

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

**Durham Planning Board  
Wednesday June 23, 2010  
Durham Town Hall - Council Chambers  
7:00 P.M.  
Minutes**

**MEMBERS PRESENT:** Chair Lorne Parnell; Vice Chair Susan Fuller; Secretary Stephen Roberts; Richard Kelley (arrived at 7:18 p.m.); Councilor Julian Smith; Wayne Lewis; Peter Wolfe; Councilor Bill Cote

**MEMBERS ABSENT:** Bill McGowan; Richard Ozenich; Kevin Gardner

**I. Call to Order**

Chair Parnell called the meeting to order at 7:02 p.m.

**II. Approval of Agenda**

Chair Parnell appointed Mr. Lewis as a voting member in place of Mr. Ozenich and appointed Mr. Wolfe as a voting member in place of Mr. Kelley.

Mr. Campbell noted that the information for the conceptual consultation on the pork chop subdivision, which was supposed to be discussed under Item XIII, had not been received, so this Item should be taken off the Agenda.

***Steve Roberts MOVED to approve the Agenda as amended by deleting Item XIII. Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.***

**III. Report of the Planner**

Mr. Campbell said he and University planner Doug Bencks had postponed their monthly meeting, and would have a meeting for June and July at the end of June. He noted that he had passed on to the Board some information from Mr. Bencks concerning the planned demolition of the farmhouse at the Leewood Orchard. He said it was in poor condition and had been vacated, and noted that the single story addition to the barn would also be demolished, but the main double-height barn would remain,

Mr. Campbell said the Traffic Safety Committee had recently met to discuss the traffic calming effort on Pettee Brook that would start on July 1<sup>st</sup>, where the two lanes would merge into one just past the Store 24 lot. He noted that 17 parking spaces would be created on the south side of the street, and said they would see what happened, with the new design.

He said at the most recent Council meeting, there was a first reading and a marathon public hearing opened on the proposed Zoning change for the ORLI and MUDOR districts. He said the hearing was continued to July 12<sup>th</sup>. He also said there was a public hearing on the proposed tax relief under RSA 79-E for the Sigma Beta fraternity, and said deliberation on this was postponed until the July 12<sup>th</sup> Council meeting.

Mr. Campbell said the consultant had been hired to assist with the inclusionary zoning process, and said the initial meeting with him and the advisory committee would be held on Friday. He said this process should take about 6 months.

He reviewed the issues the Board had dealt with at its recent quarterly planning meeting. He noted that they had heard from the consultant concerning the use of the traffic model on Mill Plaza traffic patterns; had finished working on the storm water provisions for the site plan and subdivision regulations; had discussed the Pettee Brook Road experimental design; and had started a discussion on the issue of leasing of parking spaces.

He also noted that over the past few weeks, the Board had started doing field trips to look at some developments that had been approved in recent years, to see how they had worked out. He said if the Board saw some things it didn't like, it might make some changes to the regulations.

Mr. Campbell said 12 proposals had been received concerning the planned town-wide market analysis. He said the EDC subcommittee had met that day and narrowed it down to 4 companies, and he provided details on this.

**IV. Public Hearing on 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.

Steve Kimball spoke before the Board, and said there were no changes from his initial presentation on the application. He reviewed again what was proposed, and reiterated that he would like to be able to expand the front building up to what was proposed, but might end up providing less of an expansion by taking advantage of second story space. He said in no circumstance would he exceed the expansion that was proposed.

He said it wasn't unreasonable to have space for 11 vehicles. He noted that 7 spaces were typically used, and said he had monitored this over time. He said he didn't expect all 11 spaces to be occupied 7 days a week, and said the purpose of the parking proposed was to cover a worst case scenario. He provided further details on this.

Mr. Kelley arrived at 7:18 pm.

Mr. Roberts asked Mr. Campbell for direction on this, noting that the April 19<sup>th</sup> memo from Code

Officer Tom Johnson said 6 spaces were required, and that the additional 5 spaces were now being used illegally.

Mr. Campbell said Mr. Johnson's position was that the parking in the front building, which was now striped off on the plan submitted and was within the 75 ft setback and might also be within the side setback, was not delineated previously. He said Mr. Johnson thought 11 spaces was 5 more than what were presently allowed, and he provided details on this.

Mr. Roberts noted that the Conservation Commission had refused to consider the application because the spaces weren't delineated, and asked if this was resolved.

Mr. Campbell explained that the Conservation Commission had been confused as to what it was supposed to be looking at, and giving advice about, and was looking to the Planning Board to see how many spaces would be allowed and where, so it could then look at this.

He said Mr. Kimball was required to have a minimum of 6 spaces, one per resident, and 3 for each dwelling. He said the Ordinance allowed an additional 10% over that. He also noted that under the parking ordinance, by Conditional Use the Planning Board could grant more than the 10% increase in parking spaces on an as needed basis, if it saw a need for them.

Mr. Roberts asked if there was a written explanation from the applicant as to why the additional spaces were needed.

Mr. Campbell said the Board had just heard oral testimony concerning that. He said Mr. Kimball also talked about documentation of the parking in his May 9, 2010 letter.

***Susan Fuller MOVED to open the Public Hearing 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. Wayne Lewis SECONDED the motion, and it PASSED unanimously 6-0.***

Chair Parnell asked those members of the public in favor of the application to speak. There was no response, and he then asked those against the application, or with questions/concerns to speak.

