

# D-R-A-F-T

**DURHAM PLANNING BOARD  
WEDNESDAY, JANUARY 19, 2005  
TOWN COUNCIL CHAMBERS – DURHAM TOWN HALL  
7:00 PM**

**MEMBERS PRESENT:** Chair Roberts, Amanda Merrill; Councilor Grant; Kevin Webb; Richard Kelley; Nick Isaak; Councilor Harris; Richard Ozenich

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Town Planner Jim Campbell; Planning Consultant Mark Eyerman

**MINUTES PREPARED BY:** Victoria Parmele

## **I. Call to Order**

## **II. Approval of Agenda**

*Councilor Grant MOVED to approve the Agenda as submitted. The motion was SECONDED by Nick Isaak, and PASSED unanimously.*

## **III. Introduction**

Jim Campbell welcomed everyone, and thanked the School Board for allowing the Planning Board meeting to go out live that evening, while its meeting would be taped.

He explained that the hearing would be on housekeeping amendments to the Zoning Ordinance as revised by the Planning Board on January 6th, 2005, as well as on the proposed changes concerning the overlay districts (shoreland, wetlands, aquifer, personal wireless facility, historic district, and floodplain). He said comments were welcome on both of these things, as well as on the proposed changes to the nonresidential section of the Zoning Ordinance, which had been the subject of the public hearing held on January 5th.

Mr. Campbell noted that the minutes taker was absent from the meeting, and asked members of the public to speak clearly. He said that after this hearing, the Zoning Rewrite Committee would meet on February 5th to review and discuss comments received at both of the public hearings. He said the Committee would probably make a few changes to the Zoning Ordinance, based on public comments, and said if this was the case, the Board would advertise for another public hearing on these changes.

He explained that once the Planning Board was done with the Ordinance, it would be passed on to the Town Council, which would have a first reading on it. He said if that passed, the Council would hold a public hearing on the proposed revisions, so there would be additional

opportunities for input from the public. He also noted that people could continue to provide comments in writing.

Chair Roberts noted that the Board had received comments in writing, and thanked those who had done so.

#### **IV. Public Hearing on Housekeeping Amendments and**

***Nick Isaak MOVED to open the public hearing. The motion was SECONDED by Amanda Merrill, and PASSED unanimously.***

Mr. Eyerman provided details on the most recent version of housekeeping amendments, which had been discussed in detail at the January 5<sup>th</sup> Planning Board meeting (available at Town web site, under “Zoning Draft Sections” – Miscellaneous Revised Amendments).

**Jim Jelmborg, 29 Park Court**, said he had submitted written comments on the issue of the 21-day hotel stay. He said he had not doubt that the 21-day stay was proposed with the best of intentions. But he said Mr. Burton had signed off on a 10-day stay limit for his hotel, as a condition of approval, so extending the 21 day stay for other hotels put his hotel at a disadvantage. He said the Town clearly wanted the new hotel to succeed, and said he hoped the Planning Board would return to the 2-week stay. He also asked if it was standard procedure to revisit definitions that had so recently been passed by the Town Council.

Chair Roberts asked the Board to revisit this definition, and said the Board was of a similar mind to the comments received concerning this.

**Luci Gardner, 61 Durham Point Road**, spoke about the grandfather clause, 175:75 – “Procedures for Existing Uses”, which covered pre-existing structures, including those within the shoreland district. She noted that 175- 30, “Nonconforming Structures and Buildings” now had language, under 175-30.D.3.c and d, that said that the building footprint existing prior to date on which this Article was enacted shall not be cumulatively increased by more than 15%, and that the usable building volume existing prior to the date in this Article was enacted shall not be cumulatively increased by more than 30%.

Ms. Gardner described a small house located within the shoreland district on Durham Point Road, which was clearly a legal nonconforming use. She said she had looked to see what the effect of these provisions would be on the property, and said the result was confiscatory, and might well be deemed a taking. She said it seemed that the Town could not constitutionally eliminate a grandfather clause, and said the argument of someone challenging this would be that the 15% and 30% requirements were arbitrary and unreasonable.

Mr. Webb asked Ms. Gardner if there should be no limit on the use of the property, so that in her mind, the owner of the property should be able to take the shack and make it into a mini-mansion. There was discussion about this. Mr. Webb noted that he at one time had lived in Lee, on a property located entirely in the shoreland zone, and according to what Ms. Gardner had said, he should have been able to build property line to property line. He asked her if that would be a reasonable thing to do.

Ms. Gardner said the previous provision of the Zoning Ordinance already said nonconforming structures in use could be continued as long as the use didn't expand further to encroach upon the shoreland zone, so no, one could never do that. She gave an example of how the percentages didn't work, where if one added 15% to the footprint and wanted to build up, the top story couldn't even be as big as the bottom story.

She said she wasn't speaking about McMansions, but said if a building was torn down in this zone, the owner was limited to the footprint, and these new provisions would also limit what the building could be. She said her main concern was that there should be a reasonable way to add on to a property, and said the old provisions were more reasonable. She said under them, a property owner could come in with a plan, and have the Code Administrator and ZBA determine whether it encroached on the shoreland. She said it was a saving provision, for those who bought their property before the zoning changed.

Councilor Harris said this was an appropriate item to put on the Board's punch list.

