

D-R-A-F-T

**DURHAM PLANNING BOARD
WEDNESDAY, DECEMBER 14, 2005
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL
7:00 PM**

MEMBERS PRESENT: Chair Kelley; Arthur Grant; Richard Ozenich; Stephen Roberts; Nick Isaak; Kevin Webb (arrived late); Councilor Needell

ALTERNATES PRESENT: Councilor Carroll; Bill McGowan; Susan Fuller; Lorne Parnell

MEMBERS ABSENT:

I. Call to Order

II. Approval of Agenda

Arthur Grant MOVED to approve the Agenda as submitted. The motion was SECONDED By Councilor Needell, and PASSED unanimously 6-0.

(Kevin Webb hadn't arrived yet, and Chair Kelley had not yet appointed an alternate in his place)

III. Report of the Planner

- Mr. Campbell said he met with Doug Bencks recently, and had provided a memo on this meeting for Board members.
- Mr. Campbell said the Town Council had completed its deliberations on the revised Zoning Ordinance, and said the Planning Board would begin its discussions on Section B of the proposed revisions that evening. He said he would like to schedule the Board's public hearing on Section B for the January 11th meeting. He said there were a minimal amount of changes to Sections C-G of the proposed Zoning Ordinance changes, and said hopefully the public hearing on them could be scheduled for the same meeting, and everything could then be sent back to the Town Council.
- Mr. Campbell said the University had asked him to sit on a committee that would be selecting a proposal for the Highland House.
- Mr. Campbell provided said that at the December 8th Traffic Safety Committee, there had been discussion about a request to restructure the triangle at Wednesday Hill Road. He said the committee also received an update on the Main Street Project, and had tabled discussion on the issue of parking at 16 Strafford Ave.
- Mr. Campbell noted that the previous evening, the ZBA had reversed its previous decision concerning the 10 Madbury Road variance application. He provided details on this, and said he would keep the Board informed if there was anything further from the applicants.

- IV. **Public Hearing on a Conditional Use Permit Application** submitted by Michael S. Davis, Sumner Properties, LLC, Durham, New Hampshire. The application is to change the conditional use of the property from fraternity/sorority use to general apartment use, and to change from a five-apartment with one common room building to a six-apartment building. The property is shown on Tax Map 2, Lot 8-13, located at 33 Madbury Road, and is within the Residential A Zoning District.

Mr. Campbell explained that this application had come before the Planning Board in 2004 and was accepted by the Board at that time, but the applicant had then asked for a postponement. He said the Town Attorney had suggested that the Board hold another public hearing on the application, and then could continue its deliberations on it. He said the draft Findings of Fact and Conditions of Approval had been developed, so the Board could conceivably make a decision on the application that evening.

Councilor Needell said that since the original application had been filed, the new Ordinance had been posted. He asked if there were any changes or additional requirements that had to be met because of this.

Mr. Campbell said that some of the Ordinance changes had already been posted in 2004. He said that under the new Zoning Ordinance, the property would be part of a new district, the Professional Office District, which allowed this use as a conditional use. He noted that the property had originally been an apartment house, was changed to a fraternity, and was now being changed back into an apartment house.

Councilor Needell asked which Ordinance applied. There was detailed discussion about this.

Mr. Campbell said the proposed Ordinance changes before the Council wouldn't change this application.

Nick Isaak MOVED to open the public hearing on a Conditional Use Permit Application submitted by Michael S. Davis, Sumner Properties, LLC, Durham, New Hampshire. The application is to change the conditional use of the property from fraternity/sorority use to general apartment use, and to change from a five-apartment with one common room building to a six-apartment building. The motion was SECONDED By Arthur Grant, and PASSED unanimously 6-0.

(Kevin Webb hadn't arrived yet, and Chair Kelley had not yet appointed an alternate in his place)

Mr. Davis said the property had been an apartment building prior to 1999. He provided details on this history of the property, and how the house had previously been changed from an apartment building to a fraternity house. He provided details on the issues surrounding his original conditional use permit application, and the reasons for tabling the application for a period of time, which centered on the fact that he had just signed a lease with the fraternity at the time.

Mr. Campbell asked Mr. Davis to describe the current situation with the property.

Mr. Davis said he was trying to bring the property back to six apartments, and said there would be plenty of parking – 12 spots for 6 apartments. He noted that Mr. Johnson had wanted him to put a new deck on the building, and said this work was being done.

Chair Kelley noted that one of the conditions of approval to met subsequent to the signature of approval on the final floor plan was that the dumpster on the site would be enclosed.

Mr. Davis said this had been taken care of.

Mr. Campbell noted that each apartment in the building would have its own lease.

Councilor Carroll asked if the fraternity TEK was still in the building.

Mr. Davis said it was not, and provided details on fraternities that had subsequently occupied the house, including the most recent fraternity in the building.

