

*These minutes were approved at the March 9, 2010 meeting.*

**DURHAM PLANNING BOARD  
WEDNESDAY, JANUARY 13, 2010  
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL  
MINUTES  
7:00 P.M.**

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

**ALTERNATES PRESENT:**

**MEMBERS ABSENT:** Bill McGowan; Wayne Lewis; Kevin Gardner; Councilor Neil Niman

**I. Call to Order**

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

**II. Approval of Agenda**

*Councilor Smith MOVED to amend the Agenda to postpone Items IV and V, concerning the Seacoast Repertory Theatre applications, at the request of the attorney for the applicant. Susan Fuller SECONDED the motion, and it PASSED unanimously 5-0.*

*Steve Roberts MOVED to approve the Agenda as amended. Susan Fuller SECONDED the motion, and it PASSED unanimously 5-0.*

**III. Report of the Planner**

Mr. Campbell said St. George's Episcopal Church had requested an extension to fulfill their conditions of approval. He said the Board could address this under Old Business. He also said there was a letter from the abutter to the Pasay property, and the minutes from the site walk of the Pasay property.

He said the EDC had met on Jan 8<sup>th</sup>, and approved with some amendments the final questionnaire for the business retention and expansion program. He said Administrator Selig was at the meeting, and provided an update on the different parcels the Town had been discussing as possible locations for various municipal facilities. He said there wasn't time at the EDC meeting to discuss the feedback from the Planning Board regarding the SWOT analysis.

Mr. Campbell said on January 5<sup>th</sup>, he had met with consultant Jack Mettee, who was on the list of pre-qualified consultants for the NH Housing Finance Authority's Inclusionary Zoning Implementation Program. He noted that the Town had received a \$9,000 grant from that organization, to look at drafting an exclusionary zoning ordinance. He said Mr. Mettee

would soon be providing a proposal on this project.

Mr. Campbell said the Town would also be hiring Roger Hawk from Hawk Planning Resources, to assist with creating a transfer of development rights/density transfer ordinance. He said hopefully the contract with Mr. Hawk would be signed that week. He said a 6 month process was envisioned, and said it would involve the Planning Board, the Town Council, the EDC, the Conservation Commission, and the public. He said he was eager to get this project done, which had been talked about for quite some time. He noted that the Planning Board had discussed it in 2007-2008.

Mr. Roberts asked if the proposal was structured so the Planning Board would be getting progress reports, and Mr. Campbell said absolutely.

Mr. Campbell said he had met with University planner Doug Bencks on January 4<sup>th</sup> , and said he had provided Board members with a memo on this.

He said a site plan application had been received from Xemed for a new building that would replace and expand upon the existing building the company operated out of on Strafford Ave. He said this application would be heard by the Board on January 27<sup>th</sup>.

He said he hadn't attended the TAC meeting on Friday, but would be getting an update from them on the next round of CMAQ grants. He noted that the University was applying for a CMAQ grant for its transit system. He said there had also been an update at the meeting on TE grants, noting that Durham's grant application had ranked 5 out of 7, and that only one application would probably be chosen.

Mr. Roberts asked if the University had ever done a comparative analysis of the impact of fully dormitorying the student population, in cooperation with the Town, so all this transportation wasn't necessary.

Mr. Campbell said he didn't think the University had ever done anything like that, and also said he didn't think it planned to do anything like that. He said it might be a subject to approach with them in the future.

Mr. Roberts said other colleges had faced this situation, and had made an attempt to eliminate it and build a stronger knit university community. He spoke about how Boston University had done this.

Ms. Fuller said the University president had said the University would like to expand the number of students. She said perhaps there would be the opportunity to suggest some kind of traffic study in the near future, when it went to build the new Business School.

Mr. Roberts suggested that there should be a traffic elimination study.

Mr. Campbell said at this point, the unfortunate reality was that without a broad based tax in the State, the University would never get much more funding from the State than it already got.

