site imperviousness, and said this had been increased to 35%, to allow for individual driveways if the project was built out as all single family units. He also said any approval by the Board would be contingent on the association of present homeowners at Spruce Wood agreeing to amend their condominium documents.

He said to do so, they had asked for assurances that the duplex foundation be completed, and also wanted a review of what was proposed for architectural design. He said this seemed very reasonable, and said the work on this had been started. Mr. Schuster said if this were done, the association would consider approving an amendment to the condominium documents. He said it was a great check and balance, and said Chinburg Builders would work with the association.

Mr. Schuster noted that the company had entered the market already with smaller houses, including a development called Devon Woods in Kittery, which was successful.

Councilor Needell received clarification that the impervious coverage allowed when the PUD was approved was 32% of the maximum that was allowed, not 32% impervious coverage of the lot.

Mr. Ozenich received clarification that the units, whether duplex or singles, would to be placed in the building envelope, and he asked whether there would need to be setbacks between the two single family units, if it was decided to build them.

There was discussion.

Mr. Schuster said what was approved for the PUD was approximate building envelopes. He said they were meant to show conceptually the placement of the units throughout the property. He said there was flexibility as to what would be built there, but said they would be subject to set criteria, working with the Fire Department and other Town staff. But he said he couldn't say right now what the setback distances would be.

Mr. Ozenich said it was hard to see in some of the building envelopes where two singles of the same square footage would fit.

Mr. Schuster said the footprint of two singles was actually less than the footprint of a duplex.

Mr. Roberts said the building envelopes were actually pretty big, noting that he had measured this.

Mr. Schuster said that what he had described had been part of the plan for the original PUD.

There was discussion about the idea of having two car garages for the units at Spruce Wood. Mr. Schuster said he had been playing with the idea of having some units that did have two car garages. He said there would be flexibility on this, and said what was provided would depend on the market.

Mr. Ozenich said he would like to see detailed drawings in the site plan for single family units.

Mr. Campbell said there was sufficient information provided to accept the application.

Mr. Ozenich asked for clarification that the layout process Mr. Schuster had described would supercede any Town ordinance standards.

Mr. Campbell said he assumed that the Fire Code would trump this.

Councilor Needell said he didn't know if there was anything in the Ordinance that addressed minimum separation between buildings.

Mr. Campbell said the Fire Department and the Code Enforcement office would determine what was needed.

***Steve Roberts MOVED to accept the Application for an Amended Site Plan Review Phase II submitted by Sandy Brook Corporation, Durham, New Hampshire, to allow for the building of single family homes instead of duplexes on the existing lots within the Spruce Wood Development, with the number of units to remain the same, for the property located on Worthen Road, in the Residence B Zoning District, as a Planned Unit Development. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 6-0.***

***Councilor Julian Smith MOVED to open the public hearing on the Application for an Amended Site Plan Review Phase II submitted by Sandy Brook Corporation, Durham, New Hampshire, to allow for the building of single family homes instead of duplexes on the existing lots within the Spruce Wood Development, with the number of units to remain the same, for the property located on Worthen Road, in the Residence B Zoning District, as a Planned Unit Development. Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.***

**Bob Highland, 11 Spruce Wood Lane**, president of the Spruce Wood Condominium Association, said he had met with Mr. Schuster and Mr. Chinburg. He said that based on that meeting, it was his understanding that they would seek planning Board approval to build single family units rather than duplexes on existing lots. He said he had been assured that the Board approval they sought would be contingent upon the condominium association approving an amendment to their declaration. He noted that it had currently approved the construction of duplexes only for phase I of the building process.

Mr. Highland said the association would meet with the builder to discuss this matter further, if the site plan application was approved by the Board. He asked that if this was approved, it be noted in the approval that Sandy Brook Corporation would need to receive this amendment to the declaration. He noted that the pertinent provision of the declaration had been provided to Mr. Campbell.

Chair McGowan noted that there were no other members of the public who wished to speak.

***Councilor Julian MOVED to close the public hearing. Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.***

Chair McGowan said the Findings of Fact should note that there was a public hearing, and one member of the public spoke.

Mr. Campbell suggested that #4 be a condition of approval prior to the signature of approval of the site plan regarding an amended declaration from the condominium association.

Mr. Parnell received clarification that both the approval of the Planning Board and the condo association was needed for any further development to go forward.