**Hugh Gardner, 61 Durham Point Road**, said that under the current provisions under Section 175-75, as interpreted by Code Enforcement Officer Thomas Johnson, if the building expanded away from the water, it wouldn't be further encroaching on the shoreland, so if a person wanted to build away from the water, that would be ok. Mr. Gardner said the new language confiscated the property of someone who was paying shoreline taxes.

**Dick Lord, 85 Bennett Road**, asked what categories of comments could be received concerning the proposed Ordinance changes at the present meeting.

Chair Roberts said his preference was that comments on any of the proposed revisions to the Zoning Ordinance could be provided. Board members agreed this was the most efficient way to receive public comments.

Mr. Lord said the new proposal for the shoreland zone was substantially different than the previous one, and said some of the changes were improvements, but others were substantially less protective. He noted the proposal permitted timber harvesting in the shoreland zone, and eliminated restrictions on cutting large trees over 6 inches in diameter. Mr. asked how the proposed revisions were developed, and why they were developed in a vacuum, and not in concert with other organizations in Town.

Chair Roberts said all meetings were public, and said the proposed revisions were a representation of the Master Plan and recommendations that had been received so far. He asked Mr. Lord to please feel free to recommend additional changes.

Mr. Lord said timber harvesting should be removed, and said he was also troubled at the removal of the restrictions on cutting trees over 6 inches in diameter. He also noted that the original ordinance in 1976 referred to wide standing trees. He said he realized there were times when dead trees were a problem, so there should be specific provisions for those dead trees, but not for wide trees. He also said it was important that a document such as this be reviewed by bodies with state and local responsibility to protect the shoreline area.

Mr. Webb said he was the Board's representative to the Conservation Commission, and had kept the Commission informed on the Zoning Rewrite process. He noted the Board had received comments from Commission Chair Dwight Baldwin on the wetland, shoreland and aquifer overlay districts. He said he hoped the Board would be discussing these things further with Commission members in the next few weeks, before finalizing the draft. He apologized that the Board had not contacted the Lamprey River or Oyster River watershed associations, but said he appreciated Mr. Lord's comments.

Mr. Lord asked if there was room for further input from those organizations, and Mr. Webb said there was still opportunity to provide written comments.

Councilor Harris requested that the Board give copies of the draft to the two watershed associations and to members of the Conservation Commission, so they could look it over carefully.

Mr. Kelley said members of the Lamprey River Advisory Committee should also get copies of the draft.

**Crawford Mills, 22 Newmarket Road**, noted he had missed the deadline for finalizing amendments concerning proposed additions to the boundaries for the Historic District in the Historic District overlay document. He noted his memos of Dec 22<sup>nd</sup>, and Jan 6<sup>th</sup>, and said he wanted to get these proposed additions before the Board before it moved on.

He illustrated the proposed enlargement of the District for the Board, noting it would extend from the Madbury Road and Main Street corner, down to the University property, where Petty Brook met Main St. He said the goal was to achieve a contiguous zone, rather than taking in only half of Main St. He said the area contained a mixture of buildings, in terms of age, style, etc. but said that many of the properties there were worth preserving, from an historic perspective.

Ms. Merrill asked if it was usual for an historic district to include buildings that would not be considered historic.

Mr. Mills said yes, otherwise, one got into a situation of spot zoning. He said Durham was somewhat unusual in that many other towns had districts where all the buildings in the district were from one period, while Durham had a mixed district. He provided details on the history of some of the properties in the area, including the buildings where Ocean Bank and the Tin Palace were located.

Mr. Kelley asked Mr. Mills if he believed that both Ocean Bank and the Tin Palace should be included in the district.

Mr. Mills said yes, to make the district a contiguous shape. He noted that the Post Office was already in the district, and was the same age as the bank, and also said there were already some contemporary buildings in the existing historic district.

Mr. Kelley asked if Ocean Bank and the Tin Palace offered anything of historic value.

Mr. Isaak said part of the intention was to create a more contiguous district and center of Town, rather than going lot by lot, so it made sense to treat the whole block as one entity. He said if this were done, in the event that say, Ocean Bank was demolished, there would be some guideline as to how to replace it, with something that allowed for the continuity of Main Street.

Councilor Harris noted she had previously wondered about a building on the northwest corner of Madbury Road and Main Street, across from the Post Office, which was an historic building but was not presently in the district. She said the Commission's proposal was a good one.

Chair Roberts said this proposed addition would mean a significant extension of the Historic District, and said if the Planning Board accepted it, it would have to advertise for this, so people could respond to the proposal. He said he appreciated Mr. Mills' comments.

**Beth Olshansky, Packers Falls Road**, said she appreciated the Board's willingness to send the proposals concerning the overlays to the various committees in town to get their feedback.

She also said she wanted to talk about some of the housekeeping amendments to the Zoning Ordinance. It was clarified that the latest version of the proposed housekeeping amendments had not yet been passed out at the meeting. Ms. Olshansky asked if it included the most recent definition of usable area. Told that it did, she said she would provide her comments later in the meeting.

Mr. Eyerman provided clarification that these most recent revisions had been posted, and were the product of changes made by the Planning Board at the Jan 5<sup>th</sup> Board meeting.

