

*These minutes were approved at the July 28, 2010 meeting.*

**Durham Planning Board  
Wednesday May 26, 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; Wayne Lewis; Peter Wolfe; Councilor Bill Cote

**MEMBERS ABSENT:** Kevin Gardner

**I. Call to Order**

Chair Parnell called the meeting to order at 7:01 pm.

**II. Approval of Agenda**

*Richard Kelley MOVED to approve the Agenda. Richard Ozenich SECONDED the motion, and it PASSED unanimously 6-0.*

Chair Parnell said Mr. Wolfe would be a voting member in place of Mr. McGowan.

**III. Report of the Planner**

Mr. Campbell said he had attended the May 17<sup>th</sup> Town Council meeting and introduced the proposed change to the Master Fee schedule to add an application fee for the Community Revitalization Tax Relief Incentive Program (RSA 79-E). He said this change was accepted by the Council, under the Unanimous Consent Agenda, but the Council was unable to get to an actual application under this program.

He said at this same Council meeting, there was a first reading on the proposed Zoning amendments to the ORLI/MUDOR districts.

Mr. Campbell said on May 19<sup>th</sup>, he met with department heads to discuss the Ionian Properties applications, and said he had incorporated comments received into his memo on these applications.

He said that same day, the Technical Review Committee held two public hearings, one on the placement of two tables for Moe's Sandwiches on Dover Road, and the other to allow for the option of having retail or office space in a building owned by Town & Campus. He said both applications were approved. He said there would be another Committee meeting on May 28<sup>th</sup> to address the proposed hair salon in the Benjamin's building. Mr. Campbell also said that the Traffic Safety Committee met that day at the Police

Station, and received an update on the reconstruction of Main Street (West); reviewed the planned Morgan Way/Route 4 intersection; and discussed the two-way traffic pattern concept, which included the possibility of moving forward this summer with a test to make Pettee Brook Road one lane, with on street parking added.

Mr. Campbell said he knew of one new application that would come before the Board at the June 23<sup>rd</sup> meeting, for an outside deck at Scorpions Bar and Grill of Main Street. He noted that the applicant had requested that the application go to the Technical Review Committee, but the Board had denied this request.

Mr. Campbell reviewed the agenda items for the June 9<sup>th</sup> quarterly planning meeting.

He said the EDC had met on May 24<sup>th</sup>, and said there was a discussion with Chief Kurz about the current downtown parking situation. He said among other things, Chief Kurz had told the Committee that there were currently 22 parking permits available for spaces on Madbury Road, which would be pro-rated at half price since this was half way through the year.

Mr. Campbell said at the same meeting, the EDC met with Maria Emanuel from the UNH Office of Research Partnerships and Commercialization, to discuss its commercialization efforts at UNH and in Durham. He said it was a good discussion, and said the hope was to keep the chain of communication open and work with them much more on economic development efforts.

He said there was also an update at the meeting on current and proposed developments, RSA 79-E, opportunities for a broadband capacity increase, proposed Zoning amendments, and subcommittee work including how the Right to Know law applied to subcommittees.

Mr. Campbell said he'd spoken with someone that day who was looking to put in an application for site plan review for the Cumberland Farms building, to do a hair/nails salon and a laundromat. He said the person wanted to come to the Planning Board first to see if approval could be obtained, before committing to the business. Mr. Campbell noted that the property would be leased.

**IV. Continued 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.

Mr. Michaud explained that in response to the Planning Board's suggestion at the May 12, 2010 meeting, the applicants had agreed to revise the proposed property line. He said the proposal now was to create a new lot consisting of 16,982 sf and a lot around the existing house of 22,326 sf.

Mr. Campbell said despite his earlier objections to changing the lot line, he thought what was proposed now would in fact create a better looking new lot.

Chair Parnell noted comments from the Board's attorney regarding the previous ZBA approval, which was based on a different lot size.

Mr. Campbell said the Attorney didn't see this as a problem, because it didn't change the fact that there would still be one conforming and one nonconforming lot. He said the Attorney believed that an appeal would be denied.

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

**Mr. Hutar, 24 Meadow Road**, noted he was an abutter to the lot in question. He read into the public record a letter from Ms. Willkomm, who also lived there. Her letter noted the fact that the ZBA decision was based on a 5,000 sf error, and said legally, the Planning Board couldn't approve something the ZBA didn't actually give a variance for. She said based on the new information, this should go back to the ZBA for another public hearing.

She also said the ZBA Minutes noted that the Board could request a buffer between the applicant's property and their property. She said because of the way the lot line was drawn and because of the lay of the land, the construction of a new house on the newly created lot would be only 20 ft from their house, yet it would be about 40 ft from the Brown's house. She also said if the two properties were divided more equitably, there would be a potential for an equal vegetative buffer on both sides, rather than forcing the house to be built within 20 ft of their house.

Mr. Hutar spoke further on whether the ZBA approval should be reconsidered, based on the 5,000 sf discrepancy. He spoke in favor of a subdivision resulting in 20,000 sf and 19,000 sf, or something like what was now proposed by the applicants.

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

Mr. Ozenich noted the site walk Minutes, which discussed the fact that the abutters had built a berm to deflect stormwater coming from the applicants' site. He asked if there should be a condition regarding this.

Mr. McGowan arrived at the meeting at 7:18 pm.

There was discussion that the conclusion at the previous Planning Board meeting was that the applicant would be happy with a condition of approval that the Town Engineer or Code Officer would sign off on an eventual drainage plan for the site, once the parameters of the building, etc, were known.

It was agreed that the stormwater drainage issues along the southern property line and other locations of the property should be included in the Condition of Approval. There was also discussion about the fact that a school impact fee would be assessed to whoever bought the house, and that this would most likely be built into the purchase price.

