

*These minutes were approved at the October 5, 2011 meeting.*

**Durham Planning Board  
Wednesday July 27, 2011  
Durham Town Hall - Council Chambers  
7:00P.M.  
MINUTES**

**MEMBERS PRESENT:** Chair Lorne Parnell; ; Secretary Susan Fuller; Richard Kelley (arrived at approximately 7:28 pm); Richard Ozenich; Bill McGowan; Town Council representative Jay Gooze; alternate Town Council representative Julian Smith; alternate Wayne Lewis; alternate Andy Corrow

**MEMBERS ABSENT:** Vice Chair Peter Wolfe

**I. Call to Order**

Chair Parnell called the meeting to order at 7:04. He said Mr. Corrow would be a voting member in place of Mr. Wolfe, and Mr. Lewis would be a voting member in place of Mr. Kelley.

**II. Approval of Agenda**

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

Mr. Campbell noted that approval of Minutes was supposed to go after New Business on the agenda.

***The motion to approve the Agenda, as amended, PASSED unanimously 7-0.***

**III. Planner's Report**

Mr. Campbell made note of the new stop sign, coming down from Church Hill to Madbury Road, at the intersection with Main Street. He said the sign was an experiment, and in order to go permanent, this would have to be approved by the Town Council. He also noted that there was now additional parking on the left side of Madbury Road, heading to Pettee Brook Road, and said the spaces were filling up fairly quickly. In addition, he said there were now 4 ft bike lanes going all the way down Madbury Road. Road.

He said the Technical Review Committee had reviewed the revised landscaping plan for Gibbs to address the current problem that the trees there blocked the signage for the

business. He said it was agreed that lower shrubs and perennials would be planted, and that the trees would be replanted along Bayview Road. He said if it turned out that the trees, which had done well on the site couldn't be moved, new ones would be planted. He noted that there had been consultation with the tree warden about this application.

Mr. Campbell said there were two new applications, one of which was a site plan review application for a ground mounted cell tower on the La Roche property. He said the applicant had already received a variance, to allow the tower to be a greater height than what was allowed in the Zoning Ordinance.

He said there was also an updated application for Great Bay Kennel. He reviewed the fact that the applicant had been approved for a doggie daycare building, but then changed his mind and wanted to include a caretaker apartment in what was proposed. He noted that the Planning Board hadn't allowed this application to go to the Technical Review Committee.

Mr. Campbell said he would be away for the next meeting, and staff (Karen Edwards and Tom Johnson) would be available to assist the Board.

Chair Parnell asked that application materials be in acceptable form for the August 10<sup>th</sup> meeting.

Mr. Campbell said he would do this, and would also provide his Planner's memo ahead of time.

Mr. Campbell reviewed the various materials that had just been provided to the Board at the meeting. He noted a letter from the Strafford Rivers Conservancy thanking the Planning Board for being at the site walk, and indicating that they regrettably would not be doing the conservation easement for Capstone.

He noted that Yates Electric Service, based in Durham, had just received an award from the US Navy for "outstanding safety awareness and oversight of electrical service operations" at the Portsmouth Naval Shipyard.

Mr. Campbell said Capstone had officially closed on the property, and would now be going full speed ahead with construction. He said they were starting to come forward with building permit applications for the first units. He said they expected to start renting in the fall of 2012.

Mr. McGowan asked if the Planning Board would be able to visit the site to see how construction was going.

Mr. Campbell said absolutely, if this was scheduled.

Chair Parnell asked if the Board would be involved with the deed restriction, and Mr. Campbell said he would talk with Attorney Peter Loughlin about this.

There was discussion about the issue of monitoring, if there was a deed restriction.

Mr. Campbell said the Strafford Rivers Conservancy had recommended that the Conservation Commission hold the easement and do the monitoring. He said the Board would have to see what happened. He said he didn't think Capstone was speaking with other organizations at this point about possibly holding the easement.

**IV. Public Hearing on an Application for Site Plan Review submitted by Graham Camire, Durham, New Hampshire on behalf of Kyreages Inc., York Harbor, Maine to construct a deck on the back of a commercial establishment. The property involved is shown on Tax Map 5, Lot 1-17, is located at 45 Main Street, and is in the Central Business Zoning District.**

Applicant Graham Camire said he would like to add a 30 ft by 22 ft deck to the back of the building. He said there would be a wall off the back, for noise protection, and said along the sides, there would be a 54 inch high railing all the way around. He said the back wall would be 10 ft from the ground, and said the railing would have either vertical or horizontal balusters. He said people would be able to get to the deck by coming through from inside the building, and said the back exits would only be used for emergencies.

***Susan Fuller MOVED to open the Public Hearing. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.***

**Councilor Robin Mower, Faculty Road,** received confirmation that the Board had received a copy of an email from Elly and Don Sutherland. She said they and several other residents living on Faculty Road had expressed concern about the potential impact on them from the deck. She noted her own letter concerning this, and she urged the Board to consider the fact that Faculty Road was at the same elevation as Main Street.

She said Mill Plaza was an open area, so there was nothing to absorb sound. She said different sounds traveled in different ways, and said this was of considerable concern to those who would like to protect the neighborhoods. She said if Faculty Road became a less than pleasant place for families to live, it was close enough to the University to become attractive to student rentals.

Councilor Mower noted that the Grange was to become Durham's first experiment in workforce housing. She said she was at the site walk, and said while there was some degree of comfort that the proposed workforce housing was not immediately adjacent to the proposed outside deck, it was exposed to both the open area for the immediate abutter, where there might be outdoor partying, as well as to the deck beside it.