**Joe Moore, 138 Lee Road**, said his comments had to do with the ORLI zone, and noted that he had handed out a proposal to the Board. He thanked the Board for the work it had done, and the openness of the process. He apologized for coming into it at such a late hour, and explained that he was requesting that the Board look again at the boundary of the ORLI zone. He said the current proposal had been moved beyond what the 2000 Master Plan had recommended, to the far boundary of the Lee and Madbury town lines.

He also noted that as an abutter, he had recently gotten a letter from Mr. Campbell on behalf of the Economic Development Committee, concerning possible changes to the Beech Hill Road area. He said when he saw the proposal, and talked with neighbors, that led to looking at the proposal for the ORLI zone, and then back to the Master Plan goals. He said what he felt had not been appreciated in the new proposal was that Beech Hill Road had some very valuable resources, in the context of things important to the Town. He said the land north of that, on Route 155 also had features that were important to the Town, as indicated in the Master Plan.

He said he had some major concerns with the proposed boundary change, and said there were four reasons why the Beech Hill Road area and the area north of it should be looked at as something other than ORLI. He noted the Master Plan had been referenced in developing these reasons.

1. The historic significance of the area of Beech Hill Rd. He said the road had important historic features, and provided a photo of what the upgrading of the road to Class V would mean.
2. The area was very important for recreation, and had been for years. He noted the chapter of the Master Plan on recreation contained many comments about keeping the area as it was, and not upgrading it, and said it recommended that the Town not pave existing Class VI roads, because of important resources, paths, etc.
3. He said Beech Hill Road was the logical demarcation for the northern border of ORLI, and said going beyond that created issues concerning wetlands, and the entire watershed.
4. He said there was a tri-town issue in that area – the possibility of creating a greenway to include contiguous property in Durham, Lee and Madbury. He said the Beech Hill Road area was central to the greenway, which was a potential 2000-acre parcel.

Mr. Moore said he appreciated the Board's concerns about tax revenues, but said he didn't feel stopping the ORLI boundary at Beech Hill Road would necessarily reduce the economic development potential of the area. He showed the Board a map of the proposed greenway, and the Beech Hill Road area, and said the greenway was the kind of un-fragmented land that was desired, and said it would be good if zoning would not impact on this.

Mr. Eyerman asked if part of Mr. Moore's proposal was to make the area north of Beech Hill Road part of the Rural District instead of ORLI.

Mr. Moore said he was not sure what would be most appropriate, and said he simply wanted the Board to consider what he didn't want the area to be.

Chair Roberts noted the Board had received an expanded proposal package from Mr. Moore that evening.

Mr. Moore said that since he and his wife were very familiar with this area, they would be happy to work with the Board to understand the issues involved.

Mr. Isaak asked what entity(s) were involved in pursuing the greenway concept.

Mr. Moore said the Oyster River Conservation Commission was at the heart of it, and said there were also a variety of other organizations interested in this.

Chair Roberts asked if Mr. Moore understood how the district changes recommended by the Board had come about. He explained they had come from the Master Plan, and from exploration by members of the Town Council and the Economic Development Committee over two years of how to fit economic development in somewhere, in a way that would enhance revenue, but wouldn't be offensive in terms of other goals of the Master Plan. He said this was a proposal, and was why the Board was interested in hearing public comments on it. But he said they were between a rock and a hard place, given the tax rate, and the issues to be found in any area that might be considered for economic development.

Mr. Moore noted there were only about 8-9 property owners out in that area, and said that what they were suggesting was a compromise. He noted that although they would just as soon not have Harris Graphics out there, they were trying not to be selfish, and were simply saying they lived out there, and understood the resources there better than those who had been working on this proposal. He apologized that he hadn't been working on this issue sooner.

Chair Roberts said Mr. Moore had obviously done a lot of work on this, and said the written comments were valuable in that they allowed the Board to see the detail he was talking about.

Councilor Harris asked Mr. Moore about a proposal a few years back that involved access from Route 155A in Madbury to one of the parcels of land, but was denied because of wetlands issues.

Mr. Moore said it involved Route 155 going from the greenhouses to Lee 5 Corners, and described the situation. He said it was only the Madbury property that was an issue, but had raised sufficient questions so that the developer withdrew his proposal. He said part of the comments from NHDES included the fact that consideration hadn't been given to wetland issues on the Durham portion of the property.

Councilor Harris said she also said understood that there had recently been a large parcel in Lee that must be part of the conservation corridor he had spoken about. She asked approximately where that was.

Mr. Moore illustrated on his map this 400-acre parcel.

Mr. Kelley noted that within the proposed greenway, only a sliver of it, on the border of Lee and Durham was called for as conservation land by the Master Plan.

Mr. Moore agreed with this. He said his proposal for pulling ORLI back to Beech Hill Road went beyond the Master Plan, but for reasons that were well substantiated.

Chair Roberts said the Board appreciated Mr. Moore's comments, and asked him to feel free to provide additional comments later at the meeting.

**Sandra Strauss, 22 Lee Road**, noted that her property, located partially in Madbury, extended into Durham, and said she was the proud owner of the top of Beech Hill. She said her property was part of the greenway area, and said it was her intention to leave her land to the greenway in order to preserve this area. She provided details on the history of this area, and noted that historically, and currently, the area was used extensively for recreational purposes.

