

This set of minutes was approved at the October 11, 2006 Planning Board meeting.

**DURHAM PLANNING BOARD
WEDNESDAY, JUNE 14, 2006
COUNCIL CHAMBERS, DURHAM TOWN HALL
7:00 PM**

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

ALTERNATES PRESENT: Councilor Carroll; Lorne Parnell

MEMBERS ABSENT: Susan Fuller

I. Call to Order

II. Approval of Agenda

Councilor Needell MOVED to approve the Agenda as submitted. Kevin Webb SECONDED the motion.

Chair Kelley noted some emails the Board had received regarding the Strafford Ave. area, and said he would like the Board to discuss that issue under New Business.

Arthur Grant MOVED to amend the Agenda to include discussion on the Strafford Ave. area under New Business. Bill McGowan SECONDED the motion, and it PASSED unanimously 7-0.

III. Report of the Planner

Mr. Campbell said he and University Planner Doug Bencks would have their monthly meeting the following day, and said he would send the Board a memo on the meeting.

He noted that the Town Council had approved the revised Design Guidelines for the Business Park at its June 5th meeting, and said copies had been provided to Board members.

He said the Economic Development Committee would be meeting the following day to go over next steps concerning the Design Guidelines. He also said there would be discussion on economic development approaches such as tax incremental financing and use of the State revolving loan fund. He provided some detail on how each of these approaches could be used.

Mr. Campbell said he had met with Jesse Gangwer to discuss his property off Route 4 that bordered Madbury. He said Mr. Gangwer was getting ready to move forward with developing the property, and would like to know what the Town would like to see there. Mr. Campbell said they had talked about the idea of elderly and workforce housing, as part of a conservation subdivision approach. He noted that Mr. Gangwer didn't want to see the parcel entirely built out.

Mr. Campbell said Durham had been awarded a NH Estuaries Grant, in the form of consulting services, and said there would be a meeting soon to discuss the scope of work. . He said the focus

would be on technical assistance for stormwater management, which would include review of Town regulations as well as review of the draft stormwater ordinance. He also said that if any money were left over, a buildout analysis of impervious areas would be developed.

Mr. Campbell provided details on an upcoming conference called “Growing Together, Growing Smart: Land Use, Conservation, and Housing in the Greater Seacoast Region of NH/ME”, to be held on June 23, 2006. He noted that the Town Council had recently held a work session on Housing issues, and said he had informed them that this conference was being held.

Mr. Campbell said the next Town Council meeting would include the following:

- a first reading of the revised Historic District overlay ordinance
- a hearing on the recent change proposed to the shoreland protection overlay ordinance.
- A vote on whether to accept the impact fee schedule recently approved by the Planning Board
- Review of Gary Lonsinger’s request for a building permit off a Class VI road.

IV. **Conceptual Consultation Application** submitted by Xemed Holdings LLC, Durham, New Hampshire, for the building of a new commercial building and parking lot. The property involved is shown on Tax Map 2, Lot 8-3, is located at 16 Strafford Avenue and is in the Professional Office Zoning District.

Mr. Hersman said he was the founder and owner of Xemed as well as Xemed Holdings, the real estate holding company that was created to purchase 16 Strafford Ave. He said he had lived in Durham for 17 years. He thanked the Board for their service.

He said he started the company 2 years ago to commercialize a technology he developed as a University professor, - a gas that could be used for medical imaging of the lungs. He said the company was setting up partnering with various hospitals to test the device. He said 4 grants presently provided revenues for the company.

He said the company had grown to 4 employees, and explained that there was also an academic research group that had about 16 people, the majority of whom were students. He said they presently had desks at the University.

Mr. Hersman said that rather than locate the business at Pease tradeport, he wanted to locate the business in Durham for his convenience as well as the convenience of the students.

He said he went to the ZBA the previous year to see if the building could be constructed that met the needs of the business. He provided details on this, and on the work that would be performed there.

He said 14 Strafford Place was a multiunit residence, and 18 Strafford was presently forested, with nothing on it. He said 20 Strafford was under development. He said there was a 2-story cape structure on the property, and several parking spaces which had previously been used by the Center for Constructive Change.

Mr. Hersman said when he went to the ZBA, he presented a minimal option as well as a maximal option for developing his property. He said the minimal design was a 5,000 s.f. building in the back, with parking adequate to meet the needs. He said the other design was a 7,500 s.f. structure.

He said an objective was to have current activities of Xemed go on immediately in the cape structure, while the new structure was being constructed. He said he perhaps would want to keep the cape structure in the future, but said it was also possible he would want to demolish it.

