

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

**Durham Planning Board Agenda
Wednesday April 28, 2010
Durham Town Hall - Council Chambers
7:00P.M.**

MEMBERS PRESENT:

Chair Lorne Parnell; Vice Chair Susan Fuller; Secretary Stephen Roberts; Richard Kelley (arrived at 7:05 p.m.); Bill McGowan; Councilor Julian Smith; Wayne Lewis; Kevin Gardner; Councilor Bill Cote, Richard Ozenich

MEMBERS ABSENT:

I. Call to Order

Chair Parnell called the meeting to order at 7:02 pm. He welcomed Councilor Cote as the Town Council's new Alternate Council Representative to the Planning Board.

II. Approval of Agenda

Councilor Smith MOVED to approve the Agenda. Steve Roberts SECONDED the motion, and it PASSED unanimously 7-0.

Chair Parnell said Mr. Lewis would sit in for Mr. Kelley

III. Report of the Planner

Mr. Campbell first reviewed new materials that had come in after the Board's packet had been sent out. Among other things, he noted an article about what some town officials were calling a rain tax to pay for stormwater management. He also said a late request had come in for Technical Review, and said this would be taken up under New Business.

He said on April 12th, Town staff had met with NHDOT regarding the upcoming Newmarket Road shoulder improvements. He said there was also discussion about the idea of alleviating some of the flooding problems that had been occurring on that road, and said NHDOT had seemed receptive. He said he thought something positive would come of the discussion, and said he would keep the Board informed on this issue.

Mr. Kelley arrived at 7:05 pm.

Mr. Campbell said the EDC had met on Monday, had reviewed the draft proposal for a market analysis, and also got an update from the EDC subcommittees. He noted that the EDC was generally in favor of moving forward with the proposed Zoning change to the MUDOR and ORLI districts, and he provided details on this.

Mr. Campbell said he had recently contacted Michelle Gagne regarding the creation of the steering committee for the Master Plan update, and said hopefully he would soon have the schedule for the update for the Board to review.

Mr. Campbell noted that the Council was currently working on finalizing its goals, and said it was important for the Planning Board to keep these goals in mind, and to make sure it was in line with them as well as its own goals.

IV. Public Hearing on a Zoning Ordinance Amendment to Article XII, Zone Requirements, Section 175-53 "Table of Uses," to allow Single Family Homes and Duplexes in the Office Research & Light Industry (ORLI) Zone as a Conditional Use and to allow Single Family Homes in the Multi-Unit Dwelling/Office Research (MUDOR) Zone as a Conditional Use.

Councilor Smith MOVED to open the Public Hearing on a Zoning Ordinance Amendment to Article XII, Zone Requirements, Section 175-53 "Table of Uses," to allow Single Family Homes and Duplexes in the Office Research & Light Industry (ORLI) Zone as a Conditional Use and to allow Single Family Homes in the Multi-Unit Dwelling/Office Research (MUDOR) Zone as a Conditional Use. Bill McGowan SECONDED the motion, and it PASSED unanimously 7-0.

Mr. Campbell provided an overview of what was proposed, noting that at its previous meeting, the Board had discussed the idea of providing some flexibility by allowing a mix of housing products in these districts. He also noted that when the previous Zoning change had been made to create the districts, this had made some properties non-conforming, which meant that a variance would be needed in order to make improvements to these properties.

Chair Parnell asked if there were any members of the public who wished to speak in favor of the proposed Zoning amendment.

Malcolm McNeill, 44 Colony Cove Road, spoke in favor of the proposed zoning change. He noted that his wife owned over 43 acres of land in the ORLI District that was suitable for a variety of development options. He also said ORLI was one of the few zones in Durham containing large tracts of land available for development. He noted that most of the MUDOR district was under the control of UNH.

Mr. McNeill spoke about the fact that elderly single family and duplex housing types were already permitted in these districts, so there was a precedent to allow them. He also said that regarding the general goal of tax stabilization, the proposed Zoning amendments would add flexibility and creative options for increasing the development potential of this area. He said it would assist developers in taking on the expense of extending infrastructure, which in the past had been a major constraint. He said it would provide alternatives to developers that didn't presently exist.

Mr. McNeill said the amendments were reasonable, and said with them, the Town would still have the protections afforded by the Conditional Use process when considering these new uses. He noted that the Conditional Use format was used extensively in Durham, and looked at proposed developments on a case by case basis, allowing worthy projects to be approved.

He asked that the Planning Board recommend to the Town Council these relatively minor Zoning changes, and said he thought they would assist in achieving many of the goals of the Master Plan, while also being responsive to developers with an active interest in doing projects in Town.

Chair Parnell asked if there were any members of the public who wished to speak against the proposed Zoning amendment, or who had concerns about it. There was no response, and he then read a letter from Dick Gsottschneider into the public record.

Mr. Gsottschneider said he was writing as both a long term resident and an owner of commercial property in Durham, to oppose the proposed rezoning of the ORLI zone. He said the idea of allowing single family usage in this zone made no sense, other than to allow Capstone to develop the property at Woodward's. He said there were few sites in Durham that could attract and nurture businesses, while there were ample places to build single family housing, although not necessarily at the density desired.

He said the most important thing was that the Town should be preserving this strategically located land for business. He said just because there was no apparent market today for the types of business uses envisioned for the ORLI zone, this didn't mean they should give up on this idea. He said allowing the proposed uses would eliminate this opportunity forever, for all practical purposes.

Mr. Gsottschneider said he strongly suggested that this zone, or any zone not be changed until a Town wide market study had been done and the Master Plan had been updated. He said amending the Zoning Ordinance now as proposed would in effect be changing a significant portion of the Master Plan without going through the process.

He said that as a landlord in Durham, he realized that the market for student housing was currently very soft, in that over 350 new beds had been added. He said virtually every landlord in Town had applied for tax abatement because of these soft market conditions, and said adding further to the supply would only exacerbate the situation.

Mr. McNeill said he represented his wife, and did not represent Capstone.

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

Chair Parnell noted that the Board had discussed this proposed Zoning change previously and asked if there were anything further they wished to discuss.

Richard Kelley MOVED to recommend to the Town Council the Zoning Ordinance Amendment to Article XII, Zone Requirements, Section 175-53 "Table of Uses," to allow Single Family Homes and Duplexes in the Office Research & Light Industry (ORLI) Zone as a Conditional Use and to allow Single Family Homes in the Multi-Unit Dwelling/Office Research (MUDOR) Zone as a Conditional Use. Susan Fuller SECONDED the motion, and it PASSED 6-1, with Councilor Smith voting against it.

Mr. Roberts asked Councilor Smith if he felt comfortable expressing the view of the Planning Board on the Zoning amendment to the Town Council.

