

These minutes were approved at the July 13, 2011 meeting.

**Durham Planning Board
Wednesday May 11, 2011
Durham Town Hall - Council Chambers
7:00 P.M.
MINUTES**

MEMBERS PRESENT: Vice Chair Peter Wolfe; Richard Ozenich; alternate Town Council representative Julian Smith; alternate Andrew Corrow

MEMBERS ABSENT: Chair Lorne Parnell; Richard Kelley; Secretary Susan Fuller; Bill McGowan; Town Council representative Jay Gooze; alternate Wayne Lewis

I. Call to Order

Mr. Wolfe served as Chair in place of Mr. Parnell, and called the meeting to order at 7:00 pm. He said Mr. Corrow would serve in place of Mr. Kelley, and Councilor Smith would serve in place for Councilor Gooze for this meeting.

II. Approval of Agenda

Councilor Smith recommended postponing the election of officers and approval of the sets of Minutes under Agenda Item X until there were more Planning Board members present.

Councilor Smith MOVED to postpone election of Planning Board officers, and Item X regarding the Approval of Minutes. Richard Ozenich SECONDED the motion, and it PASSED unanimously 4-0.

III. Election of Officers

Appointment of One Member to the Conservation Commission, One Member to the Historic District Commission, One Member to the Energy Committee and One Member to the Economic Development Committee

Councilor Smith MOVED to appoint Peter Wolfe as the Planning Board representative to the Energy Committee. Richard Ozenich SECONDED the motion, and it PASSED unanimously 3-0-1, with Peter Wolfe abstaining.

Richard Ozenich MOVED to appoint Councilor Julian Smith as the Planning Board representative to the Conservation Commission. Peter Wolfe SECONDED the motion, and it PASSED unanimously 4-0.

Councilor Smith MOVED to appoint Susan Fuller as the Planning Board

representative to the Economic Development Committee. Andrew Corrow SECONDED the motion, and it PASSED unanimously 4-0.

Councilor Smith MOVED to appoint Richard Ozenich as the Planning Board representative to the Historic District Commission. Andrew Corrow SECONDED the motion, and it PASSED unanimously 3-0-1, with Richard Ozenich abstaining.

IV. Planner's Report

Mr. Campbell said on April 28th, the Durham Business Association had met with some Councilors and Town department heads, and there was a discussion on planning issues.

He said he had recently met with Roger Hawk, the consultant who was working on developing design guidelines. He said the first step in this process was for the HDC to look at the Zoning Ordinance, and then move on from there.

Mr. Campbell said he had recently spoken by phone with planner Beth Della Valle for 2 ½ hours to go over Zoning amendments. He also said he had heard back from some Planning Board members in response to Ms. Della Valle's March 16th memo. He said he would bring the most recent draft of the proposed Zoning amendments to the Planning Board in the near future

He said he and Administrator Selig had recently met with the Kostis family regarding some student behavior problems. He said they were very responsive, and also said they had met with the Police Chief. He said it was good to see this kind of communication going on.

Mr. Campbell said some department heads would have a pre-construction meeting with Capstone on Monday, to lay out some of the things they could do now, and those that they could hold off on. He noted that there were a lot of conditions that needed to be fulfilled in order for permits to be issued.

He said a letter summarizing the results of the town-wide market analysis was going out to residents tomorrow. He also said that following soon after would be the postcards announcing the upcoming Master Plan survey.

V. Approval of Minutes - March 9, 2011

Page 1, should read indicate that Richard Kelley arrived at 7:08 pm

Line 18 should read "Mr. Corrow would vote temporarily for Mr. Kelley."

Line 30 should say "Mr. Kelley arrived at 7:08 pm."

Page 3, line 13 should say "...had asked if the septic system had been looked at."

Page 9, second paragraph under agenda Item VI should read "The applicants, Daniel McNeill and Christopher Parece"

Page 10, motion at the top of the page should say "Councilor Smith" rather than "Julian"

Page 12, line 24, should read "...in terms of losing financing if they lost beds."

Page 17, line 10, should read “..such as providing shelves for nesting birds...”

Page 18, line 16 should say “...was required under the current NPDES (National Permit Discharge Elimination System).

