

D-R-A-F-T

DURHAM PLANNING BOARD WEDNESDAY, AUGUST 31, 2005 DURHAM TOWN HALL – COUNCIL CHAMBERS

PRESENT MEMBERS: Chair Kelley; Arthur Grant; Stephen Roberts; Kevin Webb; Richard Ozenich; Councilor Gerald Needell

PRESENT ALTERNATE MEMBERS: Councilor Carroll; Susan Fuller; Bill McGowan; Lorne Parnell

MEMBERS ABSENT: Nick Isaak; Annmarie Harris

I. Call to Order

Chair Kelley announced that Alternate Member McGowan would serve as a voting member in the absence of Member Isaak.

II. Approval of Agenda

Arthur Grant MOVED to approve the Agenda as submitted. The motion was SECONDED by Stephen Roberts, and PASSED unanimously 7-0.

III. Report of Planner

Mr. Campbell reported he had thought the process was underway at NHDOT concerning proposed signage along Route 4 for motorists to continue going west to get to the University as one approached the intersection with Madbury Road. However, he said that apparently was not the case and that he would send a follow-up letter to Mr. Lambert to see that appropriate action was taken.

Mr. Campbell noted that PSNH had installed lights in the Town Hall parking lot, and said the Planning Board should take a look at this under Other Business that evening.

Councilor Needell noted the ruling at the previous Board meeting that alternates should not participate in deliberation on the Irving applications. He said his interpretation was that this was a change in policy, noting that since he had been sitting on the Planning Board, no such distinction had been made. He was concerned that this change in policy should be made by the Board, not the Chair, and asked why this change was made.

Chair Kelley said he valued the opinions of everyone at the table, and said this had been done on the advice of Town Attorney Walter Mitchell. He asked Attorney Mitchell to speak to this concern.

Attorney Mitchell said he had approached the Chair about this at the last meeting, and said it was advice he gave to all towns in this kind of situation. He noted that the

Planning Board sat in a quasi-judicial capacity, and said his job was to try to eliminate possible areas of attack on whatever ultimate position the Board might take. He said the concern was that after the hearing closed, the only people who should be participating were the decision makers. He said the role of alternates was no greater than any member of the public. He said he regarded this as a fairly significant area of attack, if a disappointed applicant or abutter decided to appeal.

Councilor Needell said he did not disagree with this approach and was concerned that this had not been the operating policy of the Planning Board. He said there should be discussion as to whether this should be the case. He noted that the Board's rules of procedure said alternates were encouraged to participate in discussions, but could not be involved in motions, unless asked to fill a vacancy. Councilor Needell said he did not think it was within the purview of the Chair to make this decision, so at a minimum, the Board should make it.

Attorney Mitchell noted again that he had asked Chair Kelley to proceed in that direction. He said he was confident that any Superior Court judge would say that the discussion portion of deliberations was very much a part of the process of making a decision. He said the anticipated problem was that if a non-voting alternate during the deliberation phase, with a minority point of view, was very persuasive, and caused the Board to start to go in another direction. He said that given that this was a quasi-judicial proceeding, he believed the court would say any participation in deliberations tainted the proceedings.

Mr. Roberts said the Town had never been blessed with this many alternates, and noted that most of the time, alternates were also voting members.

Chair Kelley said he would not want to put the Town in the position of having to defend the Board's actions. He said he had not thought at the time it was important to put this issue to a vote, but said he would be willing to do that if it would help move things along.

Mr. Webb asked Attorney Mitchell if taking a vote to alter the rules of procedure was the proper way to proceed, and whether the RSA's were silent on this.

Attorney Mitchell said the rules of procedure were changeable at any time.

Mr. Campbell said the rules of procedure did not actually say alternates could participate in deliberations, but did say they could participate in discussion. He agreed that discussions and deliberations were all part of the vote.

Councilor Needell said he was not suggesting amending the rules of procedure that evening, but suggested that this issue should be revisited so the wording could be clarified.

Board members agreed this issue should be put on the list for the upcoming quarterly planning meeting.

Kevin Webb MOVED that deliberation and voting by this Board this evening should be restricted to voting members and duly designated alternates only. Richard Ozenich

SECONDED the motion.