She said her vote to approve the sale of the Grange for the purpose of predominantly student housing was predicated on some workforce housing units possibly succeeding there. She said she was skeptical about this, but would like to see it succeed. She urged the boards in Town to do what they could to help it succeed, including asking the applicant in this instance to respect the noise ordinance, and have them take their business indoors when the noise ordinance was in effect.

Councilor Mower noted that as part of the recent Master Plan survey results, 68% of 359 responses agreed that there should be better buffers between commercial/mixed uses, including parking lots, and residential properties. She said this application was a prime example of an opportunity to do this, and she asked the Board to do so.

Councilor Mower read a letter into the public record from Eleanor and Don Sutherland, 25 Faculty Road. The Sutherlands said the Mill Road Plaza area was their back yard neighbor, and noise from it carried and echoed into the Faculty Neighborhood. They said Durham had a noise ordinance that required quiet after 10 pm, and allowing the deck to be built, and customers to be there until 1245 am would be a violation of that ordinance. They said sounds from the outdoor bar deck would carry across the Plaza, and would be like allowing a neighbor on their street to have an outdoor party after 10 pm. They said in that kind of situation, the police would be called and the party would be shut down.

The Sutherlands said the Town should be strategic in its planning of the downtown area. They said discouraging disruptive and destructive behavior as a result of drinking was not met by allowing outdoor bar decks after 10 pm. They said Durham had a noise ordinance, and said there should be no exceptions to it.

Councilor Mower said Faculty Road had frequently been subject to the spillover after bars closed, and said residents didn't look forward to adding to that. She said giving the applicants the opportunity to have an outdoor deck was one thing, but respecting the neighborhood and the noise ordinance was another.

Chair Parnell noted letters from Jennifer Lee of 18 Faculty Road, Joshua Meyrowitz of 7 Chesley Drive, and Todd Campbell of 9 Faculty Road, which had essentially the same theme.

Councilor Mower said that in terms of how sound traveled, residents of the faculty neighborhood could sometimes hear conversations among people who were walking outside of Dominos.

**Frank Silver**, said he was Mr. Camire's business partner. He said he could understand the concerns of residents on Faculty Road about the noise issue, because sound did travel. But he said there was a massive distance in between, and noted another deck that was 100 ft plus closer to Faculty Road than the Scorpions deck would be. He said a wall would be constructed, and also noted the location of the trees and the Durham Marketplace building. He said they had tried yelling from the property, and one could barely hear this. He said if he and Mr. Camire had to abide by a limitation, what about Dominos, and Ballards. He said they didn't have to shut down at 10 pm.

Mr. Kelley arrived at approximately 7:28 pm.

Councilor Gooze said at the site walk, the applicants had said there would be ambient music playing. He asked if it was expected that this would be louder than normal conversation. He also noted that Board members were assured that the speaker would be below the level of

the wall, so sound wouldn't carry over it.

Mr. Silver said the applicants could do that.

Councilor Smith said the wall deflected sound on only one side of the deck, so it could also bounce back against the main building. He said depending on the wind and where people were sitting, conversation and laughter was going to be heard. He said it was almost impossible to stop it. He said he didn't know whether the Planning Board was going to want to include a condition of approval that the deck would have to close at 10 pm, but said he didn't think this would matter. He said if there were constant noise complaints, this would be a police matter, and the applicants would want to close at 10 pm, or else really police themselves. Councilor Smith also noted, concerning sound traveling, that Scorpions was higher up than Dominos.

Councilor Gooze suggested that perhaps there was some kind of sound dampening material that could be included on the inside of the wall, and on both walls in order to prevent what Councilor Smith was saying. He asked if the applicants could agreed to something like that.

The applicants' contractor, Brian Petty, said they would build whatever was necessary.

**Peter Andersen, 8 Chesley Drive**, said he was almost an abutter, and had a direct line of sight to Scorpions. He said it would be great to have an establishment like this, but said the concern was noise. He said the property was high up so sound would tend to go to Faculty Road. He noted that he had done a lot of sound isolation work as part of his business.

He said some mass was needed in order to accomplish this, along with some kind of surface that could vibrate/move. He said this kind of thing could absorb an incredible amount of sound, and could avoid reverberation. He said he thought only one wall would need to be addressed in this way.

Ms. Fuller said if speakers were mounted on the wall, facing the restaurant, the noise could bounce off the wall of the restaurant. She asked if this would help dampen the sound that went out into the Plaza and the neighborhoods.

Mr. Andersen said however the speakers were placed, the sound would bounce off. He noted the fact that berms with plantings were often used to provide the mass to absorb sound. He said the applicants could afford a certain amount of money to address the sound issue, and he suggested that perhaps some hemlocks could be planted on the outside of the fence, which would help over time.

He also said it would be really good if there was something in the conditions of approval that said all three walls would contain some kind of material that could vibrate. He said he realized that the applicants didn't want to have 3 walls because they wanted to maintain a feeling of outdoor dining. He suggested that perhaps later in the evening, some plenum walls could be put in place. He also said that a trellis and some hanging plants could be used to provide more of an outdoor feel.

Councilor Mower, noted the complaint by the applicant that other establishments were allowed to stay open later. She said Ballards was farther west, and faced the dorms, and was not going to affect a residential neighborhood. She also said Dominos didn't have outdoor seating. She said after 10 pm, there would be a lot of noise coming from a place designed to have outdoor seating, as compared to a takeaway place. She said the fact that something better wasn't done with some other establishments wasn't relevant now. She said this was something that should be mitigated as much as possible.

