

These minutes were approved at the August 11, 2010 meeting.

**Durham Planning Board
Wednesday June 2, 2010
Durham Town Hall - Council Chambers
7:00 P.M.
Minutes**

MEMBERS PRESENT: Vice Chair Susan Fuller; Secretary Stephen Roberts; Richard Ozenich; Richard Kelley (arrived at 7:16 pm); Bill McGowan (arrived at 7:24 pm); Councilor Julian Smith; Peter Wolfe

MEMBERS ABSENT: Chair Lorne Parnell; Kevin Gardner; Councilor Bill Cote, Wayne Lewis

I. Call to Order

Susan Fuller served as Chair for the meeting in place of Chair Parnell, called the meeting to order at 7:02 pm and appointed Mr. Wolfe to serve as a regular member of the meeting for the time being.

II. Approval of Agenda

Chair Fuller suggested that Item VII, Other Business be moved to after the Report of the Planner to become Item IV, and that Item VIII, Approval of Minutes, be moved to become Item V.

Richard Ozenich MOVED to approve the Agenda as amended. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 5-0.

Mr. Wolfe was appointed to serve as a regular member at the meeting, for the time being.

III. Report of the Planner

Mr. Campbell said the previous Friday; the Technical Review Committee had met to discuss the hair salon moving into the former Benjamin's building on Jenkins Court. He said the application was approved, but said it then turned out that the owner decided not to lease the building to the applicants.

He said that morning, there was a Traffic Safety Committee meeting, and there were further discussions on bus transportation to be provided by the University along Madbury Road and Edgewood Road, as well as discussion on the narrower lane planned on a trial basis for Pettee Brook Road. He provided details on what was proposed, and said if the Council agreed with this proposal, the Planning Board would then discuss it at the

quarterly planning meeting. He said the plan was to begin the trial on July 1st, and said it would be re-evaluated in mid-July, and again some time in the fall.

There was discussion about how merging into one lane would occur, and would then split back into two lanes on Main Street.

Councilor Smith noted that he was the Board's representative to the Traffic Safety Committee, and had signed onto this.

Mr. Ozenich expressed skepticism about the design, and questioned whether the yield signs would work.

Mr. Campbell said if things didn't work in the summer, it would be called off. He also said at this point, there would be either free parking or permit parking.

Mr. Roberts asked if there was money in the Town budget to have someone like transportation planner Steve Pernaw give them a second opinion.

Mr. Ozenich asked about putting a roundabout there, and Mr. Campbell said the plan eventually was to do that, when they went with two way traffic.

IV. Other Business

A. New Business

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

Mr. Roberts said he had complained about the current wording for years.

Mr. Campbell read the current wording: "At least fifty percent of each newly created lot in a conventional subdivision that is located in the RA, RB, RC and Rural Districts shall consist of a rectangle of non-wetland Lot Area that ranges in shape from square to at least one-half as wide as it is long."

He said the letter from Steve Michaud of Doucet Survey said from his experience, the way this provision was written the requirement was very difficult to meet, considering the irregular shape of most wetlands, and because the regulations also required that any parcel had to include at least half upland area, in order to be considered for a possible subdivision. Mr. Michaud's letter included a sketch of a 100 acre parcel, containing 45 acres of upland and 55 acres of wetland, and noted that a strict interpretation of 175-55(E) would render the parcel unsubdividable.

Mr. Wolfe said he thought Mr. Michaud was misreading the provision. He said the whole parcel would be subdividable, and according to the regulations, each lot created from the 100 acre parcel would have to have at least 50% upland area.

Councilor Smith said in other words, there could be 3 to 4 lots carved out of the 45% of the acreage that was upland.

Mr. Wolfe said with a 3 acre minimum lot size, there could be over 10 lots created.

Mr. Campbell noted that the minimum lot size was 150,000 in the Rural District. He said Mr. Michaud's other point was concerning the requirement in regard to the shape of the lot.

Mr. Wolfe said he thought this wording was convoluted.

Mr. Kelley arrived at the meeting at 7:16 pm.

There was discussion about the difference in interpretation between Mr. Michaud and Mr. Wolfe regarding the wording "at least fifty percent of each newly created lot in a conventional subdivisionshall consist of a rectangle of non-wetland...".

Councilor Smith said he thought what Mr. Michaud was saying was that if one wanted to carve off 100 acres from a much larger lot, but it had 55 acres of wetland and 45 acres of upland, one couldn't do so because 50% of the 100 acre lot wasn't a rectangle of non-wetland. He said it might be possible to carve off a number of smaller lots, but not the large lot, which was ridiculous, and said they needed to do something about the wording.

