

These minutes were approved at the March 11, 2020 meeting.

DURHAM PLANNING BOARD
Wednesday, February 12, 2020
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
Heather Grant, alternate
Sarah Wrightsman, alternate
Carden Welsh, Council Representative to the Planning Board
Sally Tobias, alternate Council Representative to the Planning Board

MEMBERS ABSENT Mike Lambert, alternate

I. Call to Order

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

II. Roll Call and Seating of Alternates

The roll call was taken. No alternates were seated.

III. Approval of Agenda

Chair Rasmussen said Item XII had been postponed to the April 13th meetings.

Jim Bubar MOVED to approve the Agenda as amended. Bill McGowan SECONDED the motion and it PASSED unanimously 7-0.

IV. Town Planner's Report

Mr. Behrendt said he had nothing to report.

V. Reports from Board Members who serve on Other Committees

Councilor Welsh said at the most recent meeting, the Council received a report from Town Engineer April Talon on the repair of the Littlehale culvert. He said the project included installation of BMPs to clean water coming down Bagdad Road and Emerson Road, and said the Planning Board would need to think about these kinds of stormwater management approaches more in the future. Chair Rasmussen said Ms. Talon would meet with the Planning Board about this in the future.

Councilor Welsh said there were 6 public hearings at the recent Council meeting on various proposed ordinances, and he reviewed them briefly. He said all of these ordinances passed.

Mr. Bubar asked if there was any movement on the solar ordinance. Councilor Welsh said Councilor Lawson had spoken with Chair Rasmussen about this, and said it would be looked at more in April.

VI. Public Comments

No comments

VII. Review of Minutes (old):

VIII. Public Hearing - Zoning Amendments related to Agriculture. Extensive amendments to the Zoning Ordinance relating to agriculture proposed by the Durham Agricultural Commission.

Agricultural Commission Chair Theresa Walker noted the PowerPoint presentation she'd provided on the proposed ordinance at a Planning Board meeting last month. She said she believed the ordinance reflected Council goals, the Master Plan, and residents' interest in having more ways to access local food and have the ability to produce their own food.

Mr. Kelley noted that the ordinance proposal included new definitions, new principal and accessory uses in the Table of Uses, and new standards specific to agriculture based on BMPs established by the Dept of Agriculture and others.

Richard Kelley MOVED to Open the Public Hearing on Zoning Amendments related to Agriculture. Lorne Parnell SECONDED the motion and it PASSED unanimously 7-0.

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

Bill McGowan MOVED to Close the Public Hearing. Jim Bubar SECONDED the motion and it PASSED unanimously 7-0.

Councilor Welsh noted that the ordinance was making agricultural uses principal uses in the RA and RB districts, which were defined as districts for residences. He asked if the ordinance intended that someone in the district might knock down their house and raise cattle, corn, etc. He asked if these would be accessory uses as opposed to principal uses in these districts and perhaps also in the RC district. He said he'd like to discuss this next time.

There was discussion. Mr. Bubar said there could be multiple principal uses on a single property. Ms. Dill noted the footnote in the Table of Uses about an acreage requirement which would take care of concerns about raising animals in residential neighborhoods. Councilor Welsh noted that crops could still be grown as a principle use on smaller properties in these districts.

It was agreed that the discussion on the proposed ordinance would take place at the February 26th meeting.

IX. Public Hearing - Subdivision off Gerrish Drive. Parcel at 91 Bagdad Road (address). Preliminary conceptual application for conservation subdivision for 8 to 12 houses on 16-acre lot off Gerrish Drive. Marti and Michael Mulhern, property owners. Mr. Behrendt Mr. Sievert, engineer. Robbi Woodburn, Landscape Architect. Map 10, Lot 8-6. Residence B District.

Mr. Sievert noted the drainage plans he'd provided. He said he'd like the Board to do what was in the regulations concerning the conservation subdivision review process, which was to evaluate the suitability of the site, provide feedback and review the basic concepts and conservation areas. He said he could then do more design based on that.

He reviewed the application, which included 3 possible layouts. He noted that there was a lot of discussion about drainage last time, and requests for a larger map beyond the site. He discussed the Gerrish Brook Sub-catchment map that had been put together to show this. He showed the watershed area for Gerrish Brook, and the location of the applicants' property on it in the watershed.

He said their property was at the bottom of the watershed and said drainage from it would go into the culvert at Route 108 and into Johnson's Creek. He said the Portsmouth water treatment plant was upgradient from them on Johnson's Creek so there were no potential contamination issues. It was noted that the water treated in the plant came from drilled wells, as well as the reservoir in Madbury. He showed how water came from the Ambler/Gerrish subdivision, flowed through the applicants' property and went into the culvert at Route 108. He spoke in further detail on the drainage pattern and there was some discussion

Mr. Kelley asked what information was used to create these maps and was told that it was LIDAR and NH GRANIT data. Mr. Kelley said there appeared to be a discrepancy between the two maps concerning the turns in the stream channel. Mr. Sievert said the scales of the two maps were different. Chair Rasmussen described the flow he saw when he was there in December, along Gerrish Drive. He questioned the accuracy of the maps. Mr. Sievert said it was accurate. He said the Chair was there during a storm, when the water flowed in many different channels and areas. He said for the drainage analysis, the map showed the most remote point from the tributary area in order to calculate the maximum amount of runoff from the area. He said it showed where the water came from and where it eventually went.

Mr. Sievert noted concept C, where 2.5-3 acres of 15 acres would be developed. He said the vegetated portion of the developable acreage wouldn't necessarily be part of the official conservation area.