Councilor Smith said he would tell the Council that there was an almost unanimous vote in favor of the Zoning amendment, or could pass this on to Councilor Cote to explain the position of the Planning Board. He noted that the Planning Board had passed the motion without any discussion, and said for that and other reasons, it might be appropriate to have one lonely dissenting vote. He said he might well vote in favor of the Zoning amendment after the Council's discussion on it.

Mr. Roberts said he thought the Planning Board had talked about the proposed Zoning amendment rather thoroughly at the last meeting.

Mr. Campbell said the proposed Zoning amendment would be heard at the Council's second meeting in May. After further discussion on how the Board's perspective would be presented there, he said he would go to the meeting.

- V. Acceptance Consideration of an Application for Subdivision** submitted by Doucet Survey Inc., Newmarket, New Hampshire on behalf of the Brown Living Trust, Durham, New Hampshire to subdivide one lot into two lots. The property involved is shown on Tax Map 2, Lot 1-3, is located at 34 Edgewood Road, and is in the Residence A Zoning District.

Steve Michaud of Doucet Survey explained that the existing lot contained 0.9 acres and fronted on Edgewood Road and Meadow Road. He said the owner wanted to subdivide it into one lot that would be around the existing house, and a second lot that would contain the remaining land. He said both parcels met the dimensional requirements except for the fact that the proposed lot(s) were smaller than the required lot size.

He said the owner had gotten a variance for this, and also said Town staff had reviewed the proposal last week, and there were outstanding items. He said the owner realized that he would need to get the required building and driveway permits, but said other than that, the subdivision application was fairly straightforward.

Mr. Kelley noted a discrepancy between the 1941 plan and the current subdivision plan in terms of the square footage of the parcel.

Mr. Michaud noted that a 25 ft by 16 ft triangle of land was conveyed to an abutter shortly after the 1941 plan was created. He also said Doucet Survey had determined that the original surveyor's determination of the edge of right of way on Edgewood Road was inaccurate. He

said his company had discovered the original layout from the Town, dated 1927, had retraced the right of way layout and came up with a different location for the edge of the right of way. He said these two things explained the discrepancy in the reported lot sizes.

After further discussion, Mr. Kelley summarized that the surveyor who created the 1941 plan, in figuring out the area of the lot, had made some mistakes.

Mr. Michaud said that was correct, and spoke further on this.

Mr. Kelley asked Mr. Michaud to bring the Board the plan that was submitted to the ZBA, when the public hearing was held. He also noted that the warranty deed conveying the property from the Delgers to the Browns made reference to a right of way, but said he couldn't see one on the plan.

Mr. Michaud said the right of way discussed there was Meadow Road.

Mr. Kelley noted the sewage entry application and contract that was referred to in the deed, and asked what that was about.

Mr. Michaud said he didn't know, and would look into it.

Chair Parnell asked what the structure was on the southern boundary, on the right side, below the debris pile.

Mr. Michaud said there were two debris piles, and a fence between them.

Mr. Kelley stated that some of the numbers from the warranty deed establishing the proposed lot were incorrect, and provided details on this.

Mr. Michaud said he would make sure that the legal description in the warranty deed matched the language in the plan.

Mr. Kelley determined from Mr. Campbell that the application was complete.

Richard Kelley MOVED to accept the Application for Subdivision submitted by Doucet Survey Inc., Newmarket, New Hampshire on behalf of the Brown Living Trust, Durham, New Hampshire to subdivide one lot into two lots. The property involved is shown on Tax Map 2, Lot 1-3, is located at 34 Edgewood Road, and is in the Residence A Zoning District. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

Mr. Campbell recommended that the Board hold the public hearing on May 12th.

Richard Kelley MOVED to schedule the Public Hearing for May 12th, 2010. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

Board members agreed to do the site walk at 6 pm on May 12th.

Mr. Roberts received clarification that there were no wetlands involved, so the Conservation Commission didn't need to attend the site walk.

VI. Acceptance Consideration of an Application for Site Plan Review submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of CWC Properties LLC, Durham, New Hampshire to demolish the current commercial structure and rebuild a new three-story, mixed use building. The property involved is shown on Tax Map 4, Lot 12-0, is located at 9-11 Madbury Road, and is in the Central Business Zoning District.

VII. Acceptance Consideration of an Application for Conditional Use Permit submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of CWC Properties LLC, Durham, New Hampshire to demolish the current commercial structure and rebuild a new three-story, mixed use building. The property involved is shown on Tax Map 4, Lot 12-0, is located at 9-11 Madbury Road, and is in the Central Business Zoning District.

Mr. Campbell recommended that both applications be heard together.

Mike Sievert of MJS Engineering said the proposal was to do a 3 story mixed use building. He said there was approximately 15,000 sf, and said there was currently a 2,572 sf 1-2 story commercial building on the property, containing Stat's Place, Scorpio's and a hair salon, as well as about 10 parking spaces.

He said the parcel was encumbered by a flood hazard zone from Pettee Brook and a municipal sewer easement near Pettee Brook Road and adjacent to the brook. He also said it was encumbered by the wetland conservation overlay district and the shoreland protection overlay district. He said there were 6700 sf of impervious coverage in the shoreland district and 650 sf in the wetland district.

Mr. Sievert said the proposal was to remove the existing building and construct a new 3 story building with an 8300 sf footprint. He said currently, what was proposed was to have a basement and 3 stories, and to make the first floor 6700 sf of commercial space. He explained that his company was currently conducting a soils and groundwater analysis in order to determine whether a basement would work. He said if it did, there would potentially be about 5000 sf of commercial space and storage space there. He also said the applicant was proposing 16 apartments on the second and third floors, with 8 apartments on each floor.

He said all currently impervious areas would be removed from the 25 ft wetland setback. He said there would be a 3% increase in the impervious area on the parcel within the shoreland district, also noting that most of the parcel was within that district. But he said the impervious cover increase would be all roof instead of pavement, and said the runoff quality would therefore improve, which would help Pettee Brook.

He said the development would incorporate low impact development strategies, including pervious walking surfaces and a patio rain garden that would perhaps be the first of its kind.

He said this patio would be useful for the restaurant but would also incorporate some rain garden amenities, explaining that the plantings would be able to take up some of the water that fell on the site.

Mr. Sievert said the area where it would be located sat up high, so would work as an infiltration, detention and rain garden type facility. He said all of the runoff from the roof and the patio would go into there and disperse either through infiltration, uptake by the plants or slow discharge from the system. He said as a result there would be a drastic reduction in the peak runoff and volume of stormwater. He noted that the idea of using a green roof had been considered, but said the rain garden was chosen instead because it would be an amenity for the restaurant.