Mr. Wolfe said there was no question that the wording was atrocious.

Mr. Kelley said he was in agreement that there was a problem with the language, but noted that this wasn't the first time the Planning Board had re-visited this. He said the last time it had come up, there didn't seem to be much drive to change the wording.

There was discussion about the rectangle aspect of the wording, with Mr. Campbell noting Mr. Michaud's point that most wetlands weren't shaped to get rectangles.

Mr. Wolfe asked why the shape constraint was included in the Ordinance, and Mr. Campbell said it was to make it difficult.

Mr. Roberts provided details on his involvement with this issue during the Zoning Rewrite process and after, and said there had been members of the public who felt it was needed in order to save the Town from being carved up into pieces and developed.

Mr. Campbell explained that some people didn't want isolated pockets of upland to count toward lot sizes and densities.

Mr. Wolfe said there could be a contiguous amount of acreage on a lot, which didn't have to be a square, etc.

There was discussion that this provision applied to non-conservation subdivisions. Mr.

Campbell said he thought the people who created it wanted to get as much upland into new lots as possible.

Councilor Smith asked if something like this could simply be sent to the ZBA.

There was discussion. Mr. Kelley said he thought hardship could clearly be shown. It was noted that the hardship criterion was a moving target.

There was discussion about possibly eliminating 175-55 (E).

Councilor Smith said he thought the Council would be agreeable to this.

Mr. Kelley said he was in favor of scheduling a public hearing on this. But he noted that there were a lot of other issues that warranted the Board's attention.

Ms. Fuller said there were people coming to the Board asking that this be a front burner item.

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

Richard Kelley MOVED to remove in its entirety Section 175-55 (E) General Dimension Controls, Minimum Contiguous Lot Area, and schedule a public hearing. Richard Ozenich SECONDED the motion.

Mr. Wolfe said he thought he should abstain. He said he wasn't sure he understood the whole purpose of the section yet, and said there might be valid reasons for portions of the 50% provision, so he wasn't ready to say the section should be scrapped.

Mr. Kelley noted that there were several other parts to the Zoning amendment process, so they were still a long way from making this change.

Councilor Smith noted that the Board might decide to remove only the portion describing the rectangle/square aspect of the provision.

Mr. Wolfe decided that he was fine with putting the recommendation out for public discussion.

Mr. Roberts said he would bring in his file of other ordinances in the State that addressed this issue but were a lot less rigorous.

The motion PASSED 6-0-1, with Bill McGowan abstaining.

Mr. Campbell recommended that this be on the agenda for the July 24th meeting, noting that the July 12th agenda was quite full.

2. Discussion of Peter Andersen's email regarding Section 175-55(F)

Mr. Campbell said 175-55 (F) dealt with how useable area was calculated for conservation subdivisions, and he noted that when the Board came up with this language, there had been a lot of discussions on it. He explained that some soil scientists had at one point participated in the discussions, and had recommended that there be soils based lot sizing or minimum lot sizes, but the Board had decided to do both.

He explained how useable area was calculated based on this provision, and noted that there were 20-25 acre lots on Durham Point Road that were now house lots because they couldn't meet some of the soil requirements in 175-55 (F). He said Mr. Andersen had recently purchased a parcel of that size out there, and realized all he had was a house lot.

Mr. Campbell said arguments had been made in the past that these provisions went too far, and said the biggest one was probably the argument about subtracting out somewhat poorly drained soils as unusable. He noted there had also been discussion about having to subtract out moderate depth to ledge soils as unusable. In addition he said there were people who disagreed with having to subtract out 50% of areas with a slope between 15-24%, and said these soils were in fact buildable for daylight basements, etc.

Mr. Roberts said there could be drainage issues with long, sustained slopes of 15-24%, but said there was nothing like this in Durham. He said the Society of Soil Scientists of Northern New England had advised against the soils provisions included in 175-55 (F).

Mr. Kelley said for those who weren't around or didn't remember when the Board adopted these provisions, it was a long, drawn out process. He noted that the addition of the wording in 175-55(F) 3 regarding on site sewage disposal was seen as a compromise. He explained that it had been decided that if a lot would be hooking up to Town sewer, areas on the lot that had ledge outcroppings, and shallow and moderate depth to ledge would not be considered unuseable. He also noted that they hadn't been talking about 50% being unusable, and had talked about it all being unusable.

He said there had been a fight over the somewhat poorly drained soils provision, noting that there were people in the audience who said it would rob them of the value of their land, while others said this provision would help preserve Durham's character.

Mr. Roberts said it wasn't really a soils issue, but was about robbing Durham's character.

Mr. Kelley agreed, and said it had nothing to do with the science.

