

# **D-R-A-F-T**

**DURHAM PLANNING BOARD  
WEDNESDAY, MAY 24, 2006  
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL  
7:00 PM**

**MEMBERS PRESENT:** Chair Kelley; Arthur Grant; Kevin Webb; Stephen Roberts; Bill McGowan; Councilor Needell

**ALTERNATES PRESENT:** Susan Fuller; Lorne Parnell

**MEMBERS ABSENT:** Richard Ozenich; Councilor Carroll

## **I. Call to Order**

Chair Kelley said Ms. Fuller would be filling in for Mr. Ozenich.

## **II. Approval of Agenda**

*Kevin Webb MOVED to approve the Agenda as submitted. The motion was SECONDED by Steve Roberts, and PASSED unanimously 7-0.*

## **III. Report of the Planner**

- Mr. Campbell said the Town Council had held its work session on Housing issues, and he noted that a new subcommittee had been established to consider multi-family housing issues especially at the request of the Durham Landlord Association. He noted that he and a member of the Planning Board would participate on this subcommittee, and said he would update the Board on this when he knew more.
- He said he had met with the Council concerning the Design Guidelines for the Business Park. He said they had recommended some changes to the guidelines that would simplify them, and said a paired down version of them was being developed.

Mr. Webb asked if the general idea was to loosen the Design Guidelines up a bit, and Mr. Campbell said yes.

- Mr. Campbell said the Town had received a grant from the NH Estuaries Program, which would provide technical assistance with stormwater policies and education. He said it would help in updating the site plan review and subdivision regulations concerning stormwater management, and would assist in developing public education on stormwater issues. He also said it would also help with some GIS impervious surface buildout scenarios.

Chair Kelley asked where they were in the permit cycle, and Mr. Campbell said it was year 3. Chair Kelley noted the Town didn't have to do too much yet, and asked if they were at the step where stormwater policies had to be implemented.

Mr. Campbell said no, but said the next round would get into this. He noted that a draft stormwater ordinance had been developed for Durham, and would have to be adopted at some point.

- Mr. Campbell said Mike Libby of Libby's Bar and Grill had recently passed away, and said the Town had sent its condolences.

#### **IV. Public Hearing on amendments to the Historic Overlay District, Article XVII, Sections 175-90 through 175-98 of the Durham Zoning Ordinance.**

Mr. Campbell explained that the Board had forwarded to the Town Council an updated Ordinance in February, which was then sent back for revisions. He said since that time there had been several meetings with some members of the HDC and Council to work out details on this. He said the Board had forwarded for public hearing at its last meeting.

***Arthur Grant MOVED to open the public hearing on the Historic Overlay District, Article XVII, Sections 175-90 through 175-98 of the Durham Zoning Ordinance. The motion was SECONDED by Councilor Needell, and PASSED unanimously 7-0.***

Chair Kelley asked if any members of the public wished to speak.

**Bill Hall, Durham** said that although it might not be the appropriate time to discuss this, - he was a resident and one of the only owners of a house in the Church Hill District, and asked that the Board keep the front yard setback of 10-15 ft. He said it had now been reduced to a 0 ft. setback, and said this was a grievous mistake. He said he felt the setback for Nicks Bricks was about right. He noted there would be discussion about increasing business activity in that district, and said he didn't feel the sidewalks were adequate now, and didn't want to exacerbate things by having 0 ft. setbacks.

**Cathy Leach, 14 Fairchild Drive** said she had helped to make the proposed amendments to the Ordinance, and said a change she was supposed to make to the document but had not done was to make the section on the Heritage Commission into its own section, Section 175-91 C. She provided details on how this would work in the document, and said it would not be a substantive change.

There was discussion about this.

***Arthur Grant MOVED to close the public hearing. Bill McGowan SECONDED the motion, and it PASSED unanimously 7-0.***

Chair Kelley asked if Board members had any issues with the proposed amendments to the Ordinance.

Mr. Webb said he supported the changes recommended by Ms. Leach, and also said he was not sure this was the proper forum for Mr. Hall's comments, which had more to do with the underlying Church Hill District.

Mr. Campbell said this issue was on the Planning Board's "hit list" to address in the near future.

***Kevin Webb MOVED to approve the amendments to the Historic Overlay District, Article XVII, Sections 175-90 through 175-98 of the Durham Zoning Ordinance, with the recommended change suggested by Cathy Leach, and to move it to the Town Council for their action. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.***

**V. Public Hearing on amendments to the Shoreland Protection Overlay District, Article XIV, Section 175-72(A)(4).**

Mr. Campbell said the change had to do with some uses under **Article XIV, Section 175-72(A)(4)** of the Shoreland Protection Overlay District provisions - "The construction or expansion of a principal building or structure". He said the proposed amendment was to replace the word "principal" with the words "nonresidential or multiunit".

