

These minutes were approved at the July 23, 2014 meeting.

DURHAM PLANNING BOARD
Wednesday, June 11, 2014
Town Council Chambers, Durham Town Hall
7:00 p.m.
MINUTES

MEMBERS PRESENT: Peter Wolfe, Chair
Andrew Corrow, Vice Chair
Richard Kelley (arrived at 7:05 pm)
Lorne Parnell
Councilor Julian Smith, Council Representative to the
Planning Board
Wayne Lewis, alternate
Linda Tatarczuch, alternate

MEMBERS ABSENT Bill McGowan
David Williams
Jennifer Pribble, alternate
Councilor Kathy Bubar, alternate Council Representative to
the Planning Board

I. Call to Order

Chair Wolfe called the meeting to order at 7:02 pm

II. Roll Call

The roll call was taken.

III. Seating of Alternates

Mr. Lewis was seated in place of Mr. McGowan and Ms. Tatarczuch was seated in place of Mr. Williams.

IV. Approval of Agenda

Councilor Smith MOVED to approve the Agenda. Wayne Lewis SECONDED the motion, and it PASSED unanimously 6-0.

V. Town Planner's Report

Mr. Behrendt first noted the three construction projects going on right now downtown.

He said last week he attended the Congress for New Urbanism conference in Buffalo, NY, and said there were some very good sessions on housing for seniors, walkability, university relations, shared streets, form based codes, park planning, etc. He spoke about his impressions of Buffalo, noting that there was a good framework there for the greater amount of infill and vibrancy that was needed downtown.

Mr. Kelley arrived at 7:05 p,

There was discussion by the Board on the Henderson project that had recently started downtown. Mr. Behrendt explained that when the Henderson project was approved in March of 2009, the window was 6 years, which meant the owner had until March 2015 to substantially complete the project and was protected against all of the recent Ordinance changes. He noted that the window now was 5 years. He said a very attractive 3 story building was planned there and said it would provide infill on Main Street and also on Madbury Road leading down to Wildcat Pizza. He said there would be commercial on the first floor as well as a garage at the back, and said there would be residential on the second and third floors.

VI. Master Plan Process – update from Molly Donovan, chair of the Master Plan Advisory Committee

Chair Wolfe noted that MPAC Chair Molly Donovan couldn't be present tonight. He provided a brief update, and noted that the Committee was making progress on the chapters being written by Strafford Regional Planning Commission. He also said SRPC had the Commercial Core chapter and that the EDC was meeting with them. He said things were still on track to complete the Master Plan by the end of 2014.

VII. Public Comments

None

VIII. Public Hearing – 8 Madbury Terrace and 15 Madbury Road – Student Housing Development. Site plan and conditional use for redevelopment of two lots for a three-story mixed-use student housing development for 64 occupants with commercial space and garage parking. BAA Realty Acquisitions, LLC and EZT Holdings, LLC, c/o attorney Christopher Mulligan, applicant; BAA Realty Acquisitions, LLC and Theodore Finnegan, owners; Michael Sievert, MJS Engineering, engineer; Robin Wunderlich, building designer. Tax Map 2, Lots 12-5 and 12-6. Central Business Zoning District.

Chair Wolfe recused himself for this application, noting that he'd recently needed to hire Mr. Sievert to address a septic system problem, so there was a potential conflict of interest. He turned the meeting over to Mr. Corrow. Both Mr. Corrow and Councilor Smith said they were patients of the dentists on Mathes Court, and did not recuse themselves. Councilor Smith said this was the reality of living in a small town.

Chair Corrow noted that on June 25th, the Board would meet with the Town Attorney in a closed session. He asked if the Planning Board had anything to discuss prior to hearing from the applicant, and Board members said no.

Attorney John Bosen, from Bosen Associates noted that he was there in place of Attorney Chris Mulligan, who had another commitment this evening, and said he would do his best to answer questions people had. He introduced engineer Mike Sievert, architect Jennifer

Ramsey who had prepared the 3 D rendering, and Matt Stevens, the developer of the project. He noted that Mr. Stevens had invested in the 9 Madbury Road project and the 8 Jenkins Court project, and was an extremely experienced developer who was committed to hiring qualified professionals for the construction and management of the project.

Attorney Bosen noted letters from Peter Stanhope and Attorney Hildreth, which he said he'd seen for the first time this morning. He said Mr. Stanhope had cited a Supreme Court case, Richmond Co. vs City of Concord, where a developer wanted to put a suburban strip mall in downtown Concord among historic buildings. He said this was proposed in an historic overlay district, which required that projects have certain architectural characteristics that were compatible with historic elements of the capitol city. He said calling Mathes Terrace a neighborhood of historic Four Square homes was a far stretch from that case.

He said what the applicant proposed was a use permitted by right in the zone. He said no variances were required and the site wasn't in the Historic District. He also to the extent that there were any architectural characteristics of the Four Square structures, the development of Dr. Lenk's and Dr. Rutter's properties into commercial enterprises that each served about 8000 visitors a year and the Golden Goose development next door pretty much killed the modest residential properties. He said he didn't think anyone would want to live in the applicant's property, and said what was proposed was the highest and best use for it.

Attorney Bosen said many of the regulations cited in Attorney Hildreth's letter were really goals and objectives of the Ordinance, and were much more subjective than regulatory criteria that an applicant had to meet. He said Attorney Hildreth proposed a much harsher, stricter application to the site review regulations than the Planning Board had historically held applicants to, and said it was important that a double standard not apply here. He said using Attorney Hildreth's criteria, it would be difficult to get a project approved in Durham or any town.

Engineer Mike Sievert next reviewed the changes to the site plan with the most recent update:

- All residential access from the south of the building, on Mathes Terrace, has been moved up to the north
- A walkway goes up the northerly side, and there is residential access to the building at about the center.
- There are two commercial accesses and one residential access in the front, facing Madbury Road.
- The patio off of Mathes Terrace is for commercial use only.
- The parking and handicap access ramp have been reconfigured.
- On the west side at the rear of the site, more impervious area has been removed from the 75 ft wetland buffer. Previously, there was a dumpster, transformer, etc. in that area. 15 sf of transformer pad is now in the 75 ft buffer. Currently, all of that area is paved, so there will be a significant reduction of impervious area in the buffer with this project.