Mr. Roberts said the Board had discussed this about a month after the Society of Soil Scientists of Northern New England had published a paper which didn't agree with it at all. He noted that Mr. Andersen referred to this in his letter.

Mr. Kelley said prior to adopting this, a build-out analysis was done of the Town, which indicated that about 1200 additional homes could be built with the Zoning Ordinance in place.

Mr. Roberts said Strafford Regional Planning Commission had done a build-out analysis based on the proposed changes as well as the Master Plan recommendations, and the two were then compared.

Mr. Kelley asked if the Board was interested in opening up this issue.

Ms. Fuller said yes, and noted that she was just coming on the Board when the somewhat poorly drained soils provision was being discussed.

Mr. Roberts suggested asking the Conservation Commission for its opinion on this. It was agreed that they could review Mr. Andersen's letter, and the fact that the Society of Soil Scientists of Northern New England didn't have data that disagreed with a proposal to change these provisions.

Ms. Fuller asked if the Board should wait to get comments back from the Conservation Commission before deciding if they should work on it.

Mr. Ozenich said the Board could discuss it at the quarterly planning meeting, after the Commission came back with its recommendation.

Mr. Roberts said he could provide the Society of Soil Scientists of Northern New England information to Board members again.

Mr. Campbell noted that Mr. Andersen also wanted the Board to take another look at the required 100 ft setback from poorly drained soils, which was under the Wetlands Conservation Overlay District provisions. He said Mr. Andersen had stated that the State had a 0 setback for these soils.

Mr. Roberts said he didn't recall if there was a soils based recommendation behind this provision. He said he believed there was something other than a 0 setback in the Society of Soil Scientist of Northern New England report, but said he couldn't recall what it was.

Mr. Kelley said he was willing to have a discussion on the matter, but said the 100 ft setback from poorly drained soils was fine with him. He also noted that he was a big advocate of allowing somewhat poorly drained soils to be considered useable land.

Mr. Campbell said he would forward the letter to the Conservation Commission.

V. Approval of Minutes

April 14, 2010

Page 1, line 12, should say 7:03 pm. Also, line 7, indicate that Stephen Roberts arrived at 7:11 pm, and that Bill McGowan arrived at 7:33 pm.

Line 22, include period after Doug Bencks. Line 18, should read "...he said there was a memo he had sent...."

Page 3, line 25, should read "...whatever the Board decided on should be..."

Page 5, line 6, should say "...he almost looked at this as finding..."

Page 6, line 29, should say "But he said larger events would not be a usual occurrence."

Line 26, should say "Route 108"

Page 7, line 16, should say "...had often held 140 people for Saturday evening performances."

Line 28, should say "...a warning sign in both directions..."

Page 9, line 1, should say "Councilor Smith asked why this should be allowed only 5 days ..."

Line 21, should read "Councilor Smith agreed."

Page 12, line 29, should read "...8:30 am to 8:30 pm"

Page 16, line 10, should read "...the number of people attending performances was being restrained..."

Page 18, line 18, should read "...Alteration of Terrain rules..."

Page 19, line 32, should read "...cement or bituminous concrete."

Page 20, line 22, should say "...noted 4 g) and 4 d) on pages 6 and 7."

Bill McGowan MOVED to approve the April 14, 2010 Minutes as amended. Richard Kelley SECONDED the motion, and it PASSED unanimously 6-0-1, with Peter Wolfe abstaining because he was not at the meeting.

April 28, 2010

Page 1, should say Richard Ozenich was present. Should also note at the top that Richard Kelley arrived at 7:05 pm. Line 15-16, should say Councilor Cote was the alternate Council representative to the Planning Board.

Page 3, line 36, line 16, should say "Capstone"

Page 6, line 17, "...he said there was approximately 15,000 sf, and there was currently"

Page 7, put space between line 36 and 37

Page 10, line 34, should say "...in a closed room inside..."

Page 11, line 40, should say Richard Kelley MOVED to..."

Page 17, line 28, should read "He said this proposal was not a substantial change to the pre-existing nonconforming use."

Page 20, line 3, should say "Alteration of Terrain"

Page 22, should say "It was agreed that this discussion would be continued at the May 12th meeting, and that the Board would continue on with Section C. Stormwater Management Plan on page 4 at that time."

Page 23, put space between lines 25 and 26.

Page 26, line 6, should read "Mr. Roberts said this would be outside..."

Councilor Smith MOVED to approve the April 28, 2010 Minutes as amended. Bill McGowan SECONDED the motion, and it PASSED 6-0-1, with Peter Wolfe abstaining because he was not at the meeting.

