

These minutes were approved at the January 8, 2020 meeting.

DURHAM PLANNING BOARD
Wednesday, November 13, 2019
Town Council Chambers 7:00 p.m.
MINUTES

MEMBERS PRESENT: Paul Rasmussen, Chair
Barbara Dill, Vice Chair
Richard Kelley, Secretary
Lorne Parnell
Bill McGowan
Jim Bubar
Mike Lambert, alternate
Heather Grant, alternate
Carden Welsh, Council Representative to the Planning Board
Sally Tobias, alternate Council Representative to the Planning Board

MEMBERS ABSENT Sarah Wrightsman, alternate

I. Call to Order

Chair Rasmussen called the meeting to order at 7:00 pm.

II. Roll Call and Seating of Alternates

No alternates were seated.

III. Approval of Agenda

Chair Rasmussen MOVED to approve the Agenda as written. Barbara Dill SECONDED the motion and it PASSED unanimously 7-0.

IV. Town Planner's Report

Mr. Behrendt said he had nothing to report. He said the next meeting would be held on December 11th.

V. Reports from Board Members who serve on Other Committees

Councilor Welsh reported on the most recent Town Council meeting.

- There was a presentation on the proposed Pay as You Throw program, and said no action was taken on it.

- The Council discussed proposed amendments to the Town Charter, including one that would raise the level at which projects to be bonded had to get Town-wide approval from \$1 million to \$2.3 million, which reflected inflation. There will be a public hearing on this on December 2nd, and it will be on the ballot in March.
- There was a first reading on the proposed parking amendments, and the public hearing will be held on December 18th.
- There was a public hearing on a proposal to raise the age to be able to purchase tobacco products to 21. Discussion on this will continue at the next Council meeting.
- There was a presentation on the proposed 2020 Budget, which is up 3.2%. There will be a public hearing on it at the November 18th Council meeting.

Ms. Dill said at the Energy Committee meeting this week, the committee passed a motion that she encourage the developers to install charging stations as part of their projects.

Chair Rasmussen noted that there had been some interest, and confusion about when to talk about certain items on the agenda tonight. He said the public hearing on the proposed parking lot on Main St would be held on December 11th, and he suggested that most of the comments concerning it should wait until then. He said if people wanted to make comments about offsite parking during the Mill Plaza public hearing, this was appropriate as long as they didn't get into the details of the project for the 19-21 Main St lot.

VI. Public Comments

Ann Marie Harris, Oyster River Road asked if the Planning Board was in agreement that consideration of the parking lot project should be after rather than before consideration of the Mill Plaza project. Chair Rasmussen said the process he'd just described was what the Board discussed at the last meeting, under Other Business.

Nick Kostis, Jenkins Court noted concerning agenda item XI that his family was in support of opening the new restaurant, but was not in favor of the proposed changes to the sewer plan. He noted the letter he'd written, and said their concern was that as far as they knew, it hadn't been certified that the sewer pipe on their property would be able to handle additional flow. He said as far as they knew, there would be additional flow. He spoke about a situation where there was backup of raw sewage at a business in Dover in recent years, and the business ended up closing permanently. He noted that a 30 ft section of sewer pipe on the back part of his family's property had been replaced.

Mr. Parnell asked if there was a way the Board could proceed without something happening that was acceptable to the Kostises. Mr. Kostis said there was no official stamp of approval concerning the sewage flow not increasing and the pipe being able to handle the flow, and said he'd like due diligence done on this.

Mr. Bubar asked about a possible easement for the sewer line. Mr. Kostis said they hadn't been able find it anywhere.

Robin Mower, Britton Lane said the previous speaker brought up some important points, and said this was a perfect example of being able to speak about something on the agenda. Mr. Behrendt noted the recent changes concerning this in the Board's Rules of Procedure.

Ms. Mower said she discussed the sewer line recently with the Town Engineer April Talon, and said it was absolutely worth revisiting this issue with her.

VII. Review of Minutes (old):

September 25, 2019

Ms. Dill noted that she'd sent minor corrections to the Planning Dept.

Jim Bubar MOVED to approve the September 25, 2019 Minutes as amended. Councilor Welsh SECONDED the motion and it PASSED 6-0-1, with Richard Kelley abstaining because of his absence from the meeting.

VIII. Lot Line Adjustment – Sullivan Falls Road. 5, 9, and 11 Sullivan Falls Road. In preparation for sale of vacant lots 10 and 11 to the Nature Conservancy, a portion of those lots which has been encroached upon is being conveyed to the owners of Lot 3. Map 17, Lots 53-10 and 53-11 owned by Richard Lord. Map 17, Lot 53-3 owned by Sandeep and Jessica Solti. Eric Mitchell, surveyor. Rural District.