Mr. Camire said when he left his own establishment at 2 am, there were sometimes about 30 people hooting and hollering at Dominos. He also said while Ballards didn't impact the Faculty neighborhood, it could affect someone else. He said if they could do it, Scorpions should be able to do it. He said they all should go by the same rules.

Chair Parnell asked Mr. Camire if he planned on operating the deck seasonally, and Mr. Camire said yes.

***Bill McGowan MOVED to close the Public Hearing. Andy Corrow SECONDED the motion, and it PASSED unanimously 7-0.***

It was determined that Mr. Lewis was a voting member in Mr. Kelley's place for this motion, because Mr. Kelley had just recently arrived at the meeting.

Mr. McGowan asked Mr. Campbell what authority the Planning Board had regarding setting hours of operation.

Mr. Campbell said applicants could agree to put a restriction on themselves, and the Board could then include this in the conditions of approval. He said he didn't think the Board could tell them to shut down at 10 pm.

Chair Parnell said the Board could require certain construction standards.

Councilor Gooze noted that the applicants had said they would be willing to do some noise mitigation concerning the walls.

Mr. Campbell said this could be added to the conditions of approval, and said the Board should be as specific as possible about this.

There was discussion that the Board didn't have the right to restrict the hours.

Chair Parnell asked if there was a permit required that went through the Town.

Mr. Campbell noted that several years ago, when Village Pizza was Joe's NY Pizza, the Council had discussed the idea of limiting the hours of operation for all establishments to a certain hour, but he said this didn't wind up going through.

Chair Parnell asked the Board for their comments on the application.

Mr. Kelley asked if comments had been received from the Fire Department.

Mr. Campbell said comments were received verbally at a staff meeting, and said their issues were concerned with access.

Mr. Kelley said it didn't seem clear in the memo provided that the access issues were resolved to the department's satisfaction.

Mr. Campbell said there was discussion that the applicants would have staff there at all times when the deck was in operation. He said everyone would have to come in and out of the deck from the front, for safety reasons, and to be able to keep count of how many people were there.

Ms. Fuller received confirmation from the applicants that there would be a chain on the stairs that would access the deck

Mr. Campbell asked if there would be someone at the gate, and Mr. Silver said there would be someone on the deck at all times.

Councilor Gooze said if this was a conditional use permit application, he would definitely want to include something about noise mitigation that was satisfactory to the Police Department, but he said apparently the Board couldn't do that with this application. But he said the Board could require specifications in terms of construction to mitigate noise. He said he would like to see something done.

Mr. Kelley said if the applicants were agreeable, the Board could put some language in the conditions of approval concerning incorporating noise mitigation measures. He noted some of the ideas Mr. Andersen had discussed. He said he had some sense of relief in knowing that the Police Department had a very positive working relationship with the applicant. He said this might be challenged a bit if noise complaints started coming in, and said it could be a wasted venture. He said the applicants would need to police things themselves, which also gave him some sense of relief.

Councilor Gooze said in the conditions of approval, it should say there should be someone on the deck to monitor things in order to make sure that noise was kept to a minimum, and that the neighbors would be disturbed as little as possible.

It was noted that condition #3 discussed this.

Chair Parnell said perhaps there should be a different condition #4, and he provided some additional wording on this.

Brian Petty said he was the person who would be constructing the deck. He said he was planning to build a 7 ft wall made of pressure treated wood, and said he could construct the wall so it diffused sound waves. He said he could do some research on this to see what

would make the most sense.

Chair Parnell suggested that there could perhaps be an uneven surface rather than a flat wall, and Mr. Petty said that was easily achieved. He also said planting some evergreens was a great idea.

Mr. Kelley said it was in Mr. Petty's clients' best interest to implement sound mitigating devices, although it was not for the Board to say what those would be. He said normally, an applicant would tell the Board what he intended to do. He said if what was done didn't work, there would be complaints from the neighbors, and that wouldn't be good for anyone.

Mr. Petty said that while he couldn't get an acoustics expert, he could make the wall higher and take other steps to mitigate the noise.

Councilor Smith asked Councilor Gooze if the disorderly house ordinance could apply in this situation.

Councilor Gooze said the noise ordinance would come into play, without having to use the disorderly house ordinance. He said he agreed with Mr. Kelley that it was in the best interest of the applicants to make sure that this worked. He said perhaps they could contact UNH regarding construction materials, and also said he liked the idea of putting something in the conditions of approval that someone would be out there on the deck at all times, to see that noise would be as minimal as possible.

There was discussion about where to include this in the conditions of approval.

Mr. Campbell read possible wording for conditions to address noise mitigation and having someone on the deck at all times. He also noted a condition he'd included that said the south wall would be 7 ft tall, which was what the applicant had offered to do. In addition, he said he had included a condition that the deck would only be used seasonally.

There was discussion on this, and on the idea of specifying that the deck wouldn't be heated.

Ms. Fuller asked whether a 7 ft height for the wall should be specified, since it might turn out that it needed to be higher. There was discussion.

Mr. Camire said as long as the sound was being policed, who was to say the deck wouldn't be used in December.

Chair Parnell said the concern was that it wouldn't be heated. He said if a big heater was used, the deck might be used all year long.

Mr. Camire said he thought this didn't matter as long as he was meeting the requirements he was meeting in July.

Chair Parnell agreed.



The condition regarding seasonal use of the deck was removed.

There was further discussion on wording to include in the conditions of approval regarding noise mitigation in constructing the deck.

