

These minutes were approved at the June 2, 2010 meeting.

**Durham Planning Board Agenda
Wednesday April 14, 2010
Durham Town Hall - Council Chambers
7:00 P.M.**

MEMBERS PRESENT: Chair Lorne Parnell; Vice Chair Susan Fuller; Secretary Stephen Roberts (arrived at 7:11 p.m.); Richard Ozenich; Richard Kelley; Bill McGowan (arrived at 7:33 p.m.); Councilor Julian Smith

MEMBERS ABSENT: Kevin Gardner; Councilor Neil Niman; Wayne Lewis

I. Call to Order

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

II. Approval of Agenda

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

III. Report of the Planner

Mr. Campbell noted a memo on the ORLI Agenda Item . He also said there was a late submittal from St. George's Episcopal Church. In addition, he said there was a memo he had sent to B. Dennis Town Design in response to the charrette report.

Mr. Campbell said he had recent met with University planner Doug Bencks. He also said he had discussed with David Arthur from Varsity Durham regarding the idea of doing some new mixed used development on the sites currently occupied by Varsity Durham houses on Main Street. He said the plan was to take these buildings down and build something new. He said the Board would see a site plan soon, and said there might be a conceptual design first.

He said there would be three new applications at the April 28th meeting, and said one was the CWC site application, for a mixed use project on the corner of Madbury Road and Pettee Brook Road. He noted that the developers had gotten all the variance they had requested but one, and were ready to move forward.

He said the second application was for a minor subdivision of one lot into two lots on the corner of Edgewood and Meadow Road. He said the third was for an amendment to a previously approved conditional Use Permit for Pine Ledge Holdings, Inc., to construct a 368 sf addition to one of the buildings on the parcel, and to clarify the on-site parking.

Mr. Campbell said he hadn't attended the UNH Transportation Policy Committee meeting, but would provide an update to the Board on any items of importance to the Town.

IV. Acceptance Consideration of an Application for Boundary Line Adjustment submitted by McEneaney Survey Associates Inc., Dover, New Hampshire, on behalf of Loring V. & Brenda R. Tirrell, Durham, New Hampshire, and Stephen F. & Deborah A. Johnson, Durham, New Hampshire to change the boundary line between two lots. The properties involved are shown on Tax Map 11, Lots 24-1 and 24-2, are located at 108 and 112 Piscataqua Road respectively and are in the Residence C Zoning District.

Kevin McEneaney spoke for the applicants, and said this was a simple lot adjustment. He explained that currently, the minimum lot size in the Residence C Zoning District was 150,000 sf. He said the two lots in question were created in 1978, when the minimum lot size was 60,000 sf, so they were conforming at that time. He explained that the lots were created in anticipation of family members building on both of them.

He said the lot line was drawn the way it was in order to include an existing fireplace on one of the lots, in anticipation of one of the Tirrell family members using that lot. He said the Johnson house was topographically separated from the Tirrell lot, and said for all intents and purposes, the Johnsons would think the fireplace was a part of the Tirrell property.

He said since both the lots would now be nonconforming, and since the lot line adjustment would make one of them more nonconforming, a dimensional variance had been needed. He said this variance had been granted. He noted that both properties would meet the frontage requirements for Route 4 and Great Bay, and said no additional structures would be built.

Mr. Roberts arrived at the meeting at 7:11 pm.

Mr. Campbell said the application was complete. He noted that a boundary line adjustment application was a modified procedure, and said the Board could accept and vote on an application at the same meeting. He said no comments on the application had been received, and said he had provided the Board with draft Findings of Fact and Conditions of Approval.

Richard Kelley MOVED to accept the application for Boundary Line Adjustment submitted by McEneaney Survey Associates Inc., Dover, New Hampshire, on behalf of Loring V. & Brenda R. Tirrell, Durham, New Hampshire, and Stephen F. & Deborah A. Johnson, Durham, New Hampshire to change the boundary line between two lots, for the properties shown on Tax Map 11, Lots 24-1 and 24-2, located at 108 and 112 Piscataqua Road respectively in the Residence C Zoning District. Councilor Smith SECONDED the motion, and it PASSED unanimously 6-0.

Mr. Kelley received confirmation from Mr. McEneaney that the evidence in the field had been set.

Susan Fuller MOVED to approve the application for Boundary Line Adjustment submitted by McEneaney Survey Associates Inc., Dover, New Hampshire, on behalf of Loring V. & Brenda R. Tirrell, Durham, New Hampshire, and Stephen F. & Deborah A.

Johnson, Durham, New Hampshire to change the boundary line between two lots, for the properties shown on Tax Map 11, Lots 24-1 and 24-2, located at 108 and 112 Piscataqua Road respectively in the Residence C Zoning District. Richard Kelley SECONDED the motion, and it PASSED unanimously 6-0.

- V. **Deliberations 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.
- VI. **Deliberations 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.

Chair Parnell noted the memos provided by Mr. Campbell regarding the issues to be considered by the Board concerning the applications. It was agreed that the Board would go through this list.

Amplified sound - whether it should be allowed or not

There was discussion about what the noise ordinance said. Mr. Campbell said he believed the time period was 7 am to 10 pm, and said certain decibels were permitted over the property line.

Mr. Roberts said one decibel level was allowed during the day, and another was allowed at night.

Mr. Kelley suggested that it would be a Condition of Approval that amplified sound would be limited to no more than 4 times per year, and not more than one time per month.

Mr. Campbell said it would be ok if the Board wanted to go a different way, fine, but said whatever the Board decided on should be a condition of approval.

Councilor Smith said that was fine with him, and Mr. Ozenich agreed.

Chair Parnell said this was a residential district, and said he didn't think amplified sound should be allowed at all in this location. He said he didn't think it was required or was part of what the applicants wanted to do on a normal basis. He noted that there had been objections from abutters, and said he would not approve this.

Ms. Fuller said she didn't have problem with it, given the hours proposed. She said while it was a residential neighborhood, this had been part of the community for quite awhile without this restriction. She said she would want what the applicants proposed to be a condition of approval. She said in the past, there had been amplified sound there beyond 9 pm.

Councilor Smith said he lived in a rural area, and rarely heard amplified sound. He asked how many times a year in typical residential neighborhoods amplified noise was a constant source of annoyance, or whether it was an occasional problem. He also asked whether the Board, in approving subdivisions, had put a limit on amplified sound.

Mr. Roberts spoke about normal neighborhood noise in a subdivision, and said everyone had the right to be held to the same standard, whether the sound was created by a weed whacker, amplified sound, or a chainsaw. He said the applicants were talking about having a small number of interactions, including holding classes outside. He said he didn't see why the Board should differentiate concerning this. He said the wording Mr. Campbell had used was excellent, and said the Board should hold the applicants to the decibel requirements in the Zoning Ordinance.

Mr. Ozenich said for someone living near student housing, where there were boom boxes, etc, 4 times a year was a good deal.