Mr. Roberts said he didn't see why a dormitory couldn't yield a profit for the University.

Councilor Smith asked if members of the Planning Board had been invited to the presentation that President Huddleston would be giving on the University Master Plan and on the future development of the University. There was discussion.

Mr. Campbell said the Board's first quarterly planning meeting would be held on February 24<sup>th</sup>. He said the main topic would be the amendments proposed for the site plan regulations to deal with stormwater. He said the Planning Board subcommittee on water resource protection would bring forward some recommended changes. Mr. Campbell and Board members agreed that there could also be discussion at the quarterly planning meeting on recommended changes to Town regulations and the Master Plan concerning groundwater protection.

Mr. Campbell said another topic that might be discussed at this meeting was transfer of development rights. He also said among other items the Board could tackle at the quarterly planning meeting was the public vs. private roads issue. He noted that a previous Council had requested that there not be any more private roads approved.

He said the Board would probably need to have a special meeting to look at the findings of the B. Dennis Town Design report that was due in early February. He said he would forward a draft of the report to the Board in advance of such a meeting.

- IV. Acceptance and Public Hearing on an Application for Site Plan** submitted by 50 Newmarket Road Inc., Portsmouth, New Hampshire for the expansion of a non-conforming use of a performing arts facility with temporary housing for actors. The property involved is shown on Tax Map 6, Lot 9-8, is located at 50 Newmarket Road and is in the Residence B Zoning District.

Postponed

- V. Continued Public Hearing on an Application for Conditional Use Permit** submitted by 50 Newmarket Road Inc., Portsmouth, New Hampshire for the expansion of a non-conforming use of a performing arts facility with temporary housing for actors. The property involved is shown on Tax Map 6, Lot 9-8, is located at 50 Newmarket Road and is in the Residence B Zoning District.

Postponed

- VI. Continued Public Hearing on an Request to Amend a Previously Approved Subdivision Condition of Approval** submitted by Stan Pasay, Pasay Properties LLC, Newfields, New Hampshire in order to construct two additional 3-unit apartment buildings. The property involved is shown on Tax Map 18, Lots 3-2, is located at 257 Newmarket Road and is in the Rural Zoning District.

*Councilor Smith MOVED to continue the Public Hearing on a Request to Amend a Previously Approved Subdivision Condition of Approval submitted by Stan Pasay, Pasay Properties LLC, Newfields, New Hampshire in order to construct two additional 3-unit*

***apartment buildings on the property shown on Tax Map 18, Lots 3-2, located at 257 Newmarket Road in the Rural Zoning District. Richard Ozenich SECONDED the motion, and it PASSED unanimously 5-0.***

Mr. Pasay noted the site walk that had recently taken place, during which the location of the two proposed buildings had been shown, along with the degree of isolation from the road. He said the location in relation to Mr. Todd's property was noted. He said he hoped it was clear that this would be a very non-intrusive project, noting that it would be in the rear of the property and that wide buffer zones were present. He said there was a wide margin of safety from Mr. Todd's well.

He said his request before the Board was to remove the terminology in the deed that did not allow for a new development of buildings or an expansion or additional septic tank, so that he could develop the property under his plan.

He noted that if he wasn't allowed to put the new buildings in, he still was allowed to increase by 50% the existing building without going to the ZBA. But he explained that with the restriction on the septic system, he wouldn't be able to go forward with that plan. He said if the Board didn't allow him to strike the no new buildings language from the deed, he would like it to consider striking the no new septic system language from the deed. But he said hopefully the Board would allow the wording on both to be removed from the deed.

Mr. Kelley arrived at the meeting at 7:24 pm.

Chair Parnell read a letter from Jeff and Caroline Todd into the record, dated January 9<sup>th</sup>, 2010, which expressed that if the deed was changed to allow the new units, they would like the Board to require that the new buildings be moved closer to the existing building by a minimum of 20 ft.

