

D-R-A-F-T

DURHAM PLANNING BOARD WEDNESDAY, JANUARY 18, 2006 TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL 7:05 PM

MEMBERS PRESENT: Chair Richard Kelley; Arthur Grant; Richard Ozenich; Stephen Roberts; Councilor Gerald Needell; Kevin Webb (arrived at 7:50 pm)

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

MEMBERS ABSENT: Nick Isaak

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 7-0.

III. Report of the Planner

- Mr. Campbell provided details on some upcoming applications that would be coming before the Board. He said Board meetings would be getting very busy in the coming months.
- Mr. Campbell said Code Administrator Tom Johnson had met with the Mulligans concerning the 10 Madbury Road property. He said Mr. Mulligan was requesting that the building be made into apartments, which would be phased in over time. He said they would start by putting kitchens in.
- Mr. Campbell said that if developer Jack Farrell could get the necessary paperwork completed concerning the Spruce Wood Phase III application by February 1st, the Planning Board would have its acceptance meeting on the application before the end of February.
- Mr. Campbell said there was a large elderly housing application proposed off Madbury Road, which would be coming before the Planning Board soon.

Councilor Needell asked if the appeals period for the 10 Madbury Road application had passed, and Mr. Campbell said it had.

Councilor Needell asked that Mr. Campbell provide him with any paperwork that he perhaps had not received concerning the Spruce Wood application.

There was discussion that the age requirement had been lowered to 55 + at the meeting when the Spruce Wood development was last on the agenda.

- Mr. Campbell said he had been doing research as to when Northern Connector was taken off State's long range transportation plan, and said this appeared to have happened in 2003. He said he had made a motion when he was Chair of TAC that it be put back in as a regionally significant project, and said the vote at that time was unanimously in favor of this, except for Steve Pesci of UNH. Mr. Campbell said this had never happened, and said he would be talking about this with Tim Roach, the transportation planner at the Strafford Regional Planning Commission.

IV. Chair Kelley said the Planning Board's recent revisions, based on Town Council comments, to Section B – "Proposed Amendments to Chapter 175 Zoning to Implement the Master Plan Recommendations Dealing with the Non-Residential Zones" were the focus of the meeting

Mr. Campbell went through the proposed revisions to Section B. He noted that on page 1 under definitions, two definitions, bulk storage, and the commercial processing of wood, had been deleted because they were no longer referenced in the Table of Uses.

He said that on Page 2 under Commercial Agriculture, Animal Feedlot was added as a land use that was not permitted. He also noted that at the request of the Town Council, Elderly Housing had now been defined more specifically.

He said pages 2-3 now indicated additional districts - (PO, CH, C and CC) where no more than 3 unrelated occupants could occupy a dwelling. Councilor Carroll asked why the Central Business District was not listed there as well.

Mr. Campbell said that district had never had this requirement.

Mr. Campbell noted the revised definition for Light Manufacturing on Page 3.

It was noted that on Page 4, there was revised wording on the definitions of Mixed Use with Residential, and Mixed Use with Parking, in order to clarify things. There was detailed discussion on whether it was appropriate to use multi-unit or multi-family in these definitions, and in various other places in the Ordinance.

Councilor Needell said the word multi-family was more specific than multi-unit.

Chair Kelley noted that the Table of Uses used "multi-unit", so by changing the wording elsewhere to this, it would conform to the Table. There was additional discussion about this.

Chair Kelley said the definition of Motor Vehicle Sales and Service had been revised because of concern that it didn't cover all types of motorized vehicles.

Councilor Carroll pointed out that there was a definition for warehouse mini-storage on Page 5, yet this land use was not allowed in Durham.

Councilor Needell indicated that the Table of Uses still included this land use, but it was prohibited with the use of X's.

Chair Kelley said the Council specifically did not want uses like this left in the Table of Uses, with X's all the way across. There was discussion about this, and whether it was more appropriate to list warehouse mini-storage on page 31 as a land use that was specifically not allowed.

Mr. Roberts said the same question should be asked concerning "Excavation".

Chair Kelley and Mr. Campbell said this was a special case, and provided details on this.

Councilor Needell asked if the intention was that all the land uses that were not allowed were now supposed to be on the list on page 31. He said he realized that some land uses, like heliport, had to be on this list, but noted that cemeteries were not on it.

