

*These minutes were approved at the December 9, 2009 meeting.*

**Durham Planning Board Agenda  
Wednesday October 28, 2009  
Durham Town Hall - Council Chambers  
7:00 PM**

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

**ALTERNATES PRESENT:** Wayne Lewis; Kevin Gardner

**MEMBERS ABSENT:** Councilor Neil Niman

**I. Call to Order**

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

**II. Approval of Agenda**

Chair Parnell said the Board would not be doing Item VIII concerning the SWOT analysis that evening, because EDC Chair Chris Mueller was unable to be at the meeting to make the presentation.

*Councilor Smith MOVED to approve the Agenda as amended. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.*

**III. Report of the Planner**

Mr. Campbell said the EDC had met and discussed the issue of business retention, including developing a possible list of questions to ask local businesses in order to gather as much information as possible from them. He noted that EDC member Peter Ventura had resigned, and said alternate Tom Elliot would be requesting to take Mr. Ventura's place for the remainder of his term. Mr. Campbell said there were now 2 alternate positions available on the EDC, and said one application had been received.

Mr. Campbell said on October 19<sup>th</sup>, the Town Council had approved the Zoning amendments the Planning Board had forwarded to them.

Mr. Campbell made note of the fact that the Town had contracted with B. Dennis Town & Building Design to review and suggest changes to the CBD zoning, and to create a strategic plan for the community core. He said the charrette would run from November 5-9 at Holloway Commons.

Mr. Campbell said he, University planner Doug Bencks, and Council Chair Neil Niman spoke at the recent community breakfast hosted by the University. He said it was a good opportunity for everyone to get together to talk about the different projects that were going on, and he said it went well.

Mr. Campbell said the Technical Review Committee had recently approved the walk-in freezer/refrigerator for Dunkin Donuts at the Irving station.

Mr. Campbell said that for the November 18<sup>th</sup> Planning Board meeting, there would be a conceptual consultation concerning a proposed hotel/conference center. He said there would also be a conceptual consultation with representatives of the Seacoast Repertory Theatre concerning the proposed project at the Mill Pond Center property.

Mr. Campbell said he had also recently received an application for an amendment to the site plan the Board had approved for Perry Bryant's student housing project. He explained that plans for the first building that had been approved were still moving forward, but said Mr. Bryant wanted to combine the other four approved buildings into one building for a variety of reasons. He said it would be a good project, and would move the development further away from the wetland buffers. He noted that the porous asphalt and green roof features of the original project would remain.

**IV. Public Hearing 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 Zoning District.

The applicant, Doug Greene, spoke before the Board. He said he proposed to take the existing vacant spot next to Rite Aid and put a Mexican Restaurant in there. He said he was applying for a three phase construction, the first of which was to create the restaurant and get some additional restrooms 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 had formerly been outdoor seating along the side of the building.

Mr. Roberts said his understanding was that the landscaping would occupy what was now a fire lane that was not a mandatory fire lane.

Mr. Greene explained that the fire lane was not mandatory because in addition to it, there was two-way traffic in front of the building. He said he had spoken with Town officials about this, and said he was told he could come out in front and get some patio space similar to what had been done at the ice cream place.

Chair Parnell asked what the seating capacity was for the various phases.

Mr. Greene said for the first phase, there would be seating for 50 people. He said the outdoor patio seating in phase two would be for 34 people, and said with the final build-out in phase three, whether as outdoor patio or future indoor space, would accommodate 55-56 seats. He said the total number of seats was about 140.

Ms. Fuller asked what the time frame was for the phases.

Mr. Greene said the phases would occur as soon as possible, as business and revenue would allow. He said the first phase was critical and said he was shooting for a spring opening, and would then immediately try to take advantage of having outdoor seating. He said the major dining addition in phase three was probably 3-4 years off.

Mr. Ozenich noted that there was a loading dock behind Durham Marketplace, and asked if the turning radius needed for trucks had been continued with this plan.

Mr. Green said he had taken this into consideration, and was staying within the existing turning radius. He said the build-out would only come out as far as the existing parking, and said the traffic aisle to the loading areas would remain free. He said the existing parking in the center aisle and along the other building would stay as is.

***Councilor Smith MOVED to open the Public Hearing. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.***

**Hillary Scott, 20 Davis Ave.,** asked where the bump-outs would be located, and Mr. Greene explained that the bump-out in the front would be within the existing fire lane, and the bump-out on the side of the building would be within the existing turning radius.

Ms. Scott asked if there would be a reduction in the parking spaces on the side of the building, and Mr. Greene said there were seven now, and said these would remain as more compact spaces for now, but would be taken out when phase two occurred.

Ms. Scott asked Mr. Greene if he had approval to do that, and he said yes.

**Peter Andersen, 8 Chesley Drive,** said he thought this was a great plan. He said he had one concern, and noted that people coming out of the restaurant might have consumed alcohol, so might not be totally paying attention as they came out of the parking lot where Mrs. Bianchi was killed, which was already not a safe intersection. He encouraged the Board to do a full site review of the traffic circulation of the parking lot.

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

The Board agreed to deliberate on the application that evening, and began discussion on the draft Findings of Fact and Conditions of Approval.

Mr. Gardner noted that there was a Condition of Approval that a water model would be

run by the applicant, through Underwood Engineering. He asked for clarification on this.

Mr. Campbell said it was a requirement of the DPW that the calculations of the water a business would use were put into a model the Town had. He said the Town had a contract for Underwood to do this .

Ms. Fuller said the site walk Minutes should be corrected to indicate that Mr. Roberts, not herself, was the Planning Board secretary.

Chair Parnell noted that the applicant had requested some waivers, which the Board had to vote on.

Mr. Campbell said if the Board waived the surveyed site plan requirement, the mylar plat would no longer be necessary. There was discussion that Mr. Campbell had provided an existing conditions plan from another application that included the site under consideration.

A member of the public asked that the waivers being requested be read out loud.

Chair Parnell said one waiver was concerning Section 7.02 (D), for the surveyed site plan, and the other was from Section 9.03 for the stormwater drainage analysis.

Ms. Fuller said typically in the past, when new tenants came to the Plaza the Board had not asked for site plans.

