

This set of minutes was approved at the August 26, 2009 Planning Board meeting

**Durham Planning Board
Wednesday July 22, 2009
Durham Town Hall - Council Chambers
MINUTES
7:00 pm**

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

ALTERNATES PRESENT: Wayne Lewis

MEMBERS ABSENT: Stephen Roberts; Richard Kelley; Kevin Gardner; Councilor Neil
Niman

I. Call to Order

Chair Parnell called the meeting to order at 7:03 pm.

II. Approval of Agenda

Susan Fuller MOVED to approve the Agenda. Bill McGowan SECONDED the motion, and it PASSED unanimously 5-0.

Chair Parnell appointed Mr. Lewis to serve as a voting member for the meeting in place of Mr. Kelley.

III. Report of Planner

Mr. Campbell said that during the break, he would show the Board and members of the public a promotional video of Durham that had recently been completed.

Mr. Campbell said an additional alternate would be joining the EDC in September, and noted that there was still an additional alternate position available.

Mr. Campbell said the Sourcewater Subcommittee had recently met. He said they had renamed themselves the Water Resource Protection Subcommittee, had elected officers, and had worked on an updated scope of work. He said one of the first tasks of the subcommittee would be to update the stormwater provisions of the Site Plan Regulations and Subdivision Regulations.

He noted that Mr. Cedarholm had been working on draft stormwater regulations for some time, and would be meeting with committee members Richard Kelley and Jamie Houle on Friday regarding them. He said there would hopefully be some amendments ready to the draft regulations within a few weeks. He provided clarification that the committee

would be making recommendations to the Planning Board concerning updates to the regulations concerning stormwater management.

Mr. Campbell noted that the ZBA had recently approved a variance for the Seacoast Repertory Theatre. He said he would be meeting with Stephanie Shaheen of SRT on Friday to see how to proceed with coming before the Planning Board.

He said the ZBA had postponed discussion on the administrative appeal of 6 Jenkins Court until the July 28th meeting. He said he would not be at the meeting, and said it would be great if some Board members could be there. He noted that the ZBA had his memo and letter regarding the 6 Jenkins Court application, which explained his and the Planning Board's positions on the points being appealed by the abutter.

Councilor Smith asked how many of these points were still relevant, and Mr. Campbell said until the plans for the amended site plan were signed off on, they were all still relevant. He said the applicant was working to meet all those conditions.

Mr. Campbell noted that on July 5, 2009, the Governor and Executive Council had held a breakfast meeting in Durham, and representatives from the Town of Durham were in attendance. He said this had been a good opportunity to discuss with them some of the things that were happening in Durham these days.

Mr. Campbell said on July 6, 2009, he attended a meeting with the Strafford Regional Planning Commission and NHDOT on Park & Rides. He said one particular location being discussed was on Route 4 near the Lee Traffic Circle, and he noted that there would be a Wildcat Transit stop there. He said another possible site would be somewhere between Durham and Newmarket/Newfields, heading north on Route 108, and said there would be a Wildcat Transit stop there as well. He said this would be a State project, and said a CMAQ grant would be applied for.

IV. Approval of a 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.

It was noted that Mr. Cedarholm was in the process of reviewing the drainage plan.

Chair Parnell asked if there were any members of the public who would like to speak for or against the application.

Dave Van Ellen, Fellows Lane, asked for clarification concerning Note #9 in the site plan, and Mr. Caldarola said it was a typographic error.

Mr. Van Ellen said he also had question regarding the pedestrian bridge on Edgewood Road, at the end of Perley Lane. He noted that the people living at Fitts Farm were responsible for road maintenance, snow removal, trash pickup, etc, and said it had come

up last week that they were also responsible for maintaining the pedestrian bridge. He said this had been new information to him, and he asked for clarification.

Mr. Caldarola said he had built the pedestrian bridge, which was a requirement of one of the phases of work for Fitts Farm. He said the bridge was located on a Town right of way, and said although he had thought he would need to deed the bridge to the Town, he had subsequently found out that he didn't need to. He said the bridge was built for the Town, on Town property, it was accepted by the Town, and the Town maintained it.