- Trash management is now interior and is accessed from the interior of the building.
- The parking area in the back will have porous pavers.
- The drainage is essentially the same.
- The sewer line and the water line will not go down Mathes Terrace. Water will come down into the site from Madbury Road. The only utility work on Mathes Terrace will be the drainage pipe in the back.

Mr. Kelley asked Mr. Sievert what he was concerned about in regard to the peer review comments from Joe Persechino on the engineering for the project. Mr. Sievert said there was nothing in the review that changed anything for the design. He said most things were recommendations, and said some of the comments on the drainage would be worked out with Joe Persechino.

Mr. Kelley said he assumed that the pre/post flow analysis depended on the lag times used in the model, and Mr. Sievert said that was correct. Mr. Kelley said if the lag times were overly conservative/long in duration, one would expect to see an increase in the capacity of the stormwater system. He asked Mr. Sievert if he believed they were overly long in duration or could be justified. Mr. Sievert said he could justify them or modify them, and the system would still work within the original design.

Mr. Parnell asked the owner to introduce himself. Mr. Sievert said he would first like to discuss a few more things. He provided pictures that showed construction currently going on at Mathes Terrace, and noted the parking of vehicles on his client's property at the back as well as the dumpster there. He said a fence was previously proposed to be put there, but said the decision was then made not to put it there at Mr. Kelley's request, so access wasn't cut off to that property. Mr. Kelley said he hadn't requested this, had been surprised to see the fence taken off the plans, and had said not including it was a nice thing to do. Mr. Sievert said his point in showing the pictures was to say the parking was happening right now on his client's property, and noted that the building on the property was currently vacant.

Mr. Sievert said the report that had come back concerning the construction management plan was positive, and indicated that the plans he'd been writing would work with the various downtown projects that were going on.

He provided details on how the Rosemary Lane, 9 Madbury Road, and 10 Pettee Brook Lane projects all required conditional use permits and how each of these projects resulted in a reduction in imperviousness compared to these sites before they were redeveloped. He said this project wasn't near the 25 ft shoreland setback, only 15 sf of impervious surface was in the 75 ft wetland setback and none of the building itself was within the 75 ft setback. He spoke further on this project compared to the others.

Matt Stevens, the developer of the property, said he'd been involved with the 9 Madbury Road and 6 Jenkins Court projects. He said he enjoyed working in Durham and believed in a quality building and construction. He thanked the Planning Board for working

through this review process, and said he appreciated their patience. He said he realized it had been a long journey.

Councilor Smith asked about the name of Mr. Stevens' company, Island Diversified, and Mr. Stevens provided details on this. He said he did work in NY, Vermont and NH and was a subcontractor by trade. He said he'd been involved in some really interesting projects. Mr. Kelley asked what kind of subcontracting Mr. Stevens did. Mr. Stevens said he was a plastering contractor, did spray-on fire proofing and insulation for commercial projects, and said they were union projects. He said it was his company and said he'd been doing this work for 25 years. He said he also developed light industrial and other commercial properties in NY.

In answer to a question from Mr. Kelley about property management of the development, Mr. Stevens referred to the property management plan submitted to the Planning Board. He said there would be full time staff, security and maintenance, and said the management would be similar to what was done at the other two buildings in Durham he was involved with. He said an outside company would do the property management and noted that it was in his interest as well that there would be no issues with the development after it was complete, and that it be a well-functioning facility that worked with the Town. Mr. Kelley suggested that the property management plan be shown to prospective companies to see what they might add to it that would be good for the owner and the Town.

Mr. Stevens said security cameras had been a significant help with his properties in Durham, and said the security system protected the students and also the neighborhood. He provided some details on this. He also said when things went wrong early on, parents were notified immediately.

Ms. Tatarczuch said there had been an ongoing concern because the ownership of the project had remained secret for a long period of time. She asked Mr. Stevens why he hadn't come forward earlier. Mr. Smith apologized for not being there sooner and said he would be present more often if needed. He said he wasn't trying to do anything underhanded. Ms. Tatarczuch determined that while Mr. Phillips had been a partner with the 9 Madbury and 6 Jenkins Court projects, he was the sole person involved with the Mathes Terrace project. Mr. Stevens said he had done projects on his own before.

Mr. Kelley said the design professionals and legal counsel who had represented Mr. Stevens before the Planning Board had served him well, and had been very accommodating and forthright. Mr. Stevens said he appreciated the comment.

Architect Jennifer Ramsey from Somma Studios spoke next. She said they had chosen materials like those of neighboring homes and she provided details on this. She said the building did match those in the neighborhood, and said great efforts had been put toward this and being sensitive to the neighbors. She said some unit layouts had been provided and said there would be 200 sf per person in the units, minus corridors and closets. She said the colors could be changed if people didn't find them appealing.

Mr. Kelley said the two graphics were impressive when looking at the stretch along Madbury Road, and said it almost created a second Main Street there. He asked if anything could be done to the frontage along Mathes Terrace to dazzle them more.

Ms. Ramsey said windows added to the elevation enlivened it more. She noted the break in the two buildings and said the courtyard space allowed a possible retail use that used the courtyard space, which in itself would add some interest to the frontage. She noted that the landscaping shown on the graphics came from the landscaping plan. She said there weren't tenants lined up yet for the space that had the courtyard area, and provided details on possible use of it. She said it would be gated and would be accessed from the commercial space.

Mr. Kelley asked if there were any other ideas concerning the Mathes Terrace elevation. Ms. Ramsey said they could layer on more details, but said this might start to make the building a bit more "front and center". She also said shutters and other architectural details could be added to soften the front of the building, but said this wouldn't be so much in keeping with the Four Square style homes. She said they were trying to complement everything. Mr. Kelley asked why the lighter siding was brought up so high to the second story, and Ms. Ramsey said it was an element of many Fours Squares. She noted that there were exaggerated corner boards that looked like pilasters, to amplify the first floor base.

