

These minutes were approved at the February 26, 2014 meeting.

DURHAM PLANNING BOARD
Wednesday, October 9, 2013 at 7:00 p.m.
Town Council Chambers, Durham Town Hall
MINUTES

MEMBERS PRESENT: Peter Wolfe, Chair
Mr. Kelley Kelley, Vice Chair (arrived at 7:11 pm)
Andrew Corrow, Secretary
Bill McGowan (arrived at 7:47 pm)
Councilor Lawson, Council Representative to the Planning Board
Councilor Smith, alternate Council Representative to the Planning Board
Wayne Lewis, alternate
Jennifer Pribble, alternate

MEMBERS ABSENT: Lorne Parnell
David Williams

I. Call to Order

Chair Wolfe called the meeting to order at 7:01 pm.

II. Roll Call

The roll call was taken.

III. Seating of Alternate

Mr. Lewis and Ms. Pribble were seated as regular members for the meeting.

IV. Approval of Agenda

V. Planner Report

Chair Wolfe said there had been a meeting that day with Mr. Behrendt, Administrator Selig, Conservation Commission Chair John Parry, and Councilors Robin Mower and Diana Carroll regarding the issue of the trees at the Peak development. He said Peak would be coming to the Planning Board with a request for modification of the current layout. He said Mr. Parry had estimated that up to 15 trees that shouldn't have been cut had been cut, and said the average diameter of these trees was over 10 inches. Mr. Behrendt said there would probably be a public hearing when Peak came back to discuss the basal area that had been cut and the remediation that would be necessary.

He said another issue with the Peak project was that there hadn't been enough gravel put down at the entrance ways to prevent mud there. He said Mr. Cedarholm and Mr. Lynch had been out at the site to discuss remediation measures so this wouldn't happen again.

Chair Wolfe noted that he and Mr. Behrendt had recently met with Administrator Selig and Chair Gooze concerning some possible Zoning changes initiated by the Town Council.

VI. Public Comments

No comments

VII. 118 Piscataqua Road. Application for Condominium Conversion and Site Plan for a **4-unit condominium for seniors**. Submitted by **Alexander Bakman**; MSC Engineers, Engineer/Surveyor; Scott Hogan, attorney. Tax Map 11, Lot 24-4, Residence C Zoning District. *Recommended action:* Acceptance as complete and setting the public hearing for November 6.

Chair Wolfe noted that the Planning Board hadn't accepted this application previously because of some questions Councilor Smith had raised regarding parking and the garage. He said these issues had been resolved.

Attorney Scott Hogan represented the applicant, and explained when the application had previously been before the Board, there had been an issue concerning parking in front of the building, but said Code Officer Tom Johnson had issued an opinion that had resolved this issue. He said Mr. Johnson had also raised the issue that there were 4 surface parking spots in front. He said these parking spaces had been relocated and so were now outside of the setback, and said the revised plans indicated this. He also said condominium documentation, floor plans, and other documentation had been provided, as requested by the Planning Board.

Mr. Behrendt said the application was complete.

Richard Kelley MOVED to accept the Application Submitted by Alexander Bakman for Condominium Conversion and Site Plan for a 4-unit condominium for seniors at 118 Piscataqua Road, Tax Map 11, Lot 24-4, in the Residence C Zoning District, and to schedule the Public Hearing for November 6th, 2013. Councilor Lawson SECONDED the motion, and it PASSED unanimously 6-0.

VIII. Great Bay Kennel Dog Day Care Facility - Request for **Extension** of Conditions of Approval and CUP

Michael Sievert of MJS Engineer spoke on behalf of Great Bay Kennel, and explained that they were asking for a 6 month extension in order to be able to finish up all the paperwork concerning the 6-7 pages of conditions of approval for the Conditional Use Permit application that was approved by the Planning Board.

Mr. Kelley asked what the hold-up was, and Mr. Sievert said it was getting the final State driveway and septic permits. He provided details on this.

Councilor Smith said the September 26th memo sounded somewhat iffy, concerning plans to construct the project in the future. Mr. Sievert said as long as all of the approvals were in place, there would be 4 years for the Sawyers or someone else to go forward with the project. He said it would be a waste if the project didn't go forward. Chair Wolfe noted that the approval of the application went with the land. Councilor Smith said he understood that, and said if the Sawyers sold the property, the project would have to be constructed as approved. Mr. Sievert said this would be a requirement.

Richard Kelley MOVED to approve the Request for Extension of Conditions of Approval and CUP to April 24th, 2014 at the request of the applicant, Great Bay Kennel Dog Day Care Facility. Councilor Lawson SECONDED the motion, and it PASSED unanimously 6-0.

- IX. Public Hearing - 18 & 22 Colony Cove Road.** Formal application for **Boundary Line Adjustment** submitted by **Kathleen Lohnes** to change the boundary between two lots and to clarify the boundaries of an old subdivision. Tax Map 12, Lots 25 & 26. Residential Coastal Zoning District. Recommended action: Final action.

Ms. Lohnes noted that she lived at the house located on Lot 25, and said her daughter would like to build a house on lot 26. She said in order to make the lots better, she would like to exchange strips of land of equal size from one of the lots to the other.

Mr. Kelley noted that the Planning Board had heard from Fire Chief Corey Landry that the Fire Department felt that the emergency access available for the vacant lot was sufficient.

Wayne Lewis MOVED to open the Public Hearing on an application for Boundary Line Adjustment submitted by Kathleen Lohnes to change the boundary between two lots, and to clarify the boundaries of an old subdivision, for the properties located at 18 and 22 Colony Cove Road, Tax Map 12, Lots 25 & 26 in the Residential Coastal Zoning District. Richard Kelley SECONDED the motion, and it PASSED unanimously 6-0.