Mr. Roberts spoke about the noise his chainsaw made, and said he tried not to do it late at night.

Chair Parnell said it seemed that the majority of the Board agreed with the condition the applicants had proposed.

The Board confirmed this, and Mr. Kelley said it should be in conformance with the Town's noise ordinance.

Other noise - such as delivery trucks, trash trucks, cars, horns, locking door beeps, etc.

There was discussion on the issue of the dumpster being moved to a new location away from the abutter's property, as the applicants had said would happen. There was discussion on other possible noise issues, from horns, people locking their doors electronically, etc.

Councilor Smith said many people locked their doors electronically, and described this as a cultural problem. He said he wasn't sure that it was the Planning Board that should do something about it. He suggested that Seacoast Rep would be doing people a favor to ask the staff, actors, patrons, etc, to not lock their doors electronically in order to avoid the honking horns.

Mr. Campbell said the applicants had said they would move the dumpster away from the location it has been in. He noted that the abutters had said that when the trash truck came to the property, it made a lot of noise. He suggested that perhaps Seacoast Rep could make arrangement to do this at a different time.

Mr. Roberts suggested that this could be done during traditional business hours.

Mr. Ozenich said trash pickup was a part of living, just like the recycling truck, school bus, and snow plow were.

Mr. Kelley said that eventually the Board would be looking at the conditional use criteria,

including those concerning external impacts. He also noted that the ZBA had instructed the Planning Board to focus on mitigating all abutters' concerns during the site plan review process. He said with those things in mind, each one of these issues was raised as a concern of abutters. He said the Board did need to create conditions of approval that mitigated these concerns where they could.

Mr. Ozenich said some of these things were a reach, and were common every day noise. He said he almost looked at this as finding reasons not to have it there.

Mr. Kelley said he would like to see a condition of approval that trash trucks didn't arrive until after 7 am, and Mr. Ozenich said that was reasonable.

Mr. Roberts spoke about the fact that he used to live across from the Mill Pond Center property, and said it was a noisy area anyway.

Parking Area

Mr. Roberts said he agreed with what Mr. Campbell had said in his memo.

Mr. Kelley said there was little doubt in his mind, based on the Existing Plan and the site walk, that the gravel lot didn't encroach upon Mr. Hiller's land. He also said Mr. Hiller had avenues to pursue this if he wanted to.

Councilor Smith said this was a matter between neighbors.

Lighting of parking area

It was noted that the applicant had said the lighting would be shielded. Board members agreed that this should be a Condition of Approval.

Location of dumpster - in view of abutter

There was discussion that the applicants had said the dumpster would be moved, and that this could be a condition of approval. Chair Parnell said it should be said where the dumpster would be moved to.

Mr. Kelley said because there was no site plan, the Board didn't know where it would be moved to.

Craig Faulkner of Seacoast Rep described where the dumpster was currently located. He said they would ask the trash company to move the dumpster slightly down the hill to the second parking lot, between the carriage house and the barn, or somewhere in that vicinity, where the truck would have access to it. He told Councilor Smith that the dumpster would not be within the view of the abutter in this location.

Mr. Kelley noted that dumpsters were required to be screened, and Mr. Campbell said dumpsters were required to have screening if they were viewable from the public way.

Mr. Faulkner said he didn't believe the dumpster was currently within the view of the public.

Mr. Ozenich determined that trash pickup had occurred twice since November.

There was discussion on whether a Condition of Approval was needed for this, or if the Board could assume the dumpster would be moved. Mr. Campbell said he could make it a Condition of Approval.

Mr. McGowan arrived at the meeting at 7:33 pm.

Abandonment of use issue

There was brief discussion that the Board had received guidance from its attorney that this was not an issue.

Sign for the Conditional Use Permit

Councilor Smith said he doubted that there was a lack of knowledge that Seacoast Rep was having public hearings on this matter. He said the sign did blow down from time to time, but noted that there had been some strange weather in recent months. He said he didn't think that this was a problem.

Board members agreed that they had no issues with this.

Handling and frequency of large events

Chair Parnell noted that the applicant had offered to have a traffic control person posted on Route 108 for any event with 100 invitations or more, and that they would also arrange for off-site, remote parking with a shuttle service.

Mr. Kelley said the applicant needed to work with the Police Department to develop a traffic management plan for getting people in and out of the property. He said it was appropriate to have a uniformed officer doing traffic control. He also said the location for off site remote parking the applicants had proposed needed to be identified, and said there should be proof that this area could be used.

Mr. Roberts asked if Board members were happy with the rule that a traffic control person would be posted on Route 108 for any event with 100 invitations or more. He noted that the Mill Pond Center theatre could have 140 people on a weekly basis, and said the maximum number that would be allowed for Seacoast Rep at the theatre would be 49 people. But he said larger events would not be a usual occurrence.

Councilor Smith asked Mr. Kelley if he was saying the location for off site parking should be a condition of approval.

Mr. Kelley said the applicant needed to identify this, and Councilor Smith said this could change over the years. Mr. Kelley said it should be identified as part of the traffic

management plan.

Mr. Campbell agreed, and said this would be worked out with the Police Department.

Councilor Smith said he didn't think the applicants needed to specify the offsite parking now.

Ms. Fuller asked if someone having a function that required a traffic control person had to pay for this, and she was told yes.

Mr. McGowan noted that at Christmas when the open house was held, the traffic control person wasn't there. He asked what the next step would be if there weren't enough police personnel available in Town.

Chair Parnell said the applicants would have to plan in advance for this.

There was discussion about who could serve as the traffic control person, and it was noted that uniformed police officer didn't indicate a particular jurisdiction.

Mr. Kelley said the 100 invitations threshold was one of his larger concerns. He said he felt it was important to have someone directing traffic there who knew what he/she was doing, and said a badge and gun was enough to stop a car. He said he would also like to see the police car there, stating that police car lights tended to slow traffic down.

Mr. Roberts noted that the theater run by the Mill Pond Center had often held 140 people for Saturday evening performances.

Ms. Fuller said with a play, people came in and left at the same time. She said with an open house, people would come and go throughout the scheduled time. There was discussion on the level of intensity of these different situations.

Mr. Roberts asked what the Police Department would say in terms of what Mr. Campbell has described in his memo.

Mr. Campbell said the Police Department would endorse what he had written. He said he didn't know whether the Department would feel the same if the number was less than 100.

Mr. Roberts suggested asking them this question.

Mr. Ozenich said people flew through that area despite the speed limit, and said there should be a warning sign in both directions, prior to the theatre, especially with the policeman there, when it was getting dark.

Mr. Roberts said this would be the kind of thing to get guidance on from the Police Department.

Councilor Smith said it was important to make sure that the Police Department didn't

have a problem with an officer and vehicle from another jurisdiction coming in to do traffic control if the Durham Police Department couldn't do it. There was discussion.