VI. 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.

- VII. 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.

It was agreed that both VI and VII would be handled together.

Mr. Sievert provided Board members with updated plans, and an addendum to the property management plan that had previously been provided. He said the Existing Conditions page now included a decorative black metal fence on the Lenk property, explaining that it had previously been located incorrectly. He said the demolition plan noted this as well.

He said C-1 now showed a proposed new 5' 11" ft vinyl fence, and noted that he had showed this to Mr. Lenk.

Mr. Campbell said a 12 ft fence would have been considered a structure, and therefore would have had to meet the setback requirements.

Mr. Sievert said they decided to go with the fence because the area was too tight for a vegetative screen. He said Mr. Lenk seemed to be happy with the fence, and said little maintenance would be involved.

He said another agreement reached with Mr. Lenk and Mr. Stanhope was to continue a picket fence from Mr. Stanhope's property to the back corner, in order to prevent pedestrian traffic from cutting through the properties. He also noted that construction easements had been requested from each of the abutters' properties, and said an agreement on this was in the process of being worked out. He said two gates were also added at the back corners to cut off the 3 ft alleyway back there.

Mr. Sievert noted that C-2 provided a more detailed grading plan, and D-1 showed a cross-section of the pea stone swale, building, and fence. He said the fence would be installed and maintained by the applicant on the property line.

He spoke about the addendum to the management plan to cover concerns about resident tenants using those areas of the property.

Mr. Roberts asked what responsibility the applicant would have for landscaping from the center line of Pettee Brook through to the seating area.

Mr. Sievert said that information was on the original landscaping plan, and said nothing had changed. He said there would be an extensive understory, of low plantings from the bank of

the brook up to the patio. He said the ghetto shrubbery from the back of the stone wall adjacent to Madbury Road all the way down to the back corner of the building would be newly planted, including the graded area. He said the existing tall trees would remain there, and provided further details on the trees that would be there.

Mr. Roberts spoke about the need for a maintenance plan so those trees didn't get overgrown, as they were now. He also asked if the Town had any added requirements to clean up the area near the brook.

Mr. Sievert provided details on how this would be handled, and said there would be maintenance right up to the property line.

Mr. Campbell noted that a condition of approval was underground sprinkling, and said that needed to be put on the landscaping plan.

Mr. Sievert agreed. He also said the idea of providing 24 hour security if there were problems was acceptable to the applicant. In addition, he spoke about the gas line, which was proposed to come in on the northerly area of the property. He explained that Mr. Lenk had asked that a stub be added there, so he could tie in to this if he got approval to expand in the future. Mr. Sievert said the applicant was in agreement with this, and said it would be done pending approval from the utility company.

Ms. Fuller said she would like to hear from Mr. Lenk that he was in agreement with what had been proposed.

Jason Lenk, 12 Mathis Terrace, said he was very much in agreement with MJS Engineering's assessment. He explained that he had asked for the gas line to come across in exchange for part of the stormwater drainage being located on his property.

Mr. Wolfe noted that the power lines were proposed to be above ground.

Mr. Sievert said there was a waiver request to allow the overhead portion to remain, given the fact that they would end up undermining the trees there if they put it underground. He also said there was a 30 ft sewer easement they would have to cut across if it was put underground, and also noted that permission was being sought to put a patio in that area.

There was discussion on what the design would be if the utilities were underground.

Mr. Kelley said if the Board required that the electric utilities be underground and a transformer was required, it would be difficult to get it out of the floodplain.

Mr. Sievert provided details on what the options were concerning this.

There was discussion that the only thing that could actually go underground was the service line from the existing pole to the building. Mr. Kelley said the main overhead transmission lines across Madbury Road and Pettee Brook Lane wouldn't be going away. It was noted that the pole was in the floodplain and was also in the Town right of way.

Mr. Roberts said even though the Master Plan said electric utility lines should go underground, he didn't think it was smart to do so within the floodplain.

Mr. Sievert said the Fire Department had stated that it didn't have an issue with what was proposed.

Mr. Kelley said he would like the service line to be underground if this could be done, and said if the utility company said it couldn't, they would have a fallback.

Mr. Roberts asked what the opinion of staff was on this, and Mr. Campbell said he didn't see that putting the service line underground would gain much there.

Mr. Wolfe asked what precedent would be set if this was waived, and Mr. Campbell said this issue was handled by the Board on a case by case basis.

Ms. Fuller said she didn't think it was a good idea to put the utilities underground in the floodplain, especially if they wouldn't be gaining much in terms of the appearance, with the pole already there, etc.

It was noted that wording concerning a waiver for utilities was included in the Findings of Fact for both applications.

