

These minutes were approved at the July 14, 2010 meeting.

**Durham Planning Board
Wednesday May 12, 2010
Durham Town Hall - Council Chambers
7:00 P.M.
Minutes**

MEMBERS PRESENT: Chair Lorne Parnell; Vice Chair Susan Fuller; Secretary Stephen Roberts; Richard Ozenich; Richard Kelley; Bill McGowan; Councilor Julian Smith; Alternate Wayne Lewis; Alternate Peter Wolfe

MEMBERS ABSENT: Alternate Kevin Gardner, Councilor Bill Cote

I. Call to Order

Chair Parnell called the meeting to order and welcomed Peter Wolfe as a new alternate Planning Board member.

II. Approval of Agenda

Bill McGowan MOVED to approve the Agenda. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.

III. Approval of Minutes

February 24, 2010

Page 1, line 18 and line 19, move appointment of members after line 14 and before line 15.

Page 5 line 23, should read "...quite a bit of latitude..."

Page 6 line 8, should read "...needed to include, and 9.04 was the standards..."

Page 7 line 5, should say "...rate for the 1 inch storm..."

line 7 last sentence, should read "He noted that the applicant had done this voluntarily.."

Page 8, line 6, should read "...there also were some offsite issues that..."

Page 9, line 9, should read "...expecting that the Planning Board would..."

Page 10, line 17, should read "...said he didn't think the regulations would discourage..."

Page 12, line 15, should read "Mr. Gardner asked if..."

Page 17, line 7, should read "... and whether convenience store meant..."

line 24, should read " Mr. Gardner..."

Page 19, line 20, should read "said Councilor Niman saw only the..."

Page 21, under Adjournment, should say "Councilor Smith SECONDED motion...."

*Councilor Smith MOVED to adopt the February 24, 2010 Minutes as amended.
Susan Fuller SECONDED the motion, and it PASSED unanimously 5-0-2, with*

Richard Kelley and Bill McGowan abstaining because of their absence from that meeting.

March 10, 2010

Page 2 lines 7 and 15, should read "Continued until March 24, 2010"

Page 3, line 41, should read "...how Mill Road could possibly be shifted..."

Page 4, line 32, should read "...the other part of his contract with the Town ..."

line 43, should read "and recommended that it be administered by an entity other than the Planning Board."

Page 6, line 2, should read "...goods and services; assess unmet need for..."

Page 9 line 11, should read "...fighting back against the malls,..."

line 21, should read "...for variances from the Zoning Board of Adjustment, they..."

Page 10, line 26 should read "...an additional 600 parking spaces downtown,..."

Page 11, line 44, should read "...toward a park once strategy..."

line 11, should read "...would calm things down somewhat,..."

line 42, should say "...the Town required parking in the CB District,..."

Page 12, line 4 should read "Mr. Dennis said there was also..."

Page 13, line 35, should read "Mr. Kelley said the Planning Board heard public responses a lot..."

Page 18, line 46, should say "...500-600 beds..."

Councilor Smith MOVED to adopt the March 10, 2010 Minutes as amended. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.

IV. Election of Officers

Mr. Kelley said the Board had a history of Chairs serving two terms. He asked Chair Parnell if he wished to serve again, and Chair Parnell said yes.

Richard Kelley MOVED to re-appoint Lorne Parnell as Chair of the Planning Board. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

Richard Kelley MOVED to re-appoint Susan Fuller as Vice Chair of the Planning Board. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

Richard Kelley MOVED to re-appoint Steve Roberts as Secretary of the Planning Board. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

V. Appointment of One Planning Board Member to the Historic District Commission, the Economic Development Committee and the Conservation Commission.

There was discussion that Mr. Ozenich was the current Planning Board representative to the HDC, and that he no longer wished to serve.

Chair Parnell asked if there was anyone else willing to do this. It was noted that alternates were allowed to serve on committees.

Steve Roberts MOVED to appoint Peter Wolfe as the Planning Board representative to the Historic District Committee. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.

Ms. Fuller said she would be willing to continue to serve on the EDC.

Steve Roberts MOVED to re-appoint Susan Fuller as the Planning Board representative to the Economic Development Committee. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.

Mr. Roberts noted that he had served as the Planning Board representative to the Conservation Commission for two years. He spoke about the large amount of subcommittee work he was currently doing, and suggested that another Board member therefore serve on the Conservation Committee.

Mr. McGowan said he didn't have enough evenings free to be able to serve.

Mr. Roberts said Conservation Commission members were up against it right now because they didn't get meeting packets ahead of time. He noted that they sometimes needed to address conditional use applications, and said there needed to be better coordination between the Commission and the Planning Board.

Councilor Smith noted that he had served as Council representative to the Conservation Commission, so realized how much work was involved. He said he was willing to serve as the Planning Board representative to the Commission if it was thought that this was appropriate.

