

These minutes were approved at the November 18, 2009 meeting.

**Durham Planning Board
Wednesday October 14, 2009
Durham Town Hall - Council Chambers
MINUTES
7:00 pm**

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

ALTERNATES PRESENT: Wayne Lewis

MEMBERS ABSENT: Vice Chair Susan Fuller; Kevin Gardner; Councilor Neil Niman

I. Call to Order

Chair Parnell called the meeting to order at 7:06 pm.

II. Approval of Agenda

Chair Parnell noted that he had been asked to make a suggestion to move Agenda Item VI before IV because Item VI should go fairly quickly as compared to Item IV.

Councilor Smith MOVED to amend the Agenda to move Item VI in front of Item IV. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.

Chair Parnell said Mr. Lewis would sit in for Ms. Fuller.

III. Report of the Planner

Mr. Campbell noted a stack of material in front of Board members:

- copy of memo that he had emailed to Board members
- Minutes of the Mill Plaza site walk
- the summary of findings from the Conservation Commission regarding the Mill Plaza application
- approximately 10 submittals from the public regarding the Mill Plaza application
- draft language for parking provisions for Courthouse District
- memo from his recent meeting with University Planner Doug Bencks

Mr. Campbell noted that he and Councilor Smith had met last week to discuss the

parking provisions for the Courthouse.

He said the EDC had met on October 9th, and began and completed their discussion on the external SWOT analysis. He said the EDC also discussed a business visitation program, which would include feedback from Tastes of New England. He said hopefully they could learn some things from the owner on how to make businesses more successful in Durham.

Mr. Campbell said that at the October 5, 2009 Town Council meeting, the Council held a first reading on the Zoning amendments the Planning Board had recently recommended. He said there was a minor substantive change made to the elderly housing density provision, which clarified what the Board was requesting. He said all the amendments passed on first reading.

Mr. Campbell said on October 5th, he and Tom Johnson had met with Stephanie Shaheen of the Seacoast Repertory Theatre, and said the organization would be submitting a site plan application for either the November or December meeting. He also said he and Mr. Johnson would be facilitating a meeting between abutters and Seacoast Rep to see if there were issues that could be worked out.

Mr. Campbell said on the same day, he met with Bill Doucet regarding the Bryant project. He said they had final approval for their wastewater permit, which was one of the last things they needed before the Planning Board signed off on the site plan. He then noted that Mr. Bryant would be coming back to the Board with an amendment to the original site plan, most likely in November.

Mr. Campbell said the Technical Review Committee had met on October 6th, and approved the change of use for the two commercial spaces proposed at 13 Jenkins Court. He noted that after this meeting, department heads reviewed the La Paz Restaurant application.

VI. Acceptance Consideration on an Application for Site Plan Review submitted by Douglas Greene, Kittery, Maine, on behalf of Colonial Durham Associates, New York, New York, to operate a Mexican restaurant in the existing rental space formerly occupied by The Movie Stop. The property involved is shown on Tax Map 5, Lots 1-1, is located at Mill Road Plaza, and is in the Central Business District.

The applicant, Doug Greene spoke before the Board and explained that he was interested in opening a sit down Mexican restaurant with a take out and delivery function in the old Movie Stop space. He said he was proposing three phases for the project, the first of which was to create the restaurant and get some additional bathrooms and storage space, along with an alternate side entry.

He said the second phase would be to get outdoor patio seating along the front and sides of the building. He said the third and final phase would be to build a

dining addition in what was the phase two outdoor seating along the side of the building.

Mr. Kelley confirmed that Mr. Greene was seeking approval for all of three phases now. He then asked how much parking the restaurant would need.

Mr. Greene said the future phase three build out required seating for 139 people, with 12 staff. He said the parking requirement was 28 spaces.

Mr. Campbell said that amount sounded right. There was further discussion on the number of spaces required according to the Zoning Ordinance and the Site Plan regulations.

Mr. Roberts said given phase three, which showed a physical addition to the existing building, he wondered if this would allow for future construction of a road to Main Street through the Grange property.

Mr. Greene said what he was proposing didn't disturb the existing parking lot layout, preserving both the existing driving lanes, and did not preempt any of the Main Street access proposals made recently by the Mill Plaza Study Committee.

Mr. Kelley asked whether the phases would come quickly, or would be extended.

Mr. Greene said phase one would happen right away, and said he was shooting for a spring opening. He said phase two with added outdoor seating would follow fairly quickly after that. He said phase three would be a year or two off.

Mr. Kelley noted that when the ice cream place at Durham Marketplace was added, there were parking spaces in front that had to be reduced in order to be able to get emergency vehicles through and make the area safer. He asked if the same kind of thing was proposed with phase two of this project.

Mr. Greene said that was correct.

Mr. McGowan asked Mr. Campbell if there was anything else the Board should look into concerning the various phases that were proposed, and if it would be better to look at each phase individually.

Mr. Campbell said the Board could look at each of the phases individually, but should approve all three phases. He said the review done by department heads had looked at all three phases and the final outcome, noting that there would be a new wastewater permit for the third phase.

Mr. Kelley asked if the application was complete.

Mr. Campbell said yes. He noted that the applicant had asked for two waivers. He

said one waiver was concerning the surveyed site plan, and said Mr. Greene had instead provided floor plans and elevations of the site. He said the other waiver requested was concerning the stormwater drainage analysis because the site was already impervious and the development would not add any additional impervious area.

Mr. Kelley noted that the Board had a surveyed plan and a drainage analysis for Mill Plaza in their packets.

Mr. Campbell said the next available time for a public hearing was October 28, 2009. He noted that there would be one meeting a month in both November and December.

Richard Kelley MOVED the Acceptance Consideration of an Application for Site Plan Review submitted by Douglas Greene, Kittery, Maine, on behalf of Colonial Durham Associates, New York, New York, to operate a Mexican restaurant in the existing rental space formerly occupied by The Movie Stop, and schedules a public hearing for October 28, 2009. The property involved is shown on Tax Map 5, Lots 1-1, is located at Mill Road Plaza, and is in the Central Business District. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

Mr. Ozenich recommended that for the site walk, the applicant should outline where the patio and the extension would be located.

Board members agreed to have the site walk on Saturday October 17, 2009 at 9L00 am.

Mr. Campbell said that in November and December, the Board would be meeting on November 18th and December 9th.

IV. Public Hearing 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 expand the Mill Plaza Parking to create an additional 28 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.

V. Public Hearing on an Application for Conditional Use Permit submitted by Daniel Sheehan, Durham, New Hampshire on behalf of Colonial Durham Associates, New York, New York, to expand the Mill Plaza Parking to create an additional 28 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.

