

1 **DRAFT**

2
3 **Durham Planning Board Minutes**
4 **Wednesday November 9, 2011**
5 **Durham Town Hall - Council Chambers**
6 **7:00P.M.**
7

8 **MEMBERS PRESENT:** Chair Lorne Parnell; Richard Ozenich; Town Council
9 representative Jay Gooze; alternate Wayne Lewis;
10 alternate Andy Corrow; alternate Town Council
11 representative Julian Smith
12

13 **MEMBERS ABSENT:** Vice Chair Peter Wolfe; Richard Kelley; Bill McGowan
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16 **Call to Order**
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18 Chair Parnell called the meeting to order at 7:03 pm.
19

20 **Approval of Agenda**
21

22 *Richard Ozenich MOVED to approve the Agenda. Andy Corrow SECONDED the*
23 *motion, and it PASSED unanimously 4-0.*
24

25 Chair Parnell said Mr. Lewis would sit in for Mr. Wolfe.
26

27 **Planner's Report**
28

- 29 • Mr. Campbell noted, for the new Planning Board rep to the EDC who would be
30 appointed this evening, that the EDC meeting would be held next Wednesday.
- 31 • He said he'd recently spoken with Roger Hayden about possible redevelopment of his
32 property. He said Mr. Hayden would be coming before the Board in January for a
33 conceptual consultation.
- 34 • He said on November 3rd, he, Administrator Selig and Councilor Lawson spoke with
35 Don Jutton regarding the TIF district proposal. He said once it was complete, it would
36 go to the Town Council.
- 37 • Mr. Campbell said on November 3rd, he attended a kickoff meeting on the update of the
38 UNH master plan along with Administrator Selig, Councilor Carroll and Councilor
39 Smith.
- 40 • He said he'd met with University planner Doug Bencks on Monday and would email the
41 Planning Board the notes from this meeting.
- 42 • Mr. Campbell said the Technical Review Committee met on Tuesday regarding the
43 Thompson Inn at Highland Farms site plan review application. He said that at the urging
44 of the Code Enforcement Officer, the application was amended to allow up to 18 events
45 rather than 6, so that the applicants wouldn't have to keep coming back to the Planning
46 Board. He said the Committee approved the application with some conditions the

- applicants would have to meet for final approval. Mr. Campbell noted that abutter Dick Lord was at the meeting, and spoke highly of the Lambs.
- He said he and Beth Della Valle recently met with the Energy Committee to discuss the draft Energy chapter for the Master Plan. He said Michelle Auen from SRPC was helping with the writing of the chapter, and was also at the meeting. He said they were close to having a final draft to present to the public, and said a lot of good work had gone into it.

He said the Master Plan Advisory committee would make sure the committee went through the correct process concerning developing the chapter. But he noted that the Master Plan was a Planning Board document, and would ultimately be the one to approve it.

- Mr. Campbell said Ms. Della Valle would also attend the upcoming EDC meeting, and would discuss with the EDC the commercial core chapter. He said the Planning Board would discuss this chapter in December.
- He said on October 27th, Roger Hawk provided a building design presentation, and he said this presentation was also made available online. He said the results of residents' responses were currently being tabulated, and said this information would assist the Planning Board in moving forward with design guidelines for future buildings in the downtown area.

IX3 Appoint a New Representative to the Economic Development Committee to Replace Susan Fuller

Mr. Corrow said he would be willing to serve as the Planning Board representative to the EDC.

Richard Ozenich MOVED to appoint Andy Corrow as the Planning Board representative to the Economic Development Committee. Wayne Lewis SECONDED the motion, and it PASSED unanimously 5-0.

IX3 Public Hearing on a Proposed Amendment to the Durham Zoning Map to Remove Two Parcels (Map 2, Lots 6-0 and 7-1) from the Professional Office (PO) District and Incorporate them into the Residence A (RA) District as shown on the Commercial Core Map of the 2000 Master Plan.

Chair Parnell noted that the Board had received a note from someone who would be affected by this Zoning change and had asked that this proposal be continued to the next Planning Board meeting.

Councilor Smith said if this came to a vote on December 14th, he couldn't be there, and also noted that Councilor Gooze would have to recuse himself concerning the proposal. He suggested opening the public hearing now and continuing it to a time that was appropriate. He said the Board could also consider scheduling an extra meeting between now and December 14th.

1 He noted that he would like to talk about the Master Plan process, and might want to talk
2 about how the Town could take advantage of and not be disadvantaged by the University
3 master plan that was currently being updated.

4 .
5 Councilor Gooze said he thought the Board should honor the request to postpone the public
6 hearing on the Professional Office district Zoning change proposal, noting that this person
7 was directly affected by the proposal. He said he didn't think it would be a problem to wait
8 until January.

9
10 Councilor Smith said he didn't think the Board should deliberate on this proposal, but
11 suggested opening the hearing in case there were any people present to speak.

12
13 Mr. Campbell noted that the Planning Board was down three regular members for this
14 meeting, and said it would be good to have a full Board.

15
16 Chair Parnell said he thought there might be some benefits to opening the public hearing,
17 but said given the request the Board had received, he suggested postponing the public
18 hearing to December 24th.

