

These minutes were approved at the July 23, 2008 meeting.

**DURHAM PLANNING BOARD  
WEDNESDAY, JUNE 18, 2008  
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL  
7:00 P.M.  
MINUTES**

**REGULAR MEMBERS PRESENT:** Chair Bill McGowan; Secretary Susan Fuller; Richard Ozenich; Steve Roberts; Richard Kelley; Councilor Julian Smith

**ALTERNATES PRESENT:** Kevin Gardner; Wayne Lewis

**MEMBERS ABSENT:** Vice Chair Lorne Parnell

**I. Call to Order**

**II. Approval of Agenda**

Chair McGowan said there was an email from JLB Partners withdrawing from the night's agenda, and said they would come back at a future date.

*Richard Kelley MOVED that Item VI be removed from the Agenda, at the request of the applicant. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.*

Chair McGowan said Mr. Lewis would fill in for Mr. Ozenich.

**III. Report of the Planner**

Mr. Campbell said that under Old Business, there was a request from Rivers Edge, for a 30-day extension on their approval/application. He said they were waiting on a permit number from the State for their septic system. He said it shouldn't take more than 30 days to get the permit number so they could finalize their building plans.

**IV. Public Hearing** on a proposed amendment to Article VII, Section 175-55, Table of Uses, to allow Stables as a Conditional Use (CU) in the Multi-Unit Dwelling/Office Research Zoning District.

Mr. Campbell said that at the last Planning Board meeting, there had been a conceptual consultation with the Potters, who owned land in the MUDOR district. He said their development proposal included a stable, where among other things they would breed German horses. He said the Table of Uses didn't allow stables in the MUDOR district, but it was allowed in the ORLI district. He also noted that the UNH stables were in the MUDOR district.

He said the Planning Board felt it was appropriate to make this proposed change to allow stables as a conditional use in the MUDOR district.

***Councilor Julian Smith MOVED to open the public hearing on a proposed amendment to Article VII, Section 175-55, Table of Uses, to allow Stables as a Conditional Use (CU) in the Multi-Unit Dwelling/Office Research Zoning District. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.***

**Beth Olshansky, Packers Falls Road**, said she supported this proposed Ordinance change. She said residents mourned the loss of rural character in Durham, and said this was a great opportunity to set aside a piece of land for rural use, in a neighborhood where there were already horses.

Christine Potter said she would appreciate everyone's support for this proposal. She said she had grown up on this property, and was looking forward to coming back to Town and bringing the property back to what it previously had been. She said there had been horses there when she grew up, over thirty years ago. She read through an email she had previously written concerning this proposal.

Chair McGowan asked if there were any members of the public who wished to speak for or against the proposed Zoning Ordinance change. There was no response.

***Wayne Lewis MOVED to close the public hearing. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.***

***Mr. Kelley MOVED to send to the Town Council a proposed amendment to Article VII, Section 175-55, Table of Uses, to allow Stables as a Conditional Use (CU) in the Multi-Unit Dwelling/Office Research Zoning District. Steve Roberts SECONDED the motion,***

Chair McGowan noted that the Board had discussed this proposed Zoning change at the previous Board meeting. He said he was in favor of it.

***The motion PASSED unanimously 7-0.***

**V. Public Hearing** on proposed amendments to the Zoning Map to extend the Central Business District, the ORLI District, and the MUDOR District as shown on the draft Zoning Map dated May 2008.

Mr. Campbell provided detailed background on these proposed changes, which he said were initiated by the Town Council, and were driven by a desire to promote economic development in Durham. (See the June 5, 2008 Town Council Minutes for the specifics on these proposed changes.)

Mr. Roberts said that prior to the hearing, he would like to speak on behalf of the Conservation Commission regarding the proposal concerning the ORLI district. He said the Commission had just gathered its data, and would like to continue the hearing in order to be able to provide a report.

There was discussion on this, with Mr. Campbell noting that there was a 60-day window they were working with.

Councilor Needell said there was no reason why the recommendation of the Planning Board couldn't be delayed. He said the Board's response could be an emphatic request not to act, although he said the Council could ignore this.

He also said he wanted to make it clear that the initial discussion at the Economic Development Committee about the Zoning changes was at the request of Chair Niman, and was not the request of the Town Council. He said it was perfectly ok that Chair Niman had acted on his own, but said he didn't know where the decision to bring this forward as a Council initiative had been made. He said that had triggered this rather rapid process.

He said the Council had discussed the idea of these proposed changes at several meetings, and the EDC had recommended the changes. He also noted that these were three independent Zoning change requests.

Mr. Kelley asked if there would be a hearing after the Board sent its recommendations back to the Council, and Councilor Needell said there would be both a first reading and a public hearing.

Chair McGowan suggested that each proposed zoning change should be discussed separately, and the Board agreed with this.

***Chair McGowan MOVED to open the public hearing on proposed amendments to the Zoning Map to extend the Central Business District, the ORLI District, and the MUDOR District as shown on the draft Zoning Map dated May 2008. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.***

Councilor Julian Smith described the properties involved with the proposed extension of the Central Business District. He said the majority of the land involved was owned by Kyreages. He said he had been very supportive of this proposed Zoning change, as a member of the Mill Plaza Committee, and he noted that it would open up the possibility of expansion of Mill Plaza, to the east.

**Peter Anderson, 6 Chesley Drive and 8 Chesley Drive**, noted that his property abutted the area of the proposed change. He described how the proposed Ordinance change could impact the 8 Chesley Drive property, noting that there was a 0 setback, and that there might be a 30 ft structure located right near it. He also noted that 100% impervious cover was allowed in that zone, and that there were no sideyard setbacks or rear yard setbacks. He said he viewed this proposed change as a big encroachment on the Faculty neighborhood. Mr. Anderson said the stone wall from the Plaza to Smith Park Lane was not the property boundary, and also said that any developer could tear that down for additional parking space

He said the Town had recently suffered the loss of a local hardware store and a copy center. He said Durham was hard to get to, and wasn't exactly a center for shopping. He noted that he was a developer and real estate broker, and provided his perspective on the highest and best use for the land in this area. He said if the property was maxed out, there could be 360,000 sf of office and retail space, and 2000 students. He said even if there were only 200 students and 36,000 sf of office space, there could still be a significant impact.