He said the lighting proposed for the site was typical, and also said there wouldn't be any parking provided on the site. He said 7 parking spaces were proposed to be placed out on the right of way, which would also be used as the loading area to get trucks off of the travel way of Madbury Road.

Mr. Sievert noted that two variances had been granted for the property, and provided details on this. He then explained that a conditional use permit would be required for several reasons, and also said some other specific approvals would be needed, regarding the building height and the parking requirements. In addition, he said two waivers would be needed, one of which was to allow the underground utilities to remain overhead, and the other which was to waive the school impact fee requirement.

Mr. Sievert explained that there was a pathway that currently caused pedestrian traffic issues on Pettee Brook Road. He said there was a culvert there right now for the brook, and said the applicant proposed to remove it. He said this would address the existing pedestrian problems and would also avoid pedestrian problems for the outdoor seating of the restaurant, while also improving slightly the flow of Pettee Brook. He noted that a wetland permit would be required to take the culvert out, and also explained that it was located on the property line, so was partially on Town property. He said there would be a combined application going to the State soon.

He also explained that there was a sewer easement where the patio was proposed. He said the applicant was requesting to be able to build the patio with the understanding that the sewer might need to be dug up in the future. He said there would still be the boxed culvert under Madbury Road that caused some flow restriction, but said the removal of the other culvert would at least result in a slight improvement concerning flood conditions, and would also result in an improvement to the Brook itself.

Chair Parnell asked about the proposed uses in the new building.

Mr. Sievert first noted that Nick Isaac was the architect for the project. He said there would be a large area for the restaurant, including outdoor seating at the southerly end, and said there would be two other commercial spaces that would be either retail or office.

He said the main access to the building off of Madbury Road would have a ramp so would be handicap accessible. He also said there would be an elevator off the main corridor that would provide handicap accessibility to the apartments upstairs. He said the other access to the building would be from Mathis Terrace.

He said the second and third floors would be identical and would be accessed by the elevator as well as two stairwells. He said there would be 8 units on each of these floors, which would each be set up to house 4 and 5 people. He said the square footage of the units would be 900-1100 sf. He said if it was decided that there would be a basement, it would include two spaces, one of which would be commercial, and the other which would be a utility/storage area.

Mr. Kelley asked Mr. Sievert if he was confident that the 5 ft CMP culvert would go away.

Mr. Sievert said the Town would like to see it go away, and also said he didn't see the State Wetlands Bureau not permitting that. He said if there was an outdoor eating establishment, it would be a huge positive to have the culvert gone. He said that at an absolute minimum, it would be blocked, if it couldn't go away, either by rebuilding the stone wall, through a gate, or through a combination of things.

Mr. Kelley asked if the applicant would handle the burden of the cost of the brook restoration, and Mr. Sievert said yes. He noted that Mr. Sievert felt the permit would be received from NHDES, and said as the Board went forward with the review process, he would like Mr. Sievert to spend some time investigating the impacts to Pettee Brook Road from constructing the restoration detail, including getting the granite slabs 8 ft or so into the ground, how far the excavation would go into Pettee Brook Road, and the limits of the roadway repair work on that road.

Mr. Kelley said that with Conditional Use applications dealing with a multi-unit building, the Planning Board had in the past required a property management and maintenance plan. He said they would like to see that for this application, as well as a copy of the rental agreement that would be used. He also noted that while the application indicated there would be a management office on site, a question was whether there would be a property manager.

Mr. Sievert said he thought the proposal would be to have one, but said he would find out.

Councilor Smith said if the owner's signature was not legible on the documentation for the application, it would be good to have the name spelled out clearly on it. Mr. Campbell said he could adjust the application to include clearly the name of the applicant.

Mr. Roberts noted the long range planning going on right now regarding the downtown, which included consideration given to having some 4 story buildings there, in part to allow more affordable apartments. He said the proposed development would be located in a key downtown location, and asked if the applicant would consider a 4 story building if the Zoning permitted this, or if this idea was shut out because of the timing of the proposal.

Mr. Sievert said a 4 story building wasn't being contemplated right now, but said the design of the building could be set up to add an additional story if the applicant wanted to do this in the future.

Mr. Roberts said the input Mr. Sievert might get from the applicant would provide the Board with information about how to approach this subject in other parts of the Central Business district.

There was further discussion. Mr. Sievert said right now, the maximum limits of the number of units were set up in this footprint. He said there would have to be a change in the Zoning for this to go larger.

Mr. Campbell said if the Town adopted inclusionary zoning to promote workforce housing, and the applicant proposed that kind of housing, there could possibly be a density bonus. He also noted that currently in the Central Business District, 4 stories were allowed, but 2 of them had to be commercial.

Mr. Sievert said if they could get a full basement, that could play a role, and noted again that this idea was currently being looked at. He said while the parcel didn't have ledge, it did have clay soils, and he noted that the soil depth was almost 28 ft down. He said if the basement went in, piles wouldn't be necessary, but said if it didn't go in, the piles would probably be mandatory.

Mr. Roberts noted the comments that had been made about the utility lines, and also noted that the property was right next to the flood zone. He asked if the site had any flooding experience, with the recent 100 year floods.

Mr. Sievert said in 2006, the owner had talked about water coming up into the parking lot area, where the flood line was shown. He said with the proposed development, that area of the site had been carefully designed so that the grade wouldn't change.

He said if the basement was put in there could be some access to natural light, and he provided details on this. He also said there could be an access down to the basement from the sidewalk, which could include windows.

Mr. Roberts asked what the elevation difference was between the flood elevation and the elevation of a possible basement.

Mr. Sievert said the flood elevation was 44 ft, and said the basement elevation would be about 38 ft. He said the brook elevation/flow line was about 38-39 ft, and said the water table was about 39-40 ft. He noted that all of these things were being considered in their discussions about the basement.

Councilor Smith said he liked the idea of removing the culvert, and asked if this would be associated with trying to reduce some of the flood damage.

Mr. Sievert said it would be. He said because of the short distance from it to the other culvert under Madbury Road, there wouldn't be a huge change in terms of flood control. But he said there would at least be a slight change.

Councilor Smith questioned why the culvert had been placed there, and why the stone wall had been interrupted to allow pedestrian access to that corner. He said he imagined that there had been pedestrian access at that point, and that the Town had been reluctant to close it off. He said given the present condition of Pettee Brook Road, it would be a good idea to close it in, protect access to the patio, and prevent access from another direction.

Mr. Campbell said the Police Department and the DPW were also in favor of closing off the pedestrian access there.

Mr. Gardner asked why a waiver was being requested concerning underground utilities.

Mr. Sievert said the reason for the waiver request was that if the utilities were brought to the site underground, this would cut across the sewer easement. He said it was understood that there was a contradiction in asking for the underground utility waiver on the one hand, and on the other hand asking to put the patio within the sewer easement.

