

These minutes were approved at the September 27, 2017 meeting.

DURHAM PLANNING BOARD
Wednesday, June 14, 2017
Town Council Chambers
7:00 p.m.
MINUTES

MEMBERS PRESENT: Paul Rasmussen, Chair
Barbara Dill, Vice Chair
Bob Brown, Secretary
Lorne Parnell
Andrew Corrow
Councilor Jim Lawson, Council Representative to the Planning Board
Nathaniel Morneau, alternate
Councilor Carden Welsh, alternate Council Representative to the Planning Board

MEMBERS ABSENT Wayne Lewis, alternate
Bill McGowan

I. Call to Order

Chair Rasmussen called the meeting to order at 7:05 pm.

II. Roll Call and Seating of Alternates

Chair Rasmussen appointed Mr. Morneau to replace Mr. McGowan until his arrival.

III. Town Planner's Report

Mr. Behrendt said he had nothing to report.

IV. Reports from Board Members who serve on Other Committees

Mr. Brown said the consultants from Strafford Regional Planning Commission would provide the summary report on the recent Future Land Use Forum to the Future Land Use subcommittee on Friday, and said the report would be reviewed at a future meeting. He also said the subcommittee would like to get feedback from additional people in town through representatives from the Parks and Recreation Committee, the PTO, etc. He spoke further on the subcommittee's plans.

Mr. Corrow said at its recent meeting, the Conservation Commission discussed Riverwoods' proposed conversion of a barn to a market center. He said they also

discussed the land conservation project at Emery Farm, and he noted a special Conservation Commission meeting to hold a public hearing on the disbursement of \$250,000 in conservation fund money to go toward the purchase of that property. Ms. Dill said at the recent Energy Committee meeting, DPW Director Mike Lynch discussed the 85% complete LED lighting installation. She said there was also discussion on the Scammel Bridge lighting issue. She provided details on a presentation at the meeting from the Citizens Climate Action League, and said the Energy Committee discussed how to keep the Town's own standards in line with those of the Paris Climate Accord.

She said there was discussion on the energy survey that had been online for a few months, including the fact that the response so far had been low. She encouraged people to complete the survey. She said the Committee was also working on a Resolution concerning offshore wind energy.

V. Public Comments

Robin Mower, Faculty Road, said the current energy survey was on household energy use, and said the idea was to create a baseline to see how the community changed over time. She noted that the first energy survey was on transportation issues.

VI. Review of Minutes (old):

VII. Presentation on Fire Department. Presentation by Corey Landry, Durham Fire Chief, on operation of Fire Department and fire issues related to the planning process.

Chief Landry introduced new Deputy Fire Chief, Randall. He then provided a slide presentation on the Fire Department's work, and spoke in detail about the fact that their responses were a mix of EMS incidents and fires. He said of 2792 calls, 1300 had been EMS calls, and noted that for most fire departments, there were mostly EMS calls. He said Durham had averaged 10 building fires a year since 2003, and noted that this didn't include chimney fires, where the fire was restricted to the chimney. He said the number of structure fires since 2009 had been increasing, and he spoke further on this.

He said the Fire Department's work related to the work the Planning Board in many areas, including the following: roadway designs; demolition activities; safety inspections during construction; building openings/how to access buildings/architectural features that affect access; overhangs; landscape plans in relation to water and sewer connections, etc.; security fences during construction; vehicle parking and impacts on accessibility; debris issues; etc.

Chief Landry said last year, the Department's Fire Prevention Bureau identified over 2000 code violations, and said 1400 of them had been corrected so far. He noted that the Fire Department was responsible for a building for life, unlike the Building Department, and said they did various inspections to ensure safety. He provided further details on the many issues and events in Durham that they needed to keep an eye on.

He spoke in detail about the fact that the Fire Department transitioned from a 4 person shift to a 5 person shift between 1999 and 2001. He also provided a video of Department responses to some fires in Durham in recent years, and spoke in detail about the personnel and equipment needed to put it out. He explained how different crews were needed for different purposes to deal with a fire event.

Mr. Corrow asked if the Fire Department would need to add more fire fighters over the next few years, given the amount of development that had occurred in Durham in recent years, as well as development that what was coming and the additional structures built by the University over the past several years. Chief Landry spoke in detail on this issue.

Councilor Lawson asked how many more violations were being uncovered and resolved, with the increasing emphasis on safety inspections. Chief Landry said when a second inspector was added, there were more violations uncovered, but said this had now plateaued.

VIII. *Public Hearing - Mill Plaza Redevelopment.* 7 Mill Road. Design Review (preliminary application). Site plan and conditional use for the redevelopment of this 10-acre site. The project involves demolition of the rear commercial building; construction of new mixed-use buildings; new garage parking spaces; residential space for 330 occupants; new public spaces; and other site changes. Colonial Durham Associates, LP, property owner. Sean McCauley, agent. Joe Persechino, Tighe & Bond, engineer. Steve Cecil and Emily Innes, Harriman, site planner. Ari Pollack, attorney. Central Business District. Map 5, Lot 1-1.

Chair Rasmussen said Town Administrator Todd Selig had some things to say before the presentation and public hearing got underway.

Administrator Selig provided some history on redevelopment plans for Mill Plaza over the past few years, including the eventual settlement agreement between the owners and the Town. He said in 2016, the Mill Plaza owners came forward with additional iterations of a possible project, and members of the public and Planning Board members provided significant feedback. He said it became clear to him at that time that there appeared to be no resolution that worked for everyone.