Richard Kelley MOVED to appoint Councilor Smith as the Planning Board representative to the Conservation Commission. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

VI. Report of the Planner

Mr. Campbell said he had met with University planner Doug Bencks on May 3rd, and said he had emailed the Planning Board a memo on the meeting.

Mr. Campbell reviewed materials that had just been provided to the Board, including the minutes from the CWC site walk, some additional information regarding the draft storm water provisions, a letter from the EDC regarding the possible changes to the Zoning Ordinance concerning the ORLI and MUDOR districts, information on form based codes from the recent NHOEP conference provided by Mr. Roberts, and the Technical Review committee agenda for the following week.

Mr. Campbell noted that on May 3rd, he and Mr. Johnson had attended the Town Council meeting where there was discussion on the issue of the leasing of parking spaces. He said the Council had asked the Planning Board to review this matter and make suggestions on how to move forward concerning it.

Mr. Campbell said on May 4th, the Traffic and Safety Committee had discussed the B. Dennis suggestions for possible changes to the traffic pattern downtown. He noted that transportation planner Rick Chelman, representatives from the University and others were present, and said it was a good discussion. He said this discussion would continue at the next Traffic and Safety Committee meeting, to be held the following Wednesday.

Mr. Roberts asked if Planning Board goals could be told what goals the Committee was trying to accomplish with this discussion.

Mr. Campbell said the B. Dennis consultants felt that a one way loop worked well to send people out of Town, but said if the goal was to slow traffic down, and make it safer for pedestrians, and bicyclists, especially on Pettee Brook Lane, one way to accomplish this was to have two way traffic, provide more parking on the street, and also provide connecting streets.

He said if there was the inclination to go with two way traffic, the Traffic Safety Committee would like to run the traffic model. He said a question would be whether there would need to be more roadways as well as some roundabouts and/or quad/squareabouts. He said this needed to be narrowed down to one, two or three possibilities.

Mr. Roberts noted that he was a resident who remembered when there was two way traffic, and said he wouldn't want to go back to that again.

Councilor Smith said he would like to see two way traffic again.

Mr. Campbell said there would also be discussion at the next Traffic and Safety Committee meeting on doing something with Pettee Brook Lane this summer that would involve allowing parking on one side, in order to see if this would slow down traffic. He said the traffic would still be one way, and also noted that a benefit would be that it would allow some of the construction people working downtown to have a place to park.

Mr. Campbell said there would be four new applications for the next meeting, three of which were in regard to one property. He said there would be a site plan application, a conditional use permit application as well as a boundary line adjustment with the Town for the Don Thompson property.

He said there would also be a boundary line adjustment application for two properties off of Bennett Road and Cold Spring Road. In addition, he said there would possibly be a proposed amendment to the conditional use permit approved for Pine Ledge Holdings.

Mr. Campbell said it had been decided that the Board's quarterly planning meeting would be held on June 9th. He said items that could be included on the agenda included discussion with the Energy Committee on draft language for the Energy chapter of the Master Plan. He said there could also possibly be further work on the draft stormwater provisions for the site plan regulations and subdivision regulations.

There was discussion that the Board could also address the issue of leasing of parking spaces at the quarterly planning meeting. Mr. Campbell said the Board could also discuss the traffic model that had been run for the hybrid conceptual plan for Mill Plaza.

Mr. Campbell said the EDC had completed the draft RFP for the marketing study, and said it had been sent out and advertising was being done. He said the deadline for responses was June 10th, and he provided details on the approach being taken with the RFP.

- VII. Public Hearing on 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.

Councilor Smith MOVED to open the Public Hearing on 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, for the property shown on Tax Map 2, Lot 1-3, located at 34 Edgewood Road in the Residence A Zoning District. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.

Steve Michaud of Doucet Survey reviewed the details of the proposed subdivision. He noted that there had been a site walk with the Planning Board earlier that evening.

Mr. Roberts asked Mr. Michaud to respond to the concerns expressed by Board members at the site walk.

Mr. Michaud noted a concern of an abutting property owner regarding possible surface runoff, but said based on the topography, there was not a tremendous amount of land area involved. He explained that the applicant was concerned about future buyers of the existing house as well, and was amenable to a solution that would alleviate the problem.

He said right now, it was hard to prescribe a design when the building size, driveway length, impervious cover amount, etc. were not known right now. He said it should be left that the Planning Board would make sure a solution was reached that it agreed with and that would be agreeable to the Town Engineer.

Mr. Roberts said in the past, the Board had said that for a one lot issue, stormwater

management proposed at least had to be acceptable to the Town Engineer.

Mr. Michaud said that he thought this was probably reasonable, but stated again that it wasn't clear what the best solution was right now.

Mr. Roberts noted that a developer of a nearby subdivision used storm gutters, a filtration field, etc.

Mr. Michaud said the idea was not to put a limit on the design parameters other than not increasing runoff to either the abutting site or the existing house on the applicants' lot. He also explained that based on the grade, once the water went out to the road, it went to a catch basin, so as long as it could get to the street, it could be taken care of by the existing infrastructure.