***Kevin Webb MOVED to open the public hearing. The motion was SECONDED by Steve Roberts, and it PASSED unanimously 7-0.***

There were no public comments.

***Kevin Webb MOVED to close the public hearing. The motion was SECONDED by Steve Roberts, and it PASSED unanimously 7-0.***

***Kevin Webb MOVED to recommend the amendments to Article XIV, Section 175-72(A)(4) of the Shoreland Protection Overlay District to the Town Council for further action. Chair Kelley SECONDED the motion.***

Councilor Needell said when this had come up at a previous meeting, a question asked was how it got this way. He said he had done some research on this, and had found that the language changed somewhere between November and December of 2004. He provided details on this, and said perhaps the language had actually been changed at a Zoning Rewrite meeting.

He said he was not prepared to make this change until he heard more on how the change happened, and said he would like to hear from Mr. Eyerman on this.

Mr. Roberts explained that some comments by the public during the public hearing process had triggered a series of changes, and said the intent of the changes was not to implement the conditional use process but simply to solve a problem. But he said he agreed they should try to find out how the change occurred, and should talk with Mr. Eyerman.

Councilor Needell said if the change should never have happened, that was one thing, but if the Board was now actively undoing something that was a conscious change, he was not comfortable with this.

Mr. Webb said regardless of how this ambiguous language got in there, it wasn't working. He said as discussed at the previous meeting, there were other provisions that provided adequate protection for the shoreland, so there was not a need to include the wording in question within the section on conditional uses.

Chair Kelley said he support the motion as it stood, and said he felt the Board would be creating a tremendous burden for itself if it voted otherwise. He provided details on this, and agreed there were other provisions that provided the needed protections.

Mr. Webb said the Board had made some substantial changes to the entire Zoning Ordinance, and was bound to come up with things that just didn't work. He said changes like this might be needed for years to come.

Councilor Needell said he agreed this was the case, but said he was not comfortable that the Board really understood what had happened. He said while he didn't want to see conditional use applications coming to the Board, he didn't want to make the changes without due diligence.

Mr. Roberts said he thought Councilor Needell's suggestion was reasonable. He also noted that there were several cities in the state that processed conditional use applications rapidly. He provided details on this, and said if this served a use for the Board, and resulted in better planning, the Board should use it.

***The motion PASSED 5-2, with Steve Roberts and Councilor Needell voting against it.***

**VI. Design Review on a Site Plan Application submitted by Steven F. Kimball, Auburn, New Hampshire for the building of a residential and non-residential, multi-use building on a piece of property. The property involved is shown on Tax Map 2, Lot 6-0, is located at 20 Strafford Avenue and is in the Professional Office Zoning District.**

Chair Kelley said the Design Review was at Mr. Kimball's request. He explained there was no formal application process yet, and said if an application was made, there would be an opportunity for the public to speak at the public hearing on the application.

**5 minute recess 7:32 to 7:43 pm**

Steve Kimball said he was present to describe his proposed plans for the property at this stage in the process. He noted that his design team was present.

He said had been contemplating what to do with this property since 2003, explaining that he didn't see that it was productive in current form, a single-family residence in the RA zone. He said with the Zoning Rewrite process, the parcel was no included in the new Professional Office district, noting that this particular property capped the end of that district.

**Description of property:**

Mr. Kimball said it presently contained two small single-family, one-bedroom residences, both of which were showing their age. He said the house was built in 1935, and had been in the family since 1933, and was originally part of a 40-acre farm, pieces of which had been sold over the

years, resulting in such properties as the UNH Alumni Center, and the New England Center. He said the property in question contained 1.3 acres.

Mr. Kimball said his grandmother had moved out of the house on the property in 1995, and said it had been used primarily for student housing since that time. He noted he had lived there at one point.

**Location:**

He said the property was located near the New England Center, in an area where there were fraternities and some apartment buildings. He described this area in some detail, explaining that it was not residential in terms of single-family homes. He said if 15 properties in the area, none were owner occupied single-family homes, and 60% were multi-family dwellings, not including the hotel.

Mr. Kimball said there was only one residential abutter – the Gooze property. He also said the lot to the east was in the Professional Office District, and the lot to the west was a University parking lot, so there was minimal proximity to residential areas.

He said the property was located within 5 minutes of T Hall on the UNH campus, was near other student housing, and was 6 minutes from the downtown area. He said there was fairly high pedestrian traffic as well as some car traffic near the property, and noted there was easy access to the University's public transit system.

He said the average lot size on Strafford Ave was barely over ½ an acre, and also said many of the lots were essentially paved.