Mr. Campbell said he would talk to Chief Kurz about these issues, and Chair Parnell agreed this was a good idea

Applicant needs to provide a Purchase & Sale agreement

Chair Parnell noted that in his memo, Mr. Campbell had said this wasn't necessary.

Mr. Campbell said Seacoast Rep had provided a copy of the deed with the application, and said it wasn't necessary for them to provide a purchase and sale agreement. He also said if the Board didn't agree with this, it was something that could be waived.

Councilor Smith said he agreed with Mr. Campbell that it wasn't necessary for the applicants to provide the Purchase and Sale Agreement, and other Board members agreed.

Construction of sets - noise, time allowed for constructing sets

There was discussion about the fact that the applicant had offered to limit set construction to Monday through Saturday, starting no earlier than 9 am and ending no later than 8 pm, and that there would be no set construction on Sunday.

Mr. Roberts said the area where set construction occurred didn't point toward the abutter, and he provided details on this.

Mr. Kelley proposed that there be a Condition of Approval that set construction could occur between 9 am and 5 pm, on weekdays only.

Mr. Roberts said this was unrealistic for a theatre operation that was run in part with volunteers who had to work and might only be available on Saturdays. He noted that Seacoast Rep had been getting excellent reviews on the creativity of its sets, and said he felt the Board should support this.

Councilor Smith said he agreed, noting that he had helped build sets in college, which was frequently an all night activity. He said he thought it was a great concession that the applicants had offered to stop at 8 pm.

Ms. Fuller noted that in both winter and summer the doors would probably be shut.

Mr. Kelley said it didn't matter that Seacoast Rep was getting rave reviews, when it came to the criteria from the Zoning Ordinance that the Board had to use.

Mr. Roberts said this was a buffered location, and said the use had existed in the past with no restrictions concerning construction of sets.

Chair Parnell said he agreed with Mr. Kelley. He said this was a commercial type

operation in a residential area, and said he thought the applicants should be allowed to do set construction only during regular business hours. He said he thought the Board had to provide some support to the residents on this.

Councilor Smith asked why this should be allowed only 5 days week, noting that some businesses were open 6 days a week.

Chair Parnell said this was a residential area, and said if he had someone doing set construction next to his property on a Saturday night, he wouldn't care for it.

Mr. McGowan asked what protections there were in the Zoning Ordinance concerning this, and Mr. Campbell said the Ordinance established the allowed decibel level at a certain hour.

Mr. McGowan said he thought there was protection from that, and said if the decibel level was exceeded, it would be no different than if a neighbor was working in his garage late at night with power equipment.

Councilor Smith described a possible situation when someone had an accessory use at home like a boat building business, and liked to work at night.

Chair Parnell said that could become very annoying, and Councilor Smith said this wasn't a Planning Board issue. There was discussion.

Mr. Kelley said the hypothetical situation Councilor Smith had described wasn't a Planning Board issue, but said set construction, and the hours allowed for this, was.

Mr. Roberts said given the hundreds of feet of separation, the fencing, and the orientation of the building toward the river rather than the abutters, it broke the test of reasonableness. He said this was given a variance in the late 1970's because it was so isolated, and it was still isolated.

Councilor Smith agreed.

Ms. Fuller said she agreed with Mr. Roberts and Councilor Smith, and said 9 am to 8pm Monday through Saturday could be made a condition of approval. She said the distance was fairly good, and said the doors would probably be shut the majority of the time. She also said the Board could make it a Condition of Approval that the noise ordinance would have to be met.

Chair Parnell said this was a majority opinion.

Buffering/Screening of parking area

Chair Parnell noted that the applicant had stated that given the distance to the abutter's house and the amount of existing tree cover and vegetation, no further buffering or screening was needed. He noted that others had spoken differently about this.

Mr. Kelley said he would like to see a 6 ft fence built and maintained by the applicant as a Condition of Approval to provide privacy screening. He said such screening would keep light glare from shining up onto the hillside, would damper some of the noise and would also indirectly establish the property line.

Mr. Ozenich suggested that there should be evergreen screening.

Mr. Kelley said he was a bit uncomfortable with the Board having to address the screening, noting that it was a shame that the discussion between the applicant and the abutter on screening had broken down.

Mr. Roberts said the parking facing the property line would be screened, but said the back of the parking lot would be seen unless a 20 ft fence was put in.

Mr. McGowan asked how long the fencing should be required to be.

Mr. Kelley noted that the applicant was looking for a waiver from having to do a site plan. He said he wouldn't be in favor of this, in part because he felt a specific buffer needed to be established and shown on a site plan.

Mr. Campbell said the fence would have to be less than six feet, or would be considered a structure and therefore would have to meet the setback requirements for a structure.

There was discussion that an evergreen buffer would grow higher over time, so was preferable.

Mr. Kelley agreed, and suggested that a Condition of Approval could be that the applicant would establish an arborvitae along the property line.

Mr. Roberts noted that it was in the parking lot where car light angle swept into the range of the abutter's house.

Chair Parnell said the Condition of Approval would be that there would be a 6 ft arborvitae along the boundary between the parking lot and the abutter.

Mr. Roberts said he liked this suggestion, but noted that the plants needed to be planted at a sufficient distance from one another, and then took awhile to fill in. He spoke about the experience concerning landscaping at the Holiday Inn site.

Councilor Smith said the location on the Seacoast Rep site would be better for plantings than the hotel site.

Mr. Kelley said the ideal location for the screening would be on the Hiller property at the tree line, but he noted that the Board couldn't make that decision.

Councilor Smith said perhaps the two neighbors would work this out.

Mr. McGowan asked if arborvitae would be best for that location.

Chair Parnell suggested another conifer should be used for the buffer.

Mr. Campbell noted the wording in the Zoning Ordinance concerning plant materials that should be used for a buffer.

Councilor Smith suggested that the Condition of Approval should follow the Zoning Ordinance concerning landscaping materials that should be used.

Septic System condition and capacity

Chair Parnell said the Board hadn't gotten updated information on this yet.

Councilor Smith asked how this issue affected the abutter.

Chair Parnell said it became more of an issue with 9 people in the building.

Mr. Campbell said this was an issue for Mr. Johnson to deal with. He said the concern was that a residential septic system had been built, but that with a lot more activities, the system would be overburdened.

Board members reviewed the report from Epping Septic.

Mr. Kelley agreed that the Board hadn't yet gotten all the information on the septic system(s). He said it was not clear if the system was sufficient to handle nine bedrooms.

There was discussion that the accessory apartment was in the house. Mr. Roberts said the barn had a new septic system with a 1500 gallon concrete tank, while the house had a 1000 gallon home made concrete tank.

Mr. Kelley noted that Mr. Johnson had raised concerns about this, and had made the Board aware that he would like it to be addressed. He asked Mr. Campbell if Mr. Johnson had elaborated on this, and Mr. Campbell said he didn't think he had yet done so.