Councilor Needell asked if there would be fraternity members living in the apartment building.

Mr. Davis said some members of the most recent fraternity in the building would be living there, but said there would also be non-fraternity members living there.

Councilor Needell noted that each apartment unit would be a dwelling unit and would house 2 people, and asked if this would increase the number of people living in the building.

Mr. Davis said yes, noting the fraternity's common room had been eliminated, which meant two more people could occupy that space which would become an apartment.

Mrs. Harris asked what oversight there would be in terms of the occupants of the apartment building, noting that many times, students brought in other individuals who would not be on lease.

Chair Kelly noted that one of the conditions of approval was that there would be a maximum of 6 units and 12 residents.

There was discussion on the enforcement process. Mrs. Harris asked if the Town would have access to observe and enforce the conditions on the property.

Mr. Davis said he had no problem with Mr. Johnson inspecting the property.

Mr. Campbell noted that the 3rd condition said the applicant/owner agreed to inspection of each unit once per year by the Code Officer and Fire Marshall.

Councilor Needell said he assumed that if there was a complaint, and there was reason to suspect more people were living there, the Code Enforcement Officer had the ability to investigate that.

Councilor Carroll noted Mr. Davis's intention to be a good landlord and to have people managing the property. She said it was a shared responsibility, involving more than just the Town, and said it seemed Mr. Davis was willing to accept that responsibility.

Mr. Davis spoke about another property he owned in Durham, where the Town had told him he could have only seven units instead of nine. He said that since that time, those two extra units had remained empty.

There were no members of the public who spoke for or against the application.

Arthur Grant MOVED to close the public hearing. The motion was SECONDED by Richard Ozenich, and PASSED unanimously 6-0.

(Kevin Webb hadn't arrived yet, and Chair Kelley had not yet appointed an alternate in his place)

Chair Kelley asked if it was the will of the Planning Board to deliberate on the application that evening. Board members agreed the deliberation should take place that evening.

Councilor Needell asked Mr. Campbell to summarize the application, noting there had previously been a lot of comments and discussion on it.

Mr. Campbell said the major concern had been that if the application were approved, there would be a period of time between this approval and the time when it went into effect, in June of 2006. He said the postponement had taken care of this concern. Mr. Campbell also said Code Enforcement Officer Johnson had recommended a number of things that needed to be included in the Findings of Fact and Conditions of Approval, and said these had now been incorporated.

Mr. Campbell said he didn't see anything in the new Ordinance that came into play. He noted that this use would be permitted if the new Zoning Ordinance was in effect, and would simply be considered an adaptive reuse. But he said that currently, the property was going from one nonconforming use to another.

Councilor Needell noted that the Minutes from the August 11, 2004 Board meeting discussed the importance of making sure that all of the conditional use criteria were met, and that the proposed use was less deleterious than the present use.

Mr. Campbell said there had previously been a letter from Chief Kurz, which said he would rather see a fraternity in this building than apartments. Mr. Campbell said Chief Kurz had later reversed this opinion because of his relationship with Mr. Davis. He said this had been one of the issues with the application that had previously been considered, - whether the proposed use would be more or less deleterious than before. Mr. Campbell said the Board could discuss this issue more if necessary.

Councilor Needell said he wanted to be sure that the Board felt this application had been fully discussed. He said it seemed that the proposed use would be less deleterious than the previous use.

Mr. McGowan asked if the extra room could be used as an apartment without requiring any new construction.

Mr. Davis said the rooms in the building were largely interchangeable, so this construction wasn't needed.

Councilor Harris said she assumed the property met the square footage requirements for apartments, and that the conversion to apartments guaranteed that the square footage per occupant was greater than would be allowed if there were a fraternity there. She noted that the way the building was laid out, it was essentially already functioning as an apartment building.

Mr. Campbell said the building had fit more people as a fraternity because individual kitchens, bathrooms, etc. didn't exist.

Mr. Roberts asked Mr. Davis if the Conditions of Approval to be met subsequent were acceptable to him. He said he personally felt that the conditions took care of potential issues in a way that protected the neighborhood and townspeople.

Mr. Davis said they were acceptable to him.

Mr. Campbell said there were a few additions to the Conditions of Approval to be met subsequent, in addition to those developed for the original application, but he said Mr. Davis had seen them.

Chair Kelley said perhaps there should be something in the Findings of Fact that recognized the period of time that had gone by since the application was first presented to the Planning Board, and that while the application didn't have to be submitted, Mr. Davis had paid a fee for the application to be heard again.

Mr. Grant said the Findings of Fact should include the August 10, 2004 site visit.

Chair Kelley said the Findings of Fact should mention the previous and present public hearings, and that no members of the public spoke for or against the application at either of them.

