

*These minutes were approved at the October 13, 2010 meeting.*

**Durham Planning Board  
Wednesday July 28, 2010  
Durham Town Hall - Council Chambers  
7:00 P.M.  
Minutes**

**MEMBERS PRESENT:** Chair Lorne Parnell; Vice Chair Susan Fuller; Secretary Stephen Roberts; Richard Ozenich; Richard Kelley; Bill McGowan; Council representative Julian Smith; alternate Wayne Lewis; alternate Peter Wolfe; alternate Council representative Bill Cote

**MEMBERS ABSENT:**

**I. Call to Order**

Chair Parnell called the meeting to order at 7:06 pm.

**II. Approval of Agenda**

*Councilor Smith MOVED to approve the Agenda as submitted. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.*

**III. Approval of Minutes**

May 26, 2010

Page 1, should say Bill McGowan was present; also, line 23 should say "Chair Parnell said Mr. Wolfe would be a voting member in place of Mr. McGowan".

Page 9, line 5, should read "...the layout would be done by an engineering..."

Page 11, line 11 and line 17 should read "...existing building and accessory shed..."

Page 13, line 4 should read "...noted the scale of the proposed roof line."

Line 14, should read "...be important to continue the good work..."

Page 15, line 32 should read "...the developer or the abutter, Mr. Lenk, if he had..."

Page 16, line 1 should read "... prevent further congregating by tightening..."

Page 17, line 36 should read "... most of the trees would stay."

Page 22, line 15 should read, "...to move Item XIII to the June 2, 2010 Agenda."

*Susan Fuller MOVED to approve the May 26, 2010 Minutes as amended. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.*

**IV. Report of the Planner**

Mr. Campbell said the Traffic Safety Committee met on July 15<sup>th</sup> to discuss several

issues, including the Pettee Brook Road reconfiguration, the Quad Way intersection with Main Street, Campus Connector buses on Edgewood Road and Madbury Road, speed count results submitted by the Strafford Regional Planning Commission, and the intersection of Route 108 and Durham Point Road. He noted that he'd provided the Board with draft minutes of the meeting, and could answer questions they had on these issues.

He said he'd met with Matt Crape on July 15<sup>th</sup>, and they went over the conditions of approval to make sure he was on track for getting them done so he could get his Certificate of Occupancy. He said Matt's focus right now was on getting the apartments ready so occupants could move in, and said the commercial areas on the first floor would be completed after the move in. He noted that some Planning Board members had done a site visit and thought the apartments were very nice. He also said all the apartments had been leased, and there was a waiting list.

Mr. Campbell said he had attended Monday's Town Council meeting, and said the Council approved the proposed Zoning amendment to allow for flexibility in the use of the top three floors of a mixed use building in the Central Business District. He also said the Council approved the application for the Community Revitalization Tax Relief Incentive Program that was submitted by Sigma Beta fraternity.

He said the Economic Development Committee met on Monday at the Old Courthouse Building, and said most of the discussion centered on the commercial core strategic plan and the RFP for the Grange Hall.

Mr. Campbell noted that he had recently hired an intern to help develop Design Guidelines for Durham.

He reviewed documents that had come in after the packet was sent out, including the resignation of alternate Planning Board member Kevin Gardner. He said there was a notice of an upcoming public hearing concerning the nomination of the Oyster River as a State designated river under the NH River Management and Protection Program. He also noted correspondence concerning the ORLI/MUDOR Zoning change, which was pertinent to the Board's upcoming discussion on this issue.

- V. Continued Public Hearing on an Application for Site Plan Review** submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of Ionian Properties LLC, Dover, New Hampshire to demolish the existing building and an accessory shed in order to construct a new four-story, mixed use building. The property involved is shown on Tax Map 2, Lot 12-11, is located at 10 Pettee Brook Lane, and is in the Central Business Zoning District.
- VI. Continued Public Hearing on an Application for Conditional Use Permit** submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of Ionian Properties LLC, Dover, New Hampshire to demolish the existing building and an accessory shed in order to construct a new four-story, mixed use building. The property involved is shown on Tax Map 2, Lot 12-11, is located at 10 Pettee Brook

Lane, and is in the Central Business Zoning District.

**VII. Continued Public Hearing on an Application for Boundary Line Adjustment**

submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of Ionian Properties LLC, Dover, New Hampshire to demolish the existing building and an accessory shed in order to construct a new four-story, mixed use building. The property involved is shown on Tax Map 2, Lot 12-11, is located at 10 Pettee Brook Lane, and is in the Central Business Zoning District.

Mike Sievert of MJS Engineering spoke before the Board, and described again what was proposed with the development. He then noted updates to the plans that had been provided since the last meeting a month ago. He said the driveway permit and sewer discharge permit applications had been submitted. He also said the wetland setback line was now labeled as 75 ft upland buffer in sheets C-1 and C-3.

He noted previous discussion on the parking spaces sizes. He said the Zoning Ordinance required 9 ft by 18 ft spaces with a 22 ft aisle, and said this was unfortunate, because with the design that had been proposed, there were 6 ft sidewalks, overhang parking and somewhat narrower parking spaces, all of which had been intended to make things safer and more pedestrian friendly.

Mr. Sievert said because of the existing requirements, they had decided to go instead with the 9 ft by 18 ft spaces, a 22 ft aisle, and a 4 ft sidewalk. He said the applicant therefore wouldn't have to go back to the ZBA. He said hopefully the pedestrians would still be safe with a 4 ft sidewalk, and said hopefully next time, things could be looked at differently.

He said the easterly elevation of the building facing the municipal parking lot was provided, and said it showed the double doors at the right hand rear corner, which would be the access to the recycling and trash room at the bottom level. He said an easterly view from Rosemary Lane had also been submitted, which showed the parking underneath and the access to the commercial entrance there.

Mr. Sievert said another issue previously discussed with the Board was the stormwater management plan, and said this had been submitted. He noted that a matrix had been provided to help the owner concerning inspections, maintenance and reporting.

He said sight the distance to the west from the entrance and exit of the parking area had been provided on a separate sheet, in regard to the possibility of that road having a two way road pattern in the future. He noted that the sight distance to the west was greater than 200 ft because it was straight down Pettee Brook Lane.

Mr. Sievert said the final request from the Board had been that the applicant provide some idea of the expected traffic generation from the facility. He said the ITE trip generation manual was used, and said both commercial and residential use of the site was

considered. He said the worst case scenario, if all the spaces were used for residential, was an average of 6 - 8 trips per day.

Mr. Sievert noted that he had gone to the Conservation Commission, and they had formally requested that there be an erosion and sediment control plan. He said Note #5 was added to sheet D-1 under Construction Sequencing in response to their concerns about addressing collection of sediment laden storm water. He said the notes said any such stormwater would have to be pumped off site after being collected in the detention area. He explained that the detention area would be temporarily constructed during the construction of the foundation or in another nearby area, prior to completing the full rain garden.