Mr. Roberts said that looking at the Master Plan, and the need to make housing available to a wide variety of residents, he wondered if the change the applicant was proposing would be more likely or less to allow a typical Durham resident to be able to afford the housing being offered.

Mr. Schuster said they hoped it would be more likely that Durham residents would move to Spruce Wood. He said he not only hoped that, but said he believed they were going in the right direction. He said the company had learned from previously overshooting its market, and said they now had developed a new housing product that was doing very well in other locations, even in the current market. He said that was why it was being brought to Durham, and said he hoped the typical resident would find this kind of housing more attractive. He said they were willing to try.

Mr. Roberts said Durham had been criticized for having unaffordable housing, and he said it was good to see that here, there might be more flexibility in terms of what was being offered.

Mr. Schuster noted that Chinburg Builders was not talking about taking the duplexes and only building singles, and said this had been made clear in the plans. He noted that the public hearing notice itself said “single family homes instead of duplexes”, and said he would prefer that this say “single family homes in addition to duplexes”, so there would be no question about this later on.

Mr. Campbell said this had been made clear in the plans.

In answer to a question from Mr. Ozenich, Mr. Highland said that to approve an amendment to the condominium association declaration required a 2/3 vote, and said this meant 2/3 of those attending the meeting where the vote was taken. He noted that the condominium association had discussed the importance of existing residents not losing value in their properties, based on what would be built on Britton Lane.

Mr. Ozenich said this was an important issue. He noted that he was a member of a condominium association, and said there were certain things that required a higher vote than just 2/3 of those attending a meeting. He said there were some things that required 100% participation, and noted that this was difficult to achieve.

**Conditions of Approval** (to 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):

- a. The applicant shall supply two mylar plats and one paper copy for signature by the Planning Board Chair.
- b. All final plans must be stamped by appropriate professionals.
- c. All previous Conditions of Approval for the original Site Plan and Conditional Use Permit approvals shall remain in effect and are hereby incorporated by reference.
- d. Amended condominium documents shall be approved by the Spruce Wood Condominium Association and submitted to the Department of Planning & 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.
2. The Master Plan dated November 19, 2008, shall be recorded at the Strafford Registry of Deeds, at the applicant's expense, within seven (7) days of the Chair's signature on the Plan.

*Susan Fuller MOVED to approve as amended, the Amended Site Plan Review Phase II submitted by Sandy Brook Corporation, Durham, New Hampshire, to allow for the building of single family homes or duplexes on the existing lots within the Spruce Wood Development, with the number of units to remain the same, for the property located on Worthen Road, in the Residence B Zoning District, as a Planned Unit Development. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 6-0.*

Mr. Schuster thanked the Board for their expedited consideration of the application.

**VII. Public Hearing on amendments to Article XXIV, Septic Systems, of the Zoning Ordinance.**

*Councilor Julian Smith MOVED to open the public hearing on the amendments to Article XXIV, Septic Systems, of the Zoning Ordinance. Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.*

Chair McGowan noted that there were no members of the public present.

*Councilor Julian Smith MOVED to close the public hearing on the amendments to Article XXIV, Septic Systems, of the Zoning Ordinance. Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.*

Chair McGowan noted that this would be forwarded to the Town Council.

Mr. Roberts asked if there had been any comments on the amendments from Code Officer Tom Johnson, especially concerning the provision on innovative septic systems, and the fact that a report

on each of these system would need to be provided to the Code Enforcement Officer by a certified septic system evaluator every two years. He noted that a number of people were coming in for variances to allow these systems, but said there had been two instances recently where there were problems with these kinds of systems.

Ms. Fuller said if her neighbor had a problem septic system, her understanding was that she could report this, and Mr. Campbell said that in this situation, it was Mr. Johnson's responsibility to enforce the law. He said if he needed help in evaluating the situation, he could get this.

There was discussion. It was noted that there would now be cease and desist power in the septic regulations, and Mr. Ozenich said these amendments represented some real improvements. There was discussion that only state certified septic system evaluators could be hired to evaluate systems.

***Steve Roberts MOVED to recommend that the Town Council approve the amendments to Article XXIV, Septic Systems, of the Zoning Ordinance. Richard Ozenich SECONDED the motion, and it PASSED unanimously 6-0.***

### **VIII. Other Business**

#### **A. Old Business:**

#### **B. New Business:**

There was discussion about the idea of using form-based codes as part of planning for downtown areas. Mr. Campbell said this represented a more flexible type of zoning, and said he could provide information to the Board.