19
20 ***Richard Ozenich MOVED to postpone opening the public hearing until the December 14,***
21 ***2011 meeting. Andy Corrow SECONDED the motion.***

22
23 Councilor Smith noted again that he couldn't be at that meeting and that Councilor Gooze
24 couldn't participate. He suggested that the public hearing could perhaps be postponed until
25 January.

26
27 Chair Parnell said depending on what came up, the public hearing could perhaps be
28 continued at the December 14th meeting.

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30 ***The motion PASSED 4-0.***

31
32 Councilor Gooze noted that he had recused himself so had not voted on this matter.

33
34
V35 **Continued Public Hearing on an Application for Site Plan Review** submitted by MJS
36 Engineering, PC, Newmarket, New Hampshire on behalf of Great Bay Kennel, Durham,
37 New Hampshire to replace the existing canine daycare building with a new building that
38 includes an indoor and outdoor play area, office and a one-bedroom apartment on the
39 second floor. The property involved is shown on Tax Map 6, Lot 11-7, is located at 27 & 35
40 Newmarket Road, and is in the Residential C Zoning District.

41
42 Mike Sievert of MJS Engineering said in August, the applicant had proposed to put a new
43 building up slope from the existing kennel building. He said at that time, feedback had
44 been received from abutters that the applicant should look at alternatives, and he said this
45 was subsequently done.

46

1 He said what was proposed now was to put the new building at the bottom of the hill,
2 parallel to Route 108, and about 60-65 ft from the front property line. He said the
3 building would be an indoor play area, an office and an entrance area for dogs. He also
4 said there would be access to a studio apartment that would be constructed upstairs. He
5 said a small connector about 8 ft wide would go out into the open barn area that was the
6 indoor/outdoor play area. He said the fenced in area would stay the same.

7
8 Mr. Sievert said in putting the building in this alternative location, the applicants were
9 trying to abate noise that would otherwise be broadcast at the top of the hill. He also
10 provided details about the fact that the area for the dogs was redesigned so that the dogs
11 wouldn't be able to see dogs and people coming and going from the site.

12
13 He said because of where the building was proposed to be located now, it would be
14 completely within the Historic District. He said the applicant had gone to the HDC and
15 after a few meetings, got an approval for the building design. He noted that architect
16 Robin Wunderlich was present this evening. He also said a boundary line adjustment
17 would be needed, because by putting the new building in this alternative location, it
18 would be within the setback of the old property line.

19
20 Mr. Sievert said there were some drainage changes as a result of the new plan, but said
21 there would be no increase in runoff. He explained that the drainage design was more
22 involved because of the fact that the new building and parking would be next to the
23 property line, closer to the street.

24
25 He said there was an existing underground drainage system that would remain, but said a
26 rain garden would be added to handle the additional runoff created with the alternative
27 plans for the building. He said all new runoff would be treated with this rain garden. He
28 said the new drainage design had been submitted to the Planning Board, and said it met
29 all of the Town's stormwater management requirements

30
31 Councilor Gooze determined that there would not be an increase in the number of dogs
32 coming to the facility, and that the play area was being expanded in order to be able to
33 house the dogs in inclement weather.

34
35 Architect Robin Wunderlich explained that currently, the dogs had to be sent home in
36 rainy or snowy weather. He said being able to keep the dogs there would result in a
37 significant change in revenues, noting that otherwise the kennel had to be closed 2-3 days
38 a month.

39
40 Councilor Gooze said the issue with this application was noise, and asked where the extra
41 time was that the dogs would be out there making noise.

42
43 Mr. Wunderlich said the dogs would be able to be there on snowy and rainy days, and
44 would be closer to the neighbors. But he said the applicant was creating an acoustical
45 barrier to deflect the sound. He said the reason to have the building in the proposed

1 location was to create this barrier in the line of sight. He said going to the HDC was an
2 exercise to make the project better in terms of sound issues.

3
4 Chair Parnell said the barn would have a solid wall against the road at the western aspect.
5 He asked about southern access, and said it looked like there was an open area between
6 the wall and roof line.

7
8 Mr. Wunderlich said there wasn't one, and said it would all be completely closed.

9
10 Chair Parnell said it looked like the height of the barn and the other building was about
11 the same.

12
13 Mr. Wunderlich said that was true, and said they were about 23 ft high. He said the
14 elevations had been discussed with the HDC at the site walk. He said this building would
15 be tall enough so sound would be deflected by the building. There was discussion on the
16 height of the building.

17
18 ***Richard Ozenich MOVED to reopen the public hearing. Councilor Gooze SECONDED***
19 ***the motion, and it PASSED unanimously 5-0.***

20
21 **Ann Eiseman, 37 Ffrost Drive**, said she had been a long term customer of the kennel,
22 and said it was an asset to the community. She said she strongly supported the
23 renovations and the modifications to reduce the noise.

24
25 **Richard Renner 28 Newmarket Road**, said he was speaking on behalf of himself, his
26 wife Susan, the Pilars, Doug MacLennan and Susan Reed.

27
There is a proposal on the table tonight to advance the business enterprise of Mr. Sawyer of Newmarket
Rd. and we are here tonight to voice our strongest opposition to allowing this structure to move
forward. We have 2 major grounds of objections (1) **namely, loss of our and our neighbors enjoyment**
of our properties and (2) the potential diminished value to the properties surrounding the 'doggie
daycare'.