He said oversight of the storm water controls that had been designed was included, noting that the Conservation Commission had asked for this with other projects. He said they also requested a small depression in the new landscaped island, so that with smaller storms, water would infiltrate there. He said the landscape architect had changed the finish coat of the landscape island as pea stone rather than mulch to take care of that. He said the concerns of the Conservation Commission had been met.

Chair Parnell noted that the Management and Security Plan had been provided.

He asked members of the public in favor, against or with concerns about the project to come forward. There was no response.

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

Mr. Kelley asked if there had been any breakthrough on the roof line, and what would be seen.

Mr. Sievert said no, but said the dormers in the roof would not protrude out through the eave, as shown in the elevations provided, because he needed to collect all the runoff from the roof ,and couldn't do it with gutters or else there would be a lot of downspouts.

Concerning the roof line, he said the plans had been presented as an idea of what the building would look like. He said this might change, and asked the Board how much latitude he had to make the change, before he would have to come back. He said the height of the building was about 47 ft from the average grade, and said they needed the latitude to go to 50 ft.

Mr. Kelley said it was because the height waiver was being sought that the roof line was critical. He said he would like to know what was proposed for the roof line, and said if what was in the plan right now was what was proposed, that was fine. But he said if it deviated from this, he would want the applicant to come back. He noted that he wasn't speaking about the dormer change, and was talking about the massing of the roof line as it existed now. He said it appeared that in the elevation from the Pettee Brook Lane

driveway, it was coming to a point.

Mr. Sievert said this was the closest they could get right now to what the roof line would be. He said if they made a change, they would re-present the building plans to the Board.

Mr. Kelley asked if the HVAC equipment was enclosed entirely in the attic, and Mr. Sievert said yes. Mr. Kelley said it would be nice to know how equipment replacements would occur if needed.

Councilor Smith asked Mr. Kelley if he was saying that if the applicant decided to have a straight roof line on the face that faced the municipal parking lot at the same elevation, he would want the applicant to come back to the Board.

Mr. Kelley said yes. He noted with some buildings, there was a false roof line with an actual flat roof and hidden HVAC equipment. He said that was something he would like to see back in front of the Planning Board. He confirmed with Mr. Sievert that what was shown in the elevation drawing was the worst case scenario in terms of the roof line.

Chair Parnell asked Mr. Sievert whether he was talking about a worst case scenario in terms of the building height, or aesthetics.

Mr. Sievert provided details on this.

Chair Parnell asked if it was possible that the building as shown in the elevation facing the municipal parking lot could end up as a straight lined roof across the top. He said it would be quite barn like.

Councilor Smith noted that this was the question he had been asking.

Mr. Sievert said he didn't think this would be a possibility, but he said if they did go with such an approach, that would be a major change, and the applicant would come back. He said right now, they weren't veering away from the hip roof or peaked roof approach, and he provided details on this.

Mr. Wolfe asked if any changes in the size of the roof would affect the need for the catchment of storm water.

Mr. Sievert said the footprint would not get larger, and there was discussion that regardless of the roof design, the amount of water would be the same, although the speed of runoff would vary.

Mr. Kelley asked about the lighting that was proposed in the parking areas and in exterior areas. He noted that the Police Department had had some concerns about this.

Mr. Sievert said in the parking area under the building, there would be recessed lighting that would either stay on all the time, or would be motion detected lighting. He said the exterior lighting would be a cut off style. He noted that the area where the pedestrian trail was would be lit, and said the lighting would be mounted on the back of the building and

would shine down onto the path.

There was a discussion that there was a Town light on the existing back utility pole, and Mr. Sievert said that would remain. But he said the overhead wires going from the utility pole to the back would be removed, and the light would be energized from a different location. He noted that there were already underground wires for the lighting in the municipal parking lot.

Mr. Kelley noted that there was a proposed utility pole at the exit lane from the municipal parking lot, and a relocated overhead wire.

Mr. Sievert said there would be a relocated utility pole, and underground utilities to the building and into the utility area. He said the overhead wire was continued back to that pole, but said subsequently there had been discussion with the DPW on removing that overhead wiring.

He said the applicant was willing to remove this and tie it into the municipal lights. He noted that at one time, there was discussion about removing the pole itself. He said the pole itself couldn't go away, so would have to be relocated to the parking lot. He said it lit up the pedestrian bridge, and noted that this area was a well traveled path. He said there was an easement in place, at the transfer of the property from the Town that allowed that pedestrian travel to continue.

Mr. Kelley asked if there would be dewatering required for the building when it was constructed.

Mr. Sievert said no, but said if there was, it would go into the temporary sediment pond, and would be pumped off site and not to the brook.

Mr. Kelley noted that the Board was told that if things proceeded as intended, construction would begin the following summer.  
There was discussion that there would be 17 units, with 64-68 tenants.

Chair Parnell said the Board would address the boundary line adjustment application first.

Mr. Campbell noted that the boundary line adjustment plan would be recorded separately from the other plans for the project.

Mr. Kelley asked if there was anything special that needed to occur with the application because the boundary line adjustment was between the applicant and the Town.

Mr. Campbell said no, and said there was documentation from the Town regarding the boundary line adjustment.

Mr. Kelley noted that the Conditions of Approval said there would be a certificate of

monumentation, but said he didn't see anything about the monumentation on the plan.

Mr. Campbell said the monumentation would be set, and a certification letter would be provided.

There was discussion. Mr. Sievert said the only place where monumentation wasn't existing was at the stone wall.

Mr. Kelley asked Mr. Sievert to look further into the monumentation situation, noting that the surveyor would have to submit signed, sealed drawings anyway. He also noted that there was a proposed corner out back, along the edge of the easement, which might needed to be considered in terms of monumentation. Mr. Sievert agreed.

It was noted that the Findings of Fact should be updated to reflect the fact that there was a public hearing on June 23<sup>rd</sup> as well as on July 28<sup>th</sup>, and to indicate that comments were received from the Conservation Commission on July 13<sup>th</sup>.

#### Findings of Fact

- 1) The applicant received approval for three variances from the Zoning Board of Adjustment on May 12, 2009.
- 2) The applicant received approval for one variance from the Zoning Board of Adjustment on July 28, 2009.
- 3) The applicant received a portion of land from the Town of Durham through a Warranty Deed recorded at Strafford Registry of Deeds on March 16, 2010, Book 3819, Page 840.
- 4) A Site Walk was done by the Planning Board on June 12, 2010.
- 5) James Houle, Conservation Commission Chair, submitted a memo stating that no determination on the application could be done at the June 10, 2010 meeting.
- 6) James Houle, Conservation Commission Chair, submitted a memo on the application on July 13, 2010.
- 7) Public Hearings were held on June 23, 2010 and July 28, 2010 and no public comment was received.

#### Conditions of Approval to be met prior to the Signature of Approval on the Boundary Line Adjustment Plan.

- 1) The applicant shall supply two mylar plans and one paper copy for signature by the Planning Board Chair.
- 2) A certificate of monumentation must be provided to the Planning & Community Development office.
- 3) All final plans must be stamped by appropriate professionals.