Mr. Campbell said that was correct, unless it was something involving increasing the amount of impervious surface.

Mr. Roberts said he assumed the plan elevations the Board had received were to scale and had been done by a registered architect, and that it was the surveyed site map and building location on the site the Board would be waiving.

Mr. Campbell said that was correct, and said Mr. Greene had replaced the surveyed site plan with floor plans and building elevations.

Mr. Roberts said he was happy with what had been provided.

***Susan Fuller MOVED to waive Site Plan Regulations Section 7.02 (D), for a surveyed site plan, and Section 9.03 for a stormwater drainage analysis. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.***

Mr. Kelley noted that the Fire Department had suggested an awning system in phase 2 rather than the tent structure, and asked if this had been implemented in the plan.

Mr. Greene said it wouldn't change substantially what was shown on the drawings. He said it was really just a matter of wording, and the fact that an awning was an

appurtenance to the building as compared to a free standing tent structure.

Mr. Campbell said a tent brought up life safety code issues more than an awning would.

Mr. Ozenich said now that there would be a lot more traffic as a result of this restaurant, he wondered if there should be a few more handicap parking spaces designated out front.

Mr. Greene said he and Mr. Johnson had discussed this on Friday, and said there were 4 spots.

Mr. Ozenich said those spots were there for the drug store, but said there would be a lot more traffic with the restaurant. He suggested that the two spots out front closest to the restaurant should be designated as handicap spaces.

Mr. Greene said he would be happy to look at this again, but noted that Mr. Johnson had said the 4 spaces were adequate for the needs. He suggested that this could be looked at again if there was an issue.

Mr. Kelley said with the extension, he wondered if those two spaces would be moved anyway.

Mr. Campbell said the code would require that those two spaces be retained for handicap parking, and two regular spaces would be lost by moving the two handicap spaces back.

Chair Parnell asked if there should be a condition on this, or if the Board should leave this up to Mr. Johnson. There was discussion.

Mr. Ozenich said he thought it should be a condition that there be 2 additional handicap parking spots in front of the restaurant.

Mr. Gardner asked if this was how such spaces got allocated, or if there was some kind of formula involved.

Mr. Campbell said it was based on a formula, and said Mr. Johnson had agreed that what was there now met this.

Mr. Ozenich said the occupancy was changing significantly.

Mr. Roberts noted that it was customary for restaurants to try to provide some handicap parking as close to the restaurant entrance as possible.

Mr. Campbell also noted that some businesses provided more handicap spaces than was required by the codes.

There was further discussion on this issue. Ms. Fuller said the handicap spots there were 2 deep on each side, and said if they spread them out so there were 2 on either side of the

aisle, there would be 4.

Mr. Greene said there was a common 5 ft strip that was shared to get in and out, and said it would necessitate another 5 ft for the parking spots if they were relocated.

On a separate issue, Mr. Kelley said there was some merit to the idea of the Board seeing a circulation study. He said during the site walk, it wasn't clear whether what was proposed would jeopardize loading operations. He noted that the Fire Department was ok with what was proposed, but said he didn't think it was clear what was being proposed with the parking adjacent to this area. He said he would like to see that, and to understand how they could allow what was a 22 ft traveled way to narrow down to 16 ft. in an area where it didn't seem right.

Mr. Gardner said he was sympathetic to this, particularly with respect to access for safety vehicles. But he said from a traffic calming perspective, what was proposed might be exactly what one would want to achieve. He suggested that they might need additional traffic calming rather than additional width there, so perhaps necking down by the ice cream place was a good thing. He said there might be a better design that allowed width plus curves to calm traffic. But he noted that he had heard people say that cars went too fast going in and out of this area.

Mr. Ozenich said that was true for the whole parking lot.

Mr. Gardner said the area they were discussing narrowed down in what was the highest pedestrian area in the whole parking lot.

Mr. Kelley said he had found it awkward driving through this area since the ice cream place had been put in, and he provided details on this.

Mr. Roberts said the lane between the third phase building and the current middle parking stall was ample, and also said that with the back end loading area, they weren't changing the dimensions. But he said there might be safety issues in front of the building. He said these issues were more complex, with the covered walkway and a walkway on the outside of the patio, but he said there wasn't a walkway shown. He said he didn't know why one would use the rear entry unless they came down the hill.

Mr. Kelley said the fire lane was being taken, and Mr. Ozenich said it was optional, and that there wouldn't be one there.

Mr. Greene said the fire lane would be eliminated in front of his restaurant, and would be located between the patio and the ice cream place.

Mr. Campbell said it would also still exist in front of Rite Aid.

Ms. Fuller said when she was in the area of the ice cream place, she walked between the building and the benches. She said she could envision people walking through the front

of the restaurant and the tables at the restaurant. Regarding the traffic itself, she said she had tended to avoid driving in that area since the ice cream place had been put in, in order to avoid the traffic.

Mr. Kelley asked Mr. Greene if he thought the fact that part of the fire lane was going away was clear to the Fire Department, and Mr. Greene said yes.

There was discussion about the measurements for the fire lane.

Mr. Ozenich asked if there was a percentage applied for handicap spaces, and asked how this was allocated.

Mr. Greene said there was a formula, and said Mr. Johnson had applied it. He said the number was fine and the location was fine.

Mr. Ozenich said the number of handicap spaces for the whole complex seemed insignificant, especially considering the elderly population in Durham.

Mr. Roberts said if the postal truck was in front of the building (as in the photo he had taken), and with the addition of the tables out front, there would be no room for a car to pass the front of the building without going into the oncoming travel lane.

Councilor Smith said the postal truck would probably be parked there because someone else was parked in the fire lane in front of the mail box.

There was further discussion about whether to include a condition for more handicap parking spaces.

Mr. Gardner said he didn't have a problem with this, and didn't think doing so would be a burden, but said doing so seemed ad hoc.

Mr. Kelley asked if the first two parking stalls in front of the patio would go away under phase three.

Mr. Greene said to his knowledge, they didn't go away. He said this was never discussed with Town departments, and said there was no misunderstanding on this. But he said perhaps it wasn't addressed clearly enough.

Mr. Campbell said he thought they would have raised this as an issue if there was one.

Mr. Kelley said he would like to see a traffic circulation plan rather than hand it off to Town department heads.