Councilor Julian Smith MOVED to approve the March 9, 2011 Minutes as amended, subject to non-substantive edits being made. Richard Ozenich SECONDED the motion, and it PASSED unanimously 4-0.

- VI. Public Hearing on an Application for Site Plan Review** submitted by Richard Gsottschneider on behalf of Van Rich Properties, LLC, Durham, New Hampshire, to construct a one story, 2 bedroom unit on the site which would be attached to an existing duplex, creating a multi-unit building. The property involved is shown on Tax Map 9, Lot 20-1, is located on 279 Mast Road, and is in the MUDOR Zoning District.

Public Hearing on an Application for Conditional Use Permit submitted by, Richard Gsottschneider on behalf of Van Rich Properties, LLC, Durham, New Hampshire, to construct a one story, 2 bedroom unit on the site which would be attached to an existing duplex, creating a multi-unit building. The property involved is shown on Tax Map 9, Lot 20-1, is located on 279 Mast Road, and is in the MUDOR Zoning District.

Mr. Wolfe noted that there were only four Planning Board members voting that evening. There was discussion that because of this, the Board would be able to vote on the Site Plan application, but not the Conditional Use Permit application.

Mr. Gsottschneider provided details on what was proposed, which was to construct an additional apartment on an existing duplex building. He said there was bus service for the building, and also said it was located on Town sewer. He said it was a wooded site, and said there were no abutters immediately nearby.

Mr. Wolfe noted that the applicant had asked for a waiver for the school impact fee. He also said a management plan and sample lease had been provided to the Board. He asked Mr. Gsottschneider if there would be sufficient well water for the building, and he said yes.

Mr. Gsottschneider said he had just seen the Findings of Fact and Conditions of Approval for the first time. He questioned some of the wording in condition #3 to be met prior to signature for the Conditional Use Permit, which said night time security would have to be provided on the site from Thursday night through Saturday night, from 9 pm to 2 am.

There was discussion that there would be a total of three apartment units on the property once the new unit was built. Mr. Gsottschneider said what was being required seemed excessive, and pointed out that a neighbor had testified that he had never heard a peep out of the existing tenants on the property. He said he was often on the property, and said if there was a problem, he would be happy to deal with it at that time.

Mr. Campbell noted that Mr. Gsottschneider wasn't on the property between 9 pm and 2

am. He said night time security was being required now for mixed use, multi-unit projects in Town, most of which were a lot bigger than this one. He said this was a discussion for the Planning Board to have, and said it did have the authority to say the security wasn't needed, at this scale.

Councilor Smith said the applicant would be required to provide a primary contact person.

Mr. Gsottschneider said this would be himself, with his daughter as a backup. He said he objected to the requirement to provide security from Thursday night through Saturday night, stating that there wasn't a problem, and he didn't intend to have a problem when the apartment was built. He said this hadn't been a requirement when he had done the conversion a few years back.

Mr. Campbell said Mr. Gsottschneider had a valid point, and said it was a scale issue.

Mr. Wolfe said the Board would address this issue when it deliberated on the application.

Mr. Gsottschneider told the Board that he had planned to do the construction this summer, but said the work would be postponed because of a family issue. He said he would therefore appreciate it if the Board would grant him two years to fulfill the conditions of approval. He said he planned to build in 2012.

Mr. Campbell said the Board could address this in the conditions of approval. He noted that the Board had recently granted something like this for the 9-11 Madbury Road property, although it turned out that that developer was now moving ahead with construction.

Councilor Smith MOVED to open the Public Hearing. Andrew Corrow SECONDED the motion, and it PASSED unanimously 4-0.

David Potter, 281 Mast Road extension, spoke about the wetland issue between his property and Mr. Gsottschneider's property. He said when Mr. Gsottschneider's property was built up in the 1960's, the fill that was put in prevented outflow of the wetland there, which created more wetland, and impacted his own property. He said any additional runoff resulting from this project would exacerbate the existing situation.

Mr. Gsottschneider said he planned to put in a dry well to capture runoff. He also noted that he had already done grading that helped with the runoff from the driveway. He said none of the buildings on the property had gutters.

Mr. Potter said the property had grown incrementally over time, and said the Planning Board had therefore missed the opportunity to handle it all as one project. He said he understood this, and said he thought the drywell would help with the drainage issue.