#### Conditions to be Met Subsequent to the Signature of Approval on the Boundary Line Adjustment Plan:

- 1) The referenced Boundary Line Adjustment Plan and these Findings of Fact and Conditions of Approval shall be recorded with the Strafford County Registry of Deeds, at the applicant's expense, within seven (7) days of the Chair's signature on the Plan.

***Richard Kelley MOVED to approve, as amended, the Findings of Fact and Conditions of Approval for an Application for Boundary Line Adjustment submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of Ionian Properties LLC, Dover, New Hampshire to demolish the existing buildings and an accessory shed in order to construct a new four-story, mixed use building. The property involved is shown on Tax Map 2, Lot 12-11, is located at 10 Pettee Brook Lane and the Pettee Brook parking lot respectively, and is in the Central Business Zoning District. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.***

There was next discussion on the Site plan application. It was noted that the Findings of Fact should be updated to reflect the fact that comments were received from the Conservation Commission on July 13<sup>th</sup>.

There was discussion that the Findings of Fact said the Planning Board had approved a building height of up to 48 ft, but the applicant had now asked for 50 ft.

Mr. Roberts said this was ok, given the scale of Holloway Commons across the street. He also said the houses in back of the applicants' site were on hills, so would be higher than their property anyway.

There was discussion on the wording of the Condition of Approval to be met subsequent, concerning the roof line. There was also discussion about the fact that the recent changes to the stormwater management provisions of the Site Plan regulations did not apply to this application because the application was submitted prior to the passage of those regulations.

It was noted that maintenance guarantees and bonding requirements were already in place in the Site Plan regulations, and would apply with the updated stormwater provisions. Mr. Campbell also noted that Mr. Cedarholm had compared favorably the stormwater management planned for this site to what was now required in the updated stormwater regulations.

Mr. Kelley determined that the applicants had not yet reviewed the Conditions of Approval. He said the one that stood out in his mind was the condition concerning the property security and management plan, and it read it aloud.

Mr. Kelley asked if thought had been given to whether the applicant would approach the Town about utilizing a portion of the municipal lot for a staging area.

Mr. Sievert said because of the work that needed to go on in the parking lot, he envisioned that that side of the parking lot would be disrupted, especially the side with the angled parking. He provided details on this, and said he anticipated that those parking spaces could not be utilized during construction.



Mr. Kelley said some thought should be given to creating a temporary way out, and losing a few spaces. He provided some details on this, and said these things could be addressed at the preconstruction meeting.

Mr. Sievert said once the sewer line was put in and the area was re-graveled, it could probably be opened up for travel. He also noted that the parking against the building was used for the building that was there now. He said the area where the dumpster was wasn't used much, so there might be a request to use that area.

Mr. Kelley said the pedestrian area would be utilized heavily during construction, and students would be asked to take a detour. He said the specific detour route should be investigated and proposed at the preconstruction meeting.

There was discussion that the parking meters would ultimately remain where they currently were, although there would be some disruption during construction. Mr. Kelley determined that these were the Town's meters, and recommended that the Town would remove them, and the contractor would remove and dispose of the posts. He said the Board would like to see new posts installed.

#### Findings of Fact

- 1) The applicant received approval for three variances from the Zoning Board of Adjustment on May 12, 2009.
- 2) The applicant received approval for one variance from the Zoning Board of Adjustment on July 28, 2009.
- 3) The applicant received a portion of land from the Town of Durham through a Warranty Deed recorded at Strafford Registry of Deeds on March 16, 2010, Book 3819, Page 840.
- 4) A Site Walk was done by the Planning Board on June 12, 2010.
- 5) James Houle, Conservation Commission Chair, submitted a memo stating that no determination on the application could be done at the June 10, 2010 meeting.
- 6) James Houle, Conservation Commission Chair, submitted a memo on the application on July 13, 2010.
- 7) Public Hearings were held on June 23, 2010 and July 28, 2010 and no public comment was received.
- 8) The Planning Board waived the school impact.
- 9) The Planning Board exempted the applicant from providing 63 parking spaces with the requirement that the applicant pay \$750 per parking space not provided.
- 10) The Planning Board has approved a building height up to fifty (50) feet.

#### Waiver

The applicant has requested a waiver from the Town Code Chapter 75, Impact Fees. The Planning Board has reviewed this request and hereby grants the waiver.

Conditions of Approval to be met prior to Signature of Approval on the Site Plan

- 1) The applicant shall supply one mylar plan and one paper copy for signature by the Planning Board Chair.
- 2) All final plans must be stamped by appropriate professionals.
- 3) The applicant shall post an acceptable financial surety prior to the signature of the final Site Plan that is approved by the Planning Board. The financial surety shall be in an amount sufficient to ensure the completion of drainage, sewer, water, and/or any other improvements required by the Town. The financial surety shall be effective until the issuance of all certificate of occupancies needed for the property. The financial surety shall be approved by the Town as to the form and type. The Town will accept cash, pass book savings in the Town's name, letter of credit or a construction surety bond. At its discretion, the Planning Board may require approval of the construction guarantee by the Town Attorney. The amount of the surety shall be determined by the Department of Public Works.
- 4) A guarantee or performance bond or escrow agreement must be posted in an amount to be determined by the Director of Public Works and approved by the Town Administrator to ensure satisfactory completion of the landscaping plan as submitted and approved.
- 5) Water and sewer permits must be approved by the Water/Wastewater Committee and by the Town Council.
- 6) A Property and Security Management Plan shall be submitted to include, but not limited to, the following: 24 hour/7 day a week primary contact person to resolve security or other issues in a timely and appropriate manner; a secondary contact person in case the primary contact person is not available; all contact information updated with the Police Department, Fire Department, and Code Enforcement Department on an as-needed basis; and night time security for the site from Thursday night through Saturday night from 9 PM - 2AM. If problems persist on the property, as determined by the Police Chief, full time security will be needed 7 days a week from 8 PM - 6 AM until the problems are rectified. The plan shall be approved by the Town Planner with the advice and consultation of the Police, Fire, and Code Enforcement Departments and can be reviewed, modified, and updated by the owner with the approval of the above departments.
- 7) The applicant shall receive a driveway permit from the Department of Public Works.
- 8) A Stormwater System Management Plan must be approved by the Town Engineer

Conditions to be Met Subsequent to the Signature of Approval on the Site Plan:

1. The Findings of Fact and Conditions of Approval shall be recorded with the Strafford County Registry of Deeds, at the applicant's expense, within seven (7) days of the Chair's signature on the Plan.
2. The applicant shall continue to work with the Department of Public Works on removing the overhead wire that goes to the back of the property to the pole that holds a light fixture.
3. Maintenance Guarantee--a financial surety to guarantee that all site work was properly done shall be posted by the applicant with the Town. Such maintenance guarantee shall be in an amount of two (2) percent of the estimated project cost and shall remain