Mr. Roberts said the rating for the new septic system had been done, but said there was no rating yet for the house septic system.

Chair Parnell suggested that a Condition of Approval could be that the septic system would need to be professionally approved for the number of people who were going to live there.

Mr. Campbell said absolutely, and noted wording in a memo dated January 13th from Mr. Johnson stating that the Code Enforcement officer would ensure that the current septic system was sufficient, and that the owner would provide DES subsurface approval for the system on site based on all proposed site uses.

Board members agreed with this.

Site Plan waiver - replaced with Existing Conditions Plan

Mr. Kelley said he wouldn't support a waiver, because he wanted to see the buffer shown on the plan.

Mr. McGowan asked if the buffer could instead be shown on the Existing Conditions Plan.

Mr. Kelley said it could. He said Mr. Doucet could update the abutters list, and include items based on some of the other Conditions of Approval could as well, including the adequacy of the on-site septic.

Councilor Smith MOVED to grant the Site Plan waiver request. Steve Roberts SECONDED the motion.

Mr. Ozenich said he thought the site plan needed to be updated because there were modifications, and the number of people was increasing.

Chair Parnell asked whether if the applicant came up with an updated site plan, the Board would have to go through the site plan review process again.

Mr. Campbell said he didn't think so, because of times when the Board had made it a Condition of approval that an updated site plan would have to be provided.

Councilor Smith noted that public hearings weren't required as part of this.

Mr. Roberts said there was no evidence of failure in the outlines of the parking lot, with the exception of the area adjoining Mr. Hiller's property, which did need to be identified and said the buffer would take care of that. He said without any exceptional condition, he didn't see a need to have the site plan.

Councilor Smith agreed.

The motion PASSED 4-3, with Chair Parnell, Richard Kelley and Richard Ozenich voting against it.

It was clarified that this pertained to the site plan application and not the conditional use permit application.

Attorney Mitchell asked if the motion was totally to waive the need for a site plan.

Chair Parnell said it was, and Mr. Campbell noted that this was what the applicant had requested.

Hours of Operation - should they be limited ?

There was discussion about the hours proposed by the applicant, according to Attorney Springer's March 18 letter to the Planning Board. He said for the youth camp, the proposed hours were Monday through Saturday, 8:30 am to 6:00 pm. He said the hours proposed for dance classes were Monday through Saturday, 8:30 am-8:30 pm. He said for

dance recitals, performances including youth camp performances, black box productions, play and poetry readings and rehearsals, the hours proposed were Monday through Saturday, 8:30 am to 11 pm, and Sunday, from 10:00 am to 8:00 pm.

Mr. Roberts said what the applicants proposed was similar to or more strict than what the Mill Pond Center had done.

Mr. Kelley asked if that had relevance for the Board.

Mr. Roberts said the use was given a variance in the 1970's. He provided details on this.

Mr. McGowan said if those were the hours the applicant proposed, the Board should go with these hours.

Chair Parnell said performances ending at 11 pm on Monday through Thursday meant people would be coming out of the parking lot at 12 pm, and said he thought this was a bit late.

Mr. Kelley agreed.

Mr. Ozenich agreed it was too late. He said he went to summer theatre a lot, and said normally people left the theatre around 10 pm. He said there was quite a bit of noise from this.

Mr. Roberts said his concern was that these hours proposed hadn't changed from what the Mill Pond did, and weren't even part of the application. He said the application was regarding actors housed in the main house, and a reduction to a third, in terms of the number of people who would be allowed to attend performances. He spoke in some detail on this and said he didn't think they should be held to a different standard. He noted that the wedding issue was off the table, and shouldn't be part of this.

Mr. Campbell said there was a difference from the Mill Pond Center use of the property in that this wasn't Seacoast Rep's main site for doing performances. He said a question was therefore whether Seacoast Rep had to be there until 11 pm.

Mr. Roberts noted that with black box theatre productions, there were fewer people.

There was discussion that traffic, etc. would occur after 11 pm, in what was a residential zone.

Mr. Kelley said he couldn't support the hours the applicant has spoken about, and said this went back to the issue of external impacts. He said he didn't think he could support the Conditional Use permit without a change concerning this. He said the schedule proposed for youth and dance was appropriate, and said he would like to see recitals scheduled for a similar time, perhaps extending a little later on Friday or Saturday. He said he didn't take issue with Sunday hours, and said it was the performances from 8:30 am to 11pm Monday through Saturday that he took issue with.

Ms. Fuller said she was fine with the hours of operation the applicant had proposed. She said in reality, she saw the theatre happening Wednesday through Saturday, if that, and not every single week. She said she wasn't comfortable setting hours for this nonprofit community organization. She noted that there would be temporary housing for actors, and asked if the Board was going to say they couldn't come in after 11 pm.

Mr. Kelley said no. He said that was more in line with the use surrounding there. He suggested that the hours should be Monday through Friday, 8:30 am to 8:00 pm, and Saturdays 8:30 am to 9:00 pm.

There was discussion. Mr. Kelley said he wouldn't suggest hours, but wouldn't support what was proposed either.

Mr. Roberts said the last performance he attended at the Mill Pond Center got out at 10:45 pm, and said there were 140 people. He said there would only be about 50 people for a performance now. He said there should be buffering, etc, but said this place was set up for this use.

Mr. Ozenich said the cleaning up after a performance would extend beyond that, and Mr. Roberts said that wouldn't be visible, and said the only thing that would be seen was the parking lot.

Mr. Ozenich said he didn't think a patrol officer would be needed at 11 pm.

Chair Parnell determined that the condition would be the hours the applicant had suggested.

Building and Life Safety Code

Councilor Smith noted that in his memo, Mr. Campbell had said these were issues Mr. Johnson would address, and said it was not the Board's concern.

Mr. Kelley said he agreed, but noted that some valid concerns had been raised, and said Mr. Johnson would have to investigate them and things would have to be remedied according to the code.

Chair Parnell noted that a condition of approval was usually that permits, certificates of occupancy had to be received.

Property values –will approval cause them to drop for the abutters.

Chair Parnell said this would have to be discussed by the Board during the conditional use permit checklist review.

April 2005 Property Condition Assessment of the Mill Pond Center

Mr. Campbell noted that the review done of this by Town staff was done in the light of possible municipal use of the property. He said anything that came out of further review

would be handled by Mr. Johnson and the Fire Department.

Dormitories

Chair Parnell said according to the Zoning Ordinance and ZBA approval, this was not a dormitory.

Attorney Mitchell said he agreed.

Use of apartments - for non-profit as per ZBA approval

Chair Parnell said he thought there was information that the property was being rented. There was discussion. Mr. McGowan said until the application was approved, perhaps this was operating under the old conditions.

Mr. Campbell said that was the case, and said if and until this approval happened, things ran as they had in the past, and said the apartments were rented for profit. He said the ZBA decision would come into play if the Planning Board approved the application, noting that this was the last step in the ZBA approval.