**Marty Gooze, 9 Meadow Road**, said she was an abutter. She said she while she would have loved to see the woods stay, she had no problems with the project. But she said she hoped the Planning Board would allow no more parking spaces than the 6 allowed under the Zoning Ordinance. She said the driveway area in front of the garage, and the driveway to the back cottage hadn't been used by more than 2 cars for every day parking until Mr. Kimball inherited the property. She said she had lived on Meadow Road for 30 years, and used to walk through this property to Strafford Ave. She said she had rarely seen more than 2 cars parked at either the main house or the cabin in the back.

Ms. Gooze said if the Ordinance was very changed to allow more leased parking in Town, she would advocate for no more parking allowed than the number of parking spaces permitted, in any

property that abutted a residential zone.

She said the relevant criteria under the Conditional Use were that the intensity of the use shall not have an adverse affect on the surrounding environment, and that the natural, cultural, historical, and scenic resources would be preserved. She also noted that a condition of approval could be screening of adjacent properties. She said 6-7 months out of the year, there was very little foliage, which allowed noise to come through. She provided details on this, and said it could be very disruptive.

Ms. Gooze said the Professional Office District, which abutted residential neighborhoods, was intended to be a pedestrian area. She said increasing the number of parking spaces would increase the number of cars, which contradicted what the Town said it wanted in this district.

She said the project would result in 6 tenants on the Kimball property, who most likely would be students who didn't need more than one car. She said the Ordinance allowed a maximum of 3 cars for what was proposed. She said she felt strongly that allowing more parking for this project, when there might be a desire for it but not a need, wasn't warranted.

Ms. Gooze said when she went to the site walk, she saw that the parking spaces had been delineated, but said there had never before been a conscious effort to delineate the spaces. She said the area was always used as a driveway, with two cars parked there, leading to an area where two more cars were parked. She said the fact that there was space for lots of cars didn't mean there should be a parking lot, and said this wasn't in keeping with the area. She said she hoped the Planning Board would be able to address her concerns.

***Susan Fuller MOVED to close the Public Hearing. Councilor Smith SECONDED the motion, and it PASSED unanimously 6-0***

Mr. Kimball rebutted that the Board routinely approved projects that allowed parking within 5 ft of residential properties, and said the parking on this property was 100 ft from the residential abutter.

The Board agreed to reopen the public hearing.

***Richard Kelley MOVED to reopen the Public Hearing. Councilor Smith SECONDED the motion, and it PASSED unanimously 6-0.***

**Jay Gooze, 9 Meadow Road**, said the site walk had taken place when there was full foliage on the trees. He said when there was no foliage, they could hear noise from Mr. Kimball's property. He said no matter what the distance was, if there was nothing in the way, to allow more parking was an inconvenience to the abutter.

***Councilor Smith MOVED to close the Public Hearing. Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.***

Mr. Kelley noted that he wasn't at the quarterly planning session where the Board had discussed the issue of rental of parking spaces. He said he felt this was a slippery slope they were looking at, and said he was not convinced that the Board had anything in front of them to address the concerns of

allowing residents to lease parking spaces in their neighborhoods.

He said he heard the concerns of abutters, and felt strongly that the desire vs. need argument that had been put forward was valid. He said he was not in support of the additional parking proposed with the application. But he said he was fine with amending the Conditional Use Permit approval to include the changes to the structure that Mr. Kimball was seeking.

Mr. Roberts said he supported Mr. Kelley's comments. He noted the Board's recent discussion on leasing parking spaces, and said if the applicant chose to lease out spaces, including a 10% increase in spaces the Board might allow, he wouldn't be offended by this. But he said to almost double the amount of parking permitted by the Ordinance and to then lease it out gave him a problem. He said that was the implication of Mr. Johnson's memo.

Councilor Smith said he agreed with both Mr. Kelley and Mr. Roberts on this. He suggested that because the Board was waiting to hear back from Mr. Campbell on how to address the issue of leased parking spaces, it should hold the line on the number of required spaces. He also said he agreed with Mr. Kelley that the proposed building addition was appropriate.

Ms. Fuller said she agreed with what others had said, and had nothing to add to this.

Chair Parnell said the majority of the Board seemed to be thinking this way.

He appointed Mr. Lewis as a voting member in Mr. McGowan's absence.

Mr. Lewis said a key point was differentiating between the need and the desire to have more parking, and said the Board was required to put more weight toward need than desire.

Chair Parnell suggested that perhaps the Board needed to separate this into two decisions to be made concerning the application. There was discussion.

Mr. Campbell said if the Board wanted to allow only 6 spaces, this along with where the Board would allow them would be good guidance for the applicant. He said it would also be good guidance for the Conservation Commission, which then needed to be sure about the location. He said the Board could then move forward from there.

Mr. Roberts noted that the bar for a Conditional Use Permit application was higher, and said if there were 7 voting members, the applicant would have a fairer shot at approval.

There was discussion that the Board could decide where the parking spaces could be located.

The Board reviewed sheet C-1 of the plans, dated April 2010. Mr. Kelley said it showed 4 spaces up by the new proposed shed, and said there was also a carport adjacent to it. He said they were only looking at allowing one additional spot, and said it seemed that it would be down by the existing gravel driveway. He said he would think the Conservation Commission might be ok with that, because it was what had been out there, and was approved before.