John Rattigan of Donahue, Tucker and Ciandella represented the applicant. He noted that Mr. Sheehan and engineer Tobin Farwell were present. He noted the

letter from the applicant dated October 1, 2009 that addressed the Conditional Use criteria, and suggested that Mr. Farwell first give a brief presentation of the application.

Mr. Farwell said the storm water management that was proposed was to put a perforated pipe between two catch basins , and also above the pipe to put a rain garden to help infiltrate runoff.

He said there were 27 spaces under consideration, and said the proposal was to increase the number of parking spaces to 55. He said they had met with the Conservation Commission, and said the Commission was very much in favor of the best management practices that were proposed. He said they had some concerns regarding the buffer area for the offsite wetlands.

Mr. Parnell asked how large the cross hatched area was, and Mr. Farwell said it was approx 2600 sf.

Mr. Kelley asked for more detail on the bio-retention area.

Mr. Farwell said it would be below the pavement, in a 4 ft wide area. He said it would be filled with a special soil mix of coarse sand and wood fiber material. He said below that would be $\frac{3}{4}$ in stone and said there would be a 2 ft diameter perforated pipe to attenuate stormwater and infiltrate it.

Mr. Kelley asked if the water coming off the pavement would enter the swale and percolate down into that medium.

Mr. Farwell said that was correct, and also said there would be additional catch basins that would connect into this system.

Mr. Kelley asked if there was any concern about the elevation of the groundwater table in relation to the invert of the pipe.

Mr. Farwell said the wetlands were a pretty good indicator of this, and said what was proposed was above the seasonal high water table. He said it was close to the 2 ft recommended and was the best they could do.

Mr. Roberts noted a comment about a proposal to do the stockpiling of snow removed from the lot in the back area. He asked if the stormwater management system was capable of managing runoff from that as well as surface runoff from the lot.

Mr. Farwell said yes, and said this determination was based on storm events for the area.

Mr. Roberts noted a berm ditch on the northeast side where arborvitae plantings

were planned, and that there was a path from Chesley Drive that entered to the south of that area. He asked if there was a contour relationship that showed there would be no ponding or surface runoff that would escape the swale and drain onto that pathway.

Mr. Farwell said the grading pitched toward College Brook, the catch basins and the treatment swale.

Mr. Roberts asked if a treatment swale was being put in the way of any possible runoff.

Mr. Farwell said if there was some runoff, any overflow there would go into a secondary catch basin.

Mr. Roberts asked if there would be remediation for salt.

Mr. Farwell said the only way to reduce chlorides was to put less salt on the parking area and to keep it as far from College Brook as possible. He said there was no way to actually remove chloride from water other than by osmosis.

Mr. Roberts noted that on the northeast corner, there was a rise in elevation. He provided details on this, and asked if the banking that had been dug out several years ago without permits was permeable in any way, so that runoff might therefore migrate through to the wetland to the northwest onto the adjoining property.

Mr. Farwell said there were C soils there, which were typically less permeable. He said it was also graded to go toward the pavement, so it wasn't likely that stormwater would migrate to the wetland. He noted that the groundwater however did go in the direction of College Brook.

Mr. Roberts asked if there would be re-grading with any of the repaving that was planned.

Mr. Farwell said this project was not about repaving, and would leave the existing paving alone. He said new pavement would be put in the proposed area.

Mr. Kelley asked Mr. Farwell if the infiltration trench proposed on the southern edge of the parking would be expected to function better than off the shelf items like Stormceptor, etc.

Mr. Farwell said yes, noting that the stormwater would be flowing through the media.

Mr. Kelley asked if this approach could work along the entire southern edge if implemented.

Mr. Farwell said in order to do so, there would be a loss of 4 ft along the length of that area, but he said it could be used for stormwater management.

Mr. Roberts said some comments from abutters had included the issue of lighting. He asked if there was someone to discuss this issue. He noted that the elevated lights mounted on the northeast corner of the Credit Union building that were directly pointed at the neighbors.

Mr. Sheehan said currently there were two lights mounted on the Credit Union building that shined into the woods, and said these would be gone when the area was redesigned. He also said he had talked with abutter Peter Anderson about putting a dome on the existing lighting to address this for the time being. He said there would be downward lighting with the new plan, and nothing on the side of the building to his knowledge that would shine onto peoples' windows.

Mr. Roberts asked about the topsoil/retention system proposed for the area to be planted with arborvitae. He said right now the slope was so steep that topsoil didn't stay put.

Mr. Sheehan said he had discussed this with DPW Director Mike Lynch, who had recommended that hydro-seeding that area would help it take quicker and would keep the soil in place.

Mr. Parnell asked where the rain garden would be located relative to the existing paving, and Mr. Farwell said the rain garden would be located 4 ft in from the existing edge of paving. Mr. Parnell received clarification that the bike path would be located just beyond that, so that essentially the area where the bike lane now was would become the rain garden.

Attorney Rattigan next reviewed the Conditional Use criteria under Article XIC, Section 175-72, B (Shoreland Protection Overlay District and Wetlands Protection Overlay District Conditional Use Criteria).

He first noted the memo from the Conservation Commission which indicated that the Commission had voted to acknowledge that conditions 2, 3 and 4 had been satisfied.

He said the Commission had not reached a decision on the first condition as to whether there was an alternative location on the parcel that was outside the wetland district that was feasible for the proposed use. Concerning this, Attorney Rattigan said the site was largely occupied by developed space, so the only feasible space was up on the hill, which the applicant didn't feel was a good idea. He said they therefore didn't think there was a feasible alternative, so felt that Condition 1 was satisfied.

Attorney Rattigan next went through the Conditional Use Criteria, under Article

VII, Section 175-23, C of the Zoning Ordinance.

1. Site Suitability

- a. He said the proposed expansion didn't require any new or special vehicle or pedestrian access, so this condition was met.
- b. He said the site was an existing legal use, and the availability of adequate public services would not be diminished by the expansion of the use to allow 28 additional parking spaces.
- c. He said the applicant thought the proposal would enhance environmental functioning, stating that the existing drainage was outmoded. He said the buffering was now insufficient, and said the new plantings would enhance this. He said moving the snow storage would enhance the environment. He said there were therefore no constraints.
- d. He said there were no utility services required by the proposed use. But he said storm water disposal would be enhanced by the proposed improvements that would be installed in conjunction with the 28 parking spaces.

2. External Impacts

Attorney Rattigan said to the extent the proposed 28 parking space use would change the property, the existing impacts arising from the lighting, screening and buffering would all be improved by the proposed plan.