He said he had looked at both the Town and University master plans, to see what the vision was for this portion of Town. He provided details on the University's housing plans and how they related to what he was looking to do with his property.

He said the 2000 Durham Master Plan spoke about the importance of supplying adequate multiunit development in order to take the pressure off single-family homes as student housing. He said the master plan noted that locations for appropriate student housing were fairly limited because of certain criteria.

**The proposed development:**

Mr. Kimball said the conceptual site plan showed a building that was 64 ft. x 128 ft, with 3 stories. He said the facility proposed would be mixed use, with retail uses downstairs and multiunit housing on the upper floors. He provided details on the kind of retail uses he envisioned, such as a convenience store or coffee shop. He noted that the Durham Master Plan encouraged developers to experiment with uses in this district.

He said he hadn't identified a strong market for office space in Durham because the University supplied this, but said if demand for this kind of development could be generated for this area, he could accommodate this.

He said a mix of apartment types was planned and said there would be 46 bedrooms, with one student per bedroom. He explained that the design involved 4 bedroom units structured around a

common area, and noted that this would conflict with the Zoning Ordinance's 3 unrelated provision. He said he thought the ZBA was the appropriate body to deal with this, and said the project could be designed with 3 units instead of 4 if necessary. He said the issue here would be the quality of the design, and said he would make his case to the ZBA.

Mr. Kimball said there would be a residential manager to live in and supervise the building. He said the goal was to provide premium off campus housing, at this great location, which was closer to the campus than all of the new dormitory housing the University was proposing.

He said the plan was to sublet retail areas to independent businesses, and let the market sort out what was viable there.

He said there would be adequate parking for the facility, including structured parking, and he provided details on this. He said that with the combination of covered parking and exterior parking, this would meet the Ordinance's parking requirements while also meeting the 50% pervious surface ration requirements. He said this would keep the natural feeling of the area, noting that other properties in the area had close to 100% impervious surfaces, which had a negative impact on the quality of the overall environment.

He said that on the western boundary, there was a five-foot setback proposed, in order to keep the development as far to the west and south as possible. He said this was allowed since there was a nonresidential use on the western boundary.

Mr. Kimball said an issue he was sensitive to was the residential abutters to the north. He restated that he saw the proposed facility as a cap on the northern end of the Professional Office District. He explained that when one approached the property from the south, it felt like part of the Professional Office District, but after going past the property, it was clear that there was a residential area. He said the idea was to leave as much green space as possible in order not to crowd the abutters to the north.

He said another issue he was sensitive to was the wetland area to the east, and said he was looking to stay as far away from this as he reasonably could. He noted that an unpaved gravel driveway went along the wetland boundary, and said the current property had a significant incursion on the wetland buffer zone. He said this would still be the case with the proposed development, but said this incursion would be minimized, and said he would be looking at all reasonable ways to mitigate this.

Chair Kelley said it was appreciated when developers like Mr. Kimball came in at the beginning of the development process.

Mr. Grant said his first concern was the 4-bedroom aspect of the proposed development. He noted that the Town's 3 unrelated provision had withstood court challenges, and said he would not support a project that would in any way compromise the legitimacy of the Ordinance. He suggested that Mr. Kimball reconfigure the design to make certain that it conformed to the 3 unrelated provision.

Mr. Grant said his second concern was the idea of having a convenience store as part of the development, stating that to him, the primary business of a convenience store in Durham was to

sell beer and pizza. He said that placing a beer outlet in the very heart of the campus was undesirable, although stating that if it could prosper without serving liquor that would be great.

He said he suspected the Town couldn't prevent this, but he urged Mr. Kimball to consider the potential headaches to whoever owned the store. He said this would also be of serious concern to the University in trying to control on campus alcoholic beverages.

Mr. Webb said he agreed with Mr. Grant's concerns about the idea of 4 bedroom apartments. He also said he was concerned about the idea of having a package store in that area, given that it abutted a residential neighborhood to the north. He noted that Mr. Kimball had found an oversight in the Ordinance, which allowed this, and said he thought the Board had made a mistake in having this in the Table of Uses.

Mr. Webb said he strongly encouraged Mr. Kimball not to allow businesses in his facility that sold alcohol. He noted that Strafford Avenue was famous as a party district, and said selling alcohol that close to this area would add fuel to the fire. He said he was interested to know what other sorts of businesses might be attracted to that area.

Mr. Kimball said there were no solid commitments regarding this retail space, and stated there had been inquiries from a skateboard/snowboard shop and a multi-game video facility. He said these kinds of uses were be aimed at the young adult population, and said neither involved the sale of alcohol.