Councilor Needell said he had no problem with this motion, but said it put pressure on the Board to resolve this matter.

The motion PASSED unanimously 7-0.

- IV. Deliberation on Application for Conditional Use Permit** submitted by Courthouse Ventures, LLC, Hampton Falls, New Hampshire to demolish the current motor vehicle service facility and replace it with a retail fuel outlet which includes a 2,992 square foot convenience store with an attached 1,100 square foot coffee/donut shop. The property involved is shown on Tax Map 5, Lot 4-2, is located at 2 Dover Road and is in the Limited Business Zoning District.

Chair Kelley said the Board had received an extension letter from the applicant, dated August, 25, 2005, granting the Board the opportunity to continue deliberations to August 31, 2005. He noted this had been listed in the Findings of Fact.

Mr. Grant said he would like the Findings of Fact to include a sentence about how many people had testified at the public hearing, and how many communications were received concerning both applications. He noted there had been considerable public interest in these applications.

Mr. Webb said he did not see a date of acceptance of the application.

Mr. Grant said that the Conditions of Approval #2 should say that the sign was designed by the applicant and approved by the Planning Director. He also said that instead of using the word "handicapped", the wording should be "persons with disabilities".

Councilor Needell said concerning Character of the Site Development, the wording generally captured the Board's discussion. However, he recalled that the previous week the Board had agreed the development would result in a greater impact on traffic as a statement of fact. He said he wanted to ensure that the paragraph on this discussion correctly reflected that an impact would be felt.

Chair Kelley suggested there would be no greater impact from the development than existing uses. It was noted that traffic was expected to increase, but only by 1-2%.

Mr. Roberts suggested wording should be added that the daily variation in traffic in the area was from 0-7%.

Councilor Needell said he believed there was general agreement that there would be an increase in traffic. He said the Findings of Fact should indicate this.

Mr. Roberts said he was happy with noting there would be a 1-2% increase in traffic, which showed that minimal impact was anticipated.

Mr. Webb said it seemed there were other conditions the Board had talked about that

were not in the Conditions of Approval for the Conditional Use Permit.

Mr. Campbell said these were put in the Conditions of Approval for the site plan review application.

There was discussion on how to proceed concerning deliberating on both applications.

Mr. Grant spoke about the importance of encouraging the Council to negotiate with the applicant concerning parking near the Courthouse.

Mr. Campbell said discussions were taking place concerning this matter.

The applicant, Scott Mitchell, said he would speak about this under deliberation on the site plan review application. He said there were some issues as to how the Town counted its parking spaces, and that resolving them would be important in terms of how much he could help the Town with parking.

Chair Kelley said he would like to see this discussed under site plan review.

Mr. Webb noted that the Conditional Use Permit process allowed the proposed use, and the Board was charged with guaranteeing that this use would not impact the Town based on the CUP criteria. He said since a key issue regarding this was traffic, the Conditions of Approval should reference the traffic flow measures, as shown on the plans. He said the application would not have gotten to this point without the current traffic design.

There was additional discussion relative to deliberation on the documents for both applications. It was agreed that a Condition of Approval for the CUP was that the site plan review application must be approved.

Mr. Campbell suggested that the Board complete its discussion on the CUP, discuss the site plan review application, and then approve the two together. He noted that most of the detail was put into the Findings of Fact and Conditions of Approval for the site plan review application.

The Board agreed to proceed as Mr. Campbell had described.

- V. Deliberation on Application for Site Plan Review** submitted by Courthouse Venture, LLC, Hampton Falls, New Hampshire to demolish the current motor vehicle service facility and replace it with a retail fuel outlet which includes a 2,992 square foot convenience store with an attached 1,100 square foot coffee/donut shop. The property involved is shown on Tax Map 5, Lot 4-2, is located at 2 Dover Road and is in the Limited Business Zoning District.

It was noted that edits the Board had agreed on concerning the Conditional Use Permit should also apply to the site plan review application.

Mr. Grant noted #2 under the Findings of Fact concerning the original site plan submission dated February 14, 2005. He said the most recently revised plan should be

specified.

Mr. Campbell said there were some minor details on the most recent site plan that still needed to be changed, such as the white vinyl fence.