3. Character of Site Development

Attorney Rattigan said the proposed 28 spaces were not incompatible with the existing character of the neighborhood. He said there was already parking on this side of the building and said the expansion was modest. He also said the plan was to mitigate the external impacts of the proposed use on the neighborhood by proposing suitable downcast lighting, increased buffering through new plantings and improved drainage.

4. Character of the Buildings and Structures

Attorney Rattigan said the site plan proposed no buildings and no structures, so it appeared that this provision was inapplicable. But he said the addition of new plantings for the site would mitigate any visual impacts and would improve the existing buffering between the adjacent uses and the existing parking on this side of the building.

5. Preservation of Natural, Cultural, Historic and Scenic Uses

Attorney Rattigan said the proposal would not adversely affect wetlands, floodplains, significant wildlife habitat, stone walls, mature tree lines, cemeteries, graveyards, designated historic buildings or site, scenic views and view sheds. He said the additional plantings would help buffer the site from adjoining uses.

6. Impact on Property Values

Attorney Rattigan said Brian White, a well known local property appraiser had provided a letter of opinion to address this criterion, and had indicated that property values would not be negatively impacted. He provided the letter to Board members.

Mr. White's letter said improving the drainage, buffering and lighting would separate and diminish the impacts on adjoining uses, and said he didn't think the use would cause or contribute to a significant decline in property values of adjacent properties.

7. Availability of Public Services and Facilities

Attorney Rattigan said the proposed would not impact any public service or facility. He said the proposed drainage would enhance the existing drainage from the site.

8. Fiscal Impacts

Attorney Rattigan said there would be no negative fiscal impact by allowing for a modest expansion of parking in an area of the parcel that was already dedicated to parking.

Attorney Rattigan summarized that the applicant believed the criteria were satisfied, and hoped the Conditional Use permit would be granted.

Mr. Kelley summarized that with this application, an additional 2600 sf of pavement was proposed. He noted the description of stormwater improvements Mr. Farwell had provided, which included two segments of rain garden along the southern edge, separated by the paved walkway; planting along the eastern edge of the parking; and some re-striping of the parking spaces. He asked if there were proposed lighting enhancements other than the cutoffs that had been noted.

Mr. Farwell said these lighting enhancements were shown on the site plan, and said the photo-metrics on this had been provided to the DPW.

Mr. Campbell asked if the two wall units would come off if this plan was approved, and was told yes.

Mr. Sheehan said a lighting plan had been provided that showed where the lighting would end.

Mr. Roberts said in the October 1st letter, there were several parking calculations. He asked if the parking yields were considered to be sufficient if the leased spaces were excluded.

Mr. Rattigan said no, and he spoke about the assumptions made by Mr. Campbell in arriving at the 304 space figure. He said it turned out that they had realized in going through the calculations together, that with respect to the restaurants, there had been an underestimation of 28 spaces. He said he would have all of this refined for the next meeting, but said he believed the existing need was 332 spaces, based on the underestimate of the 28 spaces.

Mr. Campbell said there would be a lot of parking figures thrown around, some from the public, some from the applicant, some he had come up with. He noted that his own estimate had been made based on not knowing the exact number of employees on a maximum shift.

He said the Board should direct the Code Officer to do the measurements and figure out what the number of employees were, and then come up with the final figures. He said this would otherwise be confusing to everyone.

Attorney Rattigan said that approach was acceptable to the applicant.

Mr. Campbell said Mr. Johnson could work with the individual business owners on this.

Mr. Roberts asked if a motion was needed concerning this, and Mr. Campbell said he would like to see one. He said it would probably take a few days for Mr. Johnson to do the parking analysis, and said he had already discussed this with him.

Mr. Parnell said it was crucial that this step be taken.

Mr. Ozenich asked what happened if the Mexican restaurant wasn't approved.

There was discussion that two sets of numbers could be developed, one that included the full build-out for the restaurant and one that did not.

Mr. Ozenich asked how frequently the lot was full.

Mr. Campbell said the parking regulations didn't say "only if you are full". He said there were a minimum number of spaces required, and there then could be a certain number above that. He said these regulations were typical of parking regulations around the country, and said the Durham numbers were probably well

above what would be needed.

Mr. Ozenich said stores in strip malls had a variety of hours when customers used them.

There was further discussion.

Mr. Parnell asked if the applicant believed he was allowed to have these additional spaces, and needed them, and Attorney Rattigan said yes.

Councilor Smith said having the Code Officer do the parking analysis was a good idea.

Steve Roberts MOVED that the Durham Planning Board ask the Planner to instruct the Code Enforcement officer to conduct a parking study of requirements by area and employees detailed in a fashion so that the various ingredients of that plan can be identified. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

Mr. Kelley MOVED to open the Public Hearing on an Application for Site Plan Review and an Application for Conditional Use Permit submitted by Daniel Sheehan, Durham, New Hampshire on behalf of Colonial Durham Associates, New York, New York, to expand the Mill Plaza Parking to create an additional 28 spaces, for the property shown on Tax Map 5, Lot 1-1, located at Mill Road Plaza in the Central Business Zoning District. Councilor Smith SECONDED the motion.

Mr. Roberts noted a late memo from the Chair of the Conservation Commission. He asked if there was anything in the report the public should be aware of before the Public Hearing was opened.

Chair Parnell read the memo from the Conservation Commission. The memo indicated that the Conservation Commission had voted unanimously to recommend that the incursion into the Shoreland Protection Overlay be allowed because the benefits of the proposal outweighed the impacts, and the standards for conditional uses in the SPO district had been met.

The memo also indicated that regarding the conditional use permit required under the Wetland Conservation Overlay District, the Commission had unanimously voted that 2 of 4 of the conditional use criteria were met, assuming acceptance of the current existing conditions. The memo noted that the Commission had reservations regarding the 1st criterion, which dealt with whether there were alternative locations/configurations for parking that could achieve the developer's needs while respecting the integrity of the wetland buffer.

The memo went on to say that the members of the Commission felt obligated to

include additional information on the context under which their discussions were held to make their determinations regarding this proposal. The memo said it was clear from the thoughtful debate that Commission members took seriously their role as an advocate for the environment, while balancing the proposed improvement to the existing condition at the time of permitting.

The memo said Commission members had expressed their gratitude at the developer's willingness to help mitigate some of the poor drainage control and runoff treatment around existing impervious surfaces as part of the expansion proposal, an action this proposal did not outright require.

The memo stated that the Commission had debated at length the exact determination of what the actual "existing condition" should be in assessing the overall improvements. It said that while seemingly outside of the purview of the Commission's role, members felt a need to note reservations with respect to a perceived lack of attempt to honor the WCO buffer while doing little to address restoration of the wetland and wetland buffer that was originally altered in violation of the WCO article.