He said as he'd done with the Madbury Commons project, he approached the Mill Plaza owners about having a discussion to come up with a project that would be as close to the Mill Plaza Committee report goals as possible while also being financially viable. He said he, architect Patricia Sherman and Economic Development Director Mary Ellen Humphrey then met with the owners. He said he would now step back from the process, and said Ms. Sherman would provide further details on it.

Ms. Sherman first spoke about the AIA150 design process in 2008 concerning redevelopment of Mill Plaza, which she'd been a part of. She said the project that came out of that process had different components than today's project, and was a product of a

very different economic time. But she said the urban design principles reflected in it still applied today, and said they'd been given the test of time so there was now the opportunity to choose the best of these principles for special communities like Durham and Mill Plaza.

Ms. Sherman said it was realized that there was disappointment about many of the plans previously proposed for the Plaza, but said there were significant changes to the current plan to meet the desires of the community and to fit with urban design principles. She described some of the features of the design, and said Mill Plaza could become a community gathering place. She described the collaborative process over the past six months to get to this point, which she noted was not mandated by Durham's regulations and was done on a voluntary basis. She also noted that there were many more phases to the review process, which would bring in more details about the project. She challenged everyone to be open minded enough to look at this as an urban design project, and not as a student housing project.

Sean McCauley said he was the project development leader, and said the team was at a point where they were prepared to share the vision of relocating Rite Aid to a new building that was more central on the site so that residential units could be relocated to that part of the site. He said all things considered, this was the best option for Mill Plaza to proceed with. He thanked everyone who'd been involved with the collaborative process over the past several months, and said he hoped people would be open to the design ideas being presented.

Ms. Innes said the team had focused on addressing what they'd heard at previous meetings. She provided details on the key changes to the design since the last iteration.

Chair Rasmussen asked if Planning Board members had any questions before the public hearing was opened.

Councilor Welsh said there were a lot more trees shown on the walk through than on the plan. Ms. Innes said that in developing the final site plan, they would continue to look for locations where trees could be reasonably added, and would use several difference species. Councilor Welsh noted that including evergreens would be important given the weather.

Councilor Welsh also said he had some concerns about how stormwater runoff would be managed on the site. He noted that some rain gardens were proposed and that there would be permeable surfaces in some small locations. But he said he didn't think that would improve condition on the site significantly, and asked what else could be done.

Project engineer Joe Persechino noted that this was a conceptual stormwater management plan at this point. He spoke about elements included in the plan, and said a key part of it would be to redirect runoff that would otherwise go to College Brook, and to treat as much runoff as possible on site and to current standards. He said they were also looking at snow management, which had been a big issue for the Mill Plaza site. He said the plan

right now would be to relocate as much of the snow as possible to the back portion of the site, where it would drain into a bioretention basin, gravel wetland, or something else.

He said a comprehensive stormwater management plan would be developed. Councilor Welsh asked Mr. Persechino if he was confident that Town and state standards could be met. Mr. Persechino said yes, and said the standards would be exceeded in some instances.

Linda Tatarczuch, Fitts Farm Road, read a letter into the public record from **Beth Olshansky, Packers Falls Road**.

John Hartz, 13 Mill Road reviewed some of the comments he'd made in the letter he submitted.

He noted that a conditional use permit was required for this project, and said he thought it failed on some criteria when it needed to pass on all of them. He spoke in detail on the issue of preservation of natural resources, including the importance of restoring the wetland buffer as part of this project, and provided a number of recommendations. He said Mill Plaza demanded a modern urban landscaping design.

Tim Horrigan, Faculty Road, said Mill Plaza was currently a vibrant area, and said he was concerned that this plan/project could change that. He considered whether the businesses there could survive years of construction. He said the current plan seemed ill conceived when UNH was having trouble with enrollment, and said there might not be a large demand for the proposed apartments. He also said one egress from the Plaza might not be adequate, especially in an emergency, and said he worried about the entrance to the Plaza washing out during some storm events.

Susy Loder, Oyster River Road said she welcomed the opportunity to redevelop the Plaza. She said as people aged, many of them gave up driving a car, but still needed to have a variety of services nearby. She spoke about including in the plan some housing for elderly people, and said this would be reliable income and would result in fewer management problems.

She said she'd witnessed the lack of respect for the College Brook side of Mill Plaza, and said she hoped that this was the time to get this right for everyone. She said she appreciated the existing shortcut through Mill Plaza for pedestrians, and said it was important to protect that connection for people like herself and for children walking to school. She also said that as a supporter of alternative energy, she hoped the project would be designed so buildings could be fitted with solar panels. She said they might also consider using heat pumps to meet HVAC needs.

Joshua Meyrowitz, Chesley Drive said he'd first like to convey from a neighbor the idea of reading the Minutes from previous meetings on Mill Plaza, and reading letters received about it over the past several years. He said it was unreasonable for residents to have to come out and speak repeatedly about the same concerns.

He said he didn't know anyone who didn't want to see the redevelopment of the Plaza, and said there was broad support for the idea of a village center. He noted the inspirational photos the Mill Plaza design team had provided with a previous conceptual plan, but said none of the elements in it had turned up in the current plans being presented. He also said that in May of 2016, a group of community members were presented with a design for the site that included moving Hannaford, but then that design did not come forward.

Mr. Meyrowitz described some of the details of plans that did come forward after that, which seemed to violate town regulations and common sense. He said this plan had some good elements, including preserving some greenspace, permeable pavement, buffering College Brook, and moving Rite Aid and in its place proposing student housing. But he said the Hannaford building was being left in place, with everything built around it, as if it was an ancient burial ground.