Mr. Lord provided some history on the properties he owned, Lots 17-53-10 and 17-53-11, and how they were created as porkchop lots along with lot 17-53-3. He explained that the Nature Conservancy wanted to purchase his two lots, but there was a problem because over the years the owners of lot 17-53-3 had extended their lawn and landscaping onto portions of the other two lots. He said the Nature Conservancy was unwilling to acquire the land being encroached upon, and the new owners of lot 17-53-3 didn't want to have to abandon their lawn and landscaping.

He said the proposed boundary line adjustment would convey the encroached upon portion of lots 17-53-10 and lot 17-53-11 to the new owners of lot 17-53-3. He explained the frontage issues involved, and noted that a variance was recently received that extinguished the requirement that lots 17-53-10 and 17-53-11 have frontage on Sullivan Falls Road.

Mr. Kelley said a note on the plan referring to the horizontal datum didn't seem to be relevant, and there was discussion. He confirmed with Mr. Behrendt that the application was complete.

Richard Kelley MOVED to accept an application submitted by Richard Lord for a Lot Line Adjustment on Sullivan Falls Road in preparation for sale of vacant lots 10 and 11 to the Nature Conservancy, and to set the public hearing for December 11, 2019. The properties involved are located at Map 17, Lots 53-10 and 53-11 and Map 17, Lot 53-3, in the Rural District. Lorne Parnell SECONDED the motion and it PASSED unanimously 7-0.

IX. Public Hearing - Mill Plaza Redevelopment. 7 Mill Road. Continued review of formal application for: 1) Site plan and 2) Conditional Use for mixed use redevelopment project and activity within the wetland and shoreland overlay districts. A revised general layout has been submitted for review. Colonial Durham Associates, property owner. Sean McCauley, agent. Joe Persechino, Tighe & Bond, engineer. Ari Pollack, attorney. (Rick Taintor is serving as the Town's Contract Planner.) Central Business District. Map 5, Lot 1-1.

Attorney Pollack said it was a year since the applicant had last been before the Planning Board, and said at that time they'd respectfully asked for a time out in order to circle back with Hannaford, which the Board had granted. He said the goal was to strike a balance between a number of competing interests and what was proposed now wouldn't satisfy everyone and address every concern. He said there was work ahead, but said they could show some progress now toward a commonly held goal. He spoke further on this.

He said Mr. Persechino would address the precise changes in the current submission compared to the last submission. He said the current submission had a lesser footprint, with less residential space and more parking available on the site. He said this was a response to concerns from the Board and members of the public. He said the goal now was to re-engage in the review process, but not to exhaustively discuss the site plan approval issues.

Attorney Pollack noted the letter received from Hannaford, which covered preliminary approval for the present redevelopment layout as well as areas of concern that needed further study. He asked that this letter be read into the official record. He also said it was realized that the Town had gotten a legal opinion as to whether this was a new application or the continuation of the previous application, and asked that it too be read into the record.

He said a separate application had been filed for a parking area on an adjacent parcel, and said the timing of this was deliberate. He said these applications were linked and said if both were approved, the applicant would like to lease parking there on a long-term basis. But he said if the Mill Plaza project stopped today, that parking plan would still be viable and entitled to full consideration. He asked that there be discussion on the schedule for putting forward aspects of the application, concerning traffic, fiscal impacts, etc.

Mr. Parnell said the Hannaford letter was specific about certain things the company would require before approving the projects. He asked whether the Planning Board should be discussing the Mill Plaza application and getting input on it before there was resolution concerning the other part of the project involving the parking area, and before Hannaford would allow the applicant to go forward with this project.

Chair Rasmussen said he saw that as a definite risk, noting that there was no guarantee that the parking project could go forward, and that how that impacted this applicant remained to be seen.

Attorney Pollack said they had tried to line things up as well as they could. He said there were a number of moving parts, including a required public process to see if the parking option was available. He said the Toomerfs application stood on its own.

Mr. Parnell asked if the Mill Plaza project stood on its own. Attorney Pollack said yes, and spoke further on this. Mr. Kelley said Hannaford's first comment was that the adjacent parking lot was a deal breaker. Attorney Pollack said it might be.

In response to a question from Mr. Bubar, Mr. Taintor said the applicant could pay into the parking fund instead of providing the parking spaces on the site, but said the application specifically said that parking would be provided off site. He said he expected that the Mill Plaza application would take longer than the parking lot application, and said the plans would move forward in parallel and hopefully would meet.

Attorney Pollack said the applicant was trying to serve multiple masters: the Zoning Ordinance, which required a certain amount of parking or payment into a fund for public parking; the settlement agreement, which required a certain amount of onsite parking for nonresidential uses; and a tenant that had concerns about having enough parking on the site for itself.

Mr. Kelley asked if the client had given any indication that the remaining four bullet points in the Hannaford letter would be acceptable and addressed. Attorney Pollack said none of these points were surprises, and said the applicant believed each of them could be honored.

Councilor Welsh asked whether if the application went forward, changes would be made to it. Attorney Pollack said he didn't know that there were changes that were necessary, but said there were things that needed further fleshing out as part of the site plan application. Councilor Welsh asked if it was possible that the applicant might want to change the application given input that might be received. Attorney Pollock said yes, and spoke further.

