

This set of minutes was approved at the July 8, 2009 Planning Board meeting

**Durham Planning Board
Wednesday May 27, 2009
Durham Town Hall - Council Chambers
MINUTES
7:00 PM**

MEMBERS PRESENT: Chair Lorne Parnell; Vice Chair Susan Fuller; Secretary Stephen Roberts; Richard Ozenich; Richard Kelley; Bill McGowan (arrived late)

ALTERNATES PRESENT: Councilor Neil Niman; Wayne Lewis; Kevin Gardner

MEMBERS ABSENT: Councilor Julian Smith

I. Call to Order

II. Approval of Agenda

Susan Fuller MOVED to approve the Agenda. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.

III. Report of the Planner

Mr. Campbell said the EDC had met the previous Friday, and continued its discussion on the SWOT analysis. He said once it was done, it would be sent on to other Boards and Committees for their review and comments.

He also said that in response to public comments from Malcolm McNeil at the Committee's April 24th meeting, it would be reviewing the zoning of the ORLI and MUDOR districts to see if there were any changes the Committee would recommend to the Planning Board in terms of uses, dimensional standards, or development standards.

Mr. Campbell noted that there were two openings for alternate members on the EDC.

Mr. Campbell said the deadline for receiving proposals for the CBD zoning and strategic plan for the commercial core was on Friday. He said he was receiving a lot of calls, and was pleased with the amount of interest in the project.

Mr. Campbell said he had recently met with Jack Farrell regarding the possible subdivision of the Garland property. He noted that this property was supposed to provide access to the student housing project in that area that did not go forward. He said the Garlands were looking to subdivide the property, and he noted that if the proposal went forward, it would be a conservation subdivision.

Mr. Campbell also spoke about a possible minor subdivision off of Piscataqua Road.

He said at the last Board meeting, he had neglected to mention a letter from Jay and Marty Gooze in regard to the Kimball application. Mr. Campbell said they had wanted him to acknowledge for the record that they had spoken in favor of this application in comparison to the previous application.

Chair Parnell said Mr. Lewis would sit in for Mr. McGowan.

IV. Appoint One Member to the Historic District Commission (HDC)

After discussion, Mr. Ozenich agreed to serve on the HDC.

Richard Kelley MOVED that Richard Ozenich would serve as the Planning Board representative to the Historic District Commission. Wayne Lewis SECONDED the motion, and it PASSED 6-0-1, with Richard Ozenich abstaining.

V. Acceptance Consideration and Public Hearing on an Application for Conditional Use Permit submitted by Fall Line Properties Inc., Portsmouth, New Hampshire to convert a two-bay, heated garage into a three-bedroom apartment for three tenants. The property involved is shown on Tax Map 2, Lot 10-3, is located at 32-34 Madbury Road and is in the Professional Office Zoning District.

Paul Berton spoke before the Board. He said he had been in the community for about 30 years, and had been a landlord in Durham for 25 years. He said his property, a 10 unit student rental located at the corner of Garrison Road and Madbury Road, had a two bay garage containing 640 sf that he would like to convert into a single apartment with three bedrooms for three tenants. He noted that the garage had been heated in the past, and also had existing hot and cold water feeds as well as a wastewater line.

He said the maximum capacity allowed in the building was 30 students, and said the actual occupancy varied between 27-30 students in any given year. He said the plan was to install a passive solar unit in the apartment, which would take advantage of its southern exposure. He also said foam insulation would be used. He said the final drawing of the plan had not been finalized.

Mr. Berton noted the private property management monitoring company he ran, which watched a number of student rental properties in Durham, including his own. He said the proposed additional unit would be monitored along with the other apartments in this building. He also noted that the site was located in the Professional Office District, and also said his office had recently been moved to the building. He said there would therefore be a professional presence there during the day.

He said this apartment would help to address the problem of single family student rental units in Durham neighborhoods. He said the three bedrooms would each be about 100 sf, the

same size as the units at Nicks Bricks. He said an advantage of this size was that it was good for one person, but not for two.

Mr. Ozenich asked how the occupants would get to bathroom, and Mr. Berton said there would be access.

Mr. Kelley asked if there was capacity for the sanitary lines and water for the garage.

Mr. Campbell said he had spoken with Mr. Lynch, who had no issues because when it was put in it was oversized, so there were no concerns about capacity.

Mr. Ozenich asked how the ZBA decision related to this application, and Mr. Campbell said it was only included in the packet as background material.

Mr. Kelley received clarification that there were no floodplains on the property, and that the house was slab on grade. He noted that the setbacks were met, and said he had no issues with accepting the application.

It was determined that the application was complete.

Richard Kelley MOVED to Accept the Application for Conditional Use Permit submitted by Fall Line Properties Inc., Portsmouth, New Hampshire to convert a two-bay, heated garage into a three-bedroom apartment for three tenants, for the property shown on Tax Map 2, Lot 10-3, located at 32-34 Madbury Road in the Professional Office Zoning District, and to open the Public Hearing. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.

Chair Parnell asked those members of the public in favor of, against, or with concerns about the application to come forward. There was no response.

Richard Kelley MOVED to close the Public Hearing. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

Mr. Gardner asked if this apartment would be expressly intended for students.

Mr. Berton said anyone could live there, but said it was designed for the student rental market. He noted that the design of the apartment was similar to that of the other 3 bedroom units in the building. But he said if UNH faculty or staff were interested in renting there, he could rent it to them. He noted the student rentals in the surrounding area.

Mr. Gardner asked why there were so many parking spaces on the site.

Mr. Berton said he was fortunate to have them, and said this helped his occupancy rate. He noted that he didn't charge for parking.

The Board reviewed the Conditional Use Checklist, and had no issues concerning it.

Mr. Kelley noted that the Public Works Department and the Code Officer hadn't provided comments yet on the application. He said he wasn't concerned about the Code Officer's comments because the applicant would have to get a building permit. But he said perhaps there should be a condition that the applicant would abide by the comments submitted by DPW.

Mr. Campbell said he had received the verbal comments that day, and said these could be put in writing.

Ms. Fuller said Police Chief Kurz's memo of May 18, 2009 could be included in the Findings of Fact.

Mr. Kelley said when he had first looked at this application, he had some concerns about where the new door would go, and how that would work with people backing in. He said he had been concerned about people coming in and out of there, and the ability of cars to see them and vice versa. He said the pavement went right up to several doors in the establishment, which really weren't protected.

Mr. Berton said the existing entrance to the garage on the side hadn't been an issue in regard to cars. He also said there hadn't been a lot of pedestrian traffic in and out of the garage.

Mr. Kelley said when it became an apartment, there would be. He asked if the door on the side would remain in the future, and Mr. Berton said he saw it moving toward the middle of the building, at the center of the two garages.

Mr. Roberts said the parking spaces wouldn't be near the entrance, and said he therefore had no concerns, as long as the parking wasn't near the door.

There was discussion that the apartment would have a slab floor with carpeting over it, so there could be some heat loss.

FINDINGS OF FACT

1. The applicant submitted an Application for Conditional Use Permit with supporting documents on May 4, 2009.
2. The applicant submitted the deed for the property on May 4, 2009.
3. The applicant submitted a letter of intent on May 4, 2009.
4. The applicant submitted two Zoning Board of Adjustment Decisions on May 4, 2009 for previous Zoning Board approvals.
5. The Police Chief, David Kurz, submitted a memo on May 19, 2009.
6. The applicant submitted answers to the approval criteria of 175-23 on May 21, 2009.
7. Pictures of the site were provided to the Planning Board at their May 27, 2009 meeting.
8. A Public Hearing was held on May 27, 2009 and no members of the public were in attendance to speak to the application.