Councilor Needell noted the Findings of Fact concerning architectural drawings. He said these drawings were a key change in the site plan and it should be made clear what was being referenced. He said at present, the wording was unclear.

Mr. Webb suggested that the changes that were made based on discussion with the applicant should be listed out for the various categories. He said it was important to be careful about this since there had been so many changes.

Chair Kelley suggested this could be worked into the Conditions of Approval.

Councilor Needell asked about the dates for the most recent TMS Architects drawings and photos.

Mr. Montiero said the most recent date for these was July 27, 2005. He also said the suggestions to revise this last set could be listed.

Chair Kelley said Conditions of Approval Item #9 should say that the final architectural plans shall be submitted to the Chair of the Planning Board and the Director of Planning & Community Development, and should reference the earlier architectural documents.

There was discussion of the architectural changes that had been agreed to:

- additional black iron fencing, along Newmarket Road
- brick going along the entire back wall of the building
- vinyl fence on top of the retaining wall
- decorative knobs on top of the black iron fence
- the gable end color will be a muted yellow
- the fuel pump canopy will not have cupolas, and will have a relatively narrow (9 inch) blue band

Mr. Montiero noted that the drawings in front of Board members were in fact updated, and incorporated the last set of changes agreed to.

Chair Kelley said he believed some landscaping modifications had been made at the previous Board meeting.

It was noted that a change to this plan was that the proposed white pine in the back corner would instead be an Austrian pine.

Chair Kelley noted the retaining walls that would be established facing the Town Hall building, and Mr. Montiero said this detail was already on the site plan, sheets 7 and 8.

Mr. Roberts noted that a previously proposed chain link fence on top of the retaining wall

would instead be a white picket fence, and Mr. Campbell said this was covered under Conditions of Approval Item #5.

Chair Kelley asked the applicant, Mr. Mitchell, to speak about the parking issues.

Mr. Mitchell said Code Administrator Tom Johnson had contacted him and asked if he was willing to assist the Town with the parking problem it had around the Courthouse. Mr. Mitchell noted that when the site had first been designed, there was not any parking around the Courthouse. He said that knowing this was an issue for the Town, he developed some designs for this.

He said Mr. Johnson had determined that the area where the vacuum/air services island was could not be counted as spaces, and said he disagreed with this. He said customers would park there, noting this could be seen at the Gibbs station. Mr. Mitchell also said that some towns counted the fueling positions at the gas tanks as parking spaces, although noting that Irving would prefer people not park in these spaces. He said another possible alternative concerning parking spaces was to swap some spaces with the Town. He said he would be willing to look at this, but he did not want to be forced to go back for a variance for some reason in order to meet the site plan review requirements.

Mr. Montiero said Mr. Johnson had told them verbally that they should not count the spaces under the canopy as parking spaces. He said Mr. Johnson had said in writing that the vacuum/air parking spaces could not be counted. He said this reduced the number of extra parking spaces on the site, beyond the site plan review requirements, to three. He said if the applicant and the Town did swap spaces, he wanted to be sure this would not violate the site plan regulations, noting parking was supposed to be on site.

There was discussion on how many parking spaces the Town needed.

Mr. Campbell said three spaces were available, not counting the canopy or service island spaces. He said if parking were allowed on either side of the service island that would result in five spaces without having to do a swap or applying for a variance.

Chair Kelley said he would not want to put the applicant in a position where he would have to go for a variance in order to assist the Town with parking for the Courthouse.

Mr. Webb said he disagreed with Mr. Johnson's position concerning parking at the service island, and noted people did park in these spaces at the Gibb station.

Mr. Mitchell said he understood the Town's needs concerning parking and was willing to work with it. He said the only thing he would not do was to bring the parking up to handicapped standards, and said the Town would have to do this on its own.

Mr. Campbell said if the parking spaces were used for the Courthouse, those spaces would not be countable toward meeting the site plan review requirements concerning parking. He said the Town could not take any of the required parking from the applicant, and said the reason his suggestion would work was that the applicant had more spaces than were required.

Mr. Mitchell said he could not find anywhere in the site plan review regulations where it specified that off site parking could not be counted. There was discussion about this.