Councilor Smith said he agreed with Mr. Kelley.

Mr. Gardner said he wanted there to be recognition that there were tradeoffs between

safety access, the ability for cars to pass safely without having to slow down, and the walkability of a Plaza like this. He said if they were trying to get this to be a place that had a more human scale, they needed to think about these tradeoffs.

Chair Parnell asked Mr. Kelley what he would like to see in terms of a circulation plan.

Mr. Kelley said he'd like to see, in front of the proposed restaurant, the first parking stall whether in or out and how the striping was going to function, and what the travel lane widths would be between the patio and parking stalls. He also said if the area was going to be re-striped, he would like to see that. He asked if the patio would be on the existing asphalt, striped as a fire lane, or would have a different surface.

Mr. Greene said the proposal was to do essentially what the ice cream place had done.

Mr. Campbell summarized that Mr. Kelley wanted to see a sketch of the front of the building, the seating there, and the travel lane.

Mr. Kelley said that was correct, and said he would like to see this before he was willing to act on it. He said he wanted to be sure the Fire Department and the DPW understood what was proposed for traffic circulation in the vicinity of the building.

Mr. Roberts noted that people would be seated around tables with active traffic nearby. He said usually there was at least a parking space, a curb and a few feet of sidewalk and then the seating.

Chair Parnell said the Board had raised these issues with the ice cream place, which was why the bump-out was created. He said the design might be fine, but agreed that the Board should look at it.

Mr. Roberts said the ice cream place had put the bump-out, concrete planters and the fire lane on the outside of that to provide more space.

Councilor Smith asked if there would have to be another public hearing.

Mr. Kelley said he didn't think it necessarily affected what was on the plan, but was about what the applicant's plan affected at the parking lot.

Mr. Ozenich said it was a straightaway in that area of the parking lot.

Mr. Greene said he would be happy to lay all of this out with the Fire Department.

Chair Parnell said that would be a good thing to do, and Mr. Kelley said in this way they would know what they were voting on.

Mr. Greene said he hadn't taken into consideration the point Mr. Gardner had made, but said it was a good one. He said lessening the straightaway along the pedestrian way



between the buildings was a good idea, and he noted the traffic calming devices in Portsmouth and downtown Durham.

The Board agreed to continue the deliberations on the application. Mr. Campbell suggested doing this on November 4<sup>th</sup> instead of waiting until the Board's November 18<sup>th</sup>. Meeting, when he said the Agenda would be pretty full.

Mr. Greene said that was doable.

There was discussion that the hearing had been closed, so would need to be reopened so the public could provide additional comments.

***Councilor Smith MOVED to reconsider closing the public hearing on the Mexican restaurant application. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.***

***Richard Kelley MOVED to continue the public hearing on November 4, 2009. Councilor Smith SECONDED the motion and it PASSED unanimously 7-0.***

**V. Continued 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.

**VI. Continued 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.

Attorney Rattigan represented the applicant. He said at the last meeting, Mr. Campbell had said he would ask the Code Enforcement Officer to determine the number of spaces, and also what the required number of spaces was. He noted the memo that had been provided, and said he would wait to comment until there was discussion on this memo by the Board.

Mr. Campbell said Mr. Johnson had done the analysis and provided a memo on this dated October 23<sup>rd</sup>, and then submitted a revised memo on October 27<sup>th</sup>. He said the revised memo reflected what the parking requirements would be for a restaurant where the Movie Stop was. He also noted that an error had been found in the calculation for the Library, and said instead of 20 spaces there should be 6 spaces.

He said the total minimum spaces required, not including the restaurant, should be 310 spaces. He said the 10% overage allowed meant there could be an additional 31 spaces, for a total of 341 spaces, without a Conditional Use permit. He noted that the total spaces

on the site as of October 23<sup>rd</sup> was 349 spaces.

Mr. Campbell said Mr. Johnson had determined that for the La Paz parking, the minimum spaces required would be 41 (instead of 7 required for the Movie Stop) for a net increase of 34 spaces, bringing the total to  $310 + 34 = 344$  spaces, plus an overage allowed of 34 spaces, bringing the total to 378 spaces.

He also explained that with the La Paz restaurant moving in, there would be a loss of 7 of the existing 349 spaces at the Plaza, bringing the number of spaces that existed down to 342. He noted that Mr. Johnson was out of town, and said his assistant would adjust these numbers in the file.

Mr. Roberts asked about the 8 spaces that would be lost because of the drive-up window at the bank.

Mr. Campbell said he was in the process of contacting the bank about this. He said no drawing had been submitted yet, which was why he hadn't factored the number in yet.

Mr. Roberts said if this were done, it would leave 334 spaces (342-8). He reiterated that the required spaces was 341 with the Movie Stop, and 378 with the La Paz.

Councilor Smith noted Section 175-112, Central Business District Special Conditions, which said "All permitted uses shall be exempt from the parking requirements provided that the existing numbers of required parking spaces shall not be reduced by any proposed development unless approved as part of a property redevelopment plan by the Planning Board."

He asked if the Board could perhaps encourage the applicant to request this waiver, and also asked if the Board would be open to exempting the applicant in terms of the reduction in parking.

Mr. Kelley said he would entertain this if it came from the applicant.

Attorney Rattigan said the applicant had a plan to increase the parking by 28 spaces, which required a permit, and said the calculations that had been provided underscored the need for them. He also noted that adding an additional two handicap spaces would take two more spaces away.

He said if the Board approved the relief the applicant was seeking, the applicant wouldn't need an exemption, because they would be within the 10% overage, and would be above 334 spaces but below 378. He said this wouldn't trigger an exemption request.

Mr. Gardner received clarification that the applicant's request for additional space had nothing to do with the restaurant.

Councilor Smith said if the applicant had never applied for the parking expansion, and

they were only considering the restaurant and later were only considering the loss of 8 spaces because of the drive-thru, and the applicant requested the exemption as part of a property redevelopment plan, he thought the Board would be likely to allow it in the spirit if the CBD Zoning provision he had cited.

He said this provision was created some years ago specifically to increase the likelihood of redevelopment in the CB district. He said the issue of expansion of parking would become unnecessary if the applicant was willing to ask for a waiver for each proposed new development.