As to the first point, I reviewed the sound engineer's letter and find it totally unsatisfactory. We now
have a kennel **closer to the street**, closer to our homes with an exposed outdoor play area abutting the
street, directly facing 108, the side walk and our home. **No barrier other than fence and trees.** Dogs
could gather there all day long, barking at passersby on the sidewalk, while barking directly at our home.
This proposed arrangement looks potentially worse than the status quo, not better. Notably, the
sound engineer does not address this exposed area in his brief letter discussing the proposal. Another
glitch in this proposal is the three sided open dog barn—right on the road. There is no sign or promise
that this structure, now closer to me and our neighbors, would be seriously insulated to compensate for
the proximity. **The only obvious way to contain the noise of the kennel while allowing this business to**
operate is to locate the kennel on the backside of the hill, out of sight and out of sound. **The sound**
engineer stated that the best way to contain the noise , he writes, is to break the line of sight. I can
only imagine that the sound engineer would agree that this would be the best sound-containment
solution for everyone involved. If Mr. Sawyer truly wants to compromise with this community, that's
what compromise looks like.

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We and our neighbors need to be protected from this doggie daycare because noise pollution is real. While the town ordinance is clear, even in its amendments, it is totally unrealistic to think that anyone in town, business or residential, could play loud "doggie daycare barking rap" music out their windows without complaint. The uncontrollable and incontrovertible evidence is before you. Frank and Anita Pilar have endured years of loss of their 'quiet enjoyment' while raising 5 kids. Her husband Frank was an esteemed professor at UNH. Do they deserve to live their senior years wearing hearing protection? **Believe me, the noise is real, and loud and constant!**

Mr. McClellan and Dr. Reid try to enjoy reading a book by their pool and are forced to retreat to the interior of their home to escape the dog noise.

When we have had guests staying at our home this summer, even on the other side of the house we can palpate the noise at it crosses the Mill Pond to the senior housing.

Under Chapter 85 labeled "NOISE" article 85-4 states, **"In accordance with the concepts set forth below, it shall be unlawful for any person to make, continue to cause to be made or continue any excessive, unnecessary loud noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the town limits."**

To summarize my point, Planning Board members, you have the opportunity tonight to evaluate sight plans and a letter from one sound engineer who states no scientific measurements or guidelines, only an observation between two alternatives. His answer lies within his observations—to move the daycare over the top of the hill out of line of sight. There is acreage that exists for alternatives and now is the

time to stop this process-to cease and desist a wrong done every day in breaking noise rules and regulations creating ill will among neighbors.

The second point is actually more important.

This doggie daycare diminishes the values of the surrounding properties.

I have submitted a study, accepted by the town, stating that property values have gone up in Durham 15% over the past two years. This town wide market analysis conducted by Dr. Charles Colgan and Dr. Ross Gittell from the University of New Hampshire, and submitted April 2011 sites that their market study gave "a bird's eye view analysis for the purpose of identifying trends and opportunities for the short term economic development initiatives" for the town of Durham. I would estimate that our neighborhood has seen a reduction in value by 15-20% as witnessed by two events—the purchase of our home and Mr. McClellan's failure to sell his property. He allowed me to say that he has already reduced his sales price by \$300,000 due to the adjacent neighbor's eye-sore of a student housing rental property and the location of the doggie day care which has driven away prospective buyers. The purchase price on our home was substantially reduced and now I know why. The planning board needs to assess the cost/benefit of this project. **If you stand to gain \$200,000 in revenue from allowing the daycare structure to be built, how much will you lose in assessment of surrounding properties totaling 3 million. If it's 10%loss, you lose \$300,000. This is unacceptable when there are feasible compromises:**

Moving the building to the back of the property, and/or guaranteeing serious efforts at sound proofing this property from its neighbors by eliminating the exposed play area facing 108, and getting serious about erecting sound barriers with respect to outdoor obstacles and structural insulation.

Finally, I have a copy of minutes from the planning board dated July 23, 2009. The previous owners of our property argued the illegality of the trailer-~~no variance~~-the erection of the fence-~~no permit~~ and their subsequent appeals to the zoning board and Historical Society. Mr. Dubois stated "that Mr. Sawyer had an approach of doing whatever he wanted, and only seeking permission for something if he got caught." Your response, Planning Board members, was to grant Conditions of Approval-to be met prior to the Signature of Approval on the Boundary Line Adjustment Plan. **#4 states: "the applicant shall remove or be granted approval for the illegal kennel structure through the proper permitting and land use boards. In addition, a determination on the fencing must be made by the zoning Administrator on whether or not it needs to be presented to and approved by the Historic District Commission."** It appears that the kennel owners have defied the community in the past in the way that they've done what they wanted to do without regard for regulations and community input. I've had my own difficulty in dealing with them leading up to this hearing. I requested to see their proposal plans weeks ago after the Historical Commission met, so that I could hire my own sound engineer to evaluate them. The plans weren't sent to be until last night, the 11th hour, when it was too late for me to do anything but throw my hands up in frustration.