Councilor Welsh said it would be great if the application didn't require changes, but said it was a huge project that would change Durham's downtown forever. He said if time needed to be spent to make the project better, that was fine with him. Mr. Parnell said he didn't have a problem with moving ahead with the application.

Mr. Persechino said the current plan reduced the number of proposed mixed-use residential beds from the prior figure of 330 to 258, and said there would be approximately 80,250 sf of nonresidential space. He said the footprint would remain about the same for buildings A and B, but said building B would be moved back further from the brook and buffer. He also said part of building C would be eliminated. He said there would be improved access for trucks, and said the bank would be moved from building B to C. He said the bank would have a drive through, where cars would go through the parking garage there, instead of having the bank and drive-thru in the middle of the site as was proposed with the previous version of the project.

He said the application also included residents being able to use the parking spaces at a parking area on an adjacent property, and accessing them by a pedestrian connection between the two properties. He said the changes with the revised plan were an improvement over the former plan, according to the Town and Hannaford.

Mr. Bubar asked if the applicant still proposed to put commercial parking within the wetland setback. Mr. Persechino said what was there now was maintained with the current plan.

Ms. Dill asked for details on the drive-thru for the bank. Mr. Persechino said there would be a single lane drive-thru, and said cars would exit through the parking garage. He spoke further on this and there was discussion.

Mr. Kelley asked to see some colors and hatching on the plan to show green areas, snow storage, etc., and also asked that the plan show wetland setbacks and property lines. He asked how the proposed buffer paired up with the abutter to the north, and noted that currently there was a ramp up to the alleyway to Main St., and a retaining wall up against the property line. Mr. Persechino said he'd look at the setback requirements for the retaining

wall. He explained that the applicant wanted to keep that area open and provide a pedestrian connection, and said the area would need to be improved. He said right now it was pretty steep and said there would be steps there. Mr. Kelley said it would be nice to see loading areas and vehicle parking for deliveries included on the colored plan.

Attorney Pollack said the applicant would provide more detail on these kinds of things as they got into the next phase. He noted the schedule provided last time to address various topics as part of the site plan review process. He said the applicant could submit a full plan set, with the landscaping plan, stormwater management plan and architectural design on January 2nd, and could do a presentation on it at the January 22nd meeting.

He said the next submission after that would be the traffic study, and said it was realized that the Planning Board would like to provide input on what was looked at in this study. He said the presentation on this could be on February 12th. He said the fiscal impact study could be presented at the March 11th meeting. He said the final plan set, reflecting changes made, could be provided on March 25 and presented at the April 15th meeting.

Mr. Bubar asked if thought had been given to coordinating the stormwater plan with the stormwater plan for the neighboring property. Mr. Persechino said that would depend on the final layout and design of the parking lot. Attorney Pollack said perhaps there could be coordination of the stormwater plans. He noted that what would be shown tonight concerning the parking lot project was some options under consideration, and said whether the stormwater engineering would work depended on what option was chosen, and if it made sense to coordinate with the Mill Plaza project. Mr. Persechino said there was dialogue between the applicants concerning the two projects.

Councilor Welsh thanked the applicant for pushing the building back. But he said what stuck out with the previous plan was the pedestrian walkway, which provided walkability and connectivity on the site. He said this plan looked like a big parking lot with 3 buildings on it, and asked how people would move around on the site, and if the plan worked from a pedestrian standpoint.

Mr. Persechino said the building was moved back 125 ft, and said the center corridor lined up with the pedestrian route. He said there were options, and spoke further on this. Attorney Pollack said the applicant was trying to be responsive to competing interests. He said in removing a building and moving more to the high side of the site to keep the buildings further away from the neighborhood, it was understood that this would truncate the pedestrian thoroughfare. Councilor Welsh said the more that could be done to make a pure pedestrian walkway, the more likely that the design would be well received.

Mr. Kelley asked where things had left off last year concerning the traffic analysis. Mr. Persechino said there had been a scoping meeting. He said there was recently another meeting to look at the current plan and how it could relate to leased parking offsite. He said the applicant needed feedback on this. Mr. Kelley suggested that it would be good for the Planning Board to have a traffic engineer during the scoping session. Mr. Persechino noted that he'd met with RSG, which did the Town's traffic model. Mr. Kelley said it was wise to use this traffic model. Mr. Parnell recommended integrating the parking project in doing the traffic model run.

Councilor Welsh asked what kind of retail uses the applicant was thinking of putting in building C. Project manager Sean McCauley said the Town had asked for a small space in that building. He also said it would include the gym, management office, etc. for the residential building. He noted discussions with the current commercial tenants about the plan. Councilor Welsh asked what the applicant hoped to use the 5000 sf of retail space in building C for. Mr. McCauley said the hope was to create some energy moving into that area, and said the thought was that there would be destination businesses there, like medical offices. Councilor Welsh asked about the plans for walkability there, and Mr. Persechino provided details on this. There was further discussion.