CONDITIONS OF APPROVAL

1. These Findings of Fact and Conditions of Approval shall be recorded with the Strafford County Registry of Deeds, at the applicant's expense.
2. A building permit shall be submitted to and approved by the Code Enforcement Officer for any new construction. All appropriate building codes shall be met
3. The applicant shall meet with the Durham Fire Department to ensure that all fire and life safety codes are met.
4. A Conditional Use Permit shall be issued by the Zoning Administrator.
5. The applicant shall abide by any comments submitted by the Department of Public Works

Richard Kelley MOVED to approve the Findings of Fact and Conditions of Approval for the Application for Conditional Use Permit submitted by Fall Line Properties Inc., Portsmouth, New Hampshire to convert a two-bay, heated garage into a three-bedroom apartment for three tenants, for the property shown on Tax Map 2, Lot 10-3, located at 32-34 Madbury Road in the Professional Office Zoning District. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

- VI. Deliberation on an Application for Site Plan Review** submitted by 10 Pettee Brook Lane LLC, Durham, New Hampshire to demolish and redevelop a former hardware store into 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.

Chair Parnell asked Mr. Campbell to start off by going through the material he had prepared in response to Mr. Christie's concerns.

Mr. Campbell said that at the request of the Board, he had responded in writing to the concerns raised by abutter Tom Christie. He said there were also some emails that had gone back and forth between Mr. Johnson and Mr. Christie, and said there were copies of these. He said if the Board had any particular issues it wanted to go through, it could do that, or it could start going through his response to Mr. Christie, or could deliberate in another way.

Mr. Roberts said he had checked Mr. Campbell's comments against the Zoning Ordinance, to see if there was any need for modification or clarification of the plan. He said he picked out five issues:

- #7- Bike racks
- #15 - Add gutter maintenance requirements
- #17 -Modify final easement language
- #18- exit lighting needs to be shown
- #21 - overhead three-phase line to cardboard recycling area needs to be addressed with the Town

Mr. Campbell noted some issues listed in his May 13th memo to the Board.

Chair Parnell said it would be a good start to go through the issues Mr. Roberts had singled out first. The first issue discussed was #7:

“#7 Section 175-111 F, (pg 162 Z.O.) requires a bike rack for parking facilities of 10 or more spaces. If 2 spaces are proposed between this development and Michael (copy center) then a bike rack is required or a variance is needed.”

Mr. Campbell reviewed his written comments on #7: *I do not think that this section applies to the applicant. These are two separate places to park and not the same facility. He said this was however an opportunity for the applicant to set an example for others and provide a bicycle rack somewhere on the property. He said if the spaces in the alley were eliminated, the bicycle rack could go in that location.*

Mr. Campbell said the Board could request that the applicant provide a bike rack. He also said there could be a bike rack regardless of whether the 2 spaces stayed there.

Mr. Roberts noted that there was a no parking sign on the site plan, and said he understood from the site inspection that these 2 spaces were to be utility parking spaces. Mr. Sievert said that was correct, and said those spaces were intended for the owner's use, and would have the “no parking” sign on them.

Mr. Gardner said providing a bike rack would set a good example. He noted the plan to provide fewer parking spaces with this development, which he said was the right thing to do. He said the bike rack would provide a responsible alternative.

Mr. Kelley said apartment residents might be reluctant to leave their bikes out at night, so he assumed this would be limited to daytime visitors.

Mr. Gardner noted that bike racks in Europe were covered, but said they couldn't really hope for that in the US.

Mr. Sievert said there were bike parking garages in Europe. He said the applicant would have no problem with putting in a bike rack, and also said there was a three-quarter basement that would be used as a storage for tenants. He said the bikes could be put there at night.

Mr. Campbell said he believed the applicant had mentioned this idea in some early correspondence. He then said a determination needed to be made as to whether 8 spaces plus 2 spaces made one parking space, so bike parking was therefore required. There was discussion on this.

Mr. Kelley noted that one parking area was considered structural while the other was considered surface parking, and said he was therefore hard pressed to see it as one parking facility.

There was discussion on the fact that 2 of the spaces weren't actually parking spaces, so it was really only the 8 spaces that they were looking at.

Mr. Campbell referenced the plan, and said the note on C-1 talked about a 3 ½ ft wide parking walkway, and said he was assuming that within this distance there was no parking, but any vehicles would park in those spaces in a stacked fashion.

Mr. Sievert provided details on this, and said the 2 spaces were for the owner to use so he wouldn't have to take away from any of the commercial spaces. He said these spaces would also be available for utility vehicles to park in when they were doing work on the site.

Mr. Roberts asked what should be put down for the location and size of a possible bike rack.

Mr. Sievert said he wasn't sure about this yet, but said he could come up with an adequate number, as a certain percentage of the number of apartments. He also said he could indicate the location of the bike rack on the site plan.

Mr. Roberts also noted that the applicant had said space would be provided in the basement for bicycle storage.

Mr. Roberts next noted issue #15:

#15 - The proposed drip line is above the sidewalk. The Town Engineer, Mr. Cedarholm, has expressed concerns in the past regarding gutters icing up in our climate. Concerns have also been raised regarding the safety of pedestrians below gutters as they ice up and fail over time.

Mr. Campbell's read his written comments to Mr. Christie on this issue:

The Town Engineer has approved the use of gutters for stormwater management as evidenced by the use of gutters in Mr. Christie's drainage plan for his recent project as well as for this project. The drip line is above the sidewalk. Concerns have been raised in the past regarding gutters icing up in the climate we experience here in the northeast. The Board could require that winter maintenance be performed to alleviate the problems associated with this situation. A note should be added to the plan as well as a specific condition of approval (to be met subsequent of the signing of the plan) to ensure proper maintenance.

There was discussion on this. Mr. Campbell said as Mr. Roberts had noted, the Board had asked for a gutter maintenance plan in the Conditions of Approval for the Caldarella application.

Mr. Roberts next noted #17 of Mr. Christie's comments:

#17 - I have concerns about elements of the proposed project utilizing University owned land leased by the Town. Some public input into the use of UNH/Town land should be required. I do not see the bump out on Jenkins Court nor the utility area

on the "Town Lot" as having secured easements. Lacking this documentation the applicant is proposing to use an abutter's land to house necessary utility improvements. It should be noted that I met with Public Service of NH representative Dennis Tuttle regarding the proposed underground utility installation and there is no engineering reason why the utility pads and transformers could not be placed in an easement to Public Service using the applicants land.

Mr. Campbell's response to this comment was the following:

Public input is a requirement in the form of the public hearing. Any member of the public is welcome to come to the meeting, or provide written comment, on any issue they would like to raise, including use of University or Town owned land. The applicant has been working with abutters, the University, the Town of Durham, PSNH, and Fair Point Communications and any and all easements will need to be provided to the Town. There is nothing that would preclude the applicant from doing this, unless the easements were not granted.

As has been done in the past, the final easement language will need to be provided to the Town as part of any conditional approval. In addition, the Town Attorney should review these documents. This would be a condition of approval if the Board were to approve the application with such conditions.

Mr. Roberts and Mr. Campbell discussed the response to Mr. Christie, and agreed that as had been done in the past, the easements would need to be provided to the Town, as part of the Conditions of Approval.

Mr. Roberts noted comment #18 from Mr. Christie:

#18 - Parking lighting is shown on the Town Lot side of the proposed entrance. It is unclear where the light will be shed. Similarly on the "exit" side I could not delineate lighting. 175-116 -1 of the Z.O. outlines these requirements.

Mr. Campbell referenced the wording in his memo: *The fixture for this lighting is an existing fixture that is being relocated. The applicant will need to ensure that this lighting meets the requirements of 175-116.1 and that the light will be directed away from the abutting property. According to the plan, the "exit" side does not have any additional lighting. The parking area under the building will have lighting that is directed downward as testified by the applicant. I have asked that this be shown on the final plan or a note be added to the plan stating that this will occur.*

He said there had been discussion about this previously, in part based on comments from Chief Kurz.

Mr. Roberts noted #21 of Mr. Christie's letter:

#21 - There is a proposed overhead 3 phase wire which runs into the town cardboard recycle area. Now would be a good time for the Town to address this issue. I do not think that this is the developer's responsibility, but a good plan would involve the town and abutters, and address this now.

Mr. Roberts spoke about the idea Mr. Campbell had spoken about in the memo: *The Town of Durham, UNH, and the abutters have been involved in this process and it is a good time for all of these entities to work together.*

Mr. Roberts asked if there was anything the applicant would be doing that would precludes this kind of work.