He said with this plan, there would be no option to have a real, full sized supermarket in the future, and he noted that most residents had now abandoned Hannaford, which had created a vacuum in the center of Town. He said the continued focus on students resulted in a lack of businesses for adults. He said the Mill Plaza owners had gotten Rite Aid to move, and said they should now be pushed to get Hannaford to move, so the housing for the project would be where it was supposed to be, at the northern end of the property.

Mr. Meyrowitz spoke about the conditional use criteria, and said putting student housing in as proposed would make worse what the criteria were supposed to prevent, such as traffic noise, lighting impacts, a decrease in property values, etc. He said it seemed that any court would uphold a decision by the Planning Board that the project couldn't meet the conditional use criteria.

He said the University had lowered its enrollment standards, and said faculty were complaining about the quality of current students. He said this was happening because enrollment was going down, and said in the coming years there was the prospect of Durham having empty housing. He said Mill Plaza could do fine because of its location, but said this would mean there would be vacancies in other student housing developments. He noted that with conditional use applications, the Planning Board could look at the economic impact of a proposal. He suggested that if there was something at the back of the plaza that quieted down at night, such as senior or workforce housing, a medical building, or a boutique hotel, neighborhood opposition would evaporate.

Mr. Meyrowitz said while the residents and boards didn't have the right to tell the Mill Plaza owners how to spend their money, they should be able to say what they wanted in return for variances granted. He suggested that people should ask for a real supermarket, a bakery, a hardware store, more greenspace, etc. He said they needed to hear from Hannaford, in order to get all of the pieces in place.

Perry Morgan, Valentine Hill Road, said it was horrifying that there would be 330 students living close by. She noted that she lived next door to a house that had previously had 3 or more loud students in it, and now was owned by a family. She said the number of students living downtown had already been expanded by about 1000, and said the Town was still learning how to accommodate them whenever there was a major event that caused students to flood out into the street. She noted the increase in Town services that was needed in order to respond to this activity.

She said it was a must to include as much greenspace as possible into the redevelopment, stating that there really wasn't any downtown right now. She also said there should be a reduction in the height of some of the buildings. She spoke about businesses she'd like to see there, and noted that these days she tried to avoid going downtown because of the traffic, etc. She said it would be better if there was more walkability downtown, and spoke about the importance of having a walkable pathway through the Plaza as part of any project. She said she didn't think that having the students living there would make Mill Plaza a more walkable, child friendly space.

Robin Mower, Faculty Road noted the detailed email she'd sent to the Planning Board. She said what was proposed seemed attractive. But she said each time she looked at the revised site plan, the famous line from Elizabeth Barrett Browning's sonnet came to mind: "How can I count the ways?" As in, "How many things are wrong with this proposal?" Ms. Mower read some key points from her letter.

- 1) She noted comments made by others on the wetland setback issues and impacts on Great Bay.
- 2) She said this plan, as others before it, flouted the Town's most basic land use regulations:
 - a) Site plan regulation standards, including Architectural Design (relative to building heights), Landscaping and Screening, and Natural Resources.
 - b) Zoning ordinance, including building height, location of commercial uses, wetland setbacks, and Conditional Use criteria, among them: External impacts; Preservation of natural, cultural, historic, and scenic resources; Impact on property values.
- 3) She noted the \$64,000 question: The first Conditional Use criterion listed addresses site suitability: "The site is suitable for the proposed use." So, is the use appropriate to the site?
 - a) She said many uses were proposed for this site, and said one must look at each. She said none was guaranteed to the applicant, either by the regulations or by the settlement agreement.
 - b) She said Mill Plaza was the largest underdeveloped commercially-zoned parcel in the downtown, and said redevelopment could provide currently needed and anticipated commercial space if the Town pushed on its side of the settlement agreement terms.

Ms. Mower said according to Mary Ellen Humphrey, Durham's Director of Economic Development, demand for downtown commercial space had exceeded the current supply, indicating an immediate, let alone future need for more commercial space. She said this proved wrong the predictions of developers of the Orion and Madbury Commons projects, where she believed the Town had “caved” on commercial space requirements. She said as resident Annmarie Harris had stated in the past, commercial development would be of benefit to the community, and should take precedence over the housing component of this project.

She said a pivotal use for the applicant was multi-unit housing, which would no doubt be inhabited by students. She said the proposed multi-unit housing was a “threshold item,” a term used by a previous Planning Board member. She said if one included Mill Road to the Oyster River, the Faculty neighborhood had approximately 200 households. She said if one allowed for 3 members per household, which was probably high, this proposal of 330 beds (which excluded likely overnight visitors and other guests) would add more than half the number of residents currently living in the Faculty neighborhood. She said unfortunately, the applicant did not include a site plan that showed the abutters’ homes on Chesley Drive and Faculty Road, thus narrowing, if not obscuring, this critical perspective for those reviewing the plan.

Ms. Mower noted the comments made by Councilor Jim Lawson at the December 14, 2016 public hearing on a previous redevelopment design for Mill Plaza. She said the Minutes read as follows: *Councilor Lawson said he was convinced that Mill Plaza could be redeveloped in a way that could be approved by the Planning Board and that could be supported by the neighborhood. He considered whether from a Zoning perspective, Chesley Drive, Brookside Commons and the Faculty development were abutters or the neighborhood. He said he thought they clearly met the criterion of a neighborhood, which meant that there were significantly more criteria that an application would have to meet, concerning how a development would impact the neighborhood. He said this was going to be very challenging with the current design, and he spoke further on this. He said even if variances were granted, the Planning Board would still have to look at the Conditional use criteria.*

She asked why one would want to add student housing to the neighborhood, when Town resources had been put toward limiting it. She also said it had been said time after time that student housing was a driver for revitalizing the downtown, and said the Town should get something significant in return for allowing that use.