Mr. Campbell said if the Board did approve the application, there could be a post signature condition that when the building permit was submitted, the applicants, code enforcement officer/building inspector would seek the advice of the Town Engineer in regard to stormwater drainage.

Mr. Michaud and Mr. Roberts said they thought this would be acceptable.

Mr. Kelley said a concern was that they would want to prevent a situation where a buyer would be unaware of this in advance. He said he didn't think a buyer would be aware of it until the building permit was pulled. He suggested that getting the information into the subdivision plan as well would be a good idea, because it would be something the bank, and thus the buyer would be aware of when the property was mortgaged.

Mr. Michaud said whatever the final language was, this could be added to the subdivision plan.

Mr. Campbell suggested that this could be done as a pre-signature condition of approval.

Chair Parnell asked if there were any members of the public who wished to speak for or against the application, or had concerns about it.

Joe Michael, 14 Davis Ave. said he was not opposed to the application, but was curious as to whether the configuration of the subdivision could perhaps be changed so the smaller lot would be larger so that a house built there would have a little more space around it.

Mr. Kelley asked Mr. Campbell how much latitude the Planning Board was given in the subdivision regulations concerning this. He noted that this was not a conditional use permit application.

There was discussion as to whether the Planning Board had the authority to change the location of the boundary line. There was also discussion about the recent ZBA approval.

Mr. Campbell said the Board would have to have a good reason to do this. He noted that even if the Board said the lot line should be changed and the lot should be bigger, there was nothing to stop a property owner from building right to the setback.

Chair Parnell asked if the subdivision plan before the Board was what had been presented to the ZBA.

Mr. Kelley said not entirely. He said it appeared to him from the January 12th ZBA Minutes that the ZBA was under the impression that the lot size was only 34,000 sf. But he said Mr. Michaud had said in the field that it had turned out to be a little over 39,000 sf. He said the ZBA had not contemplated that there would be a 25,000 sf lot and a 14,000 sf lot, so there was a difference. He said he would discuss this further when the public hearing was closed.

Mr. Michael said the property was a big lot in regard to downtown Durham. He said people should be allowed to do what they wanted, but said again that he thought the new lot should be a little larger so the two lots would be more equal.

Yoslof Hutar, 24 Meadow Road, said he was concerned about the situation on the block formed by Meadow Road, Edgewood Road and Madbury Road, noting that over the last 18 months, there had been some clear cutting on a nearby lot. He also said while houses could certainly be built in the area, he was concerned about turnover of properties. He said they were on the frontier between the student rentals and the family neighborhood, and spoke further on this.

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

Mr. Kelley noted that he had questioned Mr. Michaud about the lot size the last time he was before the Board. He said the lot size listed in the earlier subdivision plan was much smaller, and said the lot drawn out now was accurate, and was larger than what had been reported in the 1940's, and what was recently reported to the ZBA.

He noted that the Minutes of the ZBA meeting where the variance for this property was received indicated that both the applicants and members of the ZBA had said the Planning Board would address this. He referred specifically to those Minutes in regard to this. He also noted that on page 5 of the Minutes, ZBA member Carden Welsh had asked for more details on why the applicants couldn't move the lot line so the new lot could have more square footage.

He said Attorney Bruton's response was that if the applicants did something different, neither lot would meet the minimum lot size. Mr. Kelley said this was either erroneous or misleading. He noted Attorney Bruton had also said the idea of a buffer could also be raised with the Planning Board.

He also noted that on page 7 of the ZBA Minutes, Mr. Mulligan thought the buffering issue should be left to the Planning Board. Mr. Kelley said one could infer from these

comments that the Planning Board would address these things.

He also noted that Mr. Starkey had said on page 8 that keeping a 20,000 sf conforming lot, and getting the second lot as close to that as they could was probably the best way to do the subdivision. He also said Mr. Starkey had said that there was no subdivision plan before the ZBA. Mr. Kelley said he assumed that the plan submitted to the ZBA was the one that added up to 34,000 sf and not approximately 39,000 sf. He said the document submitted to the ZBA therefore did not accurately reflect the total square footage of the lot.

Mr. Michaud said that was correct.

Mr. Kelley said he felt that the Planning Board would be meeting the intent of the ZBA if it asked the applicants to revise the property line in order to create a more equitable split between the two parcels. He said he realized that however this was done, one lot would be conforming and one lot would be nonconforming, but said that was how he thought the Board should move forward on this application.

Mr. Campbell asked what the ultimate goal would be of doing that.

Mr. Kelley said the goal would be to make a more conforming nonconforming lot. He said the combined square footage was 39,308 sf, and said the applicants were roughly 700 sf shy of being able to split this into two conforming lots. But he said what the applicants had proposed was one lot of 25,000 sf, which was about 125% of what it needed to be, while the proposed lot, at 14,000 sf, was roughly 7/10 of what it was supposed to be.

