

This set of minutes was approved at the March 25, 2009 Planning Board meeting

**DURHAM PLANNING BOARD
WEDNESDAY FEBRUARY 11, 2009
DURHAM TOWN HALL - COUNCIL CHAMBERS
MINUTES**

MEMBERS PRESENT: Steve Roberts; Richard Kelley; Richard Ozenich; Susan Fuller;
Councilor Julian Smith

ALTERNATES PRESENT: Councilor Jerry Needell

MEMBERS ABSENT: Chair Bill McGowan; Lorne Parnell; Wayne Lewis; Kevin Gardner

I. Call to Order

Board member Susan Fuller served as Chair of the meeting in place of Chair McGowan.

II. Approval of Agenda

Richard Kelley MOVED to approve the Agenda as submitted. Steve Roberts SECONDED the motion, and it PASSED unanimously 5-0.

III. Report of the Planner

Mr. Campbell said he had met with University planner Doug Bencks as part of their monthly meeting, and had provided a memo on the meeting to the Board.

He noted that the Town Council would be holding a public hearing on the proposed Septic System amendments on February 16, 2009. He said he hoped some Planning Board members could attend the meeting.

Mr. Campbell said he had attended the University's Committee on Real Property Acquisition and Disposal on January 29th. He said there were two items on the agenda relating to Durham, one of which was the land swap between Perry Bryant and the University on Mast Road/Route 155A, which was still moving forward. He said the other item was the fact that the Old Reservoir Dam above the Mast Road Extension was in disrepair, and would either need to be repaired or removed. He said the University was looking into this.

Mr. Campbell said he would be meeting the following day with the owners of the property at 26 Strafford Ave. about the possibility of demolishing the existing structure there, and in its place building some Class A office space with apartments. He noted that the property was located in the RA District, where mixed use development was not permitted, so either a Zoning amendment or a variance would be needed if a proposal for this type of development moved forward.

Mr. Campbell said the Economic Development Committee would be meeting on Friday, and would

be discussing the following:

- An update on the presentation to the UNH class that would be doing a marketing study for the Town
- Continued discussion on the list of possible projects the Town would like to use federal stimulus money for, to move those projects forward
- An update on assignments for the Strategic Plan
- A discussion with Administrator Selig on downtown development.

Mr. Campbell said there had been two requests for extending the deadline for meeting the conditions of approval for applications the Board had previously approved.

Mr. Campbell spoke with Board members about discussions he had with Administrator Selig regarding bringing in some professional help to update some of the chapters of the Master Plan, as well as to work on some possible Zoning changes.

IV. Public Hearing on a Site Plan Review Application submitted by Peter Murphy, Newburyport, Massachusetts, for the demolition of the current structures and the construction of a 4-unit building which would create 16 bedrooms with 32 occupants. The basement area may be used for storage, coin-operated laundry, accessory office and workshop for building maintenance. 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.

V. Public Hearing on a Conditional Use Permit Application submitted by Peter Murphy, Newburyport, Massachusetts, for the demolition of the current structures and the construction of a 4-unit building which would create 16 bedrooms with 32 occupants. The basement area may be used for storage, coin-operated laundry, accessory office and workshop for building maintenance. 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.

Councilor Needell recused himself for both Agenda Items IV and V.

Roger Roy from MJS Engineering summarized again for the Board what was proposed with the project. He noted that the applicant had been before the Conservation Commission and that members of the Commission had participated in the site walk. He also provided details on the variances that had been granted by the ZBA.

Councilor Smith MOVED to open the Public Hearing. Richard Kelley SECONDED the motion, and it PASSED unanimously 5-0.

Ms. Fuller asked if there were any members of the public who wished to speak in favor of or against the applications. There were no members of the public who came forward.

Councilor Smith MOVED to close the Public Hearing. Richard Kelley SECONDED the motion, and it PASSED unanimously 5-0.

Mr. Campbell said the Board could deliberate on the application that evening.

Mr. Kelley spoke about the summary letter dated January 30th that the applicant had provided to address various concerns. He noted that a property management plan had been prepared and had been submitted to the Planning Department. He said in the past, the Board had required a management plan as well as a security plan, and said the Board was looking for both of these things with this application as well. He advised that Mr. Roy look at the wording in the draft Conditions of Approval, specifically regarding property management.