He said in order to complete any of the viable plans, he needed a variance on durable cover and parking spaces. He said he justified this based on the fact that most of the space would be used for things like polarizer testing installations, and MRI's that were permanently installed, but wouldn't have a person working at them every day. He said the variances were granted, and he then purchased the property and hired an architect.

He said a plot plan for a new 7,500 s.f. building had then been developed, which would occupy the rear of the lot, and which could be constructed without demolishing the cape structure. But he said in order to meet the impervious cover allowed in the variance (75%), the cape structure would have to be demolished in order to put in the 16 parking spaces.

Mr. Hersman also said he had realized a week ago that the zoning requirements had changed in the meantime, and that there was a new requirement that new parking spaces had to be located behind the front wall of the principal building, which was not accomplished with the March 3rd plan. He also said there was now a setback requirement of 15 ft., rather than 10 ft. He also said that in order to provide access to the parking spaces, a 25 ft driveway would be needed. He said 15 ft. of this could be in the setback, but said the driveway would still take up more of the width of the lot, which was only about 100 ft. wide.

He said the reason he was before the Board was that scenarios that appeared to meet the needs of Xemed were difficult to achieve because of the new Zoning requirements, on this small lot, even within the allowances made by the ZBA.

He explained that there was also a potential plan that barely met the company's needs, which was slightly under 5,000 s.f., but said even that could not be accomplished and still meet all of the new Zoning requirements. He said he was hoping to receive some consultation from the Board on this.

Chair Kelley asked if a single story building was required because of the nature of the business.

Mr. Hersman said a two-story building was possible, but said because of the size of some of the equipment, this might be more difficult. But he noted that it might be the only viable solution.

Chair Kelley determined that there would be 4 full time employees. Mr. Hersman provided details on current staff, including an academic group located in the Physics Department at Demeritt Hall at UNH. He noted that this building would be demolished in June of 2007, and said from then until the new building was completed in June of 2008, the staff would need to be relocated. He described how some of those people might be part of Xemed, as it built up its employee count.

Mr. Roberts asked how many employees Xemed was expected to have in the future, using a best-case scenario. Mr. Hersman said it was hard to say, but said having 10-12 employees would be great.

Mr. Roberts asked if any of the byproducts of the “manufacturing” process were going to need permits, etc., environmentally speaking. Mr. Hersman said he didn’t believe so, noting that the glassware was washed with nitric acid, which wasn’t considered especially problematic.

Mr. Roberts asked if there was a need for unusual ceiling height on the first floor, and Mr. Hersman said at least a 10-12 ft. ceiling was needed.

Mr. Ozenich asked how equipment would be moved in and out of the building. Mr. Hersman provided details on this, and said there would be a loading dock.

There was detailed discussion regarding Mr. Hersman’s longer-term plans for having his business in Durham.

Councilor Needell asked how Mr. Hersman would characterize the work that would be done at the proposed facility. He noted that research facilities and light manufacturing were not permitted uses in that zone.

Mr. Hersman explained that components were brought in and used to construct the machines. He said the company expected to make 4 of these machines within the next 2 years.

Mr. Webb asked if there were any wetland constraints on the property, and Mr. Hersman said he didn’t believe there were. Mr. Webb noted that most of the properties in the surrounding area were either apartment buildings or fraternities, and asked if the operation of the proposed facility was compatible with these uses.

Mr. Hersman said he had looked into this, and described how he saw these particular properties as being compatible with his business. He also noted that having the New England Center across the streets would be great, when colleagues came to Town.

Chair Kelley asked if the assembly and testing that would occur would create noise.

Mr. Hersman provided details as to why he didn’t see this would be a problem, noting among other things that the machine shop at the University Physics department might continue to be used for some operations.

Mr. McGowan noted that there were two plans, and asked what the benefit would be of keeping the house, in one of the plans.

Mr. Hersman said he didn’t see a long-term use for the house, but said it was definitely needed until the new building was constructed. He also said that if the company grew beyond what was currently envisioned, he might want to use the footprint of the building for additional space. He noted he was running into some difficulty with Code Enforcement Officer Tom Johnson concerning the house.

Councilor Needell asked if there were any issues of concern regarding the running of the medical imaging equipment, and Mr. Hersman explained that standardized protective measures would be put in place.

Mr. Roberts said this was a borderline light industry, noting that he had worked in a similar industry in a residential neighborhood. He discussed the fact that the Planning Board had to be satisfied with this, and that the business wouldn't be a nuisance to neighbors. He also said the appearance of the building would need to be looked at.