Mr. Kelley noted that Mr. Michaud had been asked to revise the subdivision plan to include expansion of note #13 regarding the single family owner occupied provision of the ZBA variance. He asked that this be done prior to the signature of approval.

He also said there should be the annotation for the 5/8 bar monumentation to be set along Meadow Road.

Mr. Michaud said another monumentation proposed was along the east property line. He said both would be set prior to finalizing the mylar, and said exactly what was set in the field would be identified. There was discussion between Mr. Michaud and Mr. Roberts that a new corner that was part of the subdivision would be set in the front.

Mr. Kelley said the only other issue he had was whether the applicant would be required to do some buffering along the southern property line. He reviewed the ZBA minutes concerning this issue, noting that both the applicants' attorney as well as ZBA members said the buffer issue could be left to the Planning Board to address.

Mr. Roberts said this was a pretty urban area, and said if he was a property owner there, he would want to be able to have a garden. He said buffers were great when there was significant development impact. But he said the proposed lot was like others in the area, and to say it needed a buffer removed quite a bit of the utility of the lot. He said he would be in favor of retaining as much of the natural vegetation as possible within the drainage plan, but said a buffer didn't seem to be necessary.

Councilor Smith said a buffer would also cut out the southern exposure to a flower garden.

Mr. Campbell noted that the conditions of approval addressed the marking of trees for removal as well as the protection of trees during clearing and a site inspection concerning this. He said these things came out of the Town's landscaping ordinance.

Chair Parnell said a buffer between two residential lots wasn't something the Board had considered before, and said the Board wouldn't normally be looking at this issue if it weren't for the comments from the ZBA. He said he didn't think a buffer was appropriate in this instance.

Mr. Ozenich said they could put the buffer up if they wanted to, but said he didn't think this should be a requirement.

#### Findings of Fact

1. The applicant submitted an Application for Subdivision of Land with supporting documents on April 7, 2010.
2. The applicant submitted a Subdivision Plan on April 7, 2010 entitled "Subdivision Plan for Brown Living Trust, Tax Map 2, Lot 1-3, Edgewood Road and Meadow Road, Durham, New Hampshire" prepared by Doucet Survey, Newmarket, New Hampshire, and dated March 1, 2010.
3. The applicant submitted a letter of intent on April 7, 2010.
4. The applicant submitted a copy of the Deed for the property on April 7, 2010.
5. The applicant submitted a copy of the Zoning Board of Adjustment's variance approval of April 7, 2010.
6. The applicant submitted a letter from New Hampshire Soils Consultants Inc. on wetland delineation on April 7, 2010.
7. The applicant submitted a letter of authorization on April 7, 2010 to allow Doucet Survey Inc. to represent them before the Planning Board.
8. The applicant submitted a request for waivers on April 7, 2010.
9. James B. Campbell, Director of Planning and Community Development, granted exemption of this application from Conservation Subdivision Regulations on April 15, 2010.
10. A Site Walk of the property was held on May 12, 2010.
11. A Public Hearing was held on May 12, 2010 and May 26, 2010.
12. The Planning Board assessed the school impact fee in the amount of \$3,699. The fee will be collected at the time of the issuance of the Certificate of Occupancy.
13. The applicant submitted a revised Subdivision Plan on May 21, 2010.
14. The applicant submitted a revised deed on May 21, 2010.

#### Waivers

The Planning Board granted the applicant a waiver from the Subdivision Regulations 7.06, Verification of Soils, to provide high intensity soils survey data.

#### Conditions of Approval to be met prior to the Signature of Approval on the Subdivision Plan.

1. The applicant shall supply two mylar copies of the plan and one paper copy for signature by the Planning Board Chair.
2. A certificate of monumentation shall be provided to the Planning and Community Development Department.
3. The subdivision plan shall be amended for Note #13 to add to the Note that the Zoning Board of Adjustment approval requires that the dwelling be owner-occupied.

#### Conditions to be Met Subsequent to the Signature of Approval on the Subdivision Plan:

1. The referenced Subdivision Plan and these Findings of Fact and Conditions of Approval shall be recorded with the Strafford County Registry of Deeds, at the applicant's expense, within seven (7) days of the Chair's signature on the Plan.

2. At the time of the submittal of the building permit application, the Code Enforcement Officer/Building Inspector shall seek the advice of the Town Engineer in regards to stormwater drainage issues especially along the southern property line.
3. Trees targeted for removal shall be clearly marked.
4. Trees to be protected during clearing operations and construction shall be clearly marked to caution operators of machinery.
5. A site inspection by the Durham Tree Warden of trees marked for saving, cutting or clearing is required prior to cutting of the lot.

***Richard Kelley MOVED to approve 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, as amended, for the property shown on Tax Map 2, Lot 1-3, located at 34 Edgewood Road in the Residence A Zoning District. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.***

- V. Public Hearing** on a Zoning Ordinance Amendment to Article XII, Zone Requirements, Section 175-41(F)(7) “Development Standards in the Central Business District,” to change the requirements for the maximum height of mixed-use buildings in the Central Business Zoning District.

Mr. Campbell explained that discussion on this idea had come out of the Economic Development Committee, and the EDC had requested in a letter to the Planning Board that it review the idea. He said the objective was to still require that the first floor of a mixed use building in the CB District be nonresidential, but to give a developer flexibility regarding the uses on the next 3 floors if there was a four story building.

***Councilor Smith MOVED to open the Public Hearing on a Zoning Ordinance Amendment to Article XII, Zone Requirements, Section 175-41(F)(7) “Development Standards in the Central Business District,” to change the requirements for the maximum height of mixed-use buildings in the Central Business Zoning District. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.***

**Tom Elliot, 26 Edgewood Road**, and Chair of the EDC, noted the Committee’s letter that supported this change. He referred to the issue the Board had recently raised concerning whether making this Zoning change would overburden the current downtown parking situation. He said the EDC was working hard to learn more about the availability of all day parking spaces in support of office space. He noted that the Police Chief had updated the EDC on the current state of affairs, including the fact that there were 20 parking permits that were available, and that the Pettee Brook parking lot was underutilized.

