

These minutes were approved at the March 25, 2015 meeting.

DURHAM PLANNING BOARD
Wednesday, January 14, 2015
Town Council Chambers 7:00 p.m.
MINUTES

MEMBERS PRESENT: Andrew Corrow, Vice Chair
David Williams, Secretary
Lorne Parnell
Richard Kelley (arrived at approximately 8:37 pm)
Councilor Julian Smith, Council Representative to the Planning Board
Councilor Kathy Bubar, alternate Council Representative to the Planning Board
Wayne Lewis, alternate
Linda Tatarczuch, alternate

MEMBERS ABSENT Peter Wolfe, Chair
Bill McGowan

I. Call to Order

Mr. Corrow served as Chair for the meeting and called the meeting to order at 7:02 pm.

II. Roll Call

The roll call was taken.

III. Seating of Alternates

Chair Corrow said Mr. Lewis would sit in for Chair Wolfe and Ms. Tatarczuch would sit in for Mr. McGowan.

IV. Approval of Agenda

Chair Corrow noted that the public hearings for the Edgewood Road, and Mill Pond Center applications had been postponed. There was discussion about possibly amending the agenda so the Mill Plaza design review application could be heard after Public Comments.

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

V. Town Planner's Report

Mr. Behrendt said the Edgewood Road application had been postponed to January 28th. He also explained that the applicant for the proposed subdivision at the Mill Pond Center had some test pits done, and it turned out that only one new lot could be added to the parcel. He said the applicant would therefore like to revise the subdivision plan and come back for the February 11th meeting. He said he didn't think a new application was needed for this, especially since the project was at the design review stage.

Mr. Behrendt said Administrator Selig had convened an ad hoc committee to talk informally about the financial value of adding beds to the Peak development as well as the cost of installing additional landscaping there, with the hope that perhaps an agreement could be reached that would be forwarded to the Planning Board. He said the parties involved were very far apart in their thinking, so Peak had withdrawn both proposals. He noted that Peak was receptive to coming back to the committee to continue informal discussion.

VI. Reports from Board Members who serve on Other Committees

Ms. Tatarczuch said the ad hoc committee that was reworking the Historic Resources chapter had met recently. Mr. Behrendt said he hoped this chapter would come back to the Planning Board at the February 11, 2015 meeting. He said the Master Plan Advisory Committee wanted all chapters that had been developed to be finished by February 20th, so Strafford Regional Planning Commission could do their work on the chapters as well and get the chapters back to the MPAC by March 19th.

The Planning Board agreed to put the Historic Resources chapter on the agenda for the February 11th meeting.

Councilor Bubar said the Conservation Commission met recently but did not discuss anything relative to the Planning Board.

Chair Corrow said the Energy Committee met recently and discussed the Energy Master Plan chapter. He said there would be a special meeting on January 20th to make further corrections to the chapter. He also noted that Charlie Forcey had been voted in as the new Chair of the Committee.

Councilor Smith said he'd provide a report on the Traffic Safety Committee at a future meeting.

VII. Public Comments

Councilor Robin Mower, Faculty Road, said the reports provided by Planning Board members on the committees they served on were very useful, noting that residents were

more likely to watch Planning Board meetings than meetings of some of the other Town committees. She also noted that the Traffic Safety Committee had recently been provided with the University's initial plans for the area around the Train station, to make it into more of a transportation hub.

Councilor Mower said she'd noticed that when applicants had been before the Planning Board for a while, there could be a relaxation of the formality that was needed in order to retain the proper distance between an applicant and the Board. She said Board members might want to consider calling applicants by their proper names, and said this would help the community trust in the application review process. She also suggested concerning the Planning Board's Rules of Procedures that there should be a rule that Board members who were going to vote on an agenda item should previously have heard the members of the public who spoke at the public hearing on this item, either in person or on DCAT.

- VIII. Public Hearing - Edgewood Road and Emerson Road Subdivision.** 4-lot subdivision & boundary line adjustment. The applicant is requesting the application be changed to a 2-lot subdivision. Jack Farrell, applicant. County Line Holdings, LLC and Mark Morong, owners. David Vincent, surveyor. Map 1, Lot 15-0.

Postponed to January 28

- XII. Public Hearing –Mill Plaza Redevelopment.** Design Review (preliminary application) for significant redevelopment of Mill Plaza Shopping Center site including 89,400 square feet of commercial space (existing and new), an addition to the existing Durham Marketplace building, five new buildings, 185,750 square feet of residential space, 442 beds, greenspaces and plazas, and 168 parking spaces (there are 345 existing spaces). Colonial Durham Associates, LP, c/o John Pinto, owner. Sean McCauley, representative. Joseph Persechino, Tighe & Bond, Design Engineer. Adam Wagner, DeStefano Architects, Architect. Tax Map 5, Lot 1-1. Central Business Zoning District. Recommended action: Discussion and continuation of design review and public hearing.

Attorney Ari Pollack, representing Colonial Durham Associates, noted that at the October Planning Board meeting, there was a design review public hearing, and it was agreed that it would be continued to tonight's meeting to allow some revisions to the plans. He said the design team had reviewed notes from the meeting, regulations, and also spoke with neighbors and was back now with a responsive next step. He said the intent was to continue to listen to positive as well as negative comments.

He said on December 1st, the Town Council met and adopted a Zoning change concerning apartments not occupied by family members that would not be economically feasible in Durham. He said Planner Michael Behrendt then determined that this Zoning change applied to the Mill Plaza project, and said this was then appealed to the ZBA. He said Mr. Behrendt had also determined that dormitories was not a permitted use, and said Mill Plaza would file an appropriate appeal concerning this.

