

This set of minutes was approved at the July 22, 2009 Planning Board meeting

**Durham Planning Board
Wednesday June 24, 2009
Durham Town Hall - Council Chambers
MINUTES
7:00 pm**

MEMBERS PRESENT: Chair Lorne Parnell; Vice Chair Susan Fuller; Stephen Roberts; Richard Ozenich; Bill McGowan; Richard Kelley; Councilor Julian Smith

ALTERNATES PRESENT: Wayne Lewis

MEMBERS ABSENT: Kevin Gardner; Councilor Neil Niman

I. Call to Order

Chair Parnell called the meeting to order at 7:09 pm.

II. Approval of Agenda

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

III. Report of the Planner

Mr. Campbell reviewed materials provided to Board members at the meeting regarding the proposed amendment to the 6 Jenkins Court application; the Unitarian Universalist Church application; and the Perley Lane application.

He said he had recently participated on the subcommittee reviewing the RFPs for the Central Business District work, and said a final decision on a consulting firm would be made by the end of the week.

Mr. Campbell said the Sourcewater Committee had met on June 16th and had a really good discussion. He explained that the Committee wanted him to discuss with the Planning Board the idea of broadening the Committee's scope of work.

He noted that he had met recently with David Sawyer, owner of Great Bay Animal Hospital, regarding a boundary line adjustment.

Mr. Campbell said he had recently met with McEneaney Survey Associates regarding a boundary line adjustment. He said he liked the idea of developing some single family homes on what was considered by the Town to be a private road. He said in order for this

development to occur, the applicant would need to come before the Planning Board, and the Board could then provide comments on the idea. He said Mr. Harris would then need to go before the Town Council, which ultimately would make the decision on this. He provided some history on the lots that were involved, and the private road situation.

Councilor Smith noted that there would be a site walk on Saturday for the St. George's Episcopal Church site plan application.

Ms. Fuller asked for details on the public meeting notice the Board had gotten from the Newmarket Planning Board concerning a proposed project in that town.

Mr. Campbell said he believed this had been sent because the planner in Newmarket considered it to be a development of regional significance.

Ms. Fuller read the details of the site plan application, which involved the adaptive re-use of the Newmarket Mill Buildings into 120 residential units within the two mill buildings, over 25,000 sq. ft. of non-residential space, artist live/work space, and 4,500 sq. ft. of civic space.

IV. Acceptance Consideration of an Application to Amend a Previously Approved Site Plan submitted by 6 Jenkins Court LLC, Durham, New Hampshire to increase the commercial footprint of a new three-story, mixed use building, to create an 8-foot wide pedestrian walk-way, to provide an outdoor seating area, to provide one additional parking space along Jenkins Court and to eliminate 8 parking spaces under the 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 of MJS Engineering spoke before the Board. He explained that the site plan now was essentially the same as the one the Board had seen previously, with the exception that the area where parking and a one-way through lane had been proposed would instead be an expansion of the first floor commercial space, and a pedestrian walkway connecting the Store 24 parking lot and Jenkins Court. He said there would also be an area available out back for outdoor seating, if a restaurant was put in on the site.

He said the only other changes proposed were that there would be one additional parking space on Jenkins Court due to the length of the frontage, and that the island out back would get a little bigger as a result of the sidewalk being relocated. He noted that the larger part of this island was on the applicant's property, not the abutter's property.

Mr. Sievert said the entry-ways to the building would change, and also said there would be some slight grading changes as well. He said the utilities to be installed and any easements required would stay the same.

Mr. Kelley asked Mr. Sievert if he had seen the summary Mr. Campbell had put together for the amended application, and he also noted the items from the Police Department and the DPW.

Mr. Sievert said yes, and said that in regard to the comments from the Police Department on lighting, the applicant had agreed with them and had decided that an automatic motion sensing lighting would be used there.

Mr. Kelley asked if the application was complete, and Mr. Campbell said it was.

Richard Kelley MOVED to Accept the Application to Amend a Previously Approved Site Plan submitted by 6 Jenkins Court LLC, Durham, New Hampshire to increase the commercial footprint of a new three-story, mixed use building, to create an 8-foot wide pedestrian walk-way, to provide an outdoor seating area, to provide one additional parking space along Jenkins Court and to eliminate 8 parking spaces under the building, at the property shown on Tax Map 4, Lot 8-0, located at 6 Jenkins Court, in the Central Business Zoning District.

Chair Parnell determined that a site walk was not needed.

Mr. Campbell suggested that the Public Hearing be scheduled for the July 8th meeting.

Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

- V. Acceptance Consideration of an Application for Site Plan Review and for a Conditional Use Permit** submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of the Durham Unitarian Universalist Fellowship, Durham, New Hampshire, to remove an existing garage and breezeway and build a new addition as well as to remodel the existing main building. The property involved is shown on Tax Map 4, Lot 17-0, is located at 20 Madbury Road, and is in the Professional Office Zoning District.

Mr. Roberts recused himself, and Mr. Lewis sat in for him as a voting member.

Mike Sievert of MJS Engineering spoke before the Board. He said architects Nick Isaak and Walter Rous were present to answer questions about the architectural elements of the project. He also noted that several members of the Church were present to answer questions.

He said the proposal was to remove the existing garage to the east side of the octagonal portion of the building, and also to remove the breezeway between the existing building and the garage. He said the new building footprint expansion would occur in the same location, and said it would be used as a new area for church services, as well as for some classrooms. He also said some of the existing building would be remodeled into offices, and that a deck would be added onto the existing deck in the back.

He provided details on proposed parking, in the event that accessibility was needed to the lower level of the building. He said a ramp sidewalk would perhaps provide pedestrian access down to the lower level, and he provided details on this. He noted that if the parking area was created, it could possibly be a pervious surface

Mr. Sievert said the parking out front would be improved in terms of drainage and access, and said the parking lot to the east would remain unchanged. He said there would be a drainage system in the rear of the property, and explained that as part of this there would be a rain garden.

He said instead of going into the wetland nearby, the runoff from part of the existing building, all of the new building, and the parking lot would be directed into the rain garden, where most of the water would infiltrate. He said any excess water during storm events would overflow into a spillway, and would then gradually drain toward the wetland area. He said this design would clean up a lot of the surface runoff that was happening on the site now.

Mr. Sievert said the water line to the property would be improved. He then reviewed briefly the variances the applicants had received recently from the ZBA.

Mr. Isaak showed the Board elevations of the proposed building expansion and remodeling.

Richard Kelley MOVED to Accept an Application for Site Plan Review and for a Conditional Use Permit submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of the Durham Unitarian Universalist Fellowship, Durham, New Hampshire, to remove an existing garage and breezeway and build a new addition as well as to remodel the existing main building, at the property shown on Tax Map 4, Lot 17-0, located at 20 Madbury Road in the Professional Office Zoning District, and schedules a Public Hearing for July 8, 2009. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

Board members agreed that a site walk would take place the following Saturday at 9:45 am.

Mr. Roberts returned to the table.

- VI. Acceptance Consideration of an Application to Amend a Previously Approved Site Plan** submitted by Perley Lane LLC, Portsmouth, New Hampshire to allow for the option of building single family units or duplex units on a previously approved development. The property involved is shown on Tax Map 1, Lots 16-22 through 16-28, is located on Perley Lane, and is in the Residence A Zoning District.

Mr. Ozenich recused himself, and Chair Parnell appointed Mr. Lewis as a voting member in his place.

The applicant, Joe Caldorola, explained that Perley Lane was a part of the original Fitts Farm approval in 1999, and included 7 building lots on a public road. He said there were no age restrictions for this development at that time. He said a few years later, he had come back with a site plan for 55 plus condominiums because of the market demand for this kind of housing.

Mr. Caldarola said the market had slowed since that time, and said single, detached units had a market advantage now. He said he had asked his engineer how many single, age-controlled units could fit on the site, in a way that didn't increase the amount of impervious area. He said one unit had been eliminated in order to be able to do this, so there would be 13 units instead of 14.

He asked that, depending on how thing went, he be allowed to have either single units, duplex units or a mix of the two. He said he thought most people would want the single detached units, but said it was always hard to tell. He explained the current arrangement whereby Perley Lane was a private road.

Ms. Fuller said on the plan it looked like two of the units were almost touching each other.

Mr. Caldarola said the garages of these units had a common wall, and explained that they had designed these two units this way because the driveway wouldn't have to come any closer to the wetland than it now was.

Ms. Fuller noted that Perley Lane was originally approved as a public road, and asked why this had changed.

Mr. Campbell said when Mr. Caldarola came back to the Board regarding Perley Lane in 2002, the roadway as proposed would not have met the Town's road standards. He provided details on this, and said Bob Leveque, the Town Engineer at the time, had therefore recommended not approving Perley Lane as a public road.

Chair Parnell asked if Perley Lane accessed other property than the applicant's site.

Mr. Caldarola said no, and provided details on this.

Mr. Kelley asked Mr. Caldarola if he had received a copy of an email from Town Engineer Dave Cedarholm regarding the revised site plan. He provided details on the email, which among other things said Mr. Cedarholm couldn't ascertain how the stormwater was being treated, based on the drainage plan that had been done, and needed documentation on the stormwater management system. He also noted that the email said the Board should require submittal of the Fitts Farm as-built drawings.

