

*These minutes were approved at the February 26, 2020 meeting.*

**DURHAM PLANNING BOARD  
Wednesday, January 22, 2020  
Town Council Chambers 7:00 p.m.  
MINUTES**

**MEMBERS PRESENT:** Paul Rasmussen, Chair  
Barbara Dill, Vice Chair  
Lorne Parnell  
Bill McGowan  
Jim Bubar  
Sarah Wrightsman, alternate  
Heather Grant, alternate  
Carden Welsh, Council Representative to the Planning Board  
Sally Tobias, alternate Council Representative to the Planning Board

**MEMBERS ABSENT:** Richard Kelley, Secretary  
Mike Lambert, alternate

**I. Call to Order**

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

**II. Roll Call and Seating of Alternates**

Ms. Grant was appointed as a regular member for Mr. Kelley, and Ms. Wrightsman was appointed as a regular member for Ms. Dill until her arrival.

**III. Approval of Agenda**

Mr. Behrendt recommended moving up the Piscataqua Road 2 lot subdivision application so it would be before the public hearing on the Mill Plaza application.

*Mr. Bubar MOVED to approve the Agenda as amended by moving up the Piscataqua Road 2 lot subdivision application so it would be before the public hearing on the Mill Plaza application. Ms. Wrightsman SECONDED the motion and it PASSED unanimously 7-0.*

**IV. Town Planner's Report**

Mr. Behrendt reviewed the draft agenda for the February 12<sup>th</sup> Planning Board meeting.

**V. Reports from Board Members who serve on Other Committees**

Ms. Dill arrived at approximately 7:03 pm.

Councilor Welsh reviewed the six First Readings and associated scheduling of Public Hearings at the most recent Town Council meeting, on speed limits, short term rentals, restricting parking at the Library to patrons, prohibitions on off road vehicles, and regulation of electric scooters.

Ms. Dill said there would be a presentation on the Middle School project at the Energy Committee meeting on February 5<sup>th</sup>. She noted that it would be a net zero building, and said a lot of the presentation would be about this.

Ms. Wrightsman noted the discussion at the December EDC meeting about setting up a Housing Subcommittee under the EDC. She said there was an overview on this subcommittee on the Celebrate Durham website. She also said there was discussion about meeting with owners of businesses on Jenkins Court to discuss developing a shared vision for possible improvements to increase the vibrancy of that area of the downtown.

**VI. Public Comments**

**VII. Review of Minutes (old):**

**VIII. 22 Old Piscataqua Road – 2-lot subdivision.** Two-lot subdivision. Wetland, shoreland, and flood overlay districts. Pamela Wright and Charles Ward, owners. Paul Dobberstein, Ambit Engineering, surveyor. Map 11, Lot 9-3. Residence A District.

Mr. Dobberstein provided an overview of the project. He said it was a proposed two lot subdivision that utilized existing frontage on Old Piscataqua Road, and divided the existing 1.65 acre property into two lots. He said lot 1 had the existing residence and garage, and lot 2 had an existing shed and greenhouse and would potentially have a new residence.

He said both lots would meet the lot size and frontage requirements. He said there were several environmental constraints because the property was near tidal and freshwater wetlands, and he noted the color coded plan provided that showed the various setbacks. He said the developable area on lot 2 was relatively small relative to the size of the lot and said there was about 5400 sf of usable area outside of the WCO district and building setbacks. He said there was a portion of land in the flood hazard zone, but said it didn't impact the developable portion of the property.

Mr. Dobberstein noted that the front yard setback was 10 ft where 30 ft was needed. He said this was in accordance with a provision in the Dimensional Table: "When the average front yard of other buildings within three hundred (300) feet each way on the same side of a minor street is less than thirty (30) feet, the street yard may be reduced accordingly." He explained how the 10 ft setback was therefore calculated.

Mr. Dobberstein said Mr. Behrendt had brought up some items in his review. He said one was the existing easement to Rockingham Light and Power, and said he and the applicant didn't believe that easement was on the property. He also said a 35 ft sewer easement was located 25 ft west of the southwest property line, so wasn't on the property and didn't impact it. He also noted that Mr. Behrendt had pointed out that a cemetery was shown on the tax map. He said it was not on the property, and was actually a vault.