Councilor Smith said at some point, the Planning Board might say it could observe that there was indeed not enough parking available at Mill Plaza, and the owner would then have to find a way to provide parking if he wanted new development further down the road.

He reiterated that he was posing his questions for both the applicant and the Board.

Mr. Kelley said there had been public testimony he would like the applicant to respond to, and said he would be listening regarding the expansion and clearing in 2002. He said he was curious as to whether the applicant thought this was an enforcement issue, or whether the application was in error because it didn't include what was done in 2002.

Mr. Kelley also asked the applicant to respond as to whether a safety analysis of the intersection was required.

Attorney Rattigan said the applicant acknowledged mistakes were made in 2002. He said an enforcement action was made and they had abided by that. He said since that time, the regulations had changed and the setbacks no longer applied, so they thought the application was properly before the Board.

In regard to the safety issue, he that they were aware of the unfortunate accident at the entrance to Mill Plaza, and said he was unaware of any suggestion that there was noncompliance with what was approved for construction. He said he wasn't aware of any action by the Town to re-examine that, and said he didn't think this application was the forum to reexamine that issue, while there was pending litigation.

He said he didn't think the planning process should be used to manufacture information to support a party's position on litigation. He said they were seeking not to address a circulation issue, but just wanted to put some cars down at the end. He said he didn't understand that circulation was the cause of the accident, and said other factors involved could be addressed by traffic safety engineers.

Mr. Kelley said the Board had heard a lot of testimony, and he had seen a lot of literature on Mill Plaza dating back to the early 1970s. He said he would like to know what the applicant's position was about unfulfilled obligations under previous approvals.

Attorney Rattigan said there were approvals, and there were as-builts, and certain authorizations to proceed that were different than what the Planning Board had approved. He said to the extent the applicant hadn't done something, they would attend to it. But he said his understanding was that what was done out there was consistent with the conclusion of the development process, which was quite a bit different back then than the standards and procedures followed today.

Mr. Kelley asked for further details.

Attorney Rattigan said Mr. Campbell had a better understanding of the history, and said it sounded like the history was accurate and the history satisfied the Town in its official capacity, with the exception of the parking expansion along the end.

Mr. Campbell said in the last packet, different plans were provided to show how things had progressed from what was approved in 1978, to the as-built, to the existing conditions, which were as of May 2008. He said the 1978 site plan showed they were approved for a wider area of paving. He said there were discussions between the applicant, himself, and Mr. Johnson in 2002 about some vesting rights issues.

He said they were allowed to do some of the asphalt in the parking area they wanted. He said the parking area that was going to be paved from the 1978 plan wasn't to have parking. He said it was within the 70 ft buffer, and led to the back where the driveway went up to future employee parking. He said in 2002, they were attempting to bulldoze that area and pave it and park there. He said Mr. Johnson asked them to stop and not park in that area, part of which had already been paved.

Mr. Campbell said the area they wanted to fill in now was an area they bulldozed but did not pave over. He said Mr. Johnson had told them to loam and seed this area and not park there, which they did. He said it was a fair question as to whether this had held, but said at the time, Mr. Johnson was satisfied.

He said there were changes to the as-built plan that were signed off on by former Director of Public Works, George Crombie. He said Mr. Crombie went to the Selectmen, who endorsed the changes to the Planning Board, mostly regarding the issue of the raised bike and pedestrian path. He said the approval was to not have it raised, and to just stripe it. He said this striping had faded over the years.

Mr. Campbell said the landscape islands had Ts that were removed, which was approved in 1979 because of snow removal and drainage issues. He also said when the Planning Board approved the landscaping plan, the landscaped islands were supposed to have 45 trees, brick inlay, were to be paid for by the developer, and were to be installed and maintained by the Town.

He said if there had been a failure on this, it was the Town's responsibility because it had not maintained this. He said the islands were not brick paved or maintained. He said that was a deficiency, and said the applicant had expressed a willingness to satisfy that

deficiency and hopefully take over the maintenance, because he didn't think the Town should be maintaining this.

Mr. Kelley asked if the 70 ft buffer had been a Zoning requirement or a condition of approval.

Mr. Campbell said it was not part of the conditions of approval for the original site plan yet it showed up in almost every plan. He noted wording in the current Zoning Ordinance that required a 70 ft buffer for businesses abutting a residential district, and said if there was solid screening, the distance between them could be 5 ft.

Mr. Kelley asked if the Selectmen approved an as-built plan in 1979.

Mr. Campbell said Mr. Crombie said the changes could be made and it was approved by both the Selectmen and the Planning Board. He said the as-built plan was different from the approved plan.

Mr. Gardner asked if the paved area extended into the 70-foot buffer now, and was told yes.

Mr. Campbell said he believed it did back then, but said the part in the buffer was meant as access to the back area for employee parking on the hill in the future. He said one could tell by the plans that the parking stopped at a certain point, and that it was outside of the 70 ft buffer.

Chair Parnell said they would continue the public hearing. He asked those in favor of the application to come forward first.

**Debra Netto, Rite Aid Store manager**, said she employed 20 employees full-time who needed parking spaces. She said they parked there all day long, from 8:30 to 5:00 pm, so would need some additional parking with the expansion of the restaurant. She said 80% of their customers came by car, and said she wanted to be sure they had adequate parking. She said if her employees took the front spots, there wouldn't be enough spaces for the customers. She said she had seen an incredible increase in traffic at the store in the past 10 years, and said she would like to see the expansion go through.

Mr. Gardner asked where the walk/drive percentages came from, and Ms. Netto said it was based on looking at the numbers at different times of the year and assuming that students walked to the store.

Ms. Fuller asked where employees parked, and Ms. Netto said where the Movie Stop was. Ms. Fuller said if those spots went away, what would she tell them to do, and Ms. Netto said she would instruct them to park further down the lot, requiring a longer walk.

**Luci Gardner, 61 Durham Point Road**, said she was in favor of expanding the parking. She said this was a town that had limited parking, and paid lip service to increased

commercial property. She said every dollar the owner of Mill Plaza made contributed to the tax base of Durham. She said she wanted the owner to succeed, but said he couldn't without allowing cars there. She said the spots the owner wanted wouldn't make a difference to the environment. She also noted that the library was now abutted by the gym and there wasn't enough parking now.