Mr. Caldarola said he needed to get this documentation from his engineer. He said he thought it would be found that there wasn't a drainage analysis except for what was in the original subdivision, and that when Perley Lane was approved as part of the subdivision, there wasn't any detention.

He said he thought Bob Levesque had suggested in 2002 that runoff from the roofs of the buildings should be diverted to drywells in order to recharge the groundwater, and said he had agreed to that. He said he thought this was a condition on the site plan approval, and

said the site lent itself to recharge, so this kind of thing could be easily designed.

Mr. Kelley asked how much grading would be required for the units.

Mr. Caldarola said it would be the same amount as what was proposed in the original approved plan.

Mr. Kelley asked for a full-sized plan to look at, in order to be able to see the contours so he could better understand the existing and proposed grading. He also said Mr. Caldarola should be prepared to talk about erosion and sediment control during construction.

Councilor Smith asked Mr. Kelley if he was suggesting that the Board postpone acceptance of the application until it had the additional information.

Mr. Kelley said no, and asked if the application was complete.

Mr. Campbell said it was, but said he thought some things would be required regarding drainage, as indicated by Mr. Cedarholm's email. He noted that drywells were part of the previous approval, and still needed to be done.

Mr. Kelley asked when the drainage documentation could be prepared, and Mr. Caldarola said he hoped it could be done within the following week.

Mr. Roberts said Mr. Caldarola had gone through a very extensive review process last time, although he couldn't say whether the drainage plan met all the criteria Mr. Cedarholm was looking for.

Richard Kelley MOVED to Accept the Application to Amend a Previously Approved Site Plan submitted by Perley Lane LLC, Portsmouth, New Hampshire to allow for the option of building single family units or duplex units on a previously approved development, at the property shown on Tax Map 1, Lots 16-22 through 16-28, located on Perley Lane in the Residence A Zoning District, and schedules a Public Hearing for July 8, 2009. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

Mr. Campbell asked if any of the condominium documents would need to be changed, and Mr. Caldarola said he would take a look at them. Mr. Campbell said if they did need to be changed, Mr. Caldarola could provide him with some drafts.

The Board agreed to have the site walk on July 2nd at 5:30 pm.

Mr. Ozenich returned to the table.

VII. Other Business

A. Old Business:

Sourcewater Protection Committee

Mr. Campbell and Mr. Kelley explained that the Sourcewater Protection Committee had been given a fairly narrowly defined scope of work, and that members had expressed at the recent meeting that they would like to expand the committee's horizons.

After discussion, Board members agreed that scope of study should be expanded.

Richard Kelley MOVED that the Sourcewater Protection Committee be given some liberty to expand its scope of study, to include other matters that pertain to the safety, availability and quality of Durham's water. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

B. New Business:

1.Request for Technical Review to Renovate the Movie Stop Retail Space in the Mill Road Plaza into an Asian Restaurant.

The applicant, En Yu provided some details on what was planned for the property. He said the idea was to provide fine Chinese and Japanese dining. from 11 am to 10 pm on weekdays, and from 11 am to 11:00-11:30 pm, or 12:00 am at the latest on weekends. .He said there would be a bar.

He said he hoped to provide 40 seats for customers, and provided details on the proposed layout for the kitchen, bathrooms, etc. He said he would be able to be more specific on dimensions when he hired an architect.

There was discussion that there would be a cooler outside. The applicant also said there would probably be buckets for the deep fryer oil located next to the dumpster.

Chair Parnell asked if special ventilation would be needed for the kitchen, and the applicant said there would be an exhaust fan above the cooking area, which would be vented out the roof. He provided details on the grease trap location and maintenance.

Mr. Roberts received clarification that the restaurant would cook with gas, and that there was an existing 3 inch gas pipe to the building that would be reconnected. The applicant said there would be a shut off just for the building. He also said there would be smoke detectors, and ceiling tiles made from a special sheetrock material.

The applicant noted that he owned the other Chinese restaurant in Town, as well as some other Chinese restaurants in New Hampshire. He said he was looking to draw in college students with the Japanese sushi, and residents with fine Chinese food.

Councilor Smith asked if the applicant would have a problem with getting rid of some of the parking spaces for a higher use, and Mr. Campbell said no.

Mr. Roberts said he liked what the applicant had proposed, stating that it appeared to be well thought out. But he suggested that the application should be reviewed by the Planning Board, and said he believed the Board could complete the process in just a few weeks.

Mr. Kelley said there were benefits to both the applicant and the Planning Board if the Board did the site plan review. He asked what the applicant's timeline was, and the applicant said coming before the Board some time next month would be fine with him.