- 4) Hannaford building and site - She noted that Lorne Parnell had suggested at the February 10, 2016 Planning Board meeting that perhaps Hannaford could be moved temporarily, a 3 or 4-story building could then be built on its current site and then Hannaford could be moved back in. She said it wasn’t clear that this idea had seriously been on the table, and said if the Hannaford building wasn’t renovated or replaced as part of the redevelopment, the question was when that would happen. She said the building was likely to degrade, to the detriment of the entire project and the Town.

She said until Durham Market Place was taken over by Hannaford, the supermarket provided a valuable service to the community and an opportunity for social encounters. She said if the building degraded, even the students Hannaford now relied upon for its profits might go elsewhere. She also said it might be sold as soon as the redeveloped Plaza was up and running, so the property owner would not have to pay the piper.

Ms. Mower said it was possible that Hannaford would consider Mr. Parnell's suggestion if the applicant were to sweeten the pot, but she said they didn't know any details of the discussions between Colonial Durham and Hannaford. She said it was the applicant's right to maintain privacy on those discussions, but said doing so did not help move this proposal forward.

5) What's right up against the residential areas?

a) Loading dock – She said if the Board thought a wall would block the noise, they should think again, because expanses of asphalt bounced noise rather than deadening it. She also said there had to be an opening somewhere; it's facing homeowners! She said Rite Aid deliveries were not infrequent and might occur at 5am, and include 18-wheelers. She said this would be right behind her house, but noted that this wasn't shown on the site plan.

b) Gathering and partying areas contiguous to the Orion student housing and to the neighborhoods. She noted that there would be decks on some of the buildings. She said neighbors now experienced large daytime parties in the backyards of student housing on the south side of Main Street in addition to late night and special event partying. She said Davis Court had become a magnet for outdoor partying, and said both neighbors and Town emergency service departments had been paying the price. She questioned contemplating including raised courtyards and contiguous gathering areas that would invite large groups of parties, and bring them closer to a residential neighborhood.

She asked if property management, responsible for whatever happened outdoors on the entire 11-acre parcel, would be on site 24/7, and have authority to "move people along" at 2:00 and 3:00 am. She said what happened outdoors to date had not been subject to 24/7 residential property management, and said a recent meeting about Davis Court did not lead her to believe that other landlords would be amenable to taking responsibility for their tenants' behavior outdoors. She said the real question was what made anyone think gathering areas must be provided at downtown student housing properties in the first place?

Drive-thru for Rite Aid. Ms. Mower said drive-thrus experienced a large number of challenges, including extended wait time for customers beyond what it would take to park and walk into the pharmacy and therefore extended idling time. She said the Union of Concerned Scientists noted that "idling for longer than 10 seconds consumes more fuel and produces more global warming pollution than stopping and restarting" She said a drive-thru would not be good for the community, which had supported sustainability and environmentally-friendly initiatives for years. She said

the safety of pedestrians in the vicinity might be compromised. She suggested that instead there could be a walk-up window with a couple of 15-minute parking spaces.

Ms. Mower noted that the requirements for a formal submission were listed in Part II of the site plan regulations, and she also noted that the Planning Board could request additional documents from an applicant. She urged the Board to request that the Town Attorney review the formal site plans and provide a written legal opinion that the plans met the Settlement Agreement and that the Planning Board could proceed. She noted a precedent application, the Stonemark application for 99 Madbury Road, which was approved by the Planning Board, appealed to the Zoning Board, and then went to Superior Court, which overruled the Planning Board's approval. She said the Planning Board, Zoning Board, and members of the public spent months on the Stonemark application, and said this resulted in legal costs for the residents as well as the applicant.

She said the Planning Board would need to see a scale model of the plans for Mill Plaza, including human-size figures, the UNH dorms along Mill Road, Brookside Commons, the buildings along the south side of Main Street, and the homes on Faculty Road. She also said the location plan must show abutting homeowner properties on Chesley Drive and Faculty Road. She said the neighbors had asked for this before but somehow never received it. She said a related aerial view would complement the scale model. She also said residents had asked for but never received an overlay of the proposed plan onto the existing site plan. She said it too should show abutting homeowner properties on Chesley Drive and Faculty Road. She said she'd like to see a plan with realistic landscaping renditions, not mature trees that none of them would see in their lifetimes.

She noted a letter submitted in Feb 2016 by John Parry, on trees for the site, and the area to be excavated near Main Street.

Ms. Mower said many residents hoped that all of the points that had been made would be addressed in the applicant's formal submission.

Jay Malavenda, Faculty Road said he was a direct abutter. He said since the settlement agreement, the criteria had been to maximize the housing and minimize the retail. He also noted the settlement agreement criterion regarding location of the housing, and said that criterion had been challenged because Hannaford couldn't be relocated. He said this was a self-imposed hardship because the developer's tenant was involved, and he suggested that if the housing couldn't be concentrated to the north, some other criteria from the settlement agreement should change, including the number of beds allowed.

He said the current design resulted in a congested plan, with buildings that didn't necessarily meet the Zoning Ordinance requirements. He said if some of the residential buildings on the east side were relocated to the Hannaford site, this would be more palatable to the neighborhood. He said if the current plan went forward, it would change the dynamics of the neighborhood.

