

*These minutes were approved at the June 27, 2007 meeting.*

**DURHAM PLANNING BOARD  
WEDNESDAY, MAY 23, 2007  
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL  
7:00 pm**

**MEMBERS PRESENT:** Chair Bill McGowan; Vice Chair Lorne Parnell; Secretary Susan Fuller; Richard Ozenich; Steve Roberts; Richard Kelley; Councilor Needell

**ALTERNATES PRESENT:** Annmarie Harris; Doug Greene; Wayne Lewis; Councilor Carroll

**MEMBERS ABSENT:**

**I. Call to Order**

Chair Bill McGowan called the meeting to order at 7:05 PM.

**II. Approval of Agenda**

*Councilor Needell MOVED to approve the Agenda. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.*

**III. Report of the Planner**

- Mr. Campbell said there were several emails provided at the table concerning the Kimball application, which the Board should read before the next meeting.
- He said he had provided the Board with draft language regarding height requirements, noting there was now another application where this issue had come up. He said the draft language was generic, and was simply intended to start the discussion on this issue. He said he would like to have that discussion that evening, under Old Business.
- He said the Main Street project had begun on Monday, and noted that August 13<sup>th</sup> would be the last week of construction. He said now that the construction schedule was available, something would be put on the Town website concerning this.
- He said the Mill Plaza Study Committee was currently meeting at the Mill Plaza site with representatives from the AIA and other interested people, and would then hold its regular meeting. He said a schedule for hearings for the summer would be set soon.
- Mr. Campbell said the Housing Task Force had met that day, and said representatives from the Workforce Housing Coalition and NH Housing had made a presentation there. He said they would make a presentation to the Planning Board on this in the near future. He provided a brief update on progress being made by the Housing Task Force concerning draft language for the Zoning Ordinance concerning density.
- He said the Council had sent the Board draft language concerning virtual home businesses, and said the Board would probably see this in their next packet.
- He said there would be two new applications at the next Board meeting, - the Taylor/Paine

application and the Teeri application. He said the Board would also hold a public hearing on the proposed revisions to the forestry language in the Zoning Ordinance. In answer to Mr. Kelley, Mr. Campbell said the Paine/Taylor application was still before the ZBA.

- He said the Town Council would hold a public hearing on June 4<sup>th</sup> to discuss the Purchase and Sale agreement between the Town of Durham and Chinburg Builders concerning the Durham Business Park, and said Board members were urged to attend this meeting.
- He said the Board had agreed to hold some additional meetings because of its heavy workload, - on May 30<sup>th</sup> and June 6<sup>th</sup>. He said that under New Business the Board would discuss the idea of having a quarterly planning meeting at the second regular meeting in June. He said this would mean that any applications that came in now would be moved to the first meeting in July.

There was discussion about how the Board should receive emails sent by residents concerning particular applications. It was agreed that Board members could receive hard copies as well as electronic versions of the email. Mr. Campbell said when these emails came right before meetings, Board members were not expected to have the chance to read them all.

Chair McGowan noted that Mr. Roberts was not in attendance, and that Ms. Harris would serve as a regular member in his place.

**IV. Continued Public Hearing on a Conservation Subdivision Application** submitted by Joseph Caldarola, Portsmouth, New Hampshire for subdivision of one lot into 9 lots. The property involved is shown on Tax Map 10, Lot 7-0, is located at the corner of Bagdad Road and Canney Road and is in the Residential B Zoning District.

Mr. Ozenich and Ms. Fuller recused themselves, and Mr. Lewis was appointed to replace Mr. Ozenich.

***Richard Kelley MOVED to continue the public hearing on a Conservation Subdivision Application submitted by Joseph Caldarola, Portsmouth, New Hampshire for subdivision of one lot into 9 lots. The motion was SECONDED by Councilor Needell, and PASSED unanimously 6-0.***

Mr. Caldarola spoke before the Board concerning some issues that had come up at the previous meeting. He said the hydrant flow and pressure tests were expected in the new few weeks. He also said he had met with the forester, Mr. Moreno, about maximizing the buffers along the existing streets, and about looking at the existing woods and where the limited cut zone should be. He said Mr. Moreno would try to do this within the next few weeks.

He summarized the previous public hearing comments. He said that regarding the density issue, he realized the streets now didn't have anywhere near the number of units that were permitted in the Residence B zone. But he said the zone did have 150 ft of frontage and 40,000 sf lots, and said they were going by this, so the houses would look as they should, based on that zone. He said if there were more of a cluster design, one would see lots of houses in one spot, rather than this design, which was more in keeping with the straightforwardness of the zoning in this area.

He said that concerning the conservation subdivision approach, this had to do with identifying the resources on the site, and designing the development around it. He said this was a shallow site, where

the resources were the wetlands, buffers, etc., and he said the conservation subdivision design had to do with placing the houses near the street, which in this case, protected the resources.

Mr. Caldarola said he felt the design was not a “hodge podge,” and said he felt the site cleanly followed a logical layout. He said the smallest building area was approx 100 ft wide, and about 80 ft deep, which was adequate to build a house of the caliber that was anticipated. He noted other houses he had built on Emerson Road which were on smaller lots than this but were attractive. He said this current site wasn't as tight as it looked.

He said the idea of having separate driveways on Bagdad Road rather than a single private driveway was looked at, and said that although it was not possible to do single driveways for each lot, there could be 3 driveways that each served 2 lots and another that served a single lot. He said this would put to bed the recycling issue, but said the disadvantage was that there would be two more driveway cuts through the buffer.