Mr. Campbell noted the addition of a 6th condition to be met subsequent, that each apartment would be numbered, and a 7th condition to be met subsequent, that the apartment manager must be an active participant with the Town in the management of the apartments. He provided details on this.

Chair Kelley received clarification that these items had been gone over with Mr. Davis.

Mr. Davis said a lot of these conditions were there in case he decided to sell the property, so the Town would be protected.

Mr. Campbell said the condition concerning the dumpster had already been met, so could be removed from the Conditions of Approval.

Mr. Campbell said that concerning condition #5 to be met subsequent, someone had discussed changing the word "may" to "shall". He said if there were a violation, Code Enforcement Officer Johnson would deal with the property owner, and said the concern was that if the word "will" was used, Mr. Johnson would lose the ability to work things out with the property owners.

Councilor Needell noted Condition #6 concerning parking spaces, and asked if this was in accord with the Zoning Ordinance. Mr. Campbell said it was.

After some discussion, it was clarified that there would be no change in the amount of parking on the property.

Arthur Grant MOVED to approve the Conditional Use Permit Application submitted by Michael S. Davis, Sumner Properties, LLC, Durham, New Hampshire. The application is to change the conditional use of the property from fraternity/sorority use to general apartment use, and to change from a five-apartment with one common room building to a six-apartment building; the approval to be based on the Findings of Fact and Conditions of Approval, as amended, dated Dec 14, 2005. Steve Roberts SECONDED the motion.

Councilor Needell asked if the Board needed to go through the conditional use criteria.

Mr. Campbell said the Board didn't have to go through these criteria, but he said it was important that the Board was comfortable that the criteria had been met.

Mr. Roberts noting that the idea of a checklist and the conditional use process were opposing concepts. He said the conditional use process provided some latitude, in order to accomplish goals concerning a particular use without having to go through a checklist. There was discussion about this with Councilor Needell.

Chair Kelley said alternate Susan Fuller would be a voting member in place of Mr. Webb.

Councilor Needell said in looking through the conditional use criteria, he didn't see anything that stood out. He said there would be roughly the same use of the property.

The motion PASSED unanimously 7-0.

- V. **Public Hearing Presentation** by Appledore Engineering Inc., Portsmouth, New Hampshire, on behalf of the Oyster River School District to renovate the existing soccer and softball field at the Oyster River Middle School, to install an underground irrigation system and to pave the existing gravel parking spaces adjacent to the rear bus drop off area of the school.

Mr. Roberts MOVED to open the public hearing on a presentation by Appledore Engineering Inc., Portsmouth, New Hampshire, on behalf of the Oyster River School District to renovate the existing soccer and softball field at the Oyster River Middle School, to install an underground irrigation system and to pave the existing gravel parking spaces adjacent to the rear bus drop off area of the school Nick Isaak SECONDED the motion, and it PASSED unanimously 7-0.

Joe _____ of Appledore Engineering said the purpose of this project was to rehabilitate the existing soccer and softball field to improve the playing surface and under drainage. He said as part of the field improvements, an underground irrigation system would be installed, and also said the project involved paving of existing gravel parking spaces adjacent to the rear bus drop off area of the school.

Mr. Campbell noted that the Oyster River Middle School fell under RSA 674:54, and said the Board's role in this process was therefore to provide feedback on the project.

The engineer from Appledore provided technical details on the various aspects of the project, including a plan for snow storage that involved catch basins for snow melt, and a plan to drill a well out in the field to provide water for irrigation of that field. He said a shed was proposed for storage of well equipment and possibly athletic equipment, and also said there would be a scoreboard.

Mr. Roberts asked if there was a fence on the roadside. He noted he had used the field in the past as a soccer coach. It was noted that a fence had been there for about five years, and that the fence line would not change as part of this project.

There was discussion about the fact that currently, parking occurred on the field itself, and about proposed parking for the field.

Mr. Grant said that the previous year, a group of parents had sought additional parking spaces for the Middle School on Dennison Avenue. He asked if the parking for the field would solve that problem.

The representative from the Middle School said not really, and provided details on this. He also noted that 4 more spaces had been designated for the School on Dennison Ave.

Mrs. Harris asked if people played in the paved area near the orange building, and told that they did, she said it seemed inappropriate to have a line of cars dividing the part asphalt and part grass playground.

Councilor Needell asked if there would be any wetland impacts from the project, and was told there would not be.

Chair Kelley said it looked like the wetlands were located about 80 feet from the limit of disturbance

Councilor Carroll said this was an environmentally sensitive area, and asked if the asphalt would be impervious or instead would be porous in order to allow infiltration.

The engineer from Appledore Engineering said this issue wasn't looked at as part of this project.

Councilor Carroll said there was a catch basin, and asked where the water would go.

The engineer said the water was flowing to Beard's Creek. He said what was proposed was regular cleanout of the catch basin.

Councilor Carroll asked what chemicals had traditionally been put on the fields that might run off. There was discussion about this.