Chair Kelley said his concern was that the list on page 31 would grow. He asked whether the Council had had any comments on the list.

Councilor Needell said he didn't recall any discussion by the Council on it.

There was detailed discussion on what this list should include, and whether it would be confusing if it weren't all-inclusive.

Mr. McGowan said that "Warehouse" was in the Table of Uses, and suggested that if the Ordinance wasn't clear as to whether "Warehouse - Mini-storage" was allowed, this could be confusing.

Chair Kelley said that based on this possibility, he supported the idea of adding "Warehouse – Mini-storage to the list of specifically prohibited uses on page 31. Other Board members agreed with this.

There was detailed discussion on what the words "Recreational Vehicle facility" on Page 6 meant, and Mr. Campbell read the definition of this. It was clarified that this was defined in the Ordinance, but was prohibited.

Mr. Grant said he and Mr. Ozenich had thought it meant a repair facility for recreational vehicles.

Board members agreed that the name of a district and its abbreviation would be included together consistently throughout Section B.

It was noted that a sentence had been added on page 6 to the Purpose of the Central Business District "Mixed use development, in which the upper floors are used for residential purpose is encouraged". There was discussion that "...is encouraged...." was appropriate language. Chair Kelley said this was where the Board was saying that as per the Master Plan, this was what it would like to see happen.

Mr. Webb arrived at the meeting at 7:50 pm.

It was noted that on Page 9, development standard #6 was changed to include storage areas as well as dumpsters, and that this change was also made in other places in Section B.

There was discussion that on Page 11, wording had been added concerning the purpose of the Professional Office District.

There was detailed discussion by the Board about language added on page 17 to #7, "Architectural Treatment of Canopies". There was also detailed discussion about the change of wording under #4 on page 19 from "existing character" to "existing appearance" of the structure. Board members agreed the appropriate word to use was "character".

Councilor Needell noted that the wording "as well as elderly housing" had been deleted from the Purpose statement on page 22.

Councilor Carroll said page 24 under the MUDOR District should say "multi-unit" instead of "multi-family" under A. She also said there was a contradiction in the Purpose statement for the ORLI District on page 27, and it was agreed that the last sentence in this paragraph should be removed.

There was discussion that "cemetery" should be added to the list of prohibited uses on page 31. Councilor Needell said his question still was whether anything taken off the Table of Uses that was a prohibited use should be on this list.

There was additional discussion on this. It was agreed that the Council could, if it wanted, decide to take some of these land uses off the list on page 31, which would be a non-substantive change.

There was discussion as to whether cemeteries were previously permitted in Town. Mr. Grant noted there were churches in Town that had relatively new cemeteries. He suggested this issue could be raised with the Town Attorney.

Councilor Needell asked if the Zoning Rewrite Committee had specifically decided not to allow cemeteries. Told that it did, he and others agreed this land use should be on the list of prohibited land uses on page 31.

Recess from 8:28- 8:33 pm

There was discussion about the fact that "Conservation Activities", which had been a conditional use in the Durham Business Park, had now been made into a permitted use, as a result of input from the Council.

Chair Kelley read from the Master Plan concerning the Durham Business Park. He also noted that it had been demonstrated that because of restrictions such as the shoreland setbacks, the development possibilities there were limited.

There was discussion about the idea of selling a portion of the Business Park to a conservation organization, such as the Audubon Society. Mr. Grant said this had been tried, but said the organization had only wanted the shoreland portion of the property.

Councilor Needell said the idea of having permitted uses for this district was odd, given the fact that it was so tightly controlled by the design guidelines that had been developed.

Chair Kelley noted that page 34 listed "Reuse of existing agricultural buildings" as a permitted use in the Durham Business Park, and questioned whether there was such a building there. There was discussion about this, and about the parcels of land that comprised this district.

Chair Kelley asked what argument was put forth by the Council concerning making conservation activities a permitted use at the Business Park. He said he thought it would make a great location for a business.

Mr. Roberts provided details on the thought process the Planning Board had gone through with the Powerspan application. He said the concept of development of the Business Park was good, and Mr. Grant agreed that it remained a viable idea. Mr. Roberts said he would hate to put something in the way of that balanced concept for development of the Business Park District.