Chair Parnell asked why the line was drawn the way it was.

Mr. Michaud said he had spoken with the applicants after the site walk. He referred to the tax map of the neighborhood, and said the proposed lot configured at 14000 sf was in conformance with the remaining portion of the Meadow Road neighborhood, which they envisioned being more a part of than with the Edgewood Road corridor. He said the proposed lot was deeper than the abutting lot but equal in lot frontage, and said that pattern repeated itself as one went down Meadow Road.

He also said it was thought that the proposed configuration would mean that there would be an area behind the existing house that would provide a buffer between it and the other lot, and that could be used as a backyard.

Chair Parnell asked if when the line was selected, there was an expectation that the remaining lot would be 20,000 sf or 25,000 sf.

Mr. Michaud said the vision originally was that the proposed lot would be 14,000 sf, and that the existing house would have the remaining acreage, whatever that was. He also said it was expected that there might be some inaccuracies in the original plan. He said

when it was found that they were in excess of the 1941 plan, he didn't believe much thought was put into changing the lot line, because the decision had already been made that the proposed lot would be 14,000 sf, and the other lot would get the remainder, whatever that was.

Chair Parnell and Mr. Kelley noted that the plan submitted to the ZBA proposed that the remaining area would be 20,000 sf.

Mr. Michaud said that was correct, and said what the ZBA had received was a sketch that was based on the 1941 plan. He said the incorrect square footage calculation was based on that.

Mr. Kelley said he understood the applicants' reason for providing the ZBA with this plan, before investing money in the subdivision plan. But he said that withstanding, the ZBA understood the lot to be much smaller than what it actually was. He stated again that Attorney Bruton had said the lot line couldn't move because if this was done, both lots would be nonconforming, but he said that wasn't valid.

He noted that the way the variance was written was per that plan. He said it was approved 5-0, and referenced the plan, but said the plan the Planning Board then received had to be different. He noted that the subdivision plan was not only based on the reference plan, but was also based on the deeds surrounding the lots in question.

Mr. Roberts asked if the applicants would be agreeable to rotating the westerly line, using the front setback as a fixed point, and keeping the lot with the existing house at 20,000 sf.

Mr. Michaud said the applicants' preference was to leave the lot line where it was because it would benefit the existing house to have a buffer area in the back yard. He said they had proceeded with the understanding that the proposed lot would be 14,000 sf, but said they were going back to the site to see what the impact would be to the proposed and existing lot if the lot line was changed.

Mr. Kelley said during the site walk, the lot line was moved so that the proposed lot line was almost 17,000 sf, with the remaining land being approximately 22,000 sf. He said he thought this would be a better solution, but said he didn't think the Board had the authority to tell the applicants what to do. But he said what the ZBA had approved was not what was really out there, so it got a bit grey.

Mr. Michaud said that at the ZBA hearing, Attorney Bruton had been working with the information he had at the time.

Mr. Roberts said the idea of having 20,000 sf for the lot with the existing house was a good one, and would result in a more wholesome new lot.

Mr. Michaud said he could present this information to his client to see if they were amenable to changing the lot line.

Councilor Smith said he appreciated Mr. Kelley's analysis, and agreed with him that the ZBA had given the Planning Board carte blanche to take care of things. He said turning this into a more rectangular lot made sense, including for the owner of the present lot, because it would allow a potential buyer to have more flexibility as to where to place a house.

He said there were some constraints on the proposed lot dimensions that made it likely that a buyer would put the house close to the front of the property. But he noted that there were some mature hardwoods toward the front and some large dying pines toward the back. He said it therefore made more sense to put a new house toward the back, although noting that the Planning Board couldn't tell the applicants to do this. He said it would be a good idea for the applicants to reconsider the lot line that was proposed, and said he thought this would make the properties more valuable. He spoke in some detail on this.

Mr. Michaud said he didn't necessarily agree with the logic of putting a new house at the back of the new lot. He said it was more logical to put it at the center of the lot, which was the high point, and would create a buildable lot as it stood now.

Councilor Smith said it would be more desirable if the new lot was larger, and said it wouldn't necessarily make the applicants' lot less valuable. He said the applicants should consider that by making the new lot more attractive to someone interested in building a house in Durham, that would also make the existing house lot next to it more valuable.

Chair Parnell summarized that the Planning Board was requesting that the applicants reconsider the lot line placement before the Board made its decision.

Mr. Kelley said perhaps they would all be served best by continuing deliberations to the next meeting, which would allow Mr. Michaud to confer with his client.

Mr. Michaud said the option of revising the lot line as suggested would ultimately result in a lot of 17,000 sf and a lot of 22,400, which seemed like a fairly small change. He said he didn't know if there would be a lot of benefit for the applicants to make that change. He said the plan as proposed conformed with the variance granted by the ZBA, conformed with the neighborhood, and was sized to create a buildable area.