It was clarified that there was presently a gravel driveway, and that the front building would be a single family home with 3 bedrooms.

Mr. Kelley said if the applicant's preference was to have 3 parking spaces for the front building and eliminate some in the back, he would entertain that idea. He said it looked like there was room to get 3 spaces in the front.

There was discussion.

Mr. Campbell said if it were his property, he would want to have 3 spaces in the front and 3 in the back.

Chair Parnell asked if the Board was saying 3 spaces in the front and 3 spaces in the back would be preferred.

Mr. Roberts asked if perhaps the applicant could do a 10% increase and therefore have 7 spaces, with the provision that there wouldn't be rental of spaces for people outside of the development. He noted that Mr. Kimball indicated that there was a person who helped support efficient running of the units on the property.

There was discussion.

Chair Parnell noted that there were 11 spaces there now, and it was a matter of how many vehicles would be allowed to park there, and where they could park.

Ms. Fuller said she could support allowing a 7<sup>th</sup> parking space so a maintenance person, the owner, or a visitor could park there.

Mr. Kelley asked if the gravel parking in the back was in place and had previously been approved.

Mr. Campbell said he didn't think so. He said what was shown on the original plan that was approved talked about removing the shed and putting in the car port, and also delineated a wider space for the driveway but didn't delineate anything for parking. He said what was shown on that plan was different than what was on the new plan. He said Mr. Kimball thought the additional parking spaces were approved, and said when he applied for his building permit, he applied with those spaces.

Mr. Kelley said the parking on the new plan was flip-flopped onto the other side, compared to the old plan, which got it further away from the wetland buffer and the wetland.

Mr. Campbell said Mr. Kimball's intention was probably to get the parking as far away from the wetland as possible. He noted that the old gravel driveway wasn't removed, and was completely within the buffer. He noted that if the parking was approved as shown in the April 5<sup>th</sup> plan, with the new driveway as configured, the old part would need to be loamed and seeded.

Mr. Kelley said if the parking had been built to the extent seen on the plan, he thought there were

some spaces in either the front or back lot that should be loamed and seeded. He said there was potential for a 7<sup>th</sup> stall to go in front of the front garage, and provided details on this.

He said it sounded like there was a consensus of the Board that they were talking about allowing 6 or 7 spaces, and said he thought the Board should ask the applicant what his preference was as to where they should be located.

Mr. Kimball said he appreciated this discussion. He said he had prepared a plan and submitted it to the Town as part of the building permit application. He said the building permit was received, and said he therefore believed he had permission to construct the parking as shown, and hadn't simply built this on his own. He said he had come before the Planning Board to document the existing parking, and said because it was on an approved building permit application, even if it was in conflict with the Ordinance, it might already be approved.

Regarding the parking in front, Mr. Kimball said the parking area was always that large area in front of the garage, which was shown on earlier plan, and said he had overlaid standard size parking spaces there. He spoke about the typical amount of parking that occurred there, and noted that last year was somewhat unusual because there had been construction going on that wasn't completed until December. He said he couldn't rent the house and so had rented parking spaces out front in order to defray maintenance costs. He said this had made it look like there were a lot of cars out there all the time. But he said in the future, the property wouldn't operate that way.

Concerning the issue of desire vs. need, Mr. Kimball said he wouldn't be making a ton of money renting out a few parking spaces. He said his family and the property monitor might use some spaces, and said there would simply be a few extra spaces so visitors wouldn't be parking in the driveway, on the lawn, etc. He said the other option was to let people park wherever they wanted, and block driveways, etc.

He said he had come forward with the idea of 11 parking spaces as a worst case scenario, and said they wouldn't all be occupied 24/7. But he said if there needed to be specific parking spaces for cars, this was what he needed. He said the issue of cars parked in the wetland buffer wasn't new, and noted that one of the spaces was where the shed used to be.

Mr. Kimball said he would appreciate the Board looking at this situation in the context of what his objective was, and seeing beyond allowing the absolute minimum provided by the Ordinance, which wouldn't be beneficial to the site or surroundings. He said what was proposed didn't represent a lot of parking construction.

Chair Parnell asked Mr. Kimball whether his preference was 6 or 7 spaces.

Mr. Kimball said he would keep them exactly as they were approved on the building permit. He provided details on how he would eliminate spaces if necessary.

Mr. Gooze called a point of order, and asked if the public hearing had been reopened.

Chair Parnell said they had simply asked Mr. Kimball for some information.

Councilor Smith said on the old site plan, there was no parking configuration, as compared to the current plans. He said there was a gravel drive configuration on the old plan, and said that area was still marked as such on C-1 of the current plans. He said overlaying that were the 5 spaces in front of the garage. He said he could see that the new configuration extended to the north, away from the driveway.

He said there were simply driveways on the old plan, which was consistent with the way people used to park. He said Mr. Kimball wanted to turn a gravel drive that might handle 1-2 cars into parking for 5 cars. He also noted that there was room for a 6<sup>th</sup> space in the carport if it was used for parking.

Chair Parnell said he didn't see much disagreement on the Board concerning this issue. He said some conditions of approval needed to be developed, and said the Board was therefore not in a position to finish the deliberations that evening.

Councilor Smith asked if the applicant would need to give the Board a new plan with the parking configuration that he wanted.

Chair Parnell said the Board could say where the spaces would be.