Mr. Campbell noted that at the previous meeting, there had been discussion about a boxed culvert for the bridge.

Mr. Caldarola said during the previous site plan round, it was agreed that the responsibility for maintaining the culvert would be given to the Master Association for Fitts Farm, which included everyone on all 40 acres of the development.

Mr. Van Allen said these explanations covered his concerns.

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

There was discussion by the Board on amendments needed to the draft Findings of Fact and Conditions of Approval. Concerning the drainage issue, Mr. Campbell said that there was a site visit by the applicant's engineer, Keith Weston, and Town Engineer Dave Cedarholm. He said Mr. Cedarholm was happy with the idea of using a wet well and rain gardens. But he said any final drainage plan would have to be approved by Mr. Cedarholm, and would be one of the Conditions of Approval for the application.

After the discussion by the Board on the Findings of Fact and Conditions of Approval was complete, Mr. Caldarola said he was fine with them. Regarding Note #10 on the site plan, he provided some history on it, and said whatever the Board wanted to do concerning it was fine.

Mr. McGowan asked if the Planning Board had received anything from the Conservation Commission on this application.

Chair Parnell said there was nothing formal on the application that would be coming to the Board. He said a note from Commission member Beryl Harper indicated that it had no issues with what the applicant had proposed.

Findings of Fact

1. The applicant submitted an Application for Site Plan Review with supporting documents on June 3, 2009.
2. The applicant submitted on June 3, 2009, a Site Plan entitled "Revised Site Plan, Perley Lane Single Unit Condo's, Durham, New Hampshire" prepared by American Engineering Consultant Corps., Durham, NH, dated September 27, 2002.
3. The applicant submitted a letter of intent on June 3, 2009.

4. The applicant submitted a copy of the deed for the property on June 3, 2009.
5. The applicant submitted a copy of the sewer permit on June 19, 2009.
6. Keith Weston, P.E., American Engineering Consultants, Corp., submitted comments on the drainage for the amended plan on June 19, 2009.
7. Town Engineer, David Cedarholm, submitted an e-mail with attachments with comments on the application on June 24, 2009.
8. A Public Hearing was held on July 8, 2009 and continued to July 22, 2009.
9. A Site Walk was held on July 18, 2009.

Conditions of Approval, to be met prior to Signature of Approval on the Site Plan

1. The applicant shall supply two mylar plats and one paper copy for signature by the Planning Board Chair.
2. All final plans must be stamped by appropriate professionals and updated to make corrections to Note #9, Note #10 and Note #20.
3. All previous Conditions of Approval for the original Site Plan approval shall remain in effect and are hereby incorporated by reference.
4. The applicant shall meet with the Town Engineer. The Town Engineer shall approve the storm water drainage system for the Perley Lane Development.
5. The rain gardens shall be shown on the Site Plan.

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. Perley Lane is a private road and will be the responsibility of the Homeowners Association.

Susan Fuller MOVED to grant a waiver from section 9.03 of the Site Plan regulations pertaining to stormwater drainage analysis. Any issues relating to stormwater will be worked out with the Town Engineer. Wayne Lewis SECONDED the motion, and it PASSED unanimously 5-0.

Susan Fuller MOVED to approve, as amended, a Site Plan 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, for the property shown on Tax Map 1, Lots 16-22 through 16-28, and located on Perley Lane in the Residence A Zoning District. Wayne Lewis SECONDED the motion.

Councilor Smith asked if this meant that Mr. Caldarola could build mixed single family and duplex residences, and Chair Parnell said it did, and was up to the discretion of the

market.

Mr. Campbell noted that it could end up being a mixed single family/duplex development.

The motion PASSED unanimously 5-0.

Mr. Ozenich returned to the table.

- V. **Application for Boundary Line Adjustment submitted by Geoff Sawyer, Durham New Hampshire and Great Bay Animal Hospital LLC, Durham, New Hampshire to change the boundary line between two lots. The properties involved are shown on Tax Map 6, Lots 11-7 and 11-8, are located at 27/35 and 31 Newmarket Road respectively and are in the Residence C Zoning District.**

Ms. Fuller recused herself.