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

Richard Kelley MOVED to close the Public Hearing on an application for Boundary Line Adjustment submitted by Kathleen Lohnes to change the boundary between two lots and to clarify the boundaries of an old subdivision, for the properties located at 18 and 22 Colony Cove Road, Tax Map 12, Lots 25 & 26 in the Residential Coastal Zoning District. Andy Corrow SECONDED the motion, and it PASSED unanimously 6-0.

Mr. Kelley noted that he had previously suggested that the delineation of the opposite side of the right of way line should be provided as part of the application. Mr. Behrendt said this had been included as a condition of approval, and he provided details on this. Mr. Kelley said they hadn't seen the deed. Mr. Behrendt said a precedent condition was that there would need to be an easement submitted to the Planning Department for the

driveway, including language on maintenance of the driveway. He said this would mean that Mr. Cooley would have the right to maintain the right of way, if it wasn't otherwise maintained.

Mr. Kelley said his question pertained to the deeds of the revised lot with the boundary line adjustment. Mr. Behrendt said that because both of the lots were owned by Ms. Lohnes, no deed was required, and recording of the plat would be sufficient. He said if Ms. Lohnes conveyed lot 26 to her daughter in the future, a written instrument would be needed.

Precedent Conditions of Approval

- 1) Plan modifications. The plan drawings are to be modified as follows:
 - a) Change approval block on each page of drawings for signature of Planning Department. It should read: "Final Approval by Durham Planning Board. Certified by _____ Date _____"
 - b) Clarify the width of the right of way area and clarify whether this should be referred to as a "right of way" or "driveway easement."
 - c) Show the vacant lot to be numbered as 18 Colony Cove Road.
- 2) Plan notes. Add the following notes (or equivalent) to the plan drawings:
 - a) "For more information about this boundary line adjustment, or to see the complete plan set, contact the Town of Durham Planning Department, 15 Newmarket Road, Durham, NH 03824. (603) 868-8064."
 - b) "An indemnification form per RSA 674:41 (d) (3) must be recorded prior to issuance of any building permit on Lot 26."
- 3) Monumentation. Provide a certificate of monumentation to the Planning Department.
- 4) Signature. Sign this notice at the bottom.
- 5) Easement. Submit a written easement to the Planning Department for the driveway to be approved by the Planning Department. Include language about who will maintain the driveway.
- 6) Final drawings. The following complete sets of final approved drawings shall be submitted for signature (except the electronic version) by the Town: (a) one large set of black line drawings; (b) one large mylar; (c) one set of 11"x17" drawings; plus (d) one electronic version by pdf or CD. Each individual sheet in every set of drawings must be stamped and signed by the land surveyor, engineer, or architect responsible for the plans. (The primary set of plans was last received September 5, 2013)

General and Subsequent Terms and Conditions

- 1) Recording. The plat, this notice of decision (per RSA 676:3 III), and the easement must be recorded together at the Strafford County Registry of Deeds within two calendar months to the date the plat is certified (e.g. if certified September 9th they must be recorded by November 9th). See RSA 478:1-a regarding plat requirements. Failure to comply with this requirement herein shall render the lot line adjustment null and void.
- 2) Execution. The project must be executed exactly as specified in the approved application package unless changes are approved by the City.
- 3) Approval. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of this approval unless otherwise updated, revised, clarified in some manner, or superseded in full or in part. In the case of conflicting information between documents, the most recent documentation and this notice herein shall generally be determining.
- 4) Other permits. It is the responsibility of the applicant to obtain all other local, state, and federal permits, licenses, and approvals which may be required as part of this project. Contact the City of Rochester Code Enforcement Department at 332-3508 regarding building permits.

Richard Kelley MOVED to approve an Application for Boundary Line Adjustment submitted by Kathleen Lohnes to change the boundary between two lots and to clarify the boundaries of an old subdivision, for the properties located at 18 and 22 Colony Cove Road, Tax Map 12, Lots 25 & 26 in the Residential Coastal Zoning District, as revised this evening. Councilor Lawson SECONDED the motion, and it PASSED unanimously 6-0.

- X. Public Hearing (continued) - 15 Madbury Road and 8 Mathes Terrace.** Design review for site plan application for redevelopment of two residential lots for a three-story **mixed-use student housing development**. Submitted by **Kostis Enterprises LLC and Theodore Finnegan**; David Garvey, agent; Michael Mr. Sievert, MJS Engineering, engineer; Robin Wunderlich, designer. Tax Map 2, Lots 12-5 and 12-6. Central Business Zoning District.

Mr. Sievert said the applicants were requesting that the Public Hearing on the design review be postponed until November 6th. He explained that a number of changes were being made to the design, reflecting the concerns the applicants had heard.

Chair Wolfe asked how things were going regarding discussion with the neighbors, and Mr. Sievert said they were going ok. Chair Wolfe asked if the applicants would be coming back if there was no agreement with the neighbors, and Mr. Sievert said he wasn't sure about this.

Richard Kelley MOVED to continue to November 4, 2013 the Public Hearing submitted by Kostis Enterprises LLC and Theodore Finnegan for the Design Review for the Site Plan application for redevelopment of two residential lots for a three-story mixed-use student housing development at 15 Madbury Road and 8 Mathes Terrace, Tax Map 2, Lots 12-5 and 12-6 in the Central Business Zoning District. Councilor Lawson SECONDED the motion, and it PASSED unanimously 6-0.