Mr. Kelley spoke about the fact that a \$111,000 penalty would have to be paid by the applicant for not providing parking spaces.

There was discussion about the waiver requested from having to pay the school impact fee, with Mr. Sievert noting that this applied because right now no families were proposed to live there. It was noted that if the use changed, the school impact fee would then be assessed. There was discussion about the fact that a family could possibly move into this development.

Mr. Campbell said in the past, the Board had said that if in a six year period, a family with children in the school system moved in, the school impact fee would be imposed at that time. It was agreed to include something regarding this as a Condition of Approval for both applications.

Mr. Roberts said he thought it was sort of an item of harassment to go after such a small number of people, who might have just a few children in the school system.

Mr. Kelley said it appeared that the applicant would have to go to the Council to get the parking he was looking for.

Mr. Sievert said Chief Kurz was talking about getting the parking spaces in the right of way approved and determining whether they would be metered.

Mr. Campbell said there was also the loading zone issue.

Mr. Kelley asked if this needed to be recognized in the Conditions of Approval. He said without such action, the parking on the plans could not occur. He said he believed it was the applicant who needed to pursue this, noting that some advocates such as the DPW or Traffic Safety Committee could also come on board.

Mr. Campbell said the Police Department would be involved, but said the impetus needed to come from the applicant.

Mr. Kelley said he didn't think it was a deal breaker if this didn't occur, but said it was beyond the Planning Board's sphere of influence.

Mr. Campbell agreed that the Board couldn't approve the loading zone and the 5 additional spaces, and that this needed to be approved with an ordinance change.

Mr. Kelley said he was fine with having this be a condition to be met subsequent to signature.

Mr. Roberts said his understanding was that this needed to be initiated by the municipal authorities, just like the procedure to site a roadway.

Mr. Kelley asked whether if the sidewalk outside of the right of way on the applicant's property was removed for whatever reason, there would still be an ADA accessible path through there.

Mr. Sievert said yes, and said there would be about 5 ft.

Mr. Kelley said he was a big proponent of preconstruction meetings, and having a Planning Board representative present.

Mr. Campbell noted that this had been done with the last few applications, and said he had included it here as a Condition of Approval for the Site Plan application.

Mr. Kelley suggested that the Condition of Approval regarding fencing should include maintenance by the applicant, and said the reference to plantings could be removed. There was discussion on what the wording should be for this condition, for both the Site Plan application and Conditional Use Permit application.

Mr. McGowan noted that the information submitted that evening needed to be included in the approval documentation for both applications.

Mr. Kelley said he wanted to be sure that the applicant understood that the property and security management plan hadn't officially been submitted yet, because some of the information such as the primary contact person needed to be included, and the night time security system, etc. still needed to be beefed up.

There was discussion that this plan would be submitted to Mr. Campbell, who would then send it around to the various departments for suggestions, and it would then be approved. It was noted that this process would take place prior to the signature of approval on the Site Plan.

The Board next went through the Conditional Use Permit checklist, and found no issues with the application.

Findings of Fact - for Conditional Use Permit

1. The Zoning Board of Adjustment approved three variance requests on February 16, 2010 and March 9, 2010.
2. Chief David Kurz submitted a memo regarding the proposed development on April 27, 2010.
3. A Site Walk was conducted on May 7, 2010.
4. A Public Hearing was conducted on May 12, 2010.
5. The Planning Board exempted the applicant from 148 parking spaces with the requirement that the applicant pay the parking fee of \$750 per space not provided.
6. The Planning Board has waived the school impact fee. However, if within a six-year period a family with a child or children in the school system moves into the building, the school impact fee will be assessed at that time.
7. The Planning Board has waived the requirement of Section 9.6 of the Site Plan Regulations for Non-Municipal Utilities to allow the overhead wires to remain.
8. The Durham Conservation Commission unanimously included their wish to recommend that artificial armoring (with stone or rip-rap) be limited on the stream banks and natural vegetation be restored to the maximum extent reasonable.

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

1. These Findings of Fact and Conditions of Approval shall be recorded with the Strafford County Registry of Deeds, at the applicant's expense.
2. All final plans must be stamped by the appropriate professionals.
3. A Property and Security Management Plan shall be submitted to include, but not limited to, the following: 24 hour/7 day a week primary contact person to resolve security or other issues in a timely and appropriate manner; a secondary contact person in case the primary contact person is not available; all contact information updated with the Police Department, Fire Department, and Code Enforcement Department on an as-needed basis; and night time security for the site from Thursday night through Saturday night from 9 PM - 2AM. If problems persist on the property, as determined by the Police Chief, full time security will be needed 7 days a week from 8 PM - 6 AM until the problems are rectified. The plan shall be approved by the Town Planner with the advice and consultation of the Police, Fire, and Code Enforcement Departments and can be reviewed, modified, and updated by the owner with the approval of the above departments.
4. The three-foot area behind the building abutting Map 4, Lot 10-0, shall be fenced

with gates on either end and shall be maintained by the applicant/owner.