Mr. Elliot said he didn’t believe the proposed Zoning change would instantly disrupt the downtown parking situation, but acknowledged that a mid and long term parking plan was needed as the downtown was revitalized, and there was more office space and other

uses. He noted the current experimental proposal to add more parking along Pettee Brook Lane.

Mr. Roberts referred to the 9-11 Madbury Road applications currently before the Board, and said two abutters had raised the issue of parking. He challenged the idea that there was parking available downtown, and asked the EDC to partner with the Planning Board to push for long term parking solutions.

Mr. Elliot said that was the goal of the EDC, but said there currently was some long term, all day parking available, as compared to close-by 1 hour parking for residents, which he agreed was an issue. He suggested the idea of encouraging employees of downtown businesses who currently parked at the Store 24 lot or Main Street to park further away with a low cost parking permit. He said there were some short term solutions like this to the parking issues, but agreed again that a long term solution was needed as well.

Mr. Roberts pleaded with the EDC to work with the downtown business association. He said when the architectural rendering for the proposed development on the former Houghton's Hardware site came out, the Board had the association sign off that this was the direction the downtown should go in.

***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 change at a previous meeting.

Councilor Smith said he supported the change, but suggested that in all cases the word "shall" should be used rather than the word "will". This change was noted.

***Richard Kelley MOVED to send Article XII, Zone Requirements, Section 175-41(F)(7) "Development Standards in the Central Business District," to change the requirements for the maximum height of mixed-use buildings in the Central Business Zoning District, as amended, to the Town Council for its consideration. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.***

- VI. Acceptance Consideration of an Application for Boundary Line Adjustment**  
submitted by Farwell Engineering Services, LLC, Lee, New Hampshire, on behalf of John L. & Sherri R. Cloutier, Durham, New Hampshire, and Stephen H. and Margaret S. Wittner, Durham, New Hampshire to change the boundary line between two lots. The properties involved are shown on Tax Map 17, Lots 56-1 and 56-2, are located at 2 Cold Spring Road and 2 Corson Lane respectively and are in the Rural Zoning District.

Tobin Farwell of Farwell Engineering Services represented the applicants. He explained that there was a grassy area near Cold Spring Road, and said the goal of the boundary line adjustment was to allow the Cloutiers to maintain this area. He explained that because of

where this area was located, both lots involved were nonconforming, so acreage of equal area from each lot had to be swapped. He also said frontage on Corson Lane/Cold Spring Road would be exchanged with frontage on Bennett Road in order to keep the lots as close to conforming as possible.

There was discussion that because the Zoning Ordinance had changed since the lots were created, the minimum lot size was now 150,000, so both lots were nonconforming. Mr. Farwell said 300 ft of frontage was also required, and said while lot 56-1 was in conformance with that, lot 56-2 was not. He said the boundary line adjustment would add a few feet of frontage to lot 56-2.

He also said the boundary line adjustment would center the wells for the properties better, and also noted that there was a community septic system.

Mr. Campbell said the application was complete, and said if the Board accepted it, it could also deliberate on it that evening. He provided details on this.

***Richard Kelley MOVED to accept the Application for Boundary Line Adjustment submitted by Farwell Engineering Services, LLC, Lee, New Hampshire, on behalf of John L. & Sherri R. Cloutier, Durham, New Hampshire, and Stephen H. and Margaret S. Wittner, Durham, New Hampshire to change the boundary line between two lots. The properties involved are shown on Tax Map 17, Lots 56-1 and 56-2, are located at 2 Cold Spring Road and 2 Corson Lane respectively and are in the Rural Zoning District. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.***

The Board reviewed the Findings of Fact and Conditions of Approval.

Mr. Campbell noted a change in the format of the Findings of Fact, where now only actual findings of the Board were included. He said this change had been made based on comments from the Board's attorney regarding the recent Seacoast Repertory Theatre applications.

***Councilor Smith MOVED to approve the Application for Boundary Line Adjustment submitted by Farwell Engineering Services, LLC, Lee, New Hampshire, on behalf of John L. & Sherri R. Cloutier, Durham, New Hampshire, and Stephen H. and Margaret S. Wittner, Durham, New Hampshire to change the boundary line between two lots. The properties involved are shown on Tax Map 17, Lots 56-1 and 56-2, are located at 2 Cold Spring Road and 2 Corson Lane respectively and are in the Rural Zoning District. Bill McGowan SECONDED the motion, and it PASSED unanimously 7-0.***

- VII. Acceptance Consideration of an Application for Amendment to a Previously Approved Conditional Use Permit** submitted by Steven F. Kimball, Pine Ledge Holdings, Auburn, New Hampshire to create a parking area and to authorize an exterior addition instead of an interior addition. The property involved is shown on Tax Map 2, Lot 6-0, is located at 20 Strafford Avenue, and is in the Professional Office Zoning District.



The applicant, Steve Kimball, spoke before the Board. He noted that he had been before the Board for a conceptual consultation at a previous meeting. He said the original Conditional Use permit received regarding the parking for the new rear unit was somewhat vague, and said after this approval, the layout would be done by an engineering firm. He said the parking used to be closer to the front, but the new layout moved it so there would be clear access to the building, and the spaces would be clearly delineated.

Mr. Kimball summarized that a goal of the application was to document the parking on the site so there was no question of how many vehicles could park there. He said one issue was concern about a parking space adjacent to where the old shed was, which was within the wetland buffer. He noted a letter from Mr. Campbell that recommended going before the Conservation Commission concerning this.