Mr. Kelley said the sewer easement was fairly deep, and Mr. Sievert said it was about 14 ft deep. Mr. Kelley said there was plenty of clearance to run the duct banks over it.

On another issue, Mr. Campbell said a big discussion with staff concerning the proposed development was on trash removal.

Mr. Sievert said the applicant proposed to store trash, recycling and food wastes in a closed room inside the building on the northerly side of the first floor. He spoke further on this, stating that the applicant had spoken with Waste Management and that there would be a proposal for the Planning Board to look at. He said it looked like pickup might be every three days to manage food waste if there was a restaurant.

He said the big problem on the site now was the existing exterior trash storage in the southwest corner, and especially the food waste. He said the applicant was hoping to change that situation drastically. He said storage room for wastes would be vented and said there would also be fire protection. He said the Fire Department liked the idea of waste storage in a closed room inside the building, so cigarettes couldn't be flicked into the trash.

Mr. Campbell said the Fire Department had some concerns about the overhead utility wires, in terms of being able to get its equipment in. There was discussion.

Mr. Kelley asked that the applicant submit an Existing Conditions plan that included only that, noting that there was a lot going on, on the site.

Mr. Sievert noted the Boundary Plan that had been provided, and Mr. Kelley said it was

another tough one to read. He asked if the idea was to use it as the Existing Conditions plan.

Mr. Sievert said it had been updated, and he provided details on this.

Mr. Kelley asked for the updated Existing Conditions Plan, minus the demo.

Mr. Gardner said he couldn't believe there was another mega student housing proposal for the downtown. He said he would like to hear whether there could be a 4th story, and if apartments for regular folks could be considered. He noted an email the Board had received that said the student housing market was soft.

There was discussion on the student housing market.

Ms. Fuller said she found it shocking that the building would have some units with about 870 sf that would hold 4 people, and asked how this would be configured.

Mr. Sievert said there would be 200 sf per person, and noted that the really close units had 800 sf. He also said there would be a unit with 1100 sf. He said what the Board was looking at was the initial layout to prove that 16 units would fit in the building.

Ms. Fuller said while she might find the square footage shocking, when the market became saturated, something else would have to be done with the units. She said that was life in Durham, until the Town could get an Ordinance for inclusionary zoning.

Mr. Campbell said the Board would probably see the figures for the square footage and the number of units change, and he provided details on this.

Mr. Sievert said the formula was based on about 250 sf per person and also allowed for stairways, etc. He said once that was laid out, it got down to 200 sf. He said these types of units would ideally be about 60-62 ft wide, and explained that if the width increased, the units could be larger, which would mean more people per unit.

Ms. Fuller noted that the building would have an elevator, and asked if there was a call for handicap units.

Mr. Sievert explained the design to allow handicap accessible units on the first residential level of the building on the second floor, which could be accessed by the elevator.

Mr. Campbell explained that a variance request to allow handicap accessible units on the first floor had been denied.

There was discussion on when the public hearing and site walk should be held.

Richard Kelley MOVED to accept and schedule for Public Hearing on May 12th, 2009 the Application for Site Plan Review and Conditional Use Permit submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of CWC Properties LLC,

Durham, New Hampshire to demolish the current commercial structure and rebuild a new three-story, mixed use building. The property involved is shown on Tax Map 4, Lot 12-0, is located at 9-11 Madbury Road, and is in the Central Business Zoning District. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

After further discussion, it was agreed that the site walk would take place on May 7th at 3 pm.

Break from 8:32 - 8:43 pm.

Mr. Ozenich left the meeting during the break.

Chair Parnell asked Mr. Gardner to sit in for Mr. Ozenich.

VIII. 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.

IX. 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 that the Board had the draft Findings of Fact and Conditions of Approval for both the Conditional Use Permit application and the Site Plan application, and would address them together.

Mr. Campbell noted that based on the deliberations at the previous meeting, he had suggested adding Finding of Fact #27 for both applications, regarding the fact that the applicant had agreed to limit the second story theatre space use to 49 people, including the audience, cast and crew, per discussions with the Fire Department. He noted that this had not been the case when the Mill Pond Center had been in operation.

Mr. Campbell reviewed the Waiver requests for the Site Plan application. Among other things, he noted that the Board had waived the requirement for a surveyed site plan at the last meeting.

Chair Parnell noted the wording under Condition of Approval #2, that "The Code Enforcement Officer shall ensure that the current septic system is sufficient.."

Mr. Campbell said the applicant's septic system company would go out to the site again, and would do a full report that would then be sent to Mr. Johnson. He said this would also have to be approved by NHDES. He said if anything needed to be added to either one of the septic systems, further reporting to NHDES and Mr. Johnson would be

required.

Councilor Smith noted that since there were two septic systems, #2 should say “...current septic systems are sufficient.”

There was discussion about the Conditions of Approval the applicant had agreed to as part of the Conditional Use permit, which were included in the draft COA. Mr. Campbell noted that these conditions had been mailed to the abutters, the attorneys, etc.

Mr. Kelley asked if Attorney Mitchell had provided the Board with any further comments before going on vacation, and Mr. Campbell said no.

Mr. Campbell noted COA #9 to be met prior for the Conditional Use Permit application concerning a performance bond or escrow agreement to ensure satisfactory completion of the installation of the landscaping.

He also said COA #6 to be met subsequent, for the CUP, reflected comments from Sharon Griffin so that when there were events with 100 people or more, abutters should be notified. He said this had been added as a courtesy, and said he didn't think the applicants would have a problem with it.

It was agreed to include wording in #6 that the immediate abutters would be notified.

There was discussion about the wording in Condition #6 to be met prior for the CUP. Mr. Campbell said it had been left open-ended on purpose. After further discussion, the Board agreed that it should say “A full time, on-site property manager shall enforce housing rules and address any health and safety issues that may arise.”

Mr. Gardner noted #4, COA to be met subsequent for the Conditional User Permit concerning the constructing of sets, and said he recalled from the Minutes that there had been discussion about Mr. Roberts using his chainsaw early in the morning.

Mr. Roberts said this was in regard to what happened in a normal residential neighborhood that made noise, and he said the answer was that a weed whacker, chain saw or log splitter would overwhelm anything that one would imagine from the applicant's proposed uses.

Mr. Gardner asked if noise was the issue concerning construction of sets, and Mr. Kelley said that was what it was for him. Chair Parnell said construction projects would be going on potentially eleven hours a day, six days a week in a residential area. He said the applicant had agreed to put in this restriction, which was why it was there.

Mr. Campbell noted that this wording had come from the March 18, 2010 letter from the applicant's attorney.

Mr. Gardner said that was fine, but said he thought it was redundant.