Mr. Campbell said the management plan was good, but said details were needed on who the primary and secondary contact people would be, and how the property would be watched over.

Mr. Roy said these things would be addressed.

Ms. Fuller suggested that the idea of a zero tolerance policy could perhaps be added to the lease, and noted that she had seen this in other leases.

There was discussion about what the applicant proposed concerning excavation support for work on the site.

Mr. Roy said his experience was that while such a scheme could be devised in advance, the general contractor for the project would come up with a different scheme. He said to save money for the applicant, it made sense to let the contractor do this, and MJS Engineering along with the Code Officer would then review it to see if it was acceptable.

Mr. Kelley asked what the schedule was for breaking ground, if the applications were approved, and Mr. Roy said the schedule was to break ground shortly after the current leases expired on May 1st.

Mr. Kelley said the contractor, looking at the plans, would have no idea how much room there would be on Rosemary Lane, and said he thought there would have to be some encroachment. He said perhaps the conditions of approval could include language on what the Board felt was an acceptable closure of the road, and should also say that a certain amount of feet would have to remain open so people could pass through this area.

Mr. Roy noted that there had been similar traffic issues for the Henderson application, given its downtown location, and he reviewed the conditions of approval that the Board had put in place to address these issues. He spoke in some detail about the idea of a preconstruction meeting, where issues could get ironed out, and said perhaps there could be a condition of approval that there would need to be a preconstruction meeting.

Mr. Campbell said this had already been included as a condition to be met subsequent, and said wording could be added to this condition if needed.

Mr. Ozenich asked how snow on the site would be managed, and Mr. Roy said some snow could be stored in front of the building, as long as enough room was allowed for a drop off zone for one car. He said any snow that didn't fit in the front would be taken off site.

Mr. Roberts asked if the parking policy had been articulated in the lease, and Mr. Roy noted that this issue had been addressed in the memo that had been provided. He said this would be an ongoing management issue that would be addressed by the property owner.

Mr. Campbell said there was wording concerning this in the Rules and Regulations, and he read through this.

Mr. Roberts said it was important for the applicant to submit something in writing to explain what the plan was to offset the need for parking. He noted that the Board had required this for the Mast Road project site plan application as well.

There was discussion that there would be a condition of approval concerning this.

Mr. Campbell asked the Board to address the waiver requests concerning:

- Overhead Utilities
- Building Height
- Parking Requirements
- School Impact fees

Richard Kelley MOVED to waive 9.06 B of the Site Plan Regulations, and to allow the applicant to maintain the existing overhead utility pole. Councilor Smith SECONDED the motion, and it PASSED unanimously 5-0.

Richard Kelley MOVED to allow a building height of 40 feet. Councilor Smith SECONDED the motion and it PASSED unanimously 5-0.

Richard Kelley MOVED to waive the parking requirements (Section 175-112.A.2). Richard Ozenich SECONDED the motion

There was discussion about whether the contribution the applicant would have to make to the parking fund was part of the waiver being requested.

Richard Kelley MOVED to amended the motion, to make the waiving of the parking requirements contingent upon the parking fee being paid, for 33 spaces at \$750 a piece. Richard Ozenich SECONDED the motion, and it PASSED unanimously 5-0.

The original motion to waive the parking requirements (Section 175-112.A.2) PASSED unanimously 5-0.

The Board next reviewed the Compliance Checklist for the Conditional Use application. It was determined that the application was in compliance with all of the items on the list.

The Board then reviewed the Findings of Fact and Conditions of Approval for the Site Plan application.

Mr. Kelley asked whether perhaps a Planning Board member should be at the pre-construction meeting described in Condition #7 to be met subsequent to the signature of approval of the Site Plan.

Both Councilor Smith and Mr. Kelley said they would attend this meeting.

There was detailed discussion on this issue, with Mr. Kelley noting his concerns that construction staging, timing, and techniques needed to be carefully considered for these more urban, downtown projects where there was a tight footprint.

Mr. Campbell read the language that would be used for condition #7.