Mr. Campbell said he didn't believe so. He said as Mr. Christie had pointed out, it wasn't the developer's responsibility to do this. He said it was important for them to work with the University and PSNH to look at the issue of these overhead lines. He said he wasn't sure this had anything to do with the application, but said it was something the Town needed to keep on the radar screen.

Mr. Kelley received clarification that Mr. Campbell was saying that the Town, the University, and possibly some of the other businesses in the area would need to be involved in working together concerning the utility lines.

Mr. Campbell said the Town needed to take on the responsibility to make sure this happened.

In answer to questions from Mr. Kelley, Mr. Sievert said with the current proposal from the applicant, the two Michaels properties, Young's, and Mr. Crape's property would be fed by underground wiring. Mr. Sievert said they had provided PSNH with a plan so the company now had an overview of that entire area. He noted that PSNH had requested this plan, and was currently looking at the idea of doing a larger project there.

Mr. Kelley said if the wires went underground, easements would be needed. He said those easements would need to come from the University.

Mr. Sievert said most of the easements needed would come from the University, to come to the back of the properties on Main Street, unless the wiring went back out to Pettee Brook Road. He provided details on this.

Mr. Kelley asked if the utility work would be done in the early phase of the applicant's project.

Mr. Sievert said Mr. Crape had offered to do the portion of the relocation of utilities shown on the plan. He also said that concerning the larger picture, Mr. Crape was absolutely in favor of putting more utilities in the area underground, and said they had already started that process with this application. He said the Town and the utility companies were in favor of this, and said he thought others would be as well. He said the overall scope and cost of such work would come out at some point.

Mr. Kelley clarified that the utility work for Mr. Crape's project would be happening soon, so there was a relatively small time frame for the Town to pull this together. He

noted that the Planning Board had heard members of the public say it should step up to take care of this situation, but he said he didn't think the Board could do so in a timely manner. He said he thought the Council was better suited to do this, and said he also thought the University could be a stumbling block.

Mr. Sievert said he and Mr. Crape had already presented their plan to the University, and had gotten buy-in for what was being asked for with this application. He provided details on why he didn't see that the additional underground wiring couldn't be done, as a second phase, as long as PSNH could plan for it.

Mr. Gardner asked if Public Works Director Mike Lynch would take the lead on this with Administrator Selig.

There was discussion, and Mr. Kelley said if they wanted to see this get done, this was an ideal time, given that summer was ahead. But he said the Town was under the gun to get the pieces in place.

Councilor Niman asked if the issue was the willingness to do it, or the cost of doing it, and Mr. Kelley said he wasn't talking about costs at this point, but exploring the possibility of putting the utilities underground. He determined from Mr. Sievert that there hadn't yet been a discussion of costs with PSNH.

Councilor Niman said he didn't see why UNH would resist the idea. He also said he wouldn't have a problem with Mr. Campbell asking Administrator Selig to have a discussion with the University.

Mr. Kelley noted that the easements would need to be granted over the University's land.

Councilor Niman said if the lines were underground, this would increase the value of the University's property, and said he thought the University would be willing to work with the Town on this. He also said the Store 24 lot was not in the University's long range plans, noting that the Town currently had a six month lease on the lot. He said the University was waiting to see what would be happening downtown.

There was discussion. Councilor Niman said if the Planning Board would like to pursue this, it could direct Mr. Campbell to talk with Administrator Selig, who would talk with the University.

Mr. Kelley said it was important to expedite this matter.

Mr. Roberts said it would be important to work with the Town Engineer and the Public Works Director to make sure this would work.

Mr. Campbell said the comments on this issue had been duly noted.

Mr. Roberts said he had nothing further to add to Mr. Campbell's comments on Mr.

Christie's memos.

The Board went back to the beginning of the list of issues raised by Mr. Christie, and first reviewed #1 and #2 on this list.

#1 - Sight distances when pulling out and driveway location. The entrance to the parking area is proposed to change, and as such, a new driveway permit is needed. Additionally, if the entrance were to stay where it is, it would still require review by the board, and a new permit, since the current "surface parking" (pg 29 Z.O.) is proposed to become a new use (structural parking pg 28 Z.O.). Durham requires permitting as outlined in Z.O. pg 167, sec B "construction requirements". In part "driveway construction shall meet....." The New Hampshire DOT document referenced relies on RSA 23:13 for driveway permitting. The minimum site distance under this document is 400 ft. When I constructed 16 Jenkins Court a site distance of 235ft was deemed to be reasonable, as required using the DOT as a "guideline" and sight distances were shown on my plan. The engineer for this current project represented that there would be approx 3ft by 3ft "posts" on the corners. The landscaping and parked cars further obstruct site distances. Section 175-20, I ; (pg 171) states "Landscaping in landscaped areas shall not obstruct the view between the street and the access drives and parking... .." The only proposed tree is an obstruction. I would ask the board to carefully consider any recommended site distances and ensure that public safety is maintained.

#2 - Under Z.O. pg 167 175-117 A 1 and 2. The driveway permit must be obtained prior to any site plan review. I did not see it in the application. It had to be obtained prior. I question whether this plan should even be considered at this time.

Mr. Roberts asked if the Board had issues with # 2.

Mr. Campbell said that as his comments to Mr. Christie stated, the driveway permit did not need to be obtained prior to any site plan review. He read from Sections 175-117 A 1 and 2 of the Zoning Ordinance concerning this. He also noted that his comments to Mr. Christie stated: *Section A (1) refers to being required prior to any construction or alteration of any driveway. No alteration has occurred to date. Section A (2) refers to the permit being required and a construction permit issued prior to any site review or building permit **approval**. Neither the site plan review nor building permit has been approved. The site plan application is not approved until all the conditions of approval are met, the site plan has been signed by the chair, and the Findings of Fact and Conditions of Approval have been recorded. In the past the Board has made driveway permits part of the pre-signature conditions before the site plan has final approval.*

Mr. Kelley agreed with Mr. Campbell's comment, and noted that in the past, the Planning Board had made approval of the driveway permit a Condition of Approval.

Mr. Roberts agreed with this.

Mr. Kelley next noted #1, and the Board reviewed Mr. Campbell's comments on it: *A new driveway permit will be required and was noted in the Town Engineer's email dated May 12, 2009. Mr. Christie references 175-117 (B) and the full quotation is "Driveway construction shall meet the requirements of the Public Works Department. The latest Policy and Procedure for Driveways and Other Accesses to the State Highway System, as published by the New Hampshire Department of Transportation, will be used as a guideline". In this case the applicant must meet the requirements of the Public Works Department and not the State since this is a town road. It is stated in the NHDOT guidelines, and RSA 236:13 (not 23:13), that "unless all season safe site distance of 400 feet in both directions along the highway can be obtained, the Commissioner shall not permit more than one access to a single parcel of land, and this access shall be at the location which the Commissioner determines to be the safest".*

My reading of this is that the 400 feet of all season safe site distance would only be required for more than one driveway and if there is only one driveway, it would be in the safest place possible. I believe this is what Mr. Christie is referring to. However, this would only be required for a State highway and Jenkins Court is a Town road and not a State highway. As stated above, the Public Works Department will need to approve a driveway permit for the relocation of the entrance to Jenkins Court between the proposed new building and Mr. Christie's lot. The curb cut between the copy center and the proposed building already exists, is not changing, and will not require a new permit. In my discussions with the Town Engineer, the site distance on Jenkins Court will not be a problem.

Mr. Kelley said the sight distance issue was different with a road like Jenkin's Court. But he said the sight window was something to be concerned about, and said it would be important to maintain the sight triangle that could be achieved there. He also said it would be important to look at the landscaping plan and whether the vegetation types proposed would infringe on the sight triangle on that corner.

There was discussion on this. Mr. Campbell noted that the low plants there would be pachysandra, which he didn't think would hinder the sight distance. He also said there would be an oak tree there, and noted that the tree there now didn't block the sight distance going down Jenkin's Court.

Mr. Kelley said while discussing this, it might also be a good time to talk about the easement noted on Sheet 1.