He said the Faculty neighborhood already had issues with the students, and he provided details on this. He said if this proposed Zoning was being seriously considered, different setbacks in this area should be considered. He said the way the land laid right now was a natural buffer, and explained that it was important to have a division between the people who lived in Durham and the students. He said the main problem in Town was the clash between students and residents. He said he was a member of the Community Church, which had to replace 5 broken windows this past year. He said this proposed Zoning change was a bad idea.

Mr. Anderson also discussed the proposal to provide better access to the Mill Plaza site, and as part of this, he asked why this had not been brought forward in the public sessions on the Mill Plaza redevelopment. He said the access proposed was too close to the intersection on Route 108, and would result in major backups. He said sight distance was a problem there, and also noted the accident that had occurred at the top of Church Hill. He said if there was to be an access there, it should be on the other side of Red Tower.

Mr. Anderson said he didn't see why this Zone should be changed, noting that it had already been changed to Church Hill, which allowed greater density in housing.

**Bill Hall, 1 Smith Park Lane**, said he was concerned that this public hearing covered three proposed Zoning changes in one hearing. He also noted that he had lived in what was now the Church Hill District for 60 years, and he described the damage done to this area by students over the years.

He said the students and residents there had nothing in common, and shouldn't be living near each other. He said the people who used to own these buildings used to live in them, but not now. He said he remembered when there wasn't a single student living on Church Hill. He said things had improved recently, but said he didn't want what happened on Main Street to move up Church Hill.

Mr. Hall said that concerning the idea of putting workforce housing here, no one would want to subject himself to what went on there. He also spoke about the traffic issues in this area. He said this proposed Zoning change was not a good idea, unless the goal was to create chaos in the central core of Town.

He noted that the HDC hadn't taken the opportunity to allow the purple house (Cutter property) to become part of the Historic District, and had therefore let it get run down. He said residents of this area had been victimized by the HDC, and now by the Planning Board. He said he believed the Central Business District should stay where it was, unless people wanted to destroy what was left of it.

Mr. Kelley provided clarification that the Planning Board could not make these proposed Zoning changes, and could only make recommendations concerning them.

Mr. Hall said then the Board should recommend that this change to the downtown area should not happen.

Mr. Anderson verified that there had been damage to the Church as a result of student behavior. He also spoke about the traffic fatality that had occurred at the top of Church Hill, a location where he said there would probably be a lot of traffic if it was converted to student housing.

Mr. Anderson said Durham was not a good place for businesses because they couldn't compete with stores in surrounding towns, and asked what kind of businesses could actually be enticed to the area. He also said the Town was on a bandwagon to build student housing, but said this would be a stupid place to put it.

He said people were panicking right now, but said it was not good to act rashly at a time like this. He said this seemed like an ill-conceived, short term solution, building housing in a place that didn't fit, and he said Town officials needed to take a step back.

**Joshua Meyrowitz, 7 Chesley Drive**, said he was concerned that significant changes were being considered with very limited notice to those who might be impacted by them. He said no details had been provided with the notice on this hearing. He said the Central Business area had been rezoned in 2006, and residents of the area thought the issues were therefore settled. He urged the Board to continue this hearing until others could provide input.

He said this area of Church Hill was a primary buffer for the neighborhood, and he said the problems would only get worse with these proposed changes. He said the Faculty neighborhood contained small lots, and the layout of the area allowed people to walk to Mill Plaza. He said this could be destroyed because of this proposed Zoning change. He said he had been disturbed to hear that the stone wall back there was not a boundary, and could conceivably be removed.

Mr. Meyrowitz said he admired the work Councilor Julian Smith had done, and appreciated the attentiveness that was part of the Mill Plaza process. He said he thought his instinct to consider the Kyreages property was a good one, and said he didn't think it should be ruled out. But he said the plan as to what should be put there should come before the Zoning change. He said this plan should be something that the citizens could rally behind. He urged the Planning Board to turn this proposal down, before hearing such a plan. He said this very important buffer, that protected the community from the commercial core, should not be compromised at this time.

**Maura Slavin, 10 Burnham Ave**, said the Faculty neighborhood was a nice place for kids, and said she was concerned about what the results of this proposed Zoning change would do to kids walking to the library, etc. She said she wanted them to be able to feel safe when walking around Town.

**Pedro Dealba, 25 Mill Road**, urged the Planning Board to look carefully at any development that proposed a large building, stating that this was not a good idea.

**Bill Hall, 1 Smith Park Lane**, said he had needed to replace all of the windows on his house over time, and said his car, sitting in his driveway, had been vandalized. He said he would think that the last thing that should be located in this area was student housing, and said among other things that it would mean there would need to be more police presence in this area. He also said that the reality of fire-fighting changed when a building had three floors or more, and said the Town didn't want this.

He said he thought the Town was trying to cut costs, and not make worse the cost of funding these departments.

**Robin Mower, Faculty Road**, said she was hearing a great deal of concern about the idea of having a large number of students on Church Hill. She said it was important not to lose sight of the fact that there would be other types of development on Church Hill. She echoed the importance of planning before doing the Rezoning. She said it might be time to considering revising the Master Plan, and said it would be a shame not to consider doing this before doing the Rezoning.

**Crawford Mills, Newmarket Road**, said he had been on the Mill Plaza Committee, and these various points being made had been argued. He said now there was this public hearing to rezone this area. He said he was concerned that this was a field of dreams kind of attitude, and said he hadn't heard a proposal as to what people actually saw happening here. He said he had no idea what was planned, and said an information packet need to be given out before seriously considering this proposed Zoning change.

Councilor Needell said that while the Council hadn't used this mechanism of a Town Council initiated Zoning Change very often, the process was allowed according to the Zoning Ordinance. He said there was nothing he could see that had been done improperly regarding the procedure for amending the Zoning Ordinance.

Mr. Kelley said the Board had taken the step of notifying abutters of the parcels that were affected.