Mr. Roberts said if trees were planted next to the street to provide a buffer for the neighborhood, he could be flexible about the idea of allowing parking in front, behind the buffer.

Mr. Webb received clarification that Xemed had purchased the property under discussion. He said he agreed with Mr. Roberts that the Board would have to carefully consider whether this use fit in the Professional Office district. He said he personally thought that this was the kind of business Durham wanted to encourage, as a spin-off from the University. He said it would have a fairly low impact on the Town, and would enhance Durham's visibility as a high tech center. He said if a variance were required because the proposed use didn't meet the requirements of the Professional Office district, he would support the variance.

There was detailed discussion about the wording in the Zoning Ordinance concerned the Professional Office district, and the kinds of uses that the Ordinance really permitted there.

Mrs. Harris agreed that this business would be desirable, stating that it would moderate the impact of the fraternities in the area. She asked Mr. Hersman if he had considered getting some additional footage for his property, from an adjoining property in order to give him more room. There was discussion about this.

Councilor Needell noted that the recent Zoning changes had envisioned a change of use for this area. He said the Town would love to see Mr. Hersman's business in Durham, but said the question was whether this was the right spot for it. He said Mr. Hersman was having trouble fitting the business on this lot, even at these beginning stages of the project. He said he was concerned that this would encourage Mr. Hersman to relocate when the business grew over time.

He noted there were other places in Town that envisioned this kind of business, and asked Mr. Hersman if he had considered these locations.

Mr. Hersman said he had looked at a site near Goss International, but said the site was mostly wetlands and would be complicated to develop. He also said it was not within walking distance of the University, and would be outside of his price range.

He also said there could be spinoffs from Xemed, so if he moves the company, there would probably be an acceptable replacement for it on the site.

Councilor Needell asked whether, if the present site for Xemed didn't work, Mr. Hersman would look for a site elsewhere than Durham.

Mr. Hersman said he had already identified a potential location at the Pease tradeport.

Mrs. Harris said she had been on the Town Council when it had tried to bring in an appropriate business at another site. She said she personally would try very hard to make this development work.

Mr. Ozenich said he would like to visit the facility at UNH to see what was involved in the operation of the business. There was discussion about this.

Mr. Grant said the Planning Board and the Town Council had talked for years about the idea of the development of an entrepreneurial campus, and had that if the research emphasis of the University matured, there would be opportunities for these kinds of enterprises to locate close to campus.

He said it was unfortunate that the Town and the University couldn't come to some kind of agreement on this, and that the University couldn't assist itself and its faculty by allotting a portion of land close to campus for the development of these types of enterprises. He described the various benefits to the University and the Town from doing this, including revenues to the University from leasing the land, and revenues to the Town from taxes.

He said the present design filled up most of the available lot. He said he too was concerned that if the business was successful, it couldn't be expanded there. He asked whether a two-story structure, or perhaps designing two stories for a portion of the building was a possible compromise.

Mr. Hersman said the operations of the enterprise at UNH were currently spread over three stories, and said there would be a gain in efficiency if everything could be located on one story.

He said the 5,000 s.f. scenario more than met his present needs, noting that his operations currently at the UNH Physics department occupied significantly less than this, less than 2,000 s.f. He provided details on this. He said 5,000 s.f. could accommodate the installation of an MRI imager, and the addition of 3-4 more employees. He said he wouldn't say the plan was constraining.

He said the 7,500 s.f. plan would meet the company's needs for a long time. He said if the 5,000 s.f. facility was built, and then required an expansion, he could make the two-story addition later, and would still have enough room for parking spaces, within the variance granted by the ZBA.

Chair Kelley asked if the parking requirement was based on the 5,000 s.f. structure or the 7,500 s.f. structure, and Mr. Hersman said it was based on the 7,500 s.f. structure, as well as preserving the existing cape.

Mr. Grant received clarification that the Town's parking regulations were based on the square footage of a facility, - with one space per 250 sf. of gross floor area. There was discussion about this.

Chair Kelley noted that there were some issues that were outside the Planning Board's sphere of influence, and would likely have to be dealt with by the ZBA. He said it sounded like what Mr. Hersman needed from the Planning Board was a determination as to whether what was proposed for the property was a professional office use.

Councilor Needell said a question was whether the use qualified for the zone, or if a variance was needed to even entertain it. He said another question was that the variance that was granted tied that decision to a conditional use permit. He asked why a conditional use permit was required for this property.