Attorney Pollack said today, the applicant had received a menu of choices from Mr. Behrendt relative to housing type, with what sounded like a warning, to pick smartly from this menu or the design review process would be closed. He said the first choice was that the applicant could request a rehearing of the ZBA decision, and/or appeal this decision to Superior Court. He said the second choice was to appeal the determination made on January 8th that dormitories were not a permitted use.

He said the third choice was to seek a variance from the recent Zoning change in order to allow student housing with a density of 300 sf per occupant. He said the fourth choice presented was that the applicant could build apartments at the required 600 sf habitable density for non-families. He said if options 1, 2 and 3 failed, the applicant might consider doing this, but said it was their opinion that this approach was not economically feasible for the Mill Plaza site or any other site in Durham.

Attorney Pollack said other suggestions for the Mill Plaza project, concerning elderly and family housing or removing residential uses, while helpful were not viable for this project. He said the last suggestion was to withdraw the application, and said while this was always an option, it wasn't the one the applicant preferred. He said it was hoped that a middle ground could be found in order to deliver a win-win project that recognized the need to upgrade the property and responded to the Mill Plaza study.

He said the applicant was trying to clear the air procedurally, but noted that this was difficult because the appeals weren't resolved yet. He said meanwhile, they were moving forward with the mixed use application, and said he hoped discussion on this would continue. He said if the appeal of the ZBA decision was denied, it would then be appealed to Superior Court.

Councilor Smith said he thought a request for rehearing of the ZBA's recent decision wasn't an efficient way to proceed. He then read a statement into the public record.

Attorney Pollack asked for a copy of the statement.

Architect Adam Wagner noted that he had provided a concept for a site plan a few months ago and was told it was unimaginative. He said his client had then said the design team shouldn't be afraid to do something great. He said the various comments received had been considered, and said Lisa DeStefano would walk the Planning Board through the revisions to the plan. He said key words that would describe this plan were: village center, green, traffic calming, phasing in part to address current tenants, engaging of College Brook, pocket parks, amenity space, pedestrian approach, reduction in parking spaces.

He provided an overview of what was proposed, including the proposed square footage, number of beds, parking spaces, greenspace and plazas. He said the 442 beds mentioned in the application was based on having 300 sf of habitable area per occupant. He said the application had not been targeted to 100 sf per occupant per the dormitory classification.

In response to a question from Councilor Smith, he said they would be single occupancy beds. Councilor Smith said he would like to see this stated in future documents.

Architect Lisa DeStefano next described the revised design in detail. She noted that the existing one story Durham Marketplace building would remain, which would be anchored in a village green with a two story commercial structure and a 4 story boutique hotel, both of which would both be constructed close to the street edge on Mill Road. She said there would be green areas between the new structures that allowed pedestrians to gather and access into the site, and said this access would align with the access way on the other side of Mill Road.

She said there would be commercial space on the first floor of these new buildings, and residential space on the upper floors. She noted the current pocket garden at the corner of Mill Road and Main Street, and the change in grade there, and said they were investigating having the main entrance to the second floor of the hotel come off of the park.

She also noted the proposed 3 story mixed use building along College Brook, across from the Durham Marketplace building, as well as the proposed 4 story mixed use building to be set at a right angle to both of those buildings. She explained how cars and delivery vehicles would be able to access the site and to park, and also spoke further about how pedestrian access that would be available at various locations.

Ms. DeStefano spoke about the proposed phasing of the project. She said the tenants currently in the angled building in back could be moved to the new buildings in front, and said this would allow the second phase of the project to be built in the back. She said the tenants had been contacted concerning this. She described the plans for building in the back of the site, and said there would be a building with parking on the first floor, and two to three stories of residential above. She also described a courtyard area that had been designed for the back of the site. She explained that the proposed 4 story buildings were actually 3 stories with a 4th floor tucked under the roof so the building wouldn't appear to be as tall, and noted that this design was similar to what the Orion project included.

She said there would be pedestrian access along College Brook, which would connect with other activity on the site. She noted the current edge of road pavement against the brook, and said the design hadn't gone any closer to it. Engineer Joe Persechino said there would be 50% less wetland encroachment with this design than there was currently.

Ms. DeStefano showed visuals of the project from various angles. She noted that a lot of time was spent on designing gathering spaces for the development, and provided details on where these were included. She also spoke in detail on the proposed view corridor extending inward from the entrance to the property. She explained that green areas would extend through the site, and would help draw people into the site.

She noted a proposed bike and walking trail that would connect from Mill Road to Chesley Drive. She also spoke about opportunities for outdoor space for restaurants, etc. with the proposed commercial building along College Brook.

Councilor Smith said he liked the design, and said he might like to live in the development if it was on a subway stop, in a city. But he said there was a limited amount of space in downtown Durham, and said there would have to be discussion on the parking issue. He said he supported including parking over some other uses, in this instance.

Ms. Tatarczuch asked how many guest rooms were planned for the 4 story hotel. Ms. DeStefano said it would be a small hotel with 36-40 rooms, and noted that the owner was looking for some buy-in on this idea before signing someone up. Ms. Tatarczuch asked about parking for the hotel, and Ms. DeStefano said there would be 30-40 spaces for guests at the hotel and also there could be valet parking, so that cars could be parked elsewhere. Councilor Smith asked if there would be valet parking for residential tenants. Mr. Wagner provided further details on the parking, and noted that with valet parking, there could be some stacking of parking.