Mr. Roberts noted that Ms. Fuller would be appearing before the Conservation Commission concerning the issue of possibly rezoning the Beech Hill area. He noted that the Planning Board Zoning Rewrite subcommittee and later the Planning Board had had discussions on this, and he noted that there was a major presentation from the neighborhood at that time, covering a lot of issues. He said the information on this should be available, including the reasons why the Planning Board had reversed its decision to rezone the area, a decision that had been based on the Master Plan. He said this had occurred in 2004-2005, during the Zoning rewrite process.

Mr. Campbell said the Planning Board had revisited this issue some time later, and had noted that the Master Plan said to change the area to ORLI. But he said the Board had decided that unless it needed to change the Zoning, it would keep the area in question as part of the Rural District. He noted that it had been said at the time that the Board had the right to revisit this in the future.

There was discussion. Mr. Campbell noted that Ms. Fuller was going as the representative of the EDC. He explained that some time back, that committee had put together a map of areas in Durham it was felt should be developed. He said one area was the one on Mill Road that had recently been changed to ORLI, and said the other one was Beech Hill. He said the EDC had started a conversation with the Conservation Commission on this mapping.

He said he had had a conversation with Conservation Commission Chair Cynthia Belowski about the fact that they would rather see the Beech Hill area conserved. He said she had said that if the area



was going to be developed, and the Zoning was going to be changed, the planning for this should be done in a comprehensive way.

Mr. Roberts said he felt this possible Zoning change needed to be done by the Planning Board as part of the Zoning rewrite process as a response to the EDC.

Mr. Campbell said the idea was to get broad based discussion and support on this together, and said it would then come to the Planning Board, not the Town Council. He noted that Mr. Roberts had said before that the process previously seemed to have been circumvented, and that these things needed to come to the Planning Board.

Mr. Ozenich said that previously, the Conservation Commission hadn't said much on a possible Zoning change in the Beech Hill area, but said there had been significant comments made by residents, which had included some good arguments.

#### Discussion on RSA 79-E, Community Revitalization Tax Relief Incentive

Mr. Campbell said this initiative was coming from the EDC, and said no Zoning changes were required. He said the program was created to encourage the rehabilitation and active use of underutilized buildings and structures in downtown areas. He said in Durham, this referred to the Central Business, Church Hill, Professional Office, Coe's Corner, and Courthouse Zoning districts.

He said there was a process that needed to occur, with the first step being adoption by the Council of enabling legislation. He said if this were adopted, an owner of a qualifying structure, as defined in the statute, would apply to the Council for tax relief. He said the assessment and taxes at the present level would then be frozen, and the owner would be granted relief from an increase in the taxes for 5 years. He said if there was housing involved, this could be extended for another 2 years, and if there was affordable housing involved, it could be extended for another 4 years. It was noted that if an historical structure was involved, the tax relief could be extended for 4 years.

Mr. Campbell said the Council would have to have a hearing within 60 days of receiving an application, and would have to determine the following: 1) if a qualifying structure was involved; 2) if the proposed rehabilitation was substantial (\$785,000 or 15% of a structure's assessed valuation, whichever was less); and 3) if there was a public benefit, in terms of providing downtown economic vitality, improving a culturally or historically important structure, promoting downtown development, or increasing downtown housing.

He said the Council would have 45 days to make a decision on these things. He said if the tax relief were granted, there would be a covenant that would be recorded, which would ensure that what the tax relief was intended to accomplish actually occurred. He said the covenant could be put on for two times the period the tax relief was granted for, to ensure the building continued to be used as was intended. He said the Town Council would also have the ability to put a lien on the property above and beyond the covenant.

There was discussion that the Red Tower building, the Ballard building and the Houghton Hardware building were examples of structures that could be covered under this enabling legislation.

Mr. Roberts asked if other New Hampshire were using this enabling legislation.

Mr. Campbell noted that Manchester, Rochester, Concord, and Littleton had used it, and said Rochester had used it to restore the opera house.

Mr. Parnell said a concern was that if a property was given this kind of tax relief, the other property tax payers had to pay for the subsidy. He asked what the reason would be for this.