Councilor Welsh said this was the concept that was most problematic because it put the road almost entirely in the wetland setback. He said he saw that as a big problem. Mr.

Kelley said there would also be a home that required the filling of wetlands. Mr. Sievert said they wouldn't be putting a home in the wetland, but did want to put fill in the wetland. He spoke further on this. Mr. Kelley asked if there was a high degree of confidence that the regulatory authorities would permit this. Mr. Sievert said they wouldn't let him put a house or lawn there, but said road access was potentially allowed in order to make the subdivision function.

Chair Rasmussen said 2500 sf for a house seemed large considering how close the houses would be together. Mr. Sievert said that would be the absolute maximum size.

Mr. Bubar said he would rather look at a wetland than a commons, and said if they took the 3 house in the lower left and flipped them with the road, they could keep the road out of the wetlands.

Mr. Sievert said they'd gone away from this exact concept, and were trying to reconfigure it. He said the concept of a pocket neighborhood was not to have roads on the interior and to focus on vegetated areas and common space on the interior. He said it was that type of neighborhood that they were going for. He said this design also allowed for a great stormwater treatment area inside, and not outside toward the wetlands. He said they did propose to use the buffer area but would mitigate this with the treatment inside.

Mr. Parnell asked if from a regulatory perspective it would be possible to move some of this up into Madbury. Mr. Sievert said there were steep slopes up in that area, but said they were looking at coming around from the northern side instead of the southern side. He spoke further on this.

Mr. Sievert spoke about the design of the profile for the road in the preliminary plan, and there was discussion on this. He said he'd included this as a placeholder and said other alternatives were being looked at, which he would explain next time. He said they would like to slide the road downslope, to the north, and said in order to do this a waiver from the road design regulations would be needed. There was discussion on the size of the culverts in the design. There was also discussion on the preliminary stream there and about DES regulations concerning it.

Mr. Sievert said option A that had been provided wouldn't work because of the tightness, and said option B could be worked out. He said he'd like to come up with a final option that worked with keeping the developable area, maximum conservation area, and getting the pocket neighborhood development.

Chair Rasmussen said the Public Hearing would be continued now.

Kim Sweetman, Ambler Way, said having lived there for 3 years, it was year round flowing water.

John Carroll, Canney Road, spoke about the broader implications downstream. He said the Board needed to consider this, and said removal of a large number of trees for roads and buildings would yield quite a bit of additional stormwater. He said the 3 streams

converging at the Gerrish Drive/Ambler Way intersection would be enlarged because of this, and also because of impervious surface increases. He also said this quantity of water would be exacerbated by increased precipitation now and in the future because of climate change.

He said the Gerrish Brook watershed and the Madbury properties that were part of it would have increased flooding, and said the Route 108 culverts were already shown on maps as vulnerable to tidal flooding from rising sea levels. He said this would clash with increased freshwater from storms and would increase flooding. He said Portsmouth's wells and water treatment plant could be impacted by a backup of the freshwater and saltwater on Gerrish Brook. He said the project could have serious consequences for Madbury and Portsmouth in addition to Durham. He said an independent wetland scientist and hydrological scientist were needed to view the broader picture.

Gail Kelley, Gerrish Drive said at the confluence of the 3 streams, the impact would get greater over the years from increased precipitation and rising sea levels. She also said the leach beds from 21 households drained into that corner. She said the New York Times op-ed page today discussed changes the Trump administration was making to the Clean Water Act, and said streams and wetlands could lose their protection with such changes. She said once the protections were removed, the state could lower its standards and for financial reasons might not step in at all, leaving towns on the hook to address flood damage. She said those living contiguous to those streams and wetlands would actually be responsible for addressing the problems. She asked the Planning Board to keep all of this in mind.

Molly White, Ambler Way encouraged the Board to do a site walk. She asked them to think about not only if the project could be completed, but if it should be and who benefited from it, weighing the property owners against the neighbors and the environment. She read a letter, and said the right of way appeared to impact the playground in her backyard. She said she had not been kept in the loop about the application. Mr. Behrendt said all the pertinent documents were sent out, and asked for her email.

Andrew Merton, Gerrish Drive said the Council gave its permission to proceed but said it wasn't an endorsement, and wasn't a unanimous vote. He noted the Conservation Commission meeting on the project, and said it was useful. He said the Commission seemed intent on scheduling a joint site walk with the Planning Board. He said as he watched Mr. Sievert's maps, he kept looking at the right of way that was the confluence of everything, at the head of the future street. He said it was wetland, and said the idea of putting a road there was like trying to get a camel through the eye of a wet and soggy needle.

Diana Carroll, Canney Road thanked the Board for taking in this technical information. She said they needed to remind themselves about buffers, which had a job to do. She said she looked at what the Town's regulations said about what could be done in buffers, and

said she planned to talk about this with the Planning Board at some point. She said they needed to look at this, including in the light of climate change. She also said any water discussed tonight went into Great Bay, and said even if the EPA wasn't interested in it, the Town was. She noted that there had been an incremental improvement in the bay recently. She said a question was what would be in the water as it headed to Great Bay.

Michael (and Marti) Mulhern, Bagdad Road said they had been Durham residents for 23 years, raised 3 sons, and volunteered in the community and the school system. He said they were trustworthy and reliable people and had built two homes here. He said they intended to communicate with neighbors, and noted their invitation for the neighbors to review the plans. He said they planned to continue to do that. He said they had approximately 16 acres, and said about 3 acres would be used for housing for people 55 and older. He said 13 of the acres would be natural, and noted that there was a trail system there now. He said they would use sustainable products and would keep the price down, and said square footage was a major consideration. He said they would build a house there so would be neighbors. He said they did not intend to aggravate the drainage issues and hopefully would improve them.