Mr. Campbell also noted wording that had been included in Condition #9 to be met subsequent regarding trash collection, which would be handled privately, and would be the responsibility of the owner.

Mr. Campbell said the parking fee had a pretty hefty price tag. He noted the wording in the Conditions of Approval that the parking fee would be paid at the time of occupancy of the building. There was discussion.

Conditions of Approval - to be met prior to the Signature of Approval of the Site Plan.

1. The applicant shall supply one mylar plat and one paper copy for signature by the Planning Board Chair.
2. All final plans must be stamped by appropriate professionals.
3. The applicant shall post an acceptable financial surety 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. A Property and Security Management Plan shall be submitted to include, but not limited to, the following: Rules and regulations of the Apartments at 22 Rosemary

Lane; 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.

7. The applicant will work with the Code Enforcement Officer and Fire Department to ascertain whether windows will be allowed on the sides (north and south) of the building.
8. The applicant will provide a letter explaining reasons for not providing parking (parking demand offset).

Conditions of Approval 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. 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
 7. The construction staging, timing, and techniques shall be reviewed and approved at a pre-construction meeting prior to any demolition or construction. The pre-construction meeting shall be held with the Durham Police Department, Fire Department, Code Enforcement Officer/Building Inspector, the Department of Public Works, a member of the Planning Board and the Director of Planning and Community Development with a summary provided to the Planning Board.
 8. During construction the site will be secured by use of a temporary chain link fence. Additionally, a jersey barrier may be used at the edge of Rosemary Lane during excavation and construction.
 9. Trash collection will be private and the responsibility of the owner. All areas where trash is stored, both inside and outside, will be kept in an orderly fashion.

10. The parking fee will be paid at the time the Certificate of Occupancy is issued.

Richard Kelley MOVED to approve the Findings of Facts and Conditions of Approval as amended for the Site Plan Review Application submitted by Peter Murphy, Newburyport, Massachusetts, for the demolition of the current structures and the construction of a 4-unit building which would create 16 bedrooms with 32 occupants. The basement area may be used for storage, coin-operated laundry, accessory office and workshop for building maintenance. 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. .Councilor Smith SECONDED the motion, and it PASSED unanimously 5-0.

The Board next reviewed the Findings of Fact and Conditions of Approval for the Conditional Use Permit application. Board members agreed that the waivers applied to both applications.

Mr. Roy was asked if he and the applicant were comfortable with the Conditions of Approval that Mr. Campbell had developed, and Mr. Roy said they were.

Conditions of Approval - to be met prior to the Signature of Approval of the Conditional Use Permit Plan.

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 Apartments at 22 Rosemary Lane; 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.

Conditions to be Met Subsequent to the Signature of Approval on the Conditional User Permit Plan:

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 Findings of Fact and Conditions of Approval as amended for the Conditional Use Permit Application submitted by Peter Murphy, Newburyport, Massachusetts, for the demolition of the current structures and the construction of a 4-unit building which would create 16 bedrooms with 32 occupants. The basement area may be used for storage, coin-operated laundry, accessory office and workshop for building maintenance. 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. Councilor Smith SECONDED the motion, and it PASSED unanimously 5-0.

Mr. Roy said that concerning the lower level, it wasn't clear in the conditions of approval document that the applicant would be allowed to have that habitable floor area.

There was detailed discussion on this by the Board, and it was agreed to amend the motion to include wording on this.

Steve Roberts MOVED to add the language "...and the balance of habitable floor area.." to the motions of approval for the Conditional Use Permit application and the Site Plan Application. Richard Kelley SECONDED the motion, and it PASSED unanimously 5-0.

- VI. Acceptance Consideration of a Subdivision Application** submitted by Atlantic Survey Co. LLC, Durham, New Hampshire, on behalf of Thomas Moriarty, Heirs of Bertha Moriarty, Durham, New Hampshire, for the subdividing of one lot into two lots for conservation purposes. The property involved is shown on Tax Map 15, Lot 7-1, is located at 4 Bennett Road and is in the Rural Zoning District.