He also said selling houses where two people shared a driveway could be problematic. He also said providing separate driveways would result in essentially as much disturbance and paving of the site as doing the single private driveway, and he provided details on this. He said that aesthetically, the present design was better, and provided more of a sense of community.

Mr. Caldarola noted comments from the public about the waiver requests regarding trading off areas of the site. He explained that doing this tradeoff allowed the development to stay to the front of the site, and allowed for a unified large open space area.

There was discussion that Mr. Caldarola would at some point discuss with Councilor Needell the issues concerning Section 9.08 1 and 4 of the subdivision regulations.

Engineer Ruben Hull next spoke before the Board. He noted that he originally was involved with a subdivision project for this property that didn't move forward. He said at that time, surface runoff was proposed to be treated by innovative, low impact vegetative swales located on each house lot. He said the Board and the Public Works Department were not happy with this approach because they felt there would be no control over individual lot owners in the future.

He said this design was not proposed under this present application, and said they originally had proposed to take the runoff and pipe it into the municipal stormwater system. But he said the Town engineer had said that he wanted to get the storm water back into the groundwater on site.

He said he then came up with the chambered system. He said there would be covenants in place to allow for singular responsibility of the systems, as part of the condo documents. He said the chambered system was more mechanical than biological, and explained that the chambers were intended to serve as the equivalent of a surface storm water detention pond, but said there would not be as much surface water involved, which would therefore avoid potential stagnation of water, and overflow onto properties at the rear of the site.

Mr. Hull said it was very clear that there were 4 spots at the back of the lot that discharged to the rear of Amber Way, and that they didn't want any increase in the amount of runoff going off of the site.

He said the objective was to come up with a solution to keep as much of the water on site to infiltrate into the groundwater. But he said the groundwater and the conditions on site were what they were, and said the groundwater would follow the same path hydrologically that it did now. He said they had no control over that.

He said regarding the Canney Road drainage issue that there were presently two culverts at the intersection of Canney and Bagdad Road, and he described how a great amount of flow made its way down onto the property, then went through a series of thin wetlands and wound up crossing onto the Bradlee property and probably two other properties.

Mr. Hull said they proposed putting in two driveway culverts in the ditch line, and also restoring the topography of the stone wall to keep the ditch flow where it was supposed to be, and the site flow where they wanted it to go. He provided details on this. He noted that the Public Works Department would want to see that the culverts and the existing Canney Road culvert could handle the flow. He said in reality this shouldn't be considered additional flow, and should be considered putting the flow back where it was supposed to be. He said the benefit would be eliminating the flow currently entering the site and making its way to the properties behind it.

He said the chambered system was similar to a septic system, but handled storm water rather than septic system leachate. He noted that there were observation and maintenance ports to clean the system if it got clogged.

Concerning the idea of having separate driveways for the lots and not a single private driveway, Mr. Hull noted that a corridor would have to be disturbed anyway to allow for the utilities to be installed. He also said that turnarounds would need to be constructed if there were driveways for individual lots, so there would be as much site disturbance and paving as there would be for the one private driveway. He also said he had come away from an earlier meeting with the sense that the Board would prefer to minimize the disturbance of the buffer, which was accomplished with the current design.

Mr. Kelley asked what the size of the culvert was, and Mr. Hull said it was approximately 12 inches, and crossed at the lot line between the Hovey property and an adjoining property. Mr. Kelley summarized that what was proposed was to reconstruct the ditch, install drive culverts, clean out the 12 inch culvert, and restore what was felt to be the historic conveyance path. There was discussion about this with Mr. Hull, who among other things said the idea was to keep the drainage flow within the Town right of way.

Mr. Kelley asked if the analysis would include looking at the outfall for the 12 inch culvert on the Hovey property line, and Mr. Hull said the Public Works Department would require that the applicant ensure that this would hold the flow.

Mr. Kelley noted that Mr. Hull had said that once the water was in the ground, in the detention chambers, that was the end of it for the applicant. But he asked Mr. Hull for his opinion as to where the groundwater was moving to.

Mr. Hull said he would rather not be quoted on this, given that this was not his realm. He said his

point was the elevation of the water table at certain times of year, and how that this impacted nearby residents.

Mr. Kelley asked if it was fair to say that the season high water table was actually a water surface elevation at certain times of year, and Mr. Hull said yes.

Councilor Needell noted that because this was a conservation subdivision on a private road, there was no frontage requirement for the units.

Mr. Caldarola said he hadn't been speaking specifically about the frontage requirement, but was addressing comments that the houses were too close together. He said his point was that the house lots were laid out in a way that was similar to how they would be laid out if this frontage was required, and that the density was not greater than if this were done.

Councilor Carroll said this would be the first conservation subdivision development in Durham, and said this process was therefore new for everyone. She said they wanted to get it right. She asked how the design would look if this was not a conservation subdivision.

Mr. Caldarola said it would look essentially the same, given the resource constraints and said the difference would be that there wouldn't necessarily be common open space. He also said the areas not developed could be developed at a future date.

**Denise Day, 89 Bagdad Road**, said the design had come a long way, and was a much better plan and fit better with the neighborhood than the previous plan. She said single family homes made a lot more sense than the age restricted proposal. She noted that her concern previously had been that the design was such that the integrity of her well was still protected.