He explained that the motivation to have a convenience store was not to set up a beer outlet, and said he was thinking more along the lines of selling coffee and bagels. He explained that he had observed student management issues in Durham, and was not interested in trashing his investment. He said he would not allow open containers on his property, and would not allow large gatherings of students, stating that this did not fit the vision he had for the property.

He said he wanted to provide premium student housing for serious students, including graduate students, and said he was not interested in renting to freshmen or sophomores. He said he would be looking at providing appropriate lighting and access control on the property, with the goal of providing a safe but convenient environment. He said he appreciated the comments from the Board.

Mr. Webb said he appreciated the plans for site management and security, and also said he thought the architectural design for the facility was attractive.

Chair Kelley asked that Mr. Kimball provide his Powerpoint presentation to Mr. Campbell. He then asked if there were sidewalks on both sides along this part of Strafford Ave., and was told there was a sidewalk on the opposite side of the street, in front of the New England Center, which moved from there down to Edgewood Road. He also said there was a section of sidewalk further down on Strafford Ave. Chair Kelley asked if Mr. Kimball was considering putting in sidewalks on his side of Strafford Avenue in order to service pedestrians.

Mr. Kimball suggested there could be sidewalks, but said he hadn't looked at that. He described plans for pedestrian access to the property.

Chair Kelley suggested working with the University to create a curb extension at the end of the sidewalk as a refuge island for pedestrians in order to improve visibility there.

Chair Kelley asked if the engineering team was looking at underground detention of stormwater, and whether the outlet for this would go to the wetland area or to the Town's system. There was discussion about this with the engineer, who said they were looking at doing underground detention/retention under the parking area at two locations, and provided details on this.

Chair Kelley asked that the sewer easement within the site be shown, noting that the intent was not to have to impact the Town's sewer system.

The engineer said the section of Town sewer pipe in this area had been redone less than 10 years ago, and he said it was 18-inch pipe.

Chair Kelley asked if there was an easement for the telephone lines.

Mr. Kimball said power came in through the back area of the property, and telephone service came in from the front. He said the plan was to have everything come in from the front.

Chair Kelley asked if there would be underground utilities, and the engineer said yes.

Chair Kelley said parking within the wetland buffer was something to put on the list. He also said he had noticed that the wetland delineation had been done some time ago, and asked if the intention was to update this.

Mr. Kimball said he hadn't planned on this, and there was discussion.

Chair Kelley said there was no question that the wetland extended far enough to the east and was large enough to require a buffer, and the engineer agreed. Chair Kelley also said it looked like there would be a smaller impact to wetland B in order to get the driveway. There was discussion about this.

Chair Kelley asked where deliveries to the facility would be made to establishments on the first floor.

Mr. Kimball said he anticipated this would take place to the rear of the building.

Chair Kelley noted that the parking meters along Strafford Ave. were run by the University. He suggested creating a loading zone off the street in that area in order to service the building, stating he was concerned about trucks parking in the travel way. He suggested approaching the University's planner, Doug Bencks, concerning this

Mr. Grant noted that there was a small brook flowing through the New England Center area, and said he knew the University would want to discuss this. There was discussion about the flow of this brook, and Mr. Kimball explained that it flowed down to the New England Center, into Pettee Brook.

In answer to a question from Chair Kelley, Mr. Kimball discussed an empty fuel tank that had previously been left on the property. He said it had been empty, and was removed.

Chair Kelley asked about fire truck access.

Mr. Kimball said he hadn't discussed this with the Fire Department yet.

The engineer said they would be doing a study to survey elevations so that the Public Works Department could model this section of the Town's sewer system, in order to be able to do an analysis of long-term capacity.

Chair Kelley said this was generous, and was appreciated, stating that it would go a long way toward understanding this capacity.

Mr. Kimball said he planned to have sprinklers in the building. He said he didn't see a problem with providing fire equipment access to all sides of the building, and also noted there was a hydrant across the street. He said he would be sure to have the Fire Department review all of these things.

Chair Kelley asked if the parking up front was for retail, and if the parking in back was for residents, and Mr. Kimball said that was correct. Chair Kelley also asked about the structured parking that was planned.

Mr. Kimball explained that covered parking was desirable to tenants, and provided details on this.

Chair Kelley said Mr. Kimball had said there would be onsite management, and asked if the idea was that this would be done by one of the students or a professional management company.

Mr. Kimball said the current business plan imagined having a full time employee to manage the residential units, the commercial space and the parking, and said there would be a larger apartment for the manager and his/her spouse.

Chair Kelley noted that there was ledge outcrop at the northern property line, and asked if the engineering team knew the extent of this ledge, and if blasting would be required.