The Todd's' letter noted that Mr. Pasay had agreed to plant a vegetative buffer of evergreens, which they said would be satisfactory. They said they anticipated these trees would be a minimum of 6 ft and would be staggered in order to create a true visual barrier, for about 150 ft. They said if this wasn't done, it was felt that their property values would be decreased.

Mr. Roberts asked Mr. Pasay if he had any concerns about the letter.

Mr. Pasay said the 150 ft number was greater than what he and Mr. Todd had discussed at the ZBA meeting. But he said he was sensitive to their concerns, and said if it had to be that wide, he was agreeable to this. He said he would have the same concerns if he was in the Todd's shoes.

Mr. Roberts said the public should realize that the Planning Board was not in the business of mixing commercial uses in residential zones unless there was an exceptional situation. He spoke about how in this instance there was really only one area where buffering was needed, based on the particular abutting properties. He also said he thought the ZBA recommendations were reasonable. He asked Mr. Pasay if he accepted these recommendations, and Mr. Pasay said absolutely.

Councilor Smith said Mr. Todd hadn't specified in the letter exactly where the 150 ft buffer was to be located. He asked if there was any written agreement concerning this.

Mr. Pasay said the discussion at the ZBA meeting was that he and Mr. Todd would specifically address the need for privacy after the buildings went up. There was discussion on the language on this in the ZBA decision.

Mr. Kelley received confirmation from Mr. Campbell that if the applicant's request was approved this evening, the Board would be seeing a site plan application and a conditional use permit application at a future meeting. He suggested that at that time, the buffer could be better established, and would be seen on a plan.

Mr. Roberts said before striking the condition that the applicant was now requesting, the Board needed to understand that there was some agreement on the buffer, going forward. He said he would have preferred that the request to strike the condition and the plans had come forward at the same time.

He spoke further about the issue of mixing commercial uses in a residential zone, and asked if perhaps there was a need to include something now that indicated that the Planning Board was sensitive about this issue. He noted some other proposed commercial uses in residential zones that the public had had problems with.

Mr. Campbell said he wasn't sure how that kind of thing could be included now in the amending of the conditions, but said it could be addressed when an application for the project came before the Board. He said he understood Mr. Roberts' point.

Mr. Roberts said given the fact that Mr. Pasay had an agreement with the abutter, he felt his own questions had been answered.

Chair Parnell asked whether, if these conditions of approval didn't exist, Mr. Pasay would be able to simply go ahead with his project.

Mr. Campbell said after going to the ZBA for the nonconforming use expansion, Mr. Pasay would have come to the Board with a site plan application and a conditional use permit application.

Mr. Kelley said Mr. Pasay had made it clear that he had taken this route because he wanted to see if the condition could be removed, before spending money on the two applications.

Mr. Roberts said he would have preferred to see everything done together. But he said he had wanted to see that there was an agreement with the abutter concerning the buffer before voting on the matter of removing the condition from the previous approval. He said this agreement was expressed in the ZBA conditions, the site walk and the letter from the Todd's. He said the Planning Board therefore didn't need to get involved in being directed by the ZBA to do what it wanted in terms of requiring buffering.

Chair Parnell asked if there were any members of the public who wished to speak for or

against the application.

Mr. Pasay said it was his understanding that the Board wanted safeguards to make sure that the development didn't offend anyone. He said the safeguards were in place based on the ZBA decision and the letter from Mr. Todd.

Mr. Roberts noted that there were hundreds of people in the community who were sensitive on this issue.

***Councilor Smith MOVED to close the Public Hearing. Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.***

Mr. Kelley said he could support this request, but didn't want to insinuate that support for the project was there as well. He said the details of that would need to be worked out. He said it appeared that Mr. Pasay and the abutter had come to some agreement, which was to be commended, and said because of that, he could support the removal of the condition.