Mr. Meyrowitz said some of the people who would be affected were not simply the direct abutters. He also said that the official notice on this proposed change was general, and did not get into the specifics of the parcels involved, or the context for this proposed change.

Councilor Smith said the public should pay more attention to what went on at Town Council meetings. He said the Council had discussed this matter and these proposed changes several times. He provided details on the Council initiated Zoning change process, and said everything had been done properly, although it might not necessarily meet the pleasure of the public.

Mr. Campbell said this wasn't something the Planning Board had just come up with. He said the proposal had been discussed by the Economic Development Committee, the Town Council, and the Planning Board at various meetings. He said notices were sent to abutters, and said some people had come to his office with questions. He said the process had worked, although perhaps not for everyone. He said perhaps there needed to be a discussion about how it could be improved.

**Diane McCann, 27 Oyster River Road**, noted the Town Administrator's Friday Updates, and said perhaps that would be a place to earmark this kind of proposal.

Ms. Mower said she realized there was a legal process to be followed. But she suggested that the Planning Board might consider giving some more detailed and user friendly information to the Town Administrator to include in the Friday Update on a proposal like this.

Councilor Needell stated again that this was a Council initiated change, and the Planning Board was reacting to it. He said it was a process that the Town was not very familiar with because it wasn't used very often.

Ms. Mower agreed that people did need to start paying attention, and to be engaged.

Chair McGowan noted that the Board hadn't made a decision concerning the proposed Zoning map change regarding the Central Business District. He said he had noted that all of the information the Board had received that evening was against making the Zoning change.

Councilor Smith said whether or not the Planning Board made a recommendation, the Council could make these changes. He also said whether or not the Zoning change was actually made, there could still be a considerable amount of development in the area in question. He said the Mill Plaza Committee had recommended unanimously that student housing up by Main Street, but not by the Faculty neighborhood. He said that change was coming.

Mr. Roberts said he was in the middle on this issue. He said he appreciated what the Council was doing, but said that as someone who believed in planning, he believed the Planning Board's role was to advise the Council. He said the way this current zoning amendment process worked, this didn't happen.

He said the Board should perhaps have gone through the Table of Uses, should have discussed traffic and other issues, and should have provided the Council with information on these things. But he said he empathized with what the Council was wrestling with, especially given the tax situation. He asked that there be more consultation with the Planning Board ahead of time.

***Richard Kelley MOVED to close the Public Hearing on proposed amendments to the Zoning Map to extend the Central Business District as shown on the draft Zoning Map dated May 2008. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 7-0.***

***Richard Kelley MOVED to open the Public Hearing on proposed amendments to the Zoning Map to change from RB to ORLI. Councilor Julian Smith SECONDED the motion, and it PASSED unanimously 7-0.***

Mr. Lewis recused himself.

Chair McGowan asked if there were any members of the public who wished to speak in favor of this proposed Zoning change.

**Jack Farrell, Little John Road**, said he was a consultant for the JLB Partners project, and said he was also a trustee of the 124 acre parcel to the west of the project site. He said this parcel was the subject of this Rezoning proposal. He said the JLB proposal was consistent with the present Zoning Ordinance, subject to the Conditional Use process, and said the applicants were involved with this process right now.

He explained that the reason they had started down this road of rezoning was in part a result of wanting to apply the conservation subdivision process to develop this project. He said in doing this, a significant amount of property needed to be put into conservation, over 32 acres in this instance. He said it had become clear that the area immediately adjacent to College Woods and the Oyster River was of high conservation value, so should be used as conservation land. He said the suggestion was then made that perhaps the building footprint could be moved into the Spruce Wood area. He noted that in terms of buildable area, this area could hold 100 single family homes, or 300 senior housing units.

Mr. Farrell said the development that he would like to put on this buildable area would be more conducive to conservation goals and tax stabilization goals than others might be. He said if the Planning Board didn't recommend this Zoning change, and it wasn't approved, this would be ok too. But he said there wouldn't be as many development options, and there wouldn't be as much conservation acreage to include in the project.

He said if the 124 Spruce Wood parcel was developed as ORLI, the plan was that there would be high-value office research there, along with perhaps some workforce housing. He said it would be done under the conservation subdivision provisions, and the project would result in 70 of 124 acres of land being set aside. He provided details on this. He said this approach would give them more options from both a conservation and a tax stabilization point of view, all of which was flexibility that the developers, the EDC and the Town Council felt was appropriate.

Mr. Parnell asked how much of this area to be rezoned was owned either by the Tecces or Spruce Wood.

Mr. Farrell said almost all of it, and he noted that all of the proposed area was undeveloped.

Mr. Campbell said there were two Town parcels that would be included in the Zoning change, the Spruce Hole aquifer parcel and the property that abutted it.

Councilor Needell asked if there would be the option to get a variance, if the area was not rezoned.

Mr. Farrell said there would be. He also said he wasn't sure he would be better off with the rest of Spruce Wood as commercial, but said he felt the Town would be better off, and would be without the burden of having additional children in the school system.

Councilor Needell said in another words, Mr. Farrell would still have options, if the rezoning didn't happen.

Mr. Farrell said that was correct, for the reasons already stated.

In response to a question from Mr. Roberts, he spoke about managed student housing, and said UNH encouraged this kind of managed, concentrated student housing, close to campus and on the shuttle route. He said the University didn't feel that this kind of private student housing competed with them, and instead felt it enhanced their mission.



Mr. Roberts said the majority of this land sat on the aquifer, and was included in the aquifer protection overlay district, so there were additional constraints on uses in this district.

There was discussion on this. Mr. Farrell said the aquifer would be one of the things that could be put under permanent conservation, if the conservation subdivision method could be employed.

Councilor Smith asked if the rezoning of this parcel from RB to ORLI was more likely to make it more economically feasible for JLB Partners to cross the Oyster River in order to use Mast Road as access to this new development, rather than staying with the original plan to get access to the site via Mill Road.