Councilor Smith suggested that the Board try to go until 9:25 with the hearing, which they probably wouldn't be closing that evening.

The motion PASSED unanimously 7-0.

Chair Parnell asked members of the public who wished to speak in favor of the application to come forward.

Chuck Cressy, 578 Bay Road, and owner and operator of Durham Market Place at the Plaza, said he wanted to discuss what would be needed in the Plaza in the future for parking, assuming the Plaza wasn't redeveloped as proposed by the Mill Plaza Study Committee in 2006.

He provided three pictures taken that day at 5:10 pm, which indicated what happened at key times on slow days in front of Durham Marketplace. He said there were only two parking spots open in the "red zone", which were spots that were easy to get in and out of.

He said his store survived in Durham because it was able to get people in and out quickly. He said that was why he was very passionate about not seeing a spread of cars going down the Plaza, which was what would happen when people starting going to the Mexican restaurant.

Mr. Cressy said right now, all his employees parked in between the two buildings, or in the back part of the vacant building. He noted that he had three people who had a hard time with mobility. He said as the demand for spots increased and staff was encroached, they would be forced to move out to the area where new parking

was proposed.

He described how more business was expected at the Plaza, in part as a result of a new marketing program he was working on as well as upgrades to existing businesses and a new business at the Plaza. He asked the Board to think about all of this in terms of the future of good growth in Durham.

Ken Entz, owner of Wildcat Fitness, said he had a great business now in Durham, and said he hoped to grow the business more, to about 400 new members, and said if the Library found a new home, he wanted to take over that space. He said he would need additional parking for these customers. He noted that his employees parked on the back side of the bank to make sure there was enough space in the front.

He said Mill Plaza had generally been upgraded since the time he had moved in, and he provided details on this. He said a few more parking spaces were needed for his employees, and he also spoke about the need for more parking at Mill Plaza in general. He said no one was going to park and walk all the way from the other end of the lot in order to go to Durham Marketplace.

Mr. Parnell asked if Mr. Entz had gotten comments from his clients about parking, and Mr. Entz said that overall he had not, noting that his customers were coming to work out so didn't mind having to walk a little bit.

En Yu, owner of the upcoming new Chinese restaurant at Mill Plaza, said he was planning to have 6 employees in the kitchen, 2 waitresses and a bartender. He said there were 13 tables, which meant 52 seats; 6 stools at the bar; 4 more seats at the bar table; and 7-8 stools at the sushi bar.

He said with his previous Chinese restaurant at Mill Plaza, they didn't have many evening customers, and said it was hoped there would be more customers at night with the new restaurant. He provided details on parking near his building now, and said sometimes Wildcat Fitness took more parking, especially on Thursday and Friday evenings. He said it would be convenient for his customers to have more parking nearby, especially in the winter.

Mr. Yu said he didn't think the lighting he planned to put in on his building would affect the neighbors, stating that it would face downward. He explained that he would like the area to be brighter so when people passed by they would see the sign for his restaurant.

Brian Coza, owner of Moe's Italian Subs, said he had noticed a considerable increase in business at the Plaza over the past few years, and he provided details on this. He also explained that mid day was when he did the bulk of his business, and said any extras spots during that time would be good for his customers and his employees.

Town Engineer Dave Cedarholm noted the memo he had provided to the Board. He said he would like to speak in favor of the application, and said he applauded Shaheen Real Estate for proposing something more than what was typically seen in developments in Town. He noted that he had met with Mr. Shaheen on several occasions. He said he had also met with some residents, had heard their concerns and had relayed them to Mr. Shaheen and his engineer.

Mr. Cedarholm said the stormwater management plan that had been proposed would help to address the water quality issues at College Brook. He said parking issues aside, along with hurt feelings about what had been done with the parking lot in 2002, College Brook was impaired. He noted that it was on the Clean Water Act 303 (d) list, and had been on that list for a long time. He said anything the abutters to College Brook could do to help that impairment was significant, and said this project did that.

Chair Parnell asked if anyone would like to speak who was against the project or had concerns about it.

Peter Andersen, 8 Chesley Drive, said he was an engineer and had owned properties similar to this. He also said he had owned a parking lot similar to this in downtown Rochester. He said the first thing he had done with his own lot was to make employees park further away because the spots near the door were valuable.

He also said he had been a builder for the last 25 years, and was a real estate broker who worked all over New England, building schools, commercial buildings, etc. He said he also did small remodeling projects in Durham because it was close to home and he enjoyed being part of his community. He noted that he had grown up in the Faculty neighborhood, and had a long memory of what College Brook had been like in the past.

Mr. Andersen asked Mr. Farwell if test pits had been done to determine the soils at the site, and Mr. Farwell said the soils were based on SCS soil survey maps. Mr. Andersen asked if clay was a type C or D soil, and Mr. Farwell said it could be either, and said dissolved clay was always a D soil.

Mr. Andersen said that on his site, which was immediately adjacent to the Mill Plaza site and where he had been working for the past two years, nothing below six inches was anything but impervious clay.

Mr. Farwell said his drainage analysis assumed a 0% infiltration, which was a worst case situation.

Mr. Andersen said the drainage analysis said there was a zero percent infiltration rate in the section below the two foot perforated pipe. He asked if there was an inch and half absorption rate per hour. He said another question was for the owner of Moe's, Durham Marketplace, and Wildcat Fitness. He said having been a

business owner in the past, a parking spot in front of the establishment was worth more than one behind the building.

He said this parking lot could easily be re-stripped to achieve these same goals. He said what was basically at stake here was much more than a few parking spaces that were in a wetland protection area. He said it was the rule of law in Durham. He said the area in question was in the approved site plan for Mill Plaza as a buffer area.

Mr. Andersen noted that the area in question was brought up several years ago as a place to put cars and was denied. He said in 2002, that area was bulldozed and a good portion of it was paved. He asked if people who came in and removed trees and protective buffers between commercial and residential areas were going to be rewarded?

He said this area had been in the Master Plan as one to be protected. He also noted that \$250,000 of architectural time had been donated to Durham as part of the Mill Plaza Study project, and said one of the main findings of the study was that the buffer area around College Brook and between Mill Plaza and Chesley Drive should be enhanced.

Mr. Andersen said the abutters hadn't forced this issue because of the support for engaging the Town and the owners in the future of Mill Plaza. He said Mr. Shaheen had now indicated that there were no major plans for Mill Plaza because of the economy, and the plans now were to add onto existing properties.

He said these were all great things for the Town, but he asked if the abutters' rights had now gone away, because they had been trying to negotiate something grander for the Town.