Councilor Smith noted that he had been very opposed to the luxurious Capstone cottages, with their large living areas and bedrooms with private baths, and said he was delighted to see tiny bedrooms and 5 tenants sharing a small bathroom. He said this was the kind of simple, Spartan living college students should have.

Chair Corrow said the Public Hearing would continue now.

Malcolm Smith, 45 Woodman Road, said he lived in what was one of Durham's most beautiful but fragile neighborhoods. He said he was also President of the Unitarian Universalist Congregation, which was an abutter to the applicant property where these pretend photographs were taken. He said there were some beautiful trees on the site of the proposed project that would be demolished soon and said this would destroy the character of the neighborhood.

He said some people chose to live in this area, and also said 100 members of the Unitarian Church had been crushed by the influx of students to the area. He said it was getting to the point where it was beyond their ability to maintain their fellowship, and he provided details on this. He said this was one of the few areas left downtown where young families lived, and said the Church supported young families. He said they needed a shoe store and a hardware store and said there was already an ice cream stores downtown along with a candy store and eight pizza places.

Mr. Smith said another New Yorker, Pete Seeger, had spent time in Durham with Tom Dudley, who had recently passed away, and his wife Dudley Dudley, who had fought so

much for the way of life in New England. Mr. Smith read the words from a famous song, “Little Boxes”, that Pete Seeger had written: “Little boxes on the hillside, Little boxes made of ticky-tacky, Little boxes Little boxes, Little boxes all the same..... There's a green one and a pink one and a blue one and a yellow one, and they're all made out of ticky-tacky, and they all look just the same.....And the people in the houses all go to the university. And they all get put in boxes, little boxes all the same....” Mr. Smith said on behalf of his neighborhood and his church, he wanted to ask what had been done to the Town.

Chip Noon, 9 Littlehale Road, said he represented the Historic District Commission and Heritage Commission. He read a letter from the Commission:

The Heritage Commission was created through the Town Council adoption of Ordinance #2006-08 on January 8, 2008. This ordinance amended the Town’s Administrative Code to create a new section titled “Heritage Commission” and shall have the powers and duties set forth in New Hampshire Revised Statutes Annotated (RSA) 674:44-b.

The Heritage Commission is concerned with Preserving Neighborhoods, generally, the character of Historic Neighborhoods (whether listed in the National Register, in the Historic District, or not).

The Heritage Commission acts as the memory of the architectural past and the guardian of the architectural future. While it has no binding authority outside of the Historic District, it does have, and must exercise, the job of review, education, and persuasion.

Durham is a vibrant college town. And now we are faced with another in a long line of a vibrant town’s conflicting interests in the plans to demolish one or two of the “foursquare” houses on Mathes Terrace and put up another large building in their place, perhaps as large as the new building at 9 Madbury Road.

The Heritage Commission recommends against this plan, especially as it involves both demolition of historic buildings and severe alteration of a charming “pocket neighborhood” off Madbury Road.

First, the buildings are of a design known as American Foursquare. The American Foursquare is an American house style popular from the mid-1890s to the late 1930s. This style incorporates elements of the Prairie School and the Craftsman styles. It is also sometimes called Transitional Period. The hallmarks of the style include a basically square, boxy design, two-and-one-half stories high, usually with four large, boxy rooms to a floor, a center dormer, and a large front porch with wide stairs. The American Foursquare or "Prairie Box" was a post-Victorian style, which shared many features with the Prairie architecture pioneered by Frank Lloyd Wright.

These homes were most likely built from Sears Roebuck or Aladdin mail-order kits – a house delivered by boxcar with a book of directions and all the parts pre-cut and numbered for self-assembly.

They are truly historic houses in every sense of the word.

Second, the tiny neighborhood of Mathes Terrace is unique in itself with five of these foursquare houses still standing. Yes, there is now a large, some say overpowering, presence next door at 9 Madbury Road. But that juxtaposition further emphasizes the charm of this little neighborhood. And while the Heritage Commission is not denigrating this new building, it does create an abrupt and jarring change from one type of modern structure to these foursquares.

We feel that to remove two of these houses and replace them with a similarly large structure completely changes that small neighborhood, turning it from a charming enclave to an incongruent collection of competing styles.

Once buildings are demolished, they are gone forever. Witness the complete destruction of the North End in Portsmouth, now empty lots, unappealing commercial structures, and a large hotel complex. There is no sense of history, place, or charm left. The Heritage Commission is urging the members of the Planning Board to be mindful of the finality of demolition and the destruction of historic buildings and neighborhood.

Finally, we would like to refer to the new project planned for 25-35 Main Street, the Orion Student Housing/Commercial space. When it was first proposed, it too was completely out of character with the rest of Main Street. Through careful and thoughtful planning and negotiations, that project as it is now proposed will be a model development not only for Durham, but also for any historic New England downtown.

It is not the aim of the Heritage Commission to forestall economic development, but to encourage and promote the idea that development not destroy the historic buildings in town or the character of neighborhoods that are clearly identifiable and irreplaceable.

The Heritage Commission recommends to the Planning Board that the Board deny any application for development of this parcel that would involve the demolition of one or both of these buildings.

Mr. Noon noted one of the Town Council's Goals: "Identify, support the preservation of, and promote structures of historic significance."

Elaine Fink, Fellows Lane, said this was a beautiful presentation from the architect, but said there was no context to it. She said the building didn't look as big in isolation, in terms of the scale, footprint and height as she thought it would look in relationship to what was around it.

Chair Corrow said he thought the Planning Board had requested a 3 D model of the development at some point. Mr. Behrendt said the Board did request this. Mr. Sievert said he had thought a 3 D rendering was requested. Chair Corrow said with what was proposed, the building couldn't be seen in relationship to the other buildings on Mathes Terrace. Mr. Sievert said he would talk with Ms. Ramsey about doing this.

Ellen Karelitz, 15 Madbury Road, noted that she'd spoken in opposition to this project before. She said she felt this project was redundant, and said more housing wasn't needed next to a massive student housing project. She said besides student housing, this project promised retail at the expense of established businesses that already served the

community well. She said this project made it difficult to trust the Town, if this was the way existing businesses were treated.