Councilor Gooze said he didn't want to see light from the deck shining at the new building that would be built on the Grange property so a condition was needed concerning this.

There was discussion on wording to include in a condition concerning lighting.

### **Findings of Fact**

1. Police Chief, David Kurz, submitted a memo pertaining to the application.
2. A Site Walk was conducted on July 27, 2011.
3. A Public Hearing was conducted on July 27, 2011 and testimony was provided to the Board regarding late night noise.
4. Several letters/e-mails were received regarding the application.

### **Conditions of Approval to be met prior to signature of approval of Site Plan:**

1. The applicant shall supply one paper copy for signature by the Planning Board Chair.

### **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 applicant shall apply for, and be granted, a building permit for the deck. All fire and life safety shall be met.
3. Access to the deck by patrons shall only be from inside the establishment via the front door. The staircase for the deck will be used for emergency purposes only and shall be monitored by staff for compliance at all times during operation of the deck. Access to the deck shall be gated. Noise levels shall also be monitored.
4. The south wall of the deck at the rear of the property shall be at least 7 feet tall. The wall shall also be constructed with material and methods that will mitigate the noise coming from the deck.
5. Lighting shall be pointed downward with full cut-off lighting and night sky friendly lighting/low lighting.
6. Prior to the issuance of a Certificate of Occupancy for the deck, and at a time determined by the Code Enforcement Officer, one (1) copy of a certified plot plan shall be filed with the Code Enforcement Officer in an electronic format suitable to the Code Enforcement Officer. The plot plan shall be prepared by a professional surveyor,

engineer, or architect and shall be signed and sealed by the professional(s) preparing the plan. The plot plan shall show the post development conditions of the lot including the following information:

A. The actual location of the deck in relation to the side and rear property lines.

***Bill McGowan MOVED to approve an Application for Site Plan Review submitted by Graham Camire, Durham, New Hampshire on behalf of Kyreages Inc., York Harbor, Maine to construct a deck on the back of a commercial establishment. The property involved is shown on Tax Map 5, Lot 1-17, is located at 45 Main Street, and is in the Central Business Zoning District. Wayne Lewis SECONDED the motion, and it PASSED unanimously 7-0.***

**V. Public Hearing on an Amendment to a Previously Approved Site Plan Review**

**Application** submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of 9 Madbury Road LLC, Durham, New Hampshire to change the construction plans for a new four-story, mixed use building to place the electric utilities underground. 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.

**VI. Public Hearing on an Amendment to a Previously Approved Conditional Use Permit**

**Application** submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of 9 Madbury Road LLC, Durham, New Hampshire to change the construction plans for a new four-story, mixed use building to place the electric utilities underground. 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.

Mike Sievert of MJS Engineering provided details, as he had done at the previous Planning Board meeting, of why burying the utilities underground was now being proposed.

***Richard Kelley MOVED to open the Public Hearing. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.***

There were no members of the public who came forward to speak.

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

Mr. Kelley asked if there were any utilities that the duct bank had to cross on the way from the transformer to the building.

Mr. Sievert said yes, stating that the existing main sewer trunk was under there now, and was about 18 inches in diameter. He said just the secondary lines would go back across that, and said the sewer line was at least 13 ft deep. He said the electric utilities would be about 30 inches deep, and would be encased in plastic, not concrete. He said there would be steel sweeps where required. He said the electric utilities would be installed by a licensed electrician.

There were questions about the work that PSNH would do, and the fact that they didn't require concrete encasement unless the electric utilities went through the building. There was discussion about this. Mr. Kelley said the concern was that someone might be out there someday with a backhoe, and might crack into one of the conduits.

Mr. Sievert said there would be one 4 inch drain pipe that would barely go under the end of the conduit(s), and said that was it. He noted that access from equipment would be virtually nonexistent without having to remove the patio, which was the reason for providing the spares. He said this was double what the requirement was. He said the only reason there might be digging there was a major repair to the sewer line, or perhaps landscaping changes, and he provided details on this.

Mr. Kelley noted again that his concern was someone tapping into the conduits. He said given the amount of clearance, it looked like there would be a three by three pattern with the nine ducts. He asked if there was any assurance that the top three might be the spares.

Mr. Sievert said yes.

There was discussion that there would be no communication utilities involved, and that they would remain overhead lines.

Mr. McGowan asked why the electric utilities couldn't instead run underground along Madbury Road.

Mr. Sievert spoke in detail about why this wouldn't work, in part because water lines and gas lines came in from Madbury Road. He also said what was proposed was a shorter route, and involved 45 degree bends rather than 90 degree bends.

Mr. Kelley asked how long the duct bank ran, and Mr. Sievert said it was about 80 ft. He said he didn't think concrete encasement of the duct bank was required for this situation. He suggested that perhaps some low markers could be placed in the landscaped area to indicate where the conduits were. He also said there would be limited access to that area, noting that the only person going there would be the meter reader. He said access down to there off the deck would have to be worked out.

The Board reviewed the draft Findings of Fact and Conditions of Approval for the Site Plan Application.

There was discussion about Finding of Fact #4, regarding having to pay an additional \$750 per parking space not provided, if the buildout of the 4<sup>th</sup> floor occurred. Mr. Campbell noted that this was a holdover from the original amended application.

There was discussion that the Conservation Commission had endorsed what the applicant proposed, but no documentation was provided concerning this.

Councilor Robin Mower, Council Representative to the Conservation Commission, said the Commission had discussed this application at length. She said they came to a point where they were supportive of the change, and said the fact that there was no formal paperwork letter was a matter of things slipping between the cracks.