Chair Corrow confirmed that the current design was based on using 300 sf of habitable area per occupant. Mr. Parnell said he didn't understand what the applicant was hoping to accomplish tonight, given the ZBA decision last night and that the applicant didn't think 600 sf of habitable space per occupant was viable. Chair Corrow agreed. Mr. Wagner spoke about the dormitory concept, and Mr. Parnell said the Planning Board had been told that this wasn't viable either. He said he thought what was presented this evening was a great plan, but said he wasn't sure why they were discussing something like the number of rooms in the hotel when the plan was either not viable or not legal.

Attorney Pollack said the applicant was trying to move forward in some manner. He said they were showing the amount of space dedicated to residential, and couldn't say now whether it would be dorm style, apartments at 300 sf, or apartments at 600 sf. He said the answer to this would come from others. He said the recent ZBA decision was a split vote. Councilor Smith said the vote was 3-1-1.

Ms. DeStefano said the presentation was of a mixed use development, and said while the number of beds might change, there would be retail space, a hotel, etc. Ms. Tatarczuch said the plan was probably a very good design in terms of the amount of green space in it, etc., but she said the Planning Board had gotten into difficulty by not getting into enough detail on some projects. She said the number of beds/occupants was a critical detail that the Board would have to take into consideration, and said if it was above a certain level, the project wouldn't fly.

David Williams MOVED to open the Public Hearing. Councilor Smith SECONDED the motion, and it PASSED unanimously

Elaine Fink, Fellows Lane, said this had been a great presentation, but said she had concerns about coordinating the project with the project the Town and the University

planned to do, which included the property across the street from Mill Plaza. She noted the sight line across Mill Road to Hetzel Hall that Ms. DeStefano had referred to, and said she didn't know what would happen to it in the future. She also noted that the University/Town project might include a boutique hotel, and said she didn't think Durham could handle that many of these hotels. Ms. Fink said she also wasn't sure what would happen to the Rite Aid and Bella's commercial spaces as a result of this project. There was discussion on this with Ms. DeStefano.

Sean McCauley, of Mill Plaza Associates, said he'd had conversations with several tenants, and said the company was doing its best to accommodate them. He said some tenants might choose to relocate and some were excited about having more space. There was discussion that the rents would be higher, and Mr. McCauley said that was a condition of the marketplace.

Councilor Robin Mower, Faculty Road, said Attorney Pollack had referred to the dormitory use as being available, and then corrected himself and said it was a conditional use. She said she didn't believe this was accurate. She also noted to Planning Board members who were not on the Board several years ago when in **2002 and 2009** Mill Plaza requested additional parking because it claimed that the businesses there needed it, and this request was denied.

Councilor Mower said on March 27, 2013, she read a letter to the Planning Board about a once-in-a-lifetime opportunity presented by the proposed redevelopment of the Greens, now known as Madbury Commons, to make significant improvements that benefit the Town as a whole. Today we again find ourselves at the threshold of such an opportunity. She said then as today a property owner proposed to redevelop a large parcel of land that has in many ways been a drag on the community. She said many if not most residents would welcome improvements.

But she said key among the actions the Planning Board could make was to urge, and require where possible, that the owner of the Mill Plaza take steps to improve water quality in the College Brook. She said this depended a great deal on the functioning of buffers that provided a free, natural function of filtering pollutants, yet the College Brook had become seriously impaired through sedimentation and pollutants associated with development.

She said redevelopment according to the Town's stormwater regulations would make a huge difference in the water quality of Pettee and College brooks. But she noted that this did not address the issue of nutrient loading. She quoted former Town Engineer David Cedarholm on this issue: "An overabundance of nutrients, principally nitrogen, has been identified as adversely impacting the water quality and natural habitat of the Great Bay Estuary to the point at which NHDES has listed the Great Bay as an impaired water body." Councilor Mower said it was this overabundance of nutrients that put the Town, along with other Seacoast communities, under the eye of the federal Environmental Protection Agency."

Councilor Mower said College Brook lead to the Oyster River, which then mingled with the Great Bay. She said the Town was still on the hook for this nutrient pollution, and said Durham and other Seacoast communities must comply with strict EPA discharge permit requirements that might yet cost the Town millions of dollars if the EPA required it to improve the wastewater treatment facility. She said various proactive efforts to date had positioned the Town of Durham extremely well in the eyes of NHDES and EPA, but had also cost hundreds of thousands of dollars.

Councilor Mower said the questions she had raised two years ago were still germane:

1) How do we help buffers function as they are meant to? She said stretches of College Brook no longer retained their buffers or were buried under parking lots and buildings, and could not offer the benefits of an intact stream. But she said between Mill Road and the Mill Pond, they could offer such benefits if they were allow to do so. She spoke further on this.

2) Who is going to foot the bill for continued degradation? Councilor Mower said there a chance to require that those who contributed to water quality impairment shared the cost with the Town by taking the responsible step of protecting the riparian buffers that provided free water treatment. She said Durham should ask Colonial Durham Associates, whose Mill Plaza had had a huge negative impact on the brook for decades, to plan any redevelopment sufficiently far back from the brook and allow it to function.

Councilor Mower said the Town's Wetland Conservation Overlay District ordinance was adopted to protect the wetlands by setting limits on what can occur within its buffers. She said the purpose of the ordinance was to protect water quality, preserve flood storage capacity, protect habitats and vegetation, maintain stream flow, and to conserve natural beauty and scenic quality. She said these were mainly functional values, which translated to economic value to the community, and said they should not be given away.

Councilor Mower said it appeared that the revised site plan ("First Floor Plan") did not respect the wetland setback, and that approximately one-half of each of the two buildings parallel and adjacent to the Brook were situated within the wetland setback. She said this wasn't a minor encroachment. She said disregarding the required wetland buffers would deprive the community of their benefits for years to come. She asked that the Planning Board require the applicant to respect the setback and buffers of the College Brook, by doing the following:

- 1) Amend the site plans to show the 25-foot shoreland setback for College Brook;
- 2) Move the two buildings away from the wetland setback (misabeled "buffer" on the site plan); and
- 3) Calculate the square foot encroachment into the 75-foot wetland buffer so that we know what impact is planned.