She said several Planning Board members said they thought the fact this project wasn't popular wasn't of sufficient importance to deny approval. She said if it was the Planning Board's opinion that public opinion had no real force, this meant that the public hearings were a farce, and residents who had attended them for a year or more were suckers. She said she resented that, and said the Planning Board was charged to care about the public interest as much as it was charged to care about the commercial interest.

Ms. Karelitz said this project wasn't popular because it didn't deserve to be. She said it was, ill-conceived, out of scale and superfluous, and was an injustice to the businesses on Mathes Terrace and the community as a whole, with the loss of the integrity of this neighborhood.

Sylvia Foster, Woodridge Road, said she was opposed to this project because of the density of students who would be living in such a small space.

Katherine Meeking, HDC member, read a letter from Andrea Bodo:

Much of downtown Durham has been mired in a decades-long decline, and some may wonder if the best hope for the neighborhood's future is to tear down the rest of its buildings and start anew.

That process started with the construction of 9 Madbury. The community reaction to this building was one of profound disappointment . The building is out of scale with the small enclave of foursquares that it now looms over.

9 Madbury does not reflect the character or spirit of Durham . It's non-descript character overshadows the unique American Foursquare, or the *Prairie Box* houses that sit in this small pocket community. These were work force housing kits designed for small City lots like MT . This is an interesting historical piece of Americana in downtown Durham.

Thankfully, a committed core of business owners and residents had a different idea. Embracing the offbeat character of the MT neighborhood, they transformed their Foursquares into thriving professional businesses that contribute to the public good. The result, is a truly unique, authentic and delightful area humming with the kind of activity Durham hopes for .

The three restored FOURSQUARES on MT are not Durham's only example of a preservation success story. The Grange on Main Street is a stellar example. The infill construction proposed for 25-35 Main St and 1 Madbury are thoughtfully designed to be harmonious and consistent with its surrounding structures. These small town building designs will enhance and preserve the historic character of the Town.

These little enclaves of places are the heart and soul of Durham, and we need to ensure that business and home-owners see their historic properties as viable investments and not being obliterated by massive buildings.

Justifying the construction of 8 Mathes/15 Madbury by comparing it to contemporary large scale structures like 9 Madbury or the proposed new Madbury Commons is inaccurate.

8 Mathes/15 Madbury is proposed to sit on MT in the pocket neighborhood of MT. It is part of this historic little pocket neighborhood. In that context, its mere mass and scale are not harmonious with the smaller architecture of the FOURSQUARES that have been there.

I believe that 9 Madbury was a wrong design for that location based on its MASS and SCALE and lack of coherence to anything around it.

8 Mathes/15 Madbury would definitely be another wrong construction based on its MASS and SCALE sitting on the entry to MT creating a canyon effect with no significant green space.

Two wrongs do not make a right. Certainly we can do better.

Carol Tuveson, Watson Road noted that she had lived for many years at 11 Madbury Road. She said she had watched this review process from the beginning, when the vision for the project was a quick sketch. She said the reasons for not going ahead with the project had been articulated many times, and said based on the Town's requirements, they found opposition to it. She said Mr. Sievert had done his best with the project, but said the project was not Durham.

She said once again, a large structure was being imposed on a small space, and was being called advancement, but said she saw this as going backwards terribly fast. She said it was a Four Square neighborhood and had a special place in the Town's history. She said it created an element of charm in the Town for small businesses, even with the 9-11 Madbury building there.

Ms. Tuveson said she had concerns with the construction management plan because something this big would be going into that small a space. She also said she totally agreed with what Ellen Karelitz had said, and wondered if there was any place where residents' voices could be heard anymore. She said she'd heard well founded concerns of the established business people, who would be the most heavily impacted by this project.

She said until tonight, residents had no idea who was behind the project. She said she thought the Town had the responsibility to protect the people who were out there, and not those who came forward only when this was demanded of them. She said she was also concerned that conditional uses were now being used as excuses for continuing to make what to her were the same mistakes.

Ken Rubin, Golden Goose Capital, said he wanted to talk about the Planning Board's obligation to disapprove the application and the reasons for this. He said he had reviewed the NH Planning Board Handbook to try to understand better the Board's purview, and said the general theme he saw was that the Planning Board had broad authority to make sure a project was aligned with the Master Plan vision and was responsive to the public.

He said projects didn't live in a vacuum, and needed to be seen in the context of the community. He said there was no pure, by right project, and said the key vehicle to assess the impacts was the public. He said the negativity expressed about this project was astounding, and said the only proponents of the project were the financial stakeholders.

He said there were four real justifications a planning board could have for denying a project. He said one was not meeting technical compliance with the regulations and said another was the failure to respond to legitimate issues raised at a public hearing, concerning drainage, traffic, pollution, public safety, and other issues. He said a third was the failure to produce information, and noted that the applicant had tried very hard to produce information. He said the last category was alignment with the Master Plan, in terms of the scale, timing, type of use and the lot layout of a proposed project. He noted the Handbook said: "The Planning Board should look at how the individual lots relate to the site information and the roads and utilities to produce a functional, economical and pleasing layout."

Mr. Rubin spoke about how the applicant had responded to some of the issues brought up by the public. He said it wasn't about the effort and time spent on this, and was about actually responding to the issues. He said the intensity of the public response, in combination with the uniqueness of the site attributes should produce a fairly high bar. He said a main argument he had heard was the changing of the character of the neighborhood with a project that was oversized.

He said there would be a 70% building to parcel ratio with this project, and said the ratio for the Madbury Commons project was at about 65%. He also said Madbury Commons wasn't situated in an enclave the way this project would be. He said what was proposed was completely out of character with the rest of the businesses and structures on Mathes Terrace.

He said in terms of the traffic issues on Mathes Terrace, the applicant had put in a pretty good effort to move the problem from one side of the building to the other. He said this didn't remove the problem and just moved it. He said the applicant proposed to move the pedestrian activity to that north side where there was a 4 ft walkway that would be 7 ft from Madbury Commons, which would be a major problem. He said he didn't want the Planning Board to take that issue lightly.