He said this could be done, but also provided a photo of the existing conditions in that area, taken in March of 2003, which he said indicated that this was not an undisturbed buffer area, and instead used to sit under an old shed located there. He said it would be a great improvement to make this a gravel surface.

Mr. Kimball said another issue was the existing parking out front, which he said had existed for a long time. He said the original plan from 1942 had basically the same parking configuration. But he said it wasn't clear what the layout was, and said a sketch had been provided to show how a total of six parking spaces lined up there. He said he was asking that this be documented so there would be no question of where those spaces should be located.

He said the parking regulations only allowed four parking spaces for the entire property, and said there was significantly more than that. He said typically there were three vehicles per house, explaining that there could be more or less depending on whether the properties were rented to students or families. He said at least three spaces were needed to accommodate typical occupants, and also said he would prefer to have some additional spaces for his own use. He said he would like these spaces to be delineated so there wasn't parking all over the place.

Mr. Campbell noted the new configuration of the driveway that went to the back of the lot, and asked what would happen with a small portion of the old driveway outside of it.

Mr. Kimball said it should be loamed, and Mr. Campbell said it would be helpful to get it out of the buffer.

Mr. Wolfe asked if some of the parking spaces would be rented.

Mr. Kimball said the guidance from the Town Council was not to discuss the use of parking spaces, and that parking spaces were for the use of the property owner as he saw fit. He said he therefore wasn't sure how to answer the question. He said there were times

when the spaces would be rented, if the tenants weren't using them. He provided further details on how this had been done in the past.

Mr. Campbell said there would be a more in depth discussion on these issues at the June 9<sup>th</sup> Planning Board meeting.

Mr. Kimball said the other part of the application had to do with the front building. He said the original proposal had been to replace the building in the back, and renovate the second floor of the front building. But he said the code officer had told him the stairway of the front building couldn't meet the code.

He said what was proposed instead was to make an addition to the first floor that would add an additional bath and bedrooms. He said this would extend outside the original footprint, but would meet the buffer and setback requirements.

He said a third alternative that would occupy a smaller building footprint would be to do a small addition that provided a bathroom on the first floor and bedroom on the second floor, with a conforming stair access. He said this would still represent a 50% increase in the habitable area in the building.

He said the application asked for the larger building footprint amount, and said they were still working with the builder on what the best approach would be.

Mr. Kelley said he thought the Board would agree that this application was a bit different than many other applications before it. He asked if the application was complete.

Mr. Campbell said yes, in terms of how it addressed the amendments concerning the delineation of the parking and the type of construction that was proposed.

Mr. Kelley said his understanding was that based on the original site plan approval, the new structure had been built, the four parking spaces were there, the car port wasn't there yet, and the new shed hadn't yet been constructed. He said what was now proposed with the front building was six parking spaces in front that would service that building, along with an addition of some sort to that building.

There was discussion that Mr. Kimball would need to go to the Conservation Commission to address the issue of the incursion into the wetland buffer. Mr. Campbell said the Commission could address it in time for a Planning Board public hearing on June 23<sup>rd</sup>.

Mr. Kimball said he would be able to attend the Conservation Commission meeting on June 11<sup>th</sup>.

***Richard Kelley MOVED to accept the Application for an Amendment to a Previously Approved Conditional Use Permit submitted by Steven F. Kimball, Pine Ledge Holdings, Auburn, New Hampshire to create a parking area and to authorize an***

*exterior addition instead of an interior addition. The property involved is shown on Tax Map 2, Lot 6-0, is located at 20 Strafford Avenue, and is in the Professional Office Zoning District, and to schedule a Public Hearing for June 23, 2010. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.*

It was determined that the site walk would take place on June 19<sup>th</sup>, at 9 am.

- VIII. Acceptance Consideration of an Application for Site Plan Review** submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of Ionian Properties LLC, Dover, New Hampshire to demolish the existing building and accessory shed in order to construct a new four-story, mixed use building. The property involved is shown on Tax Map 2, Lot 12-11, is located at 10 Pettee Brook Lane, and is in the Central Business Zoning District.
- IX. Acceptance Consideration of an Application for Conditional Use Permit** submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of Ionian Properties LLC, Dover, New Hampshire to demolish the existing building and accessory shed in order to construct a new four-story, mixed use building. The property involved is shown on Tax Map 2, Lot 12-11, is located at 10 Pettee Brook Lane, and is in the Central Business Zoning District.
- X. Acceptance Consideration of an Application for Boundary Line Adjustment** submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of Ionian Properties LLC, Dover, New Hampshire to change the boundary line between two properties. The properties involved are shown on Tax Map 2, Lot 12-11 and 15-0, are located at 10 Pettee Brook Lane and the Pettee Brook parking Lot respectively, and are in the Central Business Zoning District

Mike Sievert of MJS Engineering spoke before the Board. He noted that there were three applications, and Chair Parnell said they would all be dealt with together.

Mr. Sievert said the existing conditions plan indicated that there was about a 12000 sf lot, containing a 2800 sf building that included apartments and about 2800 sf of commercial space. He said there was a 400 sf garage. He said the owners were purchasing a small, fully paved parcel directly northeast of their parcel from the Town, which would add about 3500 sf. And allow the building to have an additional 3-4 units. He said the Town land was currently part of the municipal parking lot, and provided access to Durham Bike.

He said the proposal was to construct a new building that would be about 35,000 sf. He noted that the lower level accessed at grade from two sides would be a parking garage/lot containing 21 spaces. He said the second floor, which was actually the first floor from the Rosemary Lane side would be commercial space

He said the two front spaces there would be commercial and the two rear spaces would be

residential, noting that a variance was granted to allow this. He said these apartments would be handicap accessible, and would have parking. He said the third and fourth floors would be residential.