Councilor Gooze suggested that there should be something in the Findings of Fact that noted that the Town Council had required that the electrical utilities be placed underground, as part of the applicant's RSA 79-E application.

Mr. Kelley said he thought there should be a condition of approval to be met subsequent that stated that the conduit that wasn't located under the patio would need to be encased in concrete. He said down the road, someone could decide to plant a tree in the landscaped area, which would involve digging a pit 3 ft deep. He provided details on the amount of concrete that would be involved, and estimated that this would cost about \$1,200.

Mr. Sievert said perhaps Mr. Crape would need to get a bigger tax break. He also said he wasn't sure this was a deal breaker.

Chair Parnell said the Board would include it as a condition of approval, and said if the applicant couldn't handle it, the Board would hear from him.

Mr. Sievert asked if it would be enough to encase in concrete the 40-45 ft run of the conduit across the sewer easement. After further discussion, he agreed that the entire conduit Mr. Kelley had referred to would be encased in concrete, and if the applicant complained about this, he would come back to the Board.

#### **Findings of Fact - Site Plan Application:**

1. As part of the May 23, 2011 Town Council approval for the applicant's RSA 79:E application, the Town Council required the electric utilities to be placed underground.
2. The Zoning Board of Adjustment approved three variance requests on February 16, 2010 and March 9, 2010.
3. Director of Public Works, Michael Lynch, submitted an e-mail on July 5, 2011 pertaining to the application.
4. A Public Hearing was conducted on July 27, 2011 and no members of the public were in attendance to speak to the application.
5. As part of the original approval 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. The applicant will need to pay an additional \$750 per space not provided as the build-out for the fourth floor occurs.
6. As part of the original approval 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. As part of the first amended application the Planning Board granted a building height of up to 49 feet.

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. The Conservation Commission has also endorsed the amended application to place the electric utilities underground.

**Conditions of Approval for Site Plan - 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. All Conditions of Approval from the original June 2, 2010 Site Plan Approval and the November 10, 2010 Site Plan Approval are hereby incorporated into this document by reference.

**Conditions of Approval for Site Plan - 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. All Conditions of Approval from the original June 2, 2010 Site Plan Approval and the November 10, 2010 Site Plan Approval are hereby incorporated into this document by reference.
3. The electrical duct bank shall be concrete encased.

***Richard Kelley MOVED to approve the Findings of Fact and Conditions of Approval for the Amendment to a Previously Approved Site Plan Review Application submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of 9 Madbury Road LLC, Durham, New Hampshire to change the construction plans for a new four-story, mixed use building to place the electric utilities underground. 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 and PASSED unanimously 7-0.***

**Findings of Fact for the Conditional Use Permit Application (in addition to 1-8 listed under the Site Plan Application):**

9. As part of the first amended application, the Planning Board approved the Conditional Use Permit for up to three years from the signature of approval on the final plan.

10. The Planning Board found that the applicant met the criteria under the Wetlands Conservation Overlay District, Section 175-61(B), and the Shoreland Protection Overlay District, Section 175-72(B), for the amended application.

**Conditions of Approval for the Conditional Use Permit Application - 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. All Conditions of Approval from the original June 2, 2010 Conditional Use Permit Approval and the November 10, 2010 Conditional Use Permit Approval are hereby incorporated into this document by reference.

**Conditions of Approval for the Conditional Use Permit Application - 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. All Conditions of Approval from the original June 2, 2010 Conditional Use Permit Approval and the November 10, 2010 Conditional Use Permit Approval are hereby incorporated into this document by reference.
3. A Conditional Use Permit shall be issued by the Zoning Administrator.

***Richard Kelley MOVED to approve the Findings of Fact and Conditions of Approval for the Amendment to a Previously Approved CUP Application submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of 9 Madbury Road LLC, Durham, New Hampshire to change the construction plans for a new four-story, mixed use building to place the electric utilities underground. 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, and it PASSED unanimously 7-0.***

Break from 8:35 to 8:45

Mr. McGowan left the meeting at 8:44 pm, and Chair Parnell appointed Mr. Lewis to be a voting member in Mr. McGowan's place.

- VII. Public Hearing on an Application for Site Plan Review** submitted by MJS Engineering, PC, Newmarket, New Hampshire on behalf of GHL LLC, Durham, New Hampshire and the Town of Durham to move the Grange building closer to the street, conduct a full historic renovation of the building and to construct a 3-story addition to the rear of the building. The

property involved is shown on Tax Map 5, Lot 1-5, is located at 37 Main Street, and is in the Central Business Zoning District.

Mike Sievert of MJS Engineering represented the applicant, Peter Murphy, who he said was also present to answer questions the Board might have. He noted that there had been a site walk that day. He reviewed the existing conditions on the property, and explained that the Grange building, which was now vacant, had most recently been used as a day care facility.

He said what was proposed now to redevelop and do an historic preservation of the Grange building, and to make it into a mixed use building. He said the building would be raised and moved in its entirety up to within about 10 ft of the front of the property. He said the first floor of the Grange would be commercial, and would be accessed from the front and side. He said on the second floor, the middle section of the Grange would contain three workforce housing units, each with 2 bedrooms.

Mr. Sievert said that on the rear portion of the property, a 6,000 sf 3 story building would be constructed that would contain 6-8 luxury student housing apartments with 4+ students per unit. He said one of the student apartments would be handicap accessible.

He also explained that as part of the negotiations concerning purchase of the Grange from the Town, Mr. Murphy had agreed to provide a 25 ft wide easement to maintain a pedestrian walkway that was on the property now. He provided details on this.