The engineer from Ambit Engineering said once the fine-tuning of the grading was complete, the cuts and fills would be identified. He also said it would be noted on the site plan that blasting would be required.

Chair Kelley noted the architectural perspective of the building, and asked if there was a false roof line.

The architect, Gary Meehan of Meehan Architects, said yes, and said in the current concept, there would be a flat roof. He provided details on the design.

Chair Kelley summarized that his concerns were: pedestrian access, especially coming to the parking area; and the need for a loading zone and a pedestrian refuge island. He also said

although Strafford Ave. itself was not a large traffic generator, and on one end there wasn't a traffic problem, there was a traffic problem at Edgewood Road. He said the Board would like to see some numbers on traffic in this area.

Ms. Fuller asked what the thinking was about the 4-bedroom apartment, and whether they were intended for students or for families. He said he didn't think they would be affordable for a family.

Chair Kelley said lighting would be an issue with a future application, specifically regarding the back of the property, and said the Board would like to see if there were any measures to address quality of life issues for the abutting RA district. He said he recognized that the design had brought everything up to the front to make the clear designation between the districts.

Mr. Roberts asked where loading for retail businesses in the building would take place.

Mr. Kimball said loading would be provided to the rear of the building, on the property. There was discussion as to whether the loading area was deep enough to be off the street, and Mr. Kimball said the challenge was whether trucks would be able to back in off of the street.

Mr. Roberts said the Board had held the Irving station to that, and said it would probably want to hold Mr. Kimball to this as well.

Mr. Campbell said if the amount of retail space for each unit was under 2,000 sf., they could each load up front, but he said that if they were over that, loading would have to take place off the street. He said Mr. Kimball would want to clear this up with Mr. Johnson.

Mr. Roberts said that regardless of what the requirement was, he would recommend off street loading as a courtesy to the neighborhood. He said his second comment had to do with crowd control, police access, and the issue of students hanging out in wooded dark spots in the area. He urged Mr. Kimball to reconsider the idea of having a convenience store in the building.

Councilor Needell said he agreed with what other Board members had said about the idea of having 4-bedroom apartments. He said although Mr. Kimball was welcome to seek a variance, he was not encouraging him to do this.

Mr. Kimball explained that the concern was that the building had been specifically designed for 4 person occupancy.

In response to a comment from Councilor Needell that there was a density issue, Mr. Kimball said he understood the idea of not wanting to weaken the Ordinance, but said in terms of density, this didn't come into play in the application. He said there was enough lot area, 3,000 ft, for 18 dwelling units.

Councilor Needell said he had misspoken that there was a density issue, but said he thought Mr. Kimball should pick his battles, and said he wouldn't pick the 3 unrelated one.

He also asked if wetlands had been removed from the calculations, and Mr. Campbell said he couldn't answer this because the site design was currently just conceptual. There was discussion about the calculations with the engineer.

Councilor Needell said he supported the comments from other Board members concerning the convenience store idea, but said unless he was misreading the Ordinance, it was a permitted use.

He also encouraged Mr. Kimball, if he was going to bring an application forward, to have the various permits in hand at the outset of the application process in order to simplify things.

There was detailed discussion as to whether the structural parking was a permitted use.

Councilor Needell noted that the discussion on the Professional Office district had focused on office space. He said retail uses were clearly not permitted in the district except as part of mixed use development. He said he didn't remember the Board discussing what types of things were anticipated in this district, and asked if this proposal was a surprise.

Mr. Campbell said the idea was to not have just a retail store, but to have mixed use, such as a convenience store with high density multi-units. He said this was done for the downtown area too. He said it was definitely clear to him that retail could be there, but just couldn't be there as a stand alone use.

Mr. Parnell asked what was at the northern end of the lot. Mr. Kimball said it was forested, and Mr. Parnell asked if the intention was to leave this.

Mr. Kimball described what he had in mind, explaining that he didn't want to have a hiding spot out there, but also didn't want light pollution affecting other properties. He said a hedge row might be needed as a buffer across the northern end, and said that at the very northern edge of the property, he didn't plan on changing anything.

Mr. Parnell asked if Mr. Kimball had done this kind of development before.

Mr. Kimball said he had managed the property in question for 10 years, but had not done a development before.

Mr. Webb asked how far away from Mr. Kimball's lot line was from the Gooze house. Abutter Jay Gooze pointed out his property on the site plan. He said he would just like his property to be protected as much as possible from the development.

Councilor Needell said Mr. Kimball had struggled to meet the requirements of the Zoning Ordinance, including the parking requirements, and noted that the Town's parking ordinance was on the list of things for the Board to review. He said there might be some changes in this.

Chair Kelley said if there were changes to the Ordinance, the simplest solution for Mr. Kimball would be to start taking off parking spaces at the northern end.