Andrea Bodo, Newmarket Road, said she liked the direction that the design was taking. She spoke about being at the Ritz Carlton in Boston recently, overlooking a garden and wishing there was something like this in Durham. She said currently Mill Plaza was uninspired, and said the proposed design was reminiscent of the B Dennis design. She said she could imagine walking there, and was very supportive of the design. She said she hoped everyone could find a way to make it work.

Beth Olshansky, Packers Falls Road, said she agreed that the revised design was much better than what they had seen before. She noted that the 168 proposed parking spaces was about half the number of spaces currently on the site, and asked who they had been designated for. Mr. Wagner Adam said the spaces weren't designated for a particular group. He said the majority of it was focused at the front of areas where stores would be.

Ms. Olshansky said she had heard that the hotel would require 36-40 spaces, and said it wasn't clear if cars would be parked on the site or off. Mr. Wagner said all options would be explored, including opportunities for satellite parking. Ms. Olshansky said there was the potential to end up with less parking than what was needed to benefit residents. She said Durham wanted a vibrant downtown, and knew that in order to get this, parking would be needed. She said it wasn't clear who would and wouldn't be able to use the spaces, and said the Planning Board would need to seriously consider this issue.

Ms. Olshansky said she regretted seeing that the park currently next to the Bagelry would be gone with the proposed design, and a building would be there instead. She spoke in some detail on this. She also said the 4 story hotel proposed next to the one story Durham Marketplace seemed architecturally unappealing, and said she didn't believe that it met the architectural design standards, which recommended that there be no more than a one or one and a half story difference between adjacent buildings.

She said she preferred this overall design to the last one, but said the elephant in the room was how many occupants there would be, and who they would be. She said she would hate to see the design process take up Planning Board's time and the public's time without a viable, clear path toward a permitted use and approval. She said she hoped this was something that could be resolved soon, and if not that the whole thing would be tabled until the legalities were worked out.

Steve Fink, Fellows Lane, said he was impressed by the presentation, and said the design reflected new urbanist community design. He said at its center, new urbanist design had to do with the people who lived in a development. He said it should include families with children, some older people, etc., but said if there were dorms with students living in them, it would become a slum. He said if the development could work for families and others who would walk in that community, it would be really something.

Sandra Hebert, Chesley Drive, said the design had improved tremendously, but agreed that the question was occupancy. She said one of the recommendations of the Mill Plaza study in 2008 study was that any student housing would be pushed back up toward Main Street. He said in 2014, the Town said it wanted to protect the pocket neighborhoods, and

noted that there was a large neighborhood behind Mill Plaza. She also said greenspaces were great, but said this design removed green space along Main Street out and put it in a courtyard for dorms. She said this wasn't a place she would take her kids.

John Hart, Mill Road, noted that he'd submitted a two page letter for the October Planning Board meeting. He said this design was definitely an improvement over the last one, and included a lot more green areas. He said Mill Plaza should be redeveloped, but said this should be done right. He noted that Aldo Leopold had said something was right when it preserved and enhanced the biotic community, and was wrong when it didn't. He spoke further on this, and said he didn't think there would be a decrease in impervious surface with the development. Told that there would be a decrease, he said while there was less parking proposed, there was a lot more rooftop. He said he would like to see more of a setback from College Brook, to respect College Brook, and said perhaps the buildings could be pushed back further.

Mr. Hart said this plan was a start, but said there was a long way to go. He said a lot of commercial space had already been built in Town, and some was empty while there was a fairly high turnover of other spaces. He said he didn't think Durham was a shopping destination, and said if it was going to be, more parking spaces would be needed. He also said putting 442 students in the middle of a parking lot didn't look regardless of what the buildings looked like.

Matt Komanchek said he live in the Faculty neighborhood. He said the Planning Board needed to do more planning. He said there was a blueprint for Mill Plaza in 2008, and said the current plan cast that work aside. He said there was supposed to have been a real connection to Main Street, rather than a pedestrian path through the Orion property. He also said the tiny park next to the boutique hotel would not be meaningful. He said a boutique hotel sounded nice, but said he thought they were getting ahead of themselves. He said the village green idea sounded like a rosy view of things, and also said the valet parking idea showed no sensitivity to merchants and would be very disruptive to their businesses.

He said he didn't hear anything mentioned about noise concerns, which was implicit in the concerns raised about residential housing. He said student housing and residential family housing was totally incompatible. He said neighbors could already hear it, and said once Orion came on line, it would be worse because of the elevation. He also said two of the proposed buildings would be too close to the elderly housing development nearby.

Mr. Komanchek questioned how much commercial space Durham could support. He said Mill Plaza might be a privileged location and theoretically the commercial spaces wouldn't be vacant, but he considered how this would impact other commercial space in Town. He asked the Planning Board to consider College Brook and the adjacent neighborhood when it discussed this proposal.

He also questioned the phrase “tucked under” in regard to a 4th floor of residential space in some of the buildings, and also in regard to parking. Ms. DeStefano explained that the upper floor would be contained within the roof structure, with dormers. She also said the parking in one of the buildings would be at grade, and the residences would be above this on the second floor so would be hidden.

Councilor Smith asked who the parking under the building on the northeast side of the property would be for. Ms. DeStefano said they hadn’t gotten to the point of deciding who would park where. Councilor Smith said this plan proposed to cut the existing parking in half, and then take away a portion of new proposed parking and turn it over for residential use, which would cut into the parking for retail and office uses. Ms. DeStefano said there might be uses that were symbiotic in that they could share spaces at different times of the day. She said these things needed to be figured out. Councilor Smith said the Planning Board had to figure out something concerning the parking.