Mr. Sievert said there had been no wetlands on the site until the boundary line adjustment was included in the proposal. He said parking right now on the site was minimal and said the residential parking was haphazardly done at the front of the building. He said the commercial parking was in the municipal lot.

He said there would be 17 residential units, with 2 units on the second floor and 15 on the third and fourth floors. He also said the commercial space would increase to almost 5,000 sf. He said there would also be some improvements to the municipal parking lot, including a buffer to the corner of the new building. He said the applicant proposed to put in a larger island that would protect a row of parking, and said the access in and out would be realigned somewhat. He also said the landscaping in this area would be improved.

Mr. Sievert said there would be a decrease of about 4% in the encroachment into the 75 ft wetland buffer. He noted that right now, almost the entire 3500 sf purchased from the Town was paved, and said the proposal was to make most of this area into a rain garden/landscaped area, which would represent a vast improvement. He said there would be about a 7% increase in the overall imperviousness on the entire lot.

He said upgraded water lines had already been brought into the existing building on the site from Rosemary Lane, and noted that the line had been enlarged to allow for future growth. He said the sewer line cut across a corner of the property, and would be re-routed. He also described improvements concerning utility wiring.

Mr. Sievert said a variance had been granted to permit parking between the front building wall and the front property line on Rosemary Lane. He also said a variance was granted to allow two residential units on the second floor, and to allow a portion of the building within the 75 ft wetland buffer.

He said waivers would be requested concerning building height and parking. He noted that 80 spaces were required, and said they planned to provide 21 spaces. He also said a waiver from school impact fees would be requested.

Ms. Fuller asked if the handicap rentals would definitely be for students, and also asked how many bedrooms there were in the units.

Mr. Sievert said the handicap rentals didn't have to be for students, and also said there would be at least three bedrooms per unit. He described the accessibility for these units, as well as the parking spaces for them.

Chair Parnell asked if these units would be available only for handicapped individuals. Mr. Sievert said the preference would be to rent these units to handicapped individuals,

but said if this wasn't needed, they would be rented to students or someone else. He said there would still be 4 handicap spaces, regardless of who rented the units. He said it worked for 4 spaces, even though they technically weren't needed.

Mr. Kelley noted the scale of the proposed roof line.

Mr. Sievert said it was subject to change at this point, although the building footprint was not. He said there were some issues that still needed to be resolved.

Mr. Roberts noted that when Mr. Sievert came before the Board regarding the proposed development at the former Houghton's Hardware, some Board members were extremely concerned about such a large building. He said this was dealt with well by bringing a skilled architect on board, and bringing it to the downtown business owners, who then accepted it. He said the current proposal would help remake the downtown, and said it would be important to continue the good work that had been done previously.

Mr. Sievert said the architect would take a second shot at the roof line configuration, and the redesign of the entryway.

Mr. Roberts said the entryway should show something interesting to the community, and there was discussion with Mr. Sievert.

It was determined that there would be 64-68 tenants in the building.

Mr. Sievert said the plan was to start construction in 2011, subject to the construction being moved further out than that.

Ms. Fuller asked if there was any plans to collect roof runoff.

Mr. Sievert said 75% of the roof runoff would go into the rain garden. He said there would be a good decrease in runoff volume and peak flow, and an increase in water quality. He said there would be a 25% decrease in peak runoff from all storms, but said more important was the decrease there would be in volume leaving the site, especially for the 1 inch storm, so that the first flush from a storm wouldn't go directly into Pettee Brook.

Mr. Roberts noted the new urbanism concept of allowing people to relate to the Brook visually, and not shielding it, in order to help create a more personal downtown space.

Mr. Sievert said there was a path right now from Rosemary Lane, and said that would be enhanced. He noted that there was an easement for pedestrian access as part of the sale of the Town land to the applicants. He said this was an historical access that would be maintained, and said it would include some lighting.

Mr. Campbell said he had no comments other than what had been in his memo to the Board. He said the DPW including the Town Engineer were very happy with the

stormwater management plan, as well as the proposed parking under the building. He said water and sewer permits would be required as part of the application, and said the Police Department would provide requirements concerning lighting, numbering of apartments, security, etc. He said the Fire Department had no issues with the applications, and said nothing had been received yet from Code Enforcement other than the variances that had been received.

He noted the issue of the property management and maintenance plan. He also said the overhead door for trash collection needed to be shown on the elevation from the Pettee Brook lot, and also said an elevation from Rosemary Lane was needed. In addition, he said there was a missing piece of sidewalk on Pettee Brook Lane. He said other than that, the application was complete.

Mr. Roberts said this would be a sizable building that related to the University, and asked if there was therefore a need to interface with the University concerning this.

Mr. Campbell said he had spoken with University Planner Doug Bencks, and noted that the University was an abutter so had gotten notices about the applications. He said he hadn't received comments, but would reach out to them.

Chair Parnell said the Board would expect to see a property management plan.

Mr. Campbell said the applicants were only requesting a partial waiver from the parking requirements, unlike some of the other recent applications. He noted that a fee would be associated with this.

***Richard Kelley MOVED to accept an application for Site Plan Review, Conditional Use Permit, and Boundary Line Adjustment submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of Ionian Properties LLC, Dover, New Hampshire to demolish the existing buildings and an accessory shed in order to construct a new four-story, mixed use building, and schedule a Public Hearing for June 23, 2010. The property involved for the Site Plan Application and Conditional Use Permit Application is shown on Tax Map 2, Lot 12-11, is located at 10 Pettee Brook Lane, and is in the Central Business Zoning District. The properties involved for the Boundary Line Adjustment are shown on Tax Map 2, Lot 12-11 and 15-0, are located at 10 Pettee Brook Lane and the Pettee Brook parking Lot respectively, and are in the Central Business Zoning District. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.***

A site walk was scheduled for June 12<sup>th</sup> at 8:30 am.