Matt Komonchak, Thompson Lane said he lived close enough to the Plaza to hear the noise at Orion on Main St. He said the Planning Board was in difficult situation, given the settlement agreement. He said the Town was not protected by the settlement agreement and would have to live with a project here for the next 50 years. He said the Town should therefore seek outside legal counsel and negotiate with the developer outside the lousy current settlement agreement.

He said this felt like ground hog day, because they continued to see a project of massive scale that was incompatible with maintaining a decent quality of life in nearby neighborhoods. He said it was obvious to many that the project was destined to fail without Hannaford's cooperation, given the proposed scale and the limited space in the Plaza. He spoke about the Mill Plaza Study Committee process and the report and plans that came out of it, which were not reflected in the current plan. He said this current plan violated the Zoning Ordinance and the conditional use criteria as well as the settlement agreement.

He noted the condition in the settlement agreement that the residential units would be located on the north side of the Plaza, but said 3 large residential buildings were proposed close to the family neighborhoods. He also questioned the proposed heights and architecture of the buildings. He said the proposal would install an entire neighborhood of students adjacent to a family neighborhood, and said the activities of these students would result in negative impacts on the neighborhood that would violate the conditional use criteria. He said there would be noise pollution, increased traffic, parking problems, more litter and other visual blight, degradation of College Brook, and a diminished quality of life and property values.

Mr. Komonchak said Administrator Selig's meetings behind closed doors with the developer were not the proper way to proceed, and said the current proposal showed that this didn't yield positive results. He said he hoped that future discussion of the project would take place in public, and said Durham residents deserved more transparency.

He noted that the developer was handed a generous settlement and had failed to take advantage of it. He said the Planning Board didn't have to seriously consider a proposal that failed legally on so many fronts, ignoring the Zoning Ordinance, conditional use criteria, settlement agreement terms and the extensive community input. He asked the Board to revisit the options, and seek an agreement that considered Durham's long-term interests.

Susan Richman Cowell Drive, said it was getting harder to get out of Cowell Drive with her car every day. She said traffic seemed to get more snarled all the time downtown, and said adding another 300 residents would make that even harder. She provided details on this, and said she could envision scenes where fire trucks couldn't get through. She said the entire project had one bottleneck for people to get in and out of. She recommended that the Planning Board speak with the Fire Department about the impacts of this project on traffic.

Mark McPeak, Mill Road said he was an immediate abutter, and echoed many of the concerns that had been expressed. He spoke about how Building E and the drive thru there would result in an increase in traffic, etc. and he also questioned how to buffer noise impacts from the loading dock. He noted that there were 520 ft between Building E and Faculty Road, and asked the Planning Board to consider the impact of this conditional use on his neighborhood, which was quite a bit less than 520 ft away from Building E.

Debra Hirsh Meyer, Garden Lane first read a letter from Eva Lizer, 14 Crogan Lane, which spoke in detail about the need for a good supermarket at Mill Plaza that had good product availability, including items for those with special dietary needs.

Ms. Hirsh Meyer first noted that she was disappointed to see the hours and selection at Hannaford now. She then she'd been a member of the Mill Plaza Study Committee, and said those involved on the committee had felt good about the plan that was developed. She said it now seemed like that plan had been thrown away. She said she hoped the owner could come up with a better plan than the one that was presented tonight.

John Mince, Faculty Road said he was an immediate abutter and lived close to proposed Building E. He said if both Rite Aid and Hannaford were being moved, he'd buy the champagne. He said there had been a colorful presentation this evening, but said it was important to remember that the trees wouldn't look like that way for a long time. He also said he wished the Fire Department had stayed for the presentation, and said he agreed with a previous comment that the one way in and one way out access to the Plaza was dangerous. He also noted that if someone stepped outside of Bella's and was speaking, he could hear every word, and said Building E was 3 times closer to him than Bella's was. He said he hoped there would be a plan that included moving Hannaford.

Bill Hall, Smith Park Lane said right now there was a 17,000-sf grocery store in Durham, and said a grocery store couldn't be run with less than 30,000 sf without making some people unhappy. He spoke in detail on this. He also said Rite Aid needed to use 53 ft trailers and said the design for the loading dock appeared to be workable. He said it wouldn't bother anyone on the other side of the site. Mr. Hall noted that there was a 50 ft Town right of way for the utility line that centered on the manholes on the south side of the property. He said it would make sense to mark this on the plan. He also said College Brook was now a lot cleaner than it used to be, and he provided some history on this.

Chair Rasmussen asked Planning Board members for their comments on the most recent conceptual design for Mill Plaza.

Councilor Lawson said since this was a preliminary design, there couldn't be the expectation of getting answers to some questions. He said he saw some positive changes in some aspects of the concept that had been presented this evening. He also noted that the developers understood that what was proposed was a conditional use, and also understood that some variances would be needed. He said some of the variances needed were because the owner was trying to accommodate the neighborhood.

He noted for some members of the public who had spoken tonight that the Planning Board understood how to evaluate a conditional use application. He also he believed that the design presented tonight did meet the settlement agreement, and said he'd be happy to discuss this in the context of being a Town Councilor. He also said the Council needed to review the proposal at this point with the Town Attorney.

Councilor Lawson said the Planning Board had barely scratched the surface, and said if the applicant decided to bring forward a formal application, there would be various studies/analyses provided. He said a lot of the answers to valid concerns expressed about the proposal wouldn't be known until the Board got the fiscal impact analysis and the results of these various other studies. He said if the applicant wanted to submit the various formal applications for the project, he encouraged them to do so.