Mr. Campbell said the Board could accept the application at the July 22nd meeting, and could hold the public hearing on August 12th.

There was discussion about whether a site walk was needed.

Mr. Kelley received clarification from the applicant that he was fine with going through the regular site plan review process, and would prefer to have a proper review and take his time with this process.

The applicant asked if he would need to have an architectural blueprint for the next meeting, and Mr. Campbell said that would be helpful.

Mr. Kelley said the applicant would probably ask for some waiver requests, and said given the nature of the project, he would probably be successful in having them granted.

The Board agreed that the site plan review application would not go to the Technical Review Committee, and instead would be heard by the Planning Board.

2. Discussion and Formulation of Response to the Appeal of the Planning Board Approval for 6 Jenkins Court to the Zoning Board of Adjustment.

Mr. Campbell spoke with Board members about the fact that Tom Christie, an abutter to the 6 Jenkins Court property, had appealed the Planning Board's decision on the site plan application for that property.

Mr. McGowan asked if what the Board had heard that evening regarding the amended site plan for 6 Jenkins Court would make this a moot point.

Mr. Campbell said the points Mr. Christie had made related mainly to the driveway, and said some of these would go away if the amended site plan was approved. But he noted that there was no guarantee that it would be approved.

Mr. Roberts said he thought the Board needed a pathway to properly handle this situation, whether legal counsel was needed or not. He provided details on this.

Mr. Campbell said he would leave it up to the Board whether it wanted to do nothing, or

wanted to direct him or the Board's attorney to write a response for the ZBA.

Mr. Roberts suggested that the Board should prepare a response which reflected an analysis of each item that had been raised, to see if the Board had done anything wrong, or had omitted anything.

Mr. Kelley agreed with Mr. Roberts, and said it sounded like a good course of action to prepare such a response. He said given the amended site plan application, it seemed that the Board only needed to respond to one of the items, regarding the requirement of a driveway permit, and said he thought they had good ground to stand on concerning this. He noted that the Board had made site plan approval conditional upon the driveway permit being received.

Mr. Roberts said he thought they could go through each of the items, and find everything in the Zoning Ordinance that supported them. He said the more they could bring, the better, and said he thought case law would be able to handle some of these points.

Chair Parnell said each of the items should be approached without thinking of the amended site plan application.

The Board agreed that there was time to draft the kind of response Mr. Roberts had described, and send it to the Board's attorney before the ZBA meeting. They also agreed that the response would come from the Planning Board.

Mr. Ozenich asked whether it was appropriate to bring up the stormwater issue regarding Perley Lane now, when it wasn't addressed in the application in 2002. He said he was looking for evenness in applying the rules.

Mr. Campbell said stormwater was addressed in that application, and basically said that a stormwater system involving drywells had to be designed and approved by the Public Works Department.

There was further discussion on this issue.

C. Next meeting of the Board: **July 8, 2009**

VIII. Approval of Minutes – May 13, 2009

Page 1, under Members Absent, should list Councilor Neil Niman and Wayne Lewis
Page 2, 5th paragraph from bottom, should read "Mr. Sievert said all of the easements in regard..."

Page 4, 1st full paragraph, should read "Councilor Robin Mower..."

Page 9, 2nd paragraph from bottom, should read "There was discussion by the board that the as-built construction drawings would be included in the file for this application."

Page 10, 2nd paragraph, should read "Mr. Ozenich noted that Fitts Farm, where he

lived...”

3rd paragraph on Page 10, last sentence, should read “She said perhaps the Board...”

4th paragraph, should read “Mr. Roberts asked Mr. Christie if he would be doing...”

Page 13, paragraph after motion, should read “...any members of the public who were for, against, or had concerns....”

Page 15, 2nd paragraph from bottom, should read “...near the water treatment plant and...”

Page 16, 6th paragraph, 1st sentence, should have one period at the end.

Page 17, 7th paragraph from bottom, should read “...about the dam at the HDC.”

5th paragraph from bottom should read “..He said the Wiswall wetland permit would...”

Page 18, 2nd full paragraph should read “”..the idea of making Jenkins Court into a...”

2nd paragraph from bottom, should read “There was discussion that Durham would be obligated to provide Zoning changes that would allow some kind of workforce housing..”

Page 19, 5th paragraph, should read “Mr. Roberts said there were university towns that had this kind of housing. He said there were 5,000 students coming into Durham every day, and said that was bad planning that created added traffic and lost tax revenues.”

Councilor Smith MOVED to approve the May 13, 2009 Minutes as amended. Bill McGowan SECONDED the motion, and it PASSED unanimously 7-0.

IX. Adjournment

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

Adjournment at 9:00 pm.

Victoria Parmele, Minutes taker