- XI. Public Hearing - 25 Madbury Road** – Formal site plan application for the **addition of 8 parking spaces** and associated drainage improvements. Alpha Sigma House Corp. of **Kappa Delta Sorority**, applicant; Michael Mr. Sievert, MJS Engineering, engineer; Robbi Woodburn, Woodburn & Co., landscape architect; Scott Hogan, attorney. Tax Map 2, Lot 12-2. Central Business Zoning District.

Mr. Sievert noted that there had been discussion at the site walk about tree cutting and including additional landscaping in order to provide a buffer, looking across the lawn from Madbury Road from north to south. He said after the site walk, the landscape plan had been updated to reflect this. He said there was also discussion about bike racks, and noted that one had been found on the site, which could be moved over to the parking area if that made sense. He said he didn't think that the applicants were interested in having covered bike racks, and said what was there now worked for everyone.

He noted that Mr. Kelley had wanted to see a profile of the retaining wall, and said one had been developed. He provided details on what was included in the profile and what was involved in doing the retaining wall, and there as discussion.

Mr. Kelley noted that there had also been discussion about getting a letter from the sorority that they were ok with what was planned for the parking area. He also asked if the intent was to have engineered drawings, with a seal and signature, and Mr. Sievert said yes.

There was discussion on the updated landscape plan that included some new trees and shrubs by the parking area. Chair Wolfe noted that the Conservation Commission had said trees in that area could help with taking up runoff. Mr. Sievert also noted that the porous pavement used for the parking area would help with infiltration of stormwater.

Richard Kelley MOVED to open the Public Hearing on a Site Plan application for the addition of 8 parking spaces and associated drainage improvements at Alpha Sigma House Corp. of Kappa Delta Sorority, located at 25 Madbury Road, Tax Map 2, Lot 12-2 in the Central Business Zoning District. Andy Corrow SECONDED the motion, and it PASSED unanimously 6-0.

Chair Wolfe asked if there were any members of the public who wished to speak for or against the application. There was no response.

Richard Kelley MOVED to close the Public Hearing. Wayne Lewis SECONDED the motion, and it PASSED unanimously 6-0.

Mr. Sievert said the applicants would like to come back on November 6th. Mr. Kelley said he would like to see a letter from Kappa Delta Sorority at that time.

Mr. Behrendt said the existing bike rack on the site was conventional, and noted that there had been discussion about providing a different rack, in a different location. Ms. Pribble asked if it was known how people who lived at the sorority used the existing bike rack, and Chair Wolfe agreed that knowing this and where they would prefer to see it would be helpful. Mr. Sievert said he would find out.

Mr. Behrendt said there were some trees that were to remain on the site, but said it might not be clear which ones were to remain until construction. He asked whether as part of the possible approval of the application, the Planning Board wanted to specify that the landscape architect would be on site to mark the trees to be saved and the extent of disturbance, etc., in order to manage things more carefully, - or if this procedure would be saved for bigger projects. He noted that there was a larger conversation going on about this issue right now in Durham.

Chair Wolfe said if landscape architect Robbi Woodburn hadn't done the landscape planning at the bottom of the lot, he would have been more concerned about this issue. He said he just wanted to make sure that best practices were used concerning the trees on the site.

Mr. Kelley noted that the contractor was working for the owner of the adjacent property, and recommended that when the final plans for the wall and foundation were submitted, staging details could be included on the plan, or this could be put in the conditions of approval. He said with a downtown development, there were always concerns about staging and worker parking.

He noted that details on the retaining wall had been provided in order for the Planning Board to have a clear understanding of the limits of work and what the level of disturbance would be on the adjacent parcel. He also said it would be good to show the gas line in the plans, because the excavation for the retaining wall would be close to it.

Ms. Pribble said based on the feedback received concerning the Peak project, a question was whether the Board wanted to consider having the trees marked. She noted that she hadn't been at the site walk. Mr. Kelley suggested that this could be made a condition of approval. He noted that the information on the trees was in the plan. There was discussion that there was Japanese knotweed in back, and Mr. Sievert noted that the back area of the parking lot would contain a 5 story building. He said any remaining knotweed after construction could come down at another time.

Mr. Kelley said a letter should be provided about staging to be done on the abutters' property. He asked if there had been discussion with the owner about the idea of having a covered bike rack. Mr. Sievert said he would discuss this with the owner, although noting that it was their understanding that this wasn't necessary.

XII. Public Hearing 25-35 Main Street. Formal site plan application to redevelop three lots into a **mixed-use student housing development**. The proposal involves rehabilitating the houses at 25 and 35 Main Street, demolishing the houses at 27 and 29 Main Street, demolishing or relocating the barn in the rear, erecting two new houses fronting on Main Street, erecting two large new buildings, one in the rear and one fronting on Main Street. **Orion Student Housing**, Bill Fideli and Philip Wills, applicant; Allen and Major, engineer; Lisa DeStefano and Adam Wagner, DeStefano Architects, architect; Tim Phoenix, attorney. Tax Map 5, Lots 1-6, 1-7, and 1-8, Central Business Zoning District.

Mr. McGowan arrived at 7:47 pm

Architect Adam Wagner described again what was proposed with the project (see the September 25, 2013 Minutes for these details). He noted that the applicant would be meeting with the EDC next week concerning the issue of the viability of commercial space on the property. He said a variance would be pursued in regard to the commercial space requirement.

He said the residential portion of the project would be market rate apartments containing 390 sf per bed, which exceeded the Zoning Ordinance requirement of 300 sf/occupant. He said this was a pedestrian focused project, and noted that there would be bike racks located outside as well as in the basement.

He said 4 parking spaces were proposed on the site, and also noted that the previous application for offsite parking had been withdrawn. He said Orion would work with the Town on the calculations to determine what would be owed the Town in order to offset the parking that was required. He said this approach was allowed in the Central Business District.