Mr. Corrow said he concurred with Councilor Lawson. He said the design was quite good given the constraints, and said the Board wouldn't get into conditional use issues until it got the formal application and the various studies that would come with it. He recommended closing the preliminary design review process.

Ms. Dill said she was disturbed about a few things, and first asked what the difference was between the existing and proposed edge of pavement. Ms. Innes said the proposed sidewalk was at the edge of pavement, and as one got closer to Chesley Drive, it started to move away from the edge of pavement, which created a potential area for more greenspace. She spoke further on this, and said it would be an expanded buffer at the Chesley Drive end. She explained that when they hard-lined the design, at the very entrance there would be no room for buffer.

Mr. Cecil said the advice so far was to keep the entrance where it was because of many factors. Ms. Innes noted some topography issues as one got further into the site that would need to be taken into consideration in regard to a possible sidewalk.

Ms. Dill spoke about the fact that getting in and out of Mill Plaza was already difficult. She said another thing that had bothered her was the difference in height between the existing, unmovable Hannaford and the new 4-story building proposed next to it. She suggested that if it was 3 stories and was similar to Building E, it might be more graceful. Ms. Innes explained that there would be a 2-story façade on the new building. Ms. Dill noted the Hannaford in Dover on Route 108, which had what appeared to be a false second floor, and also had a big gable at one end.

There was discussion. Mr. Cecil said the team was committed to creating an improved façade, but said they had to work with Hannaford and get their buy-in with it. Ms. Innes said the façade transitioned the stories, and also said including the façade on all 4 sides would help hide the mechanicals.

Mr. Morneau noted that he'd spent time going through Minutes of past meetings, and meeting with Mr. Behrendt in order to get up to speed on the various plans for the redevelopment of Mill Plaza. He said what had been presented tonight was a positive

move, and also said a lot of the concerns the Planning Board probably shared with members of the public couldn't be addressed until there was a formal application. He recommended closing the design review process.

Chair Rasmussen said he had nothing to add beyond what other Board members had said.

Councilor Welsh noted that the 330 maximum number of beds was negotiated as part of the settlement agreement, and said this made it difficult to put those beds in and also meet all of the conditional use criteria and Zoning and other requirements. But he said if the applicants thought this could be done, they should go ahead and submit a formal application. He said he didn't think it made sense to go over and over things at the design review level.

Mr. Brown said he agreed that there was an improved plan, and said the traffic and safety issues among other things would be fleshed out with the next steps. He spoke about the possibility that the residential units that were proposed might not just be for students, and might be for seniors, etc. He asked whether with this plan, any residential parking would be provided on the site.

Mr. McCauley said at past meetings, there was a request by the Planning Board and neighbors of Mill Plaza to remove residential parking from the site, and said this plan did that. Mr. Brown asked what the options would be for people living there who owned a car. Mr. McCauley provided some details on this and there was further discussion. Mr. Brown said he agreed that the design review process should be closed.

Attorney Pollock said they were ready to close the design review process. He said they had tried to accommodate as much feedback as possible, and were ready to move on to the next step. He said the feedback had been valuable.

Mr. Parnell said he thought the Planning Board had spent enough time on the design review process.

Lorne Parnell MOVED to close the Public Hearing. Andy Corrow SECONDED the motion and it PASSED unanimously 7-0.

Councilor Lawson MOVED to close the Preliminary Design Review for the proposed redevelopment of the 10-acre Mill Plaza site. The project proposed by Colonial Durham Associates LLC involves demolition of the rear commercial building; construction of new mixed-use buildings; new garage parking spaces; residential space for 330 occupants; new public spaces; and other site changes. The property is located at 7 Mill Road, Map 5, Lot 1-1 in the Central Business District. Lorne Parnell SECONDED the motion and it PASSED unanimously 7-0.

The Planning Board stood in recess from 10:01 to 10:08 pm.

IX. Public Hearing - Riverwoods Continuing Care Retirement Community (CCRC) – Stone Quarry Drive. Preliminary (design review) site plan and lot line adjustment application for CCRC to be located on a vacant 11.3-acre site in the northeast quadrant of the junction of Route 108 and Route 4 (one lot in from Route 108). The 315,815 square foot building, with a 95,141 square foot footprint, will contain 150 independent living apartments, 24 assisted-living apartments, 24 memory-care units, and 24 skilled-nursing units. The 57+/- foot-high building will range from 2 to 5 stories. There will be 107 enclosed and 172 outside parking spaces. The proposal includes a lot line adjustment with the adjacent lot – 8-0. Applicant - The Riverwoods Group, c/o Justine Vogel, CEO. Property owner - Rockingham Properties, c/o Dave Garvey, partner. Engineer – Jeff Clifford, Altus Engineering. Landscape architect – Robbi Woodburn. Attorney – Sharon Cuddy Somers, DT&C. Map 11, Lot 8-1 through 8-15. Office Research District.

Attorney Sharon Cuddy Somers noted that the team had provided an overview of the project on May 10th, and were now looking for further input from the public and the Planning Board. She said it was hoped that the Board would make a determination this evening that the team could move forward with a formal application that would be submitted in July.

She noted that the facility proposed was an allowed use, and said its size was in keeping with the density regulations, which reflected current Town policy. She noted the renderings that had been provided this evening at the Board's request, to show how the building would be situated on the property, and how it would look from different vantage points.