He said the applicant would coordinate with the DPW concerning the water and sewer line extension on Old Piscataqua Road that were planned for this spring. He said this was why those items weren't on the plan yet.

Mr. Dobberstein said 4 waivers were being requested, 3 of which were concerning having to do test pits and HISS mapping. He said it wasn't believed they were necessary since the properties would be served by water and sewer. He said the fourth waiver request was concerned with having to put in underground utilities. He said the existing house was served by overhead utilities, and said the applicant would like to retain that. He also said installing an underground conduit to reach the overhead utilities on the other side of the road would require digging that road back up after the water and sewer lines were installed.

Mr. Bubar noted concerning the 30 ft frontyard setback requirement that it looked like the frontyard setback for the skating rink was 10 ft. Mr. Dobberstein noted that Old Piscataqua Road was wider than the average Town road, and also said the existing house was quite old.

Councilor Welsh asked if the underground conduit could possibly be put in now. Mr. Dobberstein said that was something that could be discussed with DPW, in speaking with them about the water and sewer line extension.

There was brief discussion about the burial vault shown on the tax map, and it was noted that it was from 1860. He said there was no observable evidence of a cemetery on the property or in the records.

Mr. Behrendt said the waivers requested concerning having to provide soils information seemed reasonable. But he also said it could be helpful to know if there would be issues with a high groundwater level on a property. He asked if it would be worthwhile to do

test pits to determine the depth to groundwater for lot 2 and specifically the buildable area. Mr. Dobberstein said this could be discussed with the applicant.

Mr. Bubar asked if there was a basement in the existing house, and the applicant said there was, and also said there was a basement under the garage. There was discussion about whether there was flooding of the basement.

***Lorne Parnell MOVED to accept an application submitted by Pamela Wright and Charles Ward for a two-lot subdivision, to schedule a public hearing for February 6, 2020, and to schedule a site walk for January 24, 202 at 3 pm. The property is located at 22 Old Piscataqua Road, Map 11, lot 9-3 in the Residence A District. Barbara Dill SECONDED the motion.***

It was agreed that it would be useful to have the usable area, lot lines and the Town's wetland setback noted on the property.

***The motion 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 design has been submitted for review. Colonial Durham Associates, property owner. Sean McCauley, agent. Joe Persephone, Tighe & Bond, engineer. Ari Pollack, attorney. (Rick Taintor is serving as the Town's Contract Planner.) Central Business District. Map 5, Lot 1-1.

Mr. Behrendt stepped away from the table, and Planner Rick Taintor came to the table.

Attorney Pollack introduced the team, and noted that they'd all been coming before the Planning Board for a long time. He said they'd been accused of many things over this time, and spoke further on this. He said this proposal was an attempt to improve upon the existing conditions, which was a marginal retail center located in the center of Town in the Central Business district, which could be so much more. He said Colonial Durham Associates wanted to bring new business to the property, keep the old businesses, and bring a housing element there, which was allowed through the Conditional Use process. He said CDA also wanted to enhance the tax base, for itself and for the Town. He said the result wouldn't be satisfying to every stakeholder and interest, although their voices were important. He said the standard for review was complying with the Zoning Ordinance Conditional Use criteria, and the general structure of the settlement agreement with the Town.

He said the applicants had taken the project concept that was filed and explained at the November meeting, and put it into a packet delivered on January 2, 2020, to set the stage

for what they hoped would be a final presentation. He said there were some re-filings of things that hadn't changed, and also said there were some changes, including to the site plan. He noted that some of the reasoning and therefore the narrative for the Conditional Use application had changed, and addressed the proposed mixed use development, the drive through for the financial institution, and continued encroachment into the existing shoreland and wetland overlays.

Attorney Pollack said items provided included site perspective drawings, building floor plans, a stormwater plan, and an energy checklist. He said items not submitted yet would be provided at subsequent meetings, and said the next item to be provided was the Traffic report, which they were waiting for additional information on before submitting. He said they hoped to submit this report for discussion in March. He said the plan was to discuss stormwater, utilities, landscaping, and the energy checklist at the next meeting, in February.