Cheryl Andreason, McEneaney Survey Associates, represented the applicant, and explained that what was proposed was to do an equal land swap of two triangles of land, in order to make the existing kennel location conform to the building setback requirements for that lot.

There was discussion on the size of the kennel building that needed the lot line adjustment. There was also brief discussion on the issue of the legality of the structure.

Mr. Campbell reviewed the procedure for the Planning Board's review of a Boundary Line Adjustment application. He noted that a site visit or public hearing was not required, but said notices were sent to abutters. He then recommended that the Board accept the application.

Councilor Smith MOVED to accept the Application for Boundary Line Adjustment submitted by Geoff Sawyer, Durham New Hampshire and Great Bay Animal Hospital LLC, Durham, New Hampshire to change the boundary line between two lots, for the properties shown on Tax Map 6, Lots 11-7 and 11-8, and located at 27/35 and 31 Newmarket Road respectively in the Residence C Zoning District. Bill McGowan SECONDED the motion, and it PASSED unanimously.

Chair Parnell asked if there were any abutters who would like to speak concerning the application.

Sharon Griffin, 28 Newmarket Road, said she had her husband had nothing against the Sawyers or the kennel business they had operated, and also had no objections in principle to the lot line changes that were proposed. But she said they did object to the current application because it was designed to legitimize a doggy day care, which was the second business on the property, and was currently illegal.

Ms. Griffin said the way the day care was established was illegal in three respects. She said the building involved was a trailer that had previously been used as a portable school trailer, and said no variance was ever granted for it, and abutters were never notified. She

said the trailer simply appeared one day.

She said the Sawyers did get some kind of permission in that they applied for a storage shed. She said she had asked what the purpose of the storage shed was, and were assured there would be no dogs stored there. But she said shortly after the trailer arrived, a large fence was erected in front of the trailer. She noted that the fence was considered a structure, and as such did not conform to the requirements of the Historic Overlay District.

Ms. Griffin said after the fence was constructed, about 30 dogs had appeared on a daily basis, and said it became clear that these structures were being used to operate a doggy day care center, and were not approved by the Town. She said she and her husband had filed an appeal to the ZBA in December of 2000 to protest the irregularities, and the Board made the decision that the fence was not illegal because it was only 6 ft tall. She explained that subsequent to this, she had realized that the fence was in the Historic District, so was not allowed.

She requested that the Board not approve the boundary line adjustment because this would legitimize a business that had been approved by the Town. She said the doggy day care business was a nuisance that operated five days week, and prevents her and her husband from enjoying their own property. She noted that she and her husband lived downhill from the business, and could often hear loud music coming from it, so much so that they often had to keep their windows closed. She said her husband had sent a registered letter to Mr. Sawyer about the loud music, but never got a response.

Ms. Griffin said if the Planning Board did decide to approve the application, she urged them to put conditions on the approval, that Mr. Sawyer obtain all the proper building permits to legalize the trailer, the fence structure in the Historic District, and the nonconforming use of operating a doggy day care center.

She said she assumed that Ms. Fuller had recused herself because she took her dog to the daycare center, and asked that other Board members who took their dogs there also consider recusing themselves.

Chair Parnell asked Ms. Griffin when the trailer and the fence were put in, and Ms. Griffin said they were put in November of 2000. She said she had her husband had filed their appeal in December of that year.

Paul Dubois, 28 Newmarket Road, said that all along, there had been an approach of doing whatever the owner wanted, and only seeking permission for something if he got caught. He said when the trailer was put in, they didn't move it over far enough, so they in fact had created the problem with the setback. He said he therefore didn't see that there was a hardship. He said Mr. Sawyer should cure the problem he had caused.

Mr. Dubois said the music was so loud that he could hear the lyrics to the songs across the street, explaining that there was an amphitheatre effect because of the doggie daycare location on the landscape relative to his property. He noted that he had called former Business Inspector Edney to ask if the trailer building had been approved for the housing of animals, and was told no. Mr. Dubois said Mr. Sawyer was running two businesses

there, and said the doggie daycare was not an auxiliary use. He said he would like to see Mr. Sawyer go through the proper process.