Mr. Andersen said right now, they had cut down right up to his lot line in some places, and within 10 ft in others. He noted the 15% slope on his own property, and said all the topsoil there had been washed off. He said he was trying to re-stabilize his own slope, and said Mr. Lynch was wrong about stabilizing the 35% slope on the Mill Plaza area. He said it was clay, and didn't grow anything. He said there was a serious problem there, and said the buffer was there for a reason.

He said lights came into his bedroom window, but said this wasn't about him, it was about the people in the Faculty neighborhood and others who were passionate about keeping this green necklace in Durham.

Mr. Andersen said there was a line of trees that had largely had their roots excavated by the previous work. He said Attorney Rattigan had just indicated that nothing would happen to the mature tree lines, and that there would be no significant soil movement. But he said they had already moved 2800 cubic yards. He also said that last year, the snow was out past all the parking spaces. He said

there were 30,000 cubic yards of snow from the parking area.

He said if they maintained the parking lot to its preconstruction level and used the lot wisely, they would not have an increased salt issue. He said College Brook already had high levels of salinity.

Mr. Andersen spoke in some detail on the Conservation Commission's perspective on this situation. He then said he had done a complete parking lot analysis since this project had started, and provided details on this. He said he had given a four page in depth parking analysis to the Board, and noted that as part of this analysis he had determined that some of the owners had said they didn't need more parking.

He noted previous drafts of his analysis, but said in his most recent analysis, the total number of existing spaces was 347. He said this analysis would be given to the Code Enforcement officer, and said he had therefore erred on the side of more parking spaces. He said if the La Paz was built out to phase 3, 52 spaces would be needed, which approached the amount needed by Durham Market Place. He said that increased the demand on the parking lot quite a bit over what the demand had been for the Movie Stop, which was 8 spaces.

Mr. Andersen said if the La Paz went in, and the drive thru for the bank went in, 14 spaces would be lost overall. He said the new total would be 287 spaces that were allowed. He said if the applicant showed a need for an additional 10%, they would get another 29-30 spaces, and with adjustments for what they were going to lose, the new total would be 335, assuming they got the Conditional Use permit.

He said he would argue that they should get the permit for another 29-30 spaces, and he provided details on this. He noted they had to have someone to police the lot, and this cost money. He said this was an incidental use of the lot to have that small amount of rental. He noted that it brought up the issue of whether there was a change of use involved with this.

Mr. Andersen then spoke in some detail concerning existing and allowed parking spaces according to the Site Plan regulations and the Zoning Ordinance. Among other things, he said all of the spaces met the 9 ft by 18 ft standard in the Ordinance. He noted that the Town allowed 30% compact spaces in any plan, and said by re-striping the parking lot, they could gain a lot of spots.

He also said the lot was ugly, and noted that the medians were supposed to be wider, and that there should be twice as many there as there were now. He noted that the regulations said there shouldn't be more than 40 spaces in one location, but said there were 80 spaces in some areas.

Mr. Andersen said as things came forward, and it looked like the Plaza was going to stay in its present configuration, there were a few things the applicant should

do. He said they could enhance the buffer. He also said there could be a trading of some areas in the lot, and he provided details on this.

He said he knew the numbers he had come up with were defensible and would be scrutinized. He then reprimanded the Planning Board for the fact that he had had to develop these numbers. He said this should have been done by the applicant, not himself, and said he had spent thousands of dollars of his time on a complete parking analysis, and now the Code Officer would have to spend a lot of time doing it.

Mr. Andersen said he hoped the Board would seriously reconsider accepting applications when they were not complete. He said it would be impossible to approve this application that evening, when there had not been the benefit of having a parking plan everyone could see. He said if the Board passed this in any form, it would be illegal according to both the planning and zoning regulations. He said the applicant would need to go before the ZBA.

Brian Barrington of the Coolidge Law Firm said he represented Vincent Bianchi who lived at One Croghan Lane. Attorney Barrington said he was present to talk about the safety aspects of the Mill Plaza parking lot. He noted that the Plaza, including the entrance, had been designed in 1977, and at that time, a raised 6 ft paved barrier/walkway for pedestrians and bicycles from Mill Road to Chesley Drive had been approved. He noted that the 2002 review of the site had pointed out that for some reason this was never built according to the plans.

Attorney Barrington said Vincent Bianchi's mother had been struck and killed at the crosswalk at this entrance to Mill Plaza, and he provided details on this. He said the entrance had one lane coming in and two going out, with a median in between. He noted that the entrance was built at State expense because a through street through Chesley Drive had been planned at the time.

He said no engineering or review of the entrance had taken place since 1977, despite the various changes at Mill Plaza. He noted safety concerns expressed in 1977, and said the requirement at the time was that the walkway would be raised, but said this didn't happen.

He said after Mrs. Bianchi was killed, the family had asked why the pedestrian walkway was never built. He said the Town Administrator had said he would review this, and would get back to the family, but said there had been no response.

Attorney Barrington said now the Plaza was back with expansion plans. He said there had been so much focus on drainage and environmental issues, but he said the first issue of site plan review was safety. He said this application should address that, and said the pedestrian pathway should be raised so children and other pedestrians and bicyclists wouldn't get hit.

He said a second request was that a safety engineer should review the entryway, to see what else could be done. He noted a report on traffic calming in Durham that showed the devices the Town at its own expense had installed in other locations, but he said there was nothing at this intersection. He said when Mrs. Bianchi was struck and killed last December, all that was there was some worn paint.

He said perhaps the Board could order that there must be a blinking light there or that the middle island should be widened. He also noted some pedestrian areas at the Plaza that had been obstructed until recently.

Attorney Barrington noted that the person who had hit Ms. Bianchi had said he had never seen her entering the crosswalk. He also said the person behind him had said he would have hit her as well. He said a witness said Mrs. Bianchi had stopped briefly before stepping into the crosswalk, but did not wait for a signal from any vehicle.

He said additional signage was needed to remind people that people had the right of way, and said the same traffic calming that was found at other intersections in Town should be applied to this intersection. He said Mrs. Bianchi should not have died in vain. He said she had not dashed in front of a car, and instead was almost to the middle and was hit hard enough so that the grill of the truck that hit her was damaged. He said this could happen again, and should be addressed in the Board's deliberations,

Joshua Meyrowitz, 7 Chesley Drive, said he and others in the neighborhood loved the Plaza and wanted it to succeed, were happy about the restaurants coming in and loved Durham Market Place. He said he appreciated Mr. Sheehan's management style, and provided details on this, and said he was hopeful that the planting could be put in.