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

1. 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. A Conditional Use Permit shall be issued by the Zoning Administrator.
3. The Planning Board shall require engineering oversight for the Stormwater Practices to be installed during construction.

Richard Kelley MOVED to approve the Findings of Fact and Conditions of Approval as amended this evening, for 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. Richard Ozenich SECONDED the motion.

Mr. Wolfe noted that he and Mr. Sievert were very good friends. But he said he was able to be impartial on this matter.

Board members said they had no issues with this.

Councilor Smith said both the Site Plan and Conditional Use Permit applications contained the wording "rebuild a new three-story mixed use building." He said this should really say "build a new three-story mixed use building", and suggested that this be a friendly amendment to Mr. Kelley's motion.

Richard Kelley MOVED to approve the Findings of Fact and Conditions of Approval as amended this evening, for 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 build 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. Richard Ozenich SECONDED the motion.

Mr. Roberts noted that he had suggested to Mr. Campbell that the applicant recommend Council approval of the parking spaces, based on his reading of the RSAs and the Council's exclusive powers.

Mr. Campbell said the appropriate wording had been added to the Conditions of Approval for the Site Plan application.

He also reviewed for the Board the changes made that evening to the Finding of Fact and Conditions of Approval for the Conditional Use Permit application.

The motion PASSED unanimously 7-0.

Findings of Fact - for Site Plan Application

1. The Zoning Board of Adjustment approved three variance requests on February 16, 2010 and March 9, 2010.
2. Chief David Kurz submitted a memo regarding the proposed development on April 27, 2010.
3. A Site Walk was conducted on May 7, 2010.
4. A Public Hearing was conducted on May 12, 2010.
5. The Planning Board exempted the applicant from 148 parking spaces with the requirement that the applicant pay the parking fee of \$750 per space not provided.
6. The Planning Board has waived the school impact fee. However, if within a six-year period a family with a child or children in the school system moves into the building, the school impact fee will be assessed at that time.
7. The Planning Board has waived the requirement of Section 9.6 of the Site Plan Regulations for Non-Municipal Utilities to allow the overhead wires to remain.
8. The Planning Board has granted a building height of up to 42 feet.
The Durham Conservation Commission unanimously included their wish to recommend that artificial armoring (with stone or rip-rap) be limited on the stream banks and natural vegetation be restored to the maximum extent reasonable.

Conditions of Approval to be Met Prior to Signature of Approval on the Site Plan.

1. The applicant shall supply one mylar plat and one paper copy for signature by the Planning Board Chair.
2. All plans must be stamped by the appropriate professionals.
3. The applicant shall post an acceptable financial surety prior to the signature of the final Site Plan that is approved by the Planning Board. The financial surety shall be in an amount sufficient to ensure the completion of drainage, sewer, water, and/or any other improvements required by the Town. The financial surety shall be effective until the issuance of all certificate of occupancies needed for the property. The financial surety shall be approved by the Town as to the form and type. The Town will accept cash, pass book savings in the Town's name, letter of credit or a construction surety bond. At its discretion, the Planning Board may require approval of the construction guarantee by the Town Attorney. The amount of the surety shall be determined by the Department of Public Works.
4. A guarantee or performance bond or escrow agreement must be posted in an amount to be determined by the Director of Public Works and approved by the Town Administrator to ensure satisfactory completion of the landscaping plan as submitted and approved.
5. Water and sewer permits must be approved by the Water/Wastewater Committee and by the Town Council.
6. The final drainage plan must be approved by the Town Engineer and a letter from the Town Engineer must be received by the Department of Planning and Community

Development.

7. A Property and Security Management Plan shall be submitted to include, but not limited to, the following: 24 hour/7 day a week primary contact person to resolve security or other issues in a timely and appropriate manner; a secondary contact person in case the primary contact person is not available; all contact information updated with the Police Department, Fire Department, and Code Enforcement Department on an as-needed basis; and night time security for the site from Thursday night through Saturday night from 9 PM - 2AM. If problems persist on the property, as determined by the Police Chief, full time security will be needed 7 days a week from 8 PM - 6 AM until the problems are rectified. The plan shall be approved by the Town Planner with the advice and consultation of the Police, Fire, and Code Enforcement Departments and can be reviewed, modified, and updated by the owner with the approval of the above departments.
8. The three-foot area behind the building abutting Map 4, Lot 10-0, shall be fenced with gates on either end and shall be maintained by the applicant/owner.
9. The landscaping plan shall note that the applicant will either have an underground sprinkler system or outside hose attachment for watering the landscaping.