Mr. Wagner said the applicant was aiming to have the large buildings achieve an Energy Star rating, and said they would meet with the Energy Committee on potential opportunities.

He said the architecture for the project focused on the two existing structures that would remain along Main Street, and keeping them consistent with the scale and fabric of Main Street. He said two new structures (buildings C and D) would be located in between these two structures. He also said Building A would have 2 stories facing Main Street and 3 stories behind that. He noted that the third story would be built into the roof line, which would bring it down so that the building would read more like two stories.

He said Building B would be located in the back, behind the buildings on Main Street, and would include fenestration and other details that were in keeping with the architectural design regulations.

Engineer Bob Clarke reviewed some of the technical details of the application. Among other things, he noted that the applicant proposed to install permeable pavement at the front of the site, where the 4 parallel parking sites were. He said the DPW had asked that overflow drainage be tied into the Town's sewer system, and said Orion would look into

that. He also noted that they had been asked to send a video camera down the line to the sewer outfall.

He noted that there would be a small courtyard between Building C and D, which would contain pervious pavement. He said they would match the lighting of the surrounding area, and said the project would be Dark Sky compliant. He provided details on where bike racks would be located on the site.

Mr. Clarke said the applicants would like to discuss with the Board what the parameters of the traffic study should be. He noted that they were willing to look into widening the sidewalk in front of the property along Main Street.

Councilor Lawson said it sounded like the Town's Technical Review Committee had provided some recommendations, and asked if the applicants had looked into how to comply with what had been suggested. Mr. Clarke said the stormwater design would comply with what the TRC had recommended.

Chair Wolfe spoke about access to the basement apartments, and specifically whether there was doorway access in case of an emergency. Mr. Wagner said the units would sizable have windows. He said they were not proposing doorways off the back of the building, but said there would be stairwells in the corner of Building B. Chair Wolfe said he was always concerned about basement apartments that didn't have an exterior door, because windows could get blocked. Mr. Wagner said he could confirm that the window was large enough.

Chair Wolfe asked how high the step up to the apartment was, and Mr. Wagner said the sills were at 3-4 ft, and ground level was slightly below that, so there wasn't a drop down after going out the window. Chair Wolfe asked how the owner would be sure that the area outside the basement windows would be clear, and Mr. Wagner said this was an operation and maintenance issue for the building owner. He said the windows would be a little higher than the windows in the Council chamber.

Councilor Lawson asked for the approximate square footage of residential space and commercial space, and also asked how many beds were proposed in the redevelopment, as compared to how many there were now.

Mr. Wagner said the total build-out was a bit over 86,000 sf, and said 83,000 sf of this was residential space, and 3214 sf was commercial space. He said 180 beds were proposed, and said there were 52 beds on the properties now. He said there were currently about 25 parking spaces on the property.

Councilor Smith noted that the parking issue had come up at the site walk. He said he wasn't sure that he understood the applicant's response regarding how many tenants living on the site now parked there.

Mr. Fideli said Orion had 425 parking spaces in Durham, and said 25 of them were on that site. He said residents of Orion's units didn't fill 100% of these spaces, and said the

company leased some spaces to nonresidents. He noted that there were some residents of the Grange who leased some of Orion's spaces.

Councilor Smith said he was raising this issue because in the past, a certain amount of parking was required relative to the number of beds. He said this was no longer true for the Central Business district, but said the impression he had was that the applicant leased spaces to nonresidents of its buildings. Mr. Fideli said Orion's preference was to lease 100% of the spaces to its residents, because it further enhanced the marketability of its properties, and allowed for better management. But he said the company didn't have a demand from current residents for those spaces.

Councilor Smith said it was his impression that many of the commercial enterprises in downtown Durham relied on a certain number of clients and customers arriving by car. He asked what chance the applicant had of having viable commercial space if it couldn't provide parking for customers. Mr. Fideli said the company owned properties in Church Hill, so commercial parking spaces could be allocated there. He said there were two commercial spaces onsite.

Councilor Smith asked if the amount of parking being provide on the site had to do with the limited commercial space relative to total space being provided for this project. Mr. Fideli said they wanted to have a viable project, and said it had been designed so that it would be viable.

Councilor Smith asked if consideration had been given to putting in a major chain restaurant that would bring in a lot of customers, many of whom would wish to arrive by car. Mr. Fideli said Durham didn't meet the demographic for this, and he provided details on his conversations with owners of some chains, including the owner of the Pizza Regina chain and the owner of Planet Fitness. He said there needed to be a certain number of people living within a certain radius, and available at various hours of the day, in order for a chain to set up a business in a specific location.

Ms. Pribble said that even with the small amount of commercial space proposed with the project, she questioned whether 4 parking spaces was enough in order to market that commercial space.

Mr. Kelley asked if the lack of parking played into the decision made by the owner of Pizza Regina. Mr. Fideli said if it got to the point where parking was a requirement of getting the business, Orion would have to consider the parking issue. But he noted that the property was located in a pedestrian area and said the demographics for Pizza Regina wouldn't have a problem with that. But he said he wasn't able to get that far in a conversation with the owner.

Mr. Kelley asked whether if the variance was denied, the application would be withdrawn or amended. Mr. Fideli said he believed that this project needed to get done, to clean up what was a blight on the Town, and also said UNH would benefit from it in marketing to students. He said it would benefit everyone. But he said if the ZBA had an unrealistic

expectation concerning the commercial space, there was only so much the company could give.

Mr. Kelley asked whether if Orion was unsuccessful before the ZBA, the Planning Board should expect to see the application amended or withdrawn. Mr. Fideli said he would expect it to be amended.