Mr. Campbell said the same amount of taxes would be collected as had been collected before the redevelopment, and in a certain number of years, the Town would collect more taxes.

Mr. Parnell said a developer could improve the project in the short term and pay a reduced amount of taxes for up to nine years, and said this didn't seem to be a good deal.

Ms. Fuller noted that the extended tax relief would apply to affordable housing, or a historically significant structure. She said those kinds of uses didn't always bring in top dollar revenues, and said properties where top dollar venues could be expected, like market housing, retail and professional office uses would see tax relief for 5 years. She said the idea here was to provide an incentive to property owners of under utilized buildings to rehabilitate and redevelop them, which would provide a future economic benefit to the Town.

Mr. Parnell said there was still a delayed return on this to the Town.

Mr. Campbell said without this, the property owner wouldn't invest the money.

Mr. Parnell said he hoped an owner wouldn't invest the money with the expectation of getting the tax benefits, stating that this would be a very poor business decision.

Councilor Julian Smith said this was a variation on tax incremental financing. He then asked what was meant by "town centers" in the enabling legislation, and whether it might include a new Town center/municipal complex on Old Piscataqua Road along the Oyster River, if the Town decided to do this. He provided details on a possible design for this, and what it might include.

Mr. Campbell said there had to be a qualifying structure involved, and there was discussion. There was also discussion as to whether all three questions had to be answered to qualify for the tax relief, with Chair McGowan stating that he thought all three did have to be answered.

Councilor Smith said under this legislation, tax relief could be obtained for developing the Grange building.

Ms. Fuller said Mr. Campbell had given a presentation on this to the HDC the previous week. She said the consensus of the Commission was supportive, and it encouraged Mr. Campbell to get a recommendation from the Council to approve this. She said she, as a Planning Board member, had been supportive of this.

Councilor Needell said if this enabling legislation was adopted, a project involving it would most likely have to come before the Planning Board. He received clarification that the fact that the property would receive tax relief would not impact the Board's role in the approval process.

There was discussion that the property owner would have the double step of having to get the tax relief from the Council and having to get an approved site plan application, and that these two steps could take place in no particular order.

Ms. Fuller noted that if the Council approved the enabling legislation, the owner of the Ballard building, which had already received site plan approval from the Planning Board, could go to the Council for tax relief.

Mr. Campbell said if a developer knew that the property wouldn't be developed unless the tax relief was approved, it made sense to go first to the Council, and not to the Planning Board first.

Councilor Needell noted that the Council did have the discretion to deny a request for tax relief.

Mr. Campbell said a denial could be appealed to Superior Court or to the Board of Tax and Land Appeals.

Ms. Fuller said she thought it was a great tool to potentially bring housing other than student housing to Durham.

Councilor Needell noted that the ability for a property owner to appeal a denial was very narrowly defined. There was discussion. He also said if the property owner went first to the Planning Board with an application, the detailed plans for the property would be spelled out. But he said if the property owner went to the Council first, there might not be a lot of detail provided on what was proposed.

Mr. Campbell said his assumption was that the application the property owner would have to fill out would provide details. There was discussion on whether such an application was required by the State, and if so, what it included.

Councilor Needell said if someone went directly to the Council and got the tax relief, there would then be pressure on the Planning Board to approve an application. He said there was the potential to step on toes, in terms of the roles of the different public bodies, and said it would be interesting to see how things played out.

Councilor Smith said the way he read RSA 79-E, he didn't think that rehabilitation had to apply to an actual structure. There was discussion.

Mr. Roberts considered whether tear-downs would be legal, under this enabling legislation, so that a property like the Hardware store building could be torn down and replaced with a three story building. He said a question was whether existing buildings that qualified could essentially be eliminated or at least overwhelmed by the additions. He said he was confused as to whether improvement applied to the existing structure, or in a more general sense to the downtown area.

Mr. Campbell noted that RSA 79-E:4 II indicated that all three criteria laid out in the Statute had to be met.

There was discussion as to whether the enabling legislation would apply to a parking lot.

Mr. Ozenich asked if an inventory had been done to determine what properties would qualify for the tax relief.

Mr. Campbell said that essentially all of the properties in the districts he had listed would qualify.