Mr. Montiero said if the Town's intent was that there should be handicapped parking, more study would be needed as to the appropriate location for this. He noted the requirements in order for a parking space to be van-accessible.

Mr. Roberts asked if language was needed in the Conditions of Approval concerning the parking situation, such as allowing the inclusion of the spaces under the canopy. He also asked if it was legal for the Board to do this.

Chair Kelley said Mr. Johnson had an interpretation of the situation, and the Board could have a different interpretation. There was discussion about this.

Mr. Campbell noted that Mr. Johnson considered the service area equipment to be a structure, so parking spaces could not be there because of the setback requirements. He said he disagreed and he thought it was up to the Board to decide on this. He said he felt the service area was a minor installation that did not need to meet the setback requirements for parking, and said he thought it was within the Board's purview to consider these as parking spaces.

Attorney Mitchell said the Board's interpretation could be different from Mr. Johnson's. He said the application was before the Planning Board, which had the ultimate decision on this. He said the Board was interpreting its own regulations, so Mr. Johnson's interpretation was advisory in this context.

Councilor Needell said it was important to determine that this did not violate the Zoning Ordinance, noting the Planning Board could not issue a quasi-variance.

Attorney Mitchell agreed with Councilor Needell's comment.

Mr. McGowan asked if the Board could say employees of the business could park at the Town Hall parking lot. There was discussion on how the number of required parking spaces was determined, and whether employees could park off site.

Mr. Webb said the applicant was trying to maximize the number of parking spaces, and the way to assist him was by stating that the vacuum/air service island spaces would count toward meeting the parking requirements. He said he was in favor of this. He also said it seemed that what happened after this, such as a swap with the Town, seemed to be a completely separate issue. He said the Board needed to be sure the applicant met the requirements of the site plan review regulations.

Mr. Mitchell said the only question he had was whether off site parking for employees was allowed.

Chair Kelley said he would like the Board to stay away from an arrangement concerning this. He said if the Board could determine the vacuum/air spaces could be used as parking

spaces, there would be no legal issues to deal with.

Mr. Roberts said he was concerned that there might be some safety standard regarding the vacuums/air services. He said it seemed that allowing six of the twelve spaces under the fuel pump canopy to be used as parking could be included as part of the parking requirement, which would answer all claims.

Councilor Needell asked where Mr. Johnson's authority was derived concerning parking under the canopies or near the vacuum area, and asked if there was any guidance on this issue in the parking regulations. There was discussion that Mr. Johnson had provided an advisory opinion.

Arthur Grant MOVED that it should be specified in the Conditions of Approval that 6 parking spaces beneath the canopy can be counted as parking. Richard Ozenich SECONDED the motion.

Mr. Grant said he felt the Board thought this was the clearest way to proceed, and was within its purview to make that determination. He said there was nothing in the site plan review regulations that said the Board could not do this. He said Mr. Johnson might be using some national standard, or recommended procedure, but said he made the motion to simplify the situation, and to provide encouragement concerning the provision of parking spaces for the Courthouse.

Councilor Needell said he was sure there was a way this could be accomplished, but he said he was uncomfortable with the precedent this would set. He said he could not support this.

Mr. McGowan said he felt uncomfortable about doing this, procedurally, without knowing all the facts.

Mr. Webb said he agreed, and said he was very uncomfortable about the precedent this would set. He noted the Cumberland Farms site did not meet the parking requirements, and said he was concerned what would happen - if a new use that came in there and half of the spaces under the canopy could be used for parking. He said an easier way to proceed with the present application would be to count the two spaces next to the vacuum/air island, which would get the applicant to five "extra" spaces.

Mr. Campbell read from 175-11 E concerning parking spaces, which said that excluding employee parking, parking shall be on the same lot as the main building.

Mr. Roberts said he was in favor of the motion, also noting that the Cumberland Farms site had a fair amount of parking behind the building. He said one of the reasons for the Conditional Use process was to allow the creative, flexible use of zoning to suit the needs of the community, where as with site plan review, this was not allowed. He said if another application came in under the Conditional Use process, it would have to be treated on its merits.

Chair Kelley agreed there was concern about setting a precedent, and said the parking

standards should be reviewed. He said parking for motor fuel facilities should include the spaces under the fuel canopy which were used by customers.