Chair Kelley said one would expect a high pollutant load in the snow storage area, and asked if any special precautions had been taken for this catch basin.

The engineer said the plan was to contain the runoff, and he provided details on this. He noted that presently, the runoff flowed across the field and into Beards Creek, and said the situation after the project was completed would be better than it presently was.

Chair Kelley said he might disagree with that, noting that the large expanse of grass in the field was currently a nice buffer strip for Beards Creek. He also said that given the high degree of traffic in this area of Town daily, there should be hoods on the outlet pipes, to prevent oil from getting into Beards Creek and eventually the Oyster River.

Mr. Grant said he had noticed a hesitance about the idea of using porous material, and said why not use it here.

The engineer said that porous material was 2-3 times more expensive than impervious material. He also described the difficulty of maintaining a mixed pavement area so that the porous material remained porous. There was discussion about this.

There was discussion about providing marking for the parking spaces, and how this would be an improvement over the current parking situation at the school.

Mr. Roberts said that unfortunately, there was now a very intensive use of the space the Middle School was located on, so that there was no longer an ideal playground area. He said growth had taken that away.

There was discussion on the fencing of the playground.

Councilor Needell received clarification that the fields would still be used as a play space for Middle School students when the project was completed.

Chair Kelley asked a number of questions on the project. He asked about the fill that was to be brought in, and also asked those involved with the project to consider some kind of gravel entrance to the property in order to minimize carrying sediment out onto the street. He also asked about the stormwater system as it related to this.

There was detailed discussion about how much soil would be removed from the field, and how much fill would be brought in. There was also discussion about the idea of rebuilding the entrance to the property.

Chair Kelley asked what time of year the work would be done, what the hours of operation would be, and the location of drop off points for materials for the project. He asked what the slope of the field would be once work was completed

Mr. McGowan asked if there was a limit as to how big the well storage shed could be.

The engineer said this would probably require a building permit, and said it would also depend on what the School decided to use for a shed. There was discussion on this.

Mr. Grant asked if Mr. Johnson had provided any input on the irrigation plan.

The engineer said he was sure Mr. Johnson would be looking at it. He noted the purpose of the well was strictly to service the irrigation system.

Councilor Carroll asked if the irrigation system would be set up on a timer, and the engineer said a rain sensor would be incorporated into the system.

Chair Kelley received clarification that the irrigation system hadn't been designed yet, and that a performance spec was that it would be designed and installed.

Councilor Carroll received clarification that this project had been approved the previous March on a warrant article. She asked how much the project would cost, and was told by the representative from the Middle School that it would cost \$400,000.

Councilor Needell asked if this area would be used as an athletic field for anything other than the Middle School.

The representative from the Middle School said that over the long term, the field was to be used specifically for the Middle School, but said the High School might be using it in the short term.

Mr. Grant noted that the Town was listed as an abutter, and Mr. Campbell said this was because the Town owned Wildlife Sanctuary was located next to the School.

Chair Kelley said there was a drainage pipe coming out of catch basin 3670, heading due south toward sewer manhole 3662, but said it did not connect to this sewer manhole.

The representatives from Appledore said this would be looked at and wouldn't be left to the contractor to figure out.

Chair Kelley asked if the School District needed to have access to the well house, noting the tight conditions in the area where the well would go. There was discussion on this, and Chair Kelley asked additional questions on when the well would be dug and how deep it would be.

Chair Kelley asked if erosion control measures would be needed in the northwest quadrant, noting that baseball hoops would be located there.

The engineer said a silt fence would be continued around the backside of the building to address possible erosion problems.

Chair Kelley said there would be a significant number of trucks coming in and out of the property as part of this project, and suggested that the condition they were in when they came onto and off of Town roads should be taken into consideration.

Chair Kelley suggested that this project might be could place to use infrared pavement treatment match joints.

Mr. Webb arrived at the meeting.

Mr. Webb noted that when he had been a Planning Board representative to the Conservation Commission, there had been discussion about the dredge spoils from Mill Pond being used for this project. He asked if this was still under discussion,

There was discussion about this, and also about the idea of taking materials to be removed from the site to the Town's gravel pit.

Mr. Grant spoke about the traffic conditions on Madbury Road, and said this area was not particularly suited to truck traffic, noting among other things that there were a lot of students walking in the area. He suggested that it therefore might be better if the project was done in the summertime.

Mr. Webb suggested an alternated route that might be used for the truck traffic, and provided details on this. It was noted that this same route was used for truck traffic when the High School was being worked on.

Chair Kelley said it would benefit the School District and the residents of Durham if there were a discussion on the issue of the route to be used by trucks as part of this project.