Break from 8:40 - 8:51 pm

- XI. Deliberations 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.

**XII. Deliberations 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.

Chair Parnell noted that the public hearing was closed at the previous meeting, and a few additional letters were received. He also said there was a report from the Conservation Commission. He read this report out loud, which indicated that the Commission voted unanimously to grant the Conditional Use permit variances requested. It also recommended that artificial armoring on stream banks should be limited, natural vegetation should be restored to the maximum extent reasonable, and also suggested engineering oversight for stormwater management practices, as a condition of approval of the project.

Chair Parnell noted that a new property management plan had been received, and also said updated Findings of Fact and Conditions of Approval had been provided for both applications, along with the Conditional Use checklist.

He noted a letter received regarding the area between the buffering for the west side of the building, and the possibility that this could become a gathering spot. He said the letter also raised the question of who would be responsible for the landscaping and what it would be.

It was noted that there was a tree on the lot line that was shared.

Mr. Sievert said he had suggested that the tree probably wouldn't survive over the long term, and that removal would also make construction easier. He said a large landscaped screening was proposed, along with putting the fence back. He said the screening would be just on the abutting property, and said this hadn't been confirmed yet. He said it was subject to change. He said this would be done at the expense of the developer and maintained by either the developer or the abutter, Mr. Lenk, if he had to do this.

He also said the Town Engineer had decided at the last minute that a drainage swale in that area, down the property line was needed to channelize runoff water. He said the screening would be an evergreen screen hedge, and provided details on this. He also said there wouldn't be space there for people to congregate, and provided details on the fencing that was proposed in various areas, and the placement of doors, to cut off access where it wasn't desired.

Mr. Roberts noted the wording provided to the Planning Board of concerns about students congregating and participating in alcohol related activities at the back side of the building, within the proposed 3 ft seeded grass area. He asked Mr. Sievert if what was proposed would prevented this from happening.

Mr. Sievert said he was trying to prevent this from happening by tying all of the fences

together. He said if it was preferable to move the screening to the other side of the fence to prevent further congregating by tightening that 3 ft area up, that wasn't a problem. He said his reason for providing the design he had was to give the abutter full control.

Mr. Roberts noted the request from the abutter that CWC include language in the lease to restrict access to the 3 ft area, and also at a minimum prohibit the consumption of alcoholic beverages on the backside, western and northern sides of the property. He asked if this sounded reasonable, and Mr. Sievert said yes.

Mr. Campbell agreed that this was reasonable.

Ms. Fuller asked if the property management plan prohibited drinking outside of the building.

Mr. Campbell noted that under Usage, Conduct and Prohibition in the property management plan, it said no one under 21 could do so, and Ms. Fuller said someone 22 or older could therefore do so. She suggested that there should be language that said there could be no drinking outside of the building.

Mr. Campbell noted #18 perhaps covered this - "Tenants shall not engage in any activities which infringe upon other tenants' rights of quiet enjoyment."

Mr. Wolfe asked who would be on the premises to enforce these kinds of recommendations.

Mr. Sievert said there would be onsite management to a certain hour, and then there would be 24 hr service from Thursday night through Sunday.

Mr. Wolfe asked how it was determined what a finable offense was, and Mr. Kelley said that would be up to the responding police officer to determine. He also said his understanding was that security hired by landlords investigated if they heard noise, but weren't knocking on doors unless they could hear it from the street.

Mr. Kelley suggested that the landscaping/buffer issue needed to be discussed with the abutter.

Mr. Sievert said he had intended to get to this, and said the applicant was amenable to making a change now or instead work it out with the abutter and resubmit. He said he didn't think they were that far away from an agreement.

Mr. Kelley said he would like them to work this out first in lieu of the Planning Board making its decision that evening before the issue was thought through.

Mr. Sievert agreed, and said they could work it out on the site.

Mr. Lewis asked about the roof line, noting that it was a flat roof. He asked if it would look ok.



Mr. Sievert said he thought the idea was to have a mix of buildings downtown, some with peaked roofs and some with flat roofs. He said it was easier to collect storm water with a flat roof, and said it also allowed for potential future expansion of the building.

The applicant's architect, Nick Isaak said he had done the conceptual design for the building. He said the developer came to him with photographs from Boston, and most of the imagery was of flat roof buildings with heavy cornice lines. He said the design proposed was the first pass, and said they very well could end up with a hip roof or some variation of it. He said the height was an issue, noting that a 6 ft roof from some angles wouldn't even be seen, so a more pronounced slope would be needed. He said they would probably do some studies of various roof with different pitches.

Mr. Roberts noted again that with the development on the former Houghton's Hardware site, they went to the business people downtown and asked them if the architecture that was proposed was what they wanted the community to look like. He said before going to the little one story flat roofs, there had been the federalist buildings in Town. He said standing at the Post Office, this was a magnificent opportunity to catch someone's eye. He said he would like to see some design features that without breaking the bank would fit with the community and spiff up the downtown.

Mr. Isaak said they would study this a lot more, and said the focus so far had been on the site.

Ms. Fuller voiced her support for a flat roof type of building with architectural detail at the top of the roof. She said there were a lot of roofs like that in Durham, and said the edges of the buildings had been made to look very interesting even though the roofs were flat.

Mr. Roberts said this wasn't Portsmouth, and said there was a personality to the community.

Ms. Fuller said there were flat roofs in the downtown, and said trying to put a slope on this roof would cause it to dominate.

Mr. Wolfe noted that most of the University buildings had gabled roofs.