She said if this request was not granted, it would be a case of biting off one's nose to spite one's face. She said all of them knew how impossible it was to park in Durham, and said it was an absurdity to say the applicant couldn't have the additional parking. She noted that some of the land had been used incorrectly, and he had been penalized.

Ms. Gardner proposed that there could be a condition that if the owner continued to rent out the 28 spots, this could be considered a separate business, which would bring in additional revenue for the Town. She also suggested another condition could be that Durham residents could get some kind of sticker enabling them to park in the lot at the UNH end so they could go to a lecture at UNH, or across to the library.

She said sooner or later there would have to be a provision about letting people visit the businesses there for a longer time period. She noted that one couldn't eat a meal in an hour.

**Attorney Scott Hogan** said that for his clients and the broader community, Mill Plaza was a resource they wanted to succeed, and wanted to have the parking it needed, but in a way that was compliant with the Town's regulations and the Master Plan. He said what was clear was that there had always been a 70-75 ft buffer between the parking lot and the residential neighborhood.

He said what had been heard that evening from the applicant was that the regulations had changed. He said they had also heard from Mr. Campbell that there wasn't ever a condition of approval to impose the 70 ft buffer. But he said if one looked carefully at the Harwood memo from 2002, it was made very clear then.

He read from this memo, which said the Zoning Ordinance at the time of the approval gave the Planning Board the authority to determine what an appropriate setback would be for a parking lot. He said the memo said a 70 ft buffer was chosen by the Planning Board, given the discretion at the time.

Attorney Hogan said Mr. Harwood also said it showed up in every plan and should be recognized. He said in the context of 2002, the consultant documented that portion of hillside bulldozed. He said they were told to stop, and said he did not think it was a formal cease and desist, but were told to stop, because was in violation of the site plans.

He said for decades, the neighborhoods and broader community had tried to maintain and enhance the greenway, as recognized by the Master Plan, the Mill Plaza Study, and Mr. Harwood in 2002. He said whether the regulations had changed or not, the Planning Board had determined that a 70-75 ft buffer was appropriate. He said the current plan

would bring the parking lot 40 ft closer to the residential neighborhoods. He said it would not maintain or enhance the buffer and instead would detract from it.

Attorney Hogan said the memo on the numbers of parking spaces provided that evening was the fifth opinion on how many spaces there were. He also noted that in the Board's discussion on the restaurant, it was said that maybe the proposal would calm traffic and maybe it would not.

He said the white elephant in the room had been that the Plaza was asking for an additional 28 spaces, yet it was known where these spaces could be found. He said these 28 spaces were documented as an unlawful parking lot, and said what if they were not occupied by commercial renters, and instead were available to patrons, tenants, and employees. He said if this happened, the discussion would be over.

He said whether or not the Town took action on this, the law was very clear that the Planning Board could not approve a plan that violated the Zoning Ordinance. He quoted from *Cesere v Windham* and other related cases on this issue and said the proposed plan did violate the Ordinance. He said the applicant could seek a variance, or could try to get a Zoning amendment to eliminate the requirement. But he said it was a requirement now, and said this had been documented for almost 10 years.

Attorney Hogan said that concerning the 70 ft buffer, another issue of concern to his clients and the broader group they were in touch with was that it was very difficult to understand the applicant's critical need for parking. He said there seemed to be many times the lot was not full. He said he understood the needs articulated by the new businesses, but said there were 28 spaces available in the middle of the lot.

He said the applicant had to prove to the Board that there was no other feasible alternative outside the wetland or shoreland zone where the spaces could be located. He asked if there was some way to provide some percentage of compact spaces somewhere on the lot, re-stripe the spaces, address the travel lane widths, etc. He said there were designs for this lot that could achieve the number of spaces needed and maybe more.

He said nobody he represented wanted to stop Mill Plaza from having more parking if it was needed. He said if the applicant decided to have a commercial parking lot, and went through a change of use site plan review, there would be an analysis of traffic, stormwater management and lighting. He said the application said existing impacts from stormwater, lighting, etc, would be improved, so acknowledge these impacts existed.

Attorney Hogan said it had been a long time since there had been a full site plan review, and said the traffic issues alone merited this kind of review. He said the different uses coming along merited that, as did the 28 spaces being rented in the middle.

He said there had been no global analysis of traffic. He also said the stormwater plan didn't talk about maintaining the buffer. He said it seemed that both the concerns of the neighborhood regarding the buffer, and the concerns of the applicant to have more

parking could be met with a little more effort.

He said the easy way for him right now was to say there was an unlawful use under the Ordinance, and that the site plan couldn't be approved because it violated the Ordinance. But he said those he represented wanted to make sure the greenway was maintained. He said it seemed clear that everyone's interests could be accommodated, but not within the framework of this application.

Attorney Hogan said the Harwood memos documented noncompliance easily, and said whether the regulations had changed or not, it was already decided long ago what was appropriate here, and said this was reiterated in the Master Plan and the Mill Plaza Study. He said the 70 ft buffer should not be encroached by 40 ft. It should be remedied to the condition it was in back when it was lawful. He said there were ways to do this that were appropriate and lawful and in the interest of good planning and good neighbors, but not this way.

He said there were many issue right now that were unknown, but said the issues they did know about were easy for the Board to respond to. He said the Board couldn't approve this application, but he said there were ways to redesign this that would have broad support from the neighbors and the community. He asked that everybody's interests be respected, and said these people had as much respect for the Plaza and as much interest in it success as anyone in the room.

Mr. Kelley said similar to the number of parking spaces, the Board often got different opinions from attorneys. He asked Attorney Hogan to expand on *Cesere v Windham* , and asked if it specifically addressed a situation like this, and if it was an exact fit.

Attorney Hogan provided details on this. He also said that in 2002, the Planning Board had denied a similar request from the applicant, and a reason was because of the documentation that the buffer was part of the original approval and something that was appropriate for this area.

Mr. Kelley asked if the Town could be sued because it was denying an application because of something going on at the property.

Attorney Hogan said if there was an aspect of an application that violated the Zoning Ordinance, the Board had no authority to approve the application.