Chair Corrow asked if the Board wanted to keep the public hearing open. Councilor Smith said he would prefer to close the design review and invite the applicants to submit an application.

Mr. Behrendt said he thought it made sense to close the design review. He said there was one big issues, which was occupancy, and said he thought substantial strides had been made with the design, other than the student housing. He said unless the student housing issue was removed or a plan met the standards, he didn’t see value in continuing to talk about refinements to the design.

He also said if the design review was closed tonight, he would discourage the applicant from submitting a formal application. He said the purpose of design review was to see if everyone could get to the same page, but said there were some big obstacles. He noted that even if 600 sf was provided per occupant, what was proposed was very different than having the required commercial space on the first floor and two stories of residential space above.

Councilor Smith said another large elephant was the parking issue. He said the Planning Board would have to give the applicant a waiver in order to allow a reduction in parking by half. He said he wanted to make sure that the Planning Board discussed whether it would look favorably upon such a reduction.

Chair Corrow agreed that the public hearing could be closed this evening, and said he would like to hear from additional Planning Board members on this. Mr. Williams said Mr. Parnell’s earlier comment was helpful. He said he didn’t see how the Planning Board could proceed if the decisions to be made by others on the various options had yet to be made. He also said he shared a deep concern about College Brook, and said its rehabilitation should be given conscious attention, along with the parking and occupancy issues.

Ms. Tatarczuch said she agreed, and said the Planning Board had no reason to invite the applicant back under the current circumstances. She said the housing described this evening didn't meet the standards set for the Town, and said she agreed that the design review discussion should be closed.

Councilor Bubar said she thought the Planning Board needed to let the legal issues run their course, and said until the Court decided what the density requirements were, they couldn't do anything. She said she agreed that it was a really nice design, but said it had been made clear that what the applicant wanted to do was much too dense.

Mr. Kelley said if there was a case to be made by the owner, it wouldn't be with the Planning Board, and said the Board should let this process transpire first. Attorney Pollack agreed that the authority to decide on the legal issues might not rest with the Planning Board, and he spoke further on this.

Councilor Bubar said if the Board was dealing with something it couldn't do anything about, it would be nice if it didn't have to deal with it at each meeting. She suggested that perhaps a design committee could be developed that would meet with the design team, until the underlying density issues were resolved. Chair Corrow said it could be premature to have such a committee.

Mr. Behrendt said the Board could push the design review out a few months, or could close it, and then if and when the applicant believed the student housing issue had been worked out, a new design review application could be submitted. He said there were some significant zoning issues right now, and also said the parking was a huge question. He also noted that it would be a conditional use application, so the Planning Board would have a lot of discretion.

Mr. Parnell said traditionally the Planning Board used the design review process to provide its concerns about a proposed project, and an applicant then came back with a formal application. He said the Board had done this concerning this project, but said perhaps the concerns could be expressed more formally before closing the design review. He said the Board had issues with occupancy, parking, some of the buildings being in the wetland buffer, and the two buildings in the back having no commercial space. He said he thought whether the design review was closed or not was irrelevant, and said it could perhaps be continued to a date when there was firm information on some of these issues. But he said it shouldn't be continued to upcoming meetings.

Attorney Pollack said they would like a 3-4 month continuance, and would come back with answers concerning the occupancy issue.

Councilor Smith asked whether if the court affirmed Mr. Behrendt's administrative decisions that 600 sf applied and also that dorms were not permitted, this would kill the project. Attorney Pollack said no. He said he wasn't convinced that the owner would not proceed with some units, and was also not ruling out the possibility of receiving a variance.

Councilor Smith asked whether if the applicant accepted the 600 sf per occupant ruling and then designed and built luxury apartments, these apartments would be rentable without a guarantee of parking on the site. Attorney Pollack said he didn't know, and spoke further on this.

Richard Kelley MOVED to continue the Design Review to the April 8, 2014 meeting. Lorne Parnell SECONDED the motion.

Mr. Kelley said there were some other options the applicant could potentially exercise, and said he commended them for trying to make a project work, and said the plan presented tonight was a step in right direction, There was further discussion.

The motion PASSED 5-2 with Councilor Smith and Linda Tatarczuch voting against it.

- IX. Public Hearing - 50 Newmarket Road** – Mill Pond Center Property. Design review (preliminary application) for a 3-lot subdivision. Seacoast Repertory Theatre, property owner; Matt Faginger-Auer for Doucet Survey, Surveyor. Tax Map 6, Lot 9-8. Residence B Zoning District. Recommended action: Close design review or continue to another meeting if significant issues remain.

Postponed

- X. Public Hearing - 257 Newmarket Road** – Two New 3-Unit Buildings. 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 – for a maximum of 15 occupants in the existing building and 24 occupants in the new buildings. Christopher Meyer and Edward Marquardt, Seacoast OPM of Durham, owner; Matt Silva, coordinator; Dennis Quintal, engineer; Roscoe Blaisdell, surveyor; Nick Isaak, architect; . Tax Map 18, Lot 3-2. Rural Zoning District. Recommended action: Discussion and continuation of public hearing.

Mr. Silva said the overall plans had not changed. He noted comments made by the Planning Board about the exterior layout, but said they didn't receive specific feedback on this. He said since the buildings wouldn't be seen from the road, the design was kept the same. He said the applicant was open to suggestions, and intended to make the buildings architecturally pleasing.

Chair Wolfe asked if there were any members of the public who wished to speak for or against the application.