He also said he thought the proposed requirement to have security on the property from 9 pm to 2 am Thursday through Saturday seemed rash.

Mr. Wolfe summarized that Mr. Potter believed that the drywell would help with the drainage issues he was concerned about. He also confirmed that Mr. Potter had no concerns about noise from the property.

Mr. Gsottschneider said it was a reasonable request that there be a condition of approval that required the drywell.

Councilor Smith MOVED to close the Public Hearing. Richard Ozenich SECONDED the motion, and it PASSED unanimously 4-0.

Councilor Smith MOVED to approve the Findings of Fact and Conditions of Approval for the Site Plan Review submitted by Richard Gsottschneider on behalf of Van Rich Properties, LLC, Durham, New Hampshire, to construct a one story, 2 bedroom unit on the site which would be attached to an existing duplex, creating a multi-unit building. The property involved is shown on Tax Map 9, Lot 20-1, is located on 279 Mast Road, and is in the MUDOR Zoning District. Richard Ozenich SECONDED the motion.

There was discussion about Section 7.05 A of the Site Plan Review regulations concerning provision of recreational opportunities. Mr. Gsottschneider noted that there was a garden on the property, and that residents used it.

Chair Wolfe said the drywell to address stormwater issues would be added as a condition of approval.

Mr. Campbell said an additional condition of approval for the Site Plan application should be that the Conditional Use Application would be approved.

There was discussion about the idea of imposing a condition that a security person would have to be on the property from 9 am to 2 am from Thursday through Saturday. Mr. Wolfe said a question was whether there was some number of units for which this shouldn't be required. It was noted that there hadn't been problems at the property, and that the Police Department didn't have any issues concerning it. Mr. Wolfe said it would have been different if the abutter had said there were already noise problems there.

There was discussion that three of the four members at the present meeting would be at the next meeting, when the Board would deliberate on Mr. Gsottschneider's Conditional Use Permit application, and that these member could pass on to the other Board members the discussion on the night time security issue. It was also noted that these other Board members could watch the DVD of this meeting.

Findings of Fact

1. A Site Walk was conducted on May 11, 2011.
2. A Public Hearing was conducted on May 11, 2011 and members of the public were in attendance to speak to the application.
3. The Planning Board agreed that the site of the existing basketball area is appropriate

for the intended occupancy.

Waiver

The applicant has requested a waiver from the School Impact Fee. The Planning Board has reviewed the request and hereby grants the waiver.

Conditions of Approval to be met prior to the 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 supply the Department of Planning & Community Development with a report stating that existing water supply is adequate to supply the existing units and the additional unit.
4. The Planning Board shall approve the Conditional Use Permit Application.

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. The School Impact Fee will be assessed for any units that are occupied by school age children.
3. The applicant shall apply for and be granted a sewer permit for the new unit.
4. The applicant shall install a drywell for stormwater management and shall continue to work with the Town Engineer to review the drainage and correct any deficiencies to minimize drainage issues on the abutting property (Tax Map 9, Lot 15-0).

The motion PASSED unanimously 4-0.

- VII. Public Hearing on an Application for Conditional Use Permit** submitted by Raymond Holmes, Greenland, New Hampshire on behalf of David Ieni, Durham, New Hampshire, to construct a 12' x 39' deck and a 24' x 28' attached garage. The property involved is shown on Tax Map 12, Lot 1-21, is located at 20 Cedar Point Road, and is in the Residential C Zoning District

Councilor Smith MOVED to open the Public Hearing. Richard Ozenich SECONDED the motion, and it PASSED unanimously 4-0.

Mr. Holmes represented the applicants, and said they were seeking a Conditional Use Permit to construct a deck, in order to consolidate various activities on the water side of the property. He said the new deck would also allow the three doors to be brought up to code, noting that right now, there were no landings or railings.

He said they also wanted to build a 24 ft by 28 ft garage on the road side of the property, and said this would enable the applicants to remove an illegal storage shed, and bring the cars and lawn equipment under cover, out of sight of the neighbors. He said salt and oil runoff into the soil would be minimized.

He said the plan was also to re-route the current driveway so cars would be able to turn around, noting that they currently had to back out onto the road, and said this would create a better and safer driveway, parking area and access to Cedar Point Road.