But he said the red zone Mr. Cressy had talked about was not where the new parking was proposed. He said the back lot they were talking about adding to was empty or almost empty. He said if they needed 20 more spots, all they needed to do was to stop renting the spots that were currently rented out.

He noted that these 20 spaces weren't mentioned in the application because they were a change of use that was not authorized. He said if a change of use application were required for them, a storm water management system might have to be put in.

Mr. Meyrowitz said for the first time, Mill Plaza was coming up with some stormwater management. He said according to Conservation Chair Jamie Houle, who was a leading expert on stormwater management, what was proposed for stormwater management would not undo all the damage done from bulldozing

and paving, but would be better than what was there right now.

He said a question for the Board was whether the rain garden was enough of a prize to let the applicant take the area that was illegally bulldozed in 2002, and take the last piece of green in the wetland setback. He said although this area was only 1/10 of 1 percent of the overall paving that would be gained for 4 more cars, it was 50% of the distance from the College Brook bridge to the parking lot.

He said the Conservation Commission had spent 4 ½ hours discussing this issue, and what the pre-existing condition was. He said if this application was approved, it would be the first legal authorization of the 2002 paving. He said if the 2002 state of the hillside was the pre-existing condition, the comparisons Attorney Rattigan had made should be to that condition.

Mr. Meyrowitz said the Conservation Commission had said if the pre-existing condition was considered to be the 2001 condition, the application would fail to meet all 4 criteria for the wetland overlay.

Mr. Meyrowitz said there were scores of Durham citizens who with experts had spent many months on what to do with Mill Plaza. He said clear guidelines had been developed, and he read through them. He noted the issues of stabilizing and protecting neighborhoods through transitional yards; vegetative buffers; protection of rare species in the area; pedestrian access to Mill Pond with footpaths through from Mill Plaza; raised curbing for pedestrian access; plantings to break up the parking lot for safety and stormwater management purposes; etc.

He said this proposed project went in the other direction from what had been recommended, and said the current application was about legally authorizing an illegal degradation of the buffer in 2002, and allowing it to be further degraded. He said he hoped the Board would vote against this application.

Attorney Scott Hogan said he represented 6 homeowners in the Chesley Drive and Garden Lane neighborhoods adjacent to Mill Plaza. He noted his own experience going to the Plaza over the years, and said he had been surprised to learn that people in the neighborhoods had for several decades been dedicated for various reasons to protecting the buffer between their neighborhood and the Plaza.

He said when the buffer issue was visited in 2002, the year the buffer was unlawfully bulldozed and paved, it came out that all the plans up to that time indicated that a 70 ft buffer was appropriate. He provided details on this, and said the consultant in 2002 had said the buffer should be recognized as part of the original approval, and should therefore maintained.

Attorney Hogan noted that the abutters had said they understood that new businesses were proposed, and had asked for an analysis for the parking lot. He spoke about the various parking analyses that had been, and then noted that the

Board had directed the Code Officer to go to the site and determine how many spaces there were.

He said everyone seemed to agree that given the new types of buildings and tenants coming in, there would be different traffic patterns and volumes. He noted that the intersection was already complicated, but said there had been no additional traffic study needed for this application. He said it still wasn't clear how many parking spaces there were, and also noted that the Conditional Use application had indicated concern about the changing needs of the community.

Attorney Hogan said the application said all the 28 spaces were for tenant needs, but he said they all knew there were 28 spaces currently rented that could be available to customers, an approach which would avoid incursions into the proposed area.

He said there was a lot of downtown development right now, which was creating huge pressures there, including at the parking lot. He said it came down to the applicant needing to come in and prove to the Board how many spaces there were, how many were needed, and if there was some way to design the parking lot to get those spaces without having to take away the buffer that protected this neighborhood.

Attorney Hogan said it seemed there were a variety of ways to achieve this, or at least it should be determined if it could happen, and said the applicant had the burden to show the Board that it was or was not feasible. He said he didn't know if this was the case, but said he did know that the property owner had done something unlawful with the prior bulldozing and paving. He said considering this lawful was rubbing people the wrong way.

He read from Mr. Harwood's findings in 2002. He also said it was known that there were no approvals given for the operation of a commercial parking lot, which should be subject to a full site plan review. He said in this context, the Board should consider whether traffic patterns and volumes should be looked at to see if something else should be done to address them and ameliorate light, noise, vibrations, etc. for the neighborhood. He said he had been amazed over the past few weeks to see how much pedestrian, bicycle, and skateboard traffic there was every day in that corridor.

Attorney Hogan said what the applicant had proposed would improve stormwater management, and he noted that this would have been required if they were going through a site plan application for a change of use. But he said peoples' use and enjoyment of their properties depended on the sufficiency of the buffer, and said he hoped there were some practical ways it could be maintained and improved.

He said he believed there were design approaches that could get at the needs of the Plaza and still maintain the integrity of the buffer. He said the people he

represented loved the Plaza and thought it was the Towns biggest downtown asset. But he said they also felt the buffer was integral to the value and daily use and enjoyment of their properties.

Attorney Hogan said more baseline information was needed to make sense of all of this. He said the parking area proposed for expansion was rarely filled right now, but said people could envision a time when it might be filled, perhaps all the time. He said if it was, activity in that area would be that much closer to the neighborhood. He said a reasonable expectation they had was that the Board would provide them with some basic protections.

Debra Hirsch Mayer, 19 Garden Lane, said Attorney Hogan had expressed much of what she had wanted to say. She also said she had sent a letter to the Board, and said among other things it had indicated that there was a growing body of evidence that being in nature had a very positive effect on people, even a small slice of it like the Chesley Marsh and College Brook way area. She provided details on this, and said it behooved them to spare as many green spaces like this in Durham as they could.

Ms. Hirsch Mayer then presented a petition to the Board regarding the application that had been signed by 120 people, and read it out loud. The petition requested that the Planning Board reject the application to expand parking at the rear of Mill Plaza. It said scores of Town residents and outside efforts had worked together over the last decade to create a vision for the downtown core, and said these efforts, including the 2000 Master Plan update and the 2008 Mill Plaza Study Committee Report had laid out some clear goals:

- Expand the greenway buffer between the Plaza and the adjacent residential neighborhood
- Reduce impervious paving surfaces along the College Brook Greenway
- Enhance the pedestrian gateway to and from the rear of the Plaza, with its paths along the Chesley Marsh, the wooded path to Faculty Road over the College Brook footbridge and the Chesley Drive walking link to the Mill Pond and Milne Park.