Mr. Ozenich said he agreed, noting these were short term spaces that were filled and then vacant again within a few minutes.

The motion PASSED 4-3, with Councilor Needell, Mr. Webb and Mr. McGowan voting against it.

Mr. Grant requested that the motion include as a preface "In order to facilitate the provision of parking spaces for Courthouse use". He said he was sensitive to Mr. Webb's concern about setting a precedent, and said this motion would not do this because it was specific to the Courthouse.

The Board agreed this wording should be included.

Mr. Webb said that wording made him more comfortable with it.

The following final motion was approved.

Arthur Grant MOVED that in order to facilitate the provision of parking spaces for Courthouse use, it should be specified in the Conditions of Approval that 6 parking spaces beneath the canopy can be counted as parking. Richard Ozenich SECONDED the motion. The Motion PASSED 4-3, with Councilor Needell, Mr. Webb and Mr. McGowan voting against it.

Mr. Campbell noted Mr. Roberts' comments about the Conditional Use process, and suggested that a condition of approval should be that 6 parking spaces beneath the canopy can be counted as parking. Board members agreed with this.

Mr. Grant asked Mr. Campbell if he had the opportunity to go over the input on the application from Town department heads, especially input from Town Engineer Bob Levesque.

Mr. Campbell said Mr. Levesque's only comments recently were that sewer and water permits needed to be applied for. He said Mr. Levesque felt the increase in the amount of water used as a result of this development should be negligible. Mr. Campbell noted that the use of rain sensors as part of the landscape plan irrigation system would conserve water.

Mr. Grant said that on page 4, #5, "handicapped" should be replaced with "persons with disabilities".

Mr. Webb said the Conditions of Approval concerning the process for getting water/wastewater permits should say - ".....shall obtain permits....."

Mr. Campbell suggested it could be added that subsequent to signature, these permits needed to be obtained. There was discussion about how long this would take. Mr.

Campbell said it would be 3 months or less, noting there would be no major water or sewer work required.

Board members agreed that the wording on water/wastewater permit approval should be included under Subsequent to Signatures.

Chair Kelley said it appeared that Mr. Levesque's concerns had been addressed. He also noted that a lot of Mr. Johnson's concerns related to issues that were only within his purview, and not the Board's.

Mr. Campbell said the Board should make a determination as to whether vacuum/air units were structures or not. He said Mr. Johnson's advice was that it was a structure, and was within the setback. Mr. Campbell said that in the scheme of things, these spaces would be used more for other things than for use of the vacuum/air equipment.

Councilor Needell read the definition of “structure” from the Zoning Ordinance, and reviewed the issues involved.

Chair Kelley said a shed on cinder blocks was not seen as a permanent structure, but if the foundation was slab, it was considered permanent. He said in thinking about how the vacuum/air equipment was attached to the concrete, he believed anchor bolts were used, so would argue that this was not a permanent installation, and could easily be removed.

Councilor Needell said the concrete island with curbs was a permanent installation/structure.

Mr. Webb noted other curbs on the site which were entirely within the setback.

Councilor Needell asked whether if there were a noisy object in the setback, this had any bearing on anything, in terms of protecting abutters, and the spirit and intent of the Zoning Ordinance.

Mr. Campbell noted that the Gibbs station violated the setback concerning this, and said he did not think this was ever discussed.

Chair Kelley said he did not have a big issue with this, noting that if the canopy were extended, he would consider that an issue. He said he did not see that the vacuum unit was a structure.

Mr. Campbell said one could put an accessory shed there that would have a greater impact.

Mr. Ozenich asked how important the vacuum unit was to the business, noting these units were usually associated with car washes.

Mr. Montiero said Irving felt it was important to provide this option, as part of customer service.

Kevin Webb MOVED that the Board include in the Conditions of Approval a determination that the vacuum and air units are not considered to be structures, and may be set within the setback. Richard Ozenich SECONDED the motion.

Councilor Needell said he would vote against this, because he believed the vacuum and air units were structures, given the definition in the Zoning Ordinance. He also noted the nuisance issue, and said he was not inclined to be generous about putting these units within the setback.

The motion PASSED 6-1, with Councilor Needell voting against it.