Mr. Sievert said the applicant had been to the ZBA, and two variances were granted, one of which was to allow a portion of the lower level of the Grange to be residential and not commercial, and the other, which was to allow less than 20% of glass on the front face of the building. He explained that a goal with the development was to maintain the historic presence of the Grange.

He said sewer, water and gas utilities would come in from Main Street. He said drainage would be off the southwest portion of the property, and said the stormwater collection system would include gutters, infiltration areas, etc., and would address pre and post flows.

Mr. Sievert noted that at the site walk, there was discussion about getting approval for the application that evening, but he said the drainage design elements hadn't been ironed out yet. He said they also needed to finalize the sewer design, which might or might not have to go through the DPW.

He explained that the applicant would be requesting to pay the one time parking fee for parking spaces that would not be provided on the site. He also said there was a waiver request in order to allow the building to be greater than the 30 ft maximum, and said it would be between 35 and 38 ft high. In addition, he said Mr. Murphy was requesting a full waiver from having to meet the school impact fee requirement.

***Susan Fuller MOVED to open the Public Hearing. Councilor Gooze SECONDED the motion, and it PASSED unanimously 7-0.***

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

**Councilor Robin Mower** said she was generally in favor of the application, but had some questions. She said that regarding the school impact fee waiver, some members of the public would appreciate discussion on why this waiver would be granted, if there could be children in a workforce housing apartment.

Concerning the waiver request regarding providing parking spaces, she said this should be considered in the context of making the downtown more pedestrian and bike friendly. She said this was a perfect situation for encouraging bike use, and said she hoped the Board would encourage the applicant to provide secure, weatherproof storage for bikes. She noted that the Town was currently experimenting with some traffic changes, including bike lanes, and said the idea of providing bike storage would feed into that. She noted that she had spoken to Mr. Murphy about this, and he had seemed amenable to this.

Councilor Gooze asked if there was a particular area on the property for this.

Councilor Mower suggested that perhaps the basement could be used, and racks could be installed. She said there didn't have to be a shed outside, and said it could be a relatively inexpensive approach. She said it had to be a convenient and accessible enough location so that it would be used, and would even be seen by residents as an advantage to living there. She said perhaps there could be a bike rack outside in better weather, with a good number of slots for bikes. She noted that she'd lived in an apartment that had this kind of arrangement, and there was a demand for it.

Chair Parnell asked if perhaps the Board should keep the public hearing open until there was more information on the drainage system planned for the site. He also asked if there was anything from the Town Engineer yet on this issue.

Mr. Campbell said Mr. Cedarholm was currently working with the applicant on resolving the drainage issues, and said there was nothing from him yet for the Board. He noted that the Board historically relied on the Town Engineer to approve drainage plans if there wasn't a third party doing this. He said he had included a condition of approval that if this approval wasn't received, the site plan would not be approved. He said he wasn't hearing a lot of comments that there should be a different drainage system from what was proposed, and said he therefore suggested that Mr. Cedarholm's approval of the final drainage plan could be a condition of approval.

Mr. Sievert addressed the comment concerning the request for a waiver from having to meet the school impact fee requirement. He read the applicant's waiver request, which noted that one of the reasons for the request was the fact that the three workforce housing units were small, two bedroom units. He said workforce housing consultant Jack Mettee had stated that based on statewide data, the average number of public school children in a two bedroom household was 0.22 children. He also it wasn't likely that there would be children living



there long term.

He said the second reason the waiver was being requested was that the second building was being marketed entirely as student housing. He noted that the waiver request said that if the situation changed and there were in fact school age children living there, the impact fee issue could be revisited. He said he thought Mr. Murphy would be amenable to that.

Ms. Fuller said maybe by then, the Town Council would repeal the school impact fee. She said a general development fee would be more sensible, and said if the Town kept penalizing developers for building housing for children, pretty soon there wouldn't be kids in the school.

Mr. Campbell noted that the developer could pass this fee onto homeowners.

Chair Parnell said the fact was that there was this requirement in the regulations. He said in this instance, it was designed to apply to the workforce housing part of the proposed development.

Mr. Campbell said as the Town looked to develop workforce housing, it was penalizing the developer by adding another fee.

Mr. Sievert said that concerning the issue of bike storage on the property, the applicant did anticipate that some renters would have bikes. He said the plan was to provide some exterior racks, noting that there would be no basement space for this because there was ledge within 5 ft, so there would only be a small basement area provided for utilities.

He said there would be space for a bike rack in the entry area under the stairs, and also said some of the bedrooms in the student housing units would be between 110-160 sf, so bikes could potentially be stored there as well. He also said there would be some space available on the lot after the Grange was moved, and he provided details on this. In addition, he said the owners of the property next door had a large barn, and said there might be the potential to have some bike storage space there. He said the applicant would definitely work toward that.

Councilor Gooze asked where trash would be stored on the site, and what kind of coverage there would be for this.

Mr. Sievert said there would be a fenced in storage area out back.

Councilor Gooze asked if this would be visible as someone was walking past the Grange.

There was discussion that the requirement was that the storage area would be enclosed, and could not be seen from the public way. Mr. Sievert said it would be fenced in and enclosed on all sides. He said there would be a gate, but said it wouldn't be covered.

Mr. Kelley noted the improvements Mr. Murphy proposed to make to the drainage outlet

and a portion of the concrete path on the abutter's property to the south, and asked if the abutter was in agreement with this.