He said the architectural team, Sharon Ames and Emily Innes of Harriman Architecture, would present the plan tonight, which showed more detail than what was shown in November. He said they would also review the comments and suggestions that had been received. He said they were listening to these comments/suggestions, but said they were also sometimes bound by other constraints. He said suggestions mattered, and asked that people continue to provide their input. He said the applicants would like to be responsive and make adjustments where they could. He said they wanted to do the best they could with a premier project opportunity, on a premier property in a premier town.

It was agreed that additional copies of the stormwater management plans would be provided to the Board. There was discussion about having the Town Engineer review the plan.

Ms. Innes walked the Board in great detail through the site plan, using a slide presentation. She described how the design continued the existing pedestrian environment downtown from Main St. and Mill Road into the site, past Building A, through and around Building B, around Building C and out to Chesley Drive. She said the site was a transition from the commercial activity on Main St to the neighborhoods beyond Mill Plaza. She described how with the pedestrian environment created, the site also needed to be designed to provide safe vehicle travel, with marked crosswalks and lighting to guide pedestrians and drivers.

She provided details on how the wetland/shoreland buffer would be improved, and noted that about  $\frac{3}{4}$  of an acre of additional pervious area had been carved out of what was currently impervious area. She said some of this related to the stormwater management details.

Ms. Ames spoke in detail about a variety of views of the proposed development that were shown in slides. She provided details on the square footage of commercial and residential space to be provided, and noted that the 80,250 sf of commercial space maintained the settlement agreement with the Town. She said the proposed 424 parking spaces on the site were 80 more spaces than what was required by the settlement agreed. She also noted the proposed 157 parking spaces off site, to ensure that there was ample parking for businesses on the site.

Councilor Welsh asked why the 80 spaces were added, and Ms. Innes said this was to support the commercial uses on the site.

Councilor Welsh asked if there was a berm as part of the proposed landscaping on the edge of the site near Mill Road. Ms. Innes said yes, and said it and the plantings were designed to not block views of the site but to provide a softening of the view of the parking lot from the street and the sidewalk. She said the buffer area would be a bit wider than it was now. Councilor Welsh asked why more berming up wasn't being considered, noting that views of a parking lot weren't great.

Ms. Ames said being able to see into the property made things easier for retail businesses so they could attract customers. Ms. Innes said the businesses liked customers to be able to see the signage for their businesses. Chair Rasmussen noted the issue of access for fire trucks, near Hannaford. Ms. Innes said they would show a slide of how this access was designed.

There was discussion on the proposed changes to the Chesley path. Ms. Ames said it was a non-vehicular pathway, and said there would be retaining walls, which landscaping would soften. She said the path itself would be impervious, and would be an upgrade of the existing path. She said it would be located in essentially the same place as it was now near the site, but would diverge further out as it got closer to Chesley Drive.

A view was shown of the possible parking lot off the site, looking at it from Building C. Ms. Innes said this was based on some assumptions, but was not coordinated with anyone else. It was noted that the parking lot height roughly coincided with the 2<sup>nd</sup> floor of Building C. There was discussion on this.

Councilor Welsh asked if there would be enough changes to the façade for Building A so the project would look like a cohesive development. Ms. Innes provided details on this, and noted that they were limited as to what could be done.

Ms. Dill asked if thought had been given to making Building C the 4-story building. Attorney Pollack said yes, but said they wanted the second floor commercial space to be as visible as possible, so it needed to be in Building B. He spoke further, noting that they didn't want to compound the difficulty of having commercial space on the 1<sup>st</sup> floor of Building C by also having commercial space on the 2<sup>nd</sup> floor. He said having 2 floors of

commercial space in Building B as well as 2 floors of residential space complied with the ordinance.

Councilor Welsh asked if thought had been given to what commercial uses there might be on the 2<sup>nd</sup> floor of Building B. Attorney Pollack said yes, and noted that there had been discussion with Economic Development Director Christine Souter about this. He said a small medical practice, CPA, or other similar business made sense, which would be a destination for an appointment. He said they'd heard that there was a modest need for these kinds of uses in Durham.

There was discussion about the view that showed the proposed pedestrian passageway/arcade through Building B. Ms. Ames said this design would be an inviting space while the businesses in the building were open, and would allow people the choice of eating outside of a restaurant there, or inside as part of the arcade. She said they'd like to get input on how they could all could make this into a kind of public gathering place that was inviting.