Councilor Needell returned to the table at 8:07 pm

Adam Fogg, of Atlantic Survey represented the applicant, who he said wished to subdivide a 3.743 acre parcel with an existing single family dwelling unit out of a 52 acre parcel, in order to convey 48.26 acres to the Nature Conservancy. He said access for the smaller lot (Lot 1) would be through the existing gravel drive, and said access to the larger lot (Lot 2) would be from a proposed easement over Lot 1.

Mr. Kelly asked if this subdivision would impede or restrict a NHDOT project to put the 4 ft shoulder in, and there was discussion.

Duane Hyde of the Nature Conservancy said it would be much like dealing with any other private land owner, and said NHDOT would need to prove that there was a public need for the project, something that had probably already been established. He also said it would have to show that there would be adequate compensation provided for the impacts. He noted that the property would be transferred to NH Fish and Game, and said these details might therefore be worked out later.

Mr. Roberts said he assumed that there was an existing well on Lot 1, and Mr. Fogg said the well was actually on Lot 2.

There was further discussion about access. Mr. Hyde said there would be plenty of access from Bennett Road, noting that NH Fish and Game would own the property. He also said there was an existing trail system on the eastern portion of Foss Farm that connected up to this property. He said most people would get to the property through Foss Farm.

Ms. Fuller spoke about a memo from Code Enforcement Officer Tom Johnson regarding concerns about the existing septic system. She noted that the access included a reserved septic area on it.

Mr. Fogg said this issue could be addressed in the future, and said the septic area could be shifted.

Mr. Hyde explained that when they were drafted, the access easement terms could state that the easement could be relocated when the septic design was done.

In answer to a question from Mr. Kelley, Mr. Fogg said he wasn't sure exactly where the septic system was.

Mr. Campbell said the approximate location would be shown on the plan, and said there would be easements for the well, pump house and septic system.

Councilor Needell noted comments from Mr. Johnson regarding the conservation easement terms, and whether a dwelling could be built on the Lot 2.

Mr. Hyde noted that this was an acquisition, not a conservation easement that was planned, and said the Nature Conservancy would be conveying the property to NH Fish and Game. He said there would be deed restrictions regarding building, which would be similar to those that the Town had in place for the Beaudette property.

Councilor Needell asked if there was therefore any requirement concerning having a septic system on Lot 2.

There was detailed discussion on what the Zoning Ordinance said concerning this. Mr. Campbell said the issue would have to be dealt with at some point.

Councilor Smith asked if the access across the existing house lot would be abandoned once NH Fish and Game took control of the property.

There was discussion. Mr. Hyde said that there for management purposes, there was access from the Beaudette tract, but he said that for public purposes, it was a bit hard to get in that way. He also said that legally speaking, access wasn't required.

Mr. Hyde said the terms of the access easement would be in the deed, and Mr. Roberts recommended that this be referred to in the Board's approval of the application.

The Board next reviewed the waivers from the Subdivision Regulation requirements that the

applicant had requested.

Sections 7.01 and 702: Exemption from having to do the pre-conceptual consultation and design review phases of a subdivision application

Section 7.03 F: Exemption from having to do a final common open space and stewardship plan

Section 7.05: Exemption from having to do a Construction Plan

Section 7.06: Exemption from having to provide soils data verification

Section 9.06: Exemption from having to do an engineered stormwater analysis

Section 9.08: Exemption from having to do a subdivision layout and design

Mr. Kelley asked if an onsite septic system would be designed for Lot 1.

Mr. Fogg said the intent was not to design the septic system now, and said the plan was to use the existing leachfield until it failed.

In answer to further questions on this from Mr. Kelley, Mr. Hyde said there was a provision to maintain the existing septic system for Lot 1 on Lot 2. He said the system would be delineated, and would remain on Lot 2 for the time being.

Richard Kelley MOVED to grant the request for waivers from Sections 7.01, 7.02, 7.03F, 7.05, 7.06, 9.06 and 9.08 of the Subdivision Regulations. Steve Roberts SECONDED the motion, and it PASSED unanimously 5-0.

Mr. Campbell said the application was complete.

Mr. Roberts asked if any waivers were needed from the Zoning Ordinance concerning the well, septic system, etc.

Mr. Campbell said the only things needed were the easements for these items.