Chair Rasmussen MOVED to open the Public Hearing. Councilor Welsh SECONDED the motion and it PASSED unanimously 7-0.

Dian Chen, Oyster River Road noted that one building had been removed with the current plan, but said there was now even more parking proposed. She said she'd be curious to see the traffic study. She noted that the previous plan said students living on the site wouldn't have cars, but this plan indicated that they would have them, with the associated noise, traffic, etc. She said the Planning Board had already spent a lot of time on plans that should have been considered preliminary, since Hannaford wasn't on board. She said the current plans should be shelved until the parking application went through the vetting process.

Robin Mower, Britton Lane, read a letter into the public record, which outlined in detail her concerns about the proposed project.

Joshua Meyrowitz, Chesley Drive, said almost a year ago, Colonial Durham was forced to admit that it didn't have contractual authority to do the site plan application. He said after 4 years and thousands of hours by the Planning Board, Town Council, members of the public, legal counsel, and the courts, the Planning Board voted that it was a waste of time to resume the discussion.

He said in its latest letter, Hannaford said it didn't yet endorse the plan, and indicated that approval of the plan was strongly conditioned on many not yet met demands, including acceptance of another application for a parking lot. He said even if this application was approved, it wasn't clear that Hannaford's conditions would be met. He noted the long-term commitment involved, to 2059 in one of the conditions. He said these demands lay beyond the Planning Board's authority and needed to be negotiated before being subject to further review by the Board. He said once again the Planning Board only had a sort of plan, and he urged it to avoid wasting its time and the public's time on it. He noted the book he'd created documenting the previous review processes concerning a possible project on the site.

Sue Deese, Garden Lane, thanked those who'd spoken, and said she didn't understand why more and more of the University had to be brought into the Town. She said what was proposed was basically another dorm, and said she hoped the Planning Board would consider that. She spoke about how she didn't even drive downtown anymore.

Matt Komonchak, Thompson Lane, said even new members of the Planning Board were aware that years of time had been squandered on this project, and said they shouldn't allow this applicant to waste more time on half-baked concepts masquerading as a plan. He said at the TRG meeting, it was emphasized by the applicants that the two projects were

independent, but said this was a fuzzy situation that needed clarification. He said even if their word could be taken on this, the Mill Plaza project didn't meet the requirements of Hannaford, noting that their letter said the new parking area must be part of the Plaza through 2059.

He said Attorney Laura Spector had provided a legal opinion that Mr. Murphy was free to lease to whoever he chose, so those spaces could easily be leased to anyone, leaving Colonial Durham, Hannaford and the Town high and dry. He said it made no sense to consider traffic and other issues separately, and he encouraged the Board to flesh out whether the two applications should be considered independently.

Jeff Ward, Faculty Road, said he moved here 3 years ago from Portsmouth, which was beset by the wrong kind of development/overdevelopment. He noted the recent election there that was a reaction to this. He said the proposed Mill Plaza project would change Durham's downtown and his neighborhood forever. He said while building B had been moved, it would be 4 stories high, and said he didn't see something like that near a residential neighborhood anywhere in Durham.

He also said building C would have a bank drive-thru with an ATM, and he considered that it might be open 24 hours/day. He said the busiest part of Mill Plaza would be closest to the residential neighborhood, and said the majority of beds had not been pushed northward and were still up against College Brook and his neighborhood. He said this didn't need to happen, and spoke about impacts on property values. He said the business activity near his backyard now eventually closed each day, but said that wouldn't be the case with the new plan. He said there was significant room for improvement in the plan, and said it seemed to make sense to table it unless the applicant had the new parking area. He said he wasn't opposed to redevelopment of the Plaza, but said he didn't see why it had to be so close to his property.

Ann Marie Harris, Oyster River Road, said she'd lived in the Faculty Road neighborhood for 49 years. She said she wasn't sure that any more student housing was needed in Durham, and noted the decreasing number of students at UNH these days. She said she was very concerned that this was a completely new development proposed at the Plaza, and wasn't as proposed a continuation of an existing proposed development. She urged the Planning Board to table this until after the parking issue was resolved.

Beth Olshansky, Packers Falls Road said she thought it was a huge waste of the Planning Board's time to move forward with this application, given the conditional nature of it and the explicit tie to approval of the parking lot application. She spoke about why she thought the parking lot application wasn't a slam dunk, and said she hoped the Board would consider tabling the Mill Plaza application until after the parking lot application. She noted that it was explicit in the Town's architectural regulations that there wasn't supposed to be a 4-story building next to a one-story building, and that there shouldn't be more than a 1 ½ story difference between adjacent buildings. She said the existing one-story building on the site would be there for a long time.