This is a community conflict, and it's time to end it decisively. Kennels do serve a social good, but they can and should exist in a way that minimizes impact to neighbors. That's the cost of doing business. The alternative is ugly and un-American: elderly neighbors living with ear plugs in, family neighbors watching their property values drop. Here, the Board should reject the proposal until they see a proposal that fully minimizes impact to neighbors. To me and Frank and Anita and Doug and Susan, the answer is as clear as a rocket in the night: a kennel on the back side of the hill, out of sight and sound. Finally if the Sawyers are unwilling to consider a proposal to move the daycare to the back of the hill, I request a decision about the proposal be deferred until I can hire my own sound engineer to evaluate what would be best in my and my neighbor's interest.

Councilor Robin Mower, 11 Faculty Road, asked if this was a Conditional Use application, and Mr. Campbell said the kennel already existed and what was proposed was an accessory use, so it didn't require a Conditional Use permit, Councilor Mower noted that if this had been an original application, this permit would have been required, and said one of the issues that would have been discussed was appropriateness of the location.

She said she agreed with points Mr. Renner had brought up, and asked if there had been discussion about the idea of siting the new building on the other side of the hill. She said if the orientation of the new structure directed noise toward the Faculty neighborhood, others would be concerned about it as well. She also said she thought the request that the applicant take another look at sound engineering for the building was reasonable, especially given potential impacts of noise on abutters and other members of community,

Steve Burns, 20 Newmarket Road, said he was puzzled by the smoothness of this review process. He said the Planning Board represented him, and said he presumed that the Board was concerned about the general welfare of the community, but he said if someone wanted to do something that was not consistent with the neighborhood and no one spoke up, this seemed to be fine.

He said he had spoken with his neighbors about what was proposed. He said neighbors had perfectly legitimate reasons for not public opposing their neighbors' plans. He said it was un-neighborly, and also said to publicly state that the plan negatively affected one's

1 property values was an admission of a defect in the property, which might have to be
2 revealed to a potential buyer. He spoke further on reasons the neighbors might have for
3 not speaking up.

4
5 Mr. Burns said he didn't think that an almost industrial scale activity was consistent with
6 a neighborhood.

- 7 • He asked how many dogs there would be at the facility.
- 8 • He said he was concerned about the materials the building would be made of. He said
9 it apparently would be concrete, made to look like wood, and said he thought this
10 would be amplify sounds.
- 11 • He said he didn't think the noise would be abated with what was proposed. He said
12 there needed to be an objective way to determine whether what was proposed worked
13 or not.
- 14 • He said he didn't think it was fair to allow someone to do something on a promise.
- 15 • He said he was concerned about sanitation issues on the site, and provided details on
16 this.
- 17 • He said some criteria and some kind of mechanism were needed in order to assure the
18 neighborhood that something would be done if the noise mitigation didn't work. He
19 said there needed to be continuing evaluation of this.
- 20 • He said this particular facility had a long pattern of encroaching on the letter and
21 spirit of the Zoning Ordinance. He noted that the building put up on the site a few
22 years back was supposed to be for storage only, but said that wasn't what it was used
23 for.
- 24 • He said he lived in the Historic District, and had found this to be a pain at first,
25 because he had to appear before various boards in order to get permission for things.
26 But he said he kind of liked the result of their criticisms. He said the Town ought to
27 do everything it could to preserve this rather small treasure of a district.
- 28 • He said this proposed facility might not be consistent with the historic location where
29 it was proposed. He said he didn't know what the HDC was thinking, but said the
30 Planning Board could overcome their decision.

31
32 **Councilor Diana Carroll, 54 Canney Road**, said she was there as a resident, and had
33 been following this application review process from afar. She noted that she didn't live in
34 the neighborhood but was concerned about it because she was concerned about Durham's
35 neighborhoods. She said it was important to speak up when there were things that
36 affected the quality of life of the Town.

37
38 She said they all knew that there were neighborhoods in Town that were being impacted
39 by students living there, in terms of noise, etc. She said there were various boards and
40 commissions that were working to address this issue. But she said other neighborhoods in
41 Durham faced other issues.

42
43 Councilor Carroll said the neighborhood involved with this application deserved some
44 help, because their quality of life issues didn't just have to do with this application. She
45 said she had spoken with Doug and Susan MacLennan a year ago about the noise issue,
46 and said she'd had been quite surprised to hear about it. She also said she'd run into other

1 people who had been disturbed by the noise. She said noise was a difficult issue to deal
2 with, and noted another noise issue in Town right now involving the UNH wind tunnel.

3
4 She said the particular neighborhood near the kennel had every right to have remedies for
5 the current situation, let alone for any future changes to the property. She said
6 neighborhoods deserved to be taken care of when they came in and talked about their
7 concerns. She asked that the Planning Board listen to them and provide a remedy to
8 ensure that the residents had a good quality of life.

9
10 Councilor Mower noted that the kennel was sited in what was a gateway to Durham, and
11 was a beautiful historic area. She said residents had put a lot of work into improving their
12 properties, and said the historic houses there were a joy to see as people drove by. She
13 said her sense was that this was an unusual entrance to a Town, and was one that
14 reminded people of the connection to the Revolutionary War.

15
16 She said it would make her very sad to see those properties somehow fall upon harder
17 times because people didn't want to live in them any longer. She said she hoped the
18 Planning Board would consider this and the fact that there could be a potential loss in
19 property values if this happened. She said she hoped there would be an opportunity to
20 consider an alternative to what was proposed this evening.

21
22 Chair Parnell said he would like the applicant to respond to the comments in general, and
23 also specifically concerning the idea of placing the new building toward the back of the
24 site.