Richard Kelley MOVED to accept the Application submitted by Atlantic Survey Co. LLC, Durham, New Hampshire, on behalf of Thomas Moriarty, Heirs of Bertha Moriarty, Durham, New Hampshire, for the subdividing of one lot into two lots for conservation purposes. The property involved is shown on Tax Map 15, Lot 7-1, is located at 4 Bennett Road and is in the Rural Zoning District. Councilor Smith SECONDED the motion, and it PASSED unanimously 5-0.

Board members agreed that the site walk would be held on Saturday, February 21st at 9:30 am, and that the public hearing would be held at the February 25th Board meeting.

- VII. Conceptual Consultation** submitted by MJS Engineering, P.C., Newmarket, New Hampshire, on behalf of 10 Pettee Brook Lane LLC, Plymouth, New Hampshire, for the redevelopment of 6 Jenkins Court with a new three-story mixed-use building. The property involved is shown on Tax Map 4, Lot 8-0, is located at 6 Jenkins Court and is in the Central Business Zoning District.

Mike Sievert, President of MJS Engineering spoke before the Board and represented, Matt Crape

who owned the property in question, the former Houghton's Hardware property. Mr. Crape was also present at the meeting.

Mr. Sievert first described the existing site conditions. He noted that there were 10 parking spaces on the site, and also said there were 3 parking spaces on Jenkins Court, directly in front of the property.

He said the property was served by municipal water coming from Jenkins Court, and also said there was an existing sewer line that ran through the Store 24 parking area and under the building on the 6 Jenkins Court property. Mr. Sievert provided details on the existing sewer line, and said as part of the project, the line would be rerouted so it would not run under the building.

He said there were overhead electric and data lines that ran along the UNH owned land on the east side of the property. He provided details on this, and said the applicant would work with PSNH to resolve any potential conflicts. He also said natural gas would be provided to the site from Pettee Brook Lane.

Mr. Sievert said the proposed building footprint would be 80 ft by 56 ft, and said there would be commercial space on the first floor. He said the upper levels of the building would extend over the parking area, noting that the parking would be configured on approximately the same footprint that it now took up on the site.

He said 10 units were allowed on the property (900 sf required per unit). He said the second and third floors would measure 80 ft by 94 ft, and said each floor would contain 5 residential units with 6 bedrooms each.

Mr. Sievert noted that a 4th floor was shown in the drawing that had been provided, but said this was not proposed right now because it couldn't be done unless there were also two stories of commercial space in the building. He said it was being provided to the Board to show that a peaked type of roof looked better than one that wasn't peaked.

He said the existing property was essentially entirely impervious. He said the proposed covered parking area would result in roof drainage rather than parking lot drainage for a portion of the site, which would clean things up and improve the quality of the runoff. He also said the development would not result in an increase in the quantity of runoff.

Mr. Sievert explained in some detail that Mr. Crape would be asking for a reduction in the amount of parking that needed to be provided.

Councilor Smith asked if the kitchen and living areas for each of the units would be able to get any natural light, and Mr. Sievert said the only natural light would come through the bedroom windows. Councilor Smith asked if any consideration had been given to bringing in some natural light down from the top of the building, and Mr. Sievert said this would relate to what kind of roof there would be. He said there was definitely some discussion about this.

Councilor Smith described in detail possible options for addressing this situation.

There was discussion between Mr. Kelley and Mr. Sievert about car access and through-traffic issues.

There was also discussion on fire protection issues.

Councilor Needell asked if there was an option to have fewer than 6 bedrooms per unit, stating that this seemed like a lot.

Mr. Crape said there had been some initial discussion on this. He said although he would like to steer away from having 6 units, right now this was necessary for economic reasons.

Mr. Roberts said given the fact that the Board had approved two other student rental applications for properties in the same neighborhood, he wondered if there was still a need for this kind of facility. He also noted issues concerning the impacts of student density downtown.

Mr. Crape said he felt that what he was proposing would fit nicely into the community. He said there would be onsite management, and noted that he was a member of the Durham Landlords' Association. He also said he might have his office in the building itself.

Mr. Roberts said he didn't like flat buildings, but he also said the design Mr. Crape had provided would have some scale to it.