Ms. Fuller said she tended to agree with the applicants that changing the lot line would not be that consequential. She said if there was concern about buffering, something regarding this could be included in the conditions of approval, as the Board had done with other subdivision applications.

Mr. Campbell said he could see that there would be a disincentive for the applicants to change the lot line, in terms of costs and extending the application review process. He also said he agreed with the applicants that not much would be gained by doing this, and he provided details on this. He said the proposed new lot would be larger than or the same as the other lots nearby.

Ms. Fuller said 14,000 sf served by Town utilities was huge for an in town lot.

Mr. Michaud said it was in proportion with the surrounding neighborhood.

Councilor Smith suggested leaving the public hearing open, which would make this a simpler process.

Councilor Smith MOVED to reconsider the vote to close the Public Hearing. Richard Kelley SECONDED the motion and it PASSED 5-2, with Susan Fuller and Bill McGowan voting against it.

Mr. Kelley said if the Board voted on this application now, he couldn't support it. He said it was not because of the issue of where the lot line was drawn, but because the information provided to the ZBA wasn't accurate. He said Attorney Bruton was correct at the time that if the lot line was moved, the conforming lot would become nonconforming, but said what the ZBA had seen wasn't an accurate picture of what was out there.

He said he would like to get an opinion from the Board's attorney on this. He suggested that continuing the hearing would allow for this, and said in the mean time, Mr. Michaud could speak with the applicants and the Board could see what came of this.

Mr. Roberts said he supported what Mr. Kelley had said, but said he didn't see the need for a rehearing. He said the public input and the mistakes in the drawings pointed to a solution.

There was discussion about whether a solution would represent a substantial change to the subdivision plan, and if so, whether the review process could continue.

Mr. Kelley said he wanted to find out from the Board's attorney whether the applicants needed to go back to the ZBA, since it had approved the variance based on a plan and area that was erroneous. He said it wasn't the case that if the lot line had been moved as compared to what was proposed now, both lots would have been nonconforming.

Mr. McGowan said with the decision of the ZBA, there was one conforming and one nonconforming lot. He said if the numbers were now changed, that would still be the case.

Mr. Kelley said the question was whether the ZBA decision would have been the same if the two lots could have been closer together in size.

Mr. Campbell said it still would have been the same, because there would have been one lot that was less than 20,000 sf.

Councilor Smith said if the ZBA had known that the real lot size was in excess of 39,000 sf, it might have reached a decision to cut the property down the middle, creating two

nonconforming lots of almost the same size. He said the applicants should have another change to look at this.

Mr. Michaud said the applicants would like the opportunity to look at how changing the lot line would affect the marketability of both parcels.

Chair Parnell asked Mr. Michaud to discuss this matter with the applicants.

Richard Kelley MOVED to continue the Public Hearing to May 26th, 2010. Councilor Smith SECONDED the motion, and it PASSED 7-0.

VIII. Public Hearing on 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.

IX. Public Hearing on 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.

Councilor Smith MOVED to open the Public Hearing. Richard Kelley SECONDED the motion.

Mike Sievert of MJS Engineering represented the applicant. He agreed that there was an administrative problem in terms of getting plans to the Conservation Commission in advance of their meetings. He said he hoped that before his client went before them, they did know what was going on, noting that he had provided plans a few weeks ago.

Mr. Sievert reviewed again the existing conditions on the site, as well as what was proposed with the construction of a three-story, mixed use building there. He said the building itself would have a 8280 sf footprint, also noting that the upper floors would have about 8700 sf because there would be an overhang on the front. He said there would be about 6700 sf of usable commercial space on the site, and also said 16 residential units were proposed. He said there would be a total of 7 parking spaces, noting that 2 of them already existed.

He spoke in further detail about the fact that impervious pavement area would be eliminated from the portion of the site that was within the 25 ft shoreland setback. He also said there would be a reduction in impervious coverage within the 75 ft wetland overlay district from 6715 sf to 5985 sf.

He spoke in some detail on low impact development strategies that would be used on the site, including pervious walking surfaces, as well as a rain garden/patio/retention area that would collect all of the roof runoff and reduce the storm water flow and volume from the

site.

Mr. Sievert also provided details on areas to be re-planted, including one near Pettee Brook. In addition, he provided details on the planned removal of the culvert on the site, as well as the planned discontinuation of the existing pedestrian access coming into the site at the especially congested area of Pettee Brook Lane.

Mr. Sievert said an updated, separate existing conditions plan had been provided, which clarified some things and also provided up to date survey information. He also said he had submitted a copy of the proposed property management plan.

He said further analysis had been done concerning the likely impacts of removal of the culvert, and said it wasn't anticipated that a large excavation in the road would be needed. He said more detail had been provided on how the construction would take place, and also said there would potentially need to be a temporary lane closure in that area in order to do this work.

Mr. Sievert next spoke about the fact that there was a question at the last meeting about possible conversion of the apartments for residences other than student housing.

Mr. Roberts noted that the need for workforce housing was a topic the community was interested in.