He said a variance application had recently been approved by the ZBA, concerning the deck and the garage, and also said they had received the NHDES shoreland protection permit for the deck. He said the Conservation Commission had approved the plan that was proposed, and said the NHDES wetlands minimum impact expedited permit was pending.

Mr. Ozenich asked Mr. Holmes to describe in somewhat more detail what was proposed, perhaps with a sketch, so members of the public would have a better understanding of this.

Councilor Smith said the project involved placement of the proposed garage so that the door entrance would be perpendicular to the road, so there would be no direct access from the garage right onto the road. He said the driveway would instead swing across one side of the property. He said the ZBA and the Conservation Commission had not seen any problems with what was proposed.

Chair Wolfe asked if there were any members of the public who wished to speak in favor of, or against the application. No members of the public came forward to speak.

Councilor Smith MOVED to close the Public Hearing. Richard Ozenich SECONDED the motion, and it PASSED unanimously 4-0.

Mr. Wolfe noted that there were not enough Board members present, so the Planning Board couldn't vote on this Conditional Use application until the next meeting.

Board members briefly reviewed the draft Findings of Fact and Conditions of Approval.

Mr. Campbell said the Fire Department and the Police Department had no issues with the application. He said Mr. Johnson had discussed with Mr. Holmes the fact that the Town Engineer had some concerns about the proposed location for the driveway, and possible issues concerning the plowing of the road. He said Mr. Johnson didn't have any issues

beyond this.

There was discussion about the process that would be followed at the next meeting. Councilor Smith said the only way the public hearing would be reopened was if one of the people who had voted in the affirmative to close the public hearing moved to reconsider that vote. He said he didn't see that this would happen.

VIII. Approval of Minutes

March 16, 2011 - postponed

March 23, 2011 - postponed

April 6, 2011 - postponed

IX. Other Business

A. Old Business:

B. New Business:

1.Request for Technical Review of Accessory Structure submitted by Robin Wunderlich on behalf of Geoff Sawyer, 27- 35 Newmarket Road, Map 6, Lot 11-7.

Mr. Campbell explained that Mr. Sawyer had previously applied for a boundary line adjustment, and during that process, it came to light that the structure involved was only permitted as a temporary structure seven years ago. He said a condition of approval for the boundary line adjustment was therefore that the applicant would seek the proper approvals for the building, which he did. He said during that process, it was realized that it would probably be just as expensive to retrofit the old building as it would be to build a new building, and that if Mr. Sawyer built a new building, he could create a building that would suit the business better.

Mr. Campbell summarized that what was now proposed was to get rid of the existing building and build a new building with a new, covered outdoor exercise area. He said the applicant would like this to be sent to the Technical Review Committee.

Councilor Smith MOVED to approve the request for Technical Review. Richard Ozenich SECONDED the motion, and it PASSED 4-0.

2.Request for Technical Review to Amend a Landscaping Plan submitted by Robert Sprague on behalf of Gibbs Oil, 7 Dover Road, Map 4, Lot 41-2.

There was discussion that some of the trees on the site had grown taller than expected, and the concern was that they were blocking the signs and the business, so the owner wanted to remove them and replant something that wouldn't grow as tall.

Andrew Corrow MOVED to send this application to the Technical Review Committee. Richard Ozenich SECONDED the motion, and it PASSED unanimously 4-0.

3. Mr. Campbell said at the former Hayden Sports shop in the basement of 40 Main Street, a take out Mexican Restaurant was proposed. He said he was comfortable with sending this application to the Technical Review Committee, and said he believed that most of what would be discussed were Code enforcement issues.

Mr. Ozenich asked if parking was an issue, and Mr. Campbell said there was no parking available. He spoke about the process for addressing parking in the Central Business District, and the possible requirement of paying a fee for required spaces that weren't provided.

Councilor Smith MOVED to send this application to the Technical Review Committee. Andrew Corrow SECONDED the motion, and it PASSED unanimously 4-0.

C. Next meeting of the Board: **May 25, 2011**

XI. Adjournment

Richard Ozenich MOVED to adjourn the meeting. Councilor Smith SECONDED the motion, and it PASSED unanimously 4-0.

Adjournment at 8:07 pm.

Victoria Parmele, Minutes taker

Susan Fuller, Secretary