25
26 Mr. Sievert provided a Google map that showed the relationship of the property to
27 surrounding properties. He said the noise consultant had considered the various sight
28 lines in developing this alternative design. He said possible alternatives were looked at in
29 depth, and said it turned out that there were no great alternatives. He noted that the area
30 in back was owned by the veterinary hospital, but said it might be possible to do a lot line
31 revision.

32
33 He said the noise consultant would say that if the new building was put on the back side
34 of the hill, noise would bounce toward the people out there instead. He provided details
35 on the topography issues involved on the site, and stressed again that alternative locations
36 for the new building had been looked at. He said the noise consultant believed that what
37 was proposed now was the better alternative.

38
39 Mr. Sievert noted that there wasn't a conditional use permit involved, and said if there
40 was, the applicant would have addressed this appropriately. He also said that the
41 neighbors had had the opportunity to voice their concerns about the application. He
42 said Mr. Renner came to his office, and said the plan was subsequently changed.

43
44 He said an effort was made to listen to the neighbors, and said the building would not be
45 a concrete bunker. He explained that the foundation would be made of concrete, and said

1 there would be hardy plank siding, and there would be insulation behind it. He said this
2 material was being proposed because it was a long lasting, sustainable product.

3
4 Mr. Sievert e said the plans hadn't changed since the HDC meeting other than the rain
5 garden, and said he thought Mr. Renner had gotten a copy of this plan. He said the fence
6 existed today so the dogs would not be closer to abutting properties with what was
7 proposed. He also said the fence could be pulled back. He said the dogs would actually be
8 further away from properties as a result of this application. In addition, he said if the
9 corner area was a concern, the applicant could look at changing the fence there.

10
11 In regard to the issue of this area being a gateway to the Town, Mr. Sievert said the
12 applicant had gone to the HDC, which went over the design in detail. He said it was
13 approved so it obviously fit in. He said that was the board the applicant went to in order
14 get approval to build there, and not the board of public opinion.

15
16 **Andrea Bodo, 20 Newmarket Road**, said what concerned her was that the kennel
17 business was thriving, which was wonderful, but the Historic District was dying. She said
18 some residents of that area had moved out, having sold their houses at a lower cost. She
19 said the MacLennans had their house on the market and couldn't sell it because of the
20 noise. She said the Congdon house was student housing.

21
22 She said she and her husband heard the noise, and said the senior housing development
23 on Mill Pond Road heard the noise. She said they would be losing the people who took
24 care of their properties and gave the charm and character to Durham. She said the
25 question was whether the Planning Board was going to support the businesses or was
26 going to support the Historic District and the homes in it.

27
28 **Susan Renner, 22 Market Road**, spoke about the breezeway that was proposed as part
29 of the design, and said she thought it would be a tunnel for the noise to come right
30 through. She also said she hadn't been aware that the fence would extend beyond the
31 barn. She said even though the dogs wouldn't be coming down any closer than they were
32 now, neighbors would still be able to hear them as they did now. She said she'd been
33 under the impression that if the dogs were behind the new structure, it would be a little
34 better. She said as proposed now, the noise from the dogs wouldn't be blocked.

35
36 **Steve Burns** said it seemed that it wasn't known if the acoustic mediation would work.
37 He asked the Board to consider what happened if it didn't work.

38
39 **Andrea Bodo** said if this application was approved, she'd like to know how many dogs
40 would be allowed, and if the applicant could be held to this number. She also said the
41 dogs barked when they were outside, and said no matter where the building was, this still
42 would happen. She said it wouldn't be an enclosed structure, and instead was three sided.

43
44 Chair Parnell suggested that because there was only half of a Planning Board this
45 evening, the public hearing should be continued to the December 14th meeting. He said
46 based on what he had heard, he agreed with the comments made about the sound

1 engineer's report. He said it didn't say anything other than to put the building at the
2 bottom of the hill. He said it didn't deal with the noise issue, which the Planning Board
3 had been hearing about for several years. He said it didn't sound like that issue had been
4 improved.

5
6 Chair Parnell said while this wasn't a conditional use permit application, it was up to the
7 applicant to put more effort into the noise abatement procedure that would be used. He
8 said moving the building from the top to the bottom of the hill might do something, and
9 might not. He said a good portion of the front wall would still be open.

10
11 He said the applicant should consider doing more on soundproofing, and said between
12 now and the next meeting, there was time to think about this, and to come back with
13 something that was more favorable.

14
15 Councilor Gooze said he agreed completely. He said while this was not a conditional use
16 permit application, the noise ordinance requirements definitely had to be addressed. He
17 noted that the Board had previously been told that the UNH wind tunnel wouldn't be a
18 problem, but it had turned out to be a problem. He encouraged the applicant to provide a
19 much more informative noise component to his application, and said the letter from the
20 engineer said basically nothing.

21
22 Mr. Ozenich pointed out that the abutter had offered to get his own engineer involved,
23 and said it was only fair that the review be delayed until he got a report from him.

24
25 Mr. Campbell asked what happened if the abutter's engineer took the opposite position.
26 Mr. Corrow suggested that there should be a third party review concerning the noise issue
27 and how it was being addressed by the applicant.

28
29 Mr. Campbell agreed that this was a good idea, and said the Board could require that it be
30 paid for by the applicant.