Mr. Sievert said it was a two foot easement onto the applicant's property, in favor of the Town. He explained that the Town had installed granite curbing there, and said the applicant's request now was to push it out to the property line in order to gain 18 inches, so a new sidewalk could be put in. He also said the reason for the enlarged island was to get the correct width for a 9' x 18' parking space or larger, which would allow parallel parking.

Mr. Kelley said he didn't believe that the description of this easement had been included in the Board's packet.

Mr. Sievert said it was mentioned in the deed. He also noted that he had spoken to Mr. Lynch about relinquishing it. He said there was going to be a stipulation that the Town wouldn't relinquish it until the occupancy permit was received.

Mr. Kelley said Jenkins Court was a narrow street, and he noted the conflict between the curb bump and the loading zone across the street. He said with this project, an additional 2 feet of the street would be lost, and asked why that 2 feet couldn't be taken from the new building instead, and maintaining the required sidewalk width, maintaining the highway easement the Town had, and providing an additional 2 ft.

Mr. Sievert said they were trying to get the full building needed for occupancy, and also get the full 5 ft wide sidewalk, for accessibility purposes. He provided details on this, and noted that they would not be making the street any narrower than the 17 ft width elsewhere on Jenkin's Court.

Mr. Roberts said he was confused as to how the applicant planned to handle foot traffic around the building. He said the applicant was expecting that pedestrians would go on the north side of Jenkins Court, and that the entrance to the building was a crossing action from the real sidewalk to the entrance. He said the Applicant wasn't really providing a sidewalk of any width in front of the building.

Mr. Sievert said there would be a full sidewalk in front of the building, and a full accessible sidewalk coming out onto the island, to cross over to the sidewalk at Wings Your Way.

There was discussion on the dimensions of the sidewalk in front of the building, and it was determined that it would be 3'6" between the base of the building and the curb. There was discussion on whether this width was sufficient, and Mr. Sievert noted that this was why a vestibule had also been provided for accessibility purposes. There was further discussion on the likely traffic pattern for pedestrians.

Mr. Roberts asked where pedestrians coming from the Store 24 lot were likely to travel. He noted that this traffic might not have anything to do with the building itself.

Mr. Sievert said hopefully pedestrians coming from the Store 24 lot could walk down the new sidewalk, and could also walk underneath the building, and around it to get to Jenkin's Court.

Mr. Campbell said he wasn't sure that cutting through should be encouraged. He also asked why the bump-out for the curb couldn't be pulled back a bit.

Mr. Sievert said it could, and explained that they had wanted to make the parking spaces big enough.

Mr. Campbell spoke in detail about the problems on Jenkins Court because of the loading zone issue. He noted that the Traffic Safety Committee was looking to eliminate the loading zone next to the former movie marquee.

Mr. Sievert said he thought the long range plan was to minimize traffic on Jenkins Court.

Mr. Kelley said the operation of Jenkins Court was a Town issue that needed to be resolved, regardless of what happened with this project.

There was further discussion on this issue, including the fact that the three parking spaces out front were existing Town parking spots that the applicant would maintain.

Mr. Kelley asked if it was a deal breaker if the Town didn't want to give up the easement, and the applicant would have to have a 78 ft building instead of an 80 ft. building.

Mr. Crape said he wasn't sure if it would be a deal breaker. He said one of the reasons they had thought it was an option was because it would make the front flush with other properties on Jenkin's Court.

There was discussion. Mr. Kelley said the Town would be giving up the easement in exchange for the sidewalk that the applicant would provide, and said he could therefore rationalize this somewhat. He also noted that in most cities, the sidewalk was owned by the city.

Mr. Crape said he would own the sidewalk and would be responsible for maintaining it.

Mr. Sievert said the process of relinquishing the easement would be an act of the Town.

Mr. Roberts said his concern had been the larger issue with Jenkin's Court, which Mr. Campbell had addressed.

Mr. Campbell repeated that even if this proposal didn't move forward, the Traffic Safety Committee would be looking at this.

There was discussion on #3:

#3 - Under Z.O. pg 167 175-117 B 2 engineered construction plans are required. I did not see them in the application. This plan would have the site distances and other technical information needed to ensure safety and well being, and pedestrian friendly environment.

Mr. Kelley said the plans the Board had for this application were typical of others that it got, and said the plans had been prepared very well. He also noted that the Board often saw applications that weren't stamped. He said the applicant's plans were not stamped, and said that was why he had asked if these were the final plans the Board was to review. He said in the past, the Board had required a stamped plan prior to signature by the Chair.

Mr. Kelley referred to the northern most parking stall shown on sheet C-1, which called for a proposed tip down ramp. He said his concern was that there was no crosswalk.

Mr. Sievert provided details on this.

Mr. Kelley suggested that normally if one was introducing a ramp mid-block, a crosswalk would be placed at that location, rather than sending people out into the road there. He spoke further about this, and asked if other Board members had concerns about the proposed mid-block crossing, and the need for a crosswalk.

Mr. Campbell said this was something the Traffic Safety Committee needed to look at. Mr. Gardner said it seemed like the right thing to do would be to make a safe crosswalk.

There was further discussion with Mr. Sievert about the design.

Mr. Kelley said it was just the mid-block aspect of this that he was questioning, and he suggested that the Traffic Safety Committee could stripe this location.

Mr. Campbell said he would put this on the list of items to be discussed with the Traffic Safety Committee.

There was discussion on #4:

#4 Under the Site Plan (s.p.) 9.07 page 16 A ,B and C. These sections ensure that "such facilities be designed to ensure the safety and convenience of pedestrians and vehicular movement on the site". section C "each and every parking space shall have a safe and convenient access." The lack of site distance with the movement of pedestrians on and off the site near 12 Jenkins Court, in particular, is not safe not convenient.

Mr. Campbell's written comments on #4 were as follows:

This is a matter of opinion. The Public Works Department has no issues with the site distance and I have not heard from any other staff members that see this as a problem. I am not saying that pedestrian movement and safety is not an issue and the Planning Board should discuss the issue. Currently there are no sidewalks on the east side of Jenkins Court so all buildings on that side of the street direct people onto Jenkins Court. The applicant is proposing a sidewalk on Jenkins Court and within the development. Will this make it safer for pedestrians? Yes it will. Will pedestrians still need to cross Jenkins Court and be aware of their surroundings, including cars? Absolutely.

Mr. Roberts said he agreed with this comment.

There was discussion on #5:

#5 Under section 175-116 , A: of the Z.O. "All parking areas of over five (5) vehicles shall meet the following conditions below.....A. "a minimum of five percent (5%) of the total parking and driveway area, in addition to a buffer strip of at least ten-feet in width abutting a public right-of-way, shall be landscaped." This plan does not show this requirement. A variance from this requirement is required.

Mr. Campbell's comment was that *"This section is referring to surface parking, which is "a parking lot or similar uncovered, single-level parking facility that provides at-grade parking that is not located within a structure". It would not make much sense to require structural parking, or a structural parking facility, to have 5% of the area landscaped.*

In addition, what good would a buffer do for structural parking, or a structural parking facility, when there is a wall that would abut the public way, with the wall providing the buffer? Would this mean that up against the wall an applicant would need to provide a landscaped buffer? I do not think so. If the Board does not agree with me, you could require the applicant to provide the 5% and the landscaped buffer or the applicant could request to reduce the parking spaces to five (5) and this requirement would no longer apply. A third alternative would be to deny the application for not meeting this requirement.

Mr. Roberts noted the wording in Section 175-121 of the Zoning Ordinance. "The existing natural landscape character shall be preserved to the extent reasonable and feasible". He said he thought Mr. Campbell had done a good job in addressing this issue.

Mr. Gardner said he agreed with the analysis Mr. Campbell had provided.

The Board reviewed #6:

#6 I am unclear as to whether there are parking spaces between the copy center and the proposed new building. If so, that area would also require a driveway permit under the citations above. I don't know the sizes of the spaces and whether they meet standards set forth in section s.p. 9.07 E (pg17) as to their size. I don't believe that the space farthest from Jenkins Ct. shown on plan L1 provides "each and every parking space shall have a safe and convenient access."