Councilor Welsh asked if the idea of having housing for people 55 and older was definite. Mr. Mulhern said that was the intention and said they wanted to keep the price down for those who'd been in the community for many years.

Mr. Kelley asked if an inventory was done in terms of areas that were off the table and those that were buildable. He noted that the buildable areas were different depending on the option. Mr. Sievert showed the inventory plan. There was discussion that slopes were delineated as part of the HISS information, and those greater than 25% were noted as D, and needed to be taken out.

Mr. Sievert said the map and a table on page 2 of the site analysis narrative identified the poorly and very poorly drained soils, floodplains, shallow to ledge soils, slope information, etc. He said the net developable area was about 320,000 sf, which divided by 40,000 sf was 8 lots. He said they were allowed to double this if they did 55 plus housing, but said they wouldn't do this because this wouldn't fit.

Mr. Kelley noted that Mr. Sievert had said option A didn't work because of the tightness, but he said it had the least amount of impact on the nonbuilding areas and was a development that provided the greatest amount of setbacks for the septic systems.

Mr. Sievert said there were issues with it. He said the distances between buildings didn't work for the community use because they couldn't fit the walkways and vegetation in. He noted the rings of usable area. He said the traffic was on the outside, then the buildings, then the semi-private areas, and then the public area and gathering areas were within that. He said they also planned to utilize the central area for stormwater collection and treatment. He said if the pocket neighborhood design didn't work, they could go to a different design, which would include having to put septic and drainage treatment areas in the wetland buffers. He said there was a tradeoff.

He said there had to be some benefit to conserving 13 acres, and said this was being overlooked. Councilor Welsh asked if any of these 13 acres was buildable. Mr. Sievert said yes, and there was discussion. Mr. Kelley noted that it could be used for density calculations but for all intents in purposes wouldn't be developed. Mr. Sievert spoke more about areas that were developable but weren't being developed. Mr. Kelley said the site had constraints, including the property lines and their relationship to the large resource area on the western side of the site. He noted that just because an area was developable, that didn't make it actually usable, and he spoke further on this.

Mr. Sievert said with the pocket neighborhood design, the wetland area was protected from development. Mr. Kelley noted that the headwaters of the streams were the most important areas. He spoke about possibly redesigning the house layout/amount. There was further discussion.

Mr. Bubar said he still had some heartburn about using the Town right of way, and said he wasn't sure how to get over that. Mr. Sievert said he'd come back with a design that would show how the drainage situation there would work.

Mr. Sievert showed another option that was like more of a standard subdivision, which didn't allow drainage on the inside, allowed larger density with a straight road right through the middle that required clearcutting. He said it stayed out of the buffers and only needed a Conditional Use permit to cross two wetlands. He said the point of this was that A, B or C were far better because trees could be saved by minimizing roads, etc.

Mr. Kelley said he liked option A the best and said perhaps it could be tweaked. He noted the existing culverts at Ambler Way and Gerrish Drive and said if a road was put in there, improvements might need to be made to these culverts on the adjacent parcels in order to avoid flooding. He said they'd have a better idea on this with further mapping, which would pick up these culverts as well. Mr. Sievert agreed, and said he'd been talking with the DPW about improvements to the existing neighborhood.

Councilor Welsh said he liked option A, and said a buffer was a buffer. He said option B would violate the buffer in a massive way. And said it would have to be very good engineering to address this.

Mr. Behrendt said certain uses were allowed in the buffer by Conditional Use. He said the main purpose of the buffer was to provide a minimum of 75 ft of treatment area for runoff. Mr. Behrendt mentioned that Mr. Sievert had said that he would like the private road to be located in the buffer but planned to design it so runoff from the road wouldn't go 20 ft into the wetland and would be treated elsewhere. Mr. Behrendt spoke further on this, and asked whether if Mr. Sievert was able to do this, that would affect how the Board looked at a Conditional Use permit for a driveway inside the buffer. Councilor Welsh said he didn't think a ditch and a rain garden would cut it.

Mr. Sievert said he liked option C or option B, or a combination of them. He said a modified version of option C would make a better compromise.

Mr. Parnell said he'd expect to see a great deal of information next time on getting through the right of way and crossing the wetlands there. He said this was a significant concern to a lot of people and said he hoped the design would be able to properly address this.

Mr. Bubar said he'd spent many days as a kid hunting in areas like this, and said he would miss it.

Mr. McGowan said he thought Mr. Sievert had heard the comments, and would do what he needed to do.

Ms. Dill said she was for option A. She said she thought Mr. Sievert had been challenged, and would come back with something great.

Chair Rasmussen said he was with Mr. McGowan.

Councilor Tobias said she wished the Zoning Ordinance allowed for more in the way of affordable housing components. She also said obviously a lot of engineering was involved with this project, and said she was trusting in Mr. Sievert's ability and reputation, and assumed that he would provide a well-engineered project. She said she also assumed that members of the Planning Board would look at it closely.

Ms. Wrightsman said from data that had been collected, this was exactly the kind of housing that affordable housing proponents like herself wanted to see in Durham. She said she'd love to see the houses there be smaller and affordable. She also said she would love to see them not be age restricted. She noted that HB1629 would make it illegal for towns to offer incentives just for age restricted housing. She said she liked option A, had mixed feelings on option B and didn't like option C.

Ms. Grant said she echoed what others had said about affordability, and said it would be nice to get some young families in.

Mr. Sievert noted the 3 step process for conservation subdivision, and asked if people had to be re-notified for the second phase. There was discussion and it was agreed that people should be re-notified.