Councilor Needell said the Town needed to ask itself the question of whether it wanted the revitalization to occur, and if so, how this should happen. He noted that there had been some work done on this over the past few years, including the work on the possible redevelopment of Mill Plaza.

Councilor Smith noted that this approach would be great for Mill Plaza.

Councilor Needell said if people believed this revitalization would happen anyway, without the tax relief, the Town would be giving up a substantial amount of income over a five year period if the tax relief was granted. He said if it was believed that the revitalization wouldn't otherwise happen, it went back to the same argument as there was for the TIF.

There was discussion that there was potential to lose revenues, if the revitalization projects would be happening even without getting the tax relief.

Councilor Needell said one wouldn't want to go ahead with this approach unless the revitalization was desired. He said the desire for this revitalization had been well established, but he said there were some substantial questions to be answered. As an example, he said if it was believed that a Mill Plaza development was going to happen anyway, a question was whether offering this tax relief opportunity was the right thing to do.

Mr. Parnell asked if the person looking to develop the hardware store property was aware of this program. Told that he was, Mr. Parnell said if he were him, he wouldn't be in any rush to make a decision until the Town made a decision concerning the enabling legislation. There was discussion.

Mr. Campbell said he had brought this to the Planning Board to let members know that the EDC was bringing this forward.

Mr. Roberts noticed that what Concord included with this kind of thing was architectural standards, so there would be some kind of control. He also said the revenue impacts of revitalization, before and after, should be looked at carefully.

Chair McGowan asked why allowing the tax relief would impact the architectural design aspects of a project, noting that there were already standards in place concerning this.

Mr. Roberts said when there was the impetus for change, things could happen quickly, and he spoke in detail on this.

There was discussion about whether the Zoning Ordinance already included the architectural standards needed. Councilor Needell said if people weren't secure in the existing provisions, the Town shouldn't adopt legislation like this to spur development. He said people had to be comfortable with this. He said there was no provision in this legislation to include architectural design standards.

Mr. Roberts noted that Nick Isaak had provided some draft architectural design standards a few years back.

Mr. Campbell noted that he had spoken with Robbi Woodburn concerning updating the landscaping regulations.

Chair McGowan asked what the next step was concerning the tax relief legislation, and Mr. Campbell said he would bring feedback from the Planning Board back to the EDC, and they would then decide whether or not to request that the Council adopt the legislation.

Councilor Smith noted that a few years back when the TIF legislation was being discussed, Councilor Carroll had referred to this approach as an alternative to TIF, and the only reason the Council didn't look at it was that Council members were determined to enact the TIF enabling legislation, which did in fact happen. He said he thought the Planning Board should report back favorably to the EDC on the tax relief approach.

Mr. Campbell said the issues the Planning Board had raised would be brought back to the EDC.

C. Next meeting of the Board:

**X. Approval of Minutes –**

October 15, 2008

Page 2 "IV" should read "V"

Doucet needs to be spelled correctly throughout (not Doucette)

Page 10, under New Library, should read "...would require \$790,000 for 2009, which would include \$190,000 from the Town (to be bonded), with the rest, \$600,000, coming from the Trustees." Also page 10, last paragraph, page 10, should say "Town staff could make do at the existing Town Hall."

Page 13, 4<sup>th</sup> paragraph, should read "...the transition of what used to be a pond into ...."

Page 16, 4<sup>th</sup> paragraph, should read Mr. Cedarholm"

9<sup>th</sup> paragraph should read "...he expected to see the permit approval in 2010."

***Councilor Julian Smith MOVED to approve the October 15, 2008 Minutes as amended. Steve Roberts SECONDED the motion, and it PASSED unanimously 5-0-1, with Susan Fuller abstaining because of her absence from the meeting.***

October 29, 2008

Doucet needs to be spelled correctly throughout (not Doucette)

Page 9 should read “After further discussions, the consensus of the Board was to recommend that this requirement be removed.”

Page 11, under Article XXII, Landscaping, should read “..Mr. Campbell would sit down with landscape architect Robbi Woodburn...”

***Councilor Julian Smith MOVED to approve the October 29, 2008 Minutes as amended. Susan Fuller SECONDED the motion and it PASSED unanimously 6-0.***

## **X. Adjournment**

***Richard Ozenich MOVED to adjourn the meeting, Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.***

Adjournment at 9:43 pm

Victoria Parmele, Minutes taker