Chair Kelley noted that the condition on page 3 concerning architectural design drawings should reference the architectural renderings, and should say "These plans shall be in accordance with TMS Architects' renderings dated July 27th, 2005."

Mr. Grant noted condition #2 concerning stamping of the final plans. He noted there were still modifications to be made to the site plan, and they then would be submitted for signatures, and that would be the final revised plan.

Chair Kelley said that was correct, and said the date was yet to be determined.

Mr. McGowan noted the condition concerning a soil monitoring program, and asked if this included removal of soils.

Scott Mitchell said he had met with his soil engineer, who was used to working with NHDES. He said the present monitoring wells on the site would all be destroyed, because from his past experience with rebuilding gas station sites, the site work generally destroyed the wells. He noted as part of this that he had recently gotten an updated report on the site, and the contamination levels had gone way down. He said there were 9 wells on the site now, and said he would probably be required to have four wells. Mr. Mitchell said he wanted it to be clear in the record that whatever NHDES required would be put in.

There was discussion on what wording to put in for a condition concerning this. It was agreed the condition should say "Monitoring wells shall be reinstalled to the satisfaction of the State of NHDES."

Chair Kelley noted Mr. McGowan's concerns, and said he would like to see something about a soil monitoring, handling and disposal plan.

Scott Mitchell said a tank closure assessment and report would be done that tested the lines, tested the tanks, removed the tanks, etc. He said on a site this old, he expected to find something. He noted he had had a preconstruction meeting with NHDES.

Mr. McGowan asked what should be included in the Conditions of Approval concerning this.

Scott Mitchell said DES regulated this, and it was something a site owner had to do. He

said he felt as an old station, there could be residual contamination, noting no holes had been drilled under the building. He said he wanted to have a plan of action with NHDES in case something was found.

Mr. Montiero noted that #19 on the site plan, on sheet 3 of 8, addressed the process of working with NHDES on this issue.

Chair Kelley said he would like to see language added to the Conditions of Approval concerning soil monitoring, handling and disposal.

Arthur Grant MOVED that the Planning Board approve the Findings of Fact and Conditions of Approval for the Application for Site Plan Review submitted by Courthouse Ventures, LLC, Hampton Falls, New Hampshire, as amended. The motion was SECONDED by Stephen Roberts, and PASSED unanimously 7-0.

Kevin Webb MOVED that the Planning Board approve the Findings of Fact and Conditions of Approval for the Application for Conditional Use Permit submitted by Courthouse Ventures, LLC, Hampton Falls, New Hampshire, as amended. The motion was SECONDED by Bill McGowan, and PASSED unanimously 7-0.

In answer to a question from the Board on how soon work was expected to start, Mr. Scott Mitchell said there was a six-week turn around for the architectural drawings. He said he had asked Mr. Johnson if he could get the permit to start the foundation work, and said if that happened, things would start happening very quickly.

Scott Mitchell said he was hopeful that things could move quickly and they could beat the frost, and said if not, construction would start in April.

Chair Kelley suggested that site plan copies be submitted showing the various final changes, prior to providing the final mylars.

Mr. Grant suggested that Board go see the lights in the Town Hall parking lot that Public Service of NH had installed. The Board proceeded to do this, as part of the meeting.

VI. Other Business

Mr. Grant noted the recent arrests at some fraternities in Town that were not recognized by the UNH Greek system and referred to a recent Zoning Board of Appeals ruling that approves “boarders” living with a fraternity or sorority. He felt this ruling contradicted the intent of the zoning ordinances, and that it was a policy issue which should have been referred to the Planning Board. There was discussion on the provisions concerning the definition of fraternity houses and boarding houses.

Mr. Grant said there was a specific purpose for having fraternities recognized by UNH -- so that the University was responsible for establishing the standards, and would be a partner with the Town in upholding these standards. He said if fraternities were not recognized, this meant the University had effectively washed its hands of them. He asked why the Town should have to assume total liability when this was the case.

Councilor Needell asked how the Fire Department approached fraternities that were no longer recognized.

Mr. Campbell noted that some of the fraternities were getting “ingenious”, in that students signing leases automatically became fraternity members and did not have to go through the initiation process.