Mr. Campbell's written comment on this issue was as follows:

There is currently a curb cut and cars are currently parking in this space (at least the times I went by). As stated above, a driveway permit will not be necessary if the curb cut is not altered. According to the plan the spaces appear to be the correct dimensions of 9' X 18'.

As for having safe and convenient access, it will depend on your definition of safe and convenient. There are many places in town where stacked parking occurs, especially in downtown. In fact, Mr. Christie's parking abutting this proposed project provides this type of parking between his current buildings. In my opinion, convenience will depend on who uses the parking spaces. It may not be an inconvenience for some people to be blocked if they know or work with the person who is parking there. However, safety is another matter. The people parking in these spaces will need to back out to get onto Jenkins Court. This is not an optimal situation and causes some concern for safety for pedestrians and other vehicles. If these spaces are eliminated from the plan the Board would need to add them to the total number of exempt parking spaces if the Board is going to exempt the spaces as allowed by the Zoning Ordinance.

There was discussion about whether these spaces were included in the total number of parking spaces for the site. Mr. Campbell said they were included.

#7 Section 175-111 F, (pg 162 Z.O.) requires a bike rack for parking facilities of 10 or more spaces. If 2 spaces are proposed between this development and Michael (copy center) then a bike rack is required or a variance is needed

(#7 was addressed previously by the Board.)

#8 Section 175-121 A, 1; (page 172 Z.O.) Requires a mix of trees planted to form a twenty foot tree canopy. No such plantings are shown. A variance from this requirement is required.

The Board reviewed Mr. Campbell's written comments on this issue:

After conferring with the zoning Administrator Tom Johnson, this section would not apply due to the zero (0) foot setback in the Central Business District. Allowing the front wall of the building to go to the front property line would preclude someone from having a landscaped yard as defined by the Zoning Ordinance.

Mr. Kelley said one would expect to see street trees for a situation like this, and said given the setbacks, performance standards, impervious surface ratio, etc. for the Central Business District, he had no problem with the landscaping as proposed.

#9 Section 171-41 A, reads in part...."Downtown Durham should be an attractive and vibrant community and commercial center where desirable residential, retail, office, and other nonresidential growth can occur in a clean, safe, pedestrian-friendly environment. This proposed development allows for pedestrians to pass "through/under" the building. A plan for the flow of pedestrians should be included and reviewed as a part of this plan.

The Board reviewed Mr. Campbell's comments on this issue:

Interpreting 175-41 (A) is a matter of opinion. What is desirable to some might not be desirable to others. As I have stated before, six (6) people to an apartment is not desirable to me but it may be to others. The market may tell the applicant that six (6) people to an apartment are not desirable. Despite that fact, what is being proposed is permitted by the Zoning Ordinance.

The parking and vehicular access under the building is designed for vehicles and not pedestrians. However, there is a very good chance that this will be used by pedestrians. The Board could ask the applicant to provide extra signage saying "vehicular traffic only – not a pedestrian travel way" or something similar. However, I do not think it will do much good as pedestrians will still attempt to use it as a cut-through. There could also be signage for vehicles to watch for pedestrians. The parking could be eliminated and the entire area could be used as a pedestrian way. This would require an amendment to the plan and more spaces added to the exemption.

Mr. Kelley said what was proposed with this application was what the Zoning Ordinance allowed, and said he thought the market would dictate what the owner would get. He also said it could be argued that providing a diversity of options in terms of the number of residents per apartment offered choices for people.

Mr. Gardner said he agreed that the market would dictate this, based on what was on the books right now. He said if there was a problem with this, and if people thought other parts of the population in addition to students should be considered, the Zoning Ordinance should be changed. But he said for now, it was what it was.

The Board next reviewed #10:

#10 Section 175-41-F , #4 (page 67 Z.O.) "Development in the Central Business District" Pedestrian Area- The area directly in front of the front wall of the building shall be maintained as a pedestrian area and shall be improved with appropriate amenities to link the building with the sidewalk and to encourage pedestrian and/or customer use of this space....". This plan does not contain a pedestrian area nor is there space for customer use. A variance from this requirement is needed.

Mr. Campbell's comments on this issue were as follows:

The applicant is providing a sidewalk in front of the building and will be the only segment of sidewalk on the east side of Jenkins Court. Pedestrians and customers will be using this sidewalk. The applicant is also providing a four-foot vestibule for the use of the customers entering the building.

Chair Parnell summarized that the Board had already discussed the applicant's proposed plans for the area in front of the building.

The Board next reviewed #11:

#11 Width between proposed "bump out" on Jenkins Court and the loading zone on the other side of the street is in question. The bump out leaves only 17 ft to the curb. When deliveries are made passage on Jenkins Court is limited and at times impossible. Emergency vehicles would not be able to pass. The solution for this is to make the foot print of the building smaller in depth. This would allow for site distance to occur safely and for vehicles to pass on the street.

Mr. Campbell's comments on this issue were as follows:

This problem exists whether this project moves forward or not and should be addressed. In speaking with the applicant, he has stated that he would pull the bump-out back a foot or so to allow for more room. As I stated in an earlier memorandum, I met with Mike Lynch, Public Works Director, as well as Tom Johnson, Zoning Administrator and Code Enforcement Officer, regarding the loading zone on the west side of Jenkins Court by the old movie theater marquee.

There are three designated loading zones in Durham. Two are located on Jenkins Court and one on Main Street. The west side loading zone could not be in a worse spot for

Jenkins Court. Regardless of this application something needs to be done with the situation on Jenkins Court.

We will be placing the discussion of removing the west side loading zone on a Traffic Safety Committee agenda in the near future. This would alleviate some of the problems on Jenkins Court. In addition, the people who are receiving deliveries on Jenkins Court should remind their delivery trucks of the loading zone regulations and they need to obey these regulations. The situation that occurred the day of the site walk (pictures were sent to the Board) would not have been so bad if the drivers obeyed the regulations.

Chair Parnell said looking at the plan, if the loading zone was full, which it often was, there was very little room, perhaps 7-8 ft. He said he wondered if the bump-out needed to be as wide as it was proposed on the northern end.

Mr. Campbell said the pictures provided an illustration of this, and noted that he had suggested that the applicant could pull the curb back.

Mr. Gardner said this seemed to be a reasonable solution, but also said he thought it was the location of the loading zone that was the problem. He said he thought the design the applicant was proposing for this area, including full depth curbs to define the parking more, were the kinds of things the Town would want. He said perhaps the solution was therefore not to cut the curb back, and instead was to fix the loading zone.

There was discussion about where the loading zone could be put. Mr. Kelley agreed that the solution for the uses in the street and where it was permissible to load and unload was an issue that was in the Town's court.

Mr. Gardner suggested that all of Jenkins Court could be made into a loading zone.

There was further discussion. Mr. Kelley suggested that perhaps part of the Store 24 parking lot could be used as a loading zone.

Mr. Kelley asked for some history on the curb bump in front of Wings Your Way.

Mr. Campbell said it was there because of the old movie theatre marquee, and said the issue of whether it could be cut back was part of the conversation he had had with Mr. Lynch and Mr. Johnson.

Mr. Kelley said with a curb bump on both sides, this was where the crosswalk he had recommended could be placed. He said the loading zone was a Town issue.

The Board next considered #12:

#12 There is a loss of parking spots which would require a waiver under s.p. 9.07 pg 16.

Mr. Campbell's comment on this issue was as follow:.

If the Planning Board exempts the applicant from providing the required parking, then this would be a moot point. If the Board were to think this was an issue, you could add language to the exemption that provides for this waiver.

Mr. Roberts noted that Section 175-112 , 2 of the Zoning Ordinance said: "The existing number of required parking spaces shall not be reduced by any proposed development unless approved as part of a property redevelopment plan by the Planning Board." He said this was what was happening with this application."

Mr. Kelley said that was a good point.

Ms. Fuller said the loss in parking spots was not necessarily a bad thing. She said there were spaces for the commercial use, but also said the area would be more pedestrian friendly, and there would be the potential for something like outdoor dining in the future.