Mr. Rubin said it wasn't until tonight that at the request of the Planning Board the applicant finally showed up, and said the owner didn't sound committed to this process. He said the Madbury Commons owners had been before the Planning Board every other week. He said the Planning Board had a broad purview to deny this project. He said this was essentially a land grab, with virtually no benefit to Durham. He said it brought hardship to virtually all of the abutters, and said there was very little commercial space when the parking area and the trash room were taken out. He noted that there was supposed to be a 3 to 1 residential and commercial density. He said the Planning Board should make sure that the applicant had responded to the public well.

Bridget Finnegan, Cedar Point Road, said she was in favor of the project. She said she lived at 15 Madbury Road for 30 years and said her parents were there for 54 years. She said comments that this was a family neighborhood were misguided, and said this wasn't the case when she lived there. She said the developer had made many efforts to make the project very attractive, and said it was well in line with the vision the Town had articulated. She said the time for public comments was when the decisions were made on the direction the downtown was going in, and said this project was in line with where the Town wanted to go.

She said Golden Goose had made an offer on the family's property, and said they did have a stake in seeing this project fail so they could pick up the property for pittance. She said the Four Square house her family lived in was not every going to be a family home again, and wasn't likely to remain as a structure on that street.

Jason Lenk, 5 Hampshire Ave, noted the peer review report/letter from Mr. Bowen concerning the construction management plan. He said if adults needed to be babysat concerning construction going on as the letter indicated, a question was who was going to look out for the Middle School kids on a private drive with all of the new students there.

He said no one was saying a family was going to move in here, but said residents were looking for a family friendly environment, and said Durham was losing those places.

He said the burden of proof was on the applicant, but said when he saw the grid done by the planner he saw that the applicant still didn't feel he needed to do a traffic study or pedestrian study. He said if someone parked there, this small private drive wouldn't allow cars in and out, and cars would back up while there were kids walking in the crosswalk. He said that issue had never been legitimately answered, and said it was up to the applicant to prove that a safe environment would exist.

Mr. Lenk noted that the architectural standards said a structure shall be either parallel or perpendicular to the road it is on, but he said this project was sited parallel to Mathes Terrace but was claiming that it was part of the Madbury Road neighborhood. He asked the Board to look at this.

He noted the letter Attorney Hildreth had submitted, which explained why according to the site plan regulations, the architectural standards, and the Conditional use permit regulations, this project didn't meet the requirements. He said the regulations determined what was allowed to happen on Mathes Terrace, and said in the CBD, one could choose to eliminate green space, choose to provide parking that was inadequate and could choose to maximize setbacks and density. He said when the applicant chose those things, and although some of the minimum requirements might be met specific to the site, the Board must make sure the project was compatible with its environs.

He said the regulations also said the Planning Board must provide for a safe place, and guard against injury to health safety and prosperity. He said he and his wife felt this project would do harm to them, and noted that Mr. Stanhope was an expert in valuations and testified concerning this. Dr. Lenk said a project was supposed to enhance property

values but said he was concerned about the environment he practiced in. He said the site suitability had not been proven and said the project shouldn't be incompatible with the established character of the neighborhood. He said this was a three story walkup that was proposed, and said it didn't belong in the small neighborhood. He said a lot of other nice developments could be done there, and said he hoped this happened. But he said it the project shouldn't be something that did damage to the neighbors.

Dr. Lenk noted Attorney Hildreth's June 10th brief, and said it seemed that there was a building that was in backwards, so the access was on the back side of the street. He asked if that made sense, or instead brought into focus how inappropriate it was. He said saying no to this particular proposal just meant that there was a better proposal out there, and said he and his wife hoped to see that.

Mr. Kelley noted that Dr. Lenk had referred to the peer review of the construction management plan. Dr. Lenk quoted from the report: "Traffic issues will require intensive monitoring by a competent, on site, often full time clerk of the works.

Peter Stanhope, 37 Dover Road, said he had submitted a letter. He noted that Attorney Bosen had indicated that this wasn't a neighborhood that had historical or cultural importance to Durham. He suggested that it would be appropriate if there was an expert to refute what the Heritage Commission had said, but said coming from Attorney Bosen, the statement lacked credibility.

He said this had been a difficult process for all of the neighbors. He said he was glad to see the developer here tonight and said he was glad to hear that he was an investor in the 9-11 Madbury project, which was considered to be one of the least attractive buildings in the community.

Mr. Stanhope also said as someone who managed the property next to the property to be developed, he could say that the current property management plan for the property was in failure. He said on a regular basis, residents threw debris over the fence onto his property, and the applicant's tenants vehicles had to be removed from his property. He noted that the developer had acquired 8 Mathes Terrace and had managed the property with just 6 students. He provided a photo of it, and said it had been occupied by people who had been a nuisance to the neighborhood. He provided details on behavior issues there.

He said during turnover in June, Mathes Terrace had literally been blocked. He said this proposal would increase the student residency on Mathes Terrace by 10 fold and said there was a life safety issue because there was no provision for policing of Mathes Terrace for parking violations, or to ensure that snow was removed.

Mr. Stanhope said the Richmond v. Concord case was similar to this situation in that it was a large building going into a neighborhood and the nonconformity was argued forcibly by the residents, even though the project was approved by the Architectural Review Committee. He said the Supreme Court said the planning board had the right to

disapprove the application because of the lack of architectural continuity. He said the Heritage Commission had said the Four Squares were an historic and cultural resource in this pocket neighborhood.

He said this large building next to the remaining Four Square buildings, the intensity of use of the site, the intensity of the population of a certain generation and the property values of the remaining properties were being put at high risk of diminution of value. He said if the applicant could bring an expert forward who would say that this would not happen, he would like to see this.

Mr. Stanhope said the reason abutters were notified concerning applications was so that the Planning Board could represent them. He said the Board had the police power to protect this neighborhood and the historic neighborhood, and said he hoped the Board would not approve the application.