Mr. Farrell said yes, and said the developers were now 99% in favor of coming in from Mast Road anyway. He noted that they had asked to continue the hearing on the project because they wanted to have the opportunity to respond to the Planning Board, the University, and the community, and come up with a comprehensive plan that addressed the various issues.

Councilor Smith said some members of the public might assume that the Zoning change from RB to ORLI would make it more likely that the student housing complex would be built. But he said the change would only make it less likely that there was an economic imperative to have the shortest possible access route.

Mr. Farrell said that was correct, and said it was easier to justify the cost of doing the access to Mast Road if there was a larger, more valuable development to amortize it over.

**Robin Mower, Faculty Road**, said she was speaking as a member of the Conservation Commission. She said she echoed the Planning Board representative to the Conservation Commission when he requested that the Planning Board delay deliberation on this until the Board heard back from the Commission.

She said the area under consideration included two areas that were important to the Town's water supply, the aquifer and a significant buffer area along the Oyster River. She also noted that the proposed development was likely to increase the amount of impervious cover. She said JLB had been consulting with the Conservation Commission, and said there had been a site walk, but she said the Commission needed to have the chance to evaluate the information it had on this project.

**Beth Olshansky, Packers Falls Road**, said the Board had heard that evening about the woes of student encroachment on the neighborhoods. She said that while she would rather see the land in question remain as woodland, the property owner had the right to do something with this land. She said this was a good location, buffered from the neighborhoods. She said she was against the idea of spilling traffic from the proposed development onto Mill Road, and said it would be better to funnel it to Mast Road.

Regarding the proposed Zoning change, she said she would like to see a more visionary approach. She said she appreciated Mr. Farrell's approach, to use the conservation subdivision process, and to set aside acreage next to College Woods. But she said if this area was rezoned tomorrow, it would become subject to different uses and density requirements. She noted that commercial zones were

not subject to conservation subdivision, and asked whether this Zoning change proposal should pass without requiring conservation subdivision in the Town's commercial zones, specifically the MUDOR and ORLI districts.

She said if Mr. Farrell didn't develop his parcel, there could be a development without conservation land on it. She said Mr. Farrell was promoting the use of the conservation subdivision approach in commercial zones, and she said this process allowed a lot of input from the community. She said she would like to see a package of changes to the Zoning Ordinance that included requiring conservation subdivision in these commercial zones.

Ms. Olshansky also said that regarding the big picture, the Planning Board needed to go back to the Table of Uses and to do the planning to make these zoning changes solid, so the Town would get the best development possible.

**Dick Wyerick, Old Concord Turnpike, Lee**, said he was the Vice President of the Oyster River Watershed Association. He strongly suggested that the Planning Board consider that the proposed Zoning change would be an action with a regional impact. He said the requirements of **RSA 36-A** needed to be followed, and he urged the Town to do so.

Councilor Smith asked how this proposed Zoning change affected other towns than Durham, noting that they were all upstream.

Mr. Wyerick said the properties involved for two of the proposals were on Town lines, also noting that the Church Hill proposal impacted the wastewater treatment facility, which was downstream and had regional impact. He said it wasn't necessarily an upstream or downstream issue, but said there could be impacts on abutting communities.

**Judith Rystar, Edendale Lane, Spruce Wood**, said residents of Spruce Wood had to pay their own water and sewer. She said she had heard that water and sewer would be extended to the JLB project, and she pleaded that before doing this, that the Town consider residents of Spruce Wood, who were paying dearly for their water and sewer.

She also said she got the impression that Mr. Farrell was held in esteem, and she also said it was admirable that he was taking conservation measures. But she said that since she had been a member of the Spruce Wood condo association, there had been constant issues concerning the construction of the development she lived in. She provided details on this.

**Bob Highland, 11 Spruce Wood Lane, President of the Cottages at Spruce Wood Association**, said he found it horrifying that 600-700 students would be living in such close proximity to three elderly housing developments. He said he didn't think the Planning Board had enough information to make a decision on the proposed Zoning change.

**Sarah Crocker, Cottages of Spruce Wood, 16 Britton Lane**, said she had thought that the remaining 124 acres of Spruce Wood was supposed to be an overflow area. She also said one of the reasons Spruce Wood was allowed to happen was that it was felt it would not impact the aquifer because it was fairly low density. She said she had serious concerns about the aquifer if the area in

question was rezoned to ORLI, and said she hoped that the Planning Board would consider not permitting this Zoning change.

**Pedro Dealba, 25 Mill Road**, said he strongly opposed the proposed rezoning, because they didn't know what the impacts would be, once the area was rezoned. He said the potential impacts should be carefully considered.

Mr. Roberts said the area being considered for rezoning coincided significantly with the aquifer overlay protection district, which offered huge protection from unsuitable uses. He noted as an example that no gas station could ever be built there.

Mr. Dealba asked what light industrial would mean here.

Mr. Roberts said light industry was prohibited in the aquifer protection overlay district. He said the Table of Uses for the ORLI district allowed a range of development that supposedly fit with Mr. Farrell's concept. He said that if it turned out that Mr. Farrell didn't proceed with a project, the Planning Board had the means to prohibit uses that were not fit for that area. He also said that conservation subdivision was a separate issue. He recommended that residents read what was permitted and prohibited in the aquifer protection overlay district.

Councilor Smith said the density and uses allowable in the ORLI district were different from those allowed in the RB district. But he said the aquifer protection overlay district sat on top of a portion of the area that was proposed to be rezoned, and it prohibited certain uses that were ordinarily permitted or were a conditional use within the ORLI district, even if the Zoning district changed.

There was discussion about the fact that a portion of the acreage under consideration for rezoning was not within the aquifer protection overlay district. Councilor Smith said there were stormwater management requirements, wetland protections, etc, for this acreage. He also noted that Mr. Farrell's proposal, whether or not the Zoning Ordinance changed, was to more than double the setback from the Oyster River that he was required to have.

Mr. Dealba said assuming the project did not go through and the Zoning changed, the hypothetical bridge to Mast Road wouldn't occur, so any light industrial and other development on the property would spill on to Mill Road, which was totally inadequate for heavy traffic.