Mary Gamage, Hannaford Director of Real Estate said the basis of their letter was making sure that the plan included elements to ensure that there was enough parking on the site so customers could get what they needed, and that there would continue to be safe access and circulation on the site. She said the concerns were around the Mill Road entrance

functioning well for customers, and she spoke about the need for the traffic study at the next level of review. She said there had been conversation around the proposed adjacent parking lot, which was an essential ingredient.

Mr. Kelley asked if the current quantity and location of parking was sufficient, and Ms. Gamage said yes. Mr. Kelley asked that cart storage be shown on the plan. He then noted that there were five bullets in the letter from Hannaford, but it also spoke about other possible conditions. He asked if any of those came to mind.

Ms. Gamage said she couldn't say without knowing how the plan might change, and said the wording was meant to address subsequent changes. She spoke about the importance of the adjacent parking being in place and available to service their needs throughout the term of their lease, and the ability of the project to provide parking that was adequate to service all the uses on the site. She said they wouldn't know how traffic would flow until they saw the traffic study. She spoke about the importance of the site continuing to function in a way that worked for customers, including a friendly approach at the entrance to the Plaza.

Robin Mower said the settlement agreement required that there would be an increase in the natural buffer to College Brook, but she said the wording of the condition on this was deliberately vague. She said this site plan offered a minimal increase, and asked how it was that the hardscape for the project could be approved and then the buffer could be negotiated.

Joshua Meyrowitz said Ms. Gamage had just emphasized that the parking lot was essential, so it was important to hold off on reviewing the Mill Plaza application.

Ann Marie Harris said the Town would very much like a redeveloped Mill Plaza, provided that there was a benefit to the community. She said a benefit would be if there was a brand new grocery store, with a pharmacy, and if the student housing was placed as close to the University as possible.

Matt Komonchak said he didn't remember the exact wording of the settlement agreement, but said what was proposed now seemed to violate the spirit of that agreement because the buffer was increased only marginally on the south side, and there would be a 2 acre parking lot. He also said the proposed location of the student housing didn't meet the agreement.

Tim Horrigan, Faculty Road, said there had been discussion about redevelopment of Mill Plaza since 2001, and said what was proposed now seemed to be another plan that didn't take into account what the community had asked for. He said there wasn't a pressing need for more student housing, noting that the University wasn't planning to increase the number of students over the next few years. He said the existing Mill Plaza was very successful, and said building B had thriving businesses in it. He said the current plan was out of scale with the neighborhood,

Susan Deese said a lot of the parking spaces at Mill Plaza were being rented and asked why more parking was needed if it would just be rented to students.

Attorney Pollack asked that the letter from Hannaford and the letter from the Planning Board's counsel be entered into the record. Chair Rasmussen said these letters were in Board members' packets so were in the public record.

Lorne Parnell MOVED to continue the public hearing to the January 22, 2019 Planning Board meeting. Bill McGowan SECONDED the motion and it PASSED unanimously 7-0.

- X. 19-21 Main Street – Parking Lot.** Preliminary design review for site plan and conditional use for parking lot on four lots and reconfiguration of the entrance. Three options are presented with variations in layout and the number of spaces. The owner is in discussions with Colonial Durham Associates for a possible parking arrangement for Mill Plaza. Toomerphs, LLC c/o Pete Murphy, property owner. Mike Sievert, engineer. Map 5, Lots 1-9, 1-10, 1-15, and 1-16. Church Hill District.

Mr. Murphy said he'd like to clean up the front area between 19 and 21 Main St., redesign the front part of the entrance, and redevelop the 2 acres in the back with a parking area. He said he'd spoken with Colonial Durham Associates about this. He said his application and their application were independent, and said he'd be coming to the Board now even if the Mill Plaza application didn't exist. He explained that there had been a decision not to do more student housing on this property, and said there had been ongoing conversation about a possible parking lot before he spoke with Colonial Durham. He said if there was a chance to help them out and this project was approved, he would do so.

Mr. Sievert said there were 4 buildings on the site now. He said with option #3, there would be approximately 150 parking spaces there. He said the plan was to significantly improve the entrance on Main St., which didn't operate very well today. He said the access lanes would be widened to make them much safer. He showed the design for the parking lot, which included a boulevard with a landscaped island, and sidewalks into the site. He noted that all of this was the design review stage right now. He provided some views of the proposed parking area, and said he was asked at the TRG meeting to do a 3 D rendering of it.

Councilor Welsh asked when the proposal would be narrowed down to one option, noting that the applicant would be asking for public comments at the next meeting and people wouldn't be sure what they were commenting on. Mr. Sievert said Mr. Murphy wanted option #3.

Mr. Parnell asked why there were three proposals to start with. Mr. Sievert said they started looking at this before talking to anyone else, and said some were older options. Mr. Murphy said the original intent was to present three options, but then they decided to present one of them. He said it would be much less confusing to concentrate on one plan, for option #3.

Chair Rasmussen said the Board needed to see topographical lines on the plan. Mr. Sievert said the proposed grade lines were shown for option #3, and said there would be a 5% change in grade from top to bottom, coming in from Main St.