There was detailed discussion about what was meant by the ZBA's words: "All living space on the property shall be limited to non-rental, nonprofit use only, including the two apartments in the barn."

Attorney Mitchell said he and the Planning Board couldn't answer what the ZBA meant, but said this condition would be binding on the property when the ZBA approval became final. He said it wasn't final yet because it was still under appeal. He noted that the trial judge had supported the ZBA decision, and said a motion for reconsideration had been filed.

After further discussion with Attorney Mitchell, Chair Parnell said the Board therefore didn't need to discuss this.

Parcel is located in Residence B district - should take into account

Mr. Campbell said the Board had been hearing this throughout the review process, and needed to keep this in mind as it deliberated.

Chair Parnell asked if Board members thought there were any other issues that hadn't been addressed.

Mr. Kelley said the Board had heard additional abutters' concerns, and noted that the ZBA had asked the Planning Board to focus on mitigating all abutters' concerns. He said the abutter requested that all invites and activities should include a reminder that the theater was situated in a residential neighborhood.

He said the abutter had also asked that all patrons be respectful concerning car alarm horns, driving within posted speed limits, not parking on residential side streets, and not

using the abutter's driveway to turn around. Mr. Kelley said there was also a request that signage should be posted that contained the same information.

Mr. Kelley said there were also concerns expressed by the abutter regarding signage, and said he didn't share this, noting that there was a sign ordinance. He also noted that the issue raised concerning having a full time property manager on the property had been taken care of by the ZBA.

He said concerns were raised about the issue of alcohol being permitted at any events or functions on the property.

Councilor Smith said he knew of some residential neighborhoods in Durham where alcohol was consumed by families and their guests.

Mr. Kelley asked if the Board agreed that this as well would create a nuisance for the neighborhood.

Councilor Smith said if the Seacoast Rep property became a single family home occupied by a rambunctious family, and there were lots of parties there, it could be much worse.

Mr. Roberts said he had attended arts exhibitions and wine tasting events at the Mill Pond Center several years ago. He also said this issue wasn't part of the application, and noted that as part of the current review process, the number of people attending performances was being restrained to a third of what there had been before.

Mr. Ozenich said most places like this did allow alcohol, and said he didn't see anything wrong with it.

Mr. Campbell said he didn't think Seacoast Rep had a liquor license for the property. He noted however that there might be a catered event. He spoke about what would be involved in getting an alcohol license. He said if there were any issues the Town had with the permit, there would be a request for a public hearing.

There was discussion.

Chair Parnell asked if there should be a condition of approval concerning this.

Mr. Ozenich said he would endorse limiting alcohol use during intermissions, and said people shouldn't be able to bring their own alcohol. He said usually there was a kiosk outside, and said this was generally what summer theatres generally did.

Mr. Roberts said these issues being debated were covered when the original Mill Pond Center was established. He said he didn't know why things should be changed, when the actual sizes of the audiences for theatre events was being reduced to a third of what was allowed before.

Chair Parnell asked if there were any other conditions Board members wished to discuss, and there was no response. He then asked Mr. Campbell to come up with the Findings of

Fact and Conditions of Approval for the Board's next meeting, on April 28th.

Break from 8:43 - 8:55 pm

VII. Discussion on Stormwater Regulations with Town Engineer David Cedarholm

Town Engineer Dave Cedarholm said since the last meeting, he had forward the draft to the Town Attorney, and said Attorney Jeff Belanger had gone through it and provided comments. He said the subcommittee met last Friday and reviewed these comments, accepted the edits suggested, and then made further edits to address Mr. Belanger's comments.

He said he had also forwarded the document to Jack Farrell, Mike Sievert, Appledore Engineering, and Altus Engineering, and said he had heard back from everyone except Altus Engineering. He said there was a lot to go through, and noted that the subcommittee had voted to forward to the Board the attorney's version, along with the edits, and still recommended going forward with the proposed regulations.

Mr. Cedarholm said he wasn't sure how to address all of the other comments. He said there were some worthy comments, and biased comments, including some from him. He said probably the only unbiased comments were from the Town's attorney. He said that made it a tough job for the Planning Board, and he noted that it was difficult for him to go through all the comments and decide for the Board what was important and what wasn't.

He said there were some other comments everyone had made relative to certain text that could be adjusted some more. But he said there were various comments regarding the threshold of 10,000 sf, noting that some people said it should be 100,000 sf, and some said it should be an acre. He said Appledore had made some interesting comments relative to this.

Mr. Cedarholm said there were also various interesting comments about being able to do something concerning stormwater management in the buffer. He said there was some merit to that, and said it made sense to do something relative to helping stormwater flow through a buffer. But he said the worst thing that could happen would be to build a system right up to the edge of the buffer and expect the buffer to take care of it.

He provided details on this, and said the results of this kind of design could be a difficult thing to deal with. He said it might make sense on a case by case basis to allow some kind of structure in a buffer to help the stormwater discharge carefully near a water body. He noted an example of this was the system that MJS Engineering had recommended for the Kostis development.

Mr. Cedarholm said the subcommittee had discussed this issue at length, and he noted that it was a difficult thing to write into the regulations. He said he thought the Planning Board would have to deal with this on a case by case basis, through conditional use.

He said he had provided his own comments in response to Mr. McNeill's written

comments. He said the issue was essentially how the Planning Board was going to deal with impaired water bodies. He said Mr. McNeill had some worthy concerns about the cost of stormwater management, and said this cost was concerning how to deal with building something right next to an impaired water body.

He said every water body in Durham that was near areas to be developed was impaired in some way. He said there were already regulations in place, and noted that the current standard in the regulations was “adequate storm water disposal”. He said the position the DPW had been taking was that this meant there needed to be BMP’s that met today’s standards.

He said concerning the comments that the proposed regulations would create a hardship, or make it more difficult for developments to move forward, he thought the litmus test he had done on the five recent developments was the answer. He said they were meeting much more strict standards than those that were in these draft regulations, and without great difficulty. He said there were certainly costs, but said there were also costs with traditional stormwater management approaches like detention ponds and a series of catch basins. He said the problem with those systems was that they didn’t work.

Mr. Cedarholm said Appledore had provided extensive comments on how these regulations would impact costs, but said each comment was relative to the concept that Durham had no regulations, which was absolutely not true.

He said the Board would need to organize some work sessions, and after digesting the information in the comments, Board members could decide what comments were valid and needed to be addressed, and could work through the regulations and decide what was important and what was not.

Chair Parnell asked how what was proposed related to the State’s regulations, noting that Appledore had said that what was proposed was stricter than these regulations.

Mr. Cedarholm said the State’s Alteration of Terrain rules applied to developments of more than 100,000 sf. He said for residential developments, that would only apply to a road corridor, and noted that a road 50 ft wide would need to be 2,000 ft long for these rules to apply. He said Durham hadn’t seen a development like that very much. He said the Alteration of Terrain rules would therefore probably never apply in Durham.