- I. **Public Hearing Presentation** by T.F. Bernier Inc., Concord, New Hampshire, on behalf of the University of New Hampshire to subdivide the "Highland House" property located at 86 Bennett Road into two lots. The smaller lot containing the farmhouse and adjacent outbuildings will be sold. The remaining land will be retained by the University.

(The applicant has requested that this item be tabled.)

Chair Kelley asked Mr. Campbell why this Item had been tabled, and Mr. Campbell provided details on this. There was some discussion by Board members.

II. **Discussion on Zoning Ordinance Amendment Part B remanded by Town Council**

Mr. Campbell said the Town Council had completed its deliberations on Section B of the proposed changes to the Zoning Ordinance, and had remanded this back to the Planning Board. He discussed the memo provided to Board members which summarized the concerns of the Council with regard to Section B, under three categories: 1) Major Review areas, which were some things the Board really needed to take a look at; 2) Minor Edits or Proposed Changes; and 3) Other Areas that Need to be Considered.

He provided details on the process he thought the Board should go through in addressing the Council's concerns.

Mr. Grant said Board members were eager to get the Ordinance back to the Council, and adopted, and said he didn't look forward to this large Board trying to dig up all of the history on why various things were or were not in the Ordinance. He asked if it would be unreasonable to ask Mr. Campbell and Mr. Eyerman to provide the Board with a revised draft of Section B, incorporating the changes the Council had suggested, which the Board could then review. He said if there were further concerns about rewording the Ordinance, the Board could work from that draft.

Councilor Needell said the Board needed to provide some explanation of what was intended concerning the items listed in Section 1 of the memo. He noted that he had told the Council that it should not be asking the Planning Board to revisit aspects of Section B and essentially do them over.

Mr. Campbell said he wanted to go over the Items in Section 1- Major Review Areas. He noted concerning A. Prohibited Uses, that he and Mr. Eyerman would remove all of the uses with complete rows of X's next to them (Prohibited Uses) that were not required to be there by State statute.

Chair Kelley asked if any Board members objected to this.

Mr. Webb said his only concern was that slick lawyers would try to shoehorn their use into one of the permitted uses. He said he wanted to be very certain that the definitions of permitted uses were unequivocal, and said this should be reviewed.

Mr. Campbell said he thought they had all done a good job concerning this.

Councilor Needell asked if a use was removed from the Table of Uses, this meant the definition was also removed.

Mr. Campbell said not necessarily, and provided details on why the definition should remain.

Councilor Needell said it seemed odd to have a hanging definition, with no text in the Ordinance to go along with it.

Chair Kelley said he could see the value of having a definition in the Ordinance without a use in the Table of Uses to go along with it.

Mr. Grant noted that there were many definitions in Ordinance for uses that weren't allowed, and he said they should stay.

Councilor Needell asked if there a place in the Ordinance for a sentence to drive home the point more clearly that this was a permissive Zoning Ordinance. There was discussion about this.

Mr. Grant said that concerning Section 1-B – Treatment of Drive-Through Facilities, he believed Mr. Campbell and Mr. Eyerman were aware of the Board's viewpoint, that it didn't want drive through restaurants, but never intended not to allow drive-through banks.

There was discussion on other possible drive-through retail businesses.

Mr. Campbell noted that some Council members didn't have a problem with retail drive through establishments, for example, pharmacies. But he had told the Council that he was pretty certain that the Planning Board wanted to allow only drive-up banks.

Mr. Grant said the primary reason for this was the traffic issue, stating that the downtown streets were not adapted for this.

It was determined that the consensus of the Board was to only allow drive-throughs for banks, and not for other retail businesses.

Chair Kelley said he saw the convenience of having a business like drive-through dry-cleaning, if the space for it existed. There was discussion on towns that allowed this.

Ms. Harris said although drive-through retail businesses might be a nice convenience, they might cause problems because of the breadth of businesses that might wind up doing this.

There was discussion on the idea of drive-through package stores.

Chair Kelley asked what was so different about allowing drive-through banks.

Ms. Harris said if drive-throughs were allowed for retail businesses as well as for banks, there would be a traffic congestion issue.

Chair Kelley said he didn't see that a bank created any more or less traffic than other businesses, noting that typically, he waited on longer lines for banks than at drive up pharmacies or drycleaners.

Councilor Carroll said the more that drive up services were expanded in Town, the more air quality issues there would be.

Chair Kelley said that was a good point.

Mr. Campbell noted three types of retail establishments were defined in the Ordinance, and he provided details on this.

Mr. Grant said if the Town considered allowing a drive-through for one business, it would have to consider it for other businesses as well.

Chair Kelley said he wouldn't support a blanket statement allowing retail drive-through facilities, however this was defined, but said he thought drive-throughs would work well for some businesses, not including convenience stores. But he said if it was the will of the Board not to pursue this matter, he didn't need to discuss it further.

Mr. Campbell provided details on how the Ordinance currently addressed this issue.