Mr. Sievert said he didn't have the whole answer for this, but might have some of it. He said his clients believed that the biggest problem was the financial issue, which was directly related to the revenue stream. He said a second problem was that with buildings that had little or no parking, adult or non-student housing would pretty much be nonexistent.

He noted on the other hand that the Rosemary Lane property he had recently worked on was set up vertically in a townhouse style, so could be converted to adult living. He explained that there were firewalls between the units that went from the roof to the basement, and also said while parking wasn't available on the site, there were drop off zones that perhaps could work.

Mr. Sievert said if there was parking on the applicants' property, the proposal could be revised so two smaller units could be converted to one larger unit. He also said a project that would be more amenable to this was the project from Ionian Properties that would be coming before the Board.

He spoke about the utility issues and permitting issues that were in the process of being worked out with the DPW. He noted again that two waivers were being requested, one regarding having to have underground utilities, and the other concerning having to pay the school impact fee. In addition, he reminded the Board that the applicant was asking for a waiver from the building height and parking requirements.

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

Robin Mower, 11 Faculty Road, said she was aware of the issue concerning the Conservation Commission's receipt of materials in a timely manner before their meetings, and asked if perhaps some of the information could be submitted to them digitally.

She also said she had some questions and concerns about the application. She noted that she had heard from several residents who had concerns about the small number of parking spaces available on the property, which they said would result in people parking somewhere else, such as in the neighborhoods.

Ms. Mower noted that students living there would not be able to get UNH parking permits because they lived within a certain radius of UNH, and also said while students living there could use the bus, it was also known that students liked to have their own cars. She asked if students would be eligible for parking tags to allow parking on the street, and said if possible, this should be considered in discussing conditional use.

She also said that because of the presence of the shoreland overlay area on the site, protection needed to be provided for Pettee Brook during construction. She asked that there be oversight to make sure protective measures were installed properly and on time.

Ms. Mower also said in regard to the waiver for underground utilities that she understood there was a constraint because of Pettee Brook, but also said there was the opportunity to improve the downtown. She also noted that putting utilities underground would make them less susceptible to storm problems.

Concerning the property management plan, Ms. Mower urged that the Board have another set of eyes look at it, in order to tighten up the language and thus make it less open to misinterpretation. She suggested that the final document could serve as a model for management plans for other properties that were developed downtown. She noted issues concerning student behavior, and said this would be an important tool for the Town in order to encourage more appropriate adult behavior.

Ms. Mower also noted that the proposed building would have a flat roof, and asked if there had been discussion about the idea of a gabled roof that would fit in more with New England styles. She said she thought other residents might wonder about this as well.

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

There was discussion that the Board was not prepared to deliberate on the application that evening.

Councilor Smith suggested that there should be some discussion on the issue of the property management plan. He said calling it sloppy was generous, and asked that the applicant come back with a better one. He provided some details on how it could be improved.

Break from 9:00 to 9:10 pm

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

Board members continued to work their way through the draft document and make refinements to it.

In regard to B 2) on page 4 - a Proposed Conditions Site Plan, Mr. Kelley said it could get confusing regarding the temporary and permanent stormwater management systems, and also noted that for some projects there would be phasing of these plans. He said he wasn't saying this wording should be removed, but said it was important to keep this in mind.

In regard to page 5, C 3) An Erosion and Sediment Control Plan, Mr. Kelley said one would typically see the temporary stormwater management elements in this, while the permanent elements would be in the Proposed Conditions Site Plan.

Mr. Roberts noted that the wording in C 3) on page 5 referred to New Hampshire Stormwater Manual Volume 3, and he suggested that it instead should say "...the latest New Hampshire Stormwater Manual."

Mr. Kelley suggested that A 2) under Design Standards on page 5 should also say something like the "...latest revision of the New Hampshire Stormwater Manual."

Mr. Kelley noted that the wording "Water Supply and Pollution Control" was supposed to have been removed from A 3) b on page 5. He also said that provision should say "...New Hampshire Department of Environmental Services."

There was discussion on the terminology in A 3) c regarding the Alteration of Terrain program, and Mr. Campbell suggested keeping it.

Mr. Kelley noted A 4) a regarding locating BMPs outside specified buffer zones. He said he'd heard testimony on both sides of this, and said he would like to see some flexibility in the provision.

Chair Parnell suggested removing the sentence.

There was discussion as to whether BMPs could in some cases actually be structures that were located somewhere, whether inside or outside of the buffer. There was also discussion about the possible advantages of allowing the BMPs to be located within the buffer.

Mr. Campbell suggested the following language " Stormwater and erosion and sediment control BMPs shall be located outside the specified buffer zone unless otherwise approved by the Planning Board. It was suggested that the wording "with the advice of

the Conservation Commission” could also be added to this provision, and Mr. Campbell said that this happened already.

There was detailed discussion on A 4) e regarding Snow and salt storage, and it was decided that this provision still needed to be worked on. Board members agreed that snow storage and salt storage needed to be handled separately in the document.