The petition said the current application ran directly counter to these community recommendations. It said the Plaza was asking for 24 parking spaces in an area it had bulldozed and paved without a permit in 2002, before being stopped by the Planning Board, and was also asking for 4 additional parking spaces in the 2600 sf of what was now grass that ran along the pedestrian entrance to the rear of the Plaza.

The petition said the first request would put cars right at the residential boundary, and the second request would push impervious paving, car noise and headlights further into the greenway buffer and within 30 ft of the Chesley Marsh wetlands.

The petition said many who lived or worked in Durham enjoyed this stretch of

nature in the center of Town, and noted that most Faculty neighborhood children used the pedestrian paths to enter the Plaza and to walk to and from school. It said the College Brook /Chesley Marsh greenway was a crucial habitat for wildlife, and enhanced the aesthetic and psychological pleasure of human residents.

The petition urged that the Planning Board reject the current application, and also urged that any new Plaza parking expansion plan should include:

1. Documentation by the Plaza of the claimed shortage of parking spaces.
2. Cessation of unauthorized long term rental of Plaza parking spaces unless a change of use application was submitted and approved.
3. Protection of the limited remaining greenspace, and restoration of the trees and plants that were destroyed in 2002 in the unauthorized bulldozing of the hillside at the rear of the Plaza.
4. Planning Board consultation with independent stormwater experts who could assess the drainage claims of consultants paid by the Plaza.

Ms. Hirsch Mayer said those who had signed this petition included residents who lived in the Faculty neighborhood as well as many other places in Town, and also included people who simply shopped at Mill Plaza. She said she was confident that more signatures could be obtained if the hearing was continued past that evening.

Chair Parnell said the Board would continue the hearing until 9:30 pm.

Martha Burton, Burnham Ave, said she often walked the path between Mill Plaza and Chesley Drive. She said there used to be a hillside there but said it was now gone. She said the people who took it out should put it back, and said they should not be rewarded for taking it out, planting it with grass and paving it. She also said she often crossed the intersection at the entrance to Mill Plaza, and said it was hard to see because of the bushes there She said it would be better if they were trimmed.

Maura Slavin, 10 Burnham Ave, said she had moved to Town five years ago, and had picked Durham because it was one of few places where there was a quiet neighborhood where kids could walk downtown and to the schools. She read a letter from her daughter that expressed how much it meant to her to be able to walk that path from the neighborhood.

Dave Howland, Little Hale Road, thanked the Planning Board for listening to what they all had to say, and noted that the last time he was before the Board, it was as the Chair of the Mill Plaza Study Committee. He said he was speaking now as someone who had been a resident of the Faculty neighborhood for 10 years.

He said he wished they were talking about something positive at the Plaza, and said he was frustrated they were back having to defend the fragile wooded

wetland border. He said countless documents and letters had established beyond a doubt the importance of this area, yet here they were.

He said rather than focusing on the particulars of this specific application, he wanted to place the decision that would be made in stark terms. He said approving the application would reward bad behavior, and would send a message to developers that it paid to bulldoze and then ask for forgiveness later.

Mr. Howland provided details on this, and said the applicants would learn they would get what they wanted even if they had thumbed their nose at the very community that had reached out to them, despite this behavior, in an unprecedented process to listen and build consensus for meaningful redevelopment of the Plaza. He said this had been no small feat in Durham, which was slow to welcome change.

He said to approve this application would send a message to citizens who played by the rules and took time out of their busy lives to participate in the Mill Plaza process that none of it mattered. He noted the award from the NH Planners Association for the work done by the Mill Plaza Study Committee.

He said this wasn't to assume that the plan that was developed should be built out, but said it had provided some guiding principles, including restoration of the buffer, putting in sidewalks for safety, and doing some wonderful things near the downtown core. He said it was common sense stuff, based on a lengthy set of studies.

Mr. Howland said these applications called into question what value citizen input had, and said this really hung in the balance. He said he hoped the Board would have the courage and principle to send the right message.

Councilor Smith MOVED to continue the Public Hearing to the next meeting on October 28, 2009. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.

Break from 9:29-9:43 pm

VII. Other Business

A. Old Business: Discussion of Courthouse District Parking Requirements

Mr. Campbell said that at the last Board meeting, he and Councilor Smith had discussed the difficulties for businesses thinking of locating in the Courthouse District because parking wasn't currently allowed in front of a building without a variance.

He said they had put together some possible changes to the development

standards for the Courthouse District, involving striking out some existing language and adding some new language.

He said he and Councilor Smith had also discussed the idea of changing two sections in the parking regulations, under 175-111 G 3, "Parking serving single family and duplex units will be permitted in the front yard setback for up to three vehicles per household; however, the parking must be on paved, gravel or similar pervious surfaces as required in G.1.a and b above.", and putting something there about the Courthouse District. He provided details on this.

Mr. Kelley confirmed that the goal with the proposed changes was to permit parking in the front of the structure and to provide conditions for how this could be done.

Mr. Roberts said some towns addressed this issue through special exceptions or Conditional Use. He said it would be easy to prove the need for parking in front, for the Cumberland Farms site.

Councilor Smith said the same thing would apply to the Village Garage and the property next to it.

Mr. Campbell said part of him said the need for this was so obvious that a question was why it would need to go through the Conditional Use process.

Mr. Kelley asked what the Master Plan offered for guidance regarding parking in that area of Town, and Mr. Campbell said he didn't think it talked about parking.

Councilor Smith said there was no Courthouse District when the Master Plan was updated. He also noted that there was no longer a court in the Courthouse District, and said he felt bad about this because he was the person who had suggested this name change.

Mr. Kelley noted that he had been at an ORYA meeting at the Courthouse building recently and liked the fact that it was being used that way.

Mr. Campbell reviewed the goals in the Master Plan for what was now the Courthouse District, and how this had been translated in the Table of Uses. He noted that while it talked about creating a commercial zone, franchise architecture, adaptive reuse of old buildings, etc., it was basically silent on the issue of parking.

Mr. Kelley said he was looking for something from the Master Plan that they could hang their hat on. He said he thought the Board was in agreement that the commercial and office businesses required parking.

Mr. Campbell noted that the Master Plan recommended providing incentives

through Zoning and development recommendations that led to the construction or conversion of buildings.

Mr. Roberts said avoiding strip development was a consideration in Section 9.18 of the Master Plan, which was why allowing no parking in front became part of the package. There was discussion on this by the Board.

Mr. Roberts noted that some communities wishing to avoid strip development put in Condition Use, special exceptions, etc. in order to provide some flexibility.

Mr. Ozenich said the idea with requiring no parking in front in that district was to have an attractive front with nice buildings that fit with the Courthouse and the new townhouse, and the parking behind the building.