- in force for two (2) years after site improvements are completed. If such repairs are needed and are not satisfactorily installed by the developer, then such guarantee shall be used to complete and/or install such improvements.
4. As-built construction drawings, plan and profile, of all infrastructure improvements shall be submitted in electronic and paper copy at a scale of 1" to 20', including, but not limited to: Underground Utilities (sewer lines, storm drains, water lines, electrical, phone, cable, natural gas lines, etc.); Drainage ways, ditching, impoundments, swales, etc; Road construction
  5. The construction staging, timing, and techniques shall be reviewed and approved at a pre-construction meeting prior to any demolition or construction. The pre-construction meeting shall be held with the Durham Police Department, Fire Department, Code Enforcement Officer/Building Inspector, the Department of Public Works, a member of the Planning Board and the Director of Planning and Community Development with a summary provided to the Planning Board.
  6. During construction the site will be secured by use of a temporary chain link fence.
  7. Trash collection will be private and the responsibility of the owner. All areas where trash is stored, both inside and outside, will be kept in an orderly fashion.
  8. The parking fee will be paid at the time the Certificate of Occupancy is issued.
  9. A NH licensed professional engineer shall be on-site to provide oversight to ensure adequate erosion & sedimentation control and to ensure that the implementation of the innovative stormwater management practices is successful.
  10. The applicant shall complete the missing piece of sidewalk off Pettee Brook Road between Rosemary Lane and the entrance to the parking by the UNH Police Station. The applicant shall either work with the Department of Public Works on the cost of the sidewalk and pay the Town of Durham for the cost or the applicant can install the sidewalk during construction of the building.
  11. If the roof line changes from what was presented at the Planning Board meeting of July 28, 2010, the applicant shall come back to the Planning Board for approval of the new roof line.

***Councilor Smith MOVED to approve, as amended, the Findings of Fact and Conditions of Approval for an Application for Site Plan Review submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of Ionian Properties LLC, Dover, New Hampshire to demolish the existing buildings and an accessory shed in order to construct a new four-story, mixed use building. The property involved is shown on Tax Map 2, Lot 12-11, is located at 10 Pettee Brook Lane and the Pettee Brook parking lot respectively, and is in the Central Business Zoning District. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.***

Chair Parnell next went through the Conditional Use checklist. There was brief discussion that the concerns of the Planning Board and the Conservation Commission regarding the environmental constraints on the site had been addressed by the applicant. The Board agreed that all of the Conditional Use criteria had been met.

#### Findings of Fact

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- 8) The Planning Board waived the school impact.
- 9) The Planning Board exempted the applicant from providing 63 parking spaces with the requirement that the applicant pay \$750 per parking space not provided.
- 10) The Planning Board has approved a building height up to fifty (50) feet.

#### Waiver

The applicant has requested a waiver from the Town Code Chapter 75, Impact Fees. The Planning Board has reviewed this request and hereby grants the waiver.

#### Conditions of Approval to be met prior to the Signature of Approval on the Site Plan:

1. The applicant shall supply one mylar plan and one paper copy for signature by the Planning Board Chair.
2. All final plans must be stamped by appropriate professionals.
3. A Property and Security Management Plan shall be submitted to include, but not limited to, the following: 24 hour/7 day a week primary contact person to resolve security or other issues in a timely and appropriate manner; a secondary contact person in case the primary contact person is not available; all contact information updated with the Police Department, Fire Department, and Code Enforcement Department on an as-needed basis; and night time security for the site from Thursday night through Saturday night from 9 PM - 2AM. If problems persist on the property, as determined by the Police Chief, full time security will be needed 7 days a week from 8 PM - 6 AM until the problems are rectified. The plan shall be approved by the Town Planner with the advice and consultation of the Police, Fire, and Code Enforcement Departments and can be reviewed, modified, and updated by the owner with the approval of the above departments.

#### Conditions to be Met Subsequent to the Signature of Approval on the Site Plan:

- 1) The Findings of Fact and Conditions of Approval shall be recorded with the Strafford County Registry of Deeds, at the applicant's expense, within seven (7) days of the

Chair's signature on the Plan.

- 2) The Code Enforcement Officer shall issue a Conditional Use Permit.

***Susan Fuller MOVED to approve, as amended, the Findings of Fact and Conditions of Approval for an Application for Conditional Use Permit submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of Ionian Properties LLC, Dover, New Hampshire to demolish the existing buildings and an accessory shed in order to construct a new four-story, mixed use building. The property involved is shown on Tax Map 2, Lot 12-11, is located at 10 Pettee Brook Lane and the Pettee Brook parking lot respectively, and is in the Central Business Zoning District. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.***

- VIII. Public Hearing on an Application for Subdivision** submitted by Peter Andersen, Durham, New Hampshire, on behalf of Elizabeth C. Smith Trust, Durham, New Hampshire for the purpose of a porkchop subdivision. The property involved is shown on Tax Map 16, Lot 19-0, is located at 260 Durham Point Road and is in the Rural and Residence C Zoning District.

***Councilor Smith moved to postpone the Public Hearing until the August 11<sup>th</sup> Planning Board meeting, at the request of the applicant. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.***

Mr. Campbell explained that the ZBA denied Mr. Andersen's request for variances for the various setbacks, but approved the variance to allow an additional driveway. He noted that the applicant would therefore be doing a two lot subdivision instead of a three lot pork chop subdivision. He said he expected to get the revised plans by the end of the week or Monday.

Chair Parnell asked if there should be a new application, and Mr. Campbell said he didn't think so. There was discussion, and it was agreed that it would be a revised subdivision plan. There was discussion on when to do the site walk, and that the Board would want to have the revised subdivision plans prior to that. It was agreed that the site walk would be held on August 11<sup>th</sup> at 5 pm.

- IX. Public Hearing on an Application for Conditional Use Permit** submitted by Michael and Tammy Keegan, Durham, New Hampshire on behalf of Chester Tecce Jr., Durham, New Hampshire to expand the Tecce Farm business to include freshly made baked good, subs and prepared meals and to add a 24-foot mobile kitchen on the site. The property involved is shown on Tax Map 13, Lot 6-3, is located at 240 Mast Road, and is in the Office Research & Light Industry Zoning District.

Michael Keegan spoke before the Board. He said there was no updated information to provide, and he reviewed again what was proposed with the mobile kitchen. He said they planned to utilize the produce grown on the land.

Mr. Wolfe asked what the hours of operation would be.

Mr. Keegan said they were thinking of 10:00 am to 6:30-7:00 pm. He said the farm market was normally open until 6:00 pm.

Councilor Smith asked if the mobile kitchen would be located there permanently.

Mr. Keegan said it would be located there during the season, from April through November, and would be moved out of sight during the off season.

***Richard Kelley MOVED to open the Public Hearing. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.***

Chair Parnell asked if there were any members of the public who wished to speak in favor or against the application.

**Malcolm McNeill, Colony Cove Road**, said his wife owned property that was a direct abutter to the applicants' property. He said he was in favor of the proposal, and noted that he had gone to the farm stand for many years. He said he found it difficult to understand the characterization of the use in the context of the kitchen.