Councilor Needell said the important point was that if the Zoning change were approved, the allowed uses would change. He provided details on this. He said there were processes in place to discuss any use that was proposed. But he said the bottom line was that it was an open book what could be proposed there.

Mr. Dealba asked if a high-density development, with access on Mill Road, could come before the Town. Told that it could, he said that would be appalling.

**Robin Mower, Faculty Road**, asked if it would be helpful for the Planning Board to explain in some detail the aquifer protection overlay district in relation to the other Zoning districts.

Mr. Kelley provided details on this, reading from the Zoning Ordinance.

Mr. Campbell noted the aquifer reclassification that had occurred in 2005, and he said it was a certain amount of feet beyond the edge of the aquifer where certain uses, including gas stations would not be allowed.

Sarah Crocker asked if there was any examination of existing leachfields, when the aquifer was reclassified.

Mr. Campbell said he didn't believe so.

Ms. Crocker requested a postponement concerning a vote on this proposed Zoning change, noting that the Conservation Commission hadn't had enough time to do its job concerning this proposal. She said it would be beneficial to have them do this, including looking at current uses and possible uses if it were zoned ORLI as compared to RB.

Mr. Campbell said the Planning Board didn't have the power to postpone this process, and had a deadline to get the Board's recommendations to the Council. He said a request concerning this would have to be made to the Town Council.

Ms. Crocker said she would do that. She also noted a solution mentioned by Councilor Needell that the Planning Board could choose not to act on this at this time.

There was discussion on this by the Board. Councilor Needell said it would not be an invalid response to say the Planning Board not prepared to make a recommendation, or that the recommendation should be to delay the Zoning change.

Councilor Smith said many of the comments made that evening should be addressed to the Town Council, during the Public Comments section. He said what had happened that evening was very useful, in sending a message to the Council that there were a number of people in the community who were concerned and worried about certain changes it was proposing to make. He said the Council needed to hear that. He said once the recommendation from the Planning Board went back to the Council, it would have to schedule a public hearing.

**Eileen Larocca, 10 Britton Lane, Cottages of Spruce Wood**, said most of the people who lived there were in their 70s and 80s, and were appalled about the proposed housing for 700 students. She provided details on this, and said perhaps it would be better if the development were put further over on Mast Road, away from Spruce Wood.

Councilor Smith said whether or not these parcels were rezoned, that number of units could still be build there, and was a separate matter.

***Councilor Smith MOVED to close the Public Hearing. Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.***

Break 9:17 – 9:31 pm

***Richard Kelley MOVED to open the Public Hearing on the proposed changes to the MUDOR District. Steve Roberts SECONDED the motion, and it PASSED unanimously***

**Althea Woolf, 3 Pendexter Road,** said she thought the proposed Zoning change was a yellow brick road to getting a 2-3 story complex in her back yard, perhaps a couple of them. She said she could see the reasonableness of this idea from a development point of view, but said it would make the lives of residents of the neighborhood unbearable, and would drive down their property values.

She also said there was a previous proposal to change the Zoning of this area, and it was defeated. She said she hoped this proposal as well would not pass, stating that it would destroy the peace and serenity of the area.

**Barbara Wright, 6 Pendexter Road,** said she had chosen to live on a quiet cul-de-sac, and said the character of the area had changed, with two properties that had unofficially changed into student housing. She said this had caused some concern, but she said to sanction student housing concerned her more. She spoke in detail about safety concerns, and difficulties she had had with students in the neighborhood.

She also said that even with just the students living in her neighborhood now, it had become more crowded in terms of cars. She asked why the area should legally be changed to become an area for student housing. She said it seemed unfair, and would change the character of the area even more.

Mr. Kelley said the Planning Board had had a lot of success with multiunit student residences as part of the conditional use process, which allowed the Board to require developers to have safety and management plans that among other things could required 24/7 security. He said a conditional use permit would be required for a multi-unit student housing development on the land proposed for rezoning.

Mr. Campbell noted that if this area changed from RB to MUDOR, the three unrelated rule would no longer apply there, and the number of occupants would be based on the square footage of the house. Ms. Wright said the people who moved there thought it was a quiet little neighborhood, noting that the houses weren't inexpensive and the taxes weren't low. She said they were willing to do this in order to have a safe haven.

Mr. Campbell asked, for the sake of argument, how Ms. Wright would feel if student housing wasn't allowed, and professional offices were there. He said the Master Plan had called for this area to be rezoned as office research.

Ms. Wright said if it brought a lot of UPS trucks and business traffic, people wouldn't be enthused about it. She said it would depend on the scale of the commercial development.

Councilor Needell received clarification that the Master Plan had called for rezoning the portion of land off Madbury Road and not just the Madbury Road corridor.

Ms. Fuller asked why the rest of the neighborhood had been included in this proposed MUDOR change. There was discussion.

Mr. Roberts said the Zoning rewrite committee had considered this proposed change previously, and based on the testimony received, had kept the area as RB.

**Amy Peterson, 5 Pendexter Road**, said this was really an individual-driven change, not a Council driven change. She said she believed there were long term plans that motivated this change as well. She said they were all single family homes on this road, and also said there was no place to do office research because the buildings were too small, unless they were torn down and rebuilt.

She said she wondered what kind of police protection there would be for a student housing development, given the location. She also said she currently didn't get enough water pressure, and asked what would be done to provide more services when more people were added. She urged Board members to take a ride to the neighborhood, and to consider why this area would be included in this proposal.

She said another abutter, Dick Houghton, Pendexter Road, Madbury was opposed to this Zoning change as well. She said this was a regional issue, spanning Town boundaries. She said this proposal seemed so backwards, in that the Zoning was proposed to change for a single parcel, but would result in a big change to the neighborhood.

Councilor Needell said this was a good question. He said some of the people who would like to see this occur here were looking at a broader picture, and were looking to rezone not just for the one parcel. He said there had been talk about absorbing the broader neighborhood into this. He said he believed the intent was to provide a larger area for development, which included the neighborhood.

Mr. Campbell said any use other than a single family home in this district would have to hook up to Town water and sewer.