Mr. Campbell said there was discussion of the Business Park in the Master Plan, and the concept Chair Kelley had mentioned was part of this discussion.

Mr. Webb said the notion that the Board would make conservation uses a conditional use in such a beautiful spot seemed absurd, and said this should be a permitted use. He said that realistically, whatever use happened out there, there would be some kind of conservation activities going on, for various reasons.

Chair Kelley said the concern he had was that down the road, a conservation group would offer to buy the land. There was discussion on the value of the property, the constraints on the property that limited its development, and the likely cost of developing it. Chair Kelley said the Town would be hard pressed to make back its investment in the Durham Business Park if it became conservation land, and said if it were commercial, the pay back would be more likely.

Councilor Needell suggested that the fiscal impact of a proposed project would be the major topic of discussion, if there were a conditional use application for a development in this District.

Mr. Roberts provided details on why there were now some more permitted uses in the Table of Uses than there previous had been, and consequently fewer conditional uses.

Chair Kelley said he would be reluctant to change conservation activities from a conditional use to a permitted use, because the Town would be potentially selling itself short on that piece of land.

Councilor Needell asked if this kind of issue could be addressed as part of the site plan review process, and if the Board could reject an application based on the results of this kind of analysis. There was discussion about this.

After further discussion, the Board agreed to leave conservation activities as a permitted use in the Durham Business Park.

There was discussion that elderly housing uses were previously permitted uses in the ORLI District, but were now conditional uses. Mr. Campbell noted that the Council had said this should be changed.

Mr. Roberts pointed out that eldercare facilities were conditional uses in the RA and RB districts because they were essentially industrial facilities.

Councilor Carroll said that based on the Table of Uses, there could be elderly housing as well as student multiunit housing in the ORLI District. There was discussion about the possibility that these uses could conflict.

There was discussion on two use categories on page 44, “Mixed Use with residential (office/retail down, multi-unit residential up)” and Mixed Use with parking (parking and office/retail)”. Councilor Needell explained that the original wording of these was awkward, so it had been clarified. He said there had been no objection by the Council to the definition itself.

Mr. Webb noted that on page 42, the Table of Uses indicated that “financial institutions” were not permitted in the Coe’s Corner District, yet on page 45, the Table indicated that “drive through facilities accessory to a financial institution” were allowed as a conditional use in this same district. He also asked why a financial institution couldn’t be located in the Coe’s Corner District.

There was discussion that the two uses for the Coe’s Corner District needed to be made consistent, and there was also discussion about the appropriate way to do this.

Councilor Carroll said she would prefer that because this district was a gateway to Town, financial institutions should not be allowed in the Coe’s Corner District as a conditional use. She provided details on this.

Mr. Webb said it seemed that banks fit in with other uses allowed in this district. There was discussion about this, and about potential traffic issues there.

Councilor Needell noted that over the months, no one had questioned the fact that this was not a permitted use, and said he therefore felt it should be left as it was.

After additional discussion on this issue, the vote of the Board was 4-3 that financial institutions should remain a prohibited use in the Coe’s Corner District.

Mr. Campbell noted that this wasn’t even something the Council had wanted the Planning Board to look at.

Board members agreed that on page 45, under “drive through facilities accessory to a financial institution”, an X should be placed there for the Coe’s Corner District.

There was discussion about the Council’s discussion on impervious surface ratios. Councilor Needell noted that this would now only be addressed in the dimensional table, but he said the Council also had questions about the reasoning for some of the proposed ratios. He said he told the Council he felt it was inappropriate for the Board to review this whole issue at this point in the process.

Mr. Campbell said the changes made as a result of Council comments were to refer to the Master Plan goals to protect the character of the land, protect groundwater, and minimize erosion and sedimentation, as justification for the ratios. He noted that the Master Plan said that some of the watershed areas should have impervious surface ratios no greater than 15%, but the Ordinance was actually allowing more than this, for the Coe's Corner, OR-108, MUDOR, ORLI and the Durham Business Park Districts.

Councilor Needell said the main thing was that this reasoning needed to be explained to the Council.