He said supported this application because the ORLI zone was designed for business. He said what was proposed was an expansion of an existing business, and said the ORLI zone was designed not as a gateway, but as a business zone. He said his primary reason for speaking on behalf of this application was that it represented a use that was seemingly appropriate, and one that enhanced in a small way the business characteristics of that zone.

Mr. McNeill said while he had asked Mr. Campbell to address for him how one characterized this use under the Table of Uses, it didn't really matter. He said the use was appropriate, as it would be if he and his wife had a farm stand up the street. He said he hoped the project would be approved.

Mr. Campbell said the principal use of the property was commercial agriculture, and the farm stand was allowed for the retail sale of farm products as an accessory use. He said a use accessory to a nonresidential use in the ORLI zone (a restaurant), was allowed as a conditional use.

Mr. McNeill said the trailer was being classified as a restaurant, and Mr. Campbell said that was correct. He said it also related to the farm stand, because it sold some of the products produced on the farm.

Mr. McNeill said he wanted to be sure what the use was being characterized as, because he might be back before the Board. He noted that he had never met the applicants.

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

There was discussion about the waiver for requiring the Site Plan application. Mr. Campbell explained that nothing was being built, so he had asked that the applicant request the waiver. He said plot plans had been provided.

Mr. Kelley suggested that there should be something in the Conditions to be met subsequent regarding the months when the mobile kitchen would be on the site, and also about the hours of operation.

Mr. Roberts and other Board members questioned this, and Mr. Kelley said his concern was mainly about the hours of operation.

Councilor Smith said even if it was operated at night, there weren't nearby neighbors who would be disturbed.

Councilor Cote asked what would be done regarding water containment, for preparation of food. He asked if there would be a holding tank.

Mr. Keegan said there would be a plastic holding tank for greywater, which would be pumped out by an outside company. He noted that there would be a flexible water line that would run from the existing building's water supply to the trailer. He said the gas would be self contained propane tanks. There was discussion that the electrical wiring would be code compliant.

Chair Parnell went through the Conditional Use checklist. As part of this, there was discussion on whether there might be inappropriate hours of operation. Mr. Kelley said the Board didn't really know.

Councilor Smith said if people were hungry, and came there at 1:00 in the morning, it was appropriate. He said the applicants weren't planning to put signs up on 125 sniping truck traffic for hot coffee and donuts.

There was discussion as to whether a mobile kitchen was consistent with the character of the neighborhood. Councilor Smith noted that there was a trailer parked down the road.

Mr. Kelley asked if the applicant proposed to use a dumpster.

Mr. Keegan said a dumpster would be brought in because more waste would be generated than was currently the case.

Mr. Kelley suggested that the dumpster could be placed behind the farm stand. There was discussion that there would be trash receptacles for the public to use out front. There was also discussion that there would be temporary toilets on the site.

Mr. Ozenich asked if the parking area would be expanded, and if the pot holes would be filled in.

Mr. Keegan said it would be smoothed out on a regular basis, but would not expand.

Mr. Kelley asked if there was readily available access for a vehicle to service a dumpster behind the farm stand.

Mr. Keegan said no. He noted that there had been a dumpster on the site for the farm stand and home in the past, up past the green houses.

Mr. Kelley suggested a Condition of Approval to be met subsequent that the proposed dumpster would be screened or placed out of view of the public way. He noted that if it was placed next to the mobile kitchen, screening would be required, and Mr. Campbell said this would be handled by the Code Enforcement officer.

Mr. Kelley asked whether the statement by the applicant in the letter of intent and Conditional Use Permit application regarding the hours of operation was tied to the permit being voted on. Mr. Campbell said no. Mr. Kelley said he was looking for a way to vote in favor of the application, and said he felt strongly about the hours of operation. He noted that the approval went with the site and would apply to future owners of the property. He said that in order to support this application, and given that it was a Conditional Use application, he thought the hours of operation should be spelled out.

Councilor Cote asked if the Board would want specific hours of operation for a restaurant downtown. He said his point was whether if this was done with this application, it should be done with all restaurant applications.

Mr. Campbell said this could be looked at on a case by case basis.

Mr. Kelley said it was because this was a Conditional Use application, and also because it was kind of a unique use. He also noted that the current use of ORLI was quite contrary to the allowed uses in that zone. He asked if a restaurant was allowed in the ORLI district, and Mr. Campbell said it was, as an accessory use to a nonresidential use. Mr. Kelley said it was because this was a stretch that he was asking that the hours be included. He said if the applicant wanted to change the hours, or future owners wished to do so, this could be done.

Mr. McGowan asked Mr. Kelley what his concern was about the hours of operation.

Mr. Kelley asked what happened if it was open until 3:00 am, and this created a problem for the abutting renters across the field.

Mr. McGowan said it might not create a problem.

Mr. Kelley said he didn't think he could vote in favor of the application without this.

Councilor Smith asked if the application actually specified that there would be a



restaurant. He said they would prepare and sell food, but asked if this made it a restaurant.

Mr. Campbell said it made it a restaurant that was accessory to a nonresidential use.

Ms. Fuller said a question was what happened if they decided to sell ice cream after their suggested hours in the letter of intent. She said this could run late at night.

Chair Parnell asked Mr. Kelley to make a motion to add a Condition of Approval concerning hours of operation.

***Richard Kelley MOVED to add Condition of Approval #5 to be met subsequent that the hours of operations are from 10:00 am to 8:00 pm. Susan Fuller SECONDED the motion.***

Mr. Roberts said he felt that putting the hours down was too restrictive, given the type of use. He suggested instead 8:00 am to 10:00 pm.

Mr. Kelley said he would see this as a friendly amendment. Ms. Fuller said she was fine with this.

Mr. Ozenich said they had to make a living, so the Board shouldn't restrict the hours too tightly.

Councilor Smith noted that the hours had now been expanded beyond what the applicant had asked for in the letter of intent.

***The motion PASSED 4-3, with Bill McGowan, Susan Fuller and Richard Ozenich voting against it.***

#### Findings of Fact

- 1) Police Chief Dave Kurz submitted a memo on the project on June 29, 2010.
- 2) A Public Hearing was held on July 28, 2010 and one member of the public was in attendance to speak in favor.

#### Waiver

The applicant requested a waiver from Section 7.02D, Formal Application Content, of the Site Plan Regulations. After reviewing the request the Planning Board hereby grants the waiver.

#### Conditions of Approval to be met prior to the issuance of a Conditional Use Permit by the Code Enforcement Officer.

- 1) These Findings of Fact and Conditions of Approval shall be recorded with the

Strafford County Registry of Deeds, at the applicant's expense.

Conditions to be met subsequent to the issuance of a Conditional Use Permit by the Code Enforcement Officer.

- 1) A building permit shall be submitted to and approved by the Code Enforcement Officer for any new construction. All appropriate building codes shall be met.
- 2) The Fire Department shall ensure that there are proper extinguisher units for the kitchen, especially above the fryer (if there is a fryer).
- 3) The use of the mobile kitchen shall be approved by the New Hampshire Bureau of Food Protection.
- 4) The proposed dumpster shall be screened as planned so as not to be seen from a public way. This shall be done with a permit from the Code Enforcement Officer.
- 5) The hours of operation shall be 8:00 a.m. to 10:00 p.m., seven days a week.