There was discussion about the fact that the front setback was 15 ft. There was also discussion about the other properties in the Courthouse District that a change to the Ordinance regarding parking would impact.

Chair Parnell said the person interested in using the Cumberland Farms site wanted to have parking in front, and this was rejected by the Town Council. He said there had been a view that parking in front wasn't a good thing, but said perhaps that was changing. He said perhaps it would therefore be easier if this was a conditional thing, as opposed to just getting rid of it.

Mr. Kelley noted that the lot sizes in the Courthouse District differed, so that with the redevelopment of some, parking could fit to the rear of the building, while with the Cumberland Farms site it could not. He provided details on this.

Councilor Smith suggested that they could leave Section 175-45 (F) 2 as it was, and could add a note at the end that this provision could be waived by the Planning Board.

Mr. Campbell suggested that it could say that with a Conditional Use permit, the Planning Board could allow parking in the front.

Mr. Kelley said he was a big fan of Conditional Use. He spoke in some detail on this, and said it allowed the Planning Board to set the conditions for using a property.

There was discussion that none of the individuals interested in the Cumberland Farms property had been willing to go before the ZBA over the hardship of the lot size. Mr. Campbell said at the time, people were afraid to go to the ZBA. He noted that the Board could decide to leave the Ordinance as it was, and tell people to go for a variance concerning the parking.

Chair Parnell said that was what they had been doing, and the evidence was

available on what the result had been.

Mr. Roberts asked if research had been done on how other communities handled this issue.

Mr. Campbell said he thought Durham had been leading the way in not allowing parking in front.

Councilor Smith said looking at the Courthouse District, it was unlikely that the properties there would be torn down and new buildings would be pushed to the back.

Mr. Roberts noted that the hotel project has been able to escape the parking issue.

Mr. Kelley agreed that it was highly unlikely that the properties would be redeveloped to some different sort of use.

Mr. Campbell said an issue with Cumberland Farms was that the price of the lot was \$500,000 just for the lot, because the building would have to be torn down.

Mr. Kelley said he supported using Conditional Use to address the parking issue, and said he thought the Board should ask the public what they thought.

Mr. Campbell summarized that the Board would keep the language in Section 175-45 (F) 2, and would add that the Planning Board would allow parking in the front setback with the approval of a Conditional Use permit.

He asked if the Board wanted to change 175-45 (F) 3 - Front Yard Area to read: "The area between the front wall of the principal building and the front property line **that is not used for parking** shall be maintained as a vegetated area of lawn and shall not be used for vehicular facilities or parking";

and (F) 4 Landscaped Streetscape Strip to read: "A landscaped strip at least **five (5)** (*strike ten (10)*) feet in width shall be maintained between any parking or vehicle service area and the front property line except for driveways. The buffer strip shall be landscaped in accordance with the provisions of Article XXII."

There was discussion on this, including the fact that the right of way width in that area permitted sidewalks and that the right of way was virtually the back of the sidewalk. Mr. Campbell noted that the decorative fencing and landscaping for the Hotel and the Irving station had fit with this.

Mr. Kelley said Conditional Use would not allow relief from the 5 ft landscape strip, but would just allow the parking to go behind that strip.

Mr. Campbell said that was correct, and said what was proposed would keep the

best of both worlds. There was discussion about the idea of reducing the landscaped strip from 10 ft to 5 ft, and that if a developer didn't get the Conditional Use permit to park in the front, the setback would be 15 ft.

Chair Parnell asked if instead of the amendments proposed, the Board should say the parking issue would be handled the way building height was handled in the Zoning Ordinance.

Mr. Kelley said he liked using Conditional Use because then the Board could judge whether the vegetative strip was enough.

Mr. Campbell noted that with Conditional Use, the Board could also say less parking was required.

Mr. Kelley said he wanted to see if there was a deal breaker in the Conditional Use process, and he read through the criteria. He then said he liked the idea of using it, and asked Mr. Campbell to restate the proposed change.

Mr. Campbell said the proposal was that the Board would keep Section 175-45 (F) 2 and would add a sentence saying "However, the PB may allow parking in the front setback with the approval of a Conditional Use permit."

Richard Kelley MOVED that the Board advance to Public Hearing the proposed changes to Section 175-45 (F) 2, 3 and 4. Councilor Smith SECONDED the motion and it PASSED unanimously 7-0.

On a separate issue, Mr. Campbell noted that he had provided the Board with the Council's proposed change to Section 175-56 (A) regarding density for elderly residential uses, which clarified the wording the Board had recently developed.

Councilor Smith said the Council had seen the ambiguity in keeping the wording "for elderly occupancy" and he said taking it out reflected what the Board had intended.

Mr. Roberts asked if the Council had had any issues with what the Board was trying to do with this provision.

Mr. Campbell said that was yet to be seen, and said the proposed provisions had been forwarded on to public hearing at the October 19th Council meeting.

B. New Business

Mr. Campbell said for some reason, the Site Plan Regulations had some parking requirements, and some were different than those in the Zoning Ordinance. He

said while parking provisions in the Site Plan Regulations could be waived the Ordinance provisions could not, which was why he usually went with those.

He suggested that at some point in the future, the Board should strike the references to parking in the Site Plan Regulations, and just go with the Zoning Ordinance parking provisions, in order to avoid confusion.

Mr. Kelley said he had been nominated by the Governor and Council to serve on the Lamprey River Management Committee, along with Public Works Director Mike Lynch, Town Engineer Dave Cedarholm, and Wesley East, the waterworks operator. He said this representation was important because the Lamprey River was one of the sources of the Town's water supply.

Mr. Campbell said that at the November 18th meeting, there would be a conceptual consultation for the hotel with conference center rooms nearby.

Mr. Roberts spoke about the need for a strategy to have some architectural design coordination between construction projects in Town. He noted that Meredith had not done this, and said it was harder to accomplish than just having an architectural design ordinance in place.

Mr. Campbell said there would be a discussion on this as part of the conceptual consultation.

Mr. Roberts noted that developers so far had worked with the Board, and had been successful.

Mr. Campbell said there would be some continuity in terms of design between the Costas project and the 6 Jenkins Court project.

Mr. Roberts noted that a goal of the Master Plan was to put some good architectural development in at Mill Plaza.

Mr. Campbell said they would hear a lot about this issue during the charrette process, and said it would be reflected in the next Master Plan update.

There was discussion about changes to the Irving station site in terms of storage of materials outside, and upkeep.

C. Next meeting of the Board: October 28, 2009

VIII. Approval of Minutes - September 9, 2009

Postponed

IX. Adjournment

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

Adjournment at 10:19 pm

Victoria Parmele, Minutes taker

Stephen Roberts, Secretary