Mr. Crape said it would be a larger building than what was there now. But he noted the building Tom Christie would be building downtown, and also said that even a two story structure on Main Street would do a good job of blocking the view of the building that was proposed.

Mr. Kelley said given the magnitude of the proposal in terms of scale and this possible roof line, it would be important to pay particular attention to the aesthetics of the building.

There was discussion on stormwater management issues. Mr. Sievert said putting a roof over the parking area would take a lot of the runoff away, and said they were also looking at the potential to do some onsite stormwater management. He noted that he had met with Town Engineer Dave Cedarholm on stormwater management issues as well as utility issues. He said the development would meet the requirements of the existing NPDES permit issued regarding discharge into Pettee Brook

Councilor Needell asked if any thought had been given to using some innovative environmental approaches for the development. He said this was a landmark building, and said it would be nice to include this.

Both Mr. Sievert and Mr. Crape agreed, and said these approaches were being developed.

Mr. Kelley said when Mr. Christie had appeared before the Board concerning his site plan application, he had mentioned the ledge in that area. He asked what was proposed concerning this.

Mr. Sievert said there was some ledge in the basement of the hardware store, and he provided details on possible plans to put in a partial cellar and to stay away from the ledge.

Mr. Kelley said this was another project in the downtown area where the building would come just about to the property lines. He said his concerns down the road would be regarding construction impacts, including impacts on abutting properties. He noted the proximity to the Store 24 parking lot.

Mr. Sievert noted recent discussion by the Town Council regarding the possible provision of green space in that area along with different types of development. He said with that in the back of their minds, he and Mr. Crape were thinking that the parking on his site might someday go away, and in that case, there could be connection to the Store 24 lot, and an opening up of the covered access way. He said it could be a public access way to other green space, other buildings, and said there was also the possibility for an outdoor cafe.

There was some discussion on this.

Mr. Roberts asked about Mr. Crape's relationships with other businesses downtown, stating that the new building would change the reference point for everyone.

Mr. Sievert said Mr. Crape had spoken with the owners of the buildings on Main Street. He said they hadn't seen the pictures yet, and said the next step was to get their feedback.

Mr. Roberts spoke about his negative feelings about Holloway Commons when it was built. He said a question with this building as well was its possible size, and how it would fit with everything else.

Mr. Campbell noted that when Tom Christie constructed his new building downtown, there would be three buildings in that area that were similar in size.

Councilor Needell said the commercial space for the proposed building would be about 5000 sf., and suggested that it would be one of the larger commercial spaces downtown.

There was discussion, and Mr. Sievert said it would be basically the size of the former hardware store on the property.

Councilor Needell asked if more than one tenant was envisioned for this commercial space, and Mr. Crape said he didn't know right now. He spoke about the fact that with more than one tenant, there would be less risk, and also said he couldn't foresee what tenant would want all of that space.

Mr. Campbell asked if the parking spaces would be set aside for the commercial space, and Mr. Crape said yes, and provided details about the fact that this was needed in order to make the commercial space viable.

There was discussion that Mr. Crape would have to pay a \$50,000 parking fee for not meeting the parking requirements, based on the plan he had provided.

Mr. Kelley noted that if the Town did construct a parking garage, some of the parking spaces there could be used by the building's tenants and customers.

Mr. Crape spoke about the potential for a restaurant on the first floor over the long term, and said he would like to see a different kind of restaurant for Durham. He also said he thought there would be a lot of benefits if there were a parking garage in the Pettee Brook parking lot area.

Mr. Kelley said he hope the plans therefore wouldn't preclude this for the future.

Mr. Crape said he did in fact want to keep open the option for a restaurant with an outdoor seating area that would look out over some green space.

Duane Hyde noted the issue concerning windows, and asked how this would be addressed with the Fire Department.

Mr. Sievert said this would have to be worked out, and said perhaps some adjustments would need to be made. He said while it was nice not to have setback requirements, there were building codes and safety codes that created some issues concerning constructability. He provided details on some of the things that had to be considered.

There was discussion that Mr. Crape would like to start construction by the summer.