Mr. Campbell asked what the applicant was planning on right now for the building height, and Mr. Sievert said 33 to 35 ft. He also noted that most of the trees would stay.

There was discussion that the architecture for the project has been the same from the beginning, and no new alternatives had been proposed yet.

Mr. Roberts said the Planning Board had the responsibility to see that the development would fit with the community.

Mr. Kelley said the architectural design proposed was what he thought he would be buying into, and said if 9 months from now he was looking at a gabled roof, he would question

that. He said he was fine with the mix of flat roofs and pitched roofs in Durham.

Mr. Sievert said they might look at other options, but said if conditional approval was received that evening, the building would have a flat roof.

Mr. Isaak said they could do either one, although the flat roof was the developer's preferred option. He also noted that this was still a conceptual design because the interior units hadn't been designed, so the exact location of the windows, etc. hadn't been decided on. He noted that they were at the site plan review stage, and that Durham didn't have a separate architectural review stage or architectural design guidelines.

Ms. Fuller asked how the equipment would be hidden on the roof.

Mr. Sievert said there would be a lot more detail to the roof design, if they stayed with the flat roof, but acknowledged that some of the equipment might still be visible from some angles unless it was screened. He spoke about how screening could be done.

Councilor Cote received confirmation that the rain water would be collected internally and would drain to the rain garden.

Chair Parnell asked if the present design was what the Board would be deciding on, or if this was fluid.

Mr. Sievert said if they made a major change to the building, the responsible thing to do would be to come back to the Planning Board.

Chair Parnell said he thought that was what the Planning Board was thinking as well.

Mr. Sievert said they would most likely come back with something similar to the present design, with details, and it would go forward like that. He said if they changed from a flat roof to a different roof, they would have to come back and present this.

Ms. Fuller asked about the noise from the HVAC system in regard to the neighbors.

Mr. Isaak said there would be screening to direct the sound upward.

Mr. Roberts noted that with the 99 Madbury Road project, there was a hip roof that hid the utilities and blended with the neighborhood, while not impacting water collection on the roof. He noted that the proposed location was an interface between the Central Business District and the Professional Office District, and asked the applicant to perhaps pay more attention to blending the building into the prevailing architecture in the neighborhood.

Mr. Sievert said he thought the applicant's preference would be to move forward now with a conditional approval, including making the flat roof look nice and hiding the utilities. He said if there was a divided vote or the Board was leaning the other way, he thought the developer would accept a conditional approval subject to changing the roof and coming

back. But he said there were timing issues, noting that they wanted to construct the project this year.

Mr. Kelley asked Board members if they were ok with the architectural design that was proposed.

Mr. McGowan and Mr. Ozenich said they were ok with moving forward.

Chair Parnell said he was ok with moving forward, but said there was the issue of hiding what was on the roof. He said if the Board had had major issues with the architectural design, it would have come up some time ago.

Mr. Sievert noted the conditional use criteria that had to be met, and said if they had to screen the equipment in a way that mimicked the façade, that was what they would do.

Chair Parnell recommended going through the Findings of Fact and Conditions of Approval for the Conditional Use Permit.

Mr. Kelley asked if the applicant had seen the draft Conditions of Approval, noting that #4 to be met prior to the Signature of approval on the Site Plan was different than the property management plan that had been provided. He said this plan needed to indicate that the applicant, and not Paul Berton, was responsible for having the private security system in place, making rounds Thursday through Saturday from 9 pm to 2 am. He also said the applicant needed to understand that if there were problems, that security would have to be there onsite, from 8 pm to 6 am, 7 days a week.

Mr. Kelley asked if this was something that needed to be discussed with the applicant prior to moving forward.

Mr. Sievert said he didn't think the applicant would think that what was proposed was unreasonable, and provided details on this. He said it was understood that if there were problems, things might have to be ramped up.

Mr. Kelley said this language had been standard for the Planning Board, for mixed use developments going through the conditional use process, and said he would be very hard pressed to take any of it out.

Other Board members agreed.

Mr. Sievert said he recognized the language from the Rosemary Lane conditional use permit application, and said he thought it would be acceptable.

Chair Parnell asked if there should be a condition that the applicant would come to an agreement with the abutter regarding fencing and the buffer.

Mr. Kelley recommended that this should occur prior to the signature of approval on the

plan.

There was discussion on whether this was a reasonable condition to include.

Mr. Sievert said the applicant would be fine with it occurring prior to signature, which would give the abutter assurance that it would be done.

Chair Parnell said it should be clear that it would only involve fencing and buffering.

Mr. Kelley agreed, and said the language concerning this should be explicit that the fencing and landscaping along that common property line would be resolved between the applicant and the abutter.

Mr. Roberts noted that a drainage ditch would go through the landscaped area, so limited that area.

Mr. Kelley said right now, that ditch wasn't in the landscaped area, and was between the fence and the building.

Mr. Campbell said it had been proposed as 3 ft of grass, and now was proposed to be drainage stone. He said there could also be landscaping/buffering there.

There was discussion about the amount of runoff involved, and Mr. Sievert said the estimate was 0.2 cfs in a 25 year storm.

Mr. Kelley said it would be nice to get some landscaping on the other side of the fence, which could also capture rainwater.

Mr. Sievert said the landscape architect had assured him that a buffer in this area would not be a problem in terms of the drainage. He said he didn't think a 3 ft buffer was a problem, although it might need to be trimmed a bit more. He also said pea stone would work better than mulch, which would tend to get dragged away.

Chair Parnell suggested that the deliberations should be continued so the outstanding issues could be resolved.

Mr. Campbell summarized that these issues were the area in the back between the applicant's property and the abutter's property; the property management plan; the roof line issue; and the shielding of equipment on the roof. He also said there hadn't yet been discussion on the parking issue and a possible waiver for parking, the spaces out front and the loading zone.