In regard to A 4) d, Councilor Smith asked why the water bodies referred to in it, whether a wetland, swamp, manmade pond, etc, should be designed to drain. He suggested the following language instead “All areas that receive rainfall runoff must be designed to drain within a maximum of 72 hours for vector control, except for ponds, bogs and other wetlands.”

Mr. Kelley suggested that the entire provision should be removed because it was redundant. There was further discussion.

Councilor Smith noted that Town Engineer Dave Cedarholm had said that landowners were unlikely to create wetlands, ponds, etc. to receive rainfall runoff, because this would mean they would have to pull wetland permits from NHDES in order to do maintenance of them. He said he wasn’t sure that was true, and said if NHDES wasn’t encouraging people to create wetlands, it should be.

Mr. Kelley agreed.

Concerning A 4) h. Mr. Kelley asked if there was a weighted average for the soil multiplier. He said the chances were that there wouldn’t be just one type of soil, so it was not clear how to get the multiplier. He noted that this question hadn’t been answered by the subcommittee, so was still out there, and said there were some issues like this that the Board would have to get some advice on.

There was discussion that Mr. Campbell was developing a list of questions for Mr. Cedarholm to respond to.

Chair Parnell said he had concerns about A 4) i and j, and said he wasn’t sure how one would be able to monitor off site downstream channel erosion. He also questioned whether they could know what was in the receiving waters to start with.

There was discussion about the language, with Councilor Smith noting that the language didn’t specify that the possible channel erosion was connected to the development.

Mr. Kelley said A 4) h said there could not be a greater peak rate of water flowing off the property post construction, so in some sense, there would be protection against downstream channel erosion.

Chair Parnell said if the downstream channel erosion did occur, the finger might be pointed at the development. He said if they set up the conditions in A 4) h properly, he

didn't think they needed A 4) i.

Councilor Smith said the ideas in A 4) h and A 4) i needed to be put together, so that A 4) i could be eliminated.

Mr. Kelley spoke in some detail on new approaches in Vermont in NH to create flood hazard control zones for areas that were susceptible to erosion.

Board members agreed to continue working on revising the draft at the next Planning Board meeting, starting from page 7, with the help of Mr. Cedarholm if he could be there.

XI. Other Business

A. Old Business:

Mr. Kelley asked if the Town's administration officially supported the nomination of the Oyster River to the State's Rivers Management and Protection Program. He noted that the Conservation Commission had given its support of the nomination.

Mr. Campbell said to the best of his knowledge, the Town hadn't taken a position on it. He said the Strafford Regional Planning Commission would coordinate this.

Mr. Roberts said some significant Great Bay regulatory issues had been raised in conjunction with the Oyster River and the Bellamy River and their impacts in terms of adding nitrogen to the Bay. He said both the DPW's of Dover and Portsmouth, as well as UNH natural resources engineers had prepared some recommendations concerning this, and also said representatives from Barrington, Madbury, Lee and Dover were involved. He said it was understood that the problems couldn't be solved at the end of the line with the treatment plants, because they contributed only plus or minus 30% of the added nitrogen.

Mr. Kelley spoke in detail on this issue, and said the Lamprey River Advisory Committee intended to respond as well. He noted that the committee had been funding some of the research on this issue, and said it was amazing that it could be determined where some of the nitrogen was coming from. He said in some respects, the problem was being addressed the wrong way, and the cost benefit ratio was questionable.

B. New Business:

1. Request for Extension of Conditions of Approval on a Site Plan for Douglas Greene, Mill Road Plaza, Map 5, Lot 1-1.

Bill McGowan MOVED to grant the Request for Extension of Conditions of Approval on a Site Plan for Douglas Greene, Mill Road Plaza, Map 5, Lot 1-1, per the applicants' request. Susan Fuller SECONDED the motion.

Chair Parnell determined from speaking with Mr. Campbell that the applicant had provided adequate information to justify the extension.

The motion PASSED unanimously 7-0.

2. Request for Referring of a Site Plan Application to the Technical Review Committee for a hair salon at 13 Jenkins Court, Suite 410, Map 2, Lot 14-3.

Mr. Campbell said the applicant wished to convert an existing office space above Benjamin's to one that provided personal services, and said what was proposed was strictly interior changes.

Mr. Roberts said he had no issues with what was proposed.

Richard Kelley MOVED to approve a Request to refer a Site Plan Application for a hair salon at 13 Jenkins Court, Suite 410, Map 2, Lot 14-3 to the Technical Review Committee. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

3. Request for Referring of a Site Plan Application to the Technical Review Committee for a restaurant/take out at the Mill Road Plaza, Map 5, Lot 1-1.

Mr. Campbell said the space at Mill Plaza that had housed Moe's was now vacant. He said it had been considered a restaurant takeout, and said what was proposed now was a sit down restaurant and take out, which therefore represented a change of use. He asked that the Board approve sending this to the Technical Review Committee.