There was discussion about including skylights that would provide natural light for a portion of the arcade. Ms. Dill said she thought that would be better than having a green roof. She said she loved green roofs, but said people wouldn't really see them. It was noted that the residents living there would be able to see the green roof although pedestrians could not, so it was a balancing of amenities. Ms. Grant said the green roof would also be available to tenants of the 2<sup>nd</sup> floor office space.

Councilor Tobias asked about the amount of retail space, and how it would be divided up. Ms. Ames noted some rough floor plans that had been provided and Ms. Innes said they were designed to be flexible so could respond to different ideas of what could go there.

Ms. Wrightsman said the current local, small businesses at Mill Plaza were a big part of what was charming in Durham. She asked what would happen to them and if there were ways to accommodate them. Attorney Pollack said the applicants would like everyone to be able to stay, as well as to get more tenants.

In answer to a question from Councilor Tobias, it was noted that the commercial area at the back of Building B would be oriented to serve residential uses on the site, with a fitness center. Attorney Pollack said it would be a destination. He said they were also hopeful that the internal connections would provide a pedestrian experience and would encouraged people to go through the building. He said the site had challenges, and said this was their best effort to address issues, comply with the ordinance, and serve some other interests.

Ms. Ames spoke about the view between Building B and Building C. Ms. Innes said it looked down toward College Brook and continued the pedestrian way there. She also

spoke about the retail space there. There was discussion about the cross walks, and it was noted that they would be flush with the ground.

Ms. Grant questioned the fact that Building B would have 4 stories, and suggested putting some of the residential space in a 4<sup>th</sup> floor for a portion of Building C. Ms. Innes noted that Building C would be located closer to College Brook. and said the idea was to keep the height down there. There was detailed discussion about this. Attorney Pollack noted that these issues concerning where to put the residential space and commercial space had come up a number of times in the past.

Ms. Wrightsman asked for more detail on the housing composition of the development, and said a lot of people would say that more 4-bedroom suites tailored specifically to students weren't needed. She said with school enrollment rates declining, there was the issue of whether the units could be converted into apartments for young professionals, families and retirees.

Attorney Pollack said there was no age or population restriction, and no formal barriers to this, but said the residential space would likely cater to the student population. He said it was a successful market in Durham and said other similar projects in Town with student housing had been very successful. But he said they were open to other populations. He said an issue was whether the different residential populations would mix. He also said older people living in the downtown might or might not be a growth trend, while the student population would be in Durham as long as the University was here.

Ms. Wrightsman said if the units were being leased a year in advance, and if there was pricing per bed and a bathroom for each bedroom, it really was student housing. She said this approach wasn't realistic for most people. There was discussion. Attorney Pollack said assuming that the University population was a constant, this project opened up housing opportunities at other properties that were currently renting to students. He spoke further on this.

Councilor Tobias asked how the lease program would be set up, and if the units would be priced per bed. Attorney Pollack said they didn't know, and likely would bring in a management company to structure things, with direction from the owner. He said he didn't see why there couldn't be multiple pricing plans, but said they probably wouldn't deviate from the model for other recent projects downtown.

Chair Rasmussen said his understanding was that the agreement with Hannaford hadn't changed. Attorney Pollack said he didn't think the agreement had changed. Chair Rasmussen said it behooved the applicants to get clarification on the wording in the letter from Hannaford. He said his own reading of the letter was that Building C would be all residential, and that traffic in and out would be handled via Main St. He asked if Hannaford was aware that there would be commercial space in Building C. Attorney

Pollack said they were aware of the proposed composition of Building C, and said their issue was that the residential loading should come from the adjacent site.

Chair Rasmussen asked how deliveries to Building C would be handled. Attorney Pollack said there would be a management office, and deliveries would have to come to that door. He said Hannaford didn't want residential traffic on the site, and wanted there to be retail and business activity in the parking areas on the site. He said that was his interpretation of the letter from Hannaford.