Councilor Lawson said the Planning Board had to ask itself if it wanted Main Street to be a sea of parking, which was a model that hadn't served the Town well in the past. He said the Town wanted to have a park once and walk environment for the downtown, and said adding parking to projects on Main Street didn't do that. He said going forward, with projects of 3600 sf or more, he would be an advocate for having people park in public parking areas and walk to their destination downtown, instead of losing valuable real estate to parking. He said this approach fit with smart growth principles as well as the parking studies that had been done in Town.

Mr. Kelley said he had heard earlier that there were 25 existing spaces, but said there were 51 spaces according to the site plan.

Ms. Pribble said she didn't want a sea of parking and said the park once and walk approach worked. But she said she thought the Board should consider requiring enough parking to make this viable for the businesses. She also asked about doing a traffic study.

Councilor Smith said he suspected that there would be a fiscal impact analysis. He also said that in the best possible world, he wouldn't want to see any parking for residential units within easy walking distance of UNH. But he said there was a significant impact on Durham from tenants who lived in buildings without parking. He provided some examples of where students sometimes ended up parking in Town. He said every new bedroom downtown that didn't provide parking put more pressure on the surrounding community.

Councilor Smith said he thought Orion's plan to have this many new beds and take away so many parking spaces was a real and growing problem in the community. He said he thought the Board should ask for a traffic analysis having to do with where people would park and how they would get to this site.

Chair Wolfe said the applicant had indicated that there would be some kind of traffic study. He said there would be some kind of pedestrian study, and said the Board could decide what else to require as part of this study.

Councilor Lawson said he disagreed, and noted that the applicant managed a pool of more than 300 parking spaces, and had indicated that Orion didn't lease all of those spaces, including to those people who lived in their properties. He said he didn't think that this applicant should be responsible for addressing the parking issues in Durham. He said the concerns would be valid if this pool of parking spaces didn't exist. He said he had no idea how one would conduct a vehicular traffic study for a project like this, in terms of estimating vehicle counts and where people would be parking.

Councilor Smith agreed that this would be difficult, but said he thought it was correct to assume that some percentage of the tenants would arrive with cars. There was discussion.

Councilor Lawson said the Planning Board had no way of knowing what kind of impact on traffic and parking this project would have, because there was no volume created that would affect a change in the traffic model. He said a traffic engineering firm would probably confirm this.

Councilor Smith said in other words, the Planning Board had no reason to expect to know what kind of impact this project would have on parking and traffic in the community.

Chair Wolfe said what Councilor Lawson was saying was that the applicant had adequate parking for the students that would be housed in this project. There was discussion. Councilor Lawson said he thought the Planning Board was smart enough to figure this out, and said it seemed like the wrong area to focus on.

Mr. Kelley said he personally wasn't smart enough to figure it out, and appreciated it that the applicant was looking for feedback from the Board on what the scope of the traffic study should be. He said there should be a primarily pedestrian/bike study at the intersection of Main Street and Madbury Road, with the goal of finding out what impact the project would have on that intersection. He said he would defer to the applicant's design professional to determine the physical limits of the study, in consultation with Mr. Behrendt or the Town's own traffic design professional.

Chair Wolfe said there should be a traffic study in front of Libby's, at different hours. There was additional discussion on what to focus on in the traffic study. Ms. Pribble said she would strongly suggest having the traffic study go to Route 108, given the foot traffic that went up the hill.

There was discussion on the property management plan for the project. Councilor Lawson said he would think that the Planning Board would ask for a management plan that was specific for this project, rather than just getting an overview of capabilities, etc. Chair Wolfe suggested that the applicant should check with other developers who had done recent projects in Town.

Mr. Fideli said Orion had looked at Peak's property management plan, and said they had followed what Peak did. But he said they would come up with the specific detail that was being requested. He said their plan was similar to what the Cottages did, and said there was security Thursday through Sunday. He said it would be a highly controlled property, and would not be an animal house. Councilor Lawson said it would be good for the Board to see the details on this listed.

Councilor Smith said based his experience at another large university, and knowing downtown Durham, he predicted that unless the property was extremely well managed, there would be safety issues, including regarding fire lanes. He said the applicants would need to address these issues very realistically.

Richard Kelley MOVED to open the Public Hearing. Andy Corrow SECONDED the motion, and it PASSED unanimously 6-0.

Beth Olshansky, Packers Falls Road, said she had mixed feelings about the project. She said there was no question that it would improve the streetscape, but said she was concerned about the lack of sufficient commercial space, with 3.7% proposed compared to the 33% that was required. She said that was a huge difference. She also said in reality, there were some 4 story buildings that were called 3 stories because of the inclusion of a floor that was a basement. But she said they were only being asked to be held to the commercial requirement for a three story building.

Mr. Fideli said they were looking to make 100% of 35 and 37 Main Street commercial space. He also said they could have maximized the density on the site but didn't, noting that the units would have almost two times the amount of square footage as other recent projects downtown. He said Orion felt it had done its part to reduce density, and felt it was in the best interest of everyone to have 390 sf per resident. He said they were building apartments, not dormitories, and were creating a nice community downtown.

Ms. Olshansky said she appreciated knowing that. She asked if the 390 sf units could be retro-fitted for other kinds of residents if there weren't enough students in the future, and

Mr. Fideli said yes. He said the apartments would be targeted to students, but said they would be open to anyone in the community who wanted to rent them. He said there were full sized kitchens, and washers and dryers. He said they rented by the bed, so renting a bed in a four bedroom unit would mean a person might be renting with students. But he said each bedroom had its own bathroom.