Mr. Webb suggested that for the time being, they could decide to allow only drive-through banks, and said if the Board then wanted to redefine this in the future, it could do so.

Councilor Needell said the Ordinance as presently written didn't allow drive-through banks. He also said if the line of X's for drive-throughs was going to be taken out, something would have to be put in for banks.

There was discussion about this. Mr. Campbell suggested that the way to handle this would be to remove the line in the Table of Uses for drive-throughs, and then to noted in the definitions that banks could have drive-throughs.

Mr. Roberts suggested that the Board could finish its discussion on this issue after Mr. Campbell had redrafted the Ordinance.

Concerning 1-C under Major Review Areas, Minimum Open Space/Maximum Impervious Surface Requirements, Mr. Campbell said the way this information had been presented in the Ordinance had caused a lot of confusion for the Council. He said he and Mr. Eyerman had agreed that this information needed to be in one place. He said the Council had also asked why these figures were in the Ordinance in the first place.

There was discussion about this.

Mr. Grant said he felt it was the open space requirement that should be in the Ordinance.

Mr. Campbell said the Board needed to explain why those particular percentages were in the Ordinance.

Councilor Needell said this was a major topic of discussion among some Councilors, which could result in their voting against the Zoning Ordinance. He said the fact that the percentages occurred in two different places in the Ordinance was a minor issue, and said the major issue was the percentage values themselves, and why they were what they were. He said the some Councilors were looking for some justification of the numbers that were included in the Ordinance.

Mr. Grant said he wasn't concerned if Councilors voted no on the Ordinance. He said the Council's discussion showed an absence of having studied the document, and also showed built in biases. He said the Planning Board had already compromised its views substantially, and it was time to get on with things.

Mr. Campbell said a concern of some Councilors was that if the Town was trying to follow through with tax stabilization and attract businesses to these new zones, and a proposed use could only cover 50% of a lot, businesses wouldn't come to Durham.

Mr. Grant said the Planning Board had had a lot of discussions on this, and had tried to set up standards that would result in attractive developments.

Mr. Campbell noted there were erosion and sedimentation issues involved, and also said that the Master Plan had specifically mentioned wanting to keep 15% impervious coverage of lots in watershed areas. He noted that the Ordinance currently allowed a greater percentage of impervious coverage than this. He said he wanted to be sure that the Board could give the Council a solid reason as to why it was important to keep the numbers the way they were.

Mr. Webb said the Planning Board was charged with following the Master Plan, as approved by the Town Council, in revising the Zoning Ordinance. He said the Board was implementing the will of the Town in 2000, and said if it was now the Council's opinion that it wanted to change this, it was it's political decision. He noted that the Planning Board was not a political body.

Councilor Carroll said there was a minority of Councilors that was concerned about this issue, but she said the Council as a whole felt that since the topic had been brought up, the Planning Board should simply give the Council its reasons for these open space/maximum impervious surface percentages in the Ordinance.

She noted that it was brought up at the Council meeting that these requirements reflected that this area was one of the entryways to Durham, and also that there were concerns about impacts of development on nearby waterways. She said she thought these would be sufficient justifications for the present requirements.

Mr. McGowan asked if these percentage requirements were established, how the Town could provide some flexibility if someone wanted to develop a property. It was noted that the ZBA existed to deal with this kind of situation.

Councilor Needell said an argument against the need for the strict open space/impervious surface requirements was that the existing setbacks provided enough protection. He said there had been no response to this argument.

He said it was noted at the Council meeting that the Master Plan was not the most consistent document, when it came to some things. He also said there had been discussion as to why the Planning Board hadn't implemented some parts of the Master Plan. He said it had been explained to the Council that it was never the intent of the Board to implement all of the Master Plan with the Zoning Rewrite, so omissions were to be expected.

Mr. Webb said the Board had tried its best to be consistent with the Master Plan.

Mr. Roberts explained that the reason why conditional use had been put in there was to allow flexibility in terms of aesthetics, so that well designed architecture as well as open space could serve as a beautiful introduction to the community.

Mr. Campbell noted the concept of low impact development, and said that with such a development, even if there were impervious areas on the site, the water used was captured and re-used. He said the Planning Board couldn't get at all of these ideas right now, but could in the future.

Mr. Grant said the point Mr. Roberts had made was an important one to convey to the Council. He said the Council had a lot of concerns about the number of conditional uses in the Ordinance, and noted he had previously been against this as well. But he said that Mr. Roberts had presented a lot of data on conditional use, including the fact that some of the most progressive communities used it. He said that was where the control was.

Councilor Needell said he didn't remember a discussion by the Council that there were too many conditional uses in the Ordinance.

Chair Kelley said he thought the ratios for impervious surfaces/open space were appropriate, except for those for the Professional Office District (50%/50%). He said this district was very small in size, and had a lot of small lots, so was restricted because of the need for off street parking.