Chair Kelley said he could support all the impervious surface ratios except the one for Professional Office, and said he would recommend changing it from 50% to 80% for that District. He said the only place the Downtown area could move was up Madbury Road, or over the hill toward the Town Hall. He noted that the ZBA had recently given a variance for a commercial use in that district, to allow a greater ratio than what the Ordinance allowed.

Mr. Webb said he agreed with the 80% impervious surface ratio for the Professional Office district, and would also propose boosting the Coe's Corner district to a 50% impervious surface ratio.

Chair Kelley said Councilor Carroll's earlier comments that the Coe's Corner district was a gateway to the community were worth considering.

Mr. Webb said these were pretty small lots, so that if they needed parking, this didn't leave much land left over.

Councilor Carroll suggested that people could be more creative about parking, such as using pervious surfaces, in recognition of the Ordinance requirements. She said the Town shouldn't be too quick to allow these areas to be paved over.

Chair Kelley noted that development on this site would not be allowed to increase post construction flows. He said water had to be treated on site, so an owner either needed to use an innovative paving technique, or some sort of on site detention structure.

Mr. Roberts said he supported what Chair Kelley had said about the impervious surface ratio for the Professional Office District, because otherwise, the properties were being made essentially unusable. He said there could be creative use of architecture and engineering design to make this work.

Chair Kelley noted that when the Board was done with the present Ordinance revisions, it would be revisiting the parking regulations, so there would be ample opportunity to scrutinize the requirements in them, and determine how much parking was actually needed for various uses. There was discussion about this.

Chair Kelley asked if there had been discussion by the Council about the Professional Office impervious surface ratio.

Councilor Needell said there had been discussion about all of these numbers, but the consensus had been not to change them now.

Chair Kelley said he was fine leaving the Professional Office district impervious surface ratio at 50% for the time being, but said he would bring this issue up again after the Ordinance was approved.

Councilor Needell said a point he had made to the Council was that the impervious surface ratios for these districts had not actually changed from the ratios for the previously delineated districts. He said he wouldn't be surprised if some Councilors didn't vote for the Ordinance based on these numbers.

There was discussion on what to say to the Town Council concerning this issue. Mr. Campbell suggested the Board could see what happened when applications came before it.

Councilor Carroll noted the wording on page 50 under 175-129 E., that vending machines shall not be permitted on the exterior surface of any building or structure "...except within the C and CC Districts."

There was detailed discussion of whether the Board actually wanted to permit vending machines in the C and CC districts.

Councilor Needell noted that the only change that had been made to 175-129 was to eliminate the Limited Business District wording. He said the substance of the wording was not a matter of discussion as part of the Zoning Rewrite process.

Mr. Campbell said the Board would be changing the substance of this section in the future, but hadn't gotten to that point yet. He noted that addressing this now would require a whole new set of hearings.

There was additional discussion on the wording concerning vending machines in this section. Chair Kelley said the decision needed to be made whether to address this issue now or later.

Mr. Campbell asked Councilor Needell if the Council would have a problem the Board changing the wording now.

Councilor Needell said he thought some of the owner of properties would have a problem with this.

Mr. Campbell noted that some of these properties were grandfathered concerning having vending machines.

Councilor Carroll said this was the first she had seen this, but because it was now before the Board, it should be addressed.

Mr. Campbell said he would therefore take out the wording "...except within the C and CC Districts."

The Planning Board voted 6-1 in favor of making this change.

Chair Kelley said he was comfortable with this, because there had been opportunity for public comment on this at two public hearings.

There was discussion on the table on page 51 concerning the number of snipe signs that were allowed in various districts.

Arthur Grant MOVED to refer the “Proposed Amendments to Chapter 175 Zoning to Implement the Master Plan Recommendations Dealing with the Non-Residential Zones, as revised on January 18th, to public hearing on Feb 6th, 2006. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.

Arthur Grant MOVED to adjourn the meeting.

Mr. Ozenich asked if anything had been done concerning the issue of public roads in elderly housing developments.

Mr. Campbell noting that the Ordinance wouldn't require this for the new elderly housing development, but that the developers wanted this.

There was discussion about this issue, and Mr. Campbell said further discussion on it would be part of the review of the Town's road regulations.

Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.

Adjournment at 10:00 pm

W. Arthur Grant, Secretary