Engineer Jeff Clifford provided an overview of the site and proposed project, as he'd done at the meeting in May, using a series of drawings. He noted that one of the drawings showed the topography on the site, with the ridge running through it and a drop off in elevation of about 40 ft. He noted that when DOT built the ramp from Route 4, it made a 32 ft cut, about 25 ft of which was ledge. He said to build the proposed facility, the site would need to be fairly flat, and said the knoll would need to be cut down from 80 ft to 62 ft, which meant there would need to be retaining walls. He also said the grade dropped off in some places to the point where there would need to be some filling.

He described a current pinch point which impacted how a parking lot could be put in. He said this would mean that some parking spaces would be within the wetland buffer, and said they would like to pull the parking away from the wetland. He said in order to do this, a land swap with the Town was proposed, and said discussion on this was ongoing. He noted that an added benefit of doing the land swap was that there would be the opportunity to put some trails in.

Mr. Clifford noted that there would be some underground parking as part of the project, and said the garages would be buffered from Route 108. He also spoke about the fact that they would be seeking a conditional use permit for areas where wetland buffer would be encroached upon.

Gene Guskowski of AG Architecture said his firm worked nationally and had done 80 different campuses. He said what was proposed was a senior living community, which would be a combination of multi-family housing, healthcare and hospitality. He described in detail the layout of the various components of the facility, from independent living, to assisted living, to 24 hour supported care. He described how the supported care units would be the antithesis of nursing home design in the past. He also described in detail the common areas, which he said were what made the Riverwoods community unique. He spoke in detail on these areas, which he said would provide life-long learning opportunities, dining experiences, arts and exercise opportunities, etc.

The design team next provided computer rendered views of the proposed facility on the site from different perspectives on Route 108 and Route 4. Landscape architect Robbi Woodburn spoke next, and said the landscaping design was a work in progress and would be updated for the formal application submission in July. She noted that the site backed into the woodland on the side and back, and said her job was to consider buffering and enhance the view of the development from Stone Quarry Drive and Route 108.

She spoke about the planned landscaping easement onto the adjacent lot. She also explained that the plantings would be an extension of the woods as well as the wetlands below the site, would mask the retaining wall, and would also buffer where the parking would go in. She also noted that there would be a landscape buffer along Stone Quarry Drive and that there would be foundation plantings.

Ms. Woodburn said lawn areas would be limited to areas that were people's back yards, and said the areas beyond this would be treated more as fields. She noted the walkways that went all around the building, and also noted the recreation trails that were proposed.

Mr. Behrendt suggested that perhaps vines could be planted on the top of the proposed retaining wall. Ms. Woodburn said if vines were used, they should be put on the bottom. She also said some mixed buffer plantings would do a good job on the wall.

Wetland scientist Jamie Long spoke in detail about the wetland system in front of the proposed project, which he said had been fragmented over the years. He said there was also forested wetland in the back, with a perennial stream running through it, and said it was well vegetated with mature hardwood and pines.

Councilor Welsh noted the view that showed the project and the forested stream, and asked if it drained into the river. Mr. Long said he believed it did but said he'd never followed it all of the way down. Councilor Welsh said a concern was possible runoff from the site that would impact the stream. There was discussion that the woods and stream at the back of the site were beautiful.

Bill McGowan MOVED to open the Public Hearing. Andy Corrow SECONDED the motion and it PASSED unanimously 7-0.

Diana Carroll, 54 Canney Road, said she hoped the design team knew that the concept of Durham's gateways, - the major roads that entered and exited Durham, was very important to residents. She said the fact that there weren't a lot of shopping plazas in Durham's gateways was by design, and said they'd been kept semi-rural. She said she was pleased to see that Ms. Woodburn would be working on the landscaping, and also said she was encouraged that the applicant saw the importance of doing buffering.

She said this would be important because the building looked like it would be pretty tall, so the more it could be buffered, the better. She noted the new Harmony Homes development along Route 4, and said there was a conservation easement on the land in front, which protected the gateway in that area. She also noted the Lodges project on Route 155, and that the gateway out there had been negatively impacted. She said she applauded the applicant's interest in protecting the gateway.

Lorne Parnell MOVED to close the Public Hearing. Bob Brown SECONDED the motion and it PASSED unanimously 7-0.

Mr. Parnell said he tried to look at projects that came before the Planning Board in terms of their benefits to the Town, and said this was usually fairly clear cut. He said the fiscal analysis for this project was a little less clear, because the property would be taken off of the tax rolls. He said that was a bit of a concern, and said if the applicant decided to go ahead with this, he would like to see a fiscal analysis done as part of the site plan review and conditional use review, and would like this to be part of the approval process.

Councilor Lawson said he had a different opinion. He said this was a permitted use, and said he didn't think whether it was for profit or was a nonprofit was something the Planning Board could consider. He said with conditional use, the fiscal impact could be considered, but said he didn't think the Board could skew a decision based on whether it was a nonprofit or a taxable entity. But he said he had confidence that the Town would end up in a workable place, through discussions between Administrator Selig, the Town Council and Riverwoods.

Mr. Behrendt said that was his understanding as well concerning the permitted use. Mr. Parnell said there were conditional use aspects of the project. Mr. Behrendt said that was concerning the wetland buffer, for which fiscal impact probably wouldn't be relevant.

Mr. Corrow asked if a payment in lieu of taxes would be the Council's decision.

Administrator Selig said the statute was clear, in that if the project met the state requirements, it would be tax exempt, but a payment in lieu of taxes (PILOT) would be required. He said there had been ongoing discussion about whether the project qualified as a PILOT, and said if it did, there were two possible methodologies for doing this. He said one was based on a square footage allocation, and the other was based on the valuation of the property.