Councilor Carroll noted that Mr. Eyerman had told the Council that by the time one added up the setbacks, close to 50% of the lot was used up anyway.

Mr. Campbell said a lot of the lots had buildings, and adaptive reuse could be done for some of them. But he said a key issue was that some properties already had off street parking, but some did not.

Councilor Needell noted he had pointed out to the Council that there were no increases to the impervious surface requirements in the new Ordinance, and that the change was that there were new Zoning Districts. He said this issue could therefore be revisited later.

Chair Kelley said he felt that when the Zoning Rewrite Committee had worked on the Zoning districts, the Central Business District had gotten the short end of the stick. He said he felt that the downtown area should grow as well, and said the only way was up Madbury Road.

Mr. Webb said the downtown area was not going anywhere, noting there were no new buildings or new businesses for the most part. He said the only new businesses were on campus.

Mr. Campbell said there were some downtown businesses that wanted to do some things, but they were waiting to see what happened with the Zoning Ordinance.

Mr. Webb asked if these businesses felt hampered by either the existing or proposed Ordinance.

Mr. Campbell said they felt hampered by the existing Ordinance, but not the proposed Ordinance, which allowed mixed-use development, with commercial on the first floor and apartments upstairs, which could provide a steady stream of income. He noted that the banks liked to see this.

Chair Kelley said that 50% open space/50% impervious surface was a hard ratio to make work on Madbury Road with its small lot sizes, noting that this was easier in the ORLI and Route 108 Districts, which had larger lot sizes.

Mr. Grant said that was part of the beauty of that street were the small houses buttressed by big fraternity houses.

Mrs. Harris said in allowing greater coverage of a lot, the Town might just get larger apartment buildings, and wouldn't necessarily get businesses.

Councilor Needell noted that under the new Ordinance, multi-unit apartment buildings couldn't be expanded.

There was discussion about this.

Chair Kelley said there was the issue of whether large apartment complexes were desired.

Councilor Needell said he didn't think this was the time to address this issue in a substantial way, but said there did need to be a response to the Council on the impervious surface/open space issue. He also noted that the wording on open space requirements was not consistent for all the districts.

There was additional discussion on the treatment of the open space/impervious cover requirements in the Ordinance, including discussion on what was actually meant by impervious, and whether open space land could still be an impervious surface.

The Board agreed to include the open space requirement in the Ordinance, and to remove the impervious surface requirement because it was redundant, given the inclusion of the open space requirement.

Chair Kelley said the Board needed to consider further planning for the downtown area at some point in the future.

Concerning 1-D of Major Review Areas –Treatment of Multi-Unit Housing, and the Council's request that multi-unit residences be allowed in the ORLI District, Mr. Grant said he was looking for protections for agricultural operations. He also said if this change was going to be made for the ORLI District, it also made sense for the Business Park. There was discussion about this.

Councilor Carroll noted that the ORLI District had some good agricultural land.

Mr. Grant said that was his whole issue, noted that the Tecce land had orchards and cornfields, and said the fields were sprayed and spread with manure 4 weeks in the spring, 4 weeks in the summer

and 4 weeks in the fall. He also noted that the University owned the biggest chunk of land in this district. He said if a student apartment building were put out there, there would be a protest before the Council to enforce controls on agricultural operations. He noted that under the current conditions out there, there were times when he couldn't open his windows.

Councilor Needell said one of the points made at the Council meeting was that if elderly housing was going to be allowed there, why not allow student housing as well. There was discussion on this.

Councilor Carroll said if these were good agricultural lands, there shouldn't be apartment buildings built on this land, especially when there was so little agricultural land in Town. She said an agricultural overlay was needed.

There was discussion on this.

Chair Kelley said that concerning the idea of allowing multi-family housing in the ORLI District, he didn't think the Council was asking the Board to do anything it hadn't already agreed on.

Mrs. Harris said that the idea with the ORLI District in recent years had been to extend the line for the District but to scale the uses back somewhat.

Mr. Roberts said he liked the idea of having Mr. Campbell reworking the Ordinance in these areas, and then having the Board respond to this.

Mr. Campbell asked Board members if there were items in section 2 of the memo – Minor Edits or Proposed Changes, they would like to discuss.

Councilor Needell noted item 2-S, and said that the Council had discussed what the difference was between single-family housing and elderly single-family housing. There was discussion on this by Board members, with Councilor Needell noting there was no definition of elderly single-family housing.

Mr. Campbell said the thinking of the Council was that the Ordinance defined various housing types, but not elderly housing types, and that this needed to be done.

Chair Kelley next went through some of the other proposed changes to the Table of Uses being recommended in section 2 of the memo.

Councilor Needell noted that one of the recommendations of the Council was to change elderly housing from a permitted use to a conditional use in the OR-108 District. He provided details on this.