Mr. Roberts asked if there would be any parking impacts from this change of use.

Mr. Campbell said the restaurant takeout had about 50 spaces, based on the square footage of the space. He said the restaurant that was proposed would need fewer spaces, and said that was something that the Technical Review Committee would look at.

Chair Parnell asked if anything was proposed outside the of the building, and there was discussion.

Dan Sheehan, property manager for Mill Plaza, said they were looking to put three more seats in the restaurant than Moe's had. He said there would be 20 seats total, including some counter space, so would have a somewhat different configuration than what was there now.

Mr. Roberts said he was in favor of sending this to the Technical Review Committee, and also suggested said the Town should have a running total of what the parking at the Plaza was, given each change that was occurring. He said this should be something that was easy to find in the files, including in the site plan application approval for Lot 1-1.

The applicants spoke briefly on what they proposed with the new restaurant.

Richard Kelley MOVED to approve the Request to send to the Technical Review Committee a Site Plan Application for a restaurant/take out at the Mill Road Plaza, Map 5, Lot 1-1. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.

4. Discussion of letter from the Economic Development Committee (EDC) regarding proposed zoning changes

Mr. Campbell noted that the Chair of the EDC was in the audience. He said there had been discussion by that committee regarding how mixed uses were currently set up in the Central Business District, where there could be three stories with commercial on the first floor, or four stories with commercial on the first two floors.

He said the EDC had discussed the idea of providing more flexibility in order to allow something like a commercial use on the first floor, two stories of apartments and offices on the fourth floor. He said they had suggested some possible changes, and would like the Planning Board to discuss them and then possibly move them forward to a public hearing.

Mr. Roberts said this change would not affect the fact that the Planning Board would have to grant approval for a building height that was over 30 ft, which would still give the Board leverage regarding the architecture of the building.

Mr. Campbell agreed that someone wanting to put in a four story building would still have to get approval for this.

Mr. Roberts noted that what the EDC proposed was part of the B Dennis proposal.

Mr. Kelley said he had no issues with what was proposed.

Mr. Roberts asked if there was a possible glitch hiding in the background if this were changed, given the complexity of the Zoning Ordinance.

Mr. Campbell said he didn't foresee any glitches, and said it really only involved allowing some flexibility regarding the uses in the building.

Mr. Roberts suggested that this leverage could be used to get more affordable apartments as compared to student apartments. He asked if anything would need to be done regarding the wording on parking, if such a change was made, noting that parking had come up with the application for the mixed use building on Jenkins Court.

Mr. Campbell said that wouldn't be associated with this change, and said addressing the parking issue would require an overall review of how parking was done downtown.

There was detailed discussion on the importance of addressing parking as part of the new development going on and planned for the downtown.

Mr. Kelley this was addressed in the B Dennis report, and said structured parking was on the table. He said the findings in the report weren't well received by members of the community who wanted to see mass transit, and golf carts. He said in order to see redevelopment downtown, they needed parking downtown. He said the proposed change simply allowed a developer more flexibility.

Mr. Roberts said he wanted the kind of change that was proposed, and said the issue of how to handle the parking also needed to be considered.

Mr. Campbell said someone doing a mixed use development downtown that included workforce housing would probably lose about \$200,000 by not renting to students.

Mr. Wolfe said there needed to be parking in order for people to stop in the downtown.

Mr. Campbell said he could always find a parking spot at the Pettee Brook parking lot, where he had to feed the meter. He said people wanted free parking spaces, but he said everything should be paid parking.

Mr. Kelley agreed there should be paid parking, including stickers for residents.

Ms. Fuller agreed, noting that there was no place to park in Portsmouth for free.

It was noted that the Planning Board could make a recommendation on this, but the Town Council needed to make the decision on this.

There was further discussion on whether there was a parking problem in Durham, as development continued to occur downtown. Among other things, it was noted that at the quarterly planning meeting, the Planning Board would be discussing the issue of leasing of parking spaces.

Chair Parnell asked Board members how they wanted to proceed regarding what the EDC proposed.

Mr. Kelley said he supported it, and recommended sending it on to public hearing.

There was discussion about whether residential housing should be allowed as an option on the first floor in some instances, especially when it wasn't facing right on the street, and handicap access was desired.

Susan Fuller MOVED to Public Hearing on May 26, 2010 a Zoning Amendment to Article XII, Zone Requirements, Section 175-41(F)(7) "Development Standards in the Central Business District," to change the requirements for maximum height of mixed

use buildings in the Central Business District. Richard Kelley SECONDED the motion.

Councilor Smith said he supported the motion, but said the language might need tweaking after the Public Hearing.

The motion PASSED unanimously 7-0.

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Page 2, line 32, said he would provide rebutting arguments...”

Councilor Smith MOVED to approve the March 24, 2010 Minutes as amended. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

XII. Adjournment

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

Adjournment at 10:20 pm

Victoria Parmele, Minutes taker