31
32 Councilor Gooze agreed that this was a good idea.

33
34 ***Richard Ozenich MOVED to continue the Public Hearing until the December 14, 2011***
35 ***meeting. Wayne Lewis SECONDED the motion, and it PASSED unanimously 5-0.***

36
37 Break from 8:19 to 8:29

38
39 **VII. Acceptance Consideration of an Application for Boundary Line Adjustment**
40 **submitted** by Geoff Sawyer, Durham New Hampshire and Great Bay Animal Hospital
41 LLC, Durham, New Hampshire to change the boundary line between two lots. The
42 properties involved are shown on Tax Map 6, Lots 7-0 and 8-0, are located at 27/35 and 31
43 Newmarket Road respectively and are in the Residence C Zoning District.

44
45 The Board agreed to postpone this agenda item until the December 14th meeting.
46

VII. Discussion on Petition initiated by the Public to Change Article XII, Section 175-53, Table of Uses, in the Durham Zoning Ordinance to make Eldercare Services a Non-Permitted Use in the Residence A Zone.

Mr. Campbell noted that the Planning Board would simply be having a discussion on this proposal, and that no comments would be received from the public right now. He explained what was involved with a citizen petition for a Zoning change, and said because of timing issues concerning the paperwork, the public hearing could possibly be scheduled for the next Planning Board meeting.

He said the Board would have 60 days from the initial consideration to make a decision on it, and said if the Board recommended the Zoning change to the Town Council, the Council would then need to consider it. He said if the Planning Board needed more than 60 days, it could request an additional 30 days from the Town Council.

Chair Parnell noted that eldercare facilities were permitted uses in the Rural and RC districts, were conditional uses in the RA and RB districts, and were prohibited in the Central Business district and Professional Office district, and were permitted everywhere else. He asked if perhaps this prohibition should be extended to some other districts in Town.

Mr. Campbell said he didn't think that would be appropriate at this time, and said the petition was pretty specific to the RA zone.

Councilor Gooze asked what could be done now in terms of density.

Mr. Campbell read from Section 175-56, Special Situations affecting Dimensions. He said for an eldercare facility, every four bedrooms counted as one dwelling unit, and said 20,000 sf would be needed for this. He said this was the case regardless of whether residents shared a room or there were separate rooms.

Councilor Gooze said right now, there was some control on the use based on the size of the lot involved. He calculated that he could have 16 residents on his two acre lot.

Mr. Lewis asked what had happened to cause this proposal to come forward.

Chair Parnell said an eldercare facility was proposed on Mill Road. He said the Planning Board had accepted it, and there was then a public hearing.

Mr. Campbell noted that if that application moved forward, it would be reviewed under the existing Zoning Ordinance.

Councilor Gooze said based on the requirements, there could be 6 beds there because it the property contained 30,000 sf.

Chair Parnell noted that the applicants had come in expecting to be able to have 13-14 beds.

1 Councilor Gooze said as it was written now, impacts would be mitigated by the size of
2 the property. He also said it was a conditional use so presumably the Planning Board
3 would discuss traffic/access issues. He said he'd expect that the Planning Board would
4 turn down an eldercare facility for his own property because of access issues.

5
6 Chair Parnell asked if the original intent of allowing eldercare facilities in all of these
7 areas was to provide a diversity of housing.

8
9 Councilor Smith said as a practical matter, some people would like to live in a residential
10 area that was close to Town.

11
12 There was discussion about the definition for eldercare facility, and that it included
13 assisted living as well as independent living.

14
15 "Housing principally used, designed, or adapted for use by elderly citizens, fifty-five (55) years
16 of age and older that are not capable of living independently and that require assistance in
17 activities of daily living (ADL's), and complying with the design requirements of the
18 Architectural Barrier Free Design Code for the State of New Hampshire. Residents of an
19 eldercare facility shall receive a package of services to meet their needs. An "eldercare facility"
20 may be contained in a single building or group of buildings and may include assisted living
21 facilities or nursing home facilities. A "life care community" or other retirement community
22 that provides a continuum of care including both independent living units and units for
23 residents that require assistance, shall be considered to be an eldercare facility."

24
25 Mr. Campbell noted that Spruce Wood provided a continuum of care that encompassed
26 both of these things, as well as Alzheimer's care. He said it was all considered to be
27 eldercare.

28
29 Councilor Gooze said some people in an eldercare facility would potentially take a bus to
30 the University.

31
32 Mr. Ozenich said people who needed a lot of care wouldn't. He also said an eldercare
33 facility was a commercial enterprise, and said there needed to be a certain number of
34 people living there in order for it to work financially. He said this use shouldn't be
35 allowed in the RA.

36
37 Councilor Gooze said that was what this petition for a Zoning change was saying.

38
39 Mr. Campbell said the alternative was to sprawl out such facilities and get older people
40 out of town.

41
42 There was discussion that there needed to be a public hearing before the Planning Board
43 could make a recommendation concerning this proposal.