There was discussion by the Board on the draft Findings of Fact and Conditions of Approval. They reviewed correspondence from Code Administrator Tom Johnson and the Board's attorney on the application, which was concerned with the legality of the kennel building. There was further discussion on this issue by the Board.

Mr. Lewis asked if the Board needed to add something regarding the fencing.

Mr. Campbell said the ZBA had made a determination regarding the fencing, but said this could be referenced in the Conditions of Approval.

Chair Parnell asked whether perhaps the HDC needed to be involved in this, and Mr. Campbell said yes, if the Zoning Administrator thought they should be. He said it would depend on when the fence was put in, and what Ordinance was in place at that time. He said the current Historic District Ordinance would require that the fence would have to come before the HDC. He also noted that fences under 6 feet were not considered structures. He said he would have to check on this, and said Mr. Johnson would make a determination on this.

Mr. Ozenich questioned what the point was of going through the lot line adjustment, and asked whether instead the illegality issue should be dealt with first.

Mr. Campbell said the applicant could ask for a boundary line adjustment regardless of the building issue. He said Mr. Johnson had reviewed the application and found that the kennel was never approved correctly. He said the Board needed to make sure that it was approved correctly.

Councilor Smith said it would seem that moving the building would be easier and cheaper than going through the current approval process. He said it seemed that the applicant wanted to keep the building where it was.

There was discussion on this issue, and on the Attorney's letter regarding this. Councilor Smith said the Attorney's letter had made it clear that the issue of the building being there without a permit wouldn't go away, regardless of the boundary line adjustment approval.

Mr. Ozenich said the Board could deny the boundary line adjustment and make the applicant move the building.

Councilor Smith asked if the Board had any reason to deny the boundary line adjustment. Mr. Campbell said he didn't think so, and said the email from the Attorney had indicated that the Board would not be on solid legal ground if it denied the boundary line adjustment. There was further detailed discussion, with Mr. Campbell noting that this wasn't the first time the issue of the legality of the building had been discussed.

Councilor Smith asked if it was appropriate to ask the applicant if he wanted to put the application on hold while he decided what he wanted to do.

Chair Parnell said the Board had to decide on the application in front of it. He said Mr. Johnson had brought this issue to the Board's attention, and the Board had the opportunity to put a clause in that perhaps would solve some problems, or at least put some regulations around it.

There was detailed discussion on how Condition #4 should read, and whether it was needed. Mr. Campbell read the final wording: "The applicant shall remove or be granted approval for the illegal structure through the proper permitting and land use boards. In addition, determination on the fencing must be made by the Zoning Administrator on whether it will need to go before the Historic District Commission."

Findings of Fact

1. The applicant submitted an Application for Boundary Line Adjustment with supporting documents on July 1, 2009.
2. The applicant submitted on July 1, 2009, a Boundary Line Adjustment Plan entitled "Lot Line Adjustment Plan prepared for Great Bay Animal Hospital, LLC, and Geoff Sawyer, Tax Map 6, Lot No.s 11-7 & 11-8, Newmarket Road, N.H. Route 108, Town of Durham, County of Strafford, State of New Hampshire" prepared by McEneaney Survey Associates Inc., Dover, NH, dated April 6, 2009.
3. The applicant submitted a letter of intent on July 1, 2009.
4. The applicant submitted deeds for the two properties on July 1, 2009.
5. Dr. Jim McKiernan submitted a letter on July 1, 2009, approving Geoff Sawyer and McEneaney Survey to represent him at the Planning Board meeting.
6. Zoning Administrator, Thomas Johnson, submitted an e-mail regarding the application on July 16, 2009.
7. An abutter submitted a letter addressing concerns with the application on July 22, 2009.