Mr. McGowan asked if the applicant had any idea yet as to what the commercial space would be, and Mr. Sievert said no.

The Board next reviewed #13:

#13 - The property is proposing a change of use and complete redevelopment. As such a storm water management plan is required. The entire section s.p. 9.03 is applicable here. In particular 9.03 C,3: "The board shall require on-site retention or detention facilities to prevent the overloading of existing downstream facilities". The Z.O. pg 162 Our town engineer has documented and spoken publicly on the flooding of the Pettee Brook Road area and those catch basins as well. With my recent project retention was required and I have engineered plans to support the development. In this instance the water is proposed to enter the stormwater system even faster than in the past via gutters with no retention or detention. Since this is an entire redevelopment a retention system is required. The purpose of the site plan regulations is stated on page 1. 1.02 Purpose- authorized under RSA 674:44-II, is to a.,1 is to "guard against such conditions as would involve danger or injury to health, safety or prosperity by reason of 1) Inadequate drainage or conditions conducive to flooding of the property or that of another." This property produces water that contributes to the flooding of Pettee Brook and Pettee Brook Rd.

Mr. Campbell's comment on this was as follows:

To avoid confusion, the reference above to 9.03 C 3 should actually read 9.03 B 3. We have received an email (dated May 12, 2009) from the Town Engineer that discusses this issue and basically states that the stormwater management plan is adequate and will not be overloading the system. The proposed drainage will not be going directly to the same catch basin as Mr. Christie. It will take it down Jenkins Court and will make improvements to that system that currently causes flooding. In addition, the Town Engineer states that the plan will provide for a water quality improvement.

Mr. Campbell said if the applicant were putting the drainage through the Store 24 lot, where there was currently already a problem, some stormwater detention would have to be done. But he said the applicant's plan would help to alleviate the current drainage

problems in the area.

Mr. Kelley said the applicant would not be increasing the amount of impervious area on the site, so theoretically, the pre and post flow would be the same. He asked if for the most part, the water would be sent where it went today.

Mr. Sievert said right now, the water eventually went to Pettee Brook, but 60-70% percent of it hit the Pettee Brook lot first, while the remainder went to Jenkins Court. He said the design for the development would have 90% going to Jenkins Court and being collected, and would prevent the surface flow.

Mr. Kelley noted that the Town Engineer had approved the stormwater plan, and said the Board should move on.

The Board reviewed #14:

#14 Under the same premise of above - change of use. The parking area should additionally have the ability to trap contaminants and oil prior to entry into the Pettee Brook. The Z.O. pg 162 Article XXI G, 2."The infiltration of stormwater on-site is strongly recommended"

The Board briefly reviewed Mr. Campbell's comments, Chair Parnell noted Mr. Campbell's comment: *As stated above, the Town Engineer's email dated May 12, 2009 states that there will be a water quality improvement to the receiving waters.*

The Board reviewed #15:

#15 - The proposed drip line is above the sidewalk.....

Chair Parnell said this issue had already been discussed.

The Board reviewed #16:

#16 - Who plows/maintains the proposed sidewalk on Jenkins Ct.? Where does the snow that is removed go? I see a note on the plan for an area for snow but no calculations for the volume etc.

Mr. Campbell comments on this issue were as follows:

The applicant will be responsible for the maintenance of the proposed sidewalk. There is a note on the plan that discusses snow storage and there is not a requirement to calculate volume. As for where the snow goes that is removed, I cannot say. There is not a requirement to tell the town where the snow goes, not just for this lot but for any lot.

There was discussion on this issue. Ms. Fuller summarized that if Mr. Crape didn't maintain the sidewalks, a person who fell as a result of this would make sure that thereafter he did maintain it.

Mr. Sievert suggested that a note could be added to the plan that said the applicant would do this maintenance.

Mr. Kelley said when easement being relinquished, could add the sidewalk maintenance as a part of this. Asked if this has to be condition of approval that we approve site plan that shows town relinquishing, or is approval contingent on relinquishing of easement

The Board did not review #17 and #18 since they had been discussed earlier at the meeting. They next reviewed #19:

#19 - A proposed 9 X 8 concrete pad is shown outside the trash area on the Town Lot side. It is proposed that trucks would be entering here to collect the trash. If so this area is notorious for problems with backing and entering. As in the case above this would necessitate using Town Lot space for access to the trash and limiting the future use of the Town Lot

Mr. Campbell's comment on this issue was as follows:

Yes, a 9 X 8 concrete pad is shown outside the trash area and trucks will be entering here to collect the trash.

The Board reviewed #20:

#20 Sewer- Our current site plan regulations refer to private systems and individual private systems. In this application the proposal is to run sewer from abutter's properties under/through the new construction. I have asked for but have not received the specifics of the intended materials to be used. Absent that information it is difficult to judge the suitability of the sewer as proposed. In this proposal, the applicant has proposed to take not only his sewer flows but also that of others which I believe requires a greater degree of scrutiny. Should that line fail what actions might the Michaels property owners take to ensue they have access to sewer??

What would be the responsibility of the Town of accommodate such a need. The current configuration is unusual and unacceptable by today's standards and yet that applicant is proposing the same. Years from now the same questions could be asked as to why the line is put under the building. The quality of the materials may afford a long life expectancy but in the event of a catastrophic failure the choices for solutions are greatly reduced. Placing the sewer where there can be access to replacement, upgrade, up sizing (future main st development) would better a better "planned" solution to the sewer placement. Regarding the Michael's property I have concerns in the event the system fails and can no longer provide the Michaels with sewer service.

The town would be powerless to enforce repairs and this could leave the Michaels without sewer service. At the site walk, the engineer represented that the sewer could be run outside the building footprint. This alternative is certainly reasonable to make a part of the plan. This space within the 10 foot easement could be used for landscaping, screening , a bike rack or other requirements of the Z.O. and site plan

Mr. Campbell's comment on this issue was as follows:

Both the current and proposed sewer runs under the applicant's property. It is now centralized in one easement. As discussed the new sewer will be a heavy duty pressurized pipe that has been generally approved by the Public Works Department pending NHDES approval. It will be the responsibility of the applicant to ensure the sewer is in proper working order. The easement will specify and ensure this occurs. Mr. Michael's and Mr. Young can make alternative plans on their own property for sewer but have opted to have their sewer run through the applicant's property. Manholes on either end of the building are in place to aide in servicing and fixing any problems.

Chair Parnell determined from Board members that they had no issues with what Mr. Campbell had said.

Chair Parnell noted that #21 had already been covered.

#22- Gutters were introduced as a part of the plan at the last meeting. In the past the Town engineer has been concerned about icing and failure over time. The rip line from the proposed roof is directly over the sidewalk. I believe a safe alternative could and should be developed.

(The gutter issue was one Mr. Roberts had singled out, and was addressed earlier under #15)

The Board reviewed #23:

#23 Will the proposed landscaping grow on the side abutting #12 Jenkins Court with the construction of an in fill project as envisioned in the Master Plan and currently proposed? All projects should be considered, keeping in mind the goal of the CBD is "in fill". When considering landscaping, the available light, (now and in the future) and other factors surrounding each project should not be ignored.

Mr. Campbell's comment on #23 was as follows:

There is approximately four (4) feet between the proposed building and the side property line and the 12 Jenkins Court building addition will be about another 1/2 foot off the property line. This should allow for enough light to allow the landscaping to survive. As both are infill projects, as envisioned by the Master Plan, both projects should be considered and each project should not be ignored. The applicant for 6 Jenkins Court hired a landscape architect and is making efforts through landscaping to make the project more attractive.

The Board reviewed #24:

#24 - Is an impact fee warranted given the scope of the plan beyond those already enforceable.

There was discussion on Mr. Campbell's comment on this issue: *The only impact fee the Town of Durham has adopted is the School Impact Fee. There are no other impact fees that can be assessed.* It was noted that a parking fee would be assessed if the Board exempted the parking, and that this was not an impact fee.

The Board next reviewed the Findings of Fact and Conditions of Approval.