Mr. Kelley said it was clear that option #3 was preferred, noting that the TRG was told this and it was in the Board's notes.

Chair Rasmussen said he would like to see a plan that promoted parking for the downtown, and said a two level parking area with a deck was a potential option to achieve that, given the grading on the site. Mr. Murphy said the point was well taken. He noted that Chief Kurz had said the same thing concerning a possible deck. He agreed that the grading on the site was

good for this, and said he was asked to provide some numbers as to whether this would be possible.

Mr. Sievert said the site was very good for a two-layer parking lot, and said this would increase the number of spaces to 250 or more. He provided details on how this could be designed, and said it would narrow the parking lot footprint considerably, which would allow 50 foot buffers on both sides. He said there were obviously some other issues to consider.

Ms. Grant said it would be ideal to see what the buffer would do, noting possible concerns from neighbors about the parking facility, including concerns about lighting. Mr. Sievert said the tree buffer could remain with a two layer facility, and spoke further about the design.

Chair Rasmussen asked Mr. Murphy if he'd spoken with Economic Development Director Christine Souter, and Mr. Murphy said he had.

Mr. Behrendt said the lower access would be at grade from Mill Plaza, and the deck could be accessed from Main St. He said this design could potentially work well, and said there wouldn't need to be a ramp to connect the two levels. Mr. Sievert noted that access wouldn't need to come from Mill Plaza, but said it would be good to have that access. He said it would be cheaper to build two levels, with two different access points, but said that wasn't necessary.

Councilor Welsh said he thought this design might be prohibited by Hannaford. He said the idea of having a second level was good, but said there would be a big change, from trees to asphalt, with no environmental benefit. He noted that this would be a conditional use application, and spoke about the wording in some of the criteria on preservation of views, mature tree lines, etc., and said it was hard to see how the parking facility would fit in.

He also said there needed to be a robust way to handle stormwater, especially if there was going to be a deck with the parking area. He suggested that the Board might want to delay the public hearing until it knew exactly what design they were talking about. He said if the applicant was going to do something bigger like this, it would be good to see a model so people could see what the facility would look like vis a vis the surrounding area.

Mr. Sievert said on the easterly side, the topography was a ravine that lent itself to being a very good stormwater infiltration area. He also noted that a benefit of having double decks was that it would reduce the footprint. He said the 3D model could be pulled together in a few weeks, but said things right now were at the conceptual stage, and said they wanted to hear more comments and then see how they could be addressed.

Mr. Parnell said he'd like the Board to do a site walk soon. The Board agreed to do the site walk on Monday, November 25th at 11 am.

Robin Mower, Britton Lane, asked that the site walk include walking Chesley Drive and Faculty Road to see what people would be able see from there.

Jim Bubar MOVED to schedule a site walk for Monday, November 25, 2019, 11 am for the 19-21 Main St property. Chair Rasmussen SECONDED the motion and it PASSED unanimously 7-0.

There was discussion that the Board would wait to schedule the public hearing until they saw a plan, and the design review would be continued to the December 11th meeting.

XI. 56 Main Street – New Restaurant. The site plan for new restaurant, Italian market, and events space was approved on May 22. Doug Clark, applicant. Peter Murphy, property owner. Mike Sievert, MJS Engineering, engineer. Map 2, Lot 14-4. Central Business Zone.

A. Sewer Line. Request for modification from approval to upgrade only sewer line on the subject lot.

Attorney Sean O’Connell said the applicant had heard from the Kostises, who were abutters. He said looking at the history of this location, the use of Mr. Clark’s property had been significant over many years. But he said plumbing fixtures were more efficient now so water use was reduced. He said the restaurant would have 150 seats, with 93 in the primary restaurant and about 50 on an occasional, special event basis. He said it was believed that the use was substantially similar to the use in prior years.

He said the existing pipe would be lined and would have new grease traps. He noted that the pipe had been examined with a camera and was found to have no issues. He summarized that there would be a substantially similar flow as there had been historically, with an improved pipe and plumbing, so it wasn’t seen that Mr. Clark’s proposed use would cause a risk downstream to other properties.

Attorney O’Connell said the Kostises had asked for indemnity, noting issues with a sewer pipe in Dover, where the property and the one adjacent to it experienced a sewer backup because a city contractor had allowed it to occur. He said that kind of event would be completely outside of Mr. Clark’s control. He said Mr. Clark proposed to extend the lining of the pipe to Thai Smile, at the end of Jenkins Court, which came fairly close to where the Kostises had had problems with the sewer pipe. He said it was realized that the piping under the buildings wasn’t optimal, and said it was hoped that with other redevelopment in the area, such as at 66 Main St, that there would be a permanent solution. He said what was proposed now was reasonable and fit with Mr. Behrendt’s comments, and asked that the Board approve this change to the plan.