Chair Rasmussen MOVED to Close the Public Hearing. Richard Kelley SECONDED the motion and it PASSED unanimously 7-0.

Councilor Welsh noted the question from a member of the public about having an independent wetland scientist and a hydrological survey. There was discussion about seeing what information came from the applicant before possibly challenging it.

Recess from 8:57 to 9:02 pm.

- X. 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. 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.

Chair Rasmussen noted that there had been communication with legal counsel concerning Attorney Puffer's comments regarding whether this should be considered a new application or continuing application from the previous work done. Councilor Welsh said Attorney Spector Morgan stood by her original comments, He also said Attorney Puffer brought up some other points.

Attorney Pollack said Attorney Puffer followed up on his testimony with the letter of February 5th. He said he also received an email from Attorney Spector Morgan which said she reviewed the letter, spoke to Attorney Puffer on the phone, and concluded that she had not changed her mind. Attorney Pollack said he wasn't on that call, but prepared something to submit tonight so it would be in the record concerning this issue. He passed the letter around. He also read Attorney Spector Morgan's February 7th letter out loud. Board members said they hadn't received it and would like to get a copy.

Mr. Bubar said he thought the Board could proceed. Others agreed.

Mr. Bubar said they hadn't dealt with the Conditional Use application, which he thought would impact the stormwater runoff/management. Chair Rasmussen said they wouldn't make the decision on that until they saw the whole package. There was discussion. Attorney Pollack said the intent was to cover the Conditional Use permit applications and fiscal impacts at a meeting in April. Mr. Bubar said commercial parking was specifically not permitted in the wetland overlay district, which meant the applicant needed to go to the ZBA. Attorney Pollack said he believed this was addressed through Conditional Use but said he would check on this.

Mr. Persechino noted the presentation he'd given on stormwater management for the Mill Plaza project a few years ago. He said currently, most of the water drained into College Brook, untreated. He spoke in detail on what was proposed, using a slide presentation. He noted the closed treatment system shown in purple on the plan that would capture and treat runoff from the parking lot and buildings on the site, underground, and would then release it to College Brook at the southeast end of the site. He said the green areas shown on the plan would collect stormwater and capture it into a gravel wetland. He said the remainder would go to the purple, structural treatment area.

He said the light green area on the plan, next to Hannaford would have a rain garden, and said water would then flow into a gravel wetland nearby. He showed the current conditions on the site and how water flowed into College Brook at 7 locations. He said there would be 2 outlets with the plan, which made sense for a number of reasons. He

said there was a maintenance plan for these 2 outlets, which included reporting requirements. He said the Alteration of Terrain permit required this.

Mr. Persechino reviewed proposed improvements to the buffer with the project. He said there would be less impervious area directly adjacent to the brook (reduced by about 10,000 sf.) He said much of this would be at the eastern end, with landscaped islands. He said this would result in a reduction of peak runoff for various storm event levels, and he spoke in detail on this.

He reviewed the utility plan, for water, sewer, and electric, and said Mill Plaza functioned as a utility corridor through the middle of Durham. He said the water loop from Chesley Drive to Mill Road was old and would be upgraded. He said the sewer line would stay in place. He said electric utilities on the site would be underground. There was discussion about the utility infrastructure located between Hannaford and the buildings on Main St.

There was discussion that although the peak flow for storm events would be reduced on the site with this development, the water at the 2 outlets would be greater than it would have been at each of the 7 outlets on the site now. Mr. Parnell said he was concerned about erosion, and the need to set up the creek to deal with an increased amount of flow at the far end location.

Mr. Persechino said the outlet at the eastern end would take most of the water and said this was being designed to deal with the amount of water that would be there for various size storms. He compared this to the current situation, where some of the 7 outlets were failing and erosion was happening. It was noted that the details of the proposed outfalls were in the site plan. Mr. Persechino noted the 2-year storm, where in pre-development flow there was 25 cu ft per second leaving the site, whereas post development, it would be 8 cu ft, a 65% reduction, which would be slowly let out at 2 locations.

Mr. Parnell asked why there was a difference in the flow between the pre and post 1-inch storm and the pre and post 2-year storm. Mr. Persechino said it wasn't a linear comparison. He said going to the 2-year storm, the amount of runoff increased a lot, but said it could be reduced by 65% because there was a tremendous amount of storage capacity, and the water would be released slowly.

Mr. Kelley asked about the jellyfish filter in purple on the plan. Mr. Persechino described this and how it worked in detail. Mr. Kelley said at high flows, this would be bypassed. Mr. Persechino said the 90% storm was the one they needed to treat for, and said first inch of rain cleaned the parking lot to a large degree. He said that first inch was what they designed for, and said after that with greater flow and cleaner water, there was a bypass set up. He said if that wasn't done, the amount of flow going through the system could resuspend the particles that had been removed and trapped. He noted that it was all gravity fed.

There was discussion about snow storage on the site. Mr. Persechino said it was located in and around the gravel wetland, as well as in some vegetated buffer areas/landscaped

island on the site, not including near the brook. He said in these areas the snow would melt, drain into the drainage system and be treated. He said snow from large storms would be removed from the site.

Councilor Welsh said it didn't look like there would be enough room for snow storage. Mr. Persechino said again that for large storms, it would be removed from the site. There was discussion about how large the storm would have to be. Mr. Persechino said this was a common practice for shopping centers. There was further discussion. Ms. Dill asked if the snow would be plowed differently than it was now. Mr. Persechino said yes.