She said the land that residents were talking about keeping out of ORLI, north of Beech Hill Road, was basically uphill, and was not flat land. She noted that when she had wanted to expand her house, she was told the hill was glacial till, with a high water table, so she couldn't put a structure there. She said there was a spring on top of the hill, with the water draining to wetlands and brooks that eventually flowed to the Bay, and said the area was very fragile.

She said people were trying to preserve this area, and said she personally was willing to put money into this. She said she understood the need to reduce taxes, but said this was a beautiful

area, with deer, coyotes, and even an occasional bear. She said people were working toward making it an area that would be public, but protected, and said it really wasn't suitable for building because of the glacial till and wetlands.

Ms. Strauss said there was a lot of concern about Beech Hill at present, and noted several people had called her to see if she would go to the Planning Board hearing to speak on this. She said although it was a sliver of land, it was almost completely sloped, and was not very useful land for development.

She said she didn't understand why there was an access issue, and provided details on this.

Councilor Grant said the problem with the current access was that Goss now owned a major part of that area. He said the development above Goss would be up the hillside, so the current access, if it were to serve the upper area, was not adequate.

Ms. Strauss said she had been told this upper area was not buildable, because of the glacial till.

Councilor Grant said the issues being presented were interesting, but noted that this area was already designated Office Research.

Ms. Moore said what she was asking was that the OR designation end at Beech Hill Road, so the area up the hill would remain in the green zone. She said if people walked out there, they would see this was a really steep hillside, and though not terribly useful for development, was used by the people of Durham.

Richard Gsottschneider, Durham Point Road, said he had been involved in the Master Plan process, on one of the committees, and had lived in Town for over 30 years. He also noted he was a professional planner. He said one of the things that came out of the process was the clear feeling that people wanted to keep development in the developed areas, served by sewer and water, and said he saw no reason to zone industrial land in a fragile area. He provided details on his previous difficulty with UNH concerning expansion of a sewer line to his office building, and also said the current proposal concerning Beech Hill was not realistic without extensive grants from a government entity.

He said the Board had done a lot of great work in revising the nonresidential portions of the Ordinance. He noted a letter he had sent to Mr. Campbell containing comments about two zones where he owned rental property. He said the first comment concerned was the Courthouse District, which used to be the LB zone, and included the new hotel, Gasoline Alley, and the wooden rental buildings that were largely student housing. He said this zone abutted what would be the Coes Corner zone and the Church Hill zone.

He said the Master Plan said the goal was to revitalize this area, and noted that since it was written, a lot of this goal had been realized, without changing the ordinance. He said some of the uses proposed for this zone didn't make sense – theaters, sit down restaurants, etc. He said most of the lots in this area were \_ acres, so it would be impossible to do most of the proposed uses, also noting there was some steep topography to deal with down School House Lane. He also noted that the only residential use allowed was elderly housing.



Mr. Gsottschneider said he realized there was a strong aversion to student housing in Town, but said this was an area that had had student housing for a long time. He said although the Town wanted to deny it, rental housing was an economically viable use, representing 8-9% of the tax base, and said the dollars from it supported another 8-10% of the commercial base downtown. He said the Town should look at enhancing and developing areas that were already developed, which was what was in the Master Plan, and said he felt some of this had been lost with the proposed ordinance.

He said his other comment had to do with Multi-dwelling Office Research district (MUDOR). He noted the majority of land in this area was owned by UNH, and also noted he owned land in this area, and that he and his neighbors had been approached by UNH to sell their land. He said this was a good place to think about putting multifamily housing, and provided details on this, but said he questioned the feasibility of this idea.

He said there was an inconsistency in that the minimum lot size now 80,000 sq. ft, even though some of the lots were served by sewer and water. He also pointed out that the 4200 sq. ft. allowed per dwelling unit was not feasible because it didn't allow enough density. He said utility costs were high, so if people were going to take on such development, the math had to work. He said if this was truly a use the Town wanted, it needed to allow it to happen somewhere, in a way in which the private sector would want to participate.

Mr. Gsottschneider said he had a few additional comments regarding the feasibility of the Professional Office zone extending out from Coes Corner to the Madbury town line. He said there was neither sewer or water out there, and lousy soil. He said as a planner, he had seen a lot of commercial development without sewer, where people dumped whatever they wanted into the ground. He also said that in order to do office building in that area, the water pressure needed to be sufficient. He said that if the Town was going to create a zone, it should do so recognizing that capital development was needed to make this feasible.

Mr. Kelley provided clarification that what Mr. Gsottschneider referred to as Profession Office was the OR district out near Route 108.

There was discussion about the OR district.

Mr. Gsottschneider said to do anything substantive there, such as a hotel, conference center, utilities would be needed. He said he thought it was a great idea, but said if the Town was trying to build up its tax base, it should focus on a few areas.

Mr. Kelley said, regarding the previous comments, that one might argue that upsizing the sewer under the UNH football field might actually be easier, - less disruptive to traffic, and more cost efficient.

**Daniel Beller-McKenna, 8 Beech Hill Road**, said he wished to speak about the paved portion of the road that met up to Madbury Road, from Beech Hill Road. He noted he lived off of the dirt road, on the corner. He said he was grateful he had gotten the letter from Mr. Campbell about the proposal, and said he was trying to understand the development needs of the Town, but also what development would do to his small neighborhood. He said there was hardly any

vehicular traffic in this area, so to pave the road at that end and use it for light industry would be a radical departure. He also noted there was a hard right angle turn in the road, near his property. He said he was strongly opposed to using this area for industrial development, especially when there was already land for light industrial development on Industrial Drive.