Mr. Campbell noted again that the Conservation Commission was asking for those specifics.

Councilor Cote asked when the building permit was issued, and also said it was somewhat difficult to understand the fact that there was a memo from Mr. Johnson regarding excess parking that was not a permitted use, yet he had approved 5 parking spaces for a building that only required 3 spaces.

Mr. Campbell explained that Mr. Johnson had been thinking that for both uses, 6 parking spaces were allowed, with 3 for each building, with 5 spaces in the back and 1 with the garage in the front.

Councilor Cote determined from Mr. Campbell that Mr. Johnson had never thought that the gravel driveway in front would be used as parking, and Mr. Campbell added that when the plan was submitted with the building permit, Mr. Johnson had assumed that this was what the Planning Board had approved.

Councilor Cote said in other words, the building permit would not reflect the spaces that were hand drawn in on C-1.

Mr. Campbell said he didn't think it would, because Mr. Johnson wouldn't have gone for this.

Mr. Roberts said the old plan showed the enlarged gravel driveway in front of the back building, and said he believed the Board thought there would be 3 spaces there. He said the existing gravel drive in front of the front building could handle a lot more than 3 if one wanted to tuck them in.

He suggested that the Planning Board could direct the Conservation Commission to respond to the idea of 3 spaces with the back building as drawn, plus another space if the car port was included,



and 2-3 spaces with the front building. He said this would total 7 spaces. He said the 3 spaces could be aligned closest to the house as shown to keep them out the road and away from the wetland buffer.

Ms. Fuller said in other words, the idea was to put more cars up top, out of the wetland, and fewer cars below.

Mr. Kelley asked if the Board was saying that it was entertaining the idea of 7 spaces, and wanted to know where the Conservation Commission thought the best fit was for them.

It was clarified that the Board was saying that there would be 3 spaces associated with the front building, and 4 spaces with the back building including the carport.

There was discussion that there should be a Finding of Fact concerning the parking.

Mr. Campbell said the Board also needed to be clear on what it would approve concerning the building expansion, and said he wanted to avoid approving both options Mr. Kimball had presented.

Chair Parnell asked Mr. Campbell to write something up concerning this. He also noted the issue of the re-sodding of the old driveway.

Ms. Fuller suggested that there might also need to be no parking signs along the driveway because cars parked there could prevent an emergency vehicle from getting through. There was further discussion.

Mr. Kelley said he would like to hear from the applicant as to what he would be doing with the front building. He said once he had done this, the Board could react and review the application. He said it otherwise got far too confusing.

Mr. Roberts asked if there should be a clause about no rental of parking spaces.

Mr. Kelley said typically the Board would ask for a property management plan for an application like this.

Mr. Campbell said historically this had been done for multi-units developments, but not for single family homes.

Ms. Fuller noted that there was a problem with single family homes in Durham that students lived in. She said this was a Conditional Use application, and said the Board therefore did have the power to request a property management plan for two single family homes that each had 3 people in them.

Mr. Kelley said this could also address the parking issues. He noted that the Board typically looked at the lease and the security plan and decided what would give them a sense that the Conditional Use thresholds could be met.

Mr. Roberts asked whether if Mr. Johnson saw some leased parking space on the property in a few

years, that would be considered an unapproved use.

There was discussion.

Chair Parnell said the Board would continue its deliberations on this application at the next meeting. He said Mr. Kimball had heard the Board's comments on the idea of a management plan, and the configuration of the second building, and said Mr. Kimball could bring the Board something on this or not.

- V. **Public Hearing on 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 buildings and an 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.
- VI. **Public Hearing on 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 buildings and an 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.
- VII. **Public Hearing on an Application for Boundary Line Adjustment** submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of Ionian Properties LLC, Dover, New Hampshire and the Town of Durham, Durham, New Hampshire to change the boundary line between two properties. The properties involved are shown on Tax Map 2, Lots 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.

There was discussion that all of the public hearings for this applicant would run together.

Mike Sievert of MJS Engineering represented the applicant, and noted that the lot line adjustment was proposed in order to increase the applicant's parcel by about 3500 sf. He said this would be used to provide a better buffer to protect Pettee Brook, and would also be used to provide stormwater treatment.

He reviewed again the details of the development that was proposed, with a 3500 sf building (see May 26, 2010 Minutes for details). As part of this, he noted that there would be about a 4% decrease in the amount of imperviousness within the 75 ft wetland buffer. He said the total impervious cover on the newly adjusted lot would increase by 7%, which was due to the increase in the size of the building.

He described again the stormwater management system that was proposed. He said 75% of the roof runoff would be collected in gutters and then would drain into a rain garden system, which already had a catch basin that went directly out to the brook. He said this meant that no wetland disturbance would be necessary. He noted that runoff from one corner of the building would go into an existing drainage system. In addition, he said there would be a drainage system constructed for the lower

level parking area, and said a treatment system would be put inside a basin in there, in order to trap sediments and oils prior to tying directly into the pipe and out to the river.

He said there would be a 25% decrease in peak runoff from all storms, and also said there would be a 4% decrease in terms of the volume from a 1 inch storm leaving the site. He said this would result in a slight improvement to the flooding situation of Pettee Brook.

He said the property management and security plan had been provided and said there would be 24 hour management of the property. He noted that the Kostis family owned other properties in Town, and said their property management office was nearby. He said it would either remain there or would be located in the new building.