Mr. Kelley asked how it was envisioned that the 66 Main St project would provide a permanent solution. Mr. Clark said if Mr. Murphy redeveloped his Jenkins Court property, or if the ATO property was redeveloped, or if a sewer line on Jenkins Court was proposed to support further commercial development there, there could be a permanent solution. Mr. Kelley asked if there was anything that should be done now to facilitate that option. There was discussion on this with Mr. Clark.

Mr. Parnell said the Board’s approval was to line the sewer pipe all the way down to Pettee Brook Lane, and asked why they were all still talking about this. It was noted that discussion with the Kostises broke down, so Mr. Clark was proposing to reline the pipe to his property line. Mr. Parnell asked if the Town Engineer had approved that plan. Mr. Behrendt said she thought it wasn’t a problem for the Town to approve it because it was a private line. Mr. Parnell asked if the issue that it wouldn’t be done to the end of the line at Pettee Brook Lane concerned her.

Mr. Behrendt said the existing line was old, and said the question for the Planning Board was what the optional approach was. There was further discussion on the pipe, including on the video taken of it.

Mr. Bubar asked what the Town's liability would be if the Planning Board approved this change to the plan and there were then problems with the sewer line. Mr. Clark said he thought it would be up to the property owners to fix the problem. Mr. Behrendt provided an analogy concerning the Planning Board's role.

Mr. Parnell asked if the Town Engineer had provided an opinion on whether there would be an expanded use of Mr. Clark's property. Mr. Clark said there would be an increased use compared to the last 25 years, but said there was a full scale restaurant on the first floor of the building until the 1990s. Mr. Parnell said the sewer line was old, and asked if there was a significant increase or not.

Mr. Sievert provided details on calculations that had been done on this. Chair Rasmussen said the better question was in regard to the capacity of the pipe. Mr. Sievert said he did calculations of all flows, and said with a 100,000-gallon capacity, the pipe was probably adequate. He said its condition was suspect, but said this was a temporary situation. Mr. Parnell said a concern was that increased sewage would be going into an old pipe, and said it would be better if the pipe was completely relined.

Peter Murphy said everyone wanted to resolve this in a fair way. He said the original intent was to go down Jenkins Court with the sewer line, and said he and Mr. Clark had agreed to pay for two thirds of it, with the Town paying for the other third. He said one of the property owners on Jenkins Court hadn't wanted to see interruption of the street, which stopped the plan and left them with slim options. He said the decision was made to go ahead with lining the pipe, and as part of this there was discussion with the Kostises. He described a possible approach to line part of the pipe now, before the ground froze, and to do the rest of it out to Pettee Brook Lane with minimal disruption to the Kostises' tenants in the spring.

He said he and Mr. Clark were still committed to doing that, and said that approach would allow Mr. Clark to keep moving forward with his project. Attorney O'Connell said they were proposing to do what they could do now, and said they couldn't line the pipe beyond the property line. He said he didn't think this created a significant risk.

Mr. Parnell said the existing approval was to line all the way to Pettee Brook Lane, and now the applicant was asking to improve the line to his property line.

Councilor Tobias said she would like to see this project move along for the sake of the Town. She spoke in some detail on this, noting among other things the disruption on Jenkins Court.

Councilor Welsh said the line under the Kostis building was old, and said it was their responsibility, Attorney O'Connell agreed that it was.

Mr. Lambert said it was the Kostises section of sewer line that got plugged up last time, and said it was Mr. Clark who was taking the risk now. He said if the Kostises didn't want to line the pipe under their building, that was their issue.

Attorney O'Connell said it was Mr. Clark's business that would be shut down if there was a problem, and said there would be a risk for the Kostis building too.

There was further discussion on whose risk it was. Mr. Bubar said his concern had been to what extent the Town would be dragged into what should be an issue for the business owners. Mr. Behrendt said the Planning Board needed to be thoughtful and reasonable, and said if they did this, he didn't think they would be very exposed from a legal standpoint. He said this was largely a private matter. Attorney O'Connell agreed. He noted that with the situation in Dover, the city was sued because in that case its contractor did something wrong.

Mr. Murphy noted that with the incident with the sewer line under the Kostis building, which resulted in the business there eventually closing down, no one asked that this problem with the sewer line never happen again, and no agreements were requested. He said the property owners were all in this together concerning the old sewer pipe, which was why they had insurance.

Nick Kostis said it was never determined whose fault the blockage of the sewer line was, and said a joint in it had dislodged, but said the cost of fixing it was all on their end. He said they'd never said they weren't ok with what had previously been approved concerning the sewer line upgrade. He said the meeting with Mr. Clark and Mr. Murphy didn't go well because his family had some questions but the contractor was telling them what he planned to do. He said it would be great if the sewer line upgrade under their building could happen in the summer.

Councilor Tobias asked if these differences could be worked out, noting that this would seem to be in the best interest of everyone. Mr. Kostis said his family was always willing to sit down and talk. Councilor Tobias said it was important to continue to work out the differences, stating that the current situation downtown was extremely disruptive.