**Bob Burnett-Kurie, 4 Pendexter Road**, said he had just come back to Town after having lived out of state for 12 ½ years. He noted that when he moved to Town in 1992, he needed to go through a lot of hoops to convert from a two family house to a one family house. He said now the desire was to build multiunit development. He asked where the conditional use process had actually been used in Durham.

Mr. Kelley provided details on larger multiunit student housing developments proposed on both Strafford Ave. and Old Concord Road. He said the applicants in each case had to meet certain criteria, having to do with quality of life issues, and said conditions were imposed concerning this. He said a super majority of the Board had to agree that the application met the criteria.

He said an example of a condition imposed was a security and management plan. He said the good landlords in Town had come up with a template for such a plan, which included private policing of the student housing properties. He provided details on this.

It was clarified that the management plan was used for existing rental properties in Town, but that the two projects Mr. Kelley had referred to had not been built yet. It was noted that the Police Department had said that these management plans appeared to be working.

Ms. Fuller provided details on how these plans were carried out, and agreed that they had been working. She noted that police records were being kept on properties, and if there was a problem with a property, the police could tell the landlord that the plan wasn't working.

Mr. Kelley asked if the Council could create an ordinance that required security and management plans for all multi-unit rental properties, and there was discussion.

Ms. Wright asked if their taxes would change as result of this proposed Zoning change. There was discussion.

***Richard Kelley MOVED to close the Public Hearing. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.***

***Mr. Kelley MOVED to continue the meeting until 10:30 pm. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.***

Mr. Roberts noted that single-family homes were not a permitted use in the MUDOR or ORLI Districts. There was discussion on this. He said this was a pretty big omission.

***Richard Kelley MOVED to recommend that the Town Council not adopt any of these proposed Zoning changes. Susan Fuller SECONDED the motion.***

Mr. Kelley said he had expected to support the Central Business District/Church Hill District Zoning change, noting that he had previously stated that the Zoning rewrite had done nothing for the Central Business District. But he said what had changed his mind was not the quality of life issue with the students, noting that these existed in Church Hill as well. He said it was that fact that the Town had so much downtown area that was vacant or undeveloped.

He said that concerning the RB to ORLI proposal, there was a better means to achieve the goal. He said some people at the hearing had said there needed to be a plan before there was a Zoning change. He noted the PUD language being floated recently, and said he felt this was the real tool to make the development happen in that area.

Concerning the proposed RB to MUDOR Zoning change, Mr. Kelley said it was up against an RB district, and also said that for him not to support his own motion, he would need someone to explain to him why this proposed change would not be spot zoning.

Councilor Smith said members of the public in the audience needed to tell the Council the things that had been said that evening. He noted that two members of the Council had voted against the proposed RB to MUDOR change, and both of them were sitting at the table that evening. He said it would take three more Council members to convince the Council that this was in fact spot zoning. He said one way to address that would be to include other properties in the proposed change.

Councilor Smith said the proposed Central Business District/Church Hill District change was worthy of some consideration, and said he would like to speak further on this later.

Councilor Needell said of the three proposals, the one he had been most looking forward to hearing about was the Central Business District proposal. He said it had seemed to be the one that was the best put forward in terms of justification, based on the Master Plan and other things. But he said issues had been raised that he had not thought about, and he said he had decided that he didn't think it was the way to go. He said he would encourage the Planning Board not to recommend it.

Councilor Needell said the RB to ORLI proposal was premature. He said there was an exciting vision and plan for potential development of the entire area, but said this needed to be developed more completely and brought forward as a complete package. He said protections concerning what could be developed there were not sufficient, if just the Zoning change occurred, without expanding the conservation subdivision concept and perhaps bringing in the PUD concept. He also said the Zoning change should be separated from the proposed JLB Partners project, and could be.

Regarding the RB to MUDOR change, he said he agreed with what others had said about spot zoning, although he noted that the change was supported by the Master Plan. He said this Zoning change had not been made as part of the Zoning Rewrite process, and said he would like to understand more about why it wasn't made. He also said the inclusion of the neighborhood in the proposed Zoning change puzzled him, and said the proposed change encroached much farther than it needed to, and would have a much bigger impact on the neighborhood than he would be willing to support.

Chair McGowan said all three of these proposed Zoning changes were spoken about in the Master Plan. He said the Board had heard from the public about concerns about students, and said a question was why more enforcement wasn't taking place. He said no matter what the Board wanted for zoning, these issues concerning the students needed to be addressed by the Town.

Mr. Parnell said the issues with student housing seemed to come up no matter what project the Board was dealing with, and said he wasn't sure the Board could influence this, other than requiring safety and management plans. He also said he had hoped that the three proposed Zoning changes would be discussed separately.

He said without some project presented, it was premature to change the zoning on Church Hill, and said he felt the same way about the RB to MUDOR change. He said with the RB to ORLI change, the landowner was proposing something, and should have certain jurisdiction to do something like this. But he noted that Councilor Needell had said there might be another way to do this that was better. He said changing the Zoning didn't guarantee that the Town would get what it wanted.

He said he would support Mr. Kelley's motion but would prefer to see it separated into three motions, and also said he might have a different view on the RB to ORLI proposal.

Chair McGowan asked if all three proposals could be handled by variances, noting that some of the changes being looked at had been generated by specific proposed developments.

There was discussion about this.



Ms. Fuller said she thought it would be better to vote on one proposal at a time. She said she would be supportive of the majority of them because without them, there was no place for property taxes to go but up. She said she particularly supported the RB to ORLI proposal, because there was a specific proposal that was coming before the Board, and could be a good thing for the Town. She said this was an opportunity to find a new way for residents and students to live together more peacefully.

After discussion, it was agreed to address the three proposed Zoning changes separately.

Mr. Campbell said these motions were an opportunity to not simply say that the Board didn't recommend the adoption of a proposed Zoning change, but to recommend that the Council continue to investigate a proposal. He said if some things were changed, they might work, and said he would hate to see a whole proposal thrown out by the Board. He said he could provide more details on this as they went through each of the proposals.

Mr. Kelley withdrew his original motion.