Mr. Kelley asked why the decision was made to combine roof runoff and roadway runoff. Mr. Persechino said they did separate it for Building C, but said because of Building B's location, running two pipes didn't make sense.

There was discussion on the Landscaping plan. Mr. Persechino noted Mr. Taintor's comments about the plan, and said it would be good for the Board to discuss and provide input on these items so the applicant could then make some design decisions.. He said this was an existing site, for a portion of it, and said hopefully they would be improving the existing conditions. He also said it was a tight spot with the existing parking layout in front of Hannaford. He said there was some flexibility but said they couldn't do anything.

From Mr. Taintor's memo:

a) Sec. 5.8.4 – Trees should be distributed throughout the parking lot as evenly as practical, in order to provide optimal canopy coverage and shading. The site plan shows trees only along the perimeter of the large parking field in front of existing Building A. There is no canopy coverage or shading in the interior of the parking lot.

Mr. Persechino said the landscape architect did try to do that in the areas they had available. He said this might be something they would come back to for further discussion.

b) Sec. 5.8.5 – A landscaping peninsula shall be placed at the end of each parking row.... Each peninsula shall be planted with one shade tree, or one ornamental tree if use of a shade tree is not practical, for lack of space for roots. In the parking field in front of Building A, at least 6 end caps are shown without trees. In addition, many of the end caps are not as wide as the adjoining parking spaces.

Mr. Persechino said he thought the plan showed one tree for the most part, so he thought the provision was met. Chair Rasmussen said they also had to address the depth of the end caps. Mr. Persechino said they were made as wide as they could be with what they had. He said some spaces didn't meet the width because the parking spaces narrowed down. Chair Rasmussen said the concern for him was that for those parking spaces on the south edge, where the road came in from Mill Road, if there was parking there, one would have to pull into the road to see traffic coming.

Mr. Persechino said they understood this. He said for those locations, if they had to make them wider they would lose some parking spaces. There was discussion about the number of spaces on the site plan (424). He said they could explore options and discuss them with their partner. Mr. Kelley said the spaces they were talking about were the least desirable spaces out there. There was discussion about whether trees could survive in these end caps. Chair Rasmussen said perhaps some area could be taken from the travel line, which would get people to drive more slowly. Mr. Persechino said they didn't want to encroach any further into the buffer, so would hold that line and see what they had left. He said if losing some spaces on the end made it a better site, they would look at this.

Ms. Dill said most if not all the trees in the parking lot were dead, from snow and cars hitting them, and also said they might not have a big enough planting area. She said she'd rather have two living trees than 20 dead trees. Mr. Kelley said things had come a long way in terms of the soil base provided for trees these days. Mr. Persechino said he'd discuss this with the landscape architect. There was discussion about whether there were plans to irrigate the landscape areas.

Mr. Taintor said there were 7 pairs of end caps that were less than the required 9 ft, and said waivers could be requested concerning this. He said those in front of Building B appeared to meet the standards.

c) Sec. 5.8.6 – There shall be no more than four continuous parallel parking rows on the interior of the parking lot (i.e. parking rows along the perimeter of the parking lot are not situated on the interior) without installation of a landscaped median separating those parking rows from any additional parking rows. The existing parking field in front of Building A appears to comply with this standard: it is divided by landscaped medians into sections each containing four parking rows. However, the proposed site plan eliminates these medians, creating a single parking field containing 10 parking rows with no interior landscaped median. (These 10 rows do not include the perimeter parking row adjacent to Mill Road, or the parking row next to Building B that might be considered to be “along the perimeter of the parking lot.”) It seems that two landscaped medians would be required for compliance with this standard, which would likely require the elimination of at least one parking row. **Sec. 1.1.4 of the Development Standards provide flexibility for nonconforming site conditions,, however, it appears that the proposed site plan involves the creation of a new nonconformity, or at least an increase in the extent of the nonconformity.** Therefore, it does not appear that Sec. 1.1.4 applies to this condition.

Mr. Persechino said this could be met, but noted that there had been comments from the Planning Board about an increased buffer along Mill Road being desirable, and about wanting pedestrian conductivity on the site. He spoke about how the design had tried to provide these things, and how this impacted meeting this parking provision.

There was detailed discussion by the Board about the issue of pedestrian conductivity on the developed site with the walkway that was planned, in terms of what pedestrian flow would be desirable, and how people would actually walk on the site, from their cars, or on foot from beyond the site. As part of this there was discussion about the width of the walkway. Mr. Taintor said if car wheels were up to the curb, there would be overhang by cars, which decreased the available width. He said he thought it would need to be 10 ft wide in order to work as a walkway.

Attorney Pollack said there were choices to be made and they were discretionary. He said the team would try to synthesize the comments and come up with something that complied with the regulations. Mr. Kelley spoke about making pedestrian areas attractive enough for people to want to walk on them. It was agreed that the more trees that were provided, and which survived, the better. Mr. Parnell said it would be much more attractive if trees were put on the walkway.

d) Sec. 5.8.9 – Foundation Planting Strip. There shall be a minimum 4 foot wide foundation planting strip between the building and any parking lot or driveway situated on the front or side of the building.

Mr. Persechino said this was something that seemed incompatible. He said the regulation meant there was to be a 4 ft wide strip between the sidewalk and building, which didn't work with the pedestrian friendly environment, in Durham, etc., He said instead the project was designed with outdoor seating, other areas with tree planters, so they didn't meet the full 4 ft everywhere. There was discussion that the language in Section 5.8.9 said "preferred".