The Board agreed it had no problems with this.

There was discussion on the issue of whether to allow small theatres in the Courthouse District as a conditional use. Councilor Harris said her concern was the parking issue, noting that most people would have to drive there. She said if theatres were instead put downtown, the parking was already there.

Ms. Fuller said she thought this use should be allowed as a conditional use, so that small theatres could possibly come in. There was discussion about this.

Councilor Carroll said she would be ok with this.

Mr. Roberts said this use should be allowed as a conditional use, and said common sense should prevail.

There was also discussion mini-storage warehouses. Councilor Needell noted that these were currently banned in Durham. He said a member of the Council had questioned whether they should be, when they could provide income to the Town, and was told that they were a relatively low value business.

Chair Kelley said this type of business could provide storage for students.

Mr. Isaak noted that if multi-story facilities were developed, they could be made to look like barns. There was additional discussion about this land use.

Chair Kelley asked Mr. Campbell if the Board had given him enough direction at that point on the various Ordinance issues.

Mrs. Harris asked if the Board had the option to change the borders of the ORLI District. She said the old reasoning for development of this district was to expand the size but to somewhat limit the uses allowed there. She said now, it was being said that the uses should be expanded, while the district was taking up all the agricultural land.

Chair Kelley noted that the Board had agreed not to put anything new before the Council now.

Mr. Grant said the rationale Mrs. Harris was giving was the same one he had originally argued, in terms of putting multi-unit housing in the ORLI District.

Mrs. Harris said it was too bad this issue was going around again.

Chair Kelley said the vote on ORLI had been unanimous at this table.

Councilor Carroll asked what steps would need to be taken to do an overlay for good agricultural lands in Durham. She said these were important soils for farmland, and if identified, should be kept for agriculture.

Mr. Campbell said this was the kind of thing to look into as part of further implementation strategies for the Master Plan. He also noted that the Planning Board would be embarking on updating the Master Plan, and said this could be something to take a look at, if it had not been covered already.

Councilor Carroll asked what the thinking of the Planning Board was as to whether this issue was high on the list of priorities.

Chair Kelley said he would need to review the Master Plan before saying anything in terms of priorities, but said this could be addressed at a future meeting.

III. Review By-laws/Rules of Procedure

There was discussion between Board members and Mr. Campbell as to whether these recently revised Bylaws were ready to go to public hearing.

Some minor issues with the Bylaws were discussed. Mr. Webb said that section VIII, Miscellaneous, under C. Correspondence needed to say something about email.

Mr. Parnell also noted there had been discussion on whether to accept written comments after a public hearing closed.

Mr. Campbell said this further review of the Bylaws would be put on the agenda for the January 10th Planning Board meeting.

IV. **Site Visits** – Visit sites of some recently approved subdivisions

This item was tabled until January.

V. **Other Business**

Old Business: **Implementation strategy for Master Plan**

This issue was tabled.

B. New Business:

Mr. Campbell told Board members that Scorpion's Bar and Grill, located in downtown Durham, would like to lease the space next to it that was formerly a pizza place, and to make the pizza place part of Scorpions. He provided details on what was proposed, and said the owner wanted to know whether the application could be reviewed by the Technical Review Committee, or instead should get a full review by the Planning Board.

Mr. Grant said he had no objection to it going to the Technical Review Committee, but said there needed to be the full involvement of the Chief of Police, Fire Chief, Public Works Director, and Coed Administrator in this process.

There was discussion on previous issues with this particular property.

Councilor Needell noted an Ordinance that was developed to address late night behavior problems in this area of Town, but was then tabled. He provided details on this, noting that one of the reasons the issue went away was that the pizza place didn't stay open that late. He asked if when Scorpio's bar closed, the pizza place would close, noting that there hadn't been problems in this area in recent months, and he was concerned that these might start up again.

Ms. Harris said this application therefore shouldn't be reviewed by the Technical Review Committee, and instead should be discussed by the full Planning Board.

Mr. Roberts agreed, stating that if the owner had to stand up before the community, the formal site plan review process protected him and the public. He said the purpose of site plan review wasn't to obstruct the process.

Arthur Grant MOVED to have a full Site Plan Review for the Scorpions application. Steve Roberts SECONDED the motion, and it PASSED 5-2, with Kevin Webb and Nick Isaak voting against it.

C. Next meeting of the Board: **January 11, 2006**

There was detailed discussion on how much could be accomplished concerning the Ordinance changes by this meeting.

XI. Approval of Minutes

October 12, 2005
October 26, 2005
November 9, 2005

Approval of the Minutes was postponed.

XII. Adjournment

Arthur Grant MOVED to adjourn the meeting. The motion was SECONDED by Richard Ozenich, and PASSED unanimously 7-0.

Adjournment at 10:30 pm

Victoria Parmele, Minutes taker