Mr. Campbell noted, regarding the issue of paving Beech Hill Road, that this was technically not part of the Zoning Rewrite process, and was something the Economic Development Committee had been discussing. He said if the area was zoned ORLI, infrastructure improvements, including paving, would need to be made.

Councilor Harris noted for the audience that the Economic Development Committee had some vacancies. She said it would be appropriate for those with concerns about some of areas being discussed to put their names forward so they could participate in this process.

Mr. Webb also noted there were five vacancies for alternates on the Planning Board.

Councilor Grant explained that the Economic Development Committee was created by the Town Council, and said the Committee had appeared once before the Planning Board to speak generally about what its interests were. He said what the Planning Board had proposed was what the Master Plan had recommended, noting that particularly concerning the OR districts, which existed currently, the Master Plan had made very few recommendations for changes.

Chair Roberts noted an existing industrial development in Town that was a good neighbor, was hidden from view and yet had access to major highways. He said the Board needed input from volunteers, and said the Board was somewhat frustrated by the amount of land in Town that had been sealed off for one reason or another because of the concerns of residents.

Mr. Beller McKenna said he had come to know about this process because of the paving of the road, and said it made sense to focus on where the access already existed.

Chair Roberts noted that the issue of the paving of the road was not directly a part of the Zoning Rewrite process.

Mr. Beller McKenna said he understood this, but said once the Town decided it wanted to get access, paving of the road was the obvious next step.

**Judith Spang, 55 Wiswall Road**, said she wished to speak first about the shoreland overlay district. She said she had noticed that the previous septic setbacks, 150 ft., had now been reduced to 125 ft.

There was discussion about this with Board members.

Ms. Spang said her concern was that the setbacks were gradually being reduced over time, and asked what kind of science had been being used to determine the setbacks, and if there was more of a political process that had decided on them.

Chair Roberts noted that they exceeded the State recommended setbacks.

Ms. Spang asked if State recommended referred to the old model ordinances from the NH Office of State Planning, or from something from NHDES

Mr. Campbell said this referred to NHDES.

Ms. Spang said the shoreland ordinance at the State level had been derived as a result of a political process, where the science might say one thing, but then the politics looked at what was acceptable by the most conservative, least resource sensitive communities, resulting in an RSA that was something other than what was protective. She also said she had been concerned that the model ordinances had been developed through a similar process by OSP/OEP. She said Durham had done a really good job of avoiding that trap, and said while the proposed setbacks were not unreasonable, she hoped Durham didn't succumb to accept the State standards, either in the RSAs or in the model ordinances.

Ms. Spang next spoke about Section 175-76:A.6, concerning standards for the buffer to the shoreland area. She said allowing pesticide application for agriculture at a distance greater than 25 ft. from the shoreland was still awfully close. She also said she was concerned that under 175:71.B.12, there could be problems with athletic fields being located too close to shorelands, because of soil disturbance, and application of fertilizers and pesticides. She said these fields sometimes took an incredible beating, leading to runoff problems.

Ms. Spang also said she had some concerns about the presumption that trails were ok in wetland areas, noting that trails could be very destructive. She said some of the most impacted areas on the Lamprey River, in terms of erosion and sedimentation, were trails used by fishermen at Wadleigh Falls, and Wiswall Dam. She also said she was not aware that the Town had any regulations concerning OHRV trails, and said it would be possible to have ATV Trails on private lands close to these water bodies, which was another example of where trails could have a heavy impact on water bodies.

Councilor Harris said she thought there was a provision that said ATVs weren't allowed, and there was discussion about this.

Ms. Spang said there seemed to be some inconsistency in the shoreland overlay district provisions concerning state and local jurisdiction over docks, and said perhaps the Board needed to look into this. She also said she was confused by what the Ordinance meant by a dock and a pier, and provided details on this.

Ms. Spang also asked, concerning conditional uses in the SPO district, how the Town would deal with nurseries and greenhouses, which were agricultural, but were also structures.

She also said she wondered why the revised Ordinance distinguished between nonresidential and residential buildings in the Commercial and OR zones, stating that the way it defined what it wanted to control there was not clear. She said both had impervious surfaces, and also said she had seen the heavy impact of erosion and sedimentation to the Oyster River resulting from brooks flowing through the settled parts of town. She said she was quite concerned that the Ordinance seemed to be saying that because of a lack of land around these water bodies, one was forced to compromise on setbacks. She said she thought setbacks were important, if not

more important, in densely settled areas near water bodies flowing directly into the Oyster River.

She said was a bit worried about heavy equipment for timber harvesting in wetlands. She said she knew this was somewhat controlled by best management practices, but said skidders could do a lot of damage.

Chair Roberts noted the performance standard under 175:76.A.3 concerning limiting the opening in the forest canopy.

Ms. Spang said the work done by the Planning Board had been a heroic effort.

Mr. Kelley noted Ms. Spang had asked earlier about how the Board had arrived at these setbacks. He said he couldn't speak for everyone, but said he had looked at it the same way he looked at wetland buffers, - that while most environmental professionals said the more setback distance the better, the standard distance seemed to be around 100 ft.