He said a 100,000 sf industrial development might be seen, but said they hadn’t seen one of those in a long time either. He summarized that the State’s rules for stormwater only applied to very large sites that were not happening in Durham.

Chair Parnell asked which rules would be more stringent if there were two 100,000 sf sites.

Mr. Cedarholm said they would be very similar, but said the Alteration of Terrain rules didn’t address water quality impairments. He said that was really the focus of these rules, in order to satisfy the federal MS4 stormwater permit and address impaired water bodies.

Mr. Kelley noted that this permit was a general permit that was specific to populations the size of Durham.

Chair Parnell asked how the Board would like to proceed, noting that there was a lot of material that they hadn't yet had the time to digest.

There was discussion about the schedule. Mr. Cedarholm encouraged the Board to move forward and adopt this by the end of April. He said he had to submit an annual stormwater report to EPA by May 1st, and would like to be able to say the regulations had been adopted. He said the longer this dragged on, the more likely this would draw the attention of the regulators.

Mr. Kelley said he had some specific questions and comments on the latest draft. He first asked how to reconcile the difference between development and redevelopment, when the definition for development read "any man made change to improved or unimproved real estate." He said the word "improved" confused him.

Mr. Cedarholm said that definition came from the Zoning Ordinance, and said the subcommittee felt it was necessary to repeat this definition in the regulations. He said if it was changed here, it should also be changed in the Zoning Ordinance.

Mr. Kelley said this might avoid confusion. There was discussion, and Councilor Smith noted that he had asked this same question at a previous meeting. Mr. Kelley said this was something the Planning Board would need to come to terms with.

Mr. Kelley asked whether, if Mill Plaza decided it needed an overlay on its parking lot that was over 10,000 sf, it would have to abide by these regulations.

Mr. Cedarholm said this would be excluded, and Mr. Kelley noted that the definition of development included paving, but said under Section 9.03 Stormwater Drainage under the general requirements, it said all developments shall provide adequate management of stormwater runoff. He said if he was overlaying anything greater than 10,000 sf, he would think the stormwater management section would apply.

Mr. Cedarholm said there was an exclusion concerning repaving somewhere in the draft regulations.

Mr. Kelley said that regarding the definition for disconnected impervious cover, he suggested that "impervious cover" should say "impervious surfaces", because that was something that was defined. He also said it was redundant to say "and pavement" in this definition, because the definition for impervious surface included wording on paving. In addition, he said the wording "is designed to capture and filtrate the precipitation from a 1-inch 24-hour rain event", should say runoff instead of precipitation.

Mr. Kelley said that the wording under the definition of Effective Impervious Area should say impervious surface instead of impervious cover. Mr. Cedarholm agreed.

Mr. Campbell noted that the exemption concerning resurfacing was on page 10 of the

draft, under Waivers and Exceptions.

Mr. Kelley said on the second page of the draft, under the definition of Impervious Surface, it should say “cement or bituminous concrete“. After discussion, it was agreed that this should read “cement concrete or bituminous concrete“.

Mr. Kelley asked if gravel was considered a granular soil, and Mr. Cedarholm said yes. Mr. Kelley noted that compacted gravel was included under the definition of Impervious Surface, but said under Porous Media, the term granular soils was used. There was discussion, and it was suggested that perhaps the word soil needed to be defined.

Mr. Roberts noted that the definition for Impervious Surface was the one that was in NHDES’s Administrative Rules. He said the only time he had seen it change was in the State’s groundwater ordinance.

Mr. Kelley said he wasn’t saying it was wrong, but said it was confusing when one also looked at the definition for Porous Media in the draft regulations.

Mr. Roberts spoke about why he would be very reluctant to change the definition for Impervious Surface.

Mr. Cedarholm said most compacted gravels were considered to be impervious, and said it could perhaps say “some compacted gravels“.

After further discussion, Mr. Kelley said perhaps the definition of Porous Media could be changed.

Mr. Roberts said there were various ways to add modifiers to Impervious Surface, but said they shouldn’t disturb the main definition that was used all over the State.

Mr. Cedarholm said he thought the trigger here was that the Planning Board would be given some flexibility. He said if someone proposed a compacted gravel driveway as a way to provide a pervious surface, typically that wasn’t what one would get.

Mr. Kelley agreed there would be some infiltration, but not a lot over time.

Mr. Cedarholm said these regulations provided a lot of flexibility to be more strict or relax the BMPs with some applications, in order to help a development that was really trying to do the right thing.

Councilor Smith noted 4g) and 4d) on page 6. He asked if this meant that a pond must drain.

Mr. Cedarholm said an existing pond shouldn’t be considered part of a stormwater management system. He said perhaps this should be made explicit. He said the key under 4) g was the wording “utilize natural filtration and or infiltration BMPs (i.e., bioretention areas, subsurface filtration/infiltration systems, ponds, swales, etc). He said there could certainly be a pond that retained water for a certain amount of time, but said one wouldn’t

want it to do so for more than 72 hours.

Councilor Smith said it therefore wouldn't be a pond. He said if it didn't rain for a month, there would be no pond, and just a shallow depression. He asked if perhaps a definition for pond was needed. There was discussion.

Mr. Cedarholm said if someone was interested in having a wet pond and creating a wetland on a site, this could be designed. But he said typically one wouldn't necessarily want to create a wetland as part of a stormwater management structure, because then a wetland permit would be needed and a dredge and fill permit would be needed to do maintenance on it.

He said when someone talked about doing a rain garden, it was important to know that the soils could infiltrate so it didn't become a wetland, or if it needed to include an underdrain. He said otherwise, it couldn't be maintained over time without a DES dredge and fill permit.

Councilor Smith said that was a problem that was counterproductive to stormwater management. He said DES should want more people to have wetlands and ponds on their properties, but said once someone allowed a wetland to spread on their property, they were then under the obligation to go to DES every time they wanted to do some maintenance. He said most sensible people would therefore not let a wetland form.

Mr. Cedarholm said that was his point too.

Mr. Kelley noted the definition of water quality volume on page 3. He asked what the unit was for A, and also asked what was the resulting water quality volume.

Mr. Cedarholm agreed that this needed to be clarified.

Mr. Kelley referred to page 4, and said he wanted to make sure that the Existing Conditions Site Plan dimension of 22 inches by 34 inches conformed with the Site Plan requirements. He also noted the Appledore comments on the issue of a High Intensity Soil Survey vs. Site Specific Soil Mapping, and said he didn't think the Board needed to go any further than that.

He suggested that on page 5 under Design Standards, A 2) should refer to December 2008 or current revision, not future revision, which might be hard to implement. Mr. Cedarholm agreed. Mr. Kelley also said that under A 3) b, it should say (NHDES) Water Supply and Pollution Control Division. Mr. Cedarholm suggested removing everything but NHDES.