**Beth Olshansky, Packers Falls Road** noted some letters she had submitted concerning this application. She said this was essentially a cookie cutter subdivision, where the common open space seemed to be overlaid on top of privately owned land, and said this was her major concern. She read her letter, which said the conceptual design step had only been partially followed. She said if the steps had been fully followed, the primary conservation area, including all unsuitable areas, and the secondary conservation area, including scenic resources, would have been set aside before drawing the lots to determine the building area. She said the common open space wouldn't have been sandwiched around the building envelopes, and instead would have been set aside, and the cluster housing would have been sited outside of that area.

She provided details on the common open space aspect of conservation subdivision, and provided details on the fact that in his book on conservation subdivision, Randall Arendt had addressed problems that could result when there was shared ownership of the open space. She noted that Mr. Caldarola had said there could be problems when two lot owners shared a common driveway.

Ms. Olshansky said if the design process had been followed correctly and the criteria for the secondary conservation area had been addressed, the large granite outcropping on the site, which was the one scenic aspect of the property, wouldn't be located in the middle of the proposed driveway. She provided further details on the cookie cutter approach that had been used, and on what the words

“set aside” meant.

She said the Zoning Ordinance and the subdivision regulations were clear that the common open space was to include all primary conservation areas and the secondary conservation areas with the highest resource significance. She said swapping areas was not specifically permitted by the Ordinance, and therefore if not stated, was not allowed. She said that if the swap was not allowed, the roads and driveways needed to be reconfigured, because intensive use was not allowed in the common open space.

Ms. Olshansky said the Zoning Ordinance and the Subdivision Regulations said the common open space needed to be permanently protected, which appeared to be in conflict with letting homeowners decide policies on the land that was in their own backyards. She said a third party easement holder was also required.

Concerning the possible rerouting of water near the Hovey and adjoining property, she asked if these property owners had signed easements, as required by the regulations. She encouraged the Board to revisit this issue.

Ms. Olshansky said she was concerned that if the Planning Board approved this application, landowners in the future could choose to propose a similar design, as a way to maximize density. She said the proposal flew in the face of what the new Zoning Ordinance proposed to do, and said approving it as such would erode the intentions of the new conservation subdivision regulations. She encouraged Mr. Caldarola to go back to the drawing board, and said given the fact that this was the Town’s first conservation subdivision, it was really important to stick with the Ordinance and intentions of the Master Plan.

She said if the project didn’t have lot lines coming all the way to the road, there wouldn’t have to be the required footage. She said if it was common open space, there would be more flexibility with the frontage, size of lots, etc., and said this would allow all the open space to be common open space and not individually owned by separate homeowners. She said she would like the Planning Board to take a more careful look at the Zoning Ordinance, and to bring forth a proposal that honored it.

Mr. Kelley asked Ms. Olshansky if a conservation subdivision that clustered houses resulted in separating large open space areas, this should be seen as a detriment. He noted that a wildlife corridor ran through the back of the property.

There was discussion about this with Ms. Olshansky. She said she didn’t have as much problem with lots clustered toward the front of the lot, as reflected in the present design, as she did with the fact that the open space wasn’t set aside. She also said that if the buffer in front was owned in common, and the houses faced the private drive, there was more flexibility in terms of setbacks. She explained how this could provide more flexibility regarding the design of the conservation subdivision.

Councilor Needell noted that the current design was not approved yet, and needed to be discussed by the Board.

Ms. Olshansky said everyone would benefit from reading the Zoning Ordinance and the Subdivision

Regulations, noting that it was complicated trying to piece it all together. She repeated that her biggest concern was the fact that the common open space had not been set aside.

Mr. Caldarola said most of what he had heard from Ms. Olshansky pertained to the ownership of the open space, and said it didn't matter to him who owned the open space. He said the Subdivision Regulations said the ownership could be fee or non fee, and said he presently had non-fee ownership for the nine lots, which met the letter of the Ordinance.

He also said if it was true that the Planning Board had the flexibility that Ms. Olshansky had described, and could waive the rear setback lines from the building sites to the common lot, he was ok with this. He also said that regarding the open space coming up the lot lines, this was intended so that the drainage areas could be managed by the homeowners' association.

**Robin Mower, Faculty Road** said she would submit her letter to the Board. She said that regarding the waiver request, according to the Zoning Ordinance, the unsuitable areas were not to be included in the buildable areas and said what topped the list was very poorly drained, poorly drained and somewhat poorly drained soils. She provided details on this, and said granting this waiver would strike at the heart of the Zoning Ordinance. She noted that Mr. Caldarola had previously said that he could easily reconfigure the site plan if that land could not be used, and she recommended that the Board not remove its finger from the dike.

She said she had recently realized this was the first conservation subdivision the Town was facing, and said it would seem likely that they would want to revise the requirements for future proposals so they would more clearly meet the goals of the Town.

Ms. Mower voiced concerns about the drainage issue, and she also said the management plan for the open space should be turned over to an independent party. She said there were many good arguments for this, and noted an email from the Chair of the North Hampton Planning Board regarding this issue. She read this email.

She said this was a precedent setting application, and said it was important to emphasize the word conservation in conservation subdivision.

Ms. Day said the idea of having a clustered design and cul-de-sacs was to her a much worse proposal, and said the present design, where the lots fronted on Bagdad Road made a lot more sense.

Ms. Mower said because they were all new to the idea of conservation subdivisions, it would take awhile to get used to the idea of clustering.

Councilor Needell said some thing to be addressed the next week related to some of the comments that night regarding secondary conservation areas. He said he was not sure the consultation with the Conservation Commission had occurred, noting that this had been envisioned to be an interactive process to help determine what the layout for a conservation subdivision should look like. He said there had been some give and take with the Planning Board during the design review process, but he said the interaction with the Conservation Commission appeared to have been missed.