**Joshua Meyerowitz, 7 Chesley Drive**, said they all wanted the Plaza to thrive, and he provided details on this. He said he participated in the Mill Plaza study, and said the redevelopment envisioned would involve even more parking at Mill Plaza, and could include parking structures. He said it also included protection of the greenway buffer and a distinction between the residential and commercial zone.

He said the Plaza continued to make claims that it was tight for parking spaces, yet there were letters from residents that there were many empty spaces there. He said he took



pictures between 5:00 and 6:00 pm, at the supposed busiest time, and found many empty spots. He showed pictures of this, and said he didn't really see the difficulty finding a spot, even with the 28 rental spaces.

Regarding the compliance issue, Mr. Meyerowitz showed picture of what was supposed to have been a pedestrian walkway, and said there was no safe place to walk there. He said this was a part of the Town not doing what it was supposed to do, and not compelling the Plaza to do what it was supposed to do. He provided further details of this.

He said he had found a memo from the Conservation Commission from 1973 about soil dumping, etc. He also said the parking medians were supposed to absorb water but they were paved over, and said he didn't think any permission was given for this. He said the Town stopped the parking of cars where the hillside had been destroyed, but didn't ask the owner to restore it. He said the Plaza was never asked to request permission for the rental spaces. He also said there were supposed to be fines for taking out trees but they were never imposed.

He said the Board was being asked to retroactively ok this. He said if the Board considered the application at all, it needed to say that the pre-existing condition was the pre-bulldozed site, which was the last legal condition. He noted that Mr. Houle had said the proposed stormwater system was not a very expensive system, and said in exchange for providing it, the owner was asking to park where they shouldn't be parking.

Mr. Meyerowitz said he had measured the parking spaces at Wentworth Douglas and the Mall, and said many of the spaces there were 9 ft by 17 ft, and the travel lanes were 23-25 ft wide. He said the first row of the Plaza was 9 ft by 22 ft, and said the travel lane was 33 ft. He said there was quite a bit of room to redesign the parking, just looking at the first row. He said Mr. Shaheen had told him this would be too much trouble, but that it was not too much trouble to pave over the 2600 sf of green space for the 4 parking spots that would violate the buffer.

He said allowing these things seemed to open the doors for other landowners to do the same, and he asked the Board to not allow that precedent to be set. He said those in the neighborhood and other residents would not object to the Plaza applying for a change of use for the parking and putting in a commercial business, or putting in a parking structure and developing whatever way they thought would increase their revenue.

He said the Plaza was a great asset, and said the better it did, the more services there would be for residents, and the more taxes the Town would receive. But he said they shouldn't violate the rules, or go against the Master Plan and the Mill Plaza Study, which all suggested that this area should be restored, enhanced, and maintained.

Chair Parnell said the Board would take a break, and said when they reconvened, the people who had not yet been heard from would be allowed to speak first.

Recess from 9:04 to 9:12 pm

**Hillary Scott, 20 Davis Ave,** said she supported maintaining the greenway and the 70 ft buffer, and said the Planning Board should insist on this and not pass anything contrary to that.

**Beth Olshansky, Packers Falls Road,** said the white elephant in the room was the 28 spaces, both the need for them and the illegal renting of 28 spaces. She said it seemed to be a no-brainer that the buffer could be maintained by using these existing spaces. She said she was sympathetic to the store owners requesting spaces, but said it seemed they should be going to the Plaza manager, not the Planning Board, and should ask why they couldn't have the 28 spaces they were granted by the Planning Board.

She said that regarding the Conditional Use permit and the requirement that there was no feasible alternative to encroaching on the wetlands, surely there were several alternatives, including re-striping.

Ms. Olshansky said she had received a memo from Mr. Campbell regarding the upcoming charrette, which was a unique opportunity to plan for the future that reflected the values of the community. She said these same values had been embedded in the community planning process, the Master Plan, and the Mill Plaza Study committee, and said it was clear what they were.

She said with the charrette, once again, Durham citizens were being called together to plan for the future. She said the values of the community were clear, and said with this application, it wasn't about the future, it was about now. She said it was clear what past Planning Boards and community members had said about the protection of this buffer.

She said she hoped the Planning Board would acknowledge the goals and values of the community, as well as the illegality of what had been going on, and would recognize that if it approved this application, it would be condoning illegal behavior. She said a town that did so would easily fall into some serious trouble.

**Larry Harris, 56 Oyster River Road,** noted that he was on the Conservation Commission, and said he had seen the application for the 4 spaces, including the proposed mitigation for stormwater. He noted that he walked home most days along the pathway at the base of the Plaza parking lot, and said especially in the spring and summer, he could observe the devastation that resulted from the dumping of snow into that greenway area.

He said there was a little bit of mitigation proposed with this application, but said what they needed to do was mitigate the whole distance and do what they should have done in the first place instead of renegeing on that. He said the Town had condoned illegal activities, and he said he was very much opposed to this proposal. He said he had a hard time understanding why it was even being proposed.

**Alena Harris, Chesley Drive**, said she had grown up in Durham and was a student at UNH. She provided a petition from the Student Environmental Action Coalition, which she said was signed by students all around campus. She said she was heartbroken when the bulldozing of the hillside occurred and was then paved, noting that her whole life, she had cherished this small amount of virgin land. She noted that her shirt signified the Lorax from a Dr. Seuss book, who continued to chop down trees in order to make money.

She said with this proposal, the 70 ft buffer was being chipped away, exposing a once peaceful place and turning it into a dirty eyesore of a parking lot. She said the name would have to be changed to the College Brook black way, not greenway. She said in the end, the wetland was priceless.

Ms. Harris said there were more spaces being rented than proposed, and said if this was stopped, the spaces would be available. She said the Town should not award illegal actions. She said in 2002, the Town's planning consultant had said the Plaza should be stopped from renting spaces, but she said this comment, and the citizens had been disrespected with the choice to ignore the situation. She noted that at the previous meeting, she had learned that the Plaza needed to apply for a variance.

She said the lot should be re-striped, and said there should be more than enough spaces if this were done. She said she walked or biked through the Plaza multiple times per day, and said she had never seen a full parking lot. She asked who had concreted the medians, and said she had been sad about this ever since it happened. She questioned the landscaping proposed and also said if the parking lot was pushed out further, the trash that accumulated at the edge of the lot would be pushed out further as well.