There was discussion on 4) e under Stormwater Management for New Development on page 6. Mr. Kelley said he could understand if the melt water from a snow pile was going right into a brook, but said if there were provisions to keep it on a site, it seemed that the objective was being met.

Mr. Cedarholm agreed.

Mr. Kelley noted 4) h on page 8 discussed the water quality volume. He said it was confusing as to whether there would be a weighted average, which considered the various soil types there could be on a site in order to come up with the infiltration rate multiplier.

Mr. Cedarholm said that would depend on where the infiltration structure was located.

Mr. Kelley said in other words, when the water quality volume was determined, a portion of that had to infiltrate into the ground, depending on the receiving soils.

Mr. McGowan referred back to page 6 regarding 4) e - snow and salt storage areas. He asked if snow storage areas would be covered, and Mr. Cedarholm said it should be the salt storage areas that were covered.

Councilor Smith asked if the assumption was that the snow plowed from a large parking lot or road had salt in it.

Mr. Cedarholm agreed that the wording was confusing, and agreed with Councilor Smith's suggestion that the wording "Snow and.." could be removed. Mr. Campbell noted that the wording in the second sentence should therefore also be changed.

Mr. Cedarholm recommended a separate sentence should be included to address storage of salty snow.

Mr. Kelley said that concerning 4) i on page 7 - "Measures shall be taken to protect against on and off site downstream channel erosion and provide for sufficient capacity to convey the proposed flow without adverse effects", if one was abiding by 4) h, someone could argue that an erosive condition wasn't being created that didn't exist today. But he said rivers meandered, and said it could be a very costly item to address 4) i. He said a question was how far one would have to go.

He noted that he had learned at the most recent Lamprey River Advisory Committee meeting that Vermont had mapped its rivers in terms of fluvial erosion hazard zones. He also said there was a pilot program on the Exeter River, and said there would also be programs this summer for both the Lamprey and Cocheco Rivers that would identify zones where erosion could be expected. He said he didn't expect to see this for Pettee Brook, but said he thought there would be continued discussion about how to make 4) i work.

He said that concerning 4) l, the wording "redeveloped" appeared, but said this was under the Stormwater Management for New Development section.

Mr. Cedarholm said it was in the right place, and noted that redevelopment requirements also referred back to the Design Standards. He noted the wording in the second paragraph under 5) Redevelopment Project Requirements on page 8.

Mr. Kelley agreed. He also asked whether 4) p referred to all disturbed areas, as compared to existing ponds, etc.

Mr. Cedarholm suggested that the wording there could be: “all areas designed to retain storm water..”

Councilor Smith spoke in detail about the temporary stormwater storage that ponds, including beaver ponds could provide.

Mr. Cedarholm said the issue that was addressed under 4) p was vector control, which referred basically to mosquitoes. He suggested the wording “All BMPs designed to temporarily retain rainfall must be designed to drain the excess runoff within a maximum of 72 hours for vector control.”

Councilor Smith noted that vector control was not defined, and there was discussion.

Mr. Kelley said it was interesting how these regulations changes from state to state. He noted that some States didn’t want retention to occur for more than 24 hours because of temperature concerns, if the receiving body was a spawning area for trout.

He said that regarding the wording on pervious parking surfaces under 4) q, he was on the fence. He said his concern was that if an operation and maintenance plan was required, and it was not followed through on, there was no real backup. He said it would be a burden on the DPW or on Code Enforcement to make sure these plans were implemented appropriately.

Mr. Cedarholm said this was a very valid concern.

Mr. Kelley said under 4) s, he wondered if the underdrain wording was from the DES stormwater manual.

Mr. Cedarholm said this was wording that he had included, noting that he had seen rain garden systems fail because someone didn’t carefully consider what was happening in the soil below, and expected it to do more than it could actually achieve. He said locating an underdrain so it was elevated above the bottom of an infiltration structure would mean there would be a place for the water to go if the filter bed failed.

He noted that the wording referred to filtration BMPs, and not necessarily to an infiltration trench. He said if the intention was to create a trench to filter stormwater and not necessarily to infiltrate it to groundwater, an underdrain was needed. He said if a structure was being created to fully infiltrate the water, with surface overflow provided for 100 year storms, and there was confidence that it would never fail, perhaps an underdrain wouldn’t be necessary.

Mr. Kelley noted the second paragraph under 5) on page 8, regarding off-site locations, and said he didn’t know how “within the same subwatershed” should be defined. He determined that this was ambiguous for a reason, and was designed to give the Board some flexibility.

Mr. Cedarholm said he had struggled to imagine a scenario where a developer would have a property it could do this with. He said the wording came from the Newington text,

and said it was an interesting concept that perhaps someone would try.

Mr. Kelley said the permits were getting stricter and stricter, and he noted that some communities were moving to a user's fee, as part of a sewer bill, or based on the amount of impervious area, in order to generate revenue for a town to be able to clean up its stormwater.

He said the Board had heard a lot of comments regarding cost, and said this was a valid concern. He said if these regulations were implemented, it would be a matter of who paid for this, the developer or the general public, or a combination of the two.

He said a lot of work had been put into these draft regulations, and said he appreciated Mr. Cedarholm's efforts.

Mr. Kelley suggested that the Board could talk about the draft via email in advance of the next meeting, could move around some suggested edits and identify individual's concerns and editorial comments, and could share this with Mr. Campbell and Mr. Cedarholm, in an effort to try to move things along.

Chair Parnell said he agreed, and Mr. Campbell did as well. Chair Parnell said there should be discussion by the Board at its next meeting, but asked Mr. Cedarholm to be available for this meeting.

Mr. Cedarholm said he would be glad to attend the meetings on this.

Chair Parnell asked Mr. Campbell to send the Board the latest and greatest draft as soon as possible, and said they would go from there. He said Board members had all the copies of comments, so should all be prepared to discuss the updated draft at the next meeting, and said perhaps they could get it done.

Mr. Roberts said he hoped by that time, the aquifer ordinance draft would be available, and cross-referencing could be considered. He noted that the only recommended changes from DES for a stormwater area on an aquifer was a lower limit of 2500 sf of disturbance. He noted that the aquifer subcommittee thought Mr. Cedarholm had done a really good job on the draft stormwater regulations.

VIII. Other Business

A. Old Business: Discussion on Possible Zoning Amendments for MUDOR and ORLI Districts.

Mr. Campbell noted that the Board had discussed this at the March 10th meeting. He said Councilor Niman had discussed the idea of trying to find a way to have single family houses as an accessory to multi-unit dwellings, but said he hadn't found any place else that did this. He said the Board had also discussed the idea of Planned Unit Development, but said it would take a long time to get such a change approved, and noted that there were a number of people who felt the change needed to be made sooner.