Mr. Kelley asked if any waivers had been requested.

Mr. Sievert first noted that three variances were received, and said one waiver requested was regarding building height, because the average grade to the mean roof would be 47 ft. He said a waiver was also requested concerning the number of parking spaces. He said 25 spaces were proposed, when 88 were required. He said a third waiver request was regarding the school impact fee.

Mr. Roberts noted the electrical lines went right across the front of the building, and asked if these would remain.

Mr. Sievert said he had met with Public Service of NH and Fairpoint, He said the lines would go overhead to a new pole on the site, and would then go underground from there. He said there was another overhead wire that might also go, but said this hadn't been worked out yet.

Mr. Roberts asked if the applicants were satisfied with the rough schematic of the views of the building.

Mr. Sievert said he expected that the overall footprint wouldn't change. He noted that they were a year away from construction, so the schematics would be the next thing they worked on. He said the overhang portion might stay or go, and said if it went, that would remove some space up top. He noted that one of the residential spaces being considered was quite large for the type of residency planned now, but said it perhaps would be appropriate for the type of residency that could be there in the future.

Mr. Roberts said the roof lines shown seemed to fit with University construction in back of the building.

Mr. Sievert said that wouldn't change drastically, and said perhaps the window treatment would change. He said if there was a major change to the exterior, they would come back to the Board, but said he didn't think there would be because there wasn't that much room.

Mr. Campbell said the wetland was shown on the plan, but needed to be labeled. He said the elevation needed to be shown from Pettee Brook to the parking lot, and also said there needed to be a view of the overhead door where trash was to be removed. In addition, he said since this was a

conditional use proposed within the wetland setback, it needed to go to the Conservation Commission for review at its July 8<sup>th</sup> meeting.

***Susan Fuller MOVED to open the Public Hearing. Wayne Lewis SECONDED the motion, and it PASSED unanimously 6-0.***

Chair Parnell asked if there were any members of the public who wished to speak for or against the application, or if there was anyone who had concerns about it. There was no response.

Board members agreed that the public hearing be continued because there was more information that would be coming in, and because deliberations probably wouldn't have taken place that evening anyway.

Mr. Sievert asked if the public hearing could be continued to meeting on July 28<sup>th</sup> instead of the meeting on July 14<sup>th</sup>, because he wouldn't be available on the 14<sup>th</sup>, and because more could be taken care of concerning the application by then.

Board members said they were ok with this, but Mr. Campbell noted that if things didn't wrap up on the 28<sup>th</sup>, a request would be needed from the applicant for an extension of the application.

***Richard Kelley MOVED to continue the Public Hearing to the July 28, 2010 meeting. Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.***

Mr. Kelley said he had some questions and comments on the application. He first asked why one side of the covered parking was 17.5 ft deep, while the other side was 15 ft deep, and asked Mr. Sievert if he thought 15 ft was adequate.

Mr. Sievert said yes, and provided details on how this would work.

Mr. Kelley noted the proposed right turn in and out of the garage area. He said there was very good sight distance looking to the left, but asked what happened if Pettee Brook Lane became a two-way street.

Mr. Sievert said he didn't have an answer for that right now, and Mr. Kelley asked that he provide an answer by the meeting on the 28<sup>th</sup>.

Mr. Kelley also asked for information on the number of trips there would be with the uses proposed, although noting that the Board wasn't asking for a traffic analysis.

Mr. Kelley determined that interior lighting of the property had been provided in the plans.

Mr. Sievert said the additional lighting the Police Department had requested at the Technical Review Committee meeting was interior to the parking area.

Mr. Kelley asked who would be able to use the parking area, and Mr. Sievert said it would be for tenants only. He said parking would be available for commercial uses first, and said if the tenants

wanted to lease the space, they would have the opportunity to do so. He said they would see what happened, and said it might be that there was no parking left for residents.

Mr. Roberts noted that there would be a full cut off wall light at the north end of the building that would illuminate some of the foot paths in that area, and asked if there would be other lighting for the area.

There was discussion.

Mr. Sievert provided details on the two lighting locations proposed, and said it was felt this would be adequate. He said he believed that the police thought it would be enough.

Mr. Kelley determined from Mr. Sievert that the sewer line was a 10 inch pipe, and ran to the collector toward the brook. Mr. Sievert provided details on where the line would go on the site, and how it would tie into the UNH/Town sewer lines.

Mr. Kelley said he would like confirmation that the minimum slopes for the 10 inch sewer could be maintained, given the longer route, and that the Board would be provided with some approximate inverts for the sewer manhole numbers 1 and 3, at a minimum.

Mr. Campbell said he didn't think the stall lengths for the parking spaces met the Ordinance requirements, and said he would have a discussion with Mr. Sievert on how to address this. There was discussion on this.

Councilor Cote asked if the sediment/oil trap would discharge to Pettee Brook, and Mr. Sievert said yes. Councilor Cote asked if there were NHDES requirements concerning this, and Mr. Sievert said no. He noted that page D-2 of the plan showed the design of the system. He provided further details on it, and said it would be maintained. He noted that it was an improvement over what was there now, which was a catch basin that emptied directly into Pettee Brook. He said management of that basin was a critical piece of stormwater management of the site.