Waivers

The applicant has requested a waiver from the Subdivision Regulations sections pertaining to the submission of a copy of a State Subdivision Application, a final common open space ownership & stewardship plan, a hydrogeologic assessment, a traffic study & impact analysis, ground control, construction plans and a high intensity soils survey. The Planning Board has reviewed these waiver requests and hereby grants the waivers.

Conditions of Approval - to be met prior to the Signature of Approval on the Boundary Line Adjustment Plan.

1. The applicant shall supply two mylar plans and one paper copy for signature by the Planning Board Chair.
2. A certificate of monumentation must be provided to the Planning & Community Development office.

3. All final plans must be stamped by appropriate professionals.
4. The applicant shall remove or be granted approval for the illegal kennel structure through the proper permitting and land use boards. In addition, a determination on the fencing must be made by the Zoning Administrator on whether or not it needs to be presented to and approved by the Historic District Commission.

Conditions to be Met Subsequent to the Signature of Approval on the Boundary Line Adjustment Plan:

1. The referenced Boundary Line Adjustment Plan and 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.

Bill McGowan MOVED to approve as amended the Application for Boundary Line Adjustment submitted by Geoff Sawyer, Durham New Hampshire and Great Bay Animal Hospital LLC, Durham, New Hampshire to change the boundary line between two lots, for the properties shown on Tax Map 6, Lots 11-7 and 11-8, and located at 27/35 and 31 Newmarket Road respectively the Residence C Zoning District. Wayne Lewis SECONDED the motion, and it PASSED 5-0.

Break from 8:11- 8:23 PM.

Susan Fuller returned to the table at this time.

VI. Other Business

Mr. Campbell first noted that the Fitts Farm Condominium Association was approved by the Technical Review committee to remove the maintenance of the fire lane easement on Marden Way. He said Mr. Ozenich had done a great job representing the Condominium Association.

Mr. Ozenich spoke about the complexity and uniqueness of the Fitts Farm development, including the fact that there was a private road. He suggested that for future developments like it, it would be a lot easier if there was a public road.

Mr. Campbell said he thought the Board would find that it didn't want to approve any more private roads.

Mr. Lewis agreed that there were more headaches with private roads.

Mr. Ozenich noted that Fitts Farm Road was 22 ft wide, so was not some narrow private road. There was discussion on whether the base of the road was up to standards, and there was also discussion on the fact that the road had supposedly been made this wide to allow parking and still allow through traffic. Mr. Ozenich said it was the single car garages at Fitts Farm that were responsible for the spillover parking on the street.

Discussion on Budget, CIP, Website and Attendance at the July 28, 2009 Zoning Board Meeting

Mr. Campbell said hopefully the \$45,000 for the Master Plan update project would be approved. He spoke in detail on this, and there was discussion.

Ms. Fuller noted that a grant was coming for affordable housing, and Mr. Campbell said that was in his budget

Concerning the CIP, Mr. Campbell said a new addition to it was a continuation of the decorative lighting that was currently on Main Street onto Jenkins Court. He noted that a lot more development now on that street, so it was important to pay more attention to these kinds of things. He said the conduits would be run after the new buildings were finished.

Mr. Ozenich asked about the condition of the road itself on Jenkins Court as a result of all the building that would take place there, and Mr. Campbell said the resurfacing of the road was a part of the bond.

There was discussion on the relatively high cost of the lighting, and it was noted that this would be a Town expense.

Mr. Campbell noted the item in the CIP concerning a NW & SE linkage study.

Councilor Smith asked if this would include the southeast connector, and Mr. Campbell said yes.

Ms. Fuller said this probably wasn't going to happen next year, and Mr. Campbell said he was putting it in there because he would like it to be there next year. Ms. Fuller said the project was needed, but questioned whether realistically it would be funded. Mr. Campbell said this was one of the primary recommendations in the Master Plan, so he would keep pushing it. He noted that it had been taken out of the CIP previously, but he had put it back in.

He said it was in the State's long range plan, as a vision element, which meant it wasn't really in the plan. He said until the Town got an idea of the costs associated with it, it wouldn't be programmed into the long range plan. He noted that he had applied for four different grants, but the Town had not received any because the State didn't see that the University supported the idea of a northern connector. He noted that the University did however support the idea of doing a NW & SE transportation linkage study.