Councilor Needell asked if it was expected that any variances would need to be obtained, and Mr. Sievert said right now, none were needed.

Mr. Kelley said if some of the windows were removed, this would take away from the appearance of the building. There was further discussion on the windows issue.

Mr. Crape said he hoped to make the new building a part of Durham's future, and said he wanted it to look good.

Ms. Fuller noted the Town Council's recent discussion about the economic viability of this with Mr. Crape.

Break from 9:10 to 9:20 pm

- VIII. Discussion on Instream Flow Report-** The New Hampshire River Management and Protection Program was established in 1988 with the passage of RSA 483 to protect certain rivers, called designated rivers for their outstanding natural and cultural resources. The enabling legislation requires the establishment of Protected Instream Flows (PISF). The protected entities can be grouped as fish, riparian wildlife and vegetation and human uses including recreation and (boating and swimming) as well as public water supply. These protected flows will become water quality standards for the river upon final approval by the Commissioner of NHDES. On January 14 a public hearing was held at the Lee Safety Center, NHDES will consider the public comments received in any revisions to the protected instream flow levels. Comments will be

taken until March 2, 2009.

Mr. Kelley noted that he was on the Lamprey River Advisory Committee, and said was half way through reading the Instream Flow Report. He said it was his obligation to make comments on it, and also said it was important that the Town respond. He said a question was what entity(s) in Town would provide this response. He said he would speak with Mr. Campbell, Administrator Selig and the Department of Public Works concerning this.

Mr. Campbell noted that there was an executive summary for the report.

Mr. Kelley said the questions he had from reading the Executive Summary were answered in the report itself. He said the report represented the results of Task 5 of the study, and explained that the study itself had started back in the 1990's. He said he thought the State had done an incredible job studying the Lamprey River, and said the type of model chosen and the way the model had been created was good.

Mr. Kelley said a critical fault was that there hadn't been an analysis of the coefficients on the variables used in the model. He also said a glaring thing he had found was that the enabling legislation said that public water supply impacts had to be addressed after the other impacts. He spoke in some detail concerning this.

Councilor Needell asked what it would mean if nobody commented on the report and it was simply adopted.

Mr. Kelley said he didn't know specifically. But he said it was expected that a management committee would have to come up with a plan to maintain flows, and to determine how the river was to be managed.

Councilor Needell spoke about the issue of whether the results would be more onerous than the current situation with the management of the Lamprey River. He said he wasn't getting a sense of this from reading the document.

Mr. Roberts said he had seen a presentation on the report at the Conservation Commission meeting, and said Cynthia Copeland, the Executive Director of Strafford Regional Planning Commission (SRPC) had been there. He said the results of the study might very well bite Durham, and said perhaps some homework needed to be done on this. He said he hoped that someone in Town government was taking some interest in this.

Mr. Kelley spoke about the fact that in the study, the flow component of the river had been broken up into frequency, duration and timing. He also noted that the flows required for different species were addressed.

Mr. Kelley also said the State's consulting team was responding regarding a number of concerns that had been expressed. But he said actually addressing these concerns was a different story.

Mr. Roberts said he wondered whether SRPC would provide a response to the study.

Mr. Kelley said the river was modeled in a natural flow paradigm, as if the development wasn't there. He said it was baffling that the Town was labeled as one of the important uses of the water, but the impoundment wasn't considered as part of the model.

There was further detailed discussion about this with Mr. Roberts.

Councilor Needell asked what happened after March 1st.

Mr. Kelley said he thought NHDES would have some work to do. He said from NHDES, it would go on to the Executive Council, and then a management committee would set up a plan to maintain instream flows. He provided additional details on what happened after that.

Councilor Smith spoke about the fact that the impoundment on the Lamprey River held back water that otherwise would have flowed to the Bay. He said NHDES needed to take into account those impoundments.

There was discussion on the involvement of Town Engineer Dave Cedarholm as well as UNH staff in this process.

Mr. Roberts asked if Mr. Campbell should perhaps write something on behalf of the Planning Board.

Mr. Kelley spoke again about the fact that he didn't know what kind of response from the Town was appropriate.