Mr. Campbell said he had been looking at this, noting a conditional use permit wasn't now required. There was discussion about how recent changes to the Zoning Ordinance might explain this, with Mr. Hersman noting that this was a residential zone when he went before the ZBA.

Councilor Needell said this project might benefit from the conditional use process.

Mr. Campbell agreed that the Board should decide whether this proposed use fell under the definition of professional office. He also said he hoped Xemed outgrew this site, and that the Town would have another location for the business to move to.

He noted that Mr. Hersman had provided 4 different conceptual plans, and asked him which would be optimal for him.

Mr. Hersman said he preferred the one the architect had come up with. He said it was conceptually simple, met the needs of the business, and did not have a long driveway. He noted that it didn't meet the requirement that the parking spaces be behind the building. He also spoke about the driveway issue, noting the abutters also had a driveway along the edge of their property, and that perhaps there could be a shared driveway. He asked whether that concept was feasible.

Chair Kelley said the idea of a shared driveway was feasible, and should be explored. There was discussion about how this. Mr. Hersman provided details on how this would relate to the layout for the various aspects of the development.

Chair Kelley said if the existing building were gone eventually, what kind of footprint would be possible then. Mr. Hersman said the new building could come up to the 30 ft. setback in the front, and would get him closer to 7,500 s.f.

Mr. Campbell noted that there could be parking on the side, within the 15 ft. setback, as long as the property was not abutting a single-family house or a duplex. He said a two directional driveway would cause a problem, also noting that the back of the property abutted a single family residence and a duplex, so parking couldn't occur within the setback there.

There was additional discussion about the idea of a shared driveway.

Mr. Roberts said the residences in this area were located behind where the building would go. He suggested there could be a vegetative buffer along Strafford Ave, so that there could be parking in front of the building. He noted that it wouldn't be the Planning Board that would approve this, but said it would seem to be better planning.

Mrs. Harris noted that the Hotel NH had parking in front, and also had a fence with a hedge behind it that was tall enough to shield the view of the parking lot from the street. She said something like that might work for this property.

Mr. Hersman agreed, and said he would be pleased to do something like this.

Councilor Carroll noted that the business would be located adjacent to the University, so employees could use the shuttle. She said that in terms of parking, the less the area was paved over, the better, to allow greater groundwater absorption.

Chair Kelley said his concern was that the 16 spaces the ZBA had allowed was not a lot. He said if the company was very successful and moved on, the people coming in there might require more spaces than this.

Councilor Needell asked whether it was worth considering keeping the building size at around 5,000 s.f. He provided details on this. He also said there was no conditional use process for this zone, and asked if there still might be some ability to be creative concerning the project.

Mr. Campbell said if the preferred plan, for 7,500 s.f. Came forward, the variance for 16 spaces already existed. He said a variance would be needed for reducing the side setback from 15 ft. to 10 ft., as well as for parking between the front wall of the building and the front of the lot. He said once Mr. Hersman got these variances, he could see him coming to the Planning Board for site plan review for a permitted use in the Professional Office district

Chair Kelley said the first thing to decide was whether this was a Professional Office use.

Mr. Campbell noted that if the Planning Board said it wasn't a permitted use, Mr. Hersman could appeal this to the ZBA.

There was discussion that there were new ZBA related issues to resolve. There was also discussion that this was why some Board members liked the conditional use process.

Chair Kelley said what could come out of the discussion that evening was whether the Board thought this proposed use fit in the Professional Office district. He said he personally thought that it did. There was detailed discussion about this, and Mrs. Harris, Mr. Ozenich, and Mr. Grant agreed with Chair Kelley.

Mr. Webb said the Table of Uses had some holes that had not been addressed, and also noted that there were not definitions for research facilities and laboratories. He said in this particular instance, the proposed use was not incompatible with the neighborhood, but said he could envision similar University spin-offs that would be incompatible, producing noise, hazardous waste, etc. He said what Mr. Hersman had said the company would be doing clearly fell under both research lab, and light manufacturing, and in this instance was not incompatible with the neighborhood. He said he would support a variance, but said he thought one was necessary.

Chair Kelley said he would support this as a professional office use, despite Mr. Webb's well thought out argument.

Mr. Roberts said he hoped the Planning Board didn't give Mr. Hersman such a hard time that he would decide to go someplace else with Xemed. He said the key issue for him was protecting the neighbors, and said whatever could be done regarding this made the Planning Board's job easier. He said Xemed sounded like more of a scientific operation than manufacturing, and said from what he understood of it, it fit within the Professional Office District. He provided details on this.