Chair Wolfe said there were two conflicting goals with this project: getting more commercial space and getting a more beautiful downtown. Councilor Lawson said he didn't think that these were conflicting goals.

Ms. Olshansky spoke about the importance of having a more beautiful and a more vibrant downtown. She asked if the estimate on the demographics involved in bringing a Planet Fitness to Durham looked at the student population as well, and Mr. Fideli said yes. He noted that residents of the development would get free memberships to Wildcat Fitness, and said partnering with them helped everyone, and further enhanced the walkability of project.

Ms. Pribble asked if there were plans for a pedestrian path from the site to Mill Plaza, and Mr. Fideli said the plan would be for residents to use the Grange path to get to the Plaza. Councilor Smith asked if Orion had contacted the owner of the Plaza owner concerning creating a path from the site to the Plaza, and Mr. Fideli said yes, but said he had gotten nowhere with this. Councilor Lawson questioned whether having another path was something the Town really wanted, and said it made more sense to direct pedestrian traffic to the sidewalk and then to the Grange path.

Councilor Carden Welsh said the Town said this project had come a long way, and said the Town appreciated the streetscape, the apartment sizes, and also the Wildcat Fitness tie in, which supported a local business and helped create a virtuous cycle in terms of economic development in the Town. But he said he was still very concerned about the miniscule percentage of the development that Orion had devoted to commercial space. He said it should have 33%, but actually had less than 4%.

He said a key problem was that Durham had used student housing as an accelerator over the past few years so the Town could get more varied commercial activity downtown. But he said student housing was a limited resource, and said the Town was rapidly realizing this. He said this project and others coming along meant there would be 4000 new beds in Town, and said there were only about 5500 UNH students who didn't live on campus.

He said it felt like this was the end of student housing as a really good resource to make projects in Durham viable. He said that was why he was saying that this project needed more than about 3% commercial space. He noted that commercial space also meant a doctor, dentist, engineer, Interoperability Lab related businesses, etc., could set up in the downtown, which were businesses that didn't require a lot of people driving in and out.

Councilor Welsh noted that the EDC had given the ZBA a letter the previous day, and he read this letter, which said the EDC believed that commercial space was a public good, and therefore urged the ZBA to reject proposals to reduce commercial space in any existing building built since 2008, or in any stand-alone building proposed for the Central Business District.

He said it was realized that this project wasn't a stand-alone building, and said the reason the EDC didn't look for strict adherence with projects like Orion's with more than one building was that they provided other public benefits. But he said he wasn't seeing with this project a public benefit that would say that 90% of the commercial space could be removed. He said he would expect that this project, as with other projects, would be held to the 33% of commercial space.

Councilor Robin Mower, Faculty Road, said she was in full support of what Councilor Welsh had said regarding the commercial space requirement. She said that regarding some other elements of the project, the applicant had made terrific strides over the past year by listening to the community, and said she was grateful for that. She noted that the legal definition of abutter didn't extend to some of those who would be directly affected by this project. She said these were people who abutted Mill Plaza physically and who heard sounds and had views across the Plaza.

Concerning the visual mass of the back building of the project, she noted that Faculty Road was at approximately the same elevation as Main Street. She said currently, the height of the apex of the Grange roof was roughly the same at the tops of many of the trees east on Church Hill and said a small number of the trees were taller, while many were shorter. She said almost all of the trees were deciduous, so that when the leaves

dropped, the buildings on Church Hill were visible from Faculty Road. She said the Town's recently adopted Architectural Regulations addressed this issue in the section on maximum height, specifically, the topography, and said she hoped the Board would review that section.

Councilor Mower said the project site was within earshot of quite a few residents living in downtown neighborhoods, but said unfortunately, the Town's noise code didn't distinguish construction projects that abutted residential districts. She said sound carried across the uninterrupted asphalt of the Mill Plaza. She said it was realized that the outdated and less than ideal design of the Plaza was not the applicant's responsibility.

But she said given the failure of past Planning Boards to require more adequate noise buffers not to mention visual buffers at the time the Plaza was constructed, and the failure of the Town to uphold its responsibilities regarding those buffers, this was a burden on the community. She asked that to the extent possible, the Planning Board take seriously the disruption that this and other large projects had. She said she hoped the Board would strongly consider limiting the hours of construction so that nearby residents were not subject to evening and weekend noise. She said families should be able to enjoy quiet dinner hours and summer evenings outdoors.

Councilor Mower said Durham didn't have Dark Sky regulations that would protect residences from other residences. She said right now, the lights from the Plaza and the downtown spilled over onto the Faculty and Brookside Commons homes. She asked that the project only have well-shielded fixtures, and that no up-lighting for the area and street lighting be allowed. She said it was understood that this couldn't be required, but said she hoped the applicant would provide this.

Councilor Mower said the site plan noted a specific type of bike rack, typically called a ribbon. She said this style only provided one point of contact and was considered one of the least functional bike racks. She referred to the City of Cambridge Bicycle Parking Guide in regard to this.

Councilor Mower asked the Planning Board to consider the value that mature trees added to the community. She said with so much development, some of it proposed for tight spaces and some proposed in the Town's scenic outskirts, she feared that less attention was being paid to trees than was needed. She said trees were valuable to the community, and provided many benefits. She spoke in some detail on this, noting their aesthetic and temperature regulation benefits as well as their economic benefits in business districts.

She said in the absence of a more comprehensive Landscaping ordinance, she would ask that the Board include conditions of approval regarding specific and enforceable steps that should be taken to prevent damage to existing trees. She said when mature trees were removed for construction, the Conditions of Approval should require that the equivalent replacements be planted. She said there should also be conditions that required that tree work of any kind would be done by a professional arborist. She also asked that the Board

ask that an arborist accompany the applicant when determining which trees to remove from the site.