Mr. Roberts said the set construction would take place inside a garage that didn't face the abutters and was shielded by fences and several hundred feet of woods.

Mr. Campbell spoke about COA # 3 to be met subsequent for the CUP, to try to address the sound amplification issue. He noted that this was one of the larger concerns expressed by the abutters.

There was discussion on how this should be worded, with Chair Parnell suggesting the wording "Amplified sound shall be directed away from abutting property owners as much as possible."

There was discussion on COA #6 to be met subsequent for the CUP, concerning the planting of an evergreen buffer. Mr. Campbell said he wanted to make sure to identify the location the Board had discussed for this buffer.

There was discussion that the property boundary line extended beyond the parking lot, and that they were only talking about the border of the parking lot along the boundary. Chair Parnell said he wasn't sure that had been made clear. The wording in the draft was revised to reflect this.

CONDITIONS OF APPROVAL for Conditional Use Permit -- to be met prior to issuance of Certificate of Occupancy

1. The Findings of Fact and Conditions of Approval shall be recorded with the Strafford County Registry of Deeds, at the applicant's expense.
2. A building permit shall be submitted to and approved by the Code Enforcement Officer for any work done on the premises that require a building permit. All appropriate building codes shall be met.
3. The applicant shall meet with the Durham Fire Department to ensure that all fire and life safety codes are met as part of any permitting.
4. A Conditional Use Permit shall be issued by the Zoning Administrator.
5. The lighting in the parking area shall be shielded away from abutting properties and shall continue to use motion sensors.
6. A full time, on-site property manager shall enforce housing rules and address any health and safety issues that may arise. The name and phone number of this manager shall be provided to the Code Enforcement Officer, Police Department and Fire Department. A secondary name and phone number shall be provided in case the primary manager is not available.
7. An evergreen buffer shall be planted along the border of the parking lot where it abuts the property line with 6 Laurel Lane, Map 6, Lot 9-10. The plantings shall be at least four (4) feet at planting growing into a thick hedge of not less than (6) feet in height.

8. The Code Enforcement Officer shall ensure that the current septic system is sufficient. The owner shall provide DES Subsurface Approval for systems on site based on all proposed site uses.
9. A guarantee or performance bond or escrow agreement must be posted in an amount to be determined by the Director of Public Works to ensure satisfactory completion of the installation of the landscaping.

CONDITIONS OF APPROVAL for Conditional Use Permit -- to be met subsequent to issuance of Certificate of Occupancy

1. Hours of Operation for the youth camp shall be Monday through Saturday no earlier than 8:30 a.m. and no later than 6:00 p.m. Dance classes can be held Monday through Saturday starting no earlier than 8:30 a.m. and shall run no later than 8:00 p.m. For dance recitals, performances (including youth camp performances), black box productions, play/poetry readings, and rehearsals, on Monday through Saturday, shall start no earlier than 8:30 a.m. and run no later than 11 p.m., and on Sundays, start no earlier than 10:00 a.m. and end no later than 8:00 p.m.
2. The applicant must comply with the findings of the Zoning Board Decision of July 14, 2009.
3. The applicant shall limit the frequency of sound amplification to no more than four (4) times a year and not more than one time per month. Amplified sound shall not commence before noontime and will not continue past 9:00 p.m. Amplified sound shall be directed away from the abutters' properties as much as possible.
4. The applicant shall limit set construction to Monday through Saturday, starting no earlier than 9:00 a.m. and ending no later than 8:00 p.m. There will be no construction of any sets on Sundays.
5. The removal of trash from the dumpster shall not occur until after 7:30 a.m. In addition, the dumpster shall be moved to a new location between the barn and the house.
6. The applicant shall work with the Durham Police Department to have a uniformed police officer for traffic control posted on Route 108 for any event with 100 invitations or more. The applicant shall also arrange for off-site, remote parking, with a shuttle service to be coordinated with the Durham Police Department, and shall notify the immediate abutters of the event.
7. The evergreen buffer that shall be planted along the border of the parking lot with 6 Laurel Lane, Map 6, Lot 9-10, shall be maintained to ensure the buffer continues to be healthy and is maintained.

WAIVERS - for Site Plan Application

The Board granted the applicant waivers from:

Section 7.02(D) Formal Site Plan
Section 9.2 Streets & Access
Section 9.3 Stormwater Drainage
Section 9.4 Water Supply
Section 9.5 Sewerage
Section 9.6 Non-Municipal Utilities
Section 9.7 Off-Street Parking and Loading
Section 9.8 Signs
Section 9.10 Special Flood Hazard Areas

CONDITIONS OF APPROVAL - for Site Plan Application - to be met prior to issuance of Certificate of Occupancy

1. The lighting in the parking area shall be shielded away from abutting properties and shall continue to use motion sensors.
2. The Code Enforcement Officer shall ensure that the current septic systems are sufficient. The owner shall provide DES Subsurface Approval for systems on site based on all proposed site uses.
3. A building permit shall be submitted to and approved by the Code Enforcement Officer for any work done on the premises that require a building permit. All appropriate building codes shall be met.
4. The applicant shall meet with the Durham Fire Department to ensure that all fire and life safety codes are met as part of any permitting.

CONDITIONS OF APPROVAL - for Site Plan Application - to be met prior to issuance of Certificate of Occupancy

1. These Findings of Fact and Conditions of Approval shall be recorded with the Strafford County Registry of Deeds, at the applicant's expense.
2. The applicant must comply with the findings of the Zoning Board Decision of July 14, 2009.
3. The removal of trash from the dumpster shall not occur until after 7:30 a.m. In addition, the dumpster shall be moved to a new location between the barn and the house.

CONDITIONAL USE CHECKLIST

The Board next addressed the Conditional Use Checklist. Board members answered Yes to the first 4 Items on the Checklist. Regarding Item # 5 "Was a sign measuring two by three (2X3) feet placed on the property by the applicant at least 10 days prior to public hearing by the Planning Board?", Mr. Kelley said the spirit and intent of this criterion

had been met. He said even though the sign fell down a few times, the applicant had rectified the situation.

Regarding Item # 6, Site suitability for the proposed use, Mr. Kelley said vehicle access was questionable. He said it was certainly not a two way drive.

Mr. Kelley said the driveway was not wide enough to pass two vehicles.

In answer to a question from Chair Parnell concerning how the Board's answers to the Items in the Checklist were to be interpreted, Mr. Campbell said in going through each Item, if one or two Board members didn't feel the Item was met, but the other 5 did, that was the majority they needed.

Chair Parnell summarized that a super majority was needed for each of the Items.

Concerning the issue of access, Mr. Kelley said he thought pedestrian access was fine, but said again that the vehicular access was questionable. He said the road wasn't wide enough to pass two vehicles. He said there had been testimony that there would be a lot of offerings at the property that would involve parents dropping off and picking up their children.