Councilor Carroll noted that she had not been present for Mr. Hersman's presentation, but said from the discussion she had heard, she thought the project should move ahead.

Councilor Needell said that as he heard more about Xemed, he didn't see it as being much different than a use such as a dentist's office in terms of the types of things that would be done there. He said the warning though was that future uses would have to go through scrutiny, so whether the site could be passed on to spin-off uses was not a given.

Mr. McGowan said he thought it was fine as a professional office use.

Mr. Parnell said that other possible designs, perhaps something not rectangular, might make a building fit better on the site. He said this was the sort of project that the Town should be encouraging, as a spin-off of the University. He also said if Xemed produced 4 units in two years, he didn't see it as a manufacturing operation. He said he would support this.

Chair Kelley noted that the Board's opinion on this was not binding, and said there would be a formal vote on the matter when an application came before the Board. He said the comments indicated where the Board was leaning.

He said he agreed with Mr. Parnell that creative architecture might give Mr. Hersman what he needed on the site. He noted that lighting, traffic, parking, etc. were issues that would be dealt with in future discussions.

Ms. Harris asked if Mr. Hersman had asked about the idea of sidewalks for the area. She said this development was the opportunity to start that conversation.

Councilor Needell asked what the utility needs were, and Mr. Hersman said there would be no real impact on the water and sewer systems. He said 40 amps of power would be needed for the facility.

V. Request for Technical Review by Xemed Holdings LLC, Durham, New Hampshire, for the conversion of a garage to professional office use at 16 Strafford Avenue, Map 2, Lot 8-3.

Mr. Hersman said the short-term plan for Xemed was to use the existing structure on the property, and to use all three floors of the house, including the basement. He said he had run into some problems because he had intended to put the polarizes in the basement, but there was a low ceiling, - a little over 7 ft. high.

He said the initial impression of the fire marshal and the building inspector was that the uses allowed there should be limited. He said he thought the amount of activity on the first floor could be increased by using the garage, and said work needed to be done to outfit it properly. He noted that this garage would most likely be torn down in the future.

Mr. Campbell explained that the building that would be used for offices had existed already as an office, so there was no change of use involved. But he said Mr. Johnson considered the plans for use of the garage as a change of use, which would require Planning Board approval. He said no new construction was involved, and said all the work to be done was interior work.

Mr. Hersman said his hope was that the building would stand until construction of the new building was complete. He noted that this would mean bringing in a construction road on the left side of the house. He said this road would go away when the new construction was completed.

Chair Kelley asked if the proposed new building had a sprinkler system and Mr. Hersman said yes.

Chair Kelley then asked if the company's activities were done in the short term in the existing structure, if there was a danger if there were no sprinklers. There was discussion about the degree of flammability of the rubidium gas to be used by the business, and Mr. Hersman explained how this was managed.

Chair Kelley asked if the building inspector's questions related to just the use of the garage.

Mr. Hersman said there was no emergency exit lighting, and also said the basement had been finished in a noncompliant way, noting it had wood paneling. He said the fire marshal was uncomfortable with it as an office area or as a storage area. He said it might make sense to have exposed concrete, and said he would probably be sheet-rocking the ceiling.

Councilor Needell said if the proposal for the new building didn't come through, the request was for garage to be used as the professional office space. He asked if there might be a problem with this. He also asked why a permit was needed.

There was discussion about this, and that Mr. Johnson considered it a change of use.

Chair Kelley said the garage was currently not outfitted for professional office use, and there needed to be a way to upgrade it.

- VI. *Arthur Grant MOVED to refer the application for the conversion of a garage to professional office use at 16 Strafford Avenue, Map 2, Lot 8-3 to the Technical Review Committee for review. Kevin Webb SECONDED the motion, and it PASSED unanimously 7-0.***
- VII. *Discussion on Rezoning* – Professional Office District and Mixed-Use, Sumner Properties LLC., and Lane W. Goss**

Discussion on Professional Office District and Mixed-Use

It was noted that this issue arose as a result of a conceptual consultation of a proposed mixed use multi-unit apartment building and retail development on Strafford Ave. Mr. Campbell said the Town had received a petition from residents for an amendment to the Zoning Ordinance so that mixed-use development would be a conditional use instead of a permitted use in the Professional Office District. He said the Board needed to decide if it would entertain such a change, and he noted that if it decided not to, the citizens were ready to go through the process to petition for this amendment.

Chair Kelly said he would like the Board to discuss this that evening.