*Richard Kelley MOVED to approve the Application for Conditional Use Permit as revised this evening, submitted by Michael and Tammy Keegan, Durham, New Hampshire on behalf of Chester Tecce Jr., Durham, New Hampshire to expand the Tecce Farm business to include freshly made baked good, subs and prepared meals and to add a 24-foot mobile kitchen on the site. The property involved is shown on Tax Map 13, Lot 6-3, is located at 240 Mast Road, and is in the Office Research & Light Industry Zoning District. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.*

Break from 9:03 - 9:10 pm

**X. Discussion on Proposed Amendments to the Conservation Subdivision Section 175-107(b), Applicability, to the Zoning Ordinance by adding ORLI and MUDOR and an Amendment to Table of Uses to remove Convenience Store with Gasoline Sales from ORLI**

Mr. Campbell noted that this issue had been discussed briefly at the last Planning Board meeting.

Mr. Kelley said he found the first proposed amendment to be reasonable, because it was only tied to residential subdivisions in those districts. But regarding the Zoning proposal regarding convenience store with gasoline sales, he said there were only two interchanges with Route 4 n Town, and one was in the ORLI district. He said it had always seemed to make sense to put gasoline sales at the end of a ramp from the highway.

Councilor Smith said this made sense when one was on an interstate. He then noted that between Newington and Lee, there were no gas stations until right before the traffic circle, and also said that in the past, had been 5-6 gas stations in Durham along Route 4, which was Main Street. He said this proposed Zoning change had been included as an appeasement to those who were opposed to the original Zoning change for ORLI and MUDOR. He said he would actually support both proposed changes.

He noted that when the Council changed some of the RB zoning to ORLI a few years ago, there was a lot of discussion about the fact that an area that was largely rural was being changed to ORLI, a zone which permitted convenience stores with gasoline sales. He noted that as a member of the Council, he had not been in favor of this change. He said there was a tradeoff involved, to take back this one use.

Mr. Kelley asked why the Council didn't initiate the proposed change.

Mr. Campbell said if the change wasn't recommended by the Planning Board, it should expect to get a Council initiated change within 60 days.

Councilor Cote said these two proposed Zoning amendments had been bundled together, but were really two separate issues. He provided details on this, and noted that Administrator Selig had brought up the idea of removing convenience stores with gasoline uses. He said perhaps right now the Planning Board should look just at the issue of requiring conservation subdivision for ORLI and MUDOR, and take up the other Zoning proposal later.

Mr. Kelley said the convenience store/gasoline proposal was a fairly simple change, and said he was fine with hearing from the public on it.

Mr. Wolfe asked how removing convenience stores with gas stations from ORLI would benefit Durham.

Councilor Smith said it had to do with environmental issues. He said a lot of MUDOR and ORLI was located in the Oyster River watershed, above the reservoir from which the Town took a great deal of its water. He said the Spruce Hole aquifer was also largely within the ORLI zone. He said people concerned about the Town's water supplies had been concerned a few years ago about the ORLI expansion to include this land.

Mr. Roberts said both of these Zoning proposals were knee jerk reactions that hadn't been thought out. He first noted that the Planning Board did not recommend that the area near Spruce Hole be a part of ORLI. He explained that when the Zoning proposal to change RA area to ORLI came before the Board, it said it needed time to do a proper evaluation and recommend a proper course of action.

He said the Council then made the Zoning change to expand ORLI anyway. He also noted that the aquifer protection area was in fact protected from gasoline sales, which was not a permitted use there. He then explained that ORLI had previously been recommended by the Planning Board as a logical place for a convenience store with gasoline sales. But he said with the expansion of ORLI, this was another matter, and said now, some of the land in ORLI didn't fit the definition of that district. He noted that some portions weren't suitable for heavy truck use, and were sensitive areas, and said the districting needed to be reconsidered. He said these areas probably shouldn't be included in ORLI.

Mr. Kelley asked how this related to the overlay districts.

Mr. Roberts said convenience stores with gasoline sales was a prohibited uses in the overlay districts.

Mr. Kelley and Mr. Roberts noted that the area of concern that was changed from RB to ORLI was within the aquifer district, so a gasoline station wouldn't be allowed there. Mr. Kelley also noted that some of ORLI was next to the highway, where convenience store with gasoline sales might make sense. In addition, he said some changes had recently been made to ORLI to potentially increase the opportunities in this district, to include a variety of student housing types. He said it would be nice if there could be a convenience store out there to serve their needs.

Councilor Smith noted that he had asked in the past why there was nothing in the Table of Uses to allow convenience stores without gasoline. There was discussion on what the Planning Board had said about this a few years ago. Mr. Campbell said the Board had decided not to have a definition for convenience store, because it wasn't allowed as a use.

Mr. Kelley said convenience store with gasoline sales was allowed in the Courthouse District, and allowed by Conditional Use in another. He said the proposal now was to remove it from that second district. He said the area where it would be permitted was therefore very small, and said that was a hard sell for him. He said he would like to hear what other people had to say about this

Mr. Roberts said he was against the Zoning proposal to require conservation subdivision in ORLI and MUDOR. He said it represented bad planning. He said he had checked other NH towns, and said subdivisions weren't allowed in their commercial/industrial districts because of potential conflicts. He said having this for ORLI represented an instant conflict with industrial uses. He said putting it in MUDOR, which was somewhat residential, was another matter. He said B. Dennis had recommended setting up districts so allowed uses didn't conflict, and said allowing a residential use would be the ultimate conflict with an industrial use.

Mr. Kelley said the issue was that the residential uses and nonresidential uses weren't compatible, and said he was in some agreement on this. But he said it seemed that the concern had already gone by, in that this type of housing was now allowed in ORLI.

Mr. Roberts said the recent Zoning change had empowered single family dwellings and duplexes in ORLI and MUDOR, but he said subdivisions weren't allowed there. He said what was forwarded to the Council from the Planning Board regarding that zoning change was only in regard to the use itself.

Mr. Campbell explained that subdivisions weren't prohibited in ORLI or MUDOR, and said with the recent Zoning change, there could now be residential subdivisions.

Mr. Roberts said he had wanted more assistance from the Board's attorney regarding allowing multiunit MUDOR development by having a simple change of use. He said this

was an ongoing problem with the Attorneys. He said the Board was trying to facilitate these multiple unit developments. He said putting subdivisions in ORLI would kill the other possible uses there.

Chair Parnell asked whether, if the Board scheduled public hearings for these two proposed Zoning changes, this would represent an endorsement of them at this point by the Planning Board.

Mr. Campbell said no, and said the Board could still decide not to recommend the Zoning changes.

Mr. Roberts said the problem was that the Planning Board wasn't presenting a solution. He said he would have demanded that the Attorney address the problem.