Mr. Kimball said it would be a good thing if the number of spaces required would decrease, and said if more spaces were required, this could be a problem.

Chair Kelley said he anticipated that fewer parking spaces would be required, not more.

Chair Kelley asked why in the design for the building, the storefront ended and there was then a blank wall.

The architect, Mr. Meehan, provided details on this, and said the idea was that the front of the building would be the long side, and said there might be some vegetation along this wall. He said it was a loading zone, and also said they were not yet sure what kinds of businesses would occupy the building, so the design was open ended. He said the stone treatment might become brick depending on a number of things. There was discussion that there might even be seating in this area for patrons to drink their coffee.

Chair Kelley said he thought Mr. Kimball's design team would be able to accommodate the drainage requirements, but asked that Mr. Kimball and his team look carefully at the loading issue.

Mr. Roberts said one of the problems in envisioning this was how the development would fit into the neighborhood. He recommended that Mr. Kimball's team provide the Board with a neighborhood view of what was being proposed, and said some of the Board's questions might be moot as a result of doing this.

Ms. Fuller said when she looked at this proposed project, she thought of some of the old structures in Portsmouth, and said she could imagine a retail business like Starbucks going in on the bottom floor.

There was discussion about possible uses, and about the appearance of possible establishments.

Mr. Meehan said the design team might even be involved with the signage the businesses used.

Mr. Campbell recommended that Mr. Kimball talk with Mr. Johnson on loading, parking, lighting, and other issues.

He also noted that the Hotel New Hampshire would probably no longer be a hotel in the fall.

Chair Kelley asked if Mr. Kimball had any further questions.

Mr. Kimball said no, and said he his goal that evening was to get as many potential issues out in front as possible, so there would be no surprises. He said he appreciated the opportunity to do this. He said he would like the process to go as smoothly as possible, and said he would work to move things along as smartly as possible.

Chair Kelley said he hope the conceptual consultation had been useful, and said he appreciated Mr. Kimball's time.

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

Mr. Campbell noted that the Board had discussed this idea over the winter, as a way to determine whether the Board's work on applications was actually working.

Chair Kelley said the Board often looked at some rather complicated site plans, and said it was realized it might be challenging to make sense of some of them. He suggested look at the Irving station being constructed next door along, with the site plan for the project, and said perhaps this site visit could take place on the weekend.

The Board agreed with this idea, and said they would also plan on visiting the Allen Farm subdivision as well as Fitts Farm.

Chair Kelley said Mr. Campbell would figure out a date when the Board could do the site visits.

## **II. Other Business**

### **A. Old Business: Discussion of timber harvesting/forestry**

Chair Kelley said the Board had previously discussed how it would address this issue, but hadn't come to a conclusion. He said he hoped the Board could set a course of action for addressing it.

Mr. Campbell said after the last public hearing on the Shoreland and Wetland overlay ordinances, the discussion turned to the timber harvesting standards in these ordinances, and also to the general standards in the Zoning Ordinance regarding timber harvesting.

He said that since that time, there had been several correspondences with Mr. Keefe regarding the timber harvesting issue, and said there were also letters from Don Black of Cooperative Extension, and from the executive director of the NH Timberland Owners Association, stating their concerns about what had been done to the Ordinance.

Mr. Campbell also said he had done some further investigation as to how these standards made it into the Ordinance in the first place. He said he believed the performance standards in section 175-109 came from planning consultant Mark Eyerman as a result of the Board's discussion on timber harvesting, and said the question was whether they had a scientific basis.

Mr. Campbell said he had spoken to former Board member Amanda Merrill who had overseen the work on the wetland ordinance, and said she told him she believed she had inherited the language in question, and had not come up with it herself. He also provided details on the recollection of former Board member Rachel Rouillard as to where the language may have come from for the shoreland ordinance. He noted that Ms. Rouillard had overseen the work on the shoreland overlay.

Mr. Campbell said it was not clear where the no cut buffers had come from.

Mr. Campbell said Councilor Needell had provided him with a copy of the State RSA on timber harvesting, 227-J:9, and noted that section VIII said that "Forest management not associated with shoreland development nor land conversion and conducted in compliance with the provisions of this section shall be exempt from the provisions of RSA 483-B."

Chair Kelley said it was important to note that there were provisions in that RSA concerning cutting timber near certain waters, etc.

Mr. Campbell said those provisions were also incorporated into a document called “Best Management Practices for Erosion Control and Timber Harvesting Operations in NH”, and were also listed in the “Guide to NH Timber Harvesting Laws”. He said it was therefore pretty clear to whoever was doing a forest management plan that this was what they would have to adhere to.