Chair Rasmussen said move-in day would affect the Traffic study for this project and the parking lot project, and said he wanted the numbers on all of this to be right. Attorney Pollack said there was no residential traffic proposed in and out of Mill Road as part of the Traffic study. He said this had been shared with Hannaford, and said that was why the study wouldn't be discussed with the Planning Board until March. Councilor Tobias noted that move-in day was a catastrophic event in Durham. Attorney Pollack noted that the intent was to have furnished apartments, but said it was realized that these would be busy days.

Mr. Bubar said 420 parking places were proposed on the site, and asked how many would be available for lease or rental to the public. Attorney Pollack said there would be zero rented spaces.

Ms. Dill said 3 charging stations for electric cars were proposed in a previous plan, and said they weren't in the plan now and the energy checklist said there would be none. She asked if they could come back into the plan. Attorney Pollack said he didn't see why not. There was discussion. Ms. Dill said the time it took to charge electric vehicles was getting shorter, and said they were a good thing.

Councilor Welsh said the last time the Planning Board saw the plan, there were 263 parking spaces and 333 beds, which came to 0.8 parking spaces per bed. He said now there were 490 spaces proposed for 258 beds, which came to 1.9 spaces per bed. There was discussion that the previous number of spaces should have included the spaces on the ground floor of the back building. Attorney Pollack also stressed that they were not residential parking spaces on the site. Councilor Welsh said while it was appreciated that the number of beds was reduced to make things work, it seemed like there was a lot more commercial parking proposed in this plan.

Attorney Pollack said the settlement agreement discussed a minimum amount of parking. He also said tenants expressed the need for retail parking. In addition, he said while they didn't need to provide the full amount of parking on the site that was required by the Zoning Ordinance, they did want to provide what they could, while balancing the square footage needs. He said this drove the number of beds down.

Councilor Welsh asked if the applicants thought the Town had asked for more spaces, or it was Hannaford that was driving this increase. Attorney Pollack said it was a combination of those factors. Councilor Welsh asked whether if the Town asked for less parking there could be less, and Attorney Pollack said he didn't think so. There was further discussion on this.

The public hearing was opened.

**Attorney Mark Puffer**, said he represented towns, developers, and in this case was represented the concerns of citizens, some who were abutters and others who lived in the neighborhood. He said he also represented some residents who didn't live near the property but were concerned about the downtown. He noted his previous involvement in addressing a narrow procedural issue related to this project. He said he'd now been retained to take a more global look at the project.

He said he knew the history of the project, the many different proposals that had been proposed, and was also familiar with the 2015 settlement agreement. He said he was also familiar with the current proposal, which he and his clients believed in at least one way was substantially different than other proposals presented. He said they were familiar with the Toomerfs project, and the fact that it was problematic. He noted questions rose at the public hearing on this application as to whether it could meet the Conditional Use requirements, and the fact that some Planning Board members questioned whether they could meet them.

Attorney Puffer said he was also familiar with the role of Hannaford in this project and that its approval of it would be contingent upon substantial parking on the adjacent property, for residents/students. He said Hannaford had said this was essential to any approval. He asked why Colonial Durham was still grandfathered with this proposal, and said he and his clients believed it was a fundamentally different project, so questioned why it was moving forward. He said it wasn't known if the Church Hill parking lot would ever come to be, yet it was a crucial element of the Colonial Durham project.

He noted the legal opinion from Attorney Spector. He said it basically said the present plan was not a new application, and that it and the Toomerfs project need not be linked. He said of course they needed to be linked, and said they were tied together because that was what Hannaford was saying. He said Mr. Taintor's review reflected this.

He said what was proposed was a different plan than was the case at the time of the settlement agreement. He said this plan was different because of the demands made by Hannaford. He noted the Hebron case cited in Attorney Spector's letter and spoke about why it didn't apply to this situation, including the fact that the issue in that case was a narrow one. He spoke in some detail on this. He also said the Hebron case wasn't an actual published decision of the Supreme Court, and was a 3JX decision, for matters that were relatively straightforward. He said it had no precedential value, and spoke further about this.

Attorney Puffer said the 2015 agreement said that the new, more restrictive density requirements would not be applicable to the project, if design considerations A-H listed in it were met, and said not everything was grandfathered. He noted that one of the considerations, E, spoke about onsite parking being increased. He said the applicants had met the spirit of that, but said 157 spaces on another piece of land was a new and different application that was not subject to the settlement agreement. He said only parking on the project site had been presented to the Planning Board until now, so it was a new application. He said the exhibits in the settlement agreement showed parking that was only on the parcel, but said the first slide provided tonight showed parking on an adjacent parcel. He also said the applicants acknowledged that they needed 157 spaces there.