She noted that urban forester and Chair of the Conservation Commission John Parry wrote an email addressing these points relative to the Peak Project, dated December 20, 2012. She urged the Planning Board to take note of that memo when developing its Conditions of Approval for this project.

Mr. Behrendt noted that the architectural regulations didn't apply to properties in the Historic District, but said the HDC's provisions were very similar.

After some discussion, the Planning Board agreed to keep the Public Hearing open for the next meeting. There was additional discussion on what they would like to see in the traffic study. There was also discussion on whether a fiscal impact analysis should be required. Councilor Lawson said with other upcoming projects downtown, he thought the Board would want to require a fiscal analysis, but said with this project, where there would be a net increase of 128 beds, he didn't think it would be reasonable to require the analysis.

Mr. Kelley said the Board had heard concerns expressed about the percentage of commercial space being provided with this project. He said that while he shared those concerns, this issue was beyond the Planning Board's sphere of influence, and said this issue would be taken up by the ZBA.

He said he would be interested in seeing a traffic study with as much detail as possible. He also said he would be interested in having the applicant determine the limits of work on the site. He noted the issue of existing vegetation on the site, and said the plan indicated that they were only offering one corner of the site where existing vegetation would be maintained. But he said this area was up against the property line, where retaining walls were proposed.

Mr. Kelley said along the eastern boundary, ledge removal would be needed in order for a stone wall to be put in there. He stated again that he would therefore like the applicant to think hard about the limits of work, and whether an easement would be required on adjacent properties in order to do some of the work. He noted that the applicant had adjacent properties where cars could be parked and staging could be done. He said for a project of this magnitude, this kind of information should be provided.

Mr. Kelley also said he would like to see the lighting plan. In addition he said he would respectfully ask the applicant to provide additional landscaping along the southern property line, between Building B and the retaining wall to the south, and to consider utilizing larger caliper trees than the 2 ½ ft caliper trees that had been proposed.

Chair Wolfe said he agreed that a fiscal analysis wasn't needed for this project.

Councilor Smith stated again that he thought a fiscal impact analysis would be a good idea for the redevelopment of a large parcel like this. He noted that the redevelopment would result in a lost development opportunity for the Town in the future. The consensus of the Board by an informal 4-2 vote, was that a fiscal impact analysis would not be required. Councilor Smith and Ms. Pribble were the Board members who said the fiscal analysis should be required.

Councilor Smith asked about excavation amounts that were anticipated, and Mr. Kelley said he would expect to see this information in the staging/phasing plan.

Councilor Lawson said it was important to address how trucks would access the site.

Mr. Kelley said he would defer to the professionals who would do the traffic study regarding the time of day it would be done. Councilor Lawson agreed, and also said the Board needed to be prepared that the traffic engineer would come back and say he could provide some general information, but couldn't do a pedestrian study for a development with 130 beds.

The Board agreed that the study should cover the area down to Route 108 and over to the triangle that was Madbury Road. There was further discussion on the parameters of the Traffic study. Councilor Smith said the study should take in the weekend hours when students were likely to be downtown. He said all of the proposed student housing downtown would add to the party atmosphere there, which would impact nearby residential neighborhoods. He spoke further on this.

There was additional discussion on what the traffic study should include.

Mr. Kelley said when the traffic study came in, it would be peer reviewed by the Town's traffic engineer. He suggested that there could be a scoping session with them.

Mr. Behrendt said he could summarize the discussion and send it to the DPW and other staff. He said for the next meeting, he would put together a comprehensive list of the issues in order to help the Planning Board frame the discussion, and said he would also send it to the applicant before the meeting.

He noted that at the site walk, there was discussion that Building A would be close to the Kyreages building and that there would be potential impacts in terms of light and also potential impacts in terms of the view. He said this was something to be aware of, and said perhaps there was a way to get a little more space there.

Mr. Wills of Orion said they had looked at this issue. He said the building would be seven feet off of the property line, and said the Kyreages building was on the property line.

Councilor Smith said looking at downtown Newmarket, some of the buildings there were only a few feet from each other, which was not inconsistent with many New England

downtowns. He said the front wall of Building A was more or less in line with building on the Kyreages property.

He said that regarding the commercial space issue, he would like to ask if the issue was that Durham wasn't ready yet to supply the number of people who would take advantage of restaurants, a hardware store, etc. on the applicant's property.

Mr. Fideli said the question was when to add commercial space in Durham, and he spoke in detail about this. He said Orion believed that the people needed to be there first and then the businesses followed.

Councilor Smith said the Planning Board was confronted with a conundrum, noting that the site plan regulations spoke about preventing premature development. He said one could argue that it was premature to require Orion to provide 33% commercial space because there wasn't a market for this. But he said on the other hand, the Planning Board could also say that what Orion proposed was a premature development project, on a site that could be very valuable for commercial development. He said the Board would have to balance these things.

Mr. Fideli said these were interesting points. He said the surrounding uses around Orion's property was mostly residential, and also said there was a lot of vacant commercial space downtown. He provided details on this and there was discussion. Mr. Fideli also noted that the underwriter of the loan for this project was assuming that there would be 0 rent coming in from the commercial space. He spoke further about businesses that would not come to Durham because of the demographics. He said if this was otherwise, it would only enhance the value of Orion's properties. But he said it was believed that the project as currently designed was the highest and best use of this property.

Councilor Lawson said he respectfully had a different opinion, but said he didn't think this was the forum for it. He said it was appreciated that Orion would be speaking with the EDC, where there were some different opinions, and he also said that ultimately, this issue would go before the ZBA.