Beth Olshansky, Packers Falls Road, said concerns about the design were expressed at the last meeting, and said she had hoped to see some adjustments to address these concerns. Chair Corrow said Mr. Silva had been looking for suggestions. Mr. Silva said the buildings were being made maintenance free, and didn't include front porches, noting

that he would agree they would be good to have if the building was located in Town. He said the building design was left as it was, given the goal of keeping costs down to make the units affordable, and where the buildings would be located.

Mr. Behrendt said he talked to architect Nick Isaak, who would send his comments in a few days. Chair Corrow said that would be beneficial, and noted that Chair Wolfe had mentioned this issue at a previous meeting. Mr. Kelley said that regarding aesthetics, asphalt would run to the edge of the units, with no lawn in front of the buildings. He said it was the applicant's choice, but said he didn't think this lent itself to the look of the buildings.

Mr. Kelley said he had some questions for the engineer regarding the site plan. He noted that there would be reconstruction of the southern drive, and asked that the engineer establish the limit of work for this. He spoke in detail on the information that needed to be provided in the site plan, and said the contractor doing the work would need a lot more information than had been provided so far. He also said although narrative on erosion and sedimentation issues had been provided, there was no erosion and sedimentation plan. He noted that a lot of land would be disturbed and left that way for some time. He asked if an ATO permit had been received. Mr. Kelley summarized that the site plan wasn't ready for the Planning Board to review.

Mr. Williams confirmed that the Code Enforcement Office would review the project as part of the TRG, as would other Town staff on the TRG. Mr. Behrendt said the applicant should meet with the Town Engineer to determine what she needed to see on the site plan. The process going forward was discussed. Mr. Kelley said he was quite certain that before the Board voted on the application, there would be a complete set of plans, the drainage report would be reviewed by the Town Engineer, and she would also review the site plan as well.

Chair Corrow summarized that the applicant would meet with the TRG on February 3rd, and would meet with the Planning Board on February 11th. Mr. Behrendt said if everything was in order, he'd have a list of proposed conditions of approval. It was noted that the public hearing was still open.

Councilor Smith MOVED to close the public hearing. Richard Kelley SECONDED the motion.

There was discussion about whether any material changes could be expected from the applicant.

Councilor Robin Mower, Faculty Road, noted that Chair Wolfe had said he was less than pleased with the aesthetics of the project, and asked if this had been addressed. Chair Corrow said yes.

The motion PASSED unanimously. 7-0.

XI. Public Hearing - Automobile Service Facility – 3 Dover Road. Redevelopment of former Cumberland Farms property into facility with 4 service bays, an office and 12 parking spaces. James Mitchell, Tropic Star Development, applicant; Cumberland Farms, property owner; Barry Gier and Wayne Morrill, Jones & Beach, Design Engineers. Map 4, Lot 49. Courthouse Zoning District.

It was noted that revised plans hadn't been submitted yet. Engineer Barry Gier said at the site walk, they heard from the Board that some of the landscaping and trees at the east and rear of the project should be kept, and said this would be done to the extent possible. He also said more clarification on the access easement would be provided at the next meeting. He said they were looking now for input on the idea of a traffic study, and the waiver request for 1200 sf of separation between driveways. He said the applicant would also answer questions concerning environmental issues on the site, and possible tenants.

Mr. Gier said typically, they would say a traffic study wasn't necessary because the use wouldn't materially affect Dover Road. Chair Corrow said with this site, he thought traffic would be the largest issue. He said traffic going out was an issue, because during peak hours cars wouldn't be able to make a left hand turn. Mr. Gier said the applicant understood this wasn't done at peak hours.

Applicant Scott Mitchell said the use proposed was probably the lowest traffic generator there was, for a commercial use. He noted that he had planned to buy the Town Hall property, and as part of this the Cumberland Farms property had been planned as a relocation site for George York's garage and so the original project there was designed for his needs. He said there was currently a substantial investment in the property and said it would be purchased.

He said the proposed use was a good one, and also noted that he had a substantial foothold in Durham with the Irving Station, so would like to see the Cumberland Farms site cleaned up. He said the gas tanks were removed from the property, and also said it was still being monitored and it looked like NHDES would close the site soon. He said they didn't have any specific tenants planned for the site yet, noting that the proposed tenant originally had been George York.

Mr. Kelley asked if there was concern about the nature of the easement, and whether both pieces of the driveway would be used. Mr. Mitchell said his attorney had looked at this, and the research showed he had full access to the driveway. He said he had owned the property for many years and said the right of way was used for full access for many years. He said the intent was to utilize the easement to its fullest extent.

There was discussion about the purpose of the business. Mr. Mitchell said he didn't have a tenant yet, but said the use was allowed in the Zoning Ordinance. He said auto services repair/maintenance was the target and was probably the highest and best use for the site. He said the other option was to just fix the building up and lease it. He said the property wasn't in good shape. He said a second story was originally designed in order to provide storage area, but said he didn't think that was needed now.

Mr. Kelley said another concern raised at the site walk was how delivery trucks would be able to get in and out of the site. There was discussion that this information would be provided. Mr. Williams said the particular use would determine the traffic issues and therefore would help in developing a traffic study. Mr. Mitchell said he knew Durham and the traffic patterns in town well. He said an extensive traffic study was done when the Irving station was built, and said what was proposed with this application was one of the lowest traffic generators possible for the site.

He said he would do a traffic study if requested, but said it had been a Cumberland Farms gas station before, and also said it was a given that a car couldn't turn left out of the site at peak hours. Mr. Gier suggested that instead of a full blown study, a traffic memorandum could be developed that would include traffic data for a use like this. He said that depending on the results of the data, it could be determined if a full blown traffic study was needed.