Mr. Caldarola said he would welcome having the Conservation Commission take a look at the layout.

Councilor Needell said the ownership issue appeared to be driving a lot of the concerns. He said how the buildings would be placed on the site was a different issue, and said there might be room for compromise concerning that second issue. He also said the stewardship issue was important, and noted that the plan currently called for the Town to be the steward. He said he didn't feel that was appropriate.

Mr. Kelley asked if the open space numbers on the plan sheet, 404,018 sf, were still valid, and included approximately 40,000 sf more than was required. Told that these numbers were correct, he then asked whether, if the legs of open space separating the lots was subtracted out, this acreage would amount to more than 40,000 sf. Mr. Hull said probably not.

Ms. Harris asked if there was a checklist for this conservation subdivision. There was discussion about this, and Ms. Harris said this checklist should be reviewed by the Board.

Councilor Needell said the proposal did not appear to be complying with step 2, which said that the building sites should generally be located at least 10 ft from the primary conservation areas and 50 ft from the secondary conservation areas. He provided details on this.

Mr. Caldarola said he hated the word "generally", and also saw that on a site like this, if there were 50 or 100 ft buffers from the open space, there would be no developable land. He described how he had interpreted this language.

Councilor Needell said if the applicant wasn't trying to use the compensating area approach, there wouldn't be a problem with this, but he said the design actually carved into the protected areas, which seemed to fly directly in the face of the buffer idea. He said this raised some concerns.

Mr. Caldarola said he was simply trying to avoid building in the back area, and said the only way to do that was to develop the front of the lot. He said that regarding the setbacks, the Ordinance should instead say "always" or "never", but not "generally".

Ms. Harris said this was the kind of thing that the Conservation Commission should be discussing with the applicant. She said this was apparently something the Board missed, on the nonexistent checklist.

***Richard Kelley MOVED to continue the public hearing until June 6, 2007, and to have Mr. Caldarola speak with the Conservation Commission. Wayne Lewis SECONDED the motion, and it PASSED unanimously 7-0***

**Recess from 8:36-8:45 pm**

Chair McGowan said that given the Board's schedule, he would like to see a motion on whether the Board wanted to put a time limit on individuals speaking at the hearings.

***Annmarie Harris MOVED to limit the time per speaker to five minutes. Richard Kelley SECONDED the motion.***



Mr. Kelley said it would be nice to hear new comments from those people who had spoken before.

*The motion PASSED unanimously 7-0.*

V. **Continued Public Hearing on a Site Plan Application** submitted by Steven F. Kimball, Auburn, New Hampshire, for the building of a 16-unit residential unit and a 4000 square-foot commercial, mixed-use building on a piece of property. The property involved is shown on Tax Map 2, Lot 6-0, is located at 20 Strafford Avenue and is in the Professional Office Zoning District.

VI. **Continued Public Hearing on a Conditional Use Permit Application** submitted by Steven F. Kimball, Auburn, New Hampshire, for the building of a 16-unit residential unit and a 4000 square-foot commercial, mixed-use building on a piece of property. The property involved is shown on Tax Map 2, Lot 6-0, is located at 20 Strafford Avenue and is in the Professional Office Zoning District.

Ms. Fuller and Mr. Ozenich came back to the table.

The applicant's engineer, John Chagnon, noted there were a number of issues identified at the previous meeting. He said one issue was the height of the building, which the applicant was asking for a waiver from. He said a balloon test was done that day, and he provided pictures of this. He said the balloon was placed at the top of the parapet.

He said a model lease would be discussed by Mr. Kimball. He said the traffic report had been provided, and noted that he had gone over this at the previous meeting. He said the Conservation Commission had discussed the plans at their most recent meeting, and wanted feedback from Mr. Rozine, He said their concern related to the long term efficacy of the porous pavement system.

He said parking for the proposal was something the applicant was willing to be flexible on. He said there had been discussion about cutting back the back end of the parking lot to keep it as far away from the abutters as possible. He said the applicant wanted the same amount of parking for the commercial uses, but felt there was some flexibility in calculating the parking needed for the residential use.

He said they would like the further comments from the public before making further changes to the application.

Councilor Needell asked what eliminating some of the parking as requested would do to the percentage of impervious surface.

Mr. Chagnon said it would probably put it under 40%.

Mr. Kelley noted a clock was proposed on a rear elevation, and was told that was an architectural feature.

Mr. Kimball discussed the model lease he had provided, noting that the provisions were from the lease he currently used. He noted, among other things, that there was no right to have a motor vehicle without a separate agreement for a parking space; that compliance with the law was a provision of the lease; and that residents weren't allowed to sublet or have more than eight people including themselves in the apartment at one time. He said a new provision that had been included had to do with noise and disruptive activity, and he read through this.

THE HEARING WAS NOT OPENED.

\_\_\_\_\_, **8 Meadow Road**, said he supported content of the letter from Mr. Gooze and other neighbors, concerning the proposed minimal conditions. He said his wife, Amanda Merrill, also supported this letter.

**Jay Gooze, 9 Meadow Road**, said the proposal he had made before still stood. He noted that a lot depended on the Conservation Commission, and said he didn't know where they stood regarding the size of the project and the wetland buffers. He said he would prefer to get comments from them and have the chance to respond before closing the public hearing.