Ms. Harris said she was concerned about the safety at the Plaza, stating that she nearly got hit in the area where the 82 year old woman had died. She said she hoped she had not died in vain.

**John Hart, 13 Mill Road**, said he had lived in the area for 25 years and had a masters in landscape architecture. He said this area had been an ecological train wreck over the last few decades, and he spoke in detail on this. He said it sounded like there were some options other than going ahead with more parking.

He noted that in general, the University was working hard to reduce traffic. He said he hadn't been a part of the Mill Plaza Study Committee, but said thousands of dollars in free consulting time had been put into a very good plan for the Plaza, which had cynically been thrown into the wastebasket so more parking could be installed.

**Ted McNitt, 101 Durham Point Road**, said everything he had heard and seen indicated that the applicant did not need more parking spaces in the lot. He said if in the future they needed more, there were 28 spaces that could be changed into customer parking instead of parking for pay. He said the parking lot was there to support the businesses, and wasn't there to make money for the developer

He said the developer was coming to the Board with unclean hands, and said with a Conditional Use Permit application, where a proposed use should be exceptionally beneficial to the community, this didn't stand a chance

**Diana Carroll, 54 Canney Road**, said she was speaking as a resident who had lived in Durham since 1974. She said she had never seen the Plaza parking lot full, either in the past or in the present. She said she had recently counted the spaces there, and stopped counting when she got to 50 vacant spaces. She said she hadn't counted the spaces behind the second building, or the spaces between the two buildings.

She suggested that there should be re-striping, calling it a win-win situation that could preserve the spaces the Plaza said it needed while preserving the little bit of greenway and not adding to the burden on College Brook. She also asked why anyone would want to add parking in a location where it was a dark, out of the way place. She suggested that it would be better to do some re-striping in front of the businesses and other areas that were closer to the businesses.

She said the people in the audience were loyal customers of the Plaza and valued the local, independently owned businesses there. She said they were present because they truly valued Durham and its environmental aspects as well as the local businesses, and said this was noteworthy.

**Mike Slavin, 10 Burnham Avenue**, said he had provided a children's petition opposing the expansion of the parking lot. He said he was skeptical of the need for more parking. He said the restaurants' peak hours would be after 6 pm on Fridays and Saturdays, and he also said that lunch patrons were often within walking distance. In addition, he said he questioned that Moe's needed the number of spaces that were listed.

He said the applicant should work within the limits of what was there, and said they could easily add 20 spaces by re-striping the lot.

**Stacy Clark, student at UNH**, said one of the first things she had noticed when she came to Durham was the greenways, pathways, and people enjoying the beauty of the State. She said she visited Alena Harris on Chelsey Drive often and cut through the parking lot to get there. She said it was a dangerous area. She also said there were always empty parking spaces in the back. She said it would be a huge invasion of privacy if the area behind the walkway disappeared. She said there would be noise pollution and light pollution, and destruction of wildlife habitat. She said people of all ages cared about this area.

**Attorney Barrington**, representing Vincent Bianchi, said at no time had any lawsuit been filed against the Town. He said they had worked with the Town from the beginning, and said no lawsuit was pending. He said from the review of the record, there had never been a comprehensive review of the parking lot. He said there was some indication that George Crombie in 1974 had brought an as-built to the Selectmen and it was voted on, but he questioned how definitive the documentation was that this was what happened.

He said there had been repeated testimony that there was far more pedestrian traffic now than there had been, and that re-striping was a better way to go. He suggested that there should be a site plan of the entire parking lot, and said as part of this, a safety engineer could look at the pedestrian access ways.

He noted that the Chesley Drive entrance was designed to be a through street and said this idea was abandoned 10 years later. He said no one had taken a comprehensive look at the whole parking lot in 30 years. He said this was a change of the current use, a change in the tenants and an addition of parking space, and said the Board had the legal authority to add conditions proportionate to the change of use.

Chair Parnell said the next speaker would be the last for the evening on this Agenda item because the Board had another hearing to get on with.

Mr. Roberts noted that the 1978 as-built was voted on and approved by the Planning Board.

**Debra Hirsch Mayer, 19 Garden Lane**, said she was back to present 260 signatures, which included the original signatures, and which called for the Planning Board to reject the current application. She restated the four conditions included in the petition:

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 green space, 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 people from all over Town had signed the petition, and said if the hearing was continued, more petitions would be presented in the future.

Mr. Kelley said he would like to hear Attorney Rattigan's reply to the contention of Attorney Hogan that the Planning Board had no other choice but to deny the application based on the illegal use.

Attorney Rattigan said he didn't think it was an illegal use. He said the Table of Uses, under parking, said a permitted accessory use was surficial parking, which was a parking lot built at ground level. He said he didn't think it fell under the change of use regulations either, because the applicant was not proposing something that was not set forth in the original plan. He said if the surficial parking was approved, then leased parking fell under accessory use.

He also said it was easy to illustrate why re-striping didn't work, and he provided details on this, saying among other things that cars these days were too wide, and that from a

planning perspective, one didn't see these many of these smaller spaces.

Chair Parnell determined that there were more people who wished to speak, and said the public hearing would therefore be continued to the next meeting.

***Councilor Smith MOVED to continue the Public Hearing until the November 4<sup>th</sup>, 2009 Planning Board meeting. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.***

Mr. Kelley said he would like Mr. Campbell to ask the Board's counsel the questions raised by Mr. Hogan and Mr. Rattigan.

Councilor Smith asked if this would include the issue of whether rental of spaces was a change of use, and Mr. Kelley said yes, that issue was critical. Councilor Smith said he believed Attorney Rattigan was mistaken on this issue.

**VII. Public Hearing** on a Zoning Ordinance Amendment to Article XII, Zoning Requirements, Section 175-45(F)(2-4), "Development Standards in the Courthouse District."

Mr. Campbell reviewed the proposed changes with the Board. (See October 14, 2009 Minutes for details).

***Richard Kelley MOVED to open the Public Hearing on a Zoning Ordinance Amendment to Article XII, Zoning Requirements, Section 175-45(F)(2-4), "Development Standards in the Courthouse District." Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.***

No members of the public came forward to speak.