Mr. Parnell said he thought the Board should approve a two-step process, with the first step happening now and the second step happening as soon as possible. Attorney O'Connell said that would be great, and said Mr. Clark's project might not go forward if he had to wait until the spring. There was discussion about the second part of the process, where the pipe would go out to Pettee Brook Lane. There was discussion about the fact that this would require negotiating with the Kostises, and about whether the Board could make that mandatory. Mr. Parnell noted that the Board had already approved that. Mr. Behrendt described three parts to this process, and a possible motion with 3 parts to it.

Mr. Bubar said the Board had been told there was sufficient capacity in the pipe to handle the flow, and suggested that this could have been said in the beginning.

Councilor Tobias said the longer things went on, the more risk there was for this project. She said she saw nothing wrong with amending the approval so there would be the sewer upgrade for Mr. Clark's property. She said this situation showed the problem with having privately owned sewer lines, and said the best thing would have been for the Town to do it.

Bill McGowan MOVED to approve the request by Doug Clark for modification from approval, to upgrade only the sewer line on the subject lot. The property is located at 56

Main St., Map 2, Lot 14-4, in the Central Business Zone. Lorne Parnell SECONDED the motion and it PASSED unanimously 7-0.

Councilor Tobias spoke further. Mr. McGowan said he thought the property owners had heard enough discussion this evening to be able to resolve this issue.

B. Parking. Review of proposed off-site parking and parking impact fee.

Attorney O'Connell explained that the square footage available for parking offsite was smaller than anticipated because of ledge. He said they were going to operate as though there would be 11 spaces. He said Mr. Sievert had done the calculations on this, and said there would be 5 dedicated spaces at Mr. Clark's property at 74 Main St and at least 4 spaces he'd lease long-term at Mr. Murphy's property. He said Mr. Clark would pay into the parking fund for the 2 parking spaces if they didn't exist.

Mr. Clark said there were 11 spaces on his 74 Main St property, and said 5 spaces would be used for this project. He noted that he had only 3 tenants there who had cars. There was discussion. He said when that property was renovated there would be an underground parking area and some above ground parking, containing a total of about 22 spaces. He said how all of the parking for that property and the restaurant property would be worked out when that project came to the Planning Board. There was discussion that the parking spaces on both his property and Mr. Murphy's property would be for employees.

Mr. Bubar said the calculations for the parking weren't submitted with the packet.

Mr. Behrendt said Mr. Clark needed approval from the Planning Board if he used spaces in a different lot than his own to meet the parking requirements. He said there would be at least 9 spaces off site at two locations, but the approval would be for up to 11 spaces. He said Mr. Clark would coordinate with the Town concerning money owned for any spaces beyond 9 that he didn't provide. There was further discussion on this.

Richard Kelley MOVED to approve the applicant's request for up to 11 parking spaces to be secured through leasing or other means, to serve employees. Bill McGowan SECONDED the motion and it PASSED 6-0-1, with Jim Bubar abstaining.

Mr. Bubar said he abstained because he didn't have sufficient information to make a decision.

Mr. McGowan left the meeting at 10:38 pm.

XII. Short-Term Rental Ordinance (originally called Bed and Breakfast/Air B&B Ordinance). Proposed amendments to the Zoning Ordinance initiated by the Town Council regarding short-term rentals. (The public hearing is closed.) *Recommended action:* Finalize draft and set a public hearing for December 11.

Chair Rasmussen said there was one item that had been left to Mr. Behrendt's discretion that the Board should look at.

Jim Bubar MOVED to extend the meeting to address the short term rental proposal. Chair Rasmussen SECONDED the motion and it PASSED 5-1, with Richard Kelley voting against it.

Ms. Grant was appointed in place of Mr. McGowan.

There was discussion about the proposed language modification on page 4: 5. “Those areas of the premises open to use by lodgers remain subject to periodic safety inspections per state law.”

There was discussion about some of the other proposed provisions. The wording “providing dining facilities” was added to the definition for Hotel.

Me. Behrendt also suggested language for Standard L. Hotels and Motels. “A stay in a hotel or motel is restricted to less than thirty days (as defined in Article II – Definitions). However, a guest or guests may stay in a hotel or motel for thirty days or longer if allowed by special exception. The maximum that may be allowed by a special exception is a stay of 60 consecutive days and 90 days in any 6-month period.

Councilor Welsh MOVED that the Planning Board schedule a public hearing for the Proposed amendments to the Zoning Ordinance initiated by the Town Council regarding short-term rentals. Chair Rasmussen SECONDED the motion and it PASSED unanimously 7-0.

XIII. Other Business

XIV. Review of Minutes (new):

October 18, 2019 site walk
Postponed

October 16, 2019
Postponed

October 30, 2019
Postponed

XVI. Adjournment

Richard Kelley MOVED to adjourn the meeting. Jim Bubar SECONDED the motion and it PASSED unanimously 7-0.

Adjournment at 10:54

Victoria Parmele, Minutes taker

Richard Kelley, Secretary