He noted that the Board had recently received a number of emails from residents of the area concerning some of the issues involved with the project. He said his own request related to the close proximity to the development. He noted that this mixed use development was a completely new thing for this area of Town, and said they would like the fencing to go around the parking area, toward the building, in order to protect the area from students passing through.

He said he understood a three story building was requested, and said it was realized that the height would be whatever it had to be to make this possible.

Mr. Parnell asked Mr. Gooze where he would like the fence to go, and Mr. Gooze provided details on what would be best in order to direct pedestrian traffic away from the neighborhood, and toward the University.

Mr. Campbell asked if they wanted the fence right next to the parking lot, and there was discussion.

Ms. Harris noted that landscaping could be used as part of this.

Mr. Campbell pointed out that the Police Chief had expressed concern in the past about shrubs and trees being used as possible hiding areas near parking areas.

There was discussion that the key issues regarding the fencing were minimizing glare, noise, and the congregating of people near the residential areas.

Mrs. Gooze said the tree buffer could go on the other side of the fence, to stop as much sound as possible.

Councilor Carroll noted that at the previous meeting, Mr. Gooze had discussed the idea of eliminating some of the parking spaces, She asked him to go over this again.

Mr. Gooze said this depended on the Conservation Commission comments, but he said that in walking the site that day, he had seen how 18 ft of parking could be eliminated in proximity to his house. He said he was ok with that amount if there was also a fence installed there.

Mr. Kelley said it appeared that the fencing would make it look like a boxed in area. He asked if it would be possible to put the fence elsewhere to inhibit pedestrian movement yet allow for a better looking viewscapes from the front of the building. He said perhaps the fence could be put on abutting property lines, etc.

There was discussion with Mr. Gooze regarding how the fencing would look.

Ms. Harris said there were details to be worked out concerning this, including the use of landscaping.

Councilor Needell noted emails from residents that referenced the idea of limiting the sale of alcohol with the conditional use. He asked what the Board's purview was concerning this, and whether the type of retail could be limited as part conditional use.

Mr. Gooze suggested that Mr. Kimball could offer this as a condition.

Mr. Kelley said he felt the Board could make this a condition, as a fiscal as well as a quality of life issue.

Councilor Needell said it wasn't clear whether the Board had the authority concerning this, given the State's role. He also said retail was a permitted use in this zone, and said there was a question regarding how the Board could address this.

Chair McGowan said Mr. Kimball was aware of the concerns of the abutters and the neighborhood concerning this.

Ms. Harris said this was a concern raised throughout the Town regarding this issue.

Mr. Chagnon said the applicant would be willing to talk about these issues with the Board during the deliberations. But asked if there was a concern regarding retail uses that he hadn't been aware of.

Councilor Needell noted this issue had been brought up by some of the neighbors, and said a question was whether this was something the Board could do, and if so, how.

Mr. Chagnon said the applicant would be willing to listen, if the neighbors wanted to explain their concerns regarding this.

Chair McGowan said that given that the Board had not heard from the Conservation Commission, the public hearing should be continued.

Mr. Ozenich, the Board's representative to the Conservation Commission, said its meeting could not be held because it wasn't properly posted. He also said the Conservation Commission would like the

public hearing on this application to be continued, but he said it would have to call a special meeting in order to be able to provide input for the next Planning Board meeting.

Mr. Campbell said he would like this to be on the June 6<sup>th</sup> agenda.

Mr. Ozenich said Dr. Rozine had provided comments to the Conservation Commission. He said Mr. Rozine had said that the impervious paving system was meant to address the hydrological issues regarding storm water runoff, not the ecological issues. He said Mr. Rozine said the wetland buffer was intended to protect ecological functions of a wetland, and said this would still be a built environment. He said Mr. Rozine said the Town would need to carefully consider the purposes of its impervious cover limits in order to insure that these regulations were written to deal with these porous pavement systems and still realize the desired outcome on the site.

He said Mr. Rozine said the amount of involvement with this project was probably overstated and said he still needed to review the hydrology, especially as it related to the runoff from the building. He said Mr. Rozine recommended that the vacuuming requirement be written into the deed, and that it occur 2-4 times per year. Mr. Ozenich said these would be the main items the Conservation Commission would be looking at, with the big issue being the impervious surfaces.

***Richard Kelley MOVED to continue the public hearing until June 6<sup>th</sup>, 2007.***

He said the hearing could be continued again if the Conservation Commission hadn't met in time for this Planning Board meeting.

***Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.***

**VII. Continued Public Hearing on a Site Plan Application and Subdivision Application** submitted by Cuthartes Private Investments, Boston, Massachusetts, on behalf of Stonemark Management Co., Inc, Stratham, New Hampshire to build a 78 unit, age-restricted condominium development. The property involved is shown on Tax Map 1, Lot 6-8, is located at 97-99 Madbury Road, and is the Residential A Zoning District.

Chair McGowan said he would like the Board to hear things it hadn't yet heard, in order to move things along.

Mr. Farrell said he had no formal comments to make, and was present to respond to comments from the public and the Board.

**Peter Flynn, Madbury Road**, entered into the record a letter sent to former Chair Kelley regarding concerns about drainage. He said he had provided pictures before and after the storm event, which showed that the area where he lived was already overtaxed without this development. He said the drainage report indicated that post construction, there would be fewer drainage problems, but he said the pictures perhaps showed a different perspective.