***Councilor Smith MOVED to close the Public Hearing on a Zoning Ordinance Amendment to Article XII, Zoning Requirements, Section 175-45(F)(2-4), "Development Standards in the Courthouse District." Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.***

Chair Parnell suggested that the wording for F (3) should be changed to read "The area between the front wall of the principal building and the front property line that does not have a Conditional Use permit allowing parking shall be maintained as a vegetated area or lawn and shall not be used for vehicular facilities or parking."

Councilor Smith noted that vehicular facilities would include driving lanes, etc. He also said there would be no sidewalks/pedestrian access because it was not specified.

There was discussion that pedestrian access would be allowed, with Mr. Campbell noting F (1) concerning Pedestrian Facilities.

Mr. Kelley noted that F (2) used the words front setback, and Mr. Campbell said the

reason was that between the front wall and property line was a 15 ft setback. He said they were trying to allow parking there, but also within that setback if it was a Conditional Use.

Mr. Kelley said there might be an additional 30 ft between the edge of the setback and the principal building, but according to the language, the Conditional Use permit was for parking in the front setback.

Mr. Gardner suggested, and Mr. Campbell restated, that the last sentence of F(2) should say “However, the Planning Board may allow parking between the front wall of the principal building and the front property line, including within the setback, with the approval of a Conditional Use Permit.”

Councilor Smith said the front wall would have to be outside the setback, and asked why they needed a reference to the setback. It was explained that this was to make it clear that they could park in the setback.

Mr. Gardner asked why the landscape strip was changed from 10 ft to 5 ft., and Mr. Kelley said they were looking for something that supported vegetation but still recognized the constraints in the area.

Mr. Gardner said this strip was important to the look and feel of a place, but said he didn’t have a particular number in mind.

Councilor Smith said the number he had in mind was 0. He said a place like the Village Garage that had no buffering, if redeveloped, would have to have 10 ft and potentially 5 ft.

Mr. Gardner said if they wanted to make Durham a walkable community, this was not a place someone would want to walk.

Councilor Smith said the driveway access didn’t need to have vegetation. He said having a vegetated buffer of 5 ft was less onerous than a 10 ft buffer, but said in the Courthouse District, he wasn’t sure what the need was for a landscaped streetscape strip.

Mr. Gardner said he disagreed .

Mr. Campbell said he thought there wasn’t any rhyme or reason to 10 ft, and said the Board had been trying to strike a balance. He said a 5 ft strip mirrored some of the new development. There was discussion.

Mr. Gardner said if it was too wide, there would be too much separation from the building, and said he was ok with this.

Mr. Kelley said he talked to a landscape architect about the idea of a 5 ft buffer, and she said had said she’d like to see more for planting purposes, but that 5 ft would be adequate

for most plantings.

Mr. Gardner said that region could use some better aesthetics, as a gateway.

Mr. Ozenich said the thought when the Board was doing this was that the areas beyond Irving would be redeveloped in the future, and wouldn't be garages.

Mr. Campbell said there were people in Town who were very attached to these buildings, and Mr. Kelley said that was it in Durham in terms of those kinds of facilities.

***Richard Kelley MOVED to recommend to the Town Council changes to the Zoning Requirements Section 175-45 F Development Standards in the Courthouse District, specifically F2, F3, and F4 as revised this evening. Steve Roberts SECONDED the motion, and it PASSED unanimously 7-0.***

**VIII. Presentation of an Internal SWOT Analysis** - A primary goal of the strategic planning process is to obtain a profile of a community's economic environmental including available resources, barriers to local economic development and a plan for the future. A community's competitive advantage has a clear impact on the economic condition of the town's businesses and residents. SWOT analysis (Strengths, Weaknesses, Opportunities and Threats) is one method to assess a community's competitive advantage. A well thought out SWOT analysis leads directly to a set of conclusions that should drive marketing and policy decisions.

This item was postponed.

**IX. Other Business**

**A. Old Business:**

Mr. Campbell said the charrette would take place from Nov 5-9<sup>th</sup>, and said there was information available on it at the Town website and on posters around Town.

Mr. Ozenich said he had read in NH Business Review that USA Springs was raising its head again, and said the owner had found a buyer.

Mr. Roberts said he had read that water withdrawal companies had European owners, which was unfortunate.

There was discussion

**B. New Business:**

**C. Next meeting of the Board: November 4, 2009**

**VIII. Approval of Minutes**



September 9, 2009

Page 1, should read that the Secretary was Stephen Roberts

Page 4, lines 39-40 and 41 - should include the new definition of Contiguous: “Touching at a point or along a boundary; adjoining”

Page 8, line 10, should read “..he believed these proposed changes should be moved forward to the Town Council

Page 9, line 27, should read “Councilor Smith said he realized that. Also, that paragraph should be separated by a space from the one above it.

Line 31, should read “..have a specific number of spaces for customers and employees.”

Line 37, should read “He said when more parking spaces were applied for in 2002,..”

Line 44, should read “He said right now, other spaces were being taken up by students...”

Page 10:

Mr. Kelley said Mr. Campbell would be doing the applicant a favor if he reminded him of the wording in lines 46 and 47 on Page 10: “Mr. Kelley said he would like to see a professional parking analysis which discussed what parking was there now, and what would be needed there in the future.” He said the Board had yet to see a response to this request.

Also Page 10, line 9, should read “..customers using the Plaza...”

Page 11, first line should say “Mr. Campbell said 370 parking spaces were originally required for Mill Plaza , but only 277 spaces were required to be paved at the time.”

(There was detailed discussion at the October 28<sup>th</sup> meeting about these numbers, where they came from, and how the line on Page 11 should read.)

Page 15, line 28, should read “He noted that a Durham police officer...”

Page 19, line 20, should read “Mr. Roberts asked if there were other locations in Durham with this kind of accident rate.”

***Richard Kelley MOVED to approve the September 9, 2009 Minutes as amended. Councilor Smith SECONDED the motion, and it PASSED unanimously 6-0-1 with Richard Ozenich abstaining because he was not present at that meeting.***

**IX. Adjournment**

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

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Stephen Roberts, Secretary