Ms. Merrill asked Ms. Spang if there were sources of scientific data the Board may have missed in doing its homework.

Ms. Spang said she had been on the Board when it wrote the original shoreland and wetland ordinances, and said the Center for Rural Massachusetts had provided citations for various scientific studies on where the setback lines should be drawn. She also noted she had more recently talked to a person from Plymouth State who wanted to start up the NH Institute of Science, that would be a repository of impartial scientific information that could be used by policy makers at the local and State levels. Ms. Spang also said that Ms. Merrill was involved in starting a Research Advisory Committee that could be a tremendous help in providing scientific data from UNH to the Legislature and town planning boards.

Chair Roberts said Mr. Kelley's comment about representative setbacks he had seen in his engineering experience was echoed by a runoff study done concerning Powerspan, using a 125 ft. buffer. He said this was the only scientific data he knew of that applied specifically to Durham.

Ms. Spang said her hat was off to the Board, because a lot of town boards simply took what the State gave out.

She said her last comment was a plug for the growth control ordinance that had been developed. She said she was very disappointed that she and Neil Niman had put in many hours on this, but the Board had chosen not to include it, and she said it looked like the process would have to start over. She said she wished the ordinance at least had seen the light of day, and feedback had been obtained from affected parties. She said although the real estate market had subsided a bit, the area was growing tremendously, and the Town would need the growth control ordinance. She said she hoped the Board would undertake to review it, once it caught its breath.

Councilor Harris noted that this didn't go through the Planning Board, but instead went through the Town Council. It was clarified that it could at least be initiated by the Planning Board.

Code Administrator Tom Johnson noted that Ms. Spang had spoken of the septic setback issue. He said the present ordinance said 150 ft, and the December draft said 125 ft., so if the intent were to keep it at 150 ft, this would need to be changed.

**Judith Belowski, 35 Edgewood Road**, said the wetland ordinance required a 75 ft. setback for more urban areas of Town. She referred to *the Buffers for Wetlands and Surface Waters* guidebook written by NHOSP, which recommended a minimum buffer of 100 ft. She said the purpose for the buffer was to protect wetlands from runoff, and said in the more urban areas there was more runoff because of the greater amount of impervious surfaces. She said she would like the buffer to be at least 100 ft. for these areas.

She said she was also concerned about pesticides and herbicides for agricultural being allowed within 25 ft. of the shoreland area, noting that the old ordinance required that they be applied more than 75 ft. from it.

There was discussion about this, and Chair Roberts said the intention was not to reduce this below what had been required before.

Mr. Kelley noted that in addition to the setbacks, there were performance standards as well as stormwater regulations to protect the shoreland area.

Ms. Belowski said didn't pretend to understand BMPs, but said the size of the buffer was a concern.

Mr. Campbell referred to Mr. Johnson's previous comment, and explained that the reason the shoreland septic setback had been changed was because, as part of the Town Council's adoption of new septic regulations, a provision said that any septic system had to be located at least 125 ft. from any poorly drained or very poorly drained soil, or water body. He said this was adopted in May 2004 for the shoreland district.

**Maggie Moore, 138 Lee Road**, said she would like to follow up on comments she had made at the previous hearing. She noted she had submitted ideas for the proposed lighting and noise ordinance, and said there was another sheet that provided some clarification on prohibited and conditional uses in the ORLI zone. She asked the proper way to follow up on the ideas she had presented, and was told she should contact Mr. Campbell

Mr. Eyerman said a punch list was being put together on issues raised concerning the various zoning provisions at the public hearings. He said he and Mr. Campbell would provide additional information to the Board on these issues, and then the Board would go through the punch list, consider the various comments and proposals, and make a decision on each of the items in the list.

There was clarification that the new material from Ms. Moore had not yet been provided to Board members, but would be provided.

Ms. Moore said her husband had taken photos of Beech Hill Rd as compared to Technology Drive, and showed these to Board members.

Mr. Campbell said regarding the public comments on agriculture, that former Board member Rachel Rouillard had done a lot of work on this. He said the wording in the proposed Ordinance had to do with way the State RSAs were set up, and the Board's inability to limit agricultural activities.

Ms. Spang asked if this was relative to agriculture in general, or specifically to agriculture in the wetland and shoreland zones. She said the provisions might be different for these sensitive areas.

Mr. Campbell said the Board would be looking into this further.

**Beth Olshanksy, Packers Falls Road**, said she was proud to be part of a community where so many people had come out regarding protecting natural resources. She said she would like to speak about some of the miscellaneous amendments to the residential portion of the Zoning Ordinance as of January 6<sup>th</sup>, specifically regarding the calculation of usable area. She noted the Ordinance had gone through several public hearings the previous spring before it was approved, and said she was concerned that some of the changes recently proposed would drastically watered it down, when not enough time had been spent testing it.

Chair Roberts said the Planning Board and Town Council had received significant comments, especially during the Council hearings, and said the Council had passed the Ordinance, but had given the Board a list of items to review, which included calculation of usable area. He also said that during the review of recent subdivision applications, it was discovered that the Ordinance would have a much more significant impact as compared to other communities, and said the Board was only proposing to reduce this impact to the degree it felt the evidence warranted.