**Attorney Scott Hogan** said the applicant had presented a letter dated May 18<sup>th</sup>, 2007 that was a summary letter and which said that the abutter's "repeated demands to revisit the decision (on

density) were hindering the efficient handling of the application.” He said he had talked about the process throughout this proceeding, and had tried to provide comments that were helpful and new. He said what he had tried to do was ask that the decision be revisited. He noted the Board’s discussion on this at the previous meeting. He said he felt the decision was fundamentally flawed, and asked again that the Board address this issue. He said if it wasn’t addressed, everything after this was moot.

**Robin Mower, Faculty Road**, noted that she had spoken earlier regarding the Caldarola application, and she asked Board members to refer to her comments made concerning it. She said little had been said about the conservation aspect of this present development proposal, and she provided details on this, noting among other things that the so called management plan consisted of bits and pieces.

She encouraged the Board to request that the developer revise the condominium documents and prepare a single document that covered the utilization and management of the open space, for the reasons referred to in the Caldarola document she had prepared. She also urged the Board to take steps concerning this application so that it would not be a conservation subdivision in name only.

**Chris Cairns, 8 Rocky Lane**, said he had provided a letter some months back. He said Rocky Lane existed too, and he asked that buffering be required toward the Rocky Lane cul-de-sac. He said his house looked right at the broad side of the project. Mr. Cairns also said that while everyone wanted as much open space as possible, the question was what the cost was for this. He said there was no free forest out there, and said they would be paying way too much for this one.

Chair McGowan asked if the applicant wanted to respond to comments from the public.

Attorney Ari Pollack said he would respond to one point regarding management of the conservation areas. He noted the condominium documents, and the deed restriction language that had been provided. He said he assumed this language would be reviewed by the Board’s counsel, either as part of the deliberative process or as a condition of approval. He said this didn’t matter to the applicant. He said the issues had been addressed in the documents, perhaps in a piecemeal fashion, and said if the Board preferred to see this in a stand alone document, they would be glad to do this.

Councilor Needell said that would be helpful. He noted the requirement for a management plan, and also said the question was who was in charge of the actual management of the conservation area.

Attorney Pollack said the homeowners’ association would be responsible for this management.

Councilor Needell said the open space common area and other common space in the development were essentially treated the same in the documents. He said his concern was that this was a conservation subdivision, and the common open space was land that was set aside in perpetuity, and was not the same as other common areas in the development. He said it seemed that this language should be separated. There was further discussion on this.

Councilor Needell noted section 9.09, subsection D concerning stewardship, and said the party doing the monitoring needed to be qualified in land management. He said this wasn’t the homeowners’ association, and he also said it was not a reasonable expectation that the Town would do this.

Mr. Garvey said the applicants had originally met with the Conservation Commission concerning this, and it had suggested that this be done by a qualified organization. He said these organizations had been sought out, but had said the he parcel was too small. He said the Conservation Commission had suggested there should be a deed restriction. He said if the applicants needed to put in a management plan and to find an organization to be in charge of management, they could go back to the Conservation Commission concerning this.

Mr. Kelley said he was a former director of a condo association, and said the idea of bundling things together for the common open space area would be beneficial. He also said a land management plan could be done by a professional, and could then be monitored by the association.

Attorney Pollack asked if the Town had a format for a management plan that the applicant could use, and there was discussion. He said they were simply trying to be responsive on this issue.

Councilor Needell said it seemed the Board was not following what the regulations said, and needed to address this in some way. There was discussion about this.

Mr. Farrell suggested that a wildlife ecologist and timber management specialist could write the management plan, which could be a guide for the association to use. He said what the resource was and how it needed to be protected could be part of the documentation.

Attorney Pollack said the applicants would happily respond concerning this.

Robin Mower said when she went through the condominium documents, she completely missed this language, and said homeowners might also miss this. She said this was an important reason why a separate document was needed. She recommended that the Randall Arendt book should be looked at, noting that there was a chapter in it on open space management. She also said she was sure there was a consultant who would take this on.

Mr. Campbell noted that there was a letter from the Conservation Commission concerning this application, which endorsed protection of the land in the open space area. He read the language concerning this, which recommended adding wording in the condominium bylaws concerning open space management and maintenance, and putting a deed restriction on the parcel, which should be held by the Town. There was discussion on this.

Mr. Campbell recommended that the language be combined into an open space management plan.

Mr. Ozenich said he had realized in looking at the condominium documents that the units were rentable. He also asked if one could buy 10 units of this proposed development, and said if he bought a certain number of units, he could pretty much control what went on there. He noted that he had heard of the renting out of units at another development, and that this had cause concern among some of the residents there.

There was detailed discussion on this with Attorney Pollack, who stated that everything that was done had to be done within the constraints of the Zoning Ordinance. He also said the applicant was planning to build the units and sell them, but he said the applicant could provide a formal statement

of intent.

Mr. Farrell said the percentage of units tailored to people over 55 didn't pertain to individual units, and was a rolling percentage of the residency at any given time.

Mr. Ozenich suggested that someone could still buy up a whole floor.

***Councilor Needell MOVED to waive the privilege in the email dated May 16, 2007 from the Board's Attorney. Richard Kelley SECONDED the motion.***

Councilor Needell explained that this was a response to questions posed at the last Board meeting.

***The motion PASSED 6-0-1, with Mr. Ozenich abstaining because he was not at the meeting.***

Chair McGowan said one question was if a member of the Board originally voted against the density, could they vote against the project, and the answer was yes. He said the second question was whether the Board could revisit the density issue, and the answer was yes. He noted that a member who had voted in favor of the original motion would have to make the motion to reconsider it.