He said one approach was to allow single family homes and duplexes as well as multi-units in the ORLI and MUDOR districts by right or as a conditional use. He said another approach was to create a “mixed housing” use, which he said was used in other places but mostly when doing mixed income housing, where multi-family units, duplexes and townhouses and single family houses were intermixed. He noted that there were a few places such as Maryland that had done this well. He said most of the places that had allowed this had also allowed differing degrees of density, depending on the type of housing.

Mr. Roberts asked if retail was also mixed in with this, and Mr. Campbell said not all of the mixed housing developments he had seen included retail. Mr. Roberts said those that did include retail were like mini planned use developments.

Mr. Campbell said the mixed housing approach was an interesting concept, but said it would take some time to research it.

Mr. Roberts asked if single family homes and duplexes could be allowed by conditional use in the short term, and a major Zoning rewrite could then be done later on.

It was noted that the developer was still interested in doing the development that had started the discussion about changing the zoning. Mr. Campbell also noted that there were other landowners in the districts that would appreciate the flexibility.

Mr. Roberts said he didn’t see how such a Zoning change would burden someone.

Mr. Campbell noted that the goal in not allowing single family homes in the MUDOR and ORLI districts had been to dissuade developers from putting in single family subdivisions, and to get them to focus instead on student housing and commercial activity.

Mr. Ozenich asked if there could be a percentage that could be used that way, so that the district didn’t become all single family houses and duplexes. .

Mr. Roberts said allowing them by conditional use could get at this. He said allowing single family homes and duplexes wouldn’t be like allowing retail, where people might have a lot of objections.

Mr. Roberts said he had lived in a development that included mixed housing.

Mr. Campbell noted again that there were examples in Maryland.

Malcolm McNeill noted a development like this in Exeter that Chinburg Builders had done, which had housing of various types and for different income levels. He said the Ordinance for this was in place.

Mr. Kelley suggested that the Board should take a look at this. He said he could easily

see giving the MUDOR zone away to pretty much any use because there was little land there, and also said there would be a benefit in providing more housing for the University. But he said it would be good if a University town had an ORLI zone that was utilized as such, and said he therefore had reservations about allowing single family housing and duplexes there. He said perhaps the only light industry Durham had was student housing.

Mr. Ozenich spoke about industrial development in suburban Chicago that looked like a residential street.

There was discussion that the entity that had precipitated this discussion could go to the ZBA for a variance. Mr. Campbell said he wasn't sure what the chances were that this would be granted, but said it was definitely an option.

Chair Parnell suggested that the Board should get more information on mixed housing developments, including the one in Exeter.

There was discussion on the timeline, and Mr. Campbell said the developer would like to see something within a month or two.

Chair Parnell asked if there was interest in making the change for both districts.

Mr. Campbell said he would like to see it done for both districts, noting that there were some single family homes in the MUDOR district that were now nonconforming.

Chair Parnell said the title MUDOR reflected taking steps down the housing path already, but said housing was a completely different concept for the ORLI district. But he said the comment that the only industry Durham was going to get was very valid, and said it made sense to encourage it there rather than in other areas of Town.

Mr. Campbell said if housing was allowed in an area where student housing was already allowed, and single family homes could be included as a part of this, upper classmen would have the option of living there as opposed to living in a single family home in a neighborhood. He said there could be some benefits to this.

Mr. Kelley said the mixed housing approach was the one that intrigued him the most, and said he would like to see the Exeter ordinance.

Mr. Roberts asked if this should be done in one step or two steps.

Mr. McGowan asked what the negative effect would be from allowing these uses as conditional uses.

Mr. Roberts said he didn't see any. He said it could be done in a month or so, and also said within six months, the mixed housing concept could be addressed.

Chair Parnell recommended that the Board move forward with conditional use for single family houses and duplexes in the ORLI and MUDOR districts.

Mr. Campbell said he was fine with that, and said he could have something ready for public hearing on April 28th.

B. New Business: Request for Technical Review of a commercial space at 7 Jenkins Court to be classified as either retail or office space. The property is Tax Map 2, Lot 14-4 in the Central Business District.

Mr. Campbell explained that right now, the property, which was located across the street from the Matt Crape project, had an insurance company in it that had recently moved in. He said technically this was a change of use from the previous retail use of the property, and said Mr. Johnson had suggested that both office and retail uses be allowed there.

Richard Kelley MOVED to grant at the request of the applicant the Request for Technical Review of a commercial space at 7 Jenkins Court to be classified as either retail or office space. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

Mr. Campbell spoke briefly about the Request for a 60 day extension of the Conditions of Approval for the St. George's Episcopal Church application.

Richard Kelley MOVED at the request of the applicant to provide an extension for an additional 60 days to the Conditions of Approval dated July 8, 2009 for St. George's Episcopal Church. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

C. Next meeting of the Board: April 28, 2010

IX. Approval of Minutes –

February 10, 2010

Page 3, top paragraph, should read “..which was part of the closest..”

Same page, next paragraph, should read “..Friday from 8:30 am to...”

Same page, 3rd paragraph from bottom, should read, “...long way toward addressing...”

Same page, 4th paragraph from bottom, should read “...Mr. Faulkner had moved in, in November.”

Page 5, 3rd full paragraph, should read “...determined to be intact.”

Same page, 3rd paragraph from bottom, should read “..would put deflectors on the...”

Page 6, 2nd paragraph from bottom, should read “...when she bought her property.”

Also, first motion on the page should read “...and it PASSED 6-1, with...”

Page 7, 3rd paragraph from bottom, should read “...headlight and brake light glare.”

Page 15, 2nd paragraph from bottom, should read "...Chair Parnell noted that..."

Page 16, top paragraph, should read "...a lot to continue the existing..."

Same page, 4th paragraph from bottom, should read "...would remain as a half an acre.."

Page 17, 2nd paragraph, should read "...as professional office, or a laboratory/light industry."

Same page, 5th paragraph should read "...do something like pacifate aluminum..."

Page 18, 4th paragraph from bottom, should read "...to be met subsequently,..."

Same page, 5th paragraph from bottom, should read "...NHDES Administrator."

Page 18-19, fix numbering of Findings of Fact

Same page, FOF #14 should read "...before the repaving of Strafford Avenue."

Councilor Smith MOVED to approve the February 10, 2010 Minutes as amended. Steve Roberts SECONDED the motion, and it PASSED unanimously 7-0.

Mr. Roberts asked that the Minutes be emailed to Board members so they could prepare more easily and thoroughly for meetings.

Mr. Kelley asked why the Minutes weren't sent by email anymore.

Chair Parnell said the Board had determined that comments shouldn't be made on Minutes in advance of meetings, but said they didn't specifically say not to send the Minutes by email.

It was agreed that Minutes would be sent by email in advance of meetings.

February 24, 2010

Postponed

March 10, 2010

Postponed

X. Adjournment

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

Adjournment at 10:29 pm.

Victoria Parmele, Minutes taker

Stephen Roberts, Secretary