It was agreed that deliberations should be continued to the next meeting.

Mr. Roberts said he thought it was the Board's obligation to have another meeting if needed.

Mr. Sievert said a question was whether the roof line was really a problem, or if just the hiding of the equipment was the issue. He said he thought he had heard the majority of the Board say that they would go with the roof line as it currently was.

Mr. Roberts said the last time the Board had a discussion like this with a developer, an addition was included to hide the utilities with an architectural element of the building.

Mr. Sievert said he would do this. He then reviewed what he would be addressing concerning the property management plan, including adding language on additional security that might be needed, and no drinking on the property. He said the other issue was concerning the western property line shared with the abutter.

Mr. Kelley said with its unanimous approval, the Conservation Commission had also made a unanimous wish that stone revetment would be used to a minimum in the restoration of Pettee Brook. He said with the plan, that appeared to be the case.

Mr. Sievert said he had already made this change on the left side, and provided details on this.

There was discussion about what the Conservation Commission had meant concerning engineering oversight for the stormwater management practices, as a condition of approval.

Mr. Sievert said they wanted there to be oversight, to make sure that what was built was according to the plans.

Chair Parnell recommended that an additional Planning Board meeting be held, if the Board agreed with this.

It was agreed that an additional meeting would be held on June 2<sup>nd</sup>.

Mr. Campbell said Board members should discuss the parking right now if they had any particular issues with it. He also asked how close the applicant was to deciding whether they could have a basement. He noted that if they went with one, and a sump pump was needed, there could be issues if there was a power outage.

Mr. Sievert said the thought right now was to drive a sheet pile down several feet below the bottom of the excavation, in order to contain the excavation. He said it would be put in just outside of the footing to allow a drainage area in there. He said once the footing was set, the sheet pile wall would be several feet down. He said the wall, along with the very low permeability clay, would cut off water from getting in, and said the area would eventually be drained down to a level where a sump pump wouldn't have to be running 24/7.

He said whether or not there would be a basement would come down to the cost. He said 28 ft deep piles would be needed with the scenario where there was no basement, which was also expensive. He said it would come down to what was a little bit cheaper, and said what would also be considered was that they could get use out of a basement with the sheet pile approach. He said that was where they were going with it.

Mr. Campbell said another issue that had come up was the trash removal area, and the venting of the room. He said if it occurred there, there was the issue of moving the loading zone to the other end.

Mr. Sievert said the DPW had agreed with the idea of moving the loading zone. He said he had ended up straightening out the sidewalk, and said there would be six parking spaces, with the last two indented slightly. He said these spaces had been widened out to about 11 ft. He showed where the loading zone would be located and how trash would be moved to it. He said there would be an agreement for Waste Management to pick up the trash, up to three times a week.

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

*Bill McGowan MOVED to move Item XIII to the June 2, 2010 Agenda. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.*

**XIV. Other Business**

**A. Old Business:**

Mr. Campbell noted that the Planning Board had previously sent to the Technical Review Committee a site plan application to make a roast beef and seafood restaurant out of the previous Moe's restaurant. He said it turned out that the applicant was planning to add only 3 seats, and he provided details on this.

He said Mr. Johnson therefore didn't consider this a change of use because there wasn't a large enough difference in what was proposed. He said Mr. Johnson had recommended dealing with it instead as part of getting the building permit. He said there was interior work to be done, regarding the kitchen, changing some walls, and moving seats to the back portion of the building. He said he agreed with Mr. Johnson that this was the right way to go.

Board members agreed that this project should be handled through the building permitting process.

There was discussion that it was important to keep a running total of the parking at Mill Plaza.

**B. New Business:**

**1. Discussion on Section 175-55(E) "minimum Contiguous Lot Area" of the Zoning Ordinance**

Postponed

**2.Request for Technical Review Committee from Park Court Properties Regarding the Layout of the Property at 262 Mast Road, Map 13, Lot 5-0.**

Mr. Campbell explained that when the site plan application was approved, the plan was to remove the farm house out front. He said they now wanted to keep the house, which would have the same number of units and an office. He said they would be removing the curb cut and driveway and the parking closest to the abutter, and would also be doing some additional landscaping at the request of the abutter.

Chair Parnell said the issue at the time the Board heard the application was the abutter's concerns about what the view would be. He asked how keeping the existing building there, which was to be removed according to the original site plan, related to that. He also noted with Technical Review, the Board passed by the issue of abutters' concerns.

Ms. Fuller said the abutter would still be notified of the change and would have an opportunity to speak.

Mr. Campbell said the applicant's cover letter indicated that the area between the house and the abutting residential lot would be thickly landscaped in cooperation with the abutter, and that the landscape architect would modify the Landscape Plan to shield the abutting residential lot, enhance the wetland buffer and beautify the landscape.

Mr. Cote received clarification that there was no condition of approval in the site plan approval relating to the existing house on the property.

Mr. Roberts said it was a good thing that the Planning Board got public comments.

Mr. Campbell said if the Board wanted to see the application, it could probably be handled in one meeting. He also said it was important not to slow the project down, and said he didn't think this amendment would do so.

***Councilor Smith MOVED to grant the Request for Technical Review Committee from Park Court Properties Regarding the Layout of the Property at 262 Mast Road, Map 13, Lot 5-0, in the MUDOR District. Susan Fuller SECONDED the motion, and it FAILED 3-4, with Councilor Smith, Susan Fuller and Mr. McGowan voting in favor of it.***

Mr. Campbell determined that the Board could do the acceptance and public hearing on the same evening.

April 14, 2010 Minutes

Postponed

April 28, 2010 Minutes

Postponed

**XII. Adjournment**

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

Adjournment at 10:11 pm

Victoria Parmele, Minutes taker

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Stephen Roberts, Secretary