***Lorne Parnell MOVED to close the public hearing. Richard Kelley SECONDED the motion.***

There was discussion that an outstanding issue was the documentation concerning the open space. Mr. Campbell said other issues still to be discussed were a stewardship account that would have to be set up, and the waiver request concerning impact fees,

***The motion PASSED unanimously 6-0-1, with Mr. Ozenich abstaining.***

It was noted that deliberation on this application would take place at the next meeting, and would be the only thing on the Agenda that evening.

**VIII. Acceptance Consideration on a Subdivision Application** submitted by Gary & Nancy Lonsinger, Durham New Hampshire for subdivision of one lot into 2 lots. The property involved is shown on Tax Map 15, Lot 18-5, is located at 23 Timberbrook Lane, and is in the Residential B Zoning District.

Mr. Lonsinger spoke before the Board. He said he and his wife owned the lot, about 49 acres, had built a house on the lot on the Timberbrook side, and wished to subdivide that off and gift it to their son and daughter in law. He said it was a straightforward one lot subdivision. He said two acres were being taken off, where the house was now located.

Mr. Kelley asked if the application was complete.

Mr. Campbell said that depended on the Board. He said the applicant had requested some waivers. He said they were exempt from having to do a conservation subdivision, so had requested a waiver from the HISS requirement, the conceptual consultation and design review, the boundary survey for the larger parcel, the location of property lines for the entire undivided lot, the conservation open space stewardship plan, the construction plan, the engineered stormwater analysis, and the 4 step design process. He said a lot of these waivers were for things that dealt with a conservation subdivision.

Mr. Campbell said he didn't have a problem with these waiver requests, and he recommended that the Board vote on them that evening. He said there were some minor things the applicant would have to address, including referring on the plan to a subdivision of land rather than a plat of land, and showing where the Class V road ended and the Class VI road began so this was clear at the Registry of Deeds.

Ms. Fuller asked if the lot created would be on a Class VI road, and the Fire Department had no concerns regarding this.

Jim said the applicant went through the Conservation Commission, the Parks and Recreation Commission, and went through the Town Council for the waiver of liability to build on the Class VI road. He said he also received the building permit and driveway permit, and noted that the Public Works Department had provided a reminder that he had to pave the driveway by July 13<sup>th</sup> or the permit would be null and void.

There was discussion on previous plans done for Mr. Lonsinger's property. Mr. Lonsinger provided some history on this, and said that 20-25 acres were subdivided off in the 1980's, which was what some of the plans referred to. There was discussion as to whether any of the plans from the early 1990's would show the meets and bounds for lot 5A and 5B.

Chair McGowan asked if there were future plans for lot 5A, and Mr. Lonsinger said not for seven years.

***Richard Kelley MOVED to grant the waivers as shown in the summary of requests from the Planning Director dated May 18, 2007. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.***

***Richard Kelley MOVED to accept the Subdivision Application submitted by Gary & Nancy Lonsinger, Durham New Hampshire for subdivision of one lot into 2 lots, and to set the public hearing date of June 13, 2007. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.***

**IX. Conceptual Consultation on a Site Plan Review** submitted by Garvey & Company, Durham, New Hampshire on behalf of Rockingham Properties 1, Ltd., Belmont, Massachusetts for the development at Stone Quarry Drive and Valbeth Lane. The properties involved are shown on Tax Map 11, Lots 8-1 through 8-15 and are in the Office/Research Route 108 Zoning District.

Mr. Garvey spoke before the Board. He said the project was approved in February of 2004, and said they planned to develop the property as soon as there was a TIF district. He said they couldn't develop the property without water and sewer, but noted that between \$300,000 and 350,000 in tax revenues would be generated for the Town as a result of the development.

He said Mr. Campbell had spoke with Attorney Mitchell regarding what Zoning they were subject to, and said it appeared to be the old Zoning.



Mr. Campbell said that was the way it was leaning at that point, since the project was approved and the papers were signed off and recorded in early February of 2004, which was before the first set of zoning changes were passed. He said at the time of the approval, the front 12 lots of the 15 lot subdivision were in the Limited Business District, and the back 3 lots were in the RB district. He said when the project was approved, the developers were asked to hold off on developing the back 3 lots, until the new Zoning passed. He provided details on this. He also said the State allowed for a 4-year exemption from the Zoning Ordinance.

Mr. Garvey said because of this background, he wanted to come and talk with the Board about his plans, and to get feedback on what the Board would like to see for this development. He said some important issues were the view of the development from Route 108, the importance of having good looking buildings and landscaping, and that everything be designed to mask but not hide the buildings.

Mr. Garvey next showed the subdivision plan, and described it.

Mr. Kelley noted that with this sort of design, there could be 15 separate parking lots.

Mr. Garvey said hopefully not. He passed out some conceptual drawings, and said one thing he was talking about doing was combining some of the lots, and said the idea was to master plan these 6 lots first. He said the first few users they had talked to were medical users, whose parking needs were 40% greater than the normal need for parking. He said he had tried to put the buildings toward the front, and the parking toward the back. He said in this way, one shouldn't be able to see the parking. He said they would try to keep the trees there and to supplement them as well. He said the buildings would be about 300-350 ft back from Route 108.

He said another concept was to discuss putting some parking underneath, which would depend on the medical business's need for storage. He also provided details on how there could be cross easements for the parking, where the parking would be on the lot of one business, and there would be a cross easement for the other business.

Mr. Kelly asked if the intent was to sell the lots, and Mr. Garvey said yes. .