Mr. Roberts said it appeared from the site walk that the planned construction would not be able to be seen from the road at all.

There was detailed discussion on the language that should be included in the motion to be made.

***Richard Kelley MOVED to approve a Request submitted by Stan Pasay, Pasay Properties LLC, Newfields, New Hampshire to Amend a Previously Approved Subdivision Condition of Approval, as outlined in the Findings of Fact and Condition of Approval #5: "...no new buildings, no new septic systems, except as required for replacement and no other changes may be made to either parcel..." and as recorded at the Strafford County Registry of Deeds, Book 2735, Page 386. Councilor Smith SECONDED the motion, and it PASSED unanimously 6-0.***

Mr. Campbell recommended that there be an additional motion, concerning the applicant re-filing the Findings of Fact and Conditions of Approval, without Condition #5, with the Registry of Deeds.. He noted that in his draft, he had crossed that condition out, and had also added some things to the Findings of Fact:

- that the ZBA had granted the new owner a variance on Nov 10<sup>th</sup> 2009;
- that the new owner had submitted a request to amend the Conditions of Approval;
- that a site walk was held on January 9<sup>th</sup> 2010;
- that the Board had received a letter from the abutters regarding the application dated January 9<sup>th</sup>;
- and that a public hearing was held on December 9<sup>th</sup>, 2009 and continued to January 13<sup>th</sup>, 2010.

Mr. Kelley suggested that the Board should approve the amended Finding of Fact and Conditions of Approval.

***Susan Fuller MOVED to approve the Findings of Fact and Conditions of Approval as amended by Mr. Campbell tonight on the Request to Amend a Previously Approved***

***Subdivision Condition of Approval submitted by Stan Pasay, Pasay Properties LLC, Newfields, New Hampshire, and that this be recorded in the Strafford County Registry of Deeds.***

After further discussion, Ms. Fuller withdrew her motion. There was detailed discussion on how the revised Finding of Fact and Conditions of Approval document to be filed with the Registry of Deeds should read.

Mr. Kelley asked Mr. Campbell to get some outside opinion on how to handle this situation, where there was an amendment to some conditions of approval, a new owner of the property, and some description on the top of the Findings of Fact and Conditions of Approval document that didn't quite fit. He said the Board had just agreed to remove Condition #5, and this document was simply recording that. He said allowing a little more time to make sure the document was correct made sense.

Mr. Roberts and Mr. Kelley both suggested that it would be a good idea to include in the Findings of Fact the fact that the Board had voted unanimously to remove Condition #5 from the Conditions of Approval.

Chair Parnell suggested that perhaps there could be two documents, the original FOF and COA, and the new one based on the FOF from this particular meeting.

Mr. Roberts suggested that the new document could be titled as an Amendment, and should indicate just the one lot, the new owner, the change in the condition, and the new Findings of Fact. He said Chair Parnell would sign that document.

Mr. Campbell said he would discuss this with legal counsel, and bring something back in two weeks.

Chair Parnell said the Board had approved what Mr. Pasay wanted, and this next step was meant to make sure that the language in the document was right. The Board assured Mr. Pasay that in the mean time, he could move forward with his applications.

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

***Councilor Smith MOVED to open the Public Hearing on a Zoning Ordinance Amendment to Article XII, Zone Requirements, Section 175-45(F)(2-4), "Development Standards in the Courthouse District." Richard Kelley SECONDED the motion, and it PASSED unanimously 6-0.***

There were no members of the public who wished to speak.

***Councilor Smith MOVED to close the Public Hearing. Richard Kelley SECONDED the motion, and it PASSED unanimously 6-0.***

Mr. Campbell reviewed the process undergone concerning this proposed Zoning amendment. He said the proposed Zoning change as it now read followed what the Council was thinking:

Section 175-45(F)(2). New parking shall be located to the side or rear of the building unless the Planning Board allows parking between the front wall of the principal building and the front property line, including within the setback, as part of a site plan review application or conditional use application.