Mr. Kelley said the traffic being generated would be predominantly pedestrian, He noted that the applicant wanted residents, etc. to access the path at the Grange, and said it should be in the scope of the study as well.

Chair Wolfe said there hadn't been discussion yet about the fact that the sidewalk in front of the property was 6 ft right now, and that the applicant was willing to widen it. Mr. Kelley said this should be investigated, and said he was pleased to hear that the applicant was willing to look into this. He noted that the sidewalk closer to Libby's would dictate what could be done. He asked Orion to dazzle the Board with a design for the sidewalk.

XIII. 49 Main Street Conceptual consultation for redevelopment of a commercial site with a **three-story mixed-use building**. Submitted by **Paul Eja, proprietor of Pauly's**

Pockets; Michael Mr. Sievert, MJS Engineering (engineer). Tax Map 5, Lot 1-2. Central Business Zoning District. Recommended action: Brief presentation and set design review (and public hearing) for November 6.

Mr. Sievert represented the applicant, and said they had been working on some details of the site design with Mr. Johnson and the DPW. He explained that the DPW had asked for some enhancement of the triangular park at the corner as part of this project, and said Mr. Eja had graciously said he would work with that. Mr. Sievert said this would give the site another front, opening out onto the park. He said a landscape architect had been brought in to work on the design, and said the Town was very interested in it.

He said extensive analysis had been done concerning the constructability of the project at this location. He noted the steep bank off the back area, and the bagel restaurant, and said they would work with this. He also said it was a must that the businesses already on the site be able to keep going. He explained that there was no reason to tear down the existing building on the site, so the question was how to make everything work, on Main Street.

He said He said 1100 sf would be added on the first floor, and said there would be 4200 sf on the upper floor(s). He said there would be a full basement. Mr. Sievert explained that the plan was to provide structural reinforcement for the building so that the upper stories could be placed over the existing building. He spoke briefly about what would be involved.

He noted the narrow area in front of Libby's, and said the applicant's plan was to have an expanded area for pedestrians and pull everyone around to the area fronting on the park. He spoke about grading issues there that would need to be addressed, and said more information would be provided to the Board on some innovative ways being considered to address these issues.

Chair Wolfe asked what the expected points of contention were with the project. Mr. Sievert said it was hoped that they would be fairly minimal. He said Libby's was 35 ft in height, and said Mr. Eja's building would miss the height limit by 2 ft, so would need a variance.

Mr. Kelley said because of the location of the existing building downtown, it was a landmark building. He said he liked what the applicant had presented, and said it looked like there wasn't a perpendicular corner. Mr. Sievert said given the opportunity to work with the Town regarding the small park, it was felt that this corner could be rounded over.

Mr. Kelley said given the prominence of this location, he would be interested to see where the architect went with the design, and what the intention was regarding the band between floors. He said he believed the architect could add some real aesthetic value to this building, and make it very prominent in downtown Durham.

Councilor Smith said if everything was at the same level as Libby's, this was not what the new architectural standards called for.

Mr. Behrendt said the design echoed Libby's, which was built before the architectural regulations were developed. He suggested that there should be a design that was compatible with Libby's but that also contrasted with it. He said he assumed that the design presented now was a first cut. Mr. Sievert said it was more than that, and said they didn't want to stray too much from Libby's. Mr. Behrendt said some refinement to the design would be needed, and said a good designer could do this.

Councilor Lawson said the first floor of the project differentiated itself from Libby's and had an entirely different feel. He also said he would think they would want more similarity with Libby's on the second floor, given that there were differences between the first floors.

There was discussion with Mr. Sievert on this. Mr. Kelley said maybe it was lighting that was needed to show the building off. Mr. Sievert noted that the work that would be done on the pocket park would bring something to the project

Ms. Pribble said she was excited that there was already commercial space in the building. She said the design was sort of monolithic, and said something was needed to break up the amount of brick in the building. She said treatments like columns could set it off.

Councilor Smith said this was a very good start, and said considering the University buildings and then Mill Road, this site was then a landmark introduction to the redevelopment of Main Street stretching east, which would include the Orion Project and hopefully the Kryeages buildings. He said a little extra money on a good architectural design would buy a lot of good will. He said there was no problem that there would be no parking on this property because it was a different site. He also noted that there was paved space there now that was going to waste.

There was discussion on when Mr. Eja would bring the project back to the Planning Board. Mr. Sievert said they would try to come back for further design review at the December 11th meeting.

XIV. Other Business

Mr. Behrendt encouraged the Planning Board to hold a second meeting in December, and after discussion, the Board agreed to schedule it for December 4th.

XIV. Other Business

Mr. Kelley spoke briefly about the fact that the Water Management Planning Committee, which he served on, would have the Lamprey River Management Plan in front of it on November 6th. He asked Board members and others with any concerns about the plan to contact him.

Chair Wolfe noted the letter received from NHDOT, about the public hearing regarding the widening of Route 108, which was scheduled for October 17th.

XV. Review of Minutes

July 24, 2013 Minutes

Councilor Lawson MOVED to approve the July 24, 2013 Minutes as submitted. Wayne Lewis SECONDED the motion, and it PASSED 3-3, with Andrew Corrow, Bill McGowan and Jennifer Pribble abstaining because of their absence from the meeting.

XVI. Adjournment

Richard Kelley MOVED to adjourn the meeting. Andy Corrow SECONDED the motion, and it PASSED unanimously 6-0.

Adjournment at 955 pm

Victoria Parmele, Minutes taker

Andrew Corrow, Secretary