He said he was focusing on the big picture tonight, and he urged the Board not to proceed formally with this plan until the Church Hill property got final approval, and until Hannaford and Colonial Durham reached an agreement on an appropriate plan for development of the property. He summarized that his clients believed that this was a different, new plan that was not contemplated and not grandfathered under the 2015 agreement.

**Eric Lund, Faculty Road** said there were some improvements with this site plan. But he said Building A was 50 years old and said it might need more extensive renovations than what had been presented this evening. He said the fact that the plan said Building B would contain 4 stories was an improvement, as compared to putting a 4<sup>th</sup> story on Building C, which would be closer to the neighborhood. He urged the Planning Board to consider putting some of the additional capacity on Building A, which was even further from the neighborhood.

**Joshua Meyrowitz, Chesley Drive** said he endorsed what Attorney Puffer had said, which was that this was a new plan. He said the legal opinion from Attorney Spector seemed to be a flawed letter, and also said it wasn't posted in the public record. He also said the 2017 letter from Attorney Puffer wasn't posted. He said he hoped the Board would respect the time of the residents who were engaged in this process, and he spoke in detail about the history he'd put together about meetings concerning Mill Plaza projects over many years. He said if the Board did resume the review of the application, he hoped it would look at this history.

Mr. Meyrowitz said there was one Faculty neighborhood, which was connected by a bike path to the back of Mill Plaza. He said someone from every one of the streets in the Faculty neighborhood had been part of hiring the attorney, to fight for what they all had been speaking about for decades.

**Robin Mower, Britton Lane**, urged the Planning Board to table the public hearing until it could resolve the issues discussed by Attorney Puffer. She said it was pointless to discuss the plan as proposed until this basic issue was resolved.

**Matt Komanchak, Thompson Lane**, said he echoed what others had said, that the Planning Board should go no further reviewing the application until the ducks were in a row. He said Riverwoods looked like a city within a city, and said it was a warning about how scale could get way out of hand if they weren't careful. He said the Town couldn't afford to let that kind of thing happen in the center of Durham. He said a 4-story building next to a one story building violated the architectural regulations.

He said if people tried to discuss the Toomerfs application, the Board would shut them down. But he said the applicant came in and referenced the other parcel, because it was a life preserver thrown to them to help them keep their plan alive. He said he didn't think this was fair. He also said the flaws in the legal document had been pointed out, and said the Board should consider getting a second opinion, or should consider changing its legal counsel.

**Jeff Ward, Faculty Road**, first spoke about the proposed drive-thru, and said he assumed it would be open 24 hrs/day. He said he took issue with the Minutes from the TRG meeting, and said while putting the ATM in the covered parking area would address headlights, half of the circle there was outside of the covered parking area.

He noted the claim about Mill Plaza being a transition from the commercial area downtown to the residential area, and spoke about how buildings on Main St visible from the Faculty neighborhood rose about the tree line. He also said the proposed walkway along College Brook would mean there would be pedestrians 24 hrs/day near his backyard. He also said there would be vehicular traffic near his backyard. He said the Conditional Use narratives that were submitted suggested that there would be no impact from the bank drive thru, and no impact from the massing of structures, but said saying this didn't make it so. He suggested that people should stand on Faculty Road to see how close everything at Mill Plaza was to it.

Mr. Ward noted that the letter from Attorney Spector-Morgan cited a 3JX opinion, and said this was bad legal advice, and said based on it the Town would lose. He said this legal opinion was not based on cases that had any precedential value, and said this should give the Board significant pause. He said he hoped they would take that pause.

**Phyllis Heilbronner, Mill Pond Road** said she was concerned about safety issues with more cars on the site, and one entrance and one egress. She noted that she often walked to Town, and said those like her who could do this found that this enhanced living in Durham. She said the Plaza was a big part of Durham, and said it was important to get this project right. She said she agreed with the negatives that others had spoken about, and noted among other things that a 4 story building next to a one story building would be unpleasant to look at. She also said the density proposed was antithetical to the Town's goals concerning its carbon footprint.