Councilor Needell said the distinction between recognized and non-recognized fraternities was critical, noting that if they were recognized, UNH was quite proactive in trying to influencing behavior.

Chair Kelley asked if a fraternity's charter were revoked, could it continue to operate as a boarding house. Mr. Grant noted that the Zoning Ordinance does not permit boarding houses within the community.

Mr. Campbell said fraternity houses were approved to house fraternities, and said if the fraternity left, the owner had to get another fraternity there within a year, or lost the ability to do so.

Chair Kelley said research was needed on this issue. He also said that if a fraternity's charter was revoked, a letter on this should go to the owners, and if there was no fraternity lived at the house within a year, that use should no longer take place.

Councilor Needell asked if Mr. Johnson could explain for the Board what was going on with this, how he had been dealing with this situation, and if changes needed to be made.

Mr. Campbell said the fraternities moved around a lot. He also noted the recent variance granted by the ZBA for 10 Madbury Road, which allowed a fraternity to have a certain percentage of non-fraternity members living at the house. He said a question for the Board was whether this was a direction they wanted to go in. He noted the argument made by the applicant for the recent variance was that there were not always enough fraternity members living in the house.

Councilor Needell asked if the boarding house provision was part of the new Zoning Ordinance, and Mr. Campbell said it was. He said taking the most restrictive of the posted and current Ordinances, these fraternity uses were grandfathered as fraternities, but not as boarding houses.

Mr. Campbell said since the variance had been granted, other fraternities were looking to do the same thing. He said if this was the direction the Board wanted to go in, it should change the Zoning Ordinance in order to accomplish this.

Chair Kelley noted there were two fraternities mentioned in the paper, and asked what district they were in, and who owned them.

Mr. Campbell said they most likely were not in the Central Business District.

Chair Kelley thanked Mr. Grant for bringing up this issue.

Councilor Carroll said this brought up the issue of what fraternities would be like, and how things would change, if they had were housed on campus. She noted the Master Plan had discussed this at one time.

Chair Kelley said the Board would be starting the Master Plan rewrite concurrently with the Zoning process, and said the rewrite process would be discussed at the upcoming quarterly planning meeting.

Mr. Campbell listed the items on the Agenda for the quarterly planning meeting:

- MP update - he said there was money in the Budget to move forward with this.
- Review Planning Board bylaws/rules of procedure. He noted they included a general procedure for conducting public hearings, but said the Board did not really follow them. He said the Board's approach was more liberal, and said this should be reflected in the bylaws.
- Address Zoning Rewrite loose ends
- Address the road provisions in the site plan review regulations

Mr. Campbell asked if there were any other issues Board members would like to be discussed at the meeting, and the following were suggested:

- traffic
- the Capital Improvement Plan (CIP)
- water
- neighborhoods without pickup of recyclables, for example, Fitts Farm.

Councilor Carroll noted the recycling issue had come before the Planning Board two years ago in a presentation by the Integrated Waste Management Committee. She said the Committee was asked to look into this, and among other things, to come back with the names of haulers that could pick up the recyclables. She said they did their homework, but said the issue never came back to the Board.

It was noted that Fitts Farm was on a private road.

Mr. Ozenich said if pickup of recyclables was made mandatory, Fitts Farm residents would have to pay for it.

Councilor Carroll said she had spoken with the Public Works Department, and said although they could not drive their trucks on private roads, they could pick up recyclables if they were placed at the end of the street.

Councilor Grant asked why the Public Works Department could not drive on a private road, when the Fire and Police Departments can do so.

Mr. Campbell said this was a reason why DPW was pushing for having all public roads.

He said when residents came to the Town Council demanding services since they paid taxes, the situation would probably change.

Chair Kelley said he assumed the roads in these developments were constructed to allow for fire vehicles, and Mr. Ozenich said that Waste Management trucks drove on these roads.

Councilor Needell noted that when the conditional use permit for Fitts Farm was granted, it was agreed it would have private roads. . There was discussion about why this happened.

VII. Adjournment

Councilor Grant MOVED to adjourn the meeting. Kevin Webb SECONDED the motion, and it PASSED unanimously 7-0.

Adjournment at 10:00 PM

W. Arthur Grant, Secretary