Mr. Sievert said drainage, improvements to the path and construction access would be discussed with the abutter. He described the current drainage off the property, and noted that there was a catch basin. He said drainage post development would be taken to the same place, and also said water would be detained and treated to make it meet the post development requirements. He said discussion on this was ongoing with the abutter.

Mr. Kelley asked what the nature of the paved path was, and said he'd heard that an easement would be granted to the Town.

Mr. Sievert said that was correct, and Mr. Kelley then asked if the portion of the paved pathway granted to the Town would be ADA compliant. Mr. Sievert said it would be, and he provided details on this.

Mr. Kelley asked what the status was of the Purchase and Sale agreement with the Town.

Mr. Sievert said it was supposed to be signed on Monday, but said it would be signed within the next day or two, and would be presented at the next Town Council meeting. He said the language had been worked out.

Mr. Kelley asked if the language on the easement for the path would be part of this, and Mr. Murphy said yes. He said he would be responsible for keeping the area clean and snowplowed and repairing it, and said the easement would be for a walking path in perpetuity.

Councilor Gooze noted that there was a small change in the plan, in that the piece between the Grange and the new building wouldn't be bumped out.

Mr. Murphy said it had previously been thought that the back piece of the Grange would be removed and they would build new. But he said it turned out that the elevations worked out so that they would be able to still use that portion of the building and include a townhouse workforce housing unit. He provided details on this.

Councilor Mower said that regarding the bike issue, she had listened as Councilors and community members had expressed dismay about the parking restrictions downtown. She said unless students had an alternative, they would bring cars downtown. She said more than a handful of storage spaces for bicycles was needed, and said they needed to be secure and sheltered.

She said if the workforce housing at the Grange didn't succeed, there would be more people bringing their cars. She urged the Planning Board to consider providing adequate storage space for bikes, every time it waived parking requirements for downtown residences, and said preferably this should be incorporated early on in the review process.

Councilor Mower apologized that the Energy Committee hadn't communicated with the Planning Board on this. She said she intended at the Council to make a request that this be a condition of approval, before signing, and said it might be useful for the Board to discuss what options there were first.

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

Mr. Kelley confirmed that 8 test pits had been done in the vicinity of the path to see if the utilities could be put in there, and 5 were shown on the plan. He said the one he was concerned about was on the path. He asked if they would be able to get sewer out to the street without the basement.

Mr. Sievert said the DPW had videotaped the entire line, and said some but not the entire line would function by gravity. He said there would be gravity flow to the new manhole that would be put in on the site, and a small pump station would pump it beyond that.

Mr. Kelley said he wasn't prepared to move on this application that evening. He said he wanted to give some thought to the waiver requests, and also said some aspects of the plan were still in flux. He said the Board needed to see the complete design.

Councilor Gooze said he agreed with Councilor Mower that it would be wonderful to have more bike storage on the property, but said he couldn't see where it would go.

There was further discussion about where more bikes could perhaps go, with Mr. Kelley providing some ideas on this. He also described a possible 3 wall cage for the bikes up against a building, with a roof, and said this would secure the bikes in the evening. He said the storage area wouldn't have to be totally enclosed.

Mr. Sievert said perhaps 15-20 bikes could be stored outside with roofs over them, and would be lockable. He also noted that some bikes could fit in the larger bedrooms.

Councilor Gooze said perhaps the applicant could come back with some numbers on what he might be able to do.

Chair Parnell suggested that the Board should rethink the closing of the public hearing.

Mr. Kelley noted that there weren't currently workforce housing provisions in place in the Zoning Ordinance.

Councilor Gooze said even the provisions that were proposed wouldn't work with this application. But he noted that Mr. Murphy was working with consultant Jack Mettee to see what needed to be done with this application to meet the workforce housing criteria.

Mr. Kelley asked what kinds of metrics needed to be set up in advance, in order for that to occur.

Mr. Sievert said a management company would handle all of this.

***Richard Kelley MOVED to reconsider the earlier decision, and continue the Public Hearing to August 10, 2011. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.***

Chair Parnell said the public hearing would be continued to the August 10, 2011 meeting, at which time the applicant could provide any new information that was available.

Concerning finalization of the drainage plan for the August 10<sup>th</sup> meeting, Mr. Sievert said there would be a meeting with the abutter on the drainage, which Mr. Cedarholm had been invited to.

Chair Parnell said the Board would give further consideration to the impact fee waiver at the next meeting.

**VIII. Public Hearing on an Application for Subdivision** submitted by Jones & Beach Engineers, Stratham, New Hampshire on behalf of The Nature Conservancy, Newmarket, New Hampshire, and Jennylyn Beaudette and the Estate of Roland Beaudette, Somersworth, New Hampshire, to subdivide a property into two lots. The property involved is shown on Tax Map 15, Lot 6-0, is located at on Bennett Road, and is in the Rural Zoning District.

Chris Albert, from Jones and Beach, said the parcel involved contained 69 acres, and said a two lot subdivision was proposed, with 64 acres going to the Nature Conservancy and eventually to NH Fish and Game, and the remaining 5.43 acres going with the existing homestead. He noted that this acreage was somewhat different than what had previously been proposed.

He noted the site walk that had been done with some Planning Board members on Saturday, and also said test pits had been done, with the code inspector present. He said the monuments had been set, and said waivers being requested would be discussed by the Board.

***Richard Kelley MOVED to open the Public Hearing. Andy Corrow SECONDED the motion, and it PASSED unanimously 7-0.***

There were no comments from members of the public.

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

Mr. Kelley asked what waivers were being requested.