Councilor Needell asked what the impervious surface ratio was for the Limited Business District, and there was detailed discussion about this. He was told that the buildings could not occupy more than 50% of the lot and that the development would meet this with no problem.

Mr. Garvey said porous pavement would be used, to make the site the best it could be. He spoke about other experiences he had with this technology.

He said he would probably hold back for now the 2 lots toward the front, which provided the most view as one drove by. He said he was wide open to input from the Board on the development of the 6 lots.

Mr. Kelley noted the detailed specifications on the porous pavement, and asked if Mr. Garvey had gone through the construction effort on this yet with another project.

Mr. Garvey said he had not, but said Mr. Rozine had. He said they had also spoken with the contractors and there was one company that met this spec.

In answer to Councilor Needell, he said they were leaning toward having a single story building, potentially with record storage below, which could also be parking if that storage area wasn't needed. He noted the Frisbee building on Route 125 in Barrington might be used as a model, stating that it had good lines and blended well with the environment. He said he liked good looking buildings. and said that what was built on this site would be a nice looking building.

In answer to Mr. Kelley, he said he owned the land to the north of Stone Quarry Drive. He said there were no plans for that parcel at present.

In answer to Chair McGowan, he said they would love to begin construction by early summer

Ms. Harris said a ramification of this development was that water and sewer were needed, and if this was put in, there might be development all the way out to the Madbury town line.

Councilor Needell said a question was what the TIF district would encompass, but he agreed that once the sewer was installed, this reduced the cost of extending it.

Ms. Harris said the Economic Development Committee was talking about extending the TIF district all the way out There was discussion about possible extension of the district to include Jackson's Landing, and the inclusion of other infrastructure other than water and sewer.

Councilor Needell said the TIF district would need separate discussion, and said it was a deal breaker for this project.

In answer to a question from Councilor Needell, Mr. Garvey said there would be sufficient revenues to fund the TIF from the project, if the 10,000 sf building were constructed. He said he had been in discussion with Don Jutton regarding the TIF district, and said they would try to get this moving by the summer. He said there were other advantages to the TIF district besides the extension of water and sewer, and he provided details on this. He said if down the road the Town was looking at expanding its revenue base, it would help with this, and said that would be a Council decision.

There was discussion by Mr. Garvey on possible scheduling of the project.

Mr. Kelley asked what the Board's role was in all of this, given that the approval was already received, and that Mr. Garvey was looking to consolidate some of the lot lines. There was discussion that a lot line adjustment would be needed, and that the project would then go through site plan review.

Councilor Needell asked if what Mr. Garvey wanted to do would be significantly impacted if it had to follow the new Zoning, and Mr. Garvey said absolutely. There was discussion on this.

Mr. Kelley said he was happy to kick around some ideas, but said it didn't make sense to go too far until they knew the TIF district would happen.

Mr. Garvey said that was understood. He described informal collaborative discussions he had had with another local board recently, which had worked well.

Councilor Needell spoke about the importance of specificity regarding the TIF district as part of the process. He also asked whether the lot line adjustment would impact the relevance of the particular version of the Zoning Ordinance that was used. He also noted outstanding issues concerning how impervious cover requirements were treated, given the use of porous pavement in a development.

There was discussion about how the impervious surface issue would be dealt with for future development of lots beyond the initial 6 lots. Mr. Garvey said for the entire parcel, there would probably be that not more than 30-40% impervious cover, although the percentage for the 6 lots in the middle would be greater.

Mr. Kelley said ideally, he would like to see the 2 lots in front stay in their natural state. Mr. Garvey agreed it was better to keep them open, for a period of time.

Mr. Kelley asked if Mr. Garvey was planning to consolidate other lots and he said he was, and provided details on some of his plans for the other lots in the subdivision. There was discussion on this.

Mr. Garvey said they would also have to discuss how to deal with the lots that had been in the RB district, and had been held back. There was discussion.

Ms. Harris asked if there would be uniform design standards applied so that there would not be a “hodge podge” of buildings, and there might be a village feeling to them.

Mr. Garvey said no, but said buildings that would be built would be similar in character, and would have unique identifications to each of them. He said he wouldn't be building all of them but would be building some, and said he would have architectural control over each of them. He said each building would have architectural significance that was similar to what Durham would be expected to have. He said they would have their own design standards that would be followed.

Ms. Harris said it would be desirable for Durham would have some assurances concerning this. There was discussion with Mr. Garvey regarding this.

Councilor Carroll noted a map of farmland put out by Strafford Regional Planning Commission, and said this map showed that this development was located on prime farmland soils. She said there was only a certain amount of good agricultural soils in Durham, and said this was a resource for the landowner as well as the whole community. She said the issue is whether the food system was sustainable.

She said much of the development proposed in Town was over some of the best soils, and said the Town didn't have any way to protect them other than through conservation easements. She said if there was a way to develop a parcel and save the best farmland, for this or other developments, it was important to consider this.

Ms. Harris said in the future as oil reserves disappeared, the region would have to be able to produce its own food.

Chair McGowan asked Mr. Garvey to keep the Board up to date on his plans, and Mr. Garvey said it should be an interesting journey.

**X. Other Business**

**A. Old Business:**

**B. New Business**

**C. Next meeting of the Board: May 30, 2007**

Ms. Harris left the meeting.

**XI. Minutes**

April 18, 2007

*Councilor Needell MOVED to approve the April 11, 2007 Minutes. Lorne Parnell SECONDED the motion, and it PASSED 5-0.*

**XII. Adjournment**

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

**Adjournment at 11:03**

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Susan Fuller, Secretary