Mr. Taintor said wherever there was a numerical standard like this, it was not discretionary, so a waiver was needed for it. He said it was important for the applicant to do this. Attorney Pollack said they would do this, and at the same time would point out the discretion that was already in some of the regulations, so waivers weren't needed. There was further discussion.

e) Sec. 5.8.10 – A minimum of five percent (5%) of the total parking and driveway area, in addition to a buffer strip of at least ten feet in width abutting a public right-of-way, shall be landscaped. The plan does not indicate the percentage of the parking and driveway area that is landscaped, but it does not appear to be 5%.

Mr. Persechino said he believed this was met. Mr. Taintor said no information was provided on this. Mr. Persechino said it would be added to the plan.

f) Sec. 5.8.11 – Parking lots shall be broken up into smaller parking areas with landscaping features and bioretention systems. The total parking area required shall be broken into sections not to exceed forty (40) spaces unless otherwise approved by the

Planning Board. The large parking field in front of Building A is proposed to contain 209 spaces with only one small internal landscaped island. The parking field to the south of Building B is proposed to contain 86 spaces with no internal landscaping or bioretention system.

Mr. Persechino said they would not meet this strictly in front of Buildings A and B. and would look for guidance on this. Attorney Pollack said Building A was staying, with a parking field, but said they would be improving upon what was a nonconforming condition. Mr. Persechino said depending on how one defined parking area, he wasn't sure that landscape islands defined an area. Attorney Pollack said that term wasn't defined in the landscaping provisions.

Councilor Welsh said it stood out in the plan that there was a wide open, flat, hot parking lot in front of Building A. He said he realized that there was a long term tenant requiring an extraordinary number of parking spaces. But he said that big parking lot was bad, and said whatever could be done to fix that would be good. He said this didn't dazzle them, and was ugly.

Mr. Kelley asked if they were meeting condition 1.d. of the settlement agreement. Attorney Pollack said yes, and said they were improving upon the existing encroachment condition. He noted that this had been looked at from time to time with different versions of the plan. Mr. Kelley said this didn't sit easy with him.

Mr. Taintor said the Board should remember that the agreement was with the Town Council, and that the Planning Board needed to look at the Site Plan regulations. Mr. Kelley said that was helpful, But he said he was hearing that the actions of the Planning Board were then also subsequently reviewed by the Council. Mr. Taintor said not necessarily, and said the Council would determine if the terms of the agreement were met. He spoke further on this.

Attorney Pollack said the agreement spoke about substantial conformance with design considerations. He said concerning 1.d. that there was a previous determination that they would be making the encroachment less non-conforming/more conforming, so a variance wasn't needed. He said the idea was to bring the property closer to conformity, with substantial respect for these items, to comply with other regulations, and to do waivers when necessary.

Mr. Kelley asked whether in the Board's review, it should not look at the settlement agreement items. Mr. Taintor said the Board should be looking at the Zoning Ordinance and the Site Plan Regulations. Mr. Kelley said he disagreed. He noted condition 1.f, which was concerned with an increased buffer along the southern property line. He said he found it hard that they were not looking at these things.

Mr. Parnell said he agreed with Mr. Kelley. He said those conditions were imposed upon the Board when the application was put to them. He said they had to accept the density, and be aware that residential buildings were supposed to be moved to the northern part of the site, etc. He said to not apply the terms of the agreement to their review was not correct. But he said each time they got an application, it had been reviewed by the Town attorney and she said it went along with the agreement, so the Board had moved beyond that.

Mr. Bubar said the Site Plan regulations said nonconforming items could be made conforming, which had nothing to do with the settlement agreement. He said he'd like to see the road up to the buffer, get rid of the parking, and have a true wetland buffer, and said he didn't think that was in the spirit of the settlement agreement. He said he would be more comfortable dealing with the ordinances as written and applying them. Mr. Taintor said there was a letter from Town Counsel that dealt with these issues. He also said that concerning Mr. Bubar's point, there were 3 options in the Site Plan regulations concerning nonconformance. He reviewed them.

Mr. Parnell asked what improvements to the bank beside College Brook were planned, and said he believed it was part of the agreement that there were to be some improvements to the buffer. Mr. Persechino said there was the removal of the existing outfalls, stabilization, additional plantings, restoration and removal of impervious areas, and said this was the minimum of what they were planning to do. He said snow storage was also part of the plan, and said they also had been discussing further improvements.

Mr. Parnell said given the history of the project and the various conflicts with people, the applicant should propose rehabilitation of the area next to College Brook. He said it could very easily be made into something that was attractive. He said there were opportunities to create a brook walk, even this wasn't required. Attorney Pollack said that had been in their thinking for a long time. He said they didn't control the majority of the land, and said a proposal from them would require acceptance by other property owners.

Mr. Persechino said some plantings were proposed. Mr. Kelley said if trees were planted there, they would have the greatest ability to provide screening over time for the homes to the south. Ms. Dill noted the invasives in the area. There was discussion that poison ivy wasn't an invasive. Mr. Persechino spoke about the types of plantings proposed there, and plans to remove broken trees, etc. along the bank. He said the bank was very steep, and said there were boulders, so not all of that area could be planted. But he said some trees were proposed. He said the point was well taken to put more effort into presenting what they were proposing for the buffer, and to get more recommendations from the Board. Chair Rasmussen said perhaps they could discuss this with the landscape architect at a future meeting.

Ms. Dill noted Mr. Taintor's comments under 6. In his memo. Attorney Pollack said concerning the suggestion to take building B and turn it into a 3 story building, and turn C from 3 to 4 stories, the issue was the ordinance requirement for a matching 2nd floor of nonresidential use in order to have a 4th floor. He said they went to the ZBA for a variance on this and weren't successful. He said Mr. Taintor suggested that it was possible that the Planning Board could handle this by Conditional Use. He said they weren't opposed to that idea but didn't want to run into another wall. He said they could work that through.