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

1. 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. Maintenance Guarantee--a financial surety to guarantee that all site work was properly done shall be posted by the applicant with the Town. Such maintenance guarantee shall be in an amount of two (2) percent of the estimated project cost and shall remain in force for two (2) years after site improvements are completed. If such repairs are needed and are not satisfactorily installed by the developer, then such guarantee shall be used to complete and/or install such improvements.
3. As-built construction drawings, plan and profile, of all infrastructure improvements shall be submitted in electronic and paper copy at a scale of 1" to 20', including, but not limited to:
 - Underground Utilities (sewer lines, storm drains, water lines, electrical, phone, cable, natural gas lines, etc.)
 - Drainage ways, ditching, impoundments, swales, etc.
 - Road construction
4. The construction staging, timing, and techniques shall be reviewed and approved at a pre-construction meeting prior to any demolition or construction. The pre-construction meeting shall be held with the Durham Police Department, Fire Department, Code Enforcement Officer/Building Inspector, the Department of Public Works, a member of the Planning Board and the Director of Planning and Community Development with a summary provided to the Planning Board.
5. During construction the site will be secured by use of a temporary chain link fence.
6. Trash collection will be private and the responsibility of the owner. All areas where trash is stored, both inside and outside, will be kept in an orderly fashion.
7. The parking fee will be paid at the time the Certificate of Occupancy is issued.

- 8, The Planning Board shall require engineering oversight for the Stormwater Practices to be installed during construction.
9. The applicant shall work with the Durham Police Department and the Durham Public Works Department to propose a change to the Town Code to allow for additional parking spaces and a loading zone on Madbury Road. The additional parking spaces and loading zone shall not be striped until approved by the Town Council.

Richard Kelley MOVED to approve the Findings of Fact and Conditions of Approval as amending this evening for 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 build 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. Richard Ozenich SECONDED the motion.

Mr. Campbell reviewed the additions made to the Findings of Fact and Conditions of Approval that evening. There was discussion on the wording to be included in Finding of Fact #7 concerning electrical utilities, as well as on the addition of #9 to the Conditions to be met Subsequent, concerning the applicant working with the Police Department and DPW and regarding the loading zone and additional parking spaces.

The motion PASSED unanimously 7-0.

Mr. Sievert said it was expected that the project would start right away, and said the last he had heard, there would be a basement for the new building.

Break from 9:09 to 9:28 pm.

Mr. Wolfe left the meeting during the break.

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

Ms. Fuller noted that the Board had left off with page 7 the last time the draft was discussed.

Mr. Kelley noted 4) h on page 7, and stated again his previous question as to whether a weighted average of soil types would be used for this.

Mr. Campbell said Mr. Cedarholm had suggested wording that “infiltration structures shall be in locations with the highest permeability on the site.”

It was noted that the Board had had questions about how 4) i and j would be monitored.

Mr. Kelley said 4) h said the rate of runoff would be controlled so it didn’t exceed pre-development runoff for the 2-year, 10-year and 25-year 24-hour storm events. He said

theoretically, this was saying water could be sent down the road for 50-year and 100-year storm events, and said it would be those rates that would cause downstream channel erosion. He suggested that if the same runoff rate could be maintained for pre and post development, there was no need for 4) i.

There was discussion about the fact that rivers meandered on their own, and about whether 4) i was needed. Councilor Smith said it was an open ended statement.

Mr. Kelley said he would like to see what Mr. Cedarholm had to say. He said he was ok with 4) j, and said under normal conditions, best management practices proposed might address that. He said having the wording there was the fail-safe.

There was discussion that 4) p had been removed because it was redundant.

Ms. Fuller asked how 4) j would be monitored.

Mr. Kelley said it was good that best management practices would be used along with low impact development practices. But he said there might be a use that could create water quality runoff problems, which 4) j could address.

Ms. Fuller also noted that as properties got older, conditions on them could change.

Mr. Roberts said this issue had also come up with the Aquifer Protection subcommittee.

Councilor Smith said he had a lot of geese on his property, and said their presence could degrade the water quality downstream.

Mr. McGowan suggested that there should be wording concerning maintenance of pervious parking surfaces, under p (formerly q).

Mr. Kelley noted there was a separate Maintenance and Inspection section.