Ms. Olshansky said the minimum contiguous usable area definition had been drafted by Ben Frost of the NHOEP, and said when Rachel Rouillard had pulled together this ordinance, the intention was to remove bowling alley lots. She said that was why contiguous area was designed to be a rectangle, and said she was not sure that the proposed wording addressed that concern.

There was discussion about this, and Chair Roberts said the proposed change was a common approach in zoning ordinances.

Ms. Olshansky said much of the development of wording on usable area was based on the Hollis Zoning Ordinance, and the work of Randell Arendt, and was put together by Rachel Rouillard and Jack Farrell, who had been the Chair of the Master Plan Land Development Committee. Ms. Olshansky said she had been very interested in this particular portion of the Ordinance, and had several discussions with Virginia Mills, of the Hollis Planning Board.

She said she had asked her specifically, regarding the use of the somewhat poorly drained criteria, if that had created problems in her town. She said Ms. Mills had told her that when this came up with a developer, the Board asked the developer if he would want to build his house on somewhat poorly drained soils, and he said certainly not, and at that point, had withdrawn his complaint.

Ms. Olshansky said the whole intent of calculation of usable area had to do with protecting fragile soils, and said several criteria included a few months back were now stricken. She said she was very concerned about this, and said a lot of research had gone into what other progressive communities and experts did concerning this. She asked the Board to revisit these issues.

She noted that under 175-107, a sentence had been added that if the subdivision was exempt, the minimum usable area requirement did not apply. She asked if there was some other standard that did apply.

Chair Roberts said the septic regulations, minimum lot size, driveway permits, and other such standards applied, but explained that exempting additional land on a small lot was something that had bothered a lot of people.

Mr. Campbell said the minimum lot area per dwelling unit still applied, and also said the wetland acreage didn't count toward the lot size, so at least one of the criteria did apply, based on the wetland overlay district.

Ms. Olshansky asked if the language in the definitions and the calculation of usable area would be in conflict, based on these new changes, and there was discussion about this.

Mr. Kelley asked if Ms. Olshansky could offer any insights on how Hollis compared to Durham, in terms of surficial geology. He noted that the Board had received comments that if didn't make some revisions to the usable area criteria, it would be effectively ending any development in many of the Town's zones.

Ms. Olshansky said she had spoken to Ms. Mills about this, and said in Durham, as in Hollis, the best lands had generally already been developed. She said Hollis had specifically drafted its ordinance to protect its more fragile lands.

There was discussion on Durham's surficial geology, and Chair Roberts said he had received data from the State on this. He also noted the significant amount of frontage on water bodies in Durham, as compared to Hollis, so that there was much less usable land in Durham to begin with.

Ms. Olshansky said another way to look at this was that it was all the more reason to protect those lands.

Chair Roberts said the Board had been frustrated because a lot of the comments on this issue had not come in at first, and didn't appear until the Council hearings onward, thus getting onto

the punch list. He also noted that Mr. Campbell had been faced with a number of people who had done the calculations for their properties.

Ms. Olshansky asked Mr. Campbell if some of these people had had HISS maps done, and he said yes. She said she wondered if the Board could address some of the concerns with some kind of hardship clause.

Chair Roberts said the Board had tried to take the edge off the impacts, and also noted the Board was having an impact analysis done by the Strafford Regional Planning Commission. He noted that the Master Plan had estimated there were 1700 buildable lots, but a zoning provision had been created that only allowed 200-300 buildable lots, and said the Board had worried about whether this was what the community had anticipated. He said hopefully the impact analysis would be available before the Board finalized everything.

Ms. Olshansky pointed out that 150 new homes were proposed at Spruce Wood.

Chair Roberts said not all land in the community had the characteristics of that land.

Ms. Olshansky noted Mr. Jelmborg had brought up the issue of hotel stays. She said now that there was a conditional use permit that required that there be no more than a 10-day stay, and amendments to conditional use permits were not allowed, that created an interesting situation. She said the Zoning Ordinance didn't have any policy on how to handle this.

Mr. Webb agreed there was no amendment process, so there would have to be a new conditional use permit. He said he was not personally averse to eventually amending the regulations to allow an amendment process for minor changes to a conditional use permit, but said this was not presently on the table.

Mr. Kelley noted a similar issue had recently come before the Board.

**Perry Bryant, 24 Park Court**, commended the Board on the work it had done, and said his questions had to do with the feasibility of some of the provisions. He noted that he owned properties that were nonconforming, and based on the proposed zoning changes, the uses of these properties could not become more conforming. He said he would provide comments in writing, and also said he was interested in understanding the process the Board used for reviewing comments it received.

There was discussion about this. Mr. Campbell said the first workshop on this would be the Zoning Rewrite meeting, on February 5<sup>th</sup>. He said there would be a punch list by that time, and discussion on the list would start then.

**Jim Jelmborg** spoke about the proposed Courthouse District. He noted he had given the Board two petitions, one of them previously, with 52 signatures, which was against allowing mixed commercial residential use in this district because it was likely the properties would become student rentals. He referred to Attorney Peter Loughlin's presentation in January of 2002, which indicated that student rental housing was already overbuilt in that district, and



noted that residents of the pocket neighborhoods in this area had spoken many times about this issue.