44
45 ***Richard Ozenich MOVED to hold a public hearing on a Petition initiated by the Public***
46 ***to Change Article XII, Section 175-53, Table of Uses, in the Durham Zoning***
47 ***Ordinance to make Eldercare Services a Non-Permitted Use in the Residence A Zone***

1 *on December 14, 2011. Councilor Gooze SECONDED the motion and it PASSED*
2 *unanimously 5-0.*

3
4 There was discussion about the fact that Board members should not talk about
5 applications outside of Planning Board meetings.
6

7
8
9 **IX Other Business**

10
11 9A. Old Business:

12 Mr. Campbell noted that the Board had done a site walk concerning the Beech Hill
13 rezoning proposal, and said he had the notes from it. He said the Board could discuss this
14 issue now, but didn't have to.

15 Chair Parnell asked if the Board was obligated to move this proposal forward.
16

17 Mr. Campbell said no. He said the site walk was done because the Board wanted to see
18 the land that would potentially be rezoned, and the property owner also wanted them to
19 see it.
20

21 Mr. Ozenich asked about the Goss property, and Mr. Campbell said it didn't have
22 anything to do with this Zoning proposal.
23

24 Councilor Gooze said he was at the site walk. He said he was concerned that this Zoning
25 change would mean commercial activity would encroach on the quality of life of the
26 residents that abutted the property, and said he therefore wouldn't vote to move it
27 forward.
28

29 Mr. Ozenich asked if the area in question could be broken up so it all didn't become
30 ORLI.
31

32 There was discussion about the extent of properties involved.
33

34 Councilor Gooze said putting in commercial development up there would affect some
35 residential properties, and he provided details on this.
36

37 Mr. Campbell noted that this Zoning change was called for in the Master Plan.
38

39 Councilor Gooze said the residents had come out in force the last time the Zoning
40 change was proposed.
41

42 Chair Parnell said the landowner requesting the Zoning change now had thought he was
43 getting one type of zone and ended up in another zone. He said that was his reason for
44 doing it now.
45

1 Mr. Campbell provided some history on the evolution of the Zoning districts in the Beech
2 Hill area. He said this area that was now Rural was zoned OR based on the Master Plan
3 Future Land Use Map. He said when the Town went to change this to ORLI in 2006,
4 residents of the area came to the Planning Board and asked that this change not be made.
5 He said at that time the Planning Board said it would keep everything south of Beech Hill
6 Road in the ORLI district and change the other part to Rural, but could revisit this in the
7 future. He said this was what was happening now, upon the request of a property owner.

8
9 Mr. Corrow asked if the Cutters, who were the landowners requesting this, had particular
10 plans for the properties involved.

11
12 Mr. Campbell said he didn't know, but said the main point of the Zoning change was the
13 value of the land as ORLI compared to its value as Rural. He said the Cutters wanted to
14 capture that land value and have more options for developing the land.

15
16 Councilor Smith said in the early 1970's, that area was in the Office Research (OR)
17 district. He said everything west of the bypass was OR, and said east of the bypass was
18 RB. He said there was now RB there anymore, and noted that a great amount of it had
19 been turned into Rural, ORLI, and MUDOR. He said the Town had constantly been
20 changing the boundaries of Zoning districts, so this wasn't unusual.

21
22 He said he wasn't suggesting that the Board make this particular change, at least until
23 there was a better understanding of what would happen regarding the connector between
24 Technology Drive and Beech Hill Road. He said that project was in the Capital
25 Improvement Plan several years down the road, and said it would be very expensive. He
26 recommended leaving things as they were right now with the districts. But he said if the
27 Board was going to consider changing it, he thought the northwest corner area should go
28 to ORLI because it would be wrong to leave that tiny sliver of land in the Rural district.

29
30 Councilor Gooze said he was in favor of leaving the districts alone for the time being.

31
32 Chair Parnell asked who else would be affected if the Planning Board split up this area,
33 making the Cutter properties and all points east ORLI and leaving the rest as Rural.
34 There was discussion.

35
36 Councilor Gooze noted that there had been recent discussion as part of the Capstone
37 review process that the ORLI district was a hodge-podge and needed to be revamped,. He
38 said rather than taking a section of it, the Board should be planning on what to do with
39 the whole district.

40
41 Chair Parnell said if the Goss as well as Cutter properties were involved, a stronger case
42 could probably be made in term of making them ORLI rather than Rural. But he said it
43 was probably better to leave things as they were for now.

44
45 Councilor Smith said the Council had recently found compelling reasons to change the
46 Table of Uses to allow single family residences in the ORLI district because of Capstone.

1 He said he had objected to doing things in that way, before the Planning Board and also
2 before the Council. He said he thought the Planning Board should wait until there was a
3 more compelling reason to make this Zoning change, which would be disagreeable to
4 some property owners in what was a beautiful area.

5
6 Chair Parnell said the Capstone proposal was more concrete than anything he'd heard for
7 this area. He summarized that the wish of the Planning Board was to defer this Zoning
8 change.

9
10
11 On another issue, Councilor Smith thanked Mr. Campbell for his letter to Doug Bencks,
12 asking him to come back to the Planning Board and explain what had happened with the
13 wind tunnel between the time Mr. Bencks was before the Planning Board and the time it
14 got built.

15
16 Councilor Smith said he would like to use this issue to suggest that sometime in the
17 future, there should be a discussion about what the Planning Board and the Town Council
18 would like to see in terms of University planning. He said the University planned all
19 kinds of things that affected the Town.

20
21 He noted that approximately 10 years ago, the University had found it inconvenient for
22 the Town to be part of the University's library, and asked the Town to go someplace else.
23 He said there would probably be a substantial bond issue for the Town's new library.