She urged the developers and Planning Board members to look at this property for the long term, concerning climate change and impacts on College Brook. She thanked the

Planning Board and the developers for listening to those residents who had lived in Durham for a very long time.

There was discussion on how to proceed.

Attorney Pollack requested that the application be tabled until the February 12<sup>th</sup> meeting. He said if the Board wanted to discuss the legal opinion, it could do so, but requested that the Board not do this.

Mr. Bubar said he'd like to verify the legal opinion, but also said he didn't see a particular need to slow the review process down.

Mr. Parnell said the Board had received the legal opinion, and after discussion decided it would proceed as it was now proceeding. He said to go back and ask for a second opinion wasn't proper, and said he didn't see any reason to second guess that.

Councilor Welsh said he thought it would be prudent for Attorney Spector-Morgan to respond to the points that had been brought up. He also noted the comments concerning the Toomerfs project, from Mr. Taintor and from the TRG, so the applicants knew what they were up against. He said if the applicants were willing to continue with the review process, he was willing to hear them.

Mr. Parnell said Attorney Spector addressed two issues, one of which was whether the application met the terms of the original agreement, and the other which was whether it was a new project. He said if Board members wanted clarification on these things, that was fine.

Councilor Welsh said he'd had discussions with Attorney Spector where an initial point was softened after further discussion, and said it was therefore worth taking the time to get her comments.

***Bill McGowan MOVED to continue the meeting to the February 12, 2020 meeting. Jim Bubar SECONDED the motion and it PASSED unanimously 7-0.***

- X. Historic District Amendments.** Review of draft amendments to Article XVII. Durham Historic Overlay District of the Zoning Ordinance pertaining to purview and procedures of the HDC. Proposed by the Historic District Commission.

Councilor Andrew Corrow, the Council Rep to the HDC and also Chair of the HDC spoke before the Planning Board. He referred to Mr. Behrendt's notes on the proposed changes. There was discussion that it would be good to have a presentation on the proposed changes before the public hearing.

There was discussion about items 4 and 5, in the draft, and that they were geared mostly to buildings and not to all structures. Chair Rasmussen recommended addressing these and other points after getting public input.

Mr. Parnell said he thought there was a contradiction in Mr. Behrendt's notes concerning two of the provisions, and provided details on this. Mr. Behrendt agreed, and there was discussion on the provisions themselves. There was brief discussion on what had prompted these proposed changes to Article XVII.

***Bill McGowan MOVED to schedule a Public Hearing for March 11, 2020 on the draft amendments to Article XVII. Durham Historic Overlay District of the Zoning Ordinance pertaining to purview and procedures of the HDC proposed by the Historic District Commission. Lorne Parnell SECONDED the motion and it PASSED unanimously 7-0.***

#### **XI. Other Business**

Mr. Behrendt said the question was asked as to whether the Planning Board should provide a list of permitted uses with Conditional Use applications, in regard to the external impacts criterion. Chair Rasmussen said this would be helpful to the Planning Board in preparing for deliberations, and would also be helpful to the public in framing their comments. Board members said they thought this was a very good idea.

#### **XII. Review of Minutes (new):**

January 8, 2020

Page 1 should say "Mike Lambert"

Page 4, 6<sup>th</sup> paragraph should say "Mike Sievert"

Page 6, 3<sup>rd</sup> paragraph should say "...retired UNH Dean ..."

Page 9, line 8, should read "...not add traffic, add much more noise..."

Page 13, line 18-19, should read "He said right now a nursing student who lived in one of his buildings had to get up at 5:30 am, and either walk or take an Uber to the West lot to get her car, and said it would be good if she could park closer to where she lived. He said Toomerfs was trying to benefit her and others with this project. He noted that Durham encouraged students to vote, and to be on local boards."

***Bill McGowan MOVED to approve the January 8, 2020 as amended. Lorne Parnell SECONDED the motion and it PASSED unanimously 7-0.***

#### **XIII. Adjournment**

***Bill McGowan MOVED to adjourn the meeting. Councilor Welsh SECONDED the motion and it PASSED unanimously 7-0.***

Adjournment at 9:35 pm

Victoria Parmele, Minutes taker