Asked by Councilor Smith if he thought there was suitable access from Route 108 to the driveway, Mr. Kelley said this had been raised as a concern as well, given the sight distance and current geometry of the road. He said he questioned whether this access was adequate, and said he was leaning toward saying it was not.

Chair Parnell suggested that for each of the Conditional Use Permit Checklist items, there should be a show of hands from the Board.

Mr. Roberts noted that they were voting on an application to add housing for actors and to allow set construction for the theatre in Portsmouth, where there were 6-7 performances a year. He said this proposal was not a substantial change to the pre-existing nonconforming use. He said they were not voting on the use that had existed on the site for the last 30 years, which was a theatre that ran 3-4 times a week for 140-150 people, and also held classes during the summer and during the week. He said the Checklist should be looked at with this in mind.

Ms. Fuller said she appreciated the perspective Mr. Roberts had provided.

#6 Site Suitability - Is the site suitable for the use?

- a. Adequate vehicle and pedestrian access - Mr. Kelley said No, while other Board members said Yes.
- b. Adequate public services - All Board members said Yes
- c. Absence of environmental constraints - All Board members said Yes
- d. Available appropriate utilities - All Board members said Yes. Mr. Kelley said the Condition of Approval regarding the on-site septic systems would determine this, and

others agreed.

7 External impacts - Are the external impacts of the proposed use on abutting properties and the neighborhood greater than the impacts of adjacent existing uses or other uses permitted in the zone?

Chair Parnell said the issue was that there could be up to 9 people staying at the house, and that there would be set construction on the property. Mr. Kelley noted another Conditional Use Permit application that had been before the Board, where the Board asked its Attorney whether its scope of review was limited to the 2200 additional feet of parking, or if instead the Board could take a broader view of the entire development if it had concerns. He said the Attorney had said the Board could take this broader view.

- a. Excessive traffic generation Board members answered No
- b. Noise or vibration - 5 Board members answered No, with Mr. Kelley and Chair Parnell voting Yes. Prior to the vote, Mr. Kelley said the amplified sound issue concerned him. He said he had initially approved of that when it first came up, but said there were other Board members who didn't, and said they had made a compelling argument. Mr. Roberts said amplified sound had always been allowed, and existed at the Mill Pond Center, and said what wasn't allowed was wedding parties with boom boxes that wrecked the neighborhood. He said that kind of thing wasn't being considered now and wasn't a part of this.

Councilor Smith said the Board was not insisting that the neighbors not have amplified sound.

- c. Dust, glare, or heat - All Board members said No
- d. Smoke, fumes, gas, or odor - All Board members said No
- e. Inappropriate hours of operation Mr. Kelley said he had an issue with this, and noted that when the Board had discussed it previously, he was seeking revisions to what the applicant had proposed

8 Character of the site development: Will the proposed layout and design of the site be compatible with the established character of the neighborhood and shall mitigate any external impacts of the use on the neighborhood?

- a. Relationship of the building to the street All Board members said Yes
- b. Screen of off-street parking All Board members said Yes
- c. Treatment of yards & setbacks All Board members said Yes
- d. Buffering of adjacent properties All Board members said Yes
- e. Provisions for vehicular and pedestrian access 6 Board members said Yes, with Mr. Kelley saying No

9 Character of the buildings & structures: Is the design of any new buildings or structures and the modification of existing buildings or structures compatible with the established character of the neighborhood..... ? All Board members said Yes

10 If present, are the natural, cultural, historic & scenic resources preserved?

Wetlands	All Board members said Yes
Flood Plains	N/A
Wildlife habitat	N/A
Stonewalls	All Board members said Yes
Mature tree lines	All Board members said Yes
Cemeteries/graveyards	N/A
Historic bldgs. or sites	All Board members said Yes
Scenic views/view sheds	All Board members said Yes

11 Impact on property values: Will the proposed use cause or contribute to a decline in property values of adjacent properties? All Board members said No

12. Availability of Public Service & Facilities: Have adequate and lawful facilities or arrangements been made for sewage disposal, solid waste disposal, water supply, utilities, drainage and other necessary public or private services All Board members said Yes

Will these services cause excessive demand on municipal services including, but not limited to, water, sewer, waste disposal, police protection, fire protection & schools?
All Board members said No.

13 Fiscal Impacts: Will the proposed use have a negative fiscal impact on the Town?
The Board must answer NO unless the Board determines that there are other positive community impacts that offset the negative fiscal impacts of the proposed use.
All Board members said No.

Councilor Smith MOVED to approve the Findings of Fact and Conditions of Approval for the Site Plan Application and Conditional Use Permit Application 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. Bill McGowan SECONDED the motion, and it PASSED 6-1, with Richard Kelley voting against it.

X. Continued Discussion on Amendments to the Site Plan and Subdivision Regulations Regarding Stormwater with Town Engineer David Cedarholm

Mr. Cedarholm said he had had a number of conversations with Malcolm McNeill, who had asked him to look at how the proposed regulations impacted big projects like his conceptual plan for a 1200 bed student housing development on Mast Road as well as one of the three proposals for Mill Plaza.

He said he had first looked at what would have to be done for the conceptual plan project to meet the Alteration of Terrain permit requirements passed in 2009, since such a project would involve disturbance of more than 100,000 sf. He said the ATP requirements were complex, and far exceeded the proposed local stormwater regulations. He said he had

concluded that if the project could satisfy the water quality, channel protection and recharge and peak runoff control aspects of these requirements, then these local regulations would be a piece of cake.

Mr. Cedarholm said this had led him to think that since it would be huge ordeal to put together the ATP application, it would probably make sense for large projects to waive most of the local requirements in lieu of submitting the Alteration of Terrain Permit application and design. He said there was one exception, noting that the ATP expired after 5 years.

He said he had told Mr. McNeill that one thing the Town would want was assurance that operation and maintenance would continued after 5 years. He suggested that there should therefore be something in the local regulations that would require an annual report and continued operation and maintenance, in addition to the submittal of the ATP. He said Mr. McNeill had said he was very comfortable with that approach.

Mr. Cedarholm said he thought this would be a great way to address the concern with large developments. He said it would be simple to address this in these regulations, with something that said projects over 100,000 requiring an ATP application would need to provide the approved application.

Mr. Kelley suggested putting this requirement under 9.03 - General Requirements.

Mr. Campbell said it could go under 9.03 A.

Mr. Cedarholm noted that Mr. McNeill still was concerned about the 10,000 sf threshold. He said he had reviewed again the 5 projects he had described to the Board, which he had called a litmus test. He said two of them were under 10,000 sf, and three were over that, and said they were typical of what was being seen in Durham.