Mr. Parnell asked if any more information would be coming forward. Mr. Behrendt recommended closing the public hearing, and said in the event that the Board determined the trajectory was toward approval, the public hearing would most likely be opened as part of working out a number of details, which could take some months. He said if the Planning Board determined that it was moving toward denial, it probably had all of the information and public input that it needed.

Councilor Smith MOVED to close the Public Hearing.

Mr. Parnell said the Planning Board should close the public hearing because it had all of the information and public input, and said it was the Board's job now to deliberate and make a decision. Mr. Kelley said if any details were worked out and the Planning Board was leaning toward approval, this would not change any testimony the Board had heard, noting that this testimony reflected much bigger issues than details. He also said if the site plan took a dramatic change, the Planning Board had a history of reopening the public hearing.

Richard Kelley SECONDED the motion, and it PASSED unanimously 6-0.

Mr. Kelley asked when the Board would see a response to Mr. Persechino's peer review comments, and Mr. Sievert said if things went forward, he would provide the response before the next meeting. Mr. Kelley asked if it would benefit the applicant and the Planning Board to provide some feedback on the large concerns that had been raised, in terms of whether Mr. Sievert would address the peer review comments. Mr. Sievert said if the Board was able to do this, it would help the applicant move forward. But he said he didn't think the response to the peer review was a show stopper, and spoke further on this.

Ms. Tatarczuch asked for more details on access to the building for residents, and Mr. Sievert provided this. He said on the north elevation, the door at the center was the door for emergency egress and trash to come in and out of the building, and said it was not a

main entryway into the building. He said the main entry way for commercial and residential was on the east entrance, on Madbury Road. He said the pedestrian access had been moved to Madbury Road and to the north side of the building and said the majority of it was on Madbury Road.

Ms. Tatarczuch asked if it was expected that when the building was occupied, the students living at the rear of the building would use the side entrance. Mr. Sievert said the majority of residents entering would do so on Madbury Road, and the majority of residents exiting would use the side entrance/exit, because it would be the closest way to leave the building. There was brief discussion about the lighting plan, a short retaining wall and a stockade fence planned on the north side.

Chair Corrow noted that at the May 28th meeting, the Planning Board had decided to hold comments on the project until after the meeting with the Town Attorney in closed session on June 25th.

Attorney Bosen said in the Richmond Co. v City of Concord case, there was an historic district, and said that wasn't the case here. He said they were here to talk about what was permitted under the Zoning Ordinance, and said that was where the strength of the applicant's case was. He said no one wanted the project in their back yard, including Golden Goose, which was a competitor and had a much larger project that changed the nature of this neighborhood. He said it wasn't a bucolic neighborhood anymore, and he spoke further on this. He said it was a permitted use, and was reasonable.

There was discussion that the only information received by June 25th would be Mr. Sievert's response to the peer review comments. Mr. Sievert also said if things kept moving forward, there might be a 3 D model. Mr. Kelley confirmed that the Board would meet with the Town attorney on that date, and would deliberate on the application after that.

Break from 8:44 to 8:52 pm

- IX. *Public Hearing – 49 Main Street – Pauly's Pockets.*** Site plan for redevelopment of a commercial site with a three-story mixed-use building. Commercial on the first floor with 6 residential apartments on the upper 2 floors with a maximum of 34 beds. Paul Eja, proprietor of Pauly's Pockets, applicant; Michael Sievert, MJS Engineering, engineer; Clint Forrest, building designer. Tax Map 5, Lot 1-2. Central Business Zoning District. *Recommended action.* Discussion and continue to June 25.

Chair Corrow noted that the Board had held a site walk this evening of the property.

Michael Sievert, MJS Engineering, reviewed what was proposed, as he had at several previous meetings. He said the whole front was opened up to the sidewalk, and provided details on this, noting among other things that access would be more user friendly. He noted access in the area of the park, and access to the back.

He said the entire parcel was currently impervious and said they were pretty much keeping it that way but said most of this would be roof, noting that the parking area would be removed. He said there would be virtually no change to the drainage and said he'd asked for a waiver from having to do a full drainage report. He said the report was submitted to DPW, and included an analysis to show that there was no change. He said there was a closed drainage system in the road that caught water in a catch basin and then took it down Mill Road to the brook. He noted that the runoff would be a little cleaner because it would come from the roof and not the parking area.

Mr. Sievert provided details on the park area, which would be reconstructed, and noted a landscape schematic that showed much of what would be there. He said this work would be partially funded by the applicant and partially funded by the Town, and said the work would be done in conjunction with the DPW. He noted the portion of this area that would be used during construction. He said there would be a lane closing on Mill Road and on Main Street at times during construction, and said this was unavoidable.

He noted as he had at previous meetings the extension of the existing sewer the applicant was contributing to as part of this project, which would benefit other properties in the area as well. He noted that Orion would also tie into this sewer line, and said the whole thing would go online in June 1st of 2015. He said the occupancy of the applicant's building was tied in with that date. He said he was working on this project with the Town right now, and spoke further on this.

Mr. Sievert noted that a utility pole that serviced Mill Plaza would have to be relocated, and said this would be done by the applicant. He said in return, the park would be available to the applicant for use during construction.

Chair Corrow asked if there were any questions from Board members. Ms. Tatarczuch asked if the electrical and plumbing would be done for the whole building. Mr. Sievert said the plumbing and electrical there now would remain the same. He said there would be new utilities for the new areas, and said the electrical system would tie into a connection on the street separately from the tie in of the existing electrical.

Ms. Tatarczuch asked if the businesses would keep the same presence they now had. Mr. Sievert said the faces of the building would be changed somewhat to tie in with the rest of the project. He said he believed Mr. Eja's business would stay where it was, and said the plan was to bring a new business in to occupy the new space on the first floor. He said Hair Excitement would stay where it was.

Ms. Tatarczuch asked if there would be a possible additional crosswalk. Mr. Behrendt said the TSC had looked at possibly adding a crosswalk further to the east, but it was thought that it wouldn't be a good idea because so much was happening there. Chair Corrow said there used to be a crosswalk there a long time ago, and it was hazardous.