Councilor Needell asked if the petition had been submitted yet, and it was clarified that it would be submitted if the Planning Board didn't choose to propose the amendment.

There was discussion about what questions the Board should be discussing that evening on this issue, besides the issue reflected in the proposed amendment.

Chair Kelley said he would like to see if the Planning Board wanted to say that any nonresidential abutting a residential use would be a conditional use.

There was discussion about legislation recently passed by the House and Senate, but not yet signed by the Governor, which related to this situation.

Mr. Campbell explained that now, when a formal application was accepted, it was exempt from changes to a zoning ordinance. He said the bill was saying once an application was noticed for design review, it became vested in the current zoning. He said the bill hadn't been signed by the Governor yet, and wouldn't take effect until 60 days after the signature.

Mr. Grant suggested that a letter should be sent to the Governor asking him not to sign this bill. There was discussion about this.

Arthur Grant MOVED that the Durham Planning Board send a letter to Governor Lynch urging his veto of House Bill 1508. Richard Ozenich SECONDED the motion.

Councilor Needell said he had discussed Bill 1508 with Mr. Campbell, and said he didn't disagree that the bill represented bad planning. But he said he thought that in a situation where there had been design review for a permitted use, it was irresponsible to then change an Ordinance and say an applicant couldn't do something that had previously been permitted.

He spoke about the importance of the design review process, and said he was concerned that the Planning Board would get applications instead of design reviews, and therefore wouldn't be able to provide the input it currently could with the design review process. He noted that with the reduction in the amount of conditional use applications, design review was especially important.

Mr. Campbell provided details on language added to the bill that put a time frame on the design review process. He said there would have to be a formal application within 12 months.

Mr. Grant said that design review was a convenience for a developer, and provided details on this.

Mr. Roberts said he agreed with Mr. Grant, and also supported the motion. He provided details on his reasons for doing so.

Councilor Needell questioned how many Board members had read the bill, and said he personally did not feel he was informed enough to take a stand on this issue.

Chair Kelley spoke in favor of the motion.

The motion PASSED 6-0-1 with Councilor Needell abstaining for lack of information.

Mr. Campbell said the change being proposed by the amendment, even if it was in response to this particular design review before the Board, did not stop the process from going forward. It just changed the process. He said the discussion with the neighbors indicated they were not looking to prevent anything from happening on the site, but just wanted the Board to have more control, especially relating to the issue of a possible convenience store. He provided details on this.

Mrs. Harris noted that the most recent application that went through the conditional use process was the Hotel NH, which turned out much better because of this process.

Councilor Needell said there was no doubt that the conditional use process should be used, but he said he was very uncomfortable about the Planning Board doing this reactively. He said he would prefer to see the amendment initiated by a petition of residents, and explained his reasoning for this. There was detailed discussion about this, including discussion of whether residents of the neighborhood had previously been notified about the zoning district changes in that area.

Mr. Grant said he had initially opposed the creation of the Professional Office zone, and provided some detail on this. He said the Board had heard a case that evening for a development in that district, as well as one the week before, that were totally different from what he had had envisioned for this zone.

He said this said to him that the Board should do what it could to freeze this zone until it had time to work out these issues. He said he had never anticipated that there would be retail stores in this zone, explaining that he thought the Board had talked about professional offices downstairs, and apartments upstairs.

Mr. Webb said the Ordinance had a definition of mixed use that was structured around the Central Business district, and said that by default, this had been expanded to other districts.

Mr. Campbell said the Master Plan had called for retail in the Professional Office district, but not necessarily a convenience store. He agreed that the Planning Board needed to look at the language in the Ordinance, and said if there were concerns about the kinds of retail stores, this needed to be clarified.

It was noted that there was no definition for a convenience store by itself, without a service station.

Mrs. Harris said she understood Councilor Needell's concerns. But she said it was an imperfect process, and said when a mistake in the Ordinance was called to the Board's attention, it needed to be looked at.

Mr. Webb agreed it was inappropriate to engage in a potential chess game with applicants. But he said there was clearly something here that no one had envisioned. He said the conceptual consultation had come forward in good faith, and said he didn't want to discourage that process.

Councilor Needell said this discussion had been initiated by citizen concern, and he said it was appropriate for citizens to move forward concerning it. He said they were asking whether perhaps the Board did make a mistake with this district, and he said the Board should answer that question.

Mr. Grant noted that he had raised the issue of the convenience store, and said he thought it was a legitimate Planning Board issue. He said the Town would be up in arms if the University proposed a convenience store across from the New England Center. He said while the Town couldn't do much about this particular situation, the whole concept needed serious review.