Mr. Behrendt said the use wouldn't generate so much traffic that the intersection would be overloaded, but said the issue was the vehicles getting into, through and out of the site, how many there would be, as well as where vehicles would park and be stored. Mr. Gier said this could be addressed in the memorandum. Mr. Behrendt said some visuals were needed to show the issues with the site.

He noted that Chair Wolfe wanted it to be conveyed this evening that he didn't see how the site could work for access, as shown, and had suggested that if the 4th bay was eliminated so there could be a loop through, that would help. Mr. Parnell said the same thing could be obtained if the parking spaces at the top were eliminated, so cars could loop around to the back of the building.

Mr. Mitchell said he knew he had to look at this access issue, and said he would address it. He said there would only be 12 parking spaces, when 16 were required and noted the variance received. He said they didn't want parked cars on the property, and said the only car parked there when the facility was closed would be one that major work was being done on. He noted that Mr. York had wanted him to get a parking easement across the street because he used a lot of parking. But he said other auto service businesses generally wanted to leave room for the next customer.

Mr. Corrow asked if this use could be something like a Jiffy Lube, which could generate a lot of traffic. Mr. Mitchell said he didn't know right now. He said he was buying the property. He said they would take a hard look at eliminating one of the bays. He said he needed 24 ft. to get around the building. He said they wanted to be able to use the right of way, the same way Cumberland Farms did.

Richard Kelley MOVED to open the Public Hearing. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

Councilor Robin Mower, Faculty Road, received clarification that a traffic study wasn't necessarily required even though the property was on a State road. Mr. Behrendt

confirmed that the Board wanted a traffic analysis that focused on access in and out of the property.

Attorney Mark Beliveau, of Pierce Atwood, said he represented the owners of Holiday Inn Olympic Equity Investors LLC. He said the project was evolving, and said the site plans might change substantially. He said he would speak to the current plan and what was submitted to the ZBA. He said his client supported the reuse of the property, with a use that made sense for a quarter acre lot. He said it wasn't his client's or the Planning Board's responsibility to figure out what could fit on such a lot.

He said he heard the applicant say 24 ft was needed around the building, but said the site plan reflected a 12 ft wide easement, between the two properties. He provided details on this, and said his client believed strongly that any easement that existed there was no more than 12 ft. He said a 12 ft easement couldn't accommodate two way traffic. He also said just because a 12 ft private easement was available, this didn't mean that it was sufficient for egress and ingress. .

Attorney Beliveau said there were six buildings on the Hotel NH site, and said the major building was the Hotel. He said the site plan approved for the site had a limited common area, for designated parking spaces for the hotel, duplexes and apartments. He said the 24 ft driveway between the Cumberland Farms property and the Hotel property, which used by all of the unit owners, was at least considered a common area, and said the land over which the 12 ft easement ran was owned by the condominium unit owners as a whole. He said the easement benefited the Cumberland Farms property, and said the applicant had the right to use it, but he said there was nothing noted beyond that. He said they didn't have the right to use the entire 24 ft driveway. He said the condo owners had the right to use the entire 24 ft, as long as this wasn't inconsistent with what the easement holder could do.

Mr. Kelley said the applicant's attorney felt they did have the right to use the additional 12 ft, and said this put the Planning Board in a difficult situation, unless this issue was resolved. He said he would like the Town Attorney to weigh in on this. Mr. Behrendt said he thought that unless there was a letter from the applicant's attorney that said something contrary, the Board could assume there was 12 ft of the driveway that the applicant could use.

Ms. Tatarczuch asked who maintained the 12 ft easement. Attorney Beliveau said the Hotel plowed the driveway and maintained all 24 ft. Ms. Tatarczuch said clarification was needed on whether the Cumberland Farms property had the right to take into consideration the whole 24 ft for their use, going forward.

Mr. Gier said the applicant agreed and was looking for clarification on this. Ms. Tatarczuch said it would be appreciated that when the next version of the site plan was submitted, all of this would be shown more clearly. Mr. Gier said after the TRG met on February 3rd, the applicant would like to come back to the Planning Board with changes made as well as information provided on the easement.

Attorney Beliveau said other concerns about the application were ingress and egress, onsite circulation, and noise. He said that regarding the ingress and egress issue, this would be a very intensive use of a quarter acre lot. He said when the applicant went before the ZBA, he said the project was designed to provide quick auto servicing, and that cars would be coming in and out all of the time. Attorney Beliveau said there would be heavy reliance on the 12 ft easement, noting that there were 5 curb cuts off of the driveway within 100 ft and it wasn't clear how these would be used.

He said there would be two parking spaces in the only true driveway area in the back, so this wasn't a functional space. He also said the applicant was relying on the garage bays for ingress and egress and to store and park vehicles, in addition to being an area to work on the vehicles. He noted that the applicant had stated to the ZBA that the 12 parking spaces would not be adequate for Mr. York's business so 8 more spaces would be needed offsite. He said it was explained at that time that vehicles would be double stacked on the site to fit even more cars in the lot. He said that created an ingress and egress nightmare, for delivery trucks, etc.

Attorney Beliveau said emergency vehicles would have difficulty getting onto the site and would have to stay on Dover Road. He also said if there was a reasonable amount of business, more bays were needed. He said Mr. York had wanted 6 bays, and the compromise was 4 bays. But he said this would create issues of getting in and out of the site and circulating within the site. He said the proposed 4 bays would open up within 35 ft of the guest rooms at the hotel. He acknowledged that it was a permitted use, but said the way it was designed was unique, and very inappropriate. He said zero buffer was proposed on that side, and said a high volume use meant that even if the bay doors were closed all of the time, which he said wouldn't happen for practical reasons, it would be a noisy operation. Attorney Beliveau said he had never seen a site this small where this much was proposed.