Mr. Parnell noted that 6 units with 34 residents were proposed in the application. There was discussion. Mr. Sievert said there would be 3 units per floor, and provided details on

how they were laid out. He said they would all be 4 bedroom units, and said some of the bedrooms would be oversized. He said a floor plan would be provided to the Board. He said the large bedrooms would have large windows, and noted that the window layout was critical. He provided further details on the layout.

Mr. Parnell confirmed that there would be a property management plan. Mr. Sievert said he would provide that, the construction management plan, and the floor plans. Mr. Kelley asked if the landscape plan would be included in the formal plan set or would remain a sketch for a while. Mr. Sievert said since it was on someone else's property, he wasn't sure how to handle this. He said he'd like it to be part of the review, or at least be an agreement with the DPW as part of the conditions of approval. He said he could formalize this a bit more. Mr. Behrendt said it would be best to include everything about the park in the plan set.

Chair Corrow noted that the full project matrix would be included for the next meeting.

Mr. Kelley asked what the schedule was for the project, noting that it sounded like it was being driven by the construction of the sewer line. He said the June 1 2015 startup meant that the sewer construction would be happening in April-May. He asked if there was a way to expedite this work, and noted that the work on Mill Road should be done when the students weren't around.

Mr. Sievert said he believed the DPW wanted to get this work ready to put out to bid before September/October, and wanted the project start in March. He noted that the sewer work would be out of traffic once they got off Main Street, and also said directional drilling had been discussed. There was discussion. Mr. Kelley said the best case scenario was that the work would happen this summer, and there was discussion that this wouldn't happen.

Mr. Kelley determined that the design and permitting done on the sewer as part of the applicant's project was in lieu of payment, and that the opposite was the case for the Orion project. There was further discussion. Mr. Sievert said the builder had hoped to start construction of the project at the end of May, and said now things were in a bit of a rush. He said construction would take about 8 months, and said the sooner they could get started, the less disruption there would be to Main Street.

Mr. Kelley said this project offered a staging area for construction, so much of the disruption would be out of the public way. Mr. Sievert provided details on the staging area.

Mr. Kelley said while the project had some details to be worked out, he thought it could move along fairly quickly. He said the applicant was in a good spot to do this and meet their timeline of June 1, 2015.

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

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

Richard Kelley MOVED to close the Public Hearing, Councilor Smith SECONDED the motion.

There was discussion that the public hearing should perhaps stay open because more information was coming, and all Planning Board members weren't present.

The motion PASSED 4-2, with Lorne Parnell and Chair Corrow voting against it.

Mr. Kelley suggested that the applicant was in a sound position to finalize the plans, so the Board could do its final review, get comments back and deliberate. He said he wasn't convinced that the peer review was required, especially if the DPW ok'd the drainage analysis.

Mr. Sievert said he thought the review could be done in house, and said DPW would definitely be involved with the sewer design. Mr. Behrendt said he would confirm all of this with the DPW. He also noted the general approval of the construction management plans Mr. Sievert had been doing for projects in Town.

Mr. Kelley said Mr. Behrendt would want to see all elements of the plan set, but said the final sewer plans would be approved by the DPW subsequent to the approval of the site plan. Mr. Sievert said he would provide the Board with the layout of the sewer line.

Mr. Kelley noted that the drainage plan was a no brainer because it was trading one kind of impervious surface for another.

Ms. Tatarczuch said as things moved closer to construction, there should be information provided at the site and in the Friday Updates to explain that the park was being reconstructed. She said this was especially important because of all of the changes going on in Town right now. There was discussion on the existing donation bricks, and inclusion of them in the reconstruction work that would be done.

- X. 90 Bennett Road** – Thompson Inn. Amendment to approved site plan for new parking lot and driveway for 10-room inn. Stephen and Lori Lamb, applicant; Rokeh Consulting, Site Designer. Tax Map 14, Lot 34-1. Rural Zoning District. Recommended action. Discussion and set public hearing for June 25.

Chair Wolfe returned to the table. He said formal acceptance of this application wasn't needed since this was an amendment that was proposed.

Mr. Lamb noted the proposal to move the parking lot so it would be out of view during functions, on an elevated hill. Chair Wolfe said he gathered that from the site walk some revisions were to be done. Mr. Lamb said the revisions were made and submitted to Mr. Behrendt. He said they included a detail of the swale and some grading lines to be put around the parking in the Inn parking area.

Mr. Behrendt said he and Mr. Lamb had spoken with Town departments. He said the Fire Department had raised the issue of access by fire trucks, and handicap access to the

barn. He said there were also some stormwater details from DPW that were being worked through over the next few days. He said it was anticipated that there would be a final set of plans in the packet for the next meeting.

Mr. Lamb said he would provide this information in time for the next meeting. Mr. Behrendt said details would be worked out with the departments before the final drawings were done. Mr. Lamb said this was doable. He said there would be an ADA parking space for the function hall, and some kind of path that a wheelchair could use, which made sense.

Richard Kelley MOVED to schedule the Public Hearing for June 25, 2014. Councilor Smith SECONDED the motion and it PASSED unanimously 7-0.

Mr. Lamb explained to Councilor Smith why the name was changed to the Thompson Inn.

- XI. 257 Newmarket Road – Two New 3-Unit Buildings.** Design Review (preliminary) application for construction of two multi-dwelling buildings with three two-bedroom units each. The site contains an existing student housing building. A variance was granted in 2009 for the additional units. Christopher Meyer and Edward Marquardt, Seacoast OPM of Durham, applicants. Nick Isaak, Isaak Design, Architect. Tax Map 18, Lot 3-2. Rural Zoning District. *Recommended action:*

Mr. Behrendt said he had recommended that this application be tabled, and said the applicants were fine with this. He said they would probably work with the architect and site designer, come to a TRC meeting, and then come back with a formal plan.