Mr. Campbell said the assertion from Mr. Keefe and others was that there was sufficient regulation of timber harvesting, and that the Town went well beyond this in some of its language in the Zoning Ordinance. He said he didn’t think anyone would say that in the shoreland zone the Board wanted to allow clear cutting, but said the Board might have merged the idea of a woodland buffer with timber harvesting, and said it might want to look at this.

Chair Kelley said it appeared that the Ordinance was not in conformance with the RSAs, and the Board might want to make an adjustment concerning this. He noted that the Board had previously discussed the idea of having an information session on this issue in order to get better educated on it. He said his concern was that Board members had different levels of understanding on this issue.

Mr. Campbell said he could suggest changes that would bring the Town into line with the RSA. But he said Mr. Keefe was being cautious concerning what changes were needed, and would like to see the Board bring in some forestry people to discuss this issue, instead of rushing to make changes to the Ordinance. He noted that Councilor Carroll had suggested this idea, and said it would be a good idea to invite them to speak with the Board, perhaps at the next quarterly planning meeting.

Mr. Roberts said he had some concerns with the way the discussion was going, and said forest buffers and forest management as a business served two different purposes. He suggested that the Conservation Commission should be used as a reference for the Board concerning these issues. In answer to Mr. Grant, Mr. Roberts said the Conservation Commission had reviewed the shoreland and wetland ordinances.

Councilor Needell said there were two fundamental issues involved here. He noted it would be a good idea to get a legal opinion on this, but said it seemed like the first issue concerning 227-J, Timber Harvesting, could be solved relatively simply, and basically was that the Shoreland Protection Ordinance had no business dealing with forestry. He provided details on this.

But he said the bigger question was the purpose of the Town’s Shoreland Protection Ordinance, which was not to deal with forestry but to deal with landowners with chainsaws. He said the question was what the Board was trying to accomplish, within its rights as a Planning Board, and given the rights of landowners.

He said the question was where this language had come from, and said to assure itself that it came from something meaningful, the Board should hear from the people who wanted the no cut zones. He also said having two people in attendance to present both sides would be very useful.

Mr. Grant said the suggestion that the Board get a legal opinion on this was quite important, and said the second thing was for Mr. Campbell in bringing the Ordinance into compliance. But he said the second issue, regarding the woodland buffer in the overlay zones, was also important to think about. There was discussion about this.

Mr. Campbell provided a detailed description of what respected guidebooks in the State said about shoreland and wetland buffers.

Mr. Parnell said he had been a forester in an earlier life, and said the issue here that stood out was that there was a 250 ft. zone where no tree above 6 inches could be cut, which had nothing to do with forest management, and was strictly in regard to aesthetics. He said he thought that if it had been put in, it was something people wanted, and said having foresters say it wasn't necessary wouldn't solve that problem.

Mr. Campbell said this was where they had to separate the natural woodland buffer issue from the timber harvesting issue. He said the no cut zone related to shoreland development operations, not to forest management related timber harvesting operations

Mr. Parnell asked what the intent of the Ordinance was, stating that it seemed the intent was that there be no cutting in this zone.

Chair Kelley said his concern was that the Board might spend a lot of time trying to figure out why this was done in the past, when the important thing was that it was wrong. There was discussion about this.

Mr. Campbell said the wording had never been discussed by the Board in great detail. He said it was brought in, put in the draft Ordinance, the Conservation Commission looked at it and was ok with it. He said he had assumed the issue was researched and was put in for a reason.

Mr. Roberts said his concern was the buffer, which he did not want to see the Board deprecate. He noted that Durham was in a high intensity suburban area, where there were not a lot of tree farms.

Councilor Needell asked Mr. Keefe if he would like to speak.

**Rob Keefe, 59 Piscataqua Road** thanked the Board for having a discussion on this issue. He explained that the sentence concerning not cutting trees greater than 6 inches in diameter within the buffer zone impacted 23 acres of land on his parents' property. He said although the restriction made sense in more congested areas of Town, in some of the larger rural land areas, the requirement could have a more substantial impact on property owners.

Chair Kelley asked Mr. Keefe how to separate legitimate timber harvesters from developers who would cut down the trees within a few years.

Mr. Keefe said he didn't have the answer for this, and said it was an important issue to figure out.

Councilor Needell said clear-cutting was not a timber harvesting practice and asked what the worst thing was that could happen concerning cutting of trees in the shoreland without the provision in question, and whether if someone followed good forest practices, there would still be a lot of trees. He noted that if the property owner applied for a change of use from forestry, the property would then fall under the Shoreland Protection Act, so the exemption would go away, and the full impact of the RSA would come into play.

Mr. Keefe said it was a bit of a gray area, and acknowledged it would be irresponsible to say everything would work out fine.