Mr. Kelley asked if the applicant had received the email from Mr. Christie regarding his suggestions for the proposed project, and whether there was any interest in entertaining this. He said if not, they could move on.

Mr. Crape said he had received the email and had reviewed it. He said he had nothing to say about it.

The Board agreed on the additional Findings of Fact that would be listed:

- letter from Durham Business Association in favor of the project
- email from the Town Engineer approving the stormwater plan
- Memo from Mr. Campbell on May 26, 2009 in response to the letter from Tom Christie
- letter from Tom Christie dated May 10, 2009
- email from Tom Christie dated May 18, 2009 on stormwater
- email from Tom Christie dated May 20, 2009

The Board also discussed additions that were needed to the draft Conditions of Approval to be met prior to signature. These were the following:

- Bike rack
- Gutter maintenance agreement
- Easement language – It was noted that this was already covered in COA #4 - there was discussion on what this covered, and what it didn't
- Lighting

The Board discussed additions that were needed to the Conditions of Approval to be met subsequent to signature. These were the following:

- Gutter maintenance
- Sidewalk maintenance

FINDINGS OF FACT

1. The applicant submitted an Application for Site Plan Review with supporting documents on March 4, 2009.
2. The applicant submitted on March 4, 2009, a Site Plan entitled "Proposed Site Plan for 6 Jenkins Court Redevelopment Project, Tax Map 4, Lot 8-0, Durham, New Hampshire, March 4, 2009" prepared by MJS Engineering PC, Newmarket, NH, dated March 4, 2009.
3. The applicant submitted floor plans on March 4, 2009.
4. The applicant submitted a letter of intent on March 4, 2009.
5. The applicant submitted a Drainage Report prepared by MJS Engineering PC on March 4, 2009.
6. The applicant submitted a letter of authorization for MJS Engineering PC on March 4, 2009.
7. The applicant submitted a copy of the deed for the property on March 4, 2009.
8. Police Chief, David Kurz, submitted a memo on March 12, 2009.

9. The applicant submitted a letter of Proposed and Amended Utility Easement summary with a Utility Plan on March 19, 2009.
10. Abutter, Thomas Christie, submitted a letter on March 25, 2009.
11. A Site Walk was conducted on April 18, 2009.
12. The applicant submitted a Management Plan, Lease Agreement, Presentation Overview, Revised Layouts and additional Documents on April 24, 2009.
13. A Public Hearing was conducted on April 29, 2009 and continued until May 13, 2009.
14. The Durham Business Association submitted a letter and submitted letters from Durham business owners on April 29, 2009.
15. The applicant submitted a presentation list on April 29, 2009 for the Planning Board meeting.
16. Abutter Joseph E. Michael III submitted a letter on April 29, 2009.
17. Robin Mower submitted a letter on April 29, 2009.
18. Town Engineer, David Cedarholm, submitted an e-mail regarding utilities on April 29, 2009.
19. Beth Olshansky submitted an e-mail on April 29, 2009.
20. A second Site Walk was conducted on May 8, 2009.
21. Assistant Fire Chief, Jason Cleary, submitted a letter on May 11, 2009.
22. Town Engineer, David Cedarholm, submitted an e-mail regarding stormwater management on May 12, 2009.
23. The applicant submitted information on Electrical/Phone/Cable, Sewer Access, Sewer Alternative Options, Parking Plan and a response to Chief Kurz's letter on May 12, 2009.
24. Abutter, Thomas Christie, submitted an e-mail on May 12, 2009.
25. Director of Public Works, Michael Lynch, submitted a letter on May 13, 2009.
26. Abutter, Thomas Christie, submitted a letter on May 13, 2009.
27. Town Engineer, David Cedarholm, submitted a copy of a May 5, 2009 letter regarding 14 Jenkins Court Drainage on May 15, 2009.
28. Town Administrator, Todd Selig, submitted a copy of a letter to Thomas Christie on May 17, 2009.
29. Abutter, Thomas Christie, submitted an e-mail on May 18, 2009.
30. Abutter, Thomas Christie, submitted an e-mail on May 20, 2009.
31. Zoning Administrator, Thomas Johnson, submitted an e-mail response to Thomas Christie on May 26, 2009.
32. Planning Director, James Campbell, submitted a memo response to Thomas Christie on May 26, 2009.
33. Abutter, Thomas Christie, submitted an e-mail on May 27, 2009.
34. The Planning Board permitted a building height up to 49 feet.
35. The Planning Board exempted the applicant from 64 parking spaces with the requirement that the applicant pay the parking fee of \$750 per space not provided.
36. The Planning Board waived the School Impact Fee. As a condition of the waiver, the applicant accepts that should one or more units become occupied by children attending the Oyster River School System within six (6) years of the initial occupancy, the impact fee will be assessed to those units at the time the occupancy begins.

CONDITIONS OF APPROVAL (to be met prior to Signature of Approval of Site Plan)

1. The applicant shall supply one mylar plat and one paper copy for signature by the Planning Board Chair.
2. All plans must be stamped by the 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 drainage, sewer, water, landscaping and/or any other improvements required by the Town. The financial surety shall be effective until the issuance of all certificate of occupancies needed for the property. 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 amount of the surety shall be determined by the Department of Public Works.
4. Copies of all required easements shall be submitted to the Department of Planning and Community Development and reviewed by the Director of Planning and Community Development. The easements will be reviewed by the Town Attorney.
5. 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.
6. Water and sewer permits must be approved by the Water/Wastewater Committee and by the Town Council.
7. The drainage plan must be approved by the Town Engineer.
8. The applicant shall provide a letter explaining the parking demand offset.
9. All lighting shall be shown on the plan, shall meet the requirements of Section 175-116(1) of the Zoning Ordinance and shall be directed away from the abutting property. The parking area under the building shall have lighting that is directed downward and this shall be noted on the plan.
10. A note shall be added to the plan that the gutters shall be properly maintained.
11. A note shall be added to the plan that the sidewalk will be maintained by the owner of the property.
12. The applicant agreed to provide a bike rack. A note shall be added to the Plan stating that a bike rack shall be provided.

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. 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
 4. 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.
 5. During construction the site will be secured by use of a temporary chain link fence.
 6. 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.
 7. The parking fee will be paid at the time the Certificate of Occupancy is issued. Or the parking fee will be paid in three installments. The first payment is due at the time of the Certificate of Occupancy and the second is due by September 2010.
 8. The gutters shall be maintained especially during the winter months.
 9. The sidewalk shall be maintained by the owner of the property.

Richard Kelley MOVED to approve the Findings of Fact and Conditions of Approval for the Application for Site Plan Review submitted by 10 Pettee Brook Lane LLC, Durham, New Hampshire to demolish and redevelop a former hardware store into a new three-story, mixed use building, at the property shown on Tax Map 4, Lot 8-0, located at 6 Jenkins Court in the Central Business Zoning District. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

- VII. Acceptance Consideration on an Application for Site Plan Review** submitted by Daniel Sheehan, Durham, New Hampshire on behalf of Colonial Durham Associates, New York, New York, to amend a previously approved site plan to create an additional 31 parking spaces. The property involved is shown on Tax Map 5, Lot 1-1, is located at Mill Road Plaza and is in the Central Business Zoning District.
Mr. Campbell explained that Mr. Sheehan would like to reschedule this because there were still some issues to be resolved. He said the application would be re-advertised and re-posted.
- VIII. Conceptual Consultation on an Application for Site Plan Review** submitted by Fall Line Properties Inc., Portsmouth, New Hampshire to convert the common area within the building into six apartments and to build an addition that encompass the old volleyball court. The property involved is shown on Tax Map 2, Lot 9-4, is located at 2 Brook Way

and is in the Professional Office Zoning District.

Mr. Berton explained that there were currently six 4 bedroom units in the building, and said the area he would like to convert was an old common area/party room that faced Garrison Ave. He said he would like to add six more units now and perhaps another eleven units down the road, and was looking to get feedback from the Planning Board about hurdles he might face. He said he would like the entire building to be apartments, including on the first floor.