He said regarding 4) m that the time period should be something else than 30 days, and also said there was no reference in this provision to the size of the "area of disturbance". He said they couldn't control the amount of rain that fell, or what kind of soil there was on a site, but they could control the amount of area disturbed at any given time. He said this as well as the erosion controls that should be in place hadn't been discussed. He said he would do some research on this.

There was discussion about 4) s. Mr. Kelley said he had thought it was a design criterion that came out of the State Stormwater manual, but had determined that Mr. Cedarholm had developed the language. He said it was a great idea where it could be done, but said typically stormwater detention ponds and rain gardens were located on the low area of a site. He said the under drain would be beneath that, so the question was where this could daylight with some projects.

It was agreed that the wording “..whenever practical..” would be included in 4) s.

There was discussion on 5) Redevelopment Project Requirements. Mr. Kelley said the word “watershed” there was very subjective, and said perhaps that was the intent, to allow some flexibility.

Mr. Roberts said it wasn’t defined in the State’s model ordinance.

Councilor Smith said the use of the word “watershed” here probably meant the subwatershed encompassed by a redevelopment project.

Mr. Kelley said perhaps, but said it wasn’t uncommon to see a site where water went off in different directions into different subwatersheds that were part of the same watershed, or even to different watersheds.

Mr. Roberts asked if the intent was recognizable, and said perhaps a different word choice would make things clearer.

Mr. Kelley asked if the Board liked the idea, as proposed in the draft, of splitting up projects into separate categories depending on how much impervious coverage there was. He read through the wording under 5), and said he was not a big fan of it. He said it would be tough to work with, but asked if the Board wanted to give it a try. He asked what their concerns about it might be.

Ms. Fuller said if she was a developer doing a redevelopment, she would have to ask an engineer to figure it out.

Mr. Roberts agreed that it was too much to put in an Ordinance.

Mr. Kelley said if the Board was entertaining having an ordinance that the lay person could understand, they were in trouble.

Mr. Roberts suggested that there could instead be wording in the regulations that referred to standards found elsewhere that must be met. He asked how other towns and cities in NH handled this.

Mr. Kelley said the section was hard to read, but said it started to make sense if read through a few times. He said he was willing to give it a try and see what happened. He noted that Mr. Cedarholm had run a test of redevelopment projects, and got back more in terms of stormwater management than these provisions would require.

Other Board members agreed to try the proposed wording.

Mr. Campbell said there should be specific language under 10) Maintenance and Inspection, concerning the maintenance of pervious pavement.

There was discussion on 9.03.3 Waivers and Exceptions. Mr. Roberts agreed that the Board should try out the new stormwater regulations. He said with this kind of waiver available to applicants, the Board wouldn't be punishing them unnecessarily, especially if they had the Town Engineer to guide them.

Mr. Kelley asked if the bonding language belonged there or somewhere else, or perhaps was redundant.

Mr. Campbell noted section 8.0 of the Site Plan regulations contained language on bonding. There was discussion that the bonding language should therefore be taken out of the stormwater regulations.

Regarding 9), Mr. Kelley said he didn't understand the purpose of the language "Prior to the issuance of any certificate of occupancy, the applicant/developer shall post a bond or other security to cover the cost of installation of any storm water management and erosion control measures." He said it seemed odd that this would be requested when the work had already been completed.

Mr. Campbell said perhaps it was supposed to be part of the maintenance guarantee.

Councilor Smith said perhaps 9) should say "...to cover the cost of maintenance..."

Mr. Roberts suggested that 7) and 9) should say the applicant should conform to 11.03 of the Site plan regulations.

Mr. Campbell said 7) would go with 8.0 in the Site plan regulations, concerning the construction guarantee. He said 9) should go with 11.0 of the Site Plan regulations, regarding the maintenance guarantee.

Mr. Kelley said 10) c concerning as-built plans didn't fit there.

Mr. Roberts agreed, and said the language on as-built plans should be in one spot, in the Site Plan regulations.

Mr. Campbell said this should be moved to Section 11.02 of the Site Plan regulations, and noted that it was much stronger language than what was currently there. There was discussion that the language was good.

Mr. Kelley said he hoped the Town was getting as built plans in an electronic format, which could provide useful information for planning purposes.

Mr. Campbell said he and Mr. Cedarholm would incorporate the changes the Board had agreed on, and would also discuss with him additional issues that had come up this evening. He said he would come back with an updated document at the quarterly planning meeting, and noted that another public hearing would need to be held.

IX. Adjournment

Richard Ozenich MOVED to adjourn the meeting. Steve Roberts SECONDED the motion, and it PASSED unanimously 6-0.

Adjournment at 10: 15 pm

Victoria Parmele, Minutes taker

Stephen Roberts, Secretary