Chair Kelley said he understood the concerns about the convenience store in the neighborhood, but he said this could also bring some great benefits to residents, and noted that Durham and the

University had talked about having a walking community. He said the real concern was the sale of alcohol at a convenience store.

Mr. Grant said this location was only a 5-minute walk to downtown, so it was easy to get there. He said he felt that developing a retail establishment away from the Main Street downtown center was disruptive.

Councilor Carroll said she agreed with Mr. Grant. She said the Town was trying to support the businesses downtown, and said putting in a retail business a quarter mile away was not a good idea.

Chair Kelley asked where Board members saw the Central Business district expanding. He said he felt this issue had been neglected, and provide details on this.

Councilor Carroll said the Town needed to get other kinds businesses, and didn't need more convenience stores, competing with the existing ones.

Council Needell asked if the Board was trying to solve the wrong problem. He said if the question was whether mixed use should be allowed, or if retail should be part of mixed use, those were different questions, and making this a conditional use wouldn't address that. He said requiring the conditional use process didn't necessarily mean the Board could decide on every aspect of it. He provided details on this. He noted that what triggered this was the idea of alcohol sales, and said that was a whole different issue, and had to be dealt with in a different venue.

Chair Kelley asked whether the idea of a convenience store should be separate from the idea of a retail store.

Mr. Roberts spoke in detail about the benefits of the conditional use process. He said some citizens were now proposing some short-term protection for their neighborhood, which didn't hurt the applicant. He said the Planning Board could in the mean time deliberately craft some definitions and policies.

Mr. Campbell said if the Board wanted to move forward to make the amendment, it still didn't address what he was hearing was the problem with what the Board had done with the Professional Office district. He said if a motion was made to make the amendment, it should also direct him to make the long-term changes needed to get at the heart of the problem.

Councilor Harris said Mr. Campbell should move forward as quickly as possible to revise the mistakes that inadvertently had been put in the Ordinance. She also said she felt reasonably comfortable having the conditional use amendment come from either the citizens or the Board.

Mr. Ozenich said the Board didn't know it made a mistake with the Ordinance until there was an applicant. He said, when there were concerned citizens, the Board had the duty to respond. But he said he also agreed with the points made by Councilor Needell. He said the Board needed to look into the entire issue, and to restructure the whole district.

Mr. Grant said he favored the conditional use process in this district, and also urged that there be study of all the uses allowed in the district.

Mr. Webb said if citizens wanted to petition for conditional use, he would consider this. He also said he felt the Board needed to create a definition for mixed use.

Mr. Roberts said he agreed with the amendment, whether it came from the citizens or the Board.

Councilor Carroll said it sounded like some unanticipated mistakes had been made. She said she agreed that the Professional Office district needed to be looked at carefully, and said the proposed amendment sounded fine, for the short term.

Councilor Needell said the Zoning Ordinance was an evolving document. He said there were many things about it that people had questions about, and said he was not ready to say that conditional use was the thing to focus on but he said if a group of citizens wanted to change the Ordinance, the Board had no choice in this, and it was appropriate to have it go forward.

Mr. Parnell said his concern was that the development in question was a permitted use, that it was one of the first projects since the revised Zoning Ordinance had been passed, and that people were now saying there were mistakes in it. He said he was concerned about the ad hoc, fire-fighting aspect of this, and said perhaps the Board should look more at the overall issues involved.

Chair Kelley noted that Mr. McGowan was leaving the meeting, and said Mr. Parnell would fill in for him as a voting member.

Sumner Properties

Mike Davis, owner of Sumner Properties, explained that he owned four adjoining lots downtown, 2 of which were in the Central Business district, and 2 that were in the Church Hill district.

There was discussion about exactly where the 4 properties were located, and how the zoning district lines were drawn.

Mr. Campbell said he had done some research on this, and said on the face of it, it would have made sense to draw the district line straight up from the Plaza. He also provided details on the way the line was drawn in the future land use map of the Master Plan for this area.

There was discussion that it wasn't clear why the district lines had been drawn as they had been.

Councilor Needell said he was not prepared to make any changes concerning this without getting more information. He said everything possible should be done to find out why the line had been drawn that way, and said the question would then be which way it should be drawn.

Chair Kelley asked Mr. Davis how having some of his property zoned as part of the Church Hill district affected his plans.

Mr. Davis explained that if he was allowed to redo the properties, he would want to put office or retail below, and student housing above. But he said the density allowed was different in the two districts, and provided details on this.