Mr. Campbell said he would talk to Administrator Selig about this, and also said Mr. Cedarholm was keeping up with the process. He said he would report back to the Board on this issue.

IX. Other Business

A. Old Business:

There was discussion between Mr. Campbell and the Board about a request for an extension of the Conditions of Approval for two applications that had previously been approved. Steven F. Kimball, Pine Ledge Holdings, Inc., Auburn, New Hampshire

This is second request

Richard Kelley MOVED, at the request of Steven F. Kimball, to provide a six month extension to the conditions of approval for the Site Plan Application for the building of a 16-unit residential and a 4000 square-foot commercial, mixed-use building at 20 Strafford Avenue. Councilor Smith SECONDED the motion.

Mr. Campbell explained that the financing for the project had fallen through, and Mr. Kimball was seeking alternative means of financing it.

The motion PASSED unanimously 5-0.

The Board next discussed the extension request concerning the previously approved Application for Subdivision for the property located at 51 Durham Point Road. Mr. Campbell said this was the second extension request for this application.

Richard Kelley MOVED, at the request of the applicant, to provide a six month extension for the Conditions of Approval for the Subdivision Application submitted by Arnet Taylor Jr., Durham, New Hampshire, on behalf of Katharine Paine, Durham, New Hampshire to subdivide the property located at 51 Durham Point Road into 3 porkchop lots. Councilor Smith SECONDED the motion, and it PASSED unanimously 5-0.

B. New Business:

Mr. Campbell said the Town would be hiring a consulting firm to help with some updates to the Master Plan. He provided details on the chapters that would be updated, and also said that as part of this work, some possible Zoning changes to the Central Business District would be looked at. He said an RFP would be developed over the next few weeks and would be brought back to the Planning Board. He said everything would flow through the Planning Board, and said this was not a Town Council initiative.

Mr. Roberts asked if there was a list of firms available. He noted that the Town had had a great experience with Cambridge Associates in the past, when the Master Plan was updated.

There was discussion on the grant the Town had received for some work to be done on the Master Plan.

Mr. Campbell explained that it was from NH Cooperative Extension, and said they would be providing some technical assistance, including help with visioning aspect of the Master Plan . He said there was no set time limit on this work.

Mr. Kelley asked if the revisions on the Master Plan, including the chapter that looked at the downtown area, would be done in time to see a revised downtown. There was discussion.

There was also brief discussion on the traffic modeling work that had been completed.

C. Next meeting of the Board: February 25, 2009

X. Approval of Minutes – January 14, 2009

Page 2, under Agenda Item V. Acceptance Consideration, it should note that Councilor Needell recused himself from the discussion.

Same page, bottom paragraph, should read “Mr. Campbell asked if it had been.....”

Page 4, 5th paragraph from the bottom, should read “...would have the sub-base necessary to support the jacks for the Fire Departments’ Ladder #1 truck required for the three story

building.”

Page 6, top line, should read “..might be condominiumized at some point...”

Also Page 6, should noted that Councilor Needell returned to the table at the end of discussion on Agenda Item V.

Also Page 6, should read, at the end of the paragraph, “Further more, for some time, the Conservation Commission had evaluated and responded to applications to replace existing docks with comments to NHDES.”

Page 7, 8th full paragraph, should read “Mr. Roberts asked Mr. Campbell to correct the amendments, and to bring them back...”

Richard Kelley MOVED to approve the January 14, 2009 Minutes as amended. Councilor Smith SECONDED the motion, and it PASSED unanimously 5-0.

XI. Adjournment

Mr. Roberts said that regarding the work being done on the shoreland ordinance, there had been a comment at the previous meeting that it seemed as if with the proposed amendments that the homeowner would have more rights to cut trees than a forester. He said when he had been driving home, he remembered why the 50 ft buffer had been left in the shoreland ordinance a few years back when the Board had revised that ordinance in a way that had better accommodated forestry. He spoke about the way the State handled this, and asked if there was some way to go back to the old buffer ordinance, but to have wording that protected forestry.

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

Richard Ozenich MOVED to adjourn the meeting. Richard Kelley SECONDED the motion, and it PASSED unanimously 5-0.

Adjournment at 9:58 pm

Victoria Parmele, Minutes taker