Ms. Dill said if that worked out, perhaps they could return to the streetscape that was now an arcade within the building. She said the streetscape design was much better. There was discussion. Attorney Pollack asked how shrinking the height would improve walkability. There was further discussion.

Ms. Grant noted that there had been public comments about wanting Building B to be pushed further north. She also noted that she'd previously suggested putting the bulk of the residential density more at the back, with Building C behind the north side of Building B and not on the lower side, which would mean there would be less encroachment on the Faculty neighborhood. Attorney Pollack said they could look into this. But he noted again that the applicant had been down a similar path before and it didn't end well.

Chair Rasmussen said they would now hear from members of the public.

Nancy Lambert, Faculty Road, said they would love to see the Plaza redeveloped, but said it was hard to do the project right as long as Building A couldn't be redeveloped, so it seemed that the neighborhood was being sacrificed.

She asked if the gravel wetland could be explained further. She also said that concerning a reduction in impervious surfaces with the plan, the other parking lot off site would create a large amount of new impervious surface so there was no way there would be a reduction. She said that was her understanding. She also said with the plan, the drainage would mostly come into the southeast corner of the site, near her property and the pedestrian access. She said there was already flooding there at times. She asked whether the table concerning impacts on different rain events considered climate change, and the fact that communities regularly were experiencing 100 year storm events.

Ms. Lambert said she had never seen a list of the number of parking spaces currently on the site, how many were rented, how many the plan proposed, and how many would be rented with that plan. She said the parking issue had been unclear in the presentations.

She noted the dead trees in and around the edge of the parking lot. She said Mill Plaza didn't have a great traffic record of maintaining their plantings, and asked about compliance.

She thanked Councilor Tobias for her comment about having a safe pedestrian crossing on the site. She said in the winter when it was dark, she'd like to have a safe way to get through. She said the Pettee Brook lot was good for pedestrian crossing and was attractive. She also said the Cinemagic theater in Portsmouth provided a safe pedestrian path.

Ms. Lambert noted a conserved piece of land on the plan, and Mr. Persechino said there were no plans to develop it. She said the entrance to Mill Plaza was dark for pedestrians, and said there needed to be a discussion about lighting around the entrance. She also said ornamental grasses as compared to trees could be attractive in a parking lot. She said if there was a way to make the project better and as part of this deal with landowners along the buffer like her, she would be glad to discuss this with them.

Matt Komonchak, Thomson Lane, said there was heavy criticism of the Town attorney's legal opinion at recent Planning Board meetings. He said at the most recent meeting Attorney Puffer pointed out numerous flaws in the opinion, He said the Board said it would get clarification on this and he spoke further on this. He said he'd thought there would be a written rebuttal on the website where Attorney Puffer's points were addressed and thought perhaps Attorney Spector Morgan would have been invited to clarify her opinion, but that didn't happen. He said he'd thought perhaps Mr. Taintor would summarize his points in his official report to the Board, but that wasn't done either. He said the Board must feel quite comfortable with the Town attorney's position, and he asked the Board to clarify this position, versus Attorney Puffer's criticisms.

Chair Rasmussen said they saw the issue differently, and said Attorney Spector Morgan disagreed with Attorney Puffer's conclusions. Mr. Komonchak asked what specifics of her conclusions had made the Board comfortable with her decision. Chair Rasmussen said she was the Board's attorney. Mr. Komonchak noted the numerous criticisms Attorney Puffer made concerning her opinion, and said that should be cause for concern.

He said it was very disappointing to see the Board accept superficial reasoning. He thanked Attorney Pollack for reading the Town attorney's email. And said in it, she offered to give the Board a multi-page rebuttal of Attorney Puffer's points. He asked why the Board didn't take her up on that. Mr. Taintor said in fairness, the Board wasn't aware of the email until Attorney Pollack read it, and said that was his mistake. Mr. Komonchak said now that she had offered to give the rebuttal, a question was why the Board wouldn't take her up on this. Mr. Kelley said he'd like to hear from Town counsel on Attorney Puffer's letter. Mr. Komonchak thanked Mr. Kelley.

Attorney Pollack said the matter had been discussed twice, and said it was a conversation that would just take up more time. He said the issue was well preserved in the public record, for anyone who felt disenfranchised by the outcome.

There was discussion that the Board had heard the email but hadn't seen it, and hadn't seen Attorney Pollack's response. There was discussion that the email was confidential but could be waived. Mr. Parnell said Attorney Spector Morgan was the Town's attorney and said he was willing to accept her advice and not second guess it. Chair Rasmussen said that was what the Planning Board was trained to do at conferences. Councilor Welsh asked about making the emails public to possible answer citizens' concerns. He said the public could read what all three lawyers had said on the issue. There was further discussion. Mr. Kelley said he was ok with that. Chair Rasmussen said he would not be opposed to that. There was consensus that the emails would be made public.

Robin Mower, Britton Lane, asked that this section of the hearing be continued so that at the second meeting in February people could make comments they would have made tonight. She thanked Mr. Persechino for his well thought out presentation, and thanked Mr. Parnell and Mr. Kelley for their comments about trees. She noted the changes in climate and resulting heat islands from parking lots. She also spoke about how the attractiveness of walking paths encouraged walking, which argued against the plan regardless of the agreement between the applicant and Hannaford. She thanked Mr. Parnell for raising issues about brook restoration, and said beyond a river walk, there were issues to address concerning decades of degradation from Mill Plaza being located next to the brook. She said she would address all of this at the next meeting on the application.