He said if the threshold was increased to 20,000 sf or an acre, the Board would be essentially where it was today, and would have to think about what it would ask developers of projects under the threshold to do. He said that was why he would argue for the 10,000 sf threshold, because that was the projects the Board was seeing.

Mr. Roberts noted that this wouldn't apply on any of the large aquifer areas, where there would be a 2500 sf threshold. He noted that this was a recommendation from the State.

Mr. Kelley said whatever number was chosen, the Board always reserved the right to require any development to do a stormwater management plan.

Mr. Cedarholm said that was correct, and also said that for something under 10,000 sf, the Board would need to decide what a developer would need to do. He said the more questions the Board had to come up with on the fly, the more difficult it was for them, and the more difficult it was for a developer to anticipate.

Mr. Roberts asked if the Conservation Commission should be referenced for projects less

than 10,000 sf. He noted that this was the case with the overlay ordinances, so that the Conservation Commission was involved with the review process.

Mr. Campbell said if the Planning Board did seek the Conservation Commission's advice, the criteria they would use would need to be developed.

Mr. Roberts said the criteria could be almost the same as was used in the overlay districts.

Mr. Campbell noted that the review done by the Conservation Commission for the overlay districts related to the Conditional Use permit process. He asked what criteria would be used regarding stormwater.

Mr. Gardner said there was an element of arbitrariness to this. He asked when a project under 10,000 sf would be required to do a stormwater management plan.

There was discussion that this could happen if there were wetlands, a stream or brook on a property, or if stormwater discharge would be to an impaired water body. Mr. Campbell noted that it could also happen for redevelopment of properties downtown, and could involve things like guttering, etc to address water quality even if there wasn't a full blown stormwater management plan.

Mr. Roberts suggested a possible approach of requiring a Conditional Use Permit for areas less than 10,000 sf, but Mr. Campbell said he probably wouldn't want to do that.

There was discussion about the idea of the Planning Board allowing an applicant not to have to provide a stormwater management plan for a project under 10,000 sf, on the advice from the Conservation Commission that there were no issues.

Mr. Campbell said it could be set up so the Board could get the advice of the Conservation Commission, but the Board would then be able to make its own decision. He said the authority would be within the Planning Board, not the Conservation Commission. There was discussion, including whether the authority was the Planning Board or the Conservation Commission regarding Conditional Use Permit process overlay district issues.

Mr. Roberts spoke about the various water quality issues that the Conservation Commission was involved with.

Mr. Gardner said a concern was whether involving the Conservation Commission would make the process more cumbersome, but said if it wouldn't, it would be good to hear the members' perspectives.

Mr. Roberts noted that the Board would probably listen to the Town Engineer more.

Mr. Campbell said this would be flagged as an issue requiring more discussion.

There was discussion that there would need to be another public hearing because major

edits had been made to the draft regulations.

Page 1, under Disconnected Impervious Cover, Mr. Kelley suggested the following wording, "The sum of the proposed areas of impervious surfaces that receive precipitation.....and filtrate the runoff from a 1-inch.."

There was discussion, and it was agreed that these changes would be made.

Mr. Kelley said under Effective Impervious Area, it should read "The total impervious surface area(s) less the area of disconnected impervious cover."

There was discussion on the definition of "Development" in the draft. Mr. Kelley suggested the word "improved" could be removed in that definition. but said there would need to be a definition of Redevelopment as well. It was noted that Redevelopment was not defined in the Zoning Ordinance.

There was detailed discussion on where the definitions should be placed.

Mr. Cedarholm said under the definition of Water Quality Volume, the P and A needed to be in the same units. He proposed that $P = 0.084$ ft, which was 1 inch, and said the definition should also say "... A = total site area in square feet draining to the discharge point."

There was discussion on what the size of the Stormwater Management Plan -Existing Conditions Site Plan should be in hard copy. Mr. Kelley recommended that it should be 22 in by 34 in, and that the Site Plan should be the same size.

Mr. Campbell said he was ok with this, but said they should therefore get rid of the 8 ½ in by 11 in hard copy requirement.

There was discussion that the High Intensity Soil Survey mapping requirement was in agreement with the Subdivision Regulations.

It was agreed that this discussion would be continued at the May 12th meeting, and that the Board would continue on with Section C. Stormwater Management Plan on page 4 at that time.

XI. Other Business

- A. Old Business: Discussion on Pine Ledge Holdings Conditional Use Permit, 20 Strafford Avenue, Map 2, Lot 6-0.

Mr. Campbell explained that the Conditional Use permit was approved in 2009 to allow 2 single family homes, which was a nonconforming use in the Professional Office District. He said the proposal had been to get rid of the back building on the site and replace it with another single family home, and move it out of the wetland buffer. He said the applicant had also discussed making changes to the second story of the front building on the property in

order to make it habitable.

He said the applicant was now looking at the parking up by 20 R, and also proposed to put on a small addition to the front building instead of doing the work on the second story. He said there had been a lot of discussion between the applicant, Mr. Johnson and himself about whether this should be considered an amendment to the previously approved Conditional Use permit, or instead should be treated as part of the original CU permit so the applicant wouldn't have to come back to the Board.

Mr. Campbell said after thinking about this, he thought it was an amendment, because concerning 20 R, there had been discussion with the original CU Permit application that Mr. Kimball wanted to make changes to the driveway and improve the parking, but at the time didn't want to do it because it would have caused a delay, since it would have had to go to the Conservation Commission since it was within the wetland buffer.

He noted the old plan from 2009, and said the new plan with the parking spaces up by 20 R was never seen by the Planning Board. He provided details on what was proposed, involving a change to the driveway and a parking space within the wetland buffer, and said this should go to the Conservation Commission.

He also said a question was also whether the front addition, which met all the setbacks, constituted enough of a change to require an amended application. He said he and Mr. Kimball wanted the Board to have this conversation

Mr. Roberts said he did bring this to the Conservation Commission before, and said it wanted to keep the driveway out of the wetland buffer. But he said the house addition would be outside the buffer, and said he didn't think there would be any issues at all with it.

Councilor Cote asked about the addition of parking for the front building.

Mr. Campbell said he believed the owner had said the parking had been like that since 1947, and was just never striped out. He said Mr. Johnson said it needed to be striped and conform to the Ordinance. He said Mr. Kimball had said the parking had always been there, but he said the area up top was not there, and said that was what he had an issue with.

Steve Kimball said he was before the Board because he was trying to understand what he needed to do. Concerning the addition, he said the intent was originally to stay with the footprint and finish the attic area as living space. He said an issue was found with the stairway access, and it couldn't meet the current code. He said it was not grandfathered. He said he thought it made sense to instead build out to the side, and keep everything on one level.