- XII. ORLI and MUDOR Zoning Amendment – Single Family.** Town Council-initiated amendment to allow single family residential in the Office Research Light Industrial (ORLI) and Multi-Unit Dwelling Office Research (MUDOR) districts as a conditional use. It had been a conditional use but was made not permitted as part of a larger recent set of amendments to these districts.

Mr. Behrendt noted the recent set of Zoning amendments that removed residential uses from these districts, and said the Council believed it made sense to put the single family use back in for these districts.

It was noted that Chair Wolfe and Mr. Kelley wouldn't be at the June 25, 2014 meeting. There was discussion about doing possible video conferencing so Mr. Kelley could participate in the meeting.

There was discussion about what the Board would be able to accomplish concerning the Mathes Terrace application at the June 25th meeting. Mr. Behrendt spoke in some detail on this. Mr. Kelley asked if the matrix and draft conditions could be established by June 25th and Mr. Behrendt said this wouldn't be a good use of his time. He said even if the trajectory was toward approving the application, a few meetings would be needed to get

there. Mr. Kelley said if the Board was weighing or denying acceptance, he thought having a draft list of conditions would be a tool to use.

Chair Wolfe said another tool after listening to legal counsel would be whether there were grounds for denial of the project that didn't have to do with the details. He said that discussion could take place first on the broader issues, including whether the Concord case applied; whether the architectural regulations concerning massing applied, whether public safety was an issue, etc. Mr. Kelley agreed.

Mr. Parnell said he was ok with this, but said perhaps they were pushing things in a certain direction that might not be the best thing to do, in retrospect. He said he didn't expect the meeting with the lawyer to provide definitive answers, and spoke further on this. There was further discussion on the Board's process in general and with this project. Mr. Behrendt said it would be good if there was clarity achieved at the June 25th meeting.

Mr. Kelley said when a public hearing was closed on an application, the Board deliberated, and it often became horse trading with an applicant. He provided examples of this. Mr. Parnell said he didn't think that had happened except for conditional use permit applications. Mr. Kelley said he had done this with the Orion project, and it was noted that it wasn't a conditional use application.

Chair Wolfe suggested talking with legal counsel about possible courses of action. There was further discussion.

There was further discussion on the agenda for the June 25, 2014 meeting.

Councilor Smith MOVED to set a Public Hearing for June 25, 2014 on the ORLI and MUDOR Zoning Amendment initiated by the Town Council, to allow single family residential in the Office Research Light Industrial (ORLI) and Multi-Unit Dwelling Office Research (MUDOR) districts as a conditional use. Richard Kelley SECONDED the motion, and it FAILED 2-5, with Councilor Smith and Lorne Parnell voting in favor of it.

Richard Kelley MOVED to set a Public Hearing for July 9, 2014 on the ORLI and MUDOR Zoning Amendment initiated by the Town Council, to allow single family residential in the Office Research Light Industrial (ORLI) and Multi-Unit Dwelling Office Research (MUDOR) districts as a conditional use. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

XIII. Other Business

Chair Wolfe noted that Terra Cotta had an interest in possibly coming to the Durham Business Park as a light industrial use, and perhaps would also like to put in a restaurant and possibly retail there. There was discussion that this was worth investigating. Mr. Kelley said DOT requirements would have to be considered as part of this. Ms. Tatarczuch said perhaps the production facility could be at the Business Park and there

could be a satellite restaurant in Town in one of the commercial spaces that was available.

Chair Wolfe asked that Mr. Behrendt speak with the company about the Board's interest in exploring additional opportunities. Mr. Behrendt said a good thing about conditional use was that it could make something like this possible. There was discussion about this particular site as a possible location for the business.

On a different topic, Mr. Kelley said there was nothing to prevent the Planning Board from having additional planning sessions, and said he would like to discuss the Zoning map and explore some possible changes to it. Councilor Smith said he would love to explore those changes. Chair Wolfe noted that this would happen as part of the Master Plan process. Mr. Kelley said perhaps this piece was something the Planning Board should do in conjunction with the Master Plan process.

It was noted that the Future Land use map would be developed as part of that process. Mr. Kelley suggested that the Planning Board could provide input on this sooner rather than later, rather than waiting until it came to them. Chair Wolfe described the timing of the Master Plan process and Mr. Behrendt noted that the Future Land use chapter and map wouldn't be done until 2015. It was agreed that there could be discussion on this issue at the Board's October workshop.

XIV. Review of Minutes:

February 12, 2014

Page 1, should note that Wayne Lewis, alternate was there

Page 15, take out bolding

Page 20, line 44, should not be bolded. Remove quotation marks.

Page 25, line 13 Break from 10:36 to 10:45 pm

Councilor Smith MOVED to approve the February 12, 2014 Minutes as amended. Andy Corrow SECONDED the motion, and it PASSED 6-0-1, with Wayne Lewis abstaining because of their absence from the meeting.

February 26, 2014

Page 13, 2nd paragraph, should read "Dr. Andy Rutter thanked the Board for their thoughtful questions. He asked why there couldn't be 30 students instead of 64 students with the project the applicant proposed. He said he was opposed to the proposed scale of development with the applicant's project."

Councilor Smith MOVED to approve the February 26 2014 Minutes as amended. Lorne Parnell SECONDED the motion, and it PASSED 4-0-3, with Richard Kelley,

Andy Corrow and Linda Tatarczuch abstaining because of their absence from the meeting.

March 12, 2014

Councilor Smith MOVED to approve the March 12, 2014 Minutes as presented. Wayne Lewis SECONDED the motion, and it PASSED 6-0-1, with Lorne Parnell abstaining because of his absence from the meeting.

March 26, 2014

Page 2, line 44, should say ““see enclosed write up”

Page 27, line 6, should say “...PASSED 6-1, with Councilor Smith voting against the motion.

Lorne Parnell MOVED to approve the March 26, 2014 Minutes as presented. Wayne Lewis SECONDED the motion, and it PASSED unanimously 7-0.

XV. Adjournment

Councilor Smith MOVED to adjourn the meeting. Wayne Lewis SECONDED the motion, and it PASSED unanimously 7-0.

Adjournment at 10:02 pm

Victoria Parmele, Minutes taker

David Williams, Secretary