Attorney Pollack said they could pick this up at the March 11th meeting. Mr. Parnell suggested that the rehearing be reopened at that time based on the information heard this evening, before moving on to the Traffic Study. It was agreed that after further getting more comments on stormwater management and landscaping at that meeting, there would be a second section of public comments on traffic issues.

Chair Rasmussen MOVED to continue the Public Hearing and pick up exactly where we are now on March 11th, 2020. Bill McGowan SECONDED the motion and it PASSED unanimously 7-0.

Jim Bubar MOVED to extend the meeting. Councilor Welsh SECONDED the motion and it PASSED unanimously 7-0.

- XI. 30 Old Piscataqua Road – 3 Lot Subdivision.** Application for 3-lot subdivision. John and Judith Churchill, property owners. Tobin Farwell, Farwell Engineering Services. Map 11, Lot 94. Residence A District.

It was determined that the application was complete. There was discussion that water and sewer information could be provided in time for the February 26th meeting.

Mr. Churchill said based on the site walk and feedback from Mr. Behrendt, he had offset the road to the side more to create more privacy for one of the houses, and extended the paved area to provide more flexibility. He proposed that it would be 20 ft wide with 4 ft shoulders. He said he refined the easement for lot 3 to get to the dock, and refined where the houses would go as well as the driveway configurations.

Richard Kelley MOVED to accept the Application for a 3-lot subdivision submitted by John and Judith Churchill, and to schedule a Public Gearing for February 26, 2020. The property is located at 30 Old Piscataqua Road, Map 11, Lot 94 in the Residence A District. Bill McGowan SECONDED the motion and it PASSED unanimously 7-0.

Mr. McGowan left the meeting at 11:21 pm, and Ms. Wrightsman was appointed as a regular member in his place.

- XII. 83 Mill Road – Conditional Use.** Conditional use to place water line, septic lines and frost wall on accessory structure in the Wetland Conservation Overlay District. The purpose is to convert an existing garage to an accessory apartment. Charles and Trisha Waters, property owners. Mr. Behrendt Mr. Sievert, engineer. Map 7, Lot 2. Residence B District Recommended action: Discussion and scheduling public hearing for February 26.

Continued

- XIII. Alpha Tau Omega Fraternity Site Plan.** 18 Garrison Avenue (formerly UNH's Elizabeth DeMeritt House). Preliminary design review application for site plan and conditional use to establish fraternity, expand building, and further develop the site including additional parking. Richmond Property Group, owner. Bruce Scammen, Emanuel Engineering. Isaac Schlosser and Shawn Lorg, Krittenbrink Architecture. Map 2, Lot 12-12. Central Business District.

Mr. Scammen said he represented RPG, the owner of the property. He said they proposed to convert the house into a fraternity. He provided some history on the house, and said most recently it was offices and was traded with the University for the ATO property. He said ATO wanted to come back on campus in this house. He described the site as it currently was and the surrounding area. He said the lawn went down to Pettee Brook, which would be a very important part of the design moving forward.

He said there were two proposals in the packets, and said #2 was preferred. He said it would put an addition on the back and side, and said the parking lot would be slid around and included in the back. He said with that new parking lot they would propose to use porous pavement. He said a retaining wall would be put in to help prevent creep into the wetland and further creep into the buffer. He said there would continue to be some buffer.

Mr. Scammen said the applicant would need two variances, one for wetland buffer impacts for the parking spaces, and one for parking in front of the building. He said they would need a Conditional Use permit and provided details on this.

Ms. Wrightsman asked if with option #1 only one variance would be needed because the parking lot would be smaller. Mr. Scammen said they would still need two variances.

Mr. Bubar asked if they would need a variance for the new building in the buffer. Mr. Scammen said an institutional use was allowed in the buffer.

Councilor Tobias asked about work that would be done along Pettee Brook, which was a mess in that area. Mr. Scammen said there would be no wetland impacts, and said they didn't plan to touch any of that. He said they were trying to keep the area as natural as possible. He said UNH used to maintain the area going down to the brook as a lawn. He said they proposed the retaining wall as a physical buffer so water that currently ran into the wetlands would be treated before it got there. He spoke about the proposed porous pavement, and said captured water from it as well as roof water would be treated and would infiltrate as much as possible. He described the path of Pettee Brook, and as part of this noted that the culvert along Rosemary Lane needed some work.

There was discussion about the variances proposed. It was noted that the retaining wall needed a Conditional Use permit. Mr. Scammen said it would be 4-6 ft high. Mr. Kelley said the wall would be about 19 ft away, and Mr. Scammen said again that there would be no impact on the wetland. He said they wanted to minimize the size of the wall, and also said if it was over 2 ft high, there would be a fence. He spoke further.

Chair Rasmussen said it made sense to do the site walk after the variances came to the ZBA. It was agreed that the public hearing would be scheduled for March 11th.

Richard Kelley MOVED to accept the Preliminary design review application for site plan and conditional use to establish fraternity, expand building, and further develop the site including additional parking, and to schedule a Public Hearing for March 11, 2020. The property is located at 18 Garrison Road, Map 2, Lot 12-12 in the Central Business District. Sarah Wrightsman SECONDED the motion and it PASSED unanimously 7-0.

Mr. Scammen provided details on the status of the ATO fraternity.

XIV. Other Business

XV. Review of Minutes (new):

January 22, 2020 - postponed

XVI. Adjournment

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

Adjournment at 11:30 pm

Victoria Parmele, Minutes taker

Richard Kelley, Secretary