Mr. Campbell said he believed what Mr. Roberts was trying to say was that they wanted ORLI and MUDOR to be mainly for commercial development. He said the student housing developer had said he wanted to do multi-units and cottage single family homes, which wasn't allowed in those zones.

Councilor Smith said the Council changed the Table of Uses to allow Capstone to do what it wanted in the ORLI zone. But he said that would not require a subdivision.

Mr. Campbell said that was correct. But he said Mr. Roberts' point was that they wanted to allow something like Capstone planned for student housing, but did not want to simply allow developers to subdivide the land for residential purposes. He said this would result in conflicts with nonresidential uses. He said Mr. Roberts was saying the Planning Board needed to find a solution that reflected this.

Chair Parnell said perhaps there should have been spot zoning for the Capstone development. He said while there might have been a lot of complaints about this, it would have been simpler.

Mr. Campbell said when this first came to the Planning Board, he had suggested some alternatives. He said what the Council approved was the simplest approach, but said he didn't think they were going to see a lot of subdivisions out there. He noted that they had been allowed from 1978 to 2006, but there weren't any.

Mr. Roberts noted that there had been a proposal for 95 units in the RB/ORLI district.

Mr. Campbell also said he had suggested a Planned Unit Development approach as a possible solution, but said getting this through would have taken well over a year, which was well outside Capstone's time frame. He said he had also suggested the idea of a mixed housing development, and said perhaps he had thought this approach was more complicated than it needed to be. He noted most places where it was done were done to accommodate different income levels.

Councilor Smith said if someone came along and wanted to put single family houses on the Woodward property in ORLI, and the proposed Zoning change had passed, it would have to be a conservation subdivision, which would cause the developer to walk away, leaving it still accessible for light industry.

Mr. Kelley said in other words, making this Zoning change might work to inhibit single family homes from being developed there.

Councilor Smith said at the Council meeting where the Zoning change to allow single family residences and duplexes in ORLI and MUDOR was approved, one of the four Councilors who were not in favor of changing the Table of Uses saw a reason to support the change in use if this area could be protected from a rash of single family residences, which would now be permitted if the Zoning changed. Councilor Smith said without that change in thinking and his proposal, he didn't think the change in the Table of Uses would have passed.

Mr. Kelley said he was willing to entertain comments from the public, but said he thought Mr. Roberts was right that there might be a better solution than what was being proposed now, in order to accomplish what some Councilors and perhaps the community wanted.

Mr. Roberts said the Planning Board should have Mr. Campbell make a demand of its legal support as to how this could be done simply.

There was discussion that the Council was asking the Planning Board to initiate these Zoning changes, and Mr. Kelley said perhaps Mr. Roberts then had a good point that the Planning Board should try to find another way.

Mr. Wolfe said from what Mr. Roberts had said, it sounded like the problem was how the ORLI zone had been defined, and he asked him if addressing that would eliminate his concerns.

Mr. Roberts said the location of the ORLI district was relevant in regard to the second proposed Zoning change, regarding convenience stores with gasoline sales. He said this should be addressed with the Zoning rewrite. But he said he couldn't find any towns where subdivisions were allowed in their industrial zones.

Mr. Kelley said a question was whether Durham was wishing to have industry that just wasn't going to happen. He said the closest thing to it was student housing.

Mr. Campbell said he hadn't given up, and said that since he had come to Durham, there had been a huge change in terms of dealing with developers on possible development. He said it would take awhile before office and light industry would come to Durham. He said they would require gas stations, but said right now, student housing was the Town's industry.

Mr. Kelley said the cost of leasing in places like the mills in Dover didn't compare to new construction, and he asked why someone would therefore want to develop in Durham, especially if people had to drive three miles to get to a convenience store.

Mr. Campbell said it was shocking that there weren't more research facilities in Durham, given that UNH was a research university. He noted that the Master Plan addressed this issue.

Councilor Smith noted that Xemed had come in. Mr. Ozenich said they all went to Pease. Mr. Campbell said they needed to give these facilities a reason to come to Durham, and said they were doing it slowly but surely. There was discussion about taxes in Durham, and the need to broaden the tax base.

Councilor Smith recommended that there should be separate public hearings for the two Zoning proposals. Other Board members agreed.

***Councilor Smith MOVED to schedule a public hearing for August 11<sup>th</sup> on a proposed Amendment to the Conservation Subdivision Section 175-107(b), Applicability, to the Zoning Ordinance by adding ORLI and MUDOR. Richard Kelley SECONDED the motion, and it PASSED 6-1, with Steve Roberts voting against it.***

***Councilor Smith MOVED to schedule a public hearing for August 11<sup>th</sup> on a proposed Amendment to the Table of Uses to remove Convenience Store with Gasoline Sales from the ORLI District. Richard Kelley SECONDED the motion, and it PASSED 5-2, with Steve Roberts and Chair Parnell voting against it.***

***Steve Roberts MOVED to direct the Planner to require that the legal team assist the Planning Board in forming a Zoning change that allows the use of single and duplex housing to support MUDOR activities, without permitting the influx of subdivisions in the ORLI zone. Susan Fuller SECONDED the motion, and it PASSED 7-0.***

## **XI. Discussion on the Commercial Core Strategic Plan prepared by B. Dennis Town Design**

Mr. Campbell said he wanted to get a general feel for what the Board thought of the Strategic Plan, and to get suggestions they might have. He also said Administrator Selig had asked him to look at the quick fixes that were listed in the document, and to make those happen quickly. He noted that some were simpler than others.

He said the first quick fix proposed was to amend the purpose of the Zoning Ordinance (Section 175-3) to include language about "creating a vibrant, mixed use downtown and compact, livable neighborhoods". He said he didn't think anyone had any problems with that kind of change.

He said a second quick fix proposed was to amend the definition of permitted and prohibited uses and Section 175-11 of the Ordinance to replace the current strict

definition of permitted uses with more permissive language that includes uses similar to permitted (analogous) uses. He said he didn't think this would be a quick fix.

There was discussion on where this issue had come up with applications. Mr. Roberts asked what the down side would be if this recommendation was implemented.

Chair Parnell said if the Board was in the position of having to interpret the Ordinance regarding uses, this would cause more problems.

Mr. Campbell said they interpreted the Ordinance every day, and said Mr. Johnson did as well. He said these interpretations were often different. He noted that language "most restrictive" had been taken out of the Zoning Ordinance a few years ago, which allowed Mr. Johnson some flexibility in interpreting the Ordinance when this made sense in a particular situation.

Mr. Roberts asked what was therefore wrong with what they had now.

Chair Parnell said the most difficult issue was that if a use was not stated, it wasn't allowed.

To help provide an example of using more permissive language, Mr. Campbell read the third quick fix that was recommended, which was "to amend the definition of mixed use and review various conditional uses, particularly the fine distinctions among similar types of uses, such as bed & breakfasts and inns and variations on mixed uses, which are conditional in all retail/commercial zones. Some uses may, in fact, be appropriate for a mixed use commercial core and should be permitted, especially since the Ordinance describes a conditional use as one not normally permitted." Mr. Campbell said if there was more permissive language, they might be able to say an inn was just like a bed and breakfast.