Break from 8:50 pm to 8:57 pm

**VIII. Discussion on Restoration of the Retaining Wall** for the property at 21 Cutts Road, Map 8, Lot 1-103, within the Residence B Zoning District.

Mr. Campbell explained that Section 175-60 B of the Zoning Ordinance, the Wetlands Overlay District, discussed permitted uses within the underlying Zoning district, if the Zoning Administrator issued a permit after the Planning Board, with the advice of the Conservation Commission, determined that appropriate erosion control measures would be used.

He said one such permitted use under this provision was repair or replacement of an existing retaining wall, and said that was what the applicant wanted to do. He said there was a retaining wall on her property that was no longer working, and said the storms the past winter had taken the final toll on it.

He said Ms. Brown had spoken with him and then went to the Conservation Commission. He said they provided her with a letter stating that they were fine with the replacement and repair of the existing retaining wall, and were also ok with the erosion control measures that were proposed.

Mr. Campbell said Ms. Brown had also proposed a 45 ft extension of the wall. He explained that this would kick the project into being a Conditional Use application because it would be new wall. He said the Conservation Commission didn't rule this out, but couldn't act on it, and also hadn't looked at the site. He said the Commission had suggested that Ms. Brown look at some alternative methods to stabilize the slope, such as plantings, etc.

Ms. Brown explained to the Board that she had lost 20 pines in a storm, and some of them had hit the retaining wall. She said an emergency repair was done of the lower part of the wall, so there were now boulders 30 ft out retaining the largest part of wall on the bottom. She said she was looking to do the second terrace on the wall. She said the wall would have a similar configuration and be 30 ft. She said the lower wall would be a ft higher than it was, and the upper wall would stay about 2 ft high.

She said large granite boulders would be used rather than cinder blocks, and said some were on site and some would be shipped in. She said it was believed that what was proposed would result in a vast improvement to the wall. She also said she planned to do hay bails around the area of the lowest point of disturbance. She also said there were large piles of rotting logs, which resulted in quite a bit of quite of blockage between that area and the wetlands. She noted that the wetlands went off of the property.

Chair Parnell received clarification that Ms. Brown was not proposing a new wall, and was just fixing the existing wall.

Mr. Campbell explained that before the Zoning Administrator could issue a permit, the Planning Board had to certify that the applicant would be using correct erosion control measures.

Chair Parnell noted that the Conservation Commission had said that the hay bails seemed to be appropriate for erosion control.

Mr. Campbell read into the record the letter from the Conservation Commission.

Mr. Roberts asked Ms. Brown if she was sure that the repair/restoration that was proposed would be sufficient.

Ms. Brown explained that that it was the fact that the trees had hit the wall that had caused the damage to it, not the flooding conditions themselves. She said the flooding had compounded the problem.

***Susan Fuller MOVED to approve the Restoration of the Retaining Wall for the property at 21 Cutts Road, Map 8, Lot 1-103, within the Residence B Zoning District. Councilor Smith SECONDED the motion, and it PASSED unanimously 6-0.***

- IX. Acceptance Consideration of an Application for Site Plan Review** submitted by Jim Keenan, Atkinson, New Hampshire on behalf of Colonial Durham Associates, New York, New York and Federal Savings Bank, Durham, New Hampshire to construct a two-lane, drive-up banking facility for an existing bank. The property involved is shown on Tax Map 5, Lot 1-1, is located at 7 Mill Road Plaza, and is in the Central Business Zoning District.
- X. Acceptance Consideration of an Application for Conditional Use Permit** submitted by Jim Keenan, Atkinson, New Hampshire on behalf of Colonial Durham Associates, New York, New York and Federal Savings Bank, Durham, New Hampshire to construct a two-lane, drive-up banking facility for an existing bank. The property involved is shown on Tax Map 5, Lot 1-1, is located at 7 Mill Road Plaza, and is in the Central Business Zoning District.

Architect Michael Keene spoke before the Board. He said the plan that had been developed was part of a proposed renovation of the branch of the bank at the end unit of the easterly building at Mill Plaza, and took into account an approved plan to add on to the westerly building.

He said the proposal was to add a new bay window, a roof overhang and a two-lane drive up on the westerly side of the bank, along with re-striping of the parking out from the building. He said they would like to keep a 24 ft access road between the buildings, which would have backing out room for parking spaces, would provide access to queuing and drive-up lanes, and would also maintain access to the back of the building.

He said the applicant planned to mitigate some of the pedestrian traffic issues there by striping crosswalks across the existing paved parking there, and providing signage for pedestrians and vehicles about the crossings. He said there would also be a landscaped island adjacent to the building, in order to maintain sight lines for cars and pedestrians.

Mr. Keene said the existing drain line and catch basin located in the existing driveway would stay, but said they also proposed to separate the drive-thru lanes from the parking area with a sunken rain garden. He noted that the rain garden would be protected with wheel stops for the parking spaces.

He said painted islands at the end of each parking lane would allow truck access to service Durham Marketplace. He noted that they had looked into making the islands permeable, but said it wasn't thought this would work because of the truck traffic. He said they also proposed to remove some paving adjacent to the building, and had gone with a raised landscape area to capture rainfall.

He referenced the exterior elevations, and said the applicant was basically trying to maintain the same look and the same materials that were there now. He provided details on this, and noted among other things that the roof profile was kept low, so the snow load on the existing building wouldn't be increased. He said exterior windows would be added, along with awnings to improve the views as people were approaching the building.