Section 175-45(F)(3). Front Yard area - The area between the front wall of the principal building and the front property line that is not used for pedestrian access, vehicular access, or parking shall be maintained as a vegetated landscaped area or lawn.

Mr. Campbell noted that the language in Section 175-45(F)(4) concerning a landscaped streetscape strip had been removed, and said by adding the language in (3), whatever was not used for parking or access would need to be vegetated in some form. He said this would be worked out as part of either a site plan application or a conditional use application.

***Richard Kelley MOVED to recommend to the Town Council the changes as seen this evening on the Zoning Ordinance Amendment to Article XII, Zone Requirements, Section 175-45(F)(2-4), "Development Standards in the Courthouse District". Councilor Smith SECONDED the motion, and it PASSED unanimously 6-0.***

## **VIII. Other Business**

### **A. Old Business:**

Mr. Campbell explained that the time limit to complete the Conditions of Approval for the St. George's Episcopal Church site plan application would run out this week. He said it was only the language for the easement for the drainage that hadn't yet been provided.

After brief discussion, the Board agreed that a 90-day extension should be approved.

***Richard Kelley moved at the request of the applicant to approve a 90 day extension for the St. George's Episcopal Church site plan application Conditions of Approval dated July 8, 2009. Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.***

### **B. New Business:**

### **C. Next meeting of the Board: **January 27, 2010****

## **IX. Approval of Minutes**

November 18, 2009

Page 2, 3<sup>rd</sup> paragraph from bottom, should read "...to the previously approved site plan.."

Page 3, 1<sup>st</sup> full paragraph, should read "...radius met their criteria."

Page 4, first motion on the page should read "...MOVED to accept and open the public

hearing on the Application...”

Page 5, 6<sup>th</sup> paragraph from bottom, should read “..Findings of Fact...”

Page 6, 4<sup>th</sup> paragraph from bottom, should read “..which an abutter had appealed..”

Page 10, 1<sup>st</sup> full paragraph, should read “..relatively small loading area behind the hotel.

He said....would occur at off peak hours...”

4<sup>th</sup> full paragraph should read “Mr. Roberts said that...”

Page 11, 4<sup>th</sup> paragraph, should read “Councilor Neil Niman, speaking at the podium, said..”

Page 14, 5<sup>th</sup> paragraph from bottom, should read “..said he developed these items..”

Page 15, 3<sup>rd</sup> paragraph, should read “..including raised sidewalks and..”

Page 21, 2<sup>nd</sup> paragraph, should read “..someone could build right up to..”

***Councilor Smith MOVED to approve the November 18, 2009 Minutes as amended. Susan Fuller SECONDED the motion, and it PASSED 5-0-1, with Richard Ozenich abstaining because of his absence from the meeting.***

December 9, 2009

Page 3, for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> full paragraphs on that page, replace “sign” with “notice of public hearing.”

Page 4, 4<sup>th</sup> paragraph, replace “sign” with “notice of public hearing”.

Page 5, 2<sup>nd</sup> full paragraph, replace “sign” with “notice of public hearing”.

Page 8, bottom paragraph, should read “..had caught his attention because ...”

Page 9, 4<sup>th</sup> paragraph from bottom, should read “..hard for him to make a decision..”

Page 10, 1<sup>st</sup> paragraph, should read “..to remove the septic clause only, which..”

6<sup>th</sup> paragraph, should read “..Board members that regardless..”

Page 13, 3<sup>rd</sup> paragraph from bottom, should read “..so this was correctible.”

***Councilor Smith MOVED to approve the December 9, 2009 Minutes as amended. Susan Fuller SECONDED the motion, and it PASSED 5-0-1, with Richard Ozenich abstaining because of his absence from the meeting.***

**X. Adjournment**

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

Adjournment at 8:30 pm

Victoria Parmele, Minutes taker

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Stephen Roberts, Secretary