24
25 Councilor Smith said the University found it inconvenient to have a fire station where it
26 currently was, and would like the Town to move it someplace else. He said the University
27 had perhaps offered the Town some other sites to put it, but said this would be expensive
28 to do. He said at some point, the University and the Town needed to plan some things
29 more collaboratively.

30
31 He said at the recent UNH Master Plan meeting, he had suggested that the University
32 could encourage new faculty and staff to live in Durham, and that it might very well sell
33 or lease some of its MUDOR land to a developer to do lost cost housing there, which
34 would be good for young faculty members, etc.

35
36 Councilor Smith said the University wouldn't do this without some encouragement from
37 the Town, and said a question was how the Planning Board should get involved in this.
38 He noted that he was saying these things and asking these questions as the Planning
39 Board's representative as part of the University's master plan process.

40
41 Chair Parnell asked Councilor Smith what he suggested, and Councilor Smith said the
42 Planning Board and the Town Council should sit down together to discuss these things.

43
44 Councilor Gooze agreed, and said it would be good to get everyone on board, as a group.
45

1 Mr. Campbell said it was a good time to do this with the University, noting that Paul
2 Chamberlin and Doug Bencks had reached out to him and Administrator Selig, since both
3 the Town and the University were going through master plan processes.

4
5 Councilor Smith asked Mr. Campbell if there were things the Town did that had a
6 negative effect on the University.

7
8 Mr. Campbell said the Town had zoned a lot of University land, and said some of this
9 made sense but some didn't. He gave as an example the downtown area. He said the
10 Town had zoned Fairchild and buildings across from the Central Business District as RA.
11 He said the land should be zoned the way the Town would want it to be zoned if the
12 University didn't own it.

13
14 Councilor Smith said the University had planned to lease some land to a builder of soccer
15 fields on the west side of Mast Road, on land that was a beautiful agriculture field. He
16 said some community members came forward in opposition to this project, and the
17 University backed off. But he said it was an example of the University entering into
18 negotiations with a developer who would have brought some business into Town, but
19 would have also had some bad effects.

20
21 On another issue, Councilor Gooze said that at the most recent ZBA meeting, there was
22 an interesting decision. He explained that a previous variance approval had required that
23 a new house that would be built on a subdivided parcel of land would have to be owner
24 occupied. He said this condition had scared away potential buyers because it meant that
25 as owners of the property they wouldn't be able to rent out the property while on
26 sabbatical.

27
28 He said the applicant had then proposed that the house instead would have to be occupied
29 by a family, based on the definition in the Zoning Ordinance for family household, and
30 said the ZBA approved this. He said this would probably be the only property in Town
31 with such a restriction, and said it was almost like workforce housing, without the
32 formality. He said he thought this was a really good way to handle the situation.

33
34 Mr. Ozenich asked what percentage of UNH staff lived in Durham.

35
36 Mr. Campbell said it was a pretty low percentage, and noted that this information was in
37 the market analysis that was done for the Town.

38
39 There was discussion.

40
41 Mr. Ozenich said there was nothing for UNH faculty to do in Durham. He noted that
42 Brookstone was started in Peterborough, but eventually the headquarters was moved to
43 Nashua.

44
45 Mr. Campbell said La Paz had closed.

46

1 Councilor Gooze also said Clemento's was for sale.

2
3 Chair Parnell asked what was going on with the Cumberland Farms property, and there
4 was discussion.

5
6 Councilor Gooze noted a recent variance application before the ZBA to put eight students
7 in a single family house on Mill Road, at the junction of a residential area and University
8 property. He said concern was expressed during the public hearing that there could be a
9 domino effect.

10
11B. New Business:

12
13 Councilor Smith said at the last Planning Board meeting, Mr. Kelley had talked about the
14 idea of a waterfront district, particularly for land that the Town owned. He asked if the
15 Planning Board might consider in the future a waterfront district on the north side of the
16 Oyster River stretching from Route 108 to the Durham Business Park. He said it would
17 include everything south of Old Piscataqua Road and north of the river. He said as part of
18 this something would have to happen with the land that Eric Chinburg owned.

19
20 He said the Planning Board should start thinking about the north side of the Oyster River
21 in terms of a variety of uses such as restaurants, etc. He said there was a considerable
22 amount of Town land for something like this, not including the sewage treatment plant,
23 and said he thought this was something to talk about at the quarterly planning session.

24
25 Chair Parnell said he agreed, and said he thought it should be part of the commercial
26 core. He said the Planning Board should think about developing the Town in that
27 direction.

28
29 Mr. Ozenich said it should be the residents' downtown, and the existing downtown
30 should be the students' downtown.

31
32 Chair Parnell agreed, and said the Planning Board should do things to make it happen.

33
34
35 Councilor Gooze said there were some significant changes to the shoreland protection
36 act, and said the Board would need to have a session on this.

37
38B. Next meeting of the Board: **December 14, 2011 (Only meeting in December)**

39
X40 **Adjournment**

41
42 ***Richard Ozenich MOVED to adjourn the meeting. Councilor Gooze SECONDED the***
43 ***motion, and it PASSED unanimously 5-0.***

44
45 Adjournment at 9:16 pm

46 Victoria Parmele, Minutes taker