Mr. Campbell said the applicants were requesting waivers from: the pre-application phases; ground control on the site due to a large parcel and the cost involved; verification

of soils data, since a high intensity soil survey wasn't necessary because there wasn't a conservation subdivision; stormwater drainage since nothing on the site was changing; and subdivision layout design.

Mr. Kelley noted that the nature of this subdivision was that a large parcel was going to conservation, leaving one house lot.

Mr. Albert said a high intensity soil survey had been done for the smaller lot. He also said the test pits showed that there was an area on that parcel that was suitable for the placement of a septic system.

Mr. Kelley pointed out that note #12 on the subdivision plan said there was a well that would remain on the property.

Duane Hyde, representing the Nature Conservancy, provided details on the well, and said it had served the house at one time. He said when the property across Bennett Road was acquired from the Beaudette family, they retained the rights to the well. He said there was a pre-existing easement concerning this.

Ms. Fuller said on the conservation lot, there was a dug well, and asked if anything would be done with it once the Nature Conservancy acquired it.

Mr. Hyde said it was currently covered with granite, and said it would stay that way.

Mr. Kelley received clarification that information on the proposed septic system didn't need to be sent to the State right now, and that it would be used if needed. There was discussion that the plan was complete except for note #1.

Chair Parnell asked if the Town Council had dealt with this proposal at its meeting on Monday.

Mr. Hyde explained that the Council had deliberated on whether the Town would take legal interest in the property, and said it was unanimously approved.

Mr. Kelley asked whether there could be an approved septic system, based on the soils work.

Mr. Albert said yes, based on that as well as the location of wells, wetlands, etc. He noted that there was over 5 acres on the lot, which was well over what was required.

It was noted that the specific waivers being requested were listed in the Findings of Fact and Conditions of Approval.

***Susan Fuller MOVED to approve an Application for Subdivision submitted by Jones & Beach Engineers, Stratham, New Hampshire on behalf of The Nature Conservancy, Newmarket, New Hampshire, and Jennylyn Beaudette and the Estate of Roland***

***Beaudette, Somersworth, New Hampshire, to subdivide a property into two lots. The property involved is shown on Tax Map 15, Lot 6-0, is located at on Bennett Road, and is in the Rural Zoning District. Wayne Lewis SECONDED the motion, and it PASSED unanimously 7-0.***

**IX. Other Business**

A. Old Business:

B. New Business:

Mr. Campbell said he wanted feedback from the Board on something he would be bringing to the Council in August, which pertained to fee charged to developers who didn't provide parking as part of developments in the Central Business District. He said the fee hadn't been reviewed in 10 years, and he provided details on this. .

He said he and Administrator Selig would like the Planning Board to take a look at the fee, noting that the Board was required to do so by the ordinance. He said he was surveying other towns in order see what they charged, and said it would go up, although he wasn't sure by how much.

Mr. Kelley asked if that money went into an account just for parking, and Mr. Campbell said yes.

There was discussion on what the funds were actually used for.

Mr. Campbell said until the last few years, the fee had only been applied to residential developments in the Central Business District. He noted that the Master Plan had talked about exempting parking for all uses in that district, and said it had been collected for these uses since 2006.

Chair Parnell said a part of the Board's discussion on this issue should be on what the fee was used for now, and what it should be used for.

Mr. Campbell said he expected that there would be discussion by the Town Council on this.

Mr. Kelley suggested it should be used to pay for structured parking.

Councilor Gooze said there were a number of parking initiatives going on, so there were places to put the money.

Mr. Campbell said parking fees for the last few approvals were about \$150,000.

Councilor Smith said on Monday, he would bring before the Council a draft of a Council initiated amendment to the Table of Uses in the Zoning Ordinance, to permit single family residences in the Professional Office zone. He said he hoped this would come to the Planning Board soon after that.

Mr. Ozenich asked if a stop sign had been considered for where Pettee Brook Lane intersected Main Street. He noting that some people came tearing through that area.

Mr. Campbell said not at this point, noting that right now the focus was on the intersection of Main Street and Madbury Road, as part of trying to make that area safer for kids to travel.

There was discussion. Mr. Campbell said when they ran the traffic models, especially the two way traffic pattern, stop signs were recommended for all of those intersections.

Councilor Gooze said that regarding Councilor Smith's idea, there had been a number of conversations about the whole Professional Office district, and how this district was working out. He said people realized that what had originally been planned for that district hadn't occurred. He said either the Planning Board or another entity needed to look at this, and he said perhaps this could be done as part of the Master Plan update. He said people had different ideas for the district, and said this was something for the Planning Board to keep in mind.

C. Next meeting of the Board: **August 10, 2011**

**X. Approval of Minutes**

June 8, 2011

Page 1, should say Mr. McGowan arrived at 8:11."

line 15, should read "Chair Parnell called meeting to order at 7:04 pm."

Take out line 20

line 36, should say "...the June 22<sup>nd</sup> meeting."

Page 3 line 25, should say "Wayne Lewis"

Page 6, line 42, should say ".. if there wasn't any parking already on a parcel."

Page 8, line 36, should say "Mr. Sievert said the goal was to flesh out concerns..."

Page 10 line 42, should say "intact"

***Susan Fuller MOVED to approve the June 8, 2011 Minutes as amended. Councilor Gooze SECONDED the motion, and it PASSED 4-0-3, with Richard Kelley, Richard Ozenich, and Andy Corrow abstaining because of their absence from the meeting.***

**XI. Adjournment**

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

The meeting adjourned at 9:54 pm.

Victoria Parmele, Minutes taker

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Andrew Corrow, Secretary