***Richard Kelley MOVED to recommend to the Town Council not to make the proposed RB to MUDOR zoning change. Susan Fuller SECONDED the motion.***

Mr. Kelley said this was an area of Town the Board had struggled with, in terms of proposed Zoning changes, and said the Board had consistently heard from the people who lived there that they didn't want the Zoning changed. He said in that light, the small size of the area being discussed, and the fact that it abutted the RB district, he did not support this proposed change.

Mr. Parnell said he also did not support this change, for essentially the same reasons, and Councilor Smith and Chair McGowan agreed as well.

Ms. Fuller said there was a developer out there who would like to have a plan to develop that area, and said there could turn out to be a development that would result in a better neighborhood, with multiunit student housing that could include some affordable housing for families. She said the developer could help the neighborhood deal with the current problems in that area with students, and said there could be a new neighborhood that might be better than what was going on there now. She said she knew this neighborhood and what the residents there were dealing with. She said she didn't know that she could totally support the motion.

Mr. Campbell said this would be a perfect area for a planned unit development (PUD). He said the Board had been told that evening that people didn't want student housing downtown, or on Mast Road. He said perhaps the Board should say this wasn't the time to change things, but he said he didn't want to throw out the proposal completely. He said the rezoning could increase the value of the properties there, and he provided details on the implications of this. But he noted that not one person from the neighborhood had spoken in favor of the proposed Zoning change, and said this was exactly what had happened last time.

Councilor Smith asked if Mr. Kelley would be supportive of the idea of just a portion of this area being rezoned, leaving the small residential neighborhood alone. He noted that the owner of the larger parcel there had the recourse of going to the ZBA.

Mr. Kelley said probably not, if they were talking about one individual lot. He said he believed the PUD was the tool that should be used there.

Mr. Campbell said he wouldn't want the Planning Board or Council to rule that out either. He said the owner had three lots there, and there was the possibility for him to do a number of things that could benefit the town, and not just the owner. He said this meant that this would not be spot zoning. He said the motion could recommend to the Council not to change the Zoning, but could also ask the Council to allow the Board to investigate other options.

There was discussion that the Planning Board had a lot on its plate right now. There was also discussion that Councilor Needell and Mr. Campbell could discuss with the Council what the Board had discussed this evening on this proposed Zoning change. Councilor Needell said it was still important for the Board to make clear what the recommendation was, stating that the current motion was simply a recommendation to kill the Zoning change.

Mr. Roberts said his concern was that this proposed Zoning change was not related to the Table of Uses, and he said it was outrageous that single family homes would not be a permitted use. He said the Board needed to do its homework and come up with a different type of proposal.

Chair McGowan asked whether this could be worked into the recommendation in the motion. There was detailed discussion about this, and it was agreed that the Zoning Rewrite committee should be involved in this. Mr. Roberts said perhaps even some paid planning assistance was needed. It was agreed that the motion itself needed to reflect these ideas, in order to provide a clear recommendation to the Council. Councilor Needell said the recommendation appeared to be for the Council to drop the proposed Zoning change and to turn it over to the Zoning Rewrite Committee, with no further conditions. Mr. Roberts said that was correct.

***Susan Fuller MOVED to amend the motion to say the Planning Board recommends that the Town Council not extend the MUDOR District further into the RB District, and to have further investigation done by the Zoning Rewrite Committee, and perhaps including professional assistance. Steve Robert SECONDED the motion, and it PASSED 5-2, with Richard Kelley and Lorne Parnell voting against it.***

***The motion as amended PASSED 6-1, with Richard Kelley voting against it.***

***Richard Kelley MOVED to continue the meeting until 11:00. Councilor Smith SECONDED the motion, and it PASSED 6-1, with Susan Fuller voting against it.***

***Steve Roberts MOVED that the Planning Board recommends that the Town Council not extend the Central Business District further into the Church Hill District, and to have further investigation done by the Zoning Rewrite Committee, and perhaps including professional assistance. Susan Fuller SECONDED the motion.***

There was discussion that this proposed Zoning change as well needed closer study.

Councilor Smith said some members of Council thought another logical expansion was south or east of the Plaza, and he provided details on this. He said a reason the committee eventually voted unanimously to avoid any access via Chesley Drive was that MP had long ago encouraged another access to the Plaza. He said the library trustees would like very much to build a new library at or next to the Plaza property, on Kyreages property, which was the largest portion of area to be rezoned.

He said redevelopment of the plaza should include some of the property on Mains St. north of the Plaza. He said all members of the Council had voted in favor of that proposed change, with the idea that this would encourage large scale redevelopment of that portion of the Central business district.

He said he sympathized with the notion expressed that there needed to be a plan before rezoning, and he said there was the beginning of a plan, as a result of the recommendations of the Mill Plaza Study Committee. He said there was some merit to this proposed change. He acknowledged that some of the directly affected parties, and neighbors had a right to be concerned about it, but he said he still felt it was worth pursuing. He said he would vote against this motion.

Mr. Kelley said he felt it was important that when any nonresidential use abutted a residential use, the non residential should be conditional. He said this was the change he felt was needed, and said then, different criteria could apply. He noted that he had brought this up for the Strafford Ave project. He said what he was trying to protect with this was the buffer, and said it was a quality of life issue.

He said in this case, this would mean that the back buffer of 400 ft, including the wall, trees, etc. between Chesley Drive and the redevelopment would remain. He said he agreed with Councilor Smith that sooner or later downtown had to move somewhere, either up Madbury Road or over the hill, and said he thought it would be over the hill and down to the Town Hall area.

Councilor Smith said he thought some members of the Council, including himself, would find merit in this suggestion. He said it might come to that.

Mr. Campbell said he understood this as well. He said the Board talked about it for the Professional Office district. But he said the idea of a project in the Central Business district having to go through the conditional use process for a commercial use there made him nervous. He said buffering requirements could be put into the development standards for the Central Business District, without having to go through the conditional use process.

Mr. Kelley agreed, but said he personally liked the conditional use process.

Councilor Smith noted there was a natural buffer between the Plaza area and the south part of the Kyreages property, including Chesley Marsh and College Brook. He said the CB District allowed 100% impervious coverage, but said realistically that this should and would not happen in the Plaza area because of College Brook.