Mr. Roberts asked Mr. Campbell if he had overlaid what the applicant had proposed with the Mexican restaurant plans. He said he thought the restaurant would have an outdoor seating area that projected out further, right into where the painted crosswalk was. He noted that when the restaurant plan was reviewed, there were questions about cars speeding by that seating area.

Mr. Campbell took out the plans for the Mexican restaurant. There was discussion, and it was agreed that the applicant would have to take a look at this issue.

Mr. Keene said the applicant might wind up losing a parking space there.

There was discussion about how the architect's plans for an exit for the Grange Hall fit with this proposal as well as the Mexican restaurant plan. Mr. Roberts said it was important to make sure that there was coordination with Public Works Director Mike Lynch as to where the route would be.

Mr. Campbell said he could have Mr. Lynch take a look at this.

There was further discussion between Mr. Roberts and Mr. Campbell. Mr. Roberts noted that he didn't object to the plan, but said it would be important to have the applicant show the travel way outlines on the plan.

Mr. Keene said he would work with Mr. Campbell to make sure that all the plans were coordinated.

Chair Parnell asked how many of the existing parking spots were proposed to be eliminated, and Mr. Campbell said 7 spaces would be eliminated.

Mr. Keene said there would be a drive-up ATM in the first lane, but there would also be a cash dispenser in the vestibule for walkup traffic, which would discourage walk-ups to the drive through. There was discussion that there would be security cameras, down lighting in the canopy, and a night depository on the side of the building.

Mr. Campbell said he'd received an email from Mr. Johnson that expressed concern that the drive-through lanes would be coming right out into the parking area where the handicap parking space was. He said Mr. Johnson had suggested a possible re-design, where the 6 spaces along the new addition would become 4 accessible parking spaces, with 2 shared 8 ft wide aisles. He said this way, patrons using those spaces could go right into the crosswalk rather than into traffic, which would be a much safer design.

Mr. Roberts said he thought the through road to the Grange was dead if this all was put in. He asked if there was any other possible layout to open up that space. He also noted that it would be difficult for trucks to get through.

Mr. Campbell said he didn't think it would be changing from what was there now, but would take a look at it.

Mr. Roberts said he just wanted to make sure that the planning for these various uses was covered.

Mr. Kelley asked Mr. Roberts if his concern was the travel paths servicing the building.

Mr. Roberts said his main concern was in regard to the idea of a possible two lane road through the Grange connecting Mill Plaza to Main Street. He noted that a traffic circle on Main Street as part of



this connecting road was shown with the B Dennis work. He also noted that with the La Paz application, the issue had come up of trucks being able to get in behind the building to load. He said there was also the issue of trucks double-parking in front, and how this would impact parking spaces.

Chair Parnell said if there was a problem with this, the parking spaces could be re-designed.

Mr. Roberts said he would want to see dotted lines on the plan, in terms of what was planned for the future. He also said he would want to be sure that Rite Aid and Durham Marketplace understood the applicant's plan, and said their delivery systems had no problems with access and egress.

Mr. Kelley said if there was a new roadway and entrance to the Plaza, that would be in conjunction with a major redevelopment of the Plaza. He said at that point, the bank would take a far different look at its building there. But he said the Board had a plan to react to now.

Mr. Roberts said at least, the Board had to know that the current loading needs at the Plaza were supported by this layout, and he noted that Mr. Ozenich had brought up this point for the La Paz application.

Mr. Kelley agreed.

Mr. Keene said he had shown Durham Marketplace the truck turning movements that would be possible with the proposed plan, and they were ok with it.

Mr. Kelley asked that the Planning Board be provided with this information, and Mr. Keene said the engineer would be at the public hearing and among other things would provide this information.

Mr. Campbell said the application was complete.

***Richard Kelley MOVED to accept the Application for Site Plan Review and Application for Conditional Use Permit submitted by Jim Keenan, Atkinson, New Hampshire on behalf of Colonial Durham Associates, New York, New York and Federal Savings Bank, Durham, New Hampshire to construct a two-lane, drive-up banking facility for an existing bank, and schedule the Public Hearing for July 14, 2010. The property involved is shown on Tax Map 5, Lot 1-1, is located at 7 Mill Road Plaza, and is in the Central Business Zoning District. Susan Fuller SECONDED the motion.***

Councilor Smith noted that the applicant was not applying for any waivers, yet was eliminating some parking spaces. He said he had no objection to the removal of the spaces, but said he thought a waiver was required for this, as part of a re-development plan. He asked if it was a re-development plan.

Mr. Campbell said it could be. He said he was in the process of doing a table of what parking existed at the Plaza, so would figure this out. He noted that the Chinese restaurant had lost some parking, which took away some of the parking that was required.

There was discussion that it might be a wash in terms of the parking spaces for this application, in the sense that people driving through were not parking.

Mr. Campbell said the parking required at the Plaza was perhaps being met, and said if not, this would have to be addressed as part of a redevelopment.

***The motion PASSED unanimously 6-0.***

Board members agreed a site walk wasn't needed.

Mr. Robert said he would like to see the La Paz plan overlaid with this plan, to make sure everything worked.