After detailed discussion on this matter, Chair Kelly said more research needed to be done on it. He said the Board would be back in touch with Mr. Davis after this had been done.

Goss letter

It was noted that the Board had placed this property in the new ORLI district as part of the Zoning rewrite process, but that requests were made at a public hearing to take it out of the ORLI District and put it back in the Rural district because it abutted residentially zoned land in Madbury.

Mr. Campbell also noted previous discussions on the Beech Hill area, and that in response to comments from some residents of this area, the Board decided to keep everything south of Beech Hill as Office Research, and everything north as Rural. He said this was recommended to the Town Council, and was approved.

After some discussion by the Board and Mr. Campbell about additional details of this situation, Chair Kelley asked Mr. Goss if he felt his family's property was better suited to being in the ORLI district.

Mr. Goss said he was not sure, but said with the ORLI district, there were a number of options for development of the property, noting it was located on a State road. But he said now, with the property zoned Rural, there could only be Mc Mansions. He provided details on this, and said he felt it was almost a taking.

Councilor Needell noted that the ORLI district didn't allow single-family use, although multi-unit and elderly housing were allowed as conditional uses. He provided details on this, and asked for more specifics on what Mr. Goss wanted to be able to do with the property.

There was discussion about whether more advertising should have been done about changes to the zoning districts. Mr. Campbell provided details on how much work was done to keep residents informed about the changes to the Ordinance.

There was additional detailed discussion about why the zoning districts were drawn the way they were.

Chair Kelley noted Mr. Goss had asked why the zoning had change to 1 acre to 4 acre minimum lot sizes, and said the reason was that the Master Plan and the community were committed to preserve open space, through the conservation subdivision process, at the expense of taxable lots.

Mr. Goss said he appreciated this, but said there was a lot of beautiful land in Durham.

VIII. Other Business

IX. Old Business: Select a Representative for the Landlord Committee

Kevin Webb MOVED to nominate Susan Fuller to the Landlord Committee. Arthur Grant SECONDED the motion, and it PASSED unanimously 7-0.

X. New Business: Request for Technical Review of an extension of the canopy at the Hotel New Hampshire, 2 Main Street, Map 4, Lot 50-0.

Mr. Campbell said the request was for Holiday Inn, the new owner of the hotel building, to extend the canopy over the front entrance another 3 feet. He noted that there would not be any wording on the canopy. He also said that a satellite dish had been placed on the roof of the building without a permit, noting that what was there fit under the Town's Personal Wireless ordinance. He suggested that this issue also be looked at as part of the technical review process.

Matt Worth, of PCR Architecture, said the property was becoming a Holiday Inn Express, and the canopy change was being requested in order to bring it up to the company's standards. He provided details on this, and also said they would like to upgrade the concrete, to make it more decorative. He said the color scheme would stay the same.

After some discussion on the application, it was agreed that the canopy issue should be a separate matter from the satellite dish issue.

Kevin Webb MOVED to approve the request for technical review of an extension of an existing canopy at the former Hotel New Hampshire. Chair Kelley SECONDED the motion, and it PASSED unanimously 7-0.

Chair Kelley said the Board was not prepared to send the satellite issue to technical review because it didn't have information on it. There was discussion on this.

XI. Next meeting of the Board: June 28, 2006 (Quarterly Planning Meeting)

There was discussion that the timber harvesting issue would be the subject of the quarterly planning meeting. Mr. Campbell provided details on professionals who would be attending the session.

Mr. Roberts said he was concerned the Town was getting a snow job on this. He noted that the State of Maine had wrestled with this issue, and said the Town had what that state had concerning buffers. He asked if Mr. Eyerman would be available for the session.

Mr. Campbell said he hadn't requested that Mr. Eyerman come, but had asked where he got his information. He noted that Durham had to abide by the State of NH timber harvesting laws. He said there would be an opinion from the Town Attorney on this issue, and also said people who would represent the other side of the argument had been invited.

Mr. Grant said it was very important to have members of the Conservation Commission present. He said this was a very technical matter, and said he would be influenced by what they said.

Mr. Roberts said this was more than a technical issue. He said the State of New Hampshire had caved to forestry people, while other states had taken a more balanced approach. He said what rights the Town had in all of this were a good question.

XII. Approval of Minutes

April 26, 2006

May 10, 2006

Postponed

XII. Adjournment

Arthur Grant MOVED to postpone approval of the Minutes, and to adjourn the meeting. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.

Adjournment at 10:45 pm