Councilor Needell noted that this proposed Zoning change required that any development that occurred there would be intense.

There was discussion on whether Kyreages had expressed any interest in selling his properties. There was also discussion on other properties that might be developed in this area.

***The motion PASSED 4-3, with Councilor Julian Smith, Chair McGowan and Richard Kelley voting against it.***

***Susan Fuller MOVED to recommend to the Town Council to make the proposed change from RB to ORLI. Councilor Julian Smith SECONDED the motion.***

Ms. Fuller said in this situation there was a specific proposal, and while it could affect a large number of people in the area, she thought there would be sufficient protection provided by the developers as part of their development proposal.

Councilor Needell said his concern with this was not the development proposal being brought forward, but that Mr. Farrell's proposal went much farther. He said a reason it was so enticing was that Mr. Farrell had volunteered to place far more constraints on what he was going to do there. He said this Zoning change required none of that, and the Board had no way of knowing, or planning on that development coming forward as proposed.

He said if this change was to be made, those making it would have to be comfortable with any use of the property that was allowed under the ORLI zone. He said he didn't think the Zoning change as it stood should be based on the development proposal that had been discussed.

Mr. Roberts said he agreed, stating that this was premature. He said this Zoning change shouldn't be made without coordinating it with the rest of the Ordinance. He also said the Conservation Commission was just starting to look at the aquifer and Oyster River issues. He said the Board should do its homework and recommend some comprehensive changes. He said he liked the development proposal, but said the Board needed to do its job to make this right.

Mr. Campbell said he wasn't as concerned about the uses that would be allowed, but he said there was a potential water source and a current water source located in the area in question. He said they needed to insure that these things would be protected, noting that the ORLI district would allow for greater development of the area.

He said what Mr. Farrell had proposed would be great, but said if something happened to him and the property was sold to someone else, there could be problems. He said he wanted to be sure that Board members were satisfied with the setback requirements for ORLI. He noted that the aquifer protection overlay district offered certain protections.

Ms. Fuller said if someone else bought this property, they would have the right to build that parcel out under the RB zoning, and she said having a number of septic systems out there could create a hazard. She said again that she was comfortable enough to move forward with the Zoning change, based on the specific development proposal.

Mr. Campbell said the dimensional standards between RB and ORLI were very similar.

Councilor Smith said the specific proposal was not driving the Zoning change, and said the desire for other development out there was driving the Zoning change. He said this was the desire of the owner, his partner, members of the Town Council, and the Economic Development Committee.

Councilor Needell said there was no requirement that a commercial development in ORLI be a conservation subdivision, although he said Mr. Farrell was proposing one. He said a subdivision in RB would have to be a conservation subdivision. He said that was the one major difference between the requirements in the two zones.

Mr. Campbell said this would depend on whether Mr. Farrell developed three separate lots, in which case it would in fact be a subdivision, and would have to be a conservation subdivision. But he said if he put 3-4 commercial developments on one lot, it would not be a subdivision.

**Beth Olshansky** called a point of order, and said she thought conservation subdivision applied to all residential zones, period. There was discussion on this. Mr. Campbell determined that it applied to all residential subdivisions.

**Robin Mower, Faculty Road**, asked if a solution would be to consider including conservation subdivision in MUDOR, ORLI, etc, as part of the Zoning Rewrite process the Board had said it wanted to do regarding the other two Zoning proposals. She said they all seemed to be responsive to Mr. Farrell's voluntary offer to do this, and said perhaps it was time for the Town to be more in favor of this approach.

Councilor Julian Smith noted that he had brought this approach before the Council last year, but it was not received favorably. He said sometimes, one had to say something a few times before it caught on. He asked Ms. Fuller if she would be willing to change her motion, to include wording to the effect that the RB to ORLI Zoning change should go forward, but with the further change to extend conservation subdivision to ORLI in the Table of Uses.

Ms. Fuller said she would support this.

Mr. Roberts said the aquifer protection overlay district wording could also be revised.

Councilor Needell said he supported completely the idea of extension of conservation subdivision to the commercial zones. But he said it was not a trivial change. He noted that a commercial development didn't necessarily involve subdivision, and said the concept needed considerable thought. He said it wasn't simply a trivial tweak to the Ordinance.

There was discussion on this. Mr. Campbell said this would depend on what the goal was, and he noted that open space could be provided without doing a conservation subdivision, for a commercial development.

Councilor Smith said given the large parcels involved here, with a number of wetlands, there would be a significant amount of open space there anyway, given the stormwater regulations and the

wetland and shoreland overlays. He said there were protections, even without conservation subdivision.

Mr. Campbell said if the Board said all commercial development had to be conservation subdivision, a property like the Durham Business Park would be undevelopable.

Mr. Kelley called the question.

***The motion PASSED 4-2-1, with Richard Kelley and Steve Roberts voting against it, and Wayne Lewis abstaining because he lived in that area.***

- VI. Continued Conceptual Consultation on a Subdivision and Site Plan Review Application**  
submitted by JLB Partners, Irving, Texas, on behalf of Louise Tecce Rev Trust, Durham, New Hampshire to subdivide a lot into two lots, with the possibility of more lots being included, and to build a multi-family housing development consisting of approximately 210 units. The property involved is shown on Tax Map 13, Lot 6-3, is located at 236-240 Mast Road and is in the Office and Research & Light Industry Zoning District.

Postponed

**VII. Other Business**

A. Old Business:

***Richard Kelley MOVED to grant a 30 day extension to River View Apartments. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.***

Mr. Campbell said the Court had denied the appeal of the ZBA decision concerning the Stonemark development, on both of the issues involved. He said it would be up to the applicant whether to take this further.

B. New Business:

C. Next meeting of the Board: June 25, 2008

**VIII. Approval of Minutes – April 23, 2008**

Postponed

**IX. Adjournment**

***Susan Fuller MOVED to adjourn the meeting. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.***

Adjournment at 11:05 pm.

Victoria Parmele, Minutes taker