He said Riverwoods would pay a significant PILOT, and said it would be for Town and County taxes, but not for School taxes. He also noted that if the project was determined to be tax exempt, it would not be included as part of the Oyster River Cooperative School district funding formula. He noted that there would be no children in local schools as a result of the project. Mr. Parnell said he didn't have children in local schools either, but still had to pay taxes.

Administrator Selig also noted that there was a TIF in place for the Stone Quarry Drive property, and said if Riverwoods qualified for the PILOT, the payment would not be captured in the TIF. He explained that infrastructure improvements would be needed as part of the project, and said the Town would have to work with the applicant to determine how these improvements would be funded. He said perhaps a portion of the PILOT would pay for this infrastructure.

Mr. Parnell said he'd like to have information on all of this before making a decision on the project.

Administrator Selig said the Council would ultimately have to approve the PILOT.

Councilor Welsh said his understanding was that one of the Riverwoods properties in Exeter paid the school portion of property taxes, and asked why Durham wouldn't require this. He also said from a public policy standpoint, it seemed unfair for the people living at Riverwoods not to pay their full share of taxes.

Administrator Selig noted that the projects in Exeter were negotiated years ago. He also said the ownership structure for these facilities might not be the same as what would be done in Durham. He said if they qualified for the exemption and were required to do a PILOT in Durham, that was the route that had to be taken. He said there would be one of two approaches that could be taken, and said he, the Town Assessor and the applicant would decide which approach made sense. He said the PILOT would be in place for a period of time and would then need to be renegotiated.

Mr. Corrow said he assumed the land swap would be finalized before the engineered plan was submitted. He asked if that conversation had been started

Administrator Selig said yes, and said something would be coming to the TC. He said they were trying to find a layout that worked for the applicant and the Town. He noted that the Conservation Commission had wanted to move the project out of the wetland buffer, and said the land swap idea came up as a result of this. He said the primary benefit to the Town of the land swap was that it would provide a buffer. He also said the applicant was open to making trails available to the Town as a whole, and said the land swap would allow for this, and would also allow for some modest parking for people accessing the trails.

He said if the Planning Board was open to the land swap idea, the Council would make a decision on it. He said the goal of having as much buffer of the project as possible

remain for both parcels would be achieved as a result of the land swap. He said as long as the Planning Board seemed to be open to this, it could potentially approve the project contingent upon an eventual land transfer.

Councilor Lawson said he hadn't understood the full impact of the land swap until the site walk was done. He said he applauded whoever came up with the idea, because it increased the wetland buffer as well as recreational use for residents, and became an intersection point for Riverwood residents and other Durham residents.

Administrator Selig said the land swap would also acknowledge the DPW facility nearby, and that it was there to stay. It was noted that the firing range was located on the DPW property and Administrator Selig provided details on this. He said it was not operated on a frequent basis.

Mr. Corrow noted that 18 ft would be cut off the ridge, and said this meant that there would be blasting and some moving of materials off the site. He said there would therefore need to be a robust construction management plan, including plans for maneuvering on Route 108 at certain times of day. There was brief discussion on this with Mr. Clifford.

Attorney Somers said the team was looking for any additional direction from the Board on major outstanding issues. She said they planned to proceed with a formal application on July

Councilor Lawson MOVED to close the preliminary design review of the Riverwoods Continuing Care Retirement Community (CCRC) to be located on a vacant 11.3-acre site in the northeast quadrant of the junction of Route 108 and Route 4 on Stone Quarry Drive (one lot in from Route 108). Nate Morneault SECONDED the motion and it PASSED unanimously 7-0.

- X. Riverwoods CCRC – Conversion of Barn to Market Center.** Site plan and conditional use, related to the Riverwoods CCRC (See IX., above), to convert the existing barn and a portion of the existing house on the adjacent lot to a marketing center, reconfigure parking, and make other site changes. Conditional use for utilities, pavement, and minor structures in wetland buffer. Applicant - The RiverWoods Group, c/o Justine Vogel, CEO. Property owner - Rockingham Properties 1, c/o Dave Garvey, partner. Engineer – Jeff Clifford, Altus Engineering. Architect - Alyssa Murphy, Manypenny Murphy Architecture. Attorney – Sharon Cuddy Somers, DT&C. Map 11, Lot 8-0. Office Research District.

Lorne Parnell MOVED to continue the meeting for a maximum of 15 minutes. Nate Morneault SECONDED the motion and it PASSED unanimously 7-0.

Lorne Parnell MOVED To accept the Site Plan and Conditional Use applications submitted by the Riverwoods Group to convert the existing barn and a portion of the existing house on the adjacent lot to a marketing center, reconfigure parking, and

make other site changes. The property is located at Map 11, Lot 8-0 in the Office Research District. Nate Morneault SECONDED the motion and it PASSED unanimously 7-0.

Chair Rasmussen said the public hearing would be held on July 12th.

- XI. Other Business:** Request for extension on completing the conditions of approval for the Boundary Line Adjustment for 90 Bennett Road, Map 14, Lot 34-1. Lori and Steve Lamb, property owners.

Lorne Parnell MOVED to extend completion of the Conditions of Approval for the Boundary Line Adjustment for 90 Bennett Road, Map 14, Lot 34-1 for six months as of this date. Barbara Dill SECONDED the motion and it PASSED unanimously 7-0.

- XII. Review of Minutes (new):** None

- XIII. Adjournment**

Lorne Parnell MOVED to adjourn the meeting. Andy Corrow SECONDED the motion and it PASSED unanimously 7-0.

Adjournment at 11:19 pm

Victoria Parmele, Minutes taker

Bob Brown, Secretary