Chair Kelley noted 227 J: I, and asked if this meant that someone could harvest an additional 50% of basal area within an additional 12 month period. There was discussion about this.

Mr. Roberts said it was important to remember that what a buffer meant and what a forest preserve meant were two different things.

Mr. McGowan asked what Mr. Keefe's purpose was for wanting to harvest some trees, and Mr. Keefe said there were various forest management objectives, from wildlife habitat creation to timber production. He noted that thinning the forest improved the value of standing timber.

Mr. McGowan asked if what was there now in the shoreland zone had become an overly dense forest.

Mr. Keefe said yes. He said that literally thousands of 6-10 inch pine trees were close to dying or dead, and said getting them out was a good thing from a fire management perspective. He provided details on this.

There was discussion about whether this problem would go away if 227-J:9 came back.

Mr. Keefe also noted that the conditional use process governed a lot of forestry in Town now, and said he was worried about how this would affect the timing of forest management activities, noting for example that he would have to get the Town's permission if he wanted to do a regeneration cut.

In response to a question from Chair Kelley, Mr. Keefe said timber harvesting was considered a taxable land use, and said the money went to the Town. He said one would have to fill out an intent to cut form which estimated the volume of timber to be removed. He said one was also required to file for a wetland permit at that time.

Chair Kelley asked if the turnaround on a wetland permit for timber harvesting was fairly quick, and there was discussion about this.

In answer to a question from Ms. Fuller, Mr. Keefe said he had started a formal forest management plan this year.

Ms. Fuller asked if the Zoning Ordinance was doing more than limiting a forest management plan and Mr. Keefe said yes, explaining that it introduced a lost of costs, for things like formal wetlands delineation.

There was discussion about what value the forests in Durham had from a timber harvesting perspective, as compared to the general property values for the same piece of land.

Chair Kelley asked if there would be interest in making money commercially from timber harvesting on lands in Durham, and Mr. Keefe said yes, explaining that this would depend on the forest stand, - how it was managed, what the soils were, etc.

Mr. Roberts said a forester he had spoken with had said there was little in the way of valuable forest land in the Durham area.

Mr. Keefe said that was a generalization, and said there was over a million board feet of timber on his parents' property.

There was discussion about what the concern was regarding cutting trees in the shoreland. Examples were provided of clear cutting that had occurred in the past. Mr. Keefe said he shared these concerns.

Mr. Keefe said he appreciated this discussion, and said it was important to have a meeting with forestry professionals and others. He said there should be some way to preserve the ability to do careful forest management. There was discussion about this.

Mr. Roberts said he agreed that getting a legal opinion would be a good idea.

Mr. Grant said the discussion at the June quarterly planning meeting would be very appropriate.

Councilor Needell said hearing from the forestry community on this issue would be very useful. But he said the hard part was what the Board was going to do about buffers that had nothing to do with forestry, and about the issue that landowners simply wanted a better view of the water.

Mr. Campbell said he had called the NH Office of Energy and Planning to get some perspective on the latter issue.

Councilor Needell said he would like to hear from conservation people on why the thought buffers were a good idea. There was discussion on this.

Mr. Keefe said his parents had owned their property for thirty years, and had fought development all around them for most of that time. He said they were not interested in developing the property.

Bill Hall said several years ago as Chair of the Trustees of the Trust Fund, they were mandated to cut a forested area, where timber harvesting was needed to prevent the trees from falling in the water. He provided details on this.

There was discussion about the 14 Riverview clear-cut, and that this kind of thing was exactly what they were all trying to stop.

Chair Kelley said he had been prepared to push the changes to the Ordinance concerning timber harvesting forward, but said he was no longer convinced that this was the way to go. He said he preferred the idea of bringing in people to speak who knew what they were talking about, so the Board could get the timber harvesting aspect of the Ordinance right.

Mr. Campbell listed some possible people to invite: Don Black; Don Quigley; Rob Keefe; the executive director of the NH Timberland Owners Association; members of the Conservation Commission; someone from the NH Office of Energy and Planning; someone from the Nature Conservancy; someone from the Society for the Protection of NH Forests.

Councilor Needell said the letter from Mr. Keefe was an excellent model of the way to get discussion started on an important issue. He said the letter made it much easier to focus on what the issue involved.

**VII. New Business: Set the Quarterly Planning Meeting for June 14 or June 28**

**I. Next meeting of the Board: June 14, 2006**

**VIII. Approval of Minutes – April 26, 2006**  
Postponed

**IX. Adjournment**

Chair said next meeting, will decide who to put on committee Jim mentioned concerning housing.

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

Adjournment at 10:30 pm

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W. Arthur Grant, Secretary