Mr. Berton said he didn't wish to have to conform to the Professional Office District requirement that there be professional office or retail on the first floor. He noted the number of retail coffee shops, grocery stores, etc. on campus, not including Holloway Commons, and said he had visited them. He said given this as well as the location of his building, he didn't see that professional office space or retail was its highest and best use.

Ms. Fuller asked where the proposed UNH business school would be located relative to this site. There was discussion on this, and on the size of the proposed business school building. Councilor Niman said it would be about 100,000 sf.

Mr. Berton said he would like feedback from the Board on the idea of the six units, and not having professional office and retail uses.

There was discussion as to whether professional office and retail uses could work for that property. Councilor Niman said the problem Mr. Berton would face was that when the UNH Business School went in, the Town would want people there to visit the downtown area, and people wouldn't think of going in the direction of Mr. Berton's property. He said this would therefore limit his ability to have a retail space there.

Mr. Gardner asked about possibly using the space for professional offices.

Mr. Kelley noted that Eric Chinburg had said there was a surplus of office space available right now in the area. .

Ms. Fuller said small business owners in Durham that were close to rentals had complained about inappropriate student behavior affecting their clients.

There was further discussion on this issue

Mr. Gardner asked why the Professional Office district had been created, and Mr. Roberts said it had been hoped that over the long term there would be office spaces and light assembly operations in this area, which was near the University. But he said this had not matured as an industry in Durham.

Mr. Campbell said the desire in creating the Professional Office District had been that fraternities would change over to offices over time. But he said the reality was that they were turning into other fraternities or apartments. He noted that party rooms could be

turned into apartments, but said multi-unit apartment were not allowed in the Professional Office District. He said there would only be a site plan if Mr. Berton received a variance, because this use was not allowed.

Mr. Kelley said when the Board had been at this site a year or so ago, it hadn't seemed that parking was an issue.

Mr. Sievert said for the six new apartments that would be done in phase one, the parking would be adequate. He said he didn't believe variances would be required for anything other than the use issue and the multi-unit building issue. He said for the second phase, a variance would be needed to allow a reduction in the amount of parking that needed to be provided. He noted that if more parking was put in, there would be a possible variance needed because of exceeding setbacks, and also said there would be a setback issue concerning the wetland buffer.

There was discussion of drainage in the area, and Mr. Kelley said it would be important to do whatever could be done to improve the runoff situation, noting the proximity of the site to the brook.

Mr. Sievert said the brook in this area was more like a man-made drainage swale. There was discussion on this. Mr. Sievert noted that the sewer line went through this area, and went to a collector at Rosemary Lane. He said issues like this would come to light as part of the second phase of development on the site.

Mr. Roberts noted that with the previous site plan review for this site, some Board members were concerned about allowing retail uses close to the neighborhood. He provided details on this. He noted that there were no residential abutters, and said he didn't have any issues with what was being proposed now, but said the second phase could involve the wetland buffer.

Mr. Berton noted Mr. Robert's comment about the proposed layout of the apartments, and said the reason he was orienting them this way was to get the solar benefit.

Mr. Roberts said the contours indicated that the site sloped right down to the brook, and said this was an issue the Conservation Commission would be sensitive to.

Mr. Campbell said if the wetland was man-made, it would be excluded from the wetland requirements. There was discussion.

Mr. Kelley said it appeared that the first phase of the project was fairly straightforward

Mr. Campbell provided details on why the variances were needed.

Mr. Gardner noted that with another application before the Board that evening, it had been great to hear that so few parking spaces would be provided. He said Mr. Berton's property was only a ¼ mile away and he was saying parking was needed. He said this

seemed to be an inconsistency. He said the Master Plan, which was not that old, embraced a vision of reduced parking. He also questioned the idea of dormitories here.

There was discussion on the parking issue, with Mr. Kelley noting that while there was a clear exemption from having to provide parking in the Central Business District, there was no such exemption in the Professional Office District. He said if this was something the Board was concerned about, the Ordinance needed to be changed.

There was discussion that having 4 unrelated people in an apartment wasn't allowed in the Professional Office District, so a variance would be needed for that.

IX. Other Business

A. Old Business:

Chair Parnell noted the list of Unfinished Items that Mr. Campbell had provided.

Mr. Campbell said the University would have a representative on the Sourcewater Protection Committee.

Chair Parnell asked for an update on the status of the Master Plan RFP.

Mr. Campbell said Administrator Selig wanted to wait to see what the Town got back regarding the CBD RFP, to see if there was a firm that had a good background in doing Master Plans. He said being able to use the same firm for both projects would allow for consistency between these projects. It was noted that the CBD RFP allowed for this kind of thing to happen.

There was discussion on the process of evaluating the RFPs, and whether any Board members would be interested in serving on the selection committee. Mr. Gardner and Councilor Niman volunteered to be on the committee.

Mr. Kelley asked where item #5 on the list of Possible Zoning Amendments, "Review calculation of useable area, especially somewhat poorly drained soils" had come from.

Mr. Campbell explained that there were still some people who didn't feel the provision concerning somewhat poorly drained soils was appropriate.

Mr. Roberts provided details on his own thoughts that the Town should stay with the State's recommendations on soils and useable area, which were developed by soil scientists. He also noted the recent changes to the town's septic regulations, and said he thought this provided pretty good protection.

Councilor Niman said perhaps this item should therefore be brought up again.

Mr. Campbell noted that historically Durham had gone beyond the state requirements concerning soils, and said the Board could take a look at this issue again.

Mr. Roberts noted that he had sent an email regarding the percentage of the community that had been conserved.

Mr. Campbell said the calculation came out to 42%, based on the criteria used.

Councilor Niman said if this was looked at in terms of equalized valuation, one would find the percentage was higher than 50%.

Mr. Kelley noted that Town Engineer Dave Cedarholm he recently spoken about the draft stormwater regulations. He said he would like to get it on the Board's Unfinished business list, and keep it on Mr. Cedarholm's front burner.

Mr. Ozenich noted that the Board had planned to re-define "convenience store".

Mr. Kelley said he didn't think the Board would be able to tackle this list unless there were additional meetings, or outside assistance, or a combination of both.

Mr. Campbell noted that this had been discussed at the Board's quarterly planning meeting. There was discussion. He said perhaps there would be time at the Board's next meeting to put some dates and deadlines down on paper.

B. New Business:

C. Next meeting of the Board: **June 10, 2009**

Mr. Gardner left the meeting.

X. Approval of Minutes – April 15, 2009

6:30 pm April 15, 2009 Planning Board Meeting

Page 1, top of page under Members Present should say Richard Kelley, arrived late

Richard Kelley MOVED to approve the 6:30 pm April 15, 2009 Minutes. Richard Ozenich SECONDED the motion, and it PASSED 5-0-2, with Councilor Niman and Richard Kelley abstaining.

Councilor Niman left the meeting.

7:00 Planning Board Quarterly Planning Meeting Minutes

Page 1, bottom paragraph, should read "Mr. French said between 8 and 12 members was a good size. Ms. Gagne noted that the size...."

Page 2, 4th paragraph, should read "...scope of work required that the consultant for this work consult with..."

Page 3 ??

Page 4, 5th paragraph, should read :Mr. Roberts said he favored interaction with the

Planning Board, and he asked Ms. Gagne how the master planning process could be structured to promote this.”

Page 5, Under IV, the first numbered paragraph should be a bulleted paragraph instead. The paragraph under it should read “Mr. Roberts said he had found....”

Also, there should be a space between the next two paragraphs.

Page 6, 4th paragraph from bottom, delete.

Page 11, 6th paragraph from bottom, should read “..didn’t offer the types of protection ...”

Page 13, 7th paragraph from bottom, should read “..Portsmouth had an impermeable surface driveway tax.”

Page 16, 7th paragraph, should read “Mr. Kelley said a review of previous plans...”

Page 18, 8th paragraph, should read “..the Board would have the power to guide development that didn’t”

Richard Kelley MOVED to approve the April 15th Quarterly Planning Meeting Minutes as amended. Steve Roberts SECONDED the motion, and it PASSED unanimously 6-0.

XI. Adjournment

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

Adjournment at 10:30 PM.

Victoria Parmele, Minutes taker