He said the layout would be compatible to students or families. He said both the building in the back and the building in the front would be 1000 sf, and noted that sometimes his properties were occupied by families. He said he was trying to keep it family friendly.

Mr. Kimball said since he had received a Conditional Use Permit to expand the living area, and since all aspects of the revised expansion would be conforming, he thought it was perhaps within the scope of the existing CU Permit to do the expansion on the side. He said there would still be only a 50% increase in the living area, and said he hoped the Board agreed with him and could say this fell within the scope of the existing conditional use

Regarding the parking, he said when he originally came before the Board, he was talking about doing paved parking, and noted that everyone agreed that wasn't a good idea. He said when he had later made the application to have two single family houses on the property, and dropped the paved parking, there was an adequate quantity of parking on the site.

He said the proposal was to keep the gravel parking, and set things up so it was neatly and clearly delineated, so people would know where to park. He said this would get 4 of the 5 parking spaces out of the wetland buffer zone, and would also get it out of the sideyard setback. He noted that historically, the parking had been random.

Mr. Kimball explained that there were multiple uses of the parking on the site, explaining that the people who lived there used them, and also stating that his family members used them when they were in Town. He also said some spaces were occasionally rented out to University people. He said a land use attorney had told him that if the parking was not being expanded and was just being rearranged, he didn't need a CU permit.

He said his purpose was to document on his plans that the parking was there, in order to provide a reference point for the future in terms of where cars should be parked. He said the parking in front would be sketched out with the conforming dimensions, and said there would be posts on the site to delineate where the parking spaces were, with numbers noted for each vehicle. He said Mr. Johnson wanted a piece of paper that documented this.

Mr. Campbell said Mr. Johnson didn't consider that the spaces had always been there, and had expressed this to the applicant. He also said technically there should be 4 parking spaces, with 2 per dwelling unit, but said there had been more there historically and currently. He said the Planning Board could allow more parking spaces as part of the redevelopment, but said this had to be done as part of a Conditional Use application.

He said a problem with the spaces was leasing them to people outside of the development, and he noted that the Board had run into this issue with Mill Plaza. He said this was not an accessory use, and was a use in itself, and needed to be approved by the Planning Board. He noted that this kind of situation happened all over Town, and said the Board needed to determine how to move forward on this issue. He spoke further on this.

Mr. Kimball said he was trying to be proactive. He said this was an existing, nonconforming use, which could continue. He said he was present to say that this was the pattern of use since 1985, and said he was willing to write down what it was. He said if he were to want to change it going forward, there would have to be a new application.

Mr. Campbell said something could be legally nonconforming, while something else could

be illegally nonconforming.

There was further discussion.

Mr. Kelley noted that the property was in the Professional Office district. He asked whether if the recommendation of the Board was to seek an amended Conditional Use Permit, the Board would be in a position to approve some rental spaces.

Mr. Campbell said yes.

Mr. Kelley said his advice would therefore be to get an amended Conditional Use Permit.

Mr. Roberts said he would like a ruling on this, and also said he agreed with Mr. Kelley. He said the addition to the building was fine with him, noting that it would be going in the right direction, and that there would be no issues with this. But he said regarding the parking, if Mr. Kimball went through an amendment to the Conditional Use Permit, he would be covered no matter what.

Chair Parnell noted that the Board had the ability to approve rental parking spaces in the Professional Office District.

Mr. Gardner asked about the issue of some of the spaces being in the wetland setback. Mr. Campbell said the driveway was moving in the right direction away from the wetland buffer. He said there was one grave parking space that was still in the buffer, and said he thought this would need to be looked at by the Conservation Commission.

There was discussion that the driveway was in the buffer, but was existing.

Mr. Kimball noted that this was already a developed/disturbed area, but said it would be a good conversation to have with the Conservation Commission.

Chair Parnell summarized that the Board was asking Mr. Kimball to obtain an amended Conditional Use permit, and said this involved the same process as a Conditional Use application.

Mr. Kimball said his understanding was that he would need to document the pattern of use of parking.

Mr. Campbell suggested that Mr. Kimball include the proposal to expand the front house in with the plan that would be submitted for the amended Conditional Use Permit application.

B. New Business: Request for Technical Review of Picnic Tables on the Site of the Phillips 66 Gas Station, Map 4, Lot 41-2.

Mr. Campbell explained that there had been a carry out restaurant at the site before. He said with Moe's moving there, it would be a carry out restaurant again. He said

technically the seating was allowed. He said the frontyard setback was 15 ft.

Mr. Gardner said it sounded like a great idea.

Ms. Fuller said she would like to see a small landscape and maintenance plan, to make the area look respectable.

Mr. Roberts noted that this was a gateway to Durham, and said it would be good if the applicant came before the Planning Board to provide an idea of what they wanted to do. He spoke in some detail on this, and there was discussion with Mr. Campbell. Mr. Roberts said this would be outside rather than inside, and said everyone in Town would see it.

Chair Parnell said he thought the application should be handled by the Technical Review Committee.

Mr. Kelley agreed, but suggested that Ms. Fuller's concerns could be relayed to the Technical Review Committee, including a maintenance plan.

There was further discussion. Mr. Roberts said he didn't like to have Technical Review for visible facilities in the community. He said there could be an expedited procedure before the Planning Board that wouldn't hurt the business owner.

There was discussion that there wasn't currently an expedited procedure for the Board to review applications. Mr. Campbell said he was working on this. He also noted that if Gibb's simply decided to put out some picnic tables, a question was what the Board would require of them.

Mr. Roberts said the idea would be to leverage this with the kind of thing Ms. Fuller had mentioned in terms of design and trash removal.

Ms. Fuller said through Technical Review, these things could be requested.

There was further discussion.

Richard Kelley MOVED to grant the Request for Technical Review of Picnic Tables on the Site of the Phillips 66 Gas Station, Map 4, Lot 41-2, as submitted. Councilor Smith SECONDED the motion.

Mr. Kelley said the Technical Review Committee should be aware of the ideas and concerns that had been expressed by the Planning Board.

There was discussion that there should be no advertising on umbrellas for the tables.

The motion PASSED 6-1, with Steve Roberts voting against it.

Mr. Campbell said Scorpion's Bar and Grill and Village Pizza had put in a Request for

Technical Review of an application to put a deck as big as would be allowed off the back of their building. He said he had told the applicants they could make this request, but was pretty sure it would be denied.

Richard Kelley MOVED to deny the Applicant's request for Technical Review by Michael McLean of Scorpion's Bar and Grill. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

C. Next meeting of the Board: May 12, 2010

XII. Approval of Minutes

February 24, 2010
March 10, 2010
March 24, 2010

Approval of the Minutes was postponed

XIII. Adjournment

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

Adjournment at 10:48 pm

Victoria Parmele, Minutes taker

Stephen Roberts, Secretary