He said the second petition, which he was now submitting, contained 45 names, and was also against allowing mixed use in this district. He said those who signed it felt this was a glaring contradiction to the Master Plan's goals for the Courthouse District, -establishment of a gateway to the Town; development of a Town common and community center; protection of pocket neighborhoods from unregulated and disruptive student housing; disallowance of uses with negative impact in terms of light, noise, pollution and trash; and encouragement of professional offices. He said that allowing more student apartments would be a poison pill that would prevent these offices from coming into this zone.

He noted that Attorney Laughlin's report also explained why the Churchill area was also overbuilt, and said the Master Plan also recognized this. Mr. Jelmsberg also spoke about the various riots that had taken place in this area, and the unfairness to the students of crowding too much rental housing into this area. He said allowing additional student housing in this district defied logic, and said the Town should give the Courthouse District the chance to become the town center it was intended to be.

Mr. Eyerman noted Mr. Jelmsberg referred to both Church Hill and Gasoline Alley, and said that for both areas, the Master Plan had spoken about mixed use as being acceptable, with apartments on the second floor.

Mr. Jelmsberg said when one looked at the wording closely, the inclusion of apartments seemed to be an afterthought.

It was clarified that Mr. Jelmsberg's comments about mixed use referred only to the Courthouse District.

Mr. Kelley said he had heard the opposing argument that professional offices couldn't be supported in that district without the rental units.

Mr. Jelmsberg said he took the opposite view, and said apartment rentals would discourage office rentals from coming in. He said the Master Plan's Town center concept needed to be given a chance, along with development of professional offices around the new hotel.

**Paul Berton** noted that Mr. Jelmsberg had students in his house. He also said it was well documented that most of the riots were generated by students in the dorms. He said the rental component on the second and third floors of buildings was a crucial component to any retail development in that whole corridor.

Councilor Harris asked where documentation existed on where the student rioters had lived. She noted that the original proposal for the hotel was to allow mixed use, but said the long range goal for the eastern area of Town was to reduce student rentals, and shift student rentals to the western side of Town. She said the Town wouldn't be able to see if this could work if it continued to allow all of the mixed uses to occur on the eastern side of Town.

Mr. Burton said one of the major pressures on neighborhoods in this area was single-family homes that were converted to student rentals. He said if viable student housing opportunities continued to be taken away, they would continue to pop up in the neighborhoods. He also noted that he had attended meetings on the downtown disturbances, and said the dorm connection was well documented.

Chair Roberts noted he would read two letters from residents who could not attend the hearing, but asked that there letters be read out loud.

**James Bubar, 42 Dover Road**, said he had purchased a lot with the intent of building a single-family home the coming spring. He provided details on the property and surrounding area, and explained that the proposed ordinance had reclassified his property as being in the RC district. He said the district provisions would have an onerous impact on his ability to develop the property, and noted that the lot he had purchased was the only one impacted by the change from LCB to RC. He said the other properties either had existing building permits, or had already been developed as their owners had intended. He said the strict application of the proposed ordinance would significantly reduce the value of his property, and make it unsuitable for the purpose for which it was purchased.

Mr. Bubar said he realized he would have to seek variances to build a home if the Ordinance passed, but said would be simpler if his property was rezoned RA or COESCORNER (provided this was amended to allow residential construction) or if the setbacks were less, and the minimum lot size accommodated the pre-existing lot. He said because it appeared he had the only undeveloped lot in the area, any change in zoning, or granting of variances would therefore have very little effect on anyone else.

**Attorney Malcolm McNeill** noted he had previously appeared before the Board on behalf of Amber Acres, the owner of approximately 43 acres on Mast Road. He provided details on the property, and said the apartment building on it was a legal, nonconforming use.

He recommended the following amendments to the presently proposed Zoning Map:

1. He asked that MUDOR be extended from its present terminus at the UNH /TC property line, to the full length of the southerly side of Mast Road, to include the TC and Amber Acres property all the way to the Lee town line.
2. He said in the event the above did not occur, he respectfully requested that multi-unit residences be allowed by conditional use in ORLI;
3. He asked that hotels be permitted in both MUDOR and ORLI districts;
4. He asked that multiunit elderly housing be permitted as a matter of right in the ORLI zone.
5. He asked that light manufacturing be allowed by right, and not as a conditional use in the ORLI zone.

Mr. McNeill's letter dated January 19, 2005 provided extensive details on each of these recommendations. *Mr. McNeill's letter is attached and on file with this set of minutes.*

Mr. Jelmsberg said he took exception to what Mr. Burton had said. He said had made a financial commitment to the Town, in the form of a mortgage, and said he had one student living in house, but was certain she was not a problem to the Town.

There was discussion about whether to close the public hearing. Mr. Campbell said the Zoning Rewrite Committee would discuss the punch list of issues on Feb 5<sup>th</sup>, and said the Board could repost to reopen the hearing after this. Board members agreed the record would be left open until January 24<sup>th</sup> in order to allow submission of additional written comments.

***Richard Kelley MOVED to close the public hearing with the exception that written comments would be received until Monday, January 24, 2005. The motion was SECONDED by Kevin Webb and PASSED unanimously.***

***Kevin Webb MOVED To adjourn the meeting. The motion was SECONDED by Amanda Merrill, and PASSED unanimously.***

Meeting adjourned at 10:\_\_\_??

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Amanda Merrill, Secretary