Mr. Campbell noted a proposed item in the CIP regarding a Downtown Parking Plan, which he said was another project idea taken from the Master Plan. He said having a plan that accommodated the retail and commercial needs of businesses, the general public and housing downtown would be more and more important as the downtown continued to develop.

Chair Parnell asked what the \$15,000 in the CIP for this project was actually for, and Mr.

Campbell said it would be used to hire someone to work on such a study.

Ms. Fuller said that as Mr. Roberts would say, there needed to be a traffic analysis before the parking could be figured out.

Mr. Campbell said there would be time to talk about that.

Mr. Ozenich questioned whether \$15,000 was enough for a parking study, and there was discussion.

Mr. Campbell noted the item in the CIP regarding Wagon Hill parking, and explained that this was discussed in the Master Plan as well as in the master plan for Wagon Hill. He said what had been envisioned was a lot more parking for that area, but said the thought now was to start smaller, with a gravel parking lot with about 50 spaces.

There was discussion about the community garden on a portion of the site as well as other activities there. It was noted that the bus stopped there. Mr. Ozenich said he thought this would be a good place for commuter parking.

Mr. Campbell noted the item in the CIP regarding Technology Drive Infrastructure Improvement. He explained that this would entail extension of 4,260 feet of roadway and sewer line in and around Technology Drive and Beech Hill Road to allow for further commercial development in the area. He said the idea was to piggy back onto Goss International, and he provided details on this. There was discussion.

Mr. Campbell next updated on the work underway to update the Town website.

He noted again the upcoming ZBA meeting on July 28, 2009, when the administrative appeal concerning 6 Jenkins Court would be heard. Chair Parnell said he would be able to attend the ZBA meeting.

After discussion, the Board agreed that because there were no new applications for the August 12th Planning Board meeting, and because Mr. Campbell would be on vacation, the meeting would be cancelled, and the next regular Planning Board meeting would take place on August 26th.

B. New Business

Request for Technical Review for unit A-3 at 35 Main Street, Map 5, Lot 1-6, submitted by Varsity Durham, LLC

Susan Fuller MOVED to send to Technical Review the application regarding unit A-3 at 35 Main Street, Map 5, Lot 1-6, submitted by Varsity Durham, LLC. Richard Ozenich SECONDED the motion, and it PASSED unanimously 6-0.

VII. Approval of Minutes

Minutes June 10th

Page 1, under Members Absent, should list Councilor Neil Niman
Page 2, 2nd full paragraph, should read “..to allow single family residences in addition..”
Same paragraph, should read “Mr. Campbell noted that this..”
Page 3, 4th paragraph, should read “..the correct dimensions had solved some...”
Page 6, 7th paragraph, should read “..with DPW regarding the Road Regulations, and..”
Page 10, 5th paragraph, should read “..a portion of the existing building and re-build, ..”
Page 11, 5th full paragraph, should read “..It was agreed that a site walk..”
Page 13, 6th full paragraph, should read “..land that was not conservation land next to..”

Susan Fuller MOVED to approve June 10th as amended. Councilor Smith SECONDED the motion, and it PASSED 5-0-1 with Bill McGowan abstaining because of his absence from the meeting.

Minutes June 24, 2009

Page 1, 2nd paragraph from bottom, should read “had recently met with McEneaney Survey Associates regarding a boundary line adjustment.”
Page 3, bottom paragraph, should read “..could possibly be a pervious surface.”
Page 5, 4th paragraph, should read “..units this way because the driveway..”
5th paragraph, should read “..was originally approved as a...”
Page 7, 1st paragraph under New Business, should read “The applicant, En Yu, provided..”
Page 8, 1st paragraph, should read “Mr. Roberts said he liked what the...”

Susan Fuller to approve June 24, 2009 as amended Councilor Smith SECONDED the motion, and it PASSED unanimously 6-0.

VIII. Adjournment

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

Adjournment at 9:15 pm

Victoria Parmele, Minutes taker