He reviewed the fourth quick fix recommended, which was to amend Section 175-22 to require a simple majority to approve a conditional use. He said he had told the consultant that this probably wouldn't get very far, and said he thought the Board could tell her to not even investigate that one.

Councilor Smith noted that again and again, people at the Council table had supported a proposed Zoning change by saying it would be a Conditional Use, and a super majority would therefore be required to get it through.

Mr. Campbell said the fifth quick fix recommended was to review the requirement of Site Plan Review for changes in occupancy of existing buildings, with the intent of removing the requirement from conversions that reflected the mixed use goals of the Strategic Plan.

Councilor Smith said he thought that was a great recommendation.

Mr. Campbell said another quick fix recommended was to amend Section 175-29 to



allow at least 3,000 square foot lots in the commercial core. He noted that the minimum lot size right now was 5,000 sf unless a special exception was obtained. He said there were quite a few small lots downtown.

He said another quick fix recommended was to amend Section 175-38 to allow smaller lot sizes (5,000 to 10,000 square feet) in portions of the RA District that were part of the Strategic Plan when they were developed using traditional neighborhood design of small lots, walkable, interconnected streets, and planned open spaces guided by the location of natural features.

There was discussion that the current minimum lot size in the RA District, 20,000 sf, was too big, and that allowing smaller minimum lot sizes would result in higher density and more affordable housing. Mr. Campbell said 10,000 sf was a good size. He said the Brown subdivision was a good example of this, and provided details on this.

Ms. Fuller said 5,000 sf was ample if someone was building a regular size home, which was what people wanted these days.

Mr. Campbell said this made things more affordable, because the land was cheaper, and the house put on the lot would be less expensive.

Mr. Roberts noted that the Faculty Road houses in some cases were fine, and he provided details on this.

Mr. Kelley noted that any subdivision would be a conservation subdivision, so there would still be some common land. He then asked if there was developable land in the RA District, and Mr. Campbell said yes.

Mr. Roberts said this issue was a subject of controversy at the planning conference, and spoke in some detail on this.

Mr. Kelley said the pill that was hard for him to swallow regarding developing the conservation subdivision requirements was that in addition to all the factors that went into determining usable area, minimum lot size requirements were then applied.

Mr. Campbell said expert advice had said that the Board shouldn't do both, and Mr. Roberts said they were outvoted every time on this.

Mr. Kelley said perhaps this was ok for some of the districts, but wasn't ok for others, where they were trying to increase density, and do sustainable design.

Mr. Campbell noted that most of the RA district was on water and sewer, yet there were soils based lot size requirements as well as minimum lot size requirements.

Mr. Kelley said perhaps the consultant was commenting on this in recommending that the minimum lot size for the RA district could be decreased.

Mr. Campbell said another recommendation was to amend the definition of retail store to provide a mechanism to exceed the 20,000 square foot limit under conditions that reflected the Strategic Plan. He said he didn't think Durham had a population that meant big box stores would be knocking down their doors, even with the University. But he provided an example from his days as working as the planning director in Bar Harbor, Maine, where this idea might make sense. He said one large building had been proposed downtown, but it looked like more than one building as viewed from the street. He said he imagined that this recommendation would garner some discussion.

Mr. Campbell said another quick fix recommendation was to amend the 30 foot height limit in retail/commercial districts (Section 175-54) to allow four and five story structures envisioned in the Strategic Plan.

Mr. Roberts said the current 30 ft height limit worked to the Board's advantage, because it allowed it to put some pressure on a developer to fit in with the neighborhood.

Mr. Campbell noted that there was an extra step involved right now for the applicant, and said if they envisioned the downtown with 4-5 stories, this should be allowed.

Mr. Roberts said a developer might put in the cheapest four stories he could get. He said a criterion of conditional use was that a development had to fit the character of the neighborhood, including the architecture.

Mr. Kelley noted that the form based code would alleviate those concerns.

Chair Parnell asked if the 30 ft height limit actually kept people away. He said 3 story buildings were over 30 ft, so what was currently allowed was a 2 story building, unless there were some kind of special approval.

Ms. Fuller said it wouldn't be unreasonable to take the 30 ft height limit away in the retail/commercial district.

Mr. Roberts said this would take the Board's leverage away. He said there had been two applications where the building designs that had come in were substandard. He said the Board had approved the added height, but asked that the development fit better with the neighborhood. He said the applicants then came back with beautiful designs.

Mr. Wolfe read the wording on the purpose of Durham's site plan regulations. He said some communities really took it seriously how a development looked.

Mr. Roberts said the height limit in place hadn't held up applications.

Mr. Campbell noted that before the current height provision was put in place a few years ago, developments had been held up over height issues.

Ms. Fuller said in order to encourage people to come to Durham, they had to address things that turned people away. She said the height provision was one of these things.

Mr. Roberts said some communities had used tax incentives or other means to leverage with. He said the only leverage the Planning Board had was building height. He noted that things had worked out well with the applications that had come before it. There was further discussion on this issue.

Mr. Campbell noted that if any of these Zoning changes were to be made, they would be Planning Board initiatives. There was discussion that if the Board decided not to do them, they could be Council initiatives. He said he would be bringing someone on board to work on the first five or so items on the list, and said if the Board hadn't been comfortable with them, this would not be happening. He said he would keep the Board informed.

Mr. Kelley asked if they were ready to make the big leap, which was the form based code.

Mr. Campbell said he didn't think so.

Mr. Roberts said in its strict form, it wasn't legal, but he noted that Dover had found a way to implement the same thing using a different mechanism.

Mr. Campbell said he had attended a New England Form Based Code Council workshop in Lowell, MA, and Dover had made a presentation there. He said the "experts: ripped it apart. But he said Dover had done something that would work. He said he didn't think people in Durham were willing to put the uses in the back seat.

Mr. Kelley said even architectural standards would be good to have. He said that aesthetic for developers to look at was currently not in the code.

Mr. Campbell said design guidelines could explain how the Planning Board wanted developments to look. He said while this wouldn't be a regulation, it would provide guidelines to a developer who wanted to get through the review process.

Mr. Kelley said such guidelines could say that if a developer wanted a five story building, it needed to have a brick facade, and not wood.

It was agreed that the Board would continue this discussion at the next meeting.

Mr. Roberts asked Mr. Campbell to make an action item list for the Board out of these quick fix issues.

## **XII. Other Business**

### **A. Old Business**

B. New Business

**XIII. Approval of Minutes**

June 2, 2010 and June 23, 2010 Minutes - Postponed

**XIV. Adjournment**

*Richard Ozenich MOVED to adjourn the meeting. Susan Fuller SECONDED the motion, and it PASSED 6-1, with Councilor Smith against the motion.*

Adjournment at 10:14 pm

Victoria Parmele, Minutes taker

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Susan Fuller, Secretary