Mr. Campbell noted that the applicant wasn't requesting any waivers, but had not provided a stormwater analysis with the application. He explained that they had been working with Town Engineer Dave Cedarholm to come up with a design, and said Mr. Cedarholm was very happy about the rain garden approach that was developed. Mr. Campbell said if the Board wasn't going to require a stormwater analysis, it should ask that the applicant request a waiver from this. . He said he would be supportive of a waiver of that requirement, and asked the Board how it felt about this.

Board members agreed that the applicant should request the waiver.

**XI. Acceptance Consideration of an Application for Amendment to a Previously Approved Site Plan** submitted by Park Court Properties Inc., Durham, New Hampshire to retain an existing house on the lot and to move the existing driveway and parking area serving the existing house to a new location. The property involved is shown on Tax Map 13, Lot 5-0, is located at 262 Mast Road, and is in the Multi-Unit Dwelling/Office Research Zoning District.

**XII. Acceptance Consideration of an Application for Amendment to a Previously Approved Conditional Use Permit** submitted by Park Court Properties Inc., Durham, New Hampshire to retain an existing house on the lot and to move the existing driveway and parking area serving the existing house to a new location. The property involved is shown on Tax Map 13, Lot 5-0, is located at 262 Mast Road, and is in the Multi-Unit Dwelling/Office Research Zoning District.

Bill Doucet, representing the applicant, Perry Bryant, said it had been found when the two new buildings were constructed on the site that the existing house there somehow fit in. He noted that the approval included approval for some office space, and said they would like that space to be in the house rather than in the new building. He said there would be no net change in the number of units.

Mr. Doucet noted that the applicant had previously talked extensively with the abutter and had assured him that they would provide a buffer. He said the intent was still to do this. He said in deciding to keep the house, what was proposed now was to move the existing parking area on the east side of the house to the west, which would mean that cars would enter it off of a driveway entrance, and not off of the road.

He spoke in great detail about the development itself, as actually built. Among other things, he noted that porous pavement would be used for the entire site. He said the proposed parking lot would also be porous, but noted that the existing parking lot next to the house was compacted gravel, which was not porous. He said the proposed change in terms of the parking areas would therefore reduce runoff, although noting that there would be more reduction in runoff if the house was removed.

Chair Parnell summarized that the project now was to keep the house as it was, remove the parking lot and driveway, and take the curb cut off the highway. He said he had heard at the site walk that there would be some more extensive plantings on the east side of the site.

Mr. Doucet said between the existing house and the residence next door, 5 large hemlocks, as well as several Norway spruces and sugar maples would be put in, in addition to the buffer that had already been agreed to. He said the landscape plan specified seven 8 ft trees.

Mr. Kelley said he had realized when he saw the existing house there with the new buildings that it did in fact look good, from either direction. But he noted that if this was a new development, the house could not be there because it was within the 100 ft setback.

Mr. Campbell noted that when the original application came before the Board, he and Mr. Bryant's wife had thought they should keep the house.

Mr. Roberts agreed concerning how the house looked, and said his only concern was the neighbor.

Mr. Doucet said Mr. Bryant had spoken to the neighbor about the plan.

Mr. Campbell noted that this would now be a mixed-use house, which was allowed in the MUDOR zone. He said even though it looked like one, it would not be a single family home.

Mr. Kelley noted an email from Mr. Johnson that said he thought action by the ZBA was required.

Mr. Campbell said he agreed with him concerning the parking issue only, but said if Mr. Johnson said a variance was needed concerning the house too, there could be a variance application for both. He noted that the ZBA meeting would be held the day before the Planning Board's July 14<sup>th</sup> meeting.

There was discussion by the Board.

Mr. Campbell also said the plans had already gone to the Conservation Commission, which had endorsed them.

***Richard Kelley MOVED to accept and schedule a public hearing for July 14, 2010, an Application for Amendment to a Previously Approved Site Plan and an Amendment to a Previously Approved Conditional Use Permit submitted by Park Court Properties Inc., Durham, New Hampshire to retain an existing house on the lot and to move the existing driveway and parking area serving the existing house to a new location. The property involved is shown on Tax***

***Map 13, Lot 5-0, is located at 262 Mast Road, and is in the Multi-Unit Dwelling/Office Research Zoning District. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 6-0.***

- XIII. Conceptual Consultation** submitted by Peter Andersen, Durham, New Hampshire, on behalf of Elizabeth C. Smith Trust, Durham, New Hampshire for the purpose of a porkchop subdivision. The property involved is shown on Tax Map 16, Lot 19-0, is located at 260 Durham Point Road and is in the Rural and Residence C Zoning

Postponed

**XIV. Other Business**

A. Old Business:

There was brief discussion on the fact that the Wiswall Bridge was now open, and that there were some safety issue because when they re-did the bridge and the abutment was removed, it revealed some ledge there.

B. New Business:

Mr. Kelley said it seemed that the State was getting ready to start putting out the water management plan for the Lamprey River. He said he noted that he had been contacted about a possible meeting in July, and said a specific issue mentioned concerning this meeting was public water supply. He said he'd keep the Board posted on this.

C. Next meeting of the Board: **July 14, 2010**

**XV. Approval of Minutes – No minutes**

**XVI. Adjournment**

***Susan Fuller MOVED to adjourn the meeting. Richard Kelley SECONDED the motion, and it PASSED unanimously 6-0.***

Adjournment at 9:59 pm

Victoria Parmele, Minutes taker

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Stephen Roberts, Secretary