Mr. Kelley said he agreed that the traffic generated at the site wouldn't make that much difference at the traffic signal, but said he was curious to know about the traffic along the right of way, and how much would be added. He asked if there was value in getting this information. Attorney Beliveau said that would show how intensively the driveway was used and would be used. He noted that the use wasn't clear yet. He said the bigger aspect of the driveway was that the applicant had a right to use 12 ft of the driveway, which couldn't accommodate two way traffic. He said there was two way traffic on the 24 ft driveway by hotel customers.

Councilor Smith asked Attorney Beliveau if he foresaw that if this business operated, there would be a constant problem of people coming out of the bays wanting to enter the part of the driveway headed toward Dover Road, which they weren't permitted to drive on. Attorney Beliveau said yes. Councilor Smith asked in what realistic way the owners/managers of the Hotel could stop the constant use of the west side of the driveway. He said if this use was permitted by the Planning Board, it would create a potential problem. He said someone turning right off of Dover Road onto the site would

have to wait for someone to move a car, etc., and meanwhile people coming into the hotel would be blocked. He said the applicant had a right of way, but it wasn't functional for the purposes to which he proposed to put it.

Attorney Beliveau said another concern was what would prevent people from turning right into the condo property and traveling through it. There was discussion. Mr. Behrendt said this might be less of a concern if there was another use. Attorney Beliveau said it depended on the use, and said with the proposed use, cars would be coming and going, using 5 access points along the easement. He spoke further on this.

Mr. Kelley said the easement issue was beyond the purview of the Planning Board. Attorney Beliveau said he was responding to a question that was asked. He said it was realized that the easement issue was a private, legal matter that would have to be resolved between the parties. He said a letter would be provided from his client on this. He said there were many uses that could be made of this property that would be more appropriate. He said the Planning Board wasn't required to approve anything that was permitted on a site.

Beth Olshansky, Packers Falls Road, said this discussion had almost sounded like a design review, yet there was an application. She said she was confused about the process, and what was proposed. She said the proposed building was too big for the site, and she also questioned the functionality of the site design. She said she would love to see the lot redeveloped, but said this plan seemed ill suited to the site and seemed incompatible with the neighbors.

She said the Hotel was a pre-existing use there and said they didn't want to damage this business. She said she hoped the Planning Board would think seriously about what fit on the site and whether this application was functional within the lot and within the context of the neighborhood. She said if it didn't work, she advised the Board to reject the application and ask the applicant to come back with a new plan that hopefully would work. There was discussion that the architectural design was for a one story building. Ms. Olshansky said she hoped the Planning Board would discuss what the building would look like.

Mr. Gier said the traffic memo would be provided at the TRG meeting and at an upcoming Planning Board meeting. Mr. Behrendt asked again that visuals be provided on types and numbers of vehicles, where they would be stored and moved through the site, etc. He also asked if the site would work if these weren't through-bays, and Mr. Gier said they would look into this. Mr. Behrendt said the current design didn't work even without considering the impacts on the Hotel, and he provided details on this. Mr. Gier said there would be an answer provided concerning this issue at the February 25th meeting.

Mr. Lewis said at the ZBA meeting, a question was asked about whether trees would be cut, and the answer was no. Mr. Gier said the Minutes of that meeting would be reviewed. Chair Corrow said this issue could be addressed at the meeting on February 25th.

- XIII. The Lodges – Mast Road.** An amendment to the approved site plan for 142 unit/460 bed housing development. Peak Campus Development, LLC, c/o Jeff Githens and Jonathon Barge, developer. Tax Map 13, Lots 6-1, 10-0, 3-0 UNH and 4-0 UNH. Office Research Light Industry Zoning District. Recommended action: Set public hearing for January 28. A. A change in the site plan to add trees and landscaping B. A change in the site plan to convert 13 parking spaces to 4 spaces and add landscaping C. A conditional use to expand a nonconforming use by increasing the number of beds, including an allowance to provide less than 1 parking space per occupant

WITHDRAWN BY THE APPLICANT – January 14

- XIV. Eldercare Facility – Durham Business Park.** Design Review (preliminary application) for an eldercare facility with a total of 116 dwelling units situated in three large buildings and 14 cottage and duplex units. Grant Development, LLC, c/o Eric Chinburg, property owner and developer. Mike Sievert, MJS Engineering, Engineer. Tax Map 11-27-1 through 11-27-7. Durham Business Park Zoning District.

Councilor Smith MOVED to nominate Peter Wolfe to serve on the Design Committee for the Business Park. Richard Kelley SECONDED the motion, and it PASSED 6-0-1, with David Williams abstaining.

It was noted that the public hearing would be held on February 11th.

- XV. Other Business – Discussion of Master Plan status**

Mr. Behrendt suggested that there could be discussion on the Master Plan status at the next meeting.

He also noted that the charge of the ad hoc committee for the Pauly's Pocket project had been expanded a bit.

Mr. Kelley left the meeting at 10:43 pm.

A motion to adjourn the meeting Failed 3-3.

- XVI. Review of Minutes**

May 28, 2014,

August 13, 2014,

September 10, 2014,

September 17, 2014,

October 8, 2014

It was noted that there wouldn't be a quorum now to do the Minutes.

XVII. Adjournment

Councilor Smith MOVED to adjourn the meeting. Wayne Lewis SECONDED the motion, and it PASSED unanimously 5-0.

Adjournment at 10:45 pm

Victoria Parmele, Minutes taker

Andrew Corrow, Secretary