

These minutes were approved at the December 8, 2010 meeting.

**Durham Planning Board
Wednesday October 27, 2010
Durham Town Hall - Council Chambers
7:00 P.M.
MINUTES**

MEMBERS PRESENT: Chair Lorne Parnell; Vice Chair Peter Wolfe; Secretary Susan Fuller; Richard Kelley; Richard Ozenich; Bill McGowan (arrived at 7:13 p.m.; Town Council representative Julian Smith; alternate Wayne Lewis

MEMBERS ABSENT: alternate Town Council representative Bill Cote

I. Call to Order

Chair Parnell called the meeting to order at 7:09 pm.

II. Approval of Agenda

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

Mr. Lewis was a voting member in place of Mr. McGowan, who had not yet arrived..

III. Report of the Planner

Mr. Campbell said there would be one regular meeting in November, on November 10th, and one regular meeting in December, on December 8th. He said there were no new applications for the November meeting.

He said the Traffic Safety Committee met on October 20th, and discussed the idea of raised speed tables, speed limit adjustments, and other issues. He noted that a test speed table would be installed between Edgewood Road and Madbury Road some time that month. He noted that there were more speed tables proposed in the CIP.

He said the Town still needed citizen volunteers for the Master Plan committees. He provided details on this, and when the committees would be meeting. He said the visioning forum for the Master Plan would be held on December 10th at the High School, and he provided some details on this, noting that more would come out over the next few weeks.

He said the Water Resource Protection subcommittee had met on October 22, and continued discussion on updating the Aquifer Protection Overlay District ordinance. He said they were also in the process of discussing hiring of a hydro geologist to review this. He said the Conservation Commission would discuss funding this review through the Land Use Change

Tax, and would need to hold a public hearing on this.
Mr. McGowan arrived at 7:13 pm.

Mr. Campbell said the Town wide market analysis had begun, and said there would be biweekly teleconferences with the consultant.

He said they were also moving forward with the quick fixes to the Zoning Ordinance based on the Strategic Plan, and said two additional Board meetings were proposed to work on this.

Mr. Campbell said the Economic Development Committee met on October 25th, and discussed the following:

- the Business Visitation program -Ms. Fuller said the EDC would like to get more interviews done as part of the Business Visitation program, and said for Board members and residents who were interested in being a part of this, it was a great way to connect with community businesses.
 - The EDC's request for a part-time economic development position as part of the 2011 Budget process - Mr. Campbell said the position would be paid for through UDAG funds, and said this proposal would be discussed during the Council's Budget discussions. He said Planning Board members would have the opportunity to speak their minds on this.
 - the Market analysis
 - downtown parking
 - mixed use developments
 - a possible TIF district for the downtown -Mr. Campbell said he would give a presentation on TIF districts to the EDC in November
- Ms. Fuller said the Planning Board would be working with the EDC concerning the idea of a TIF district and other issues in the coming months, and said there perhaps should be a joint meeting.

Mr. Kelley asked if there were specific infrastructure improvements that a TIF district could fund.

Mr. Campbell said the new lights planned for Jenkins Court and Pettee Brook Road, which were items in the CIP, could be paid for through a TIF district. He also said sewer and water upgrades could be funded through a TIF district, and said there would be discussion on this with the DPW.

IV. Public Hearing on an Amendment to a Previously Approved Site Plan Review
submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of CWC Properties LLC, Durham, New Hampshire to change the construction plans for a new three-story, mixed use building to remove the proposed full basement and to add a proposed fourth floor for commercial use. The property involved is shown on Tax Map 4, Lot 12-0, is located at 9-11 Madbury Road, and is in the Central Business Zoning District.

V. Public Hearing on an Amendment to a Previously Approved Conditional Use Permit

submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of CWC Properties LLC, Durham, New Hampshire to change the construction plans for a new three-story, mixed use building to remove the proposed full basement and to add a proposed fourth floor for commercial use. The property involved is shown on Tax Map 4, Lot 12-0, is located at 9-11 Madbury Road, and is in the Central Business Zoning District.

Mike Sievert of MJS Engineer spoke on behalf of the applicant and summarized again that this was an application to amend the existing approval issued by the Planning Board on June 2, 2010 for a 3 story building. He said the applicant was planning to construct a partial 4th floor of 6,400 sf.

He said there were no changes to the site plan with the exception that the finished floor would drop one foot and the exterior patio would be raised one foot, which meant that everything would be level. He said there was no basement proposed anymore and also therefore no exterior stairwell in the patio area to access the basement. He said Conditional Use approval was still required because of the shoreland and wetland setback issues, and also said the percentage of impervious area had not changed.

Mr. Sievert said as part of the site plan approval, the applicant would ask for approval for a building height of 50 ft, and also would ask that the parking requirement not have to be met. He explained that no change was proposed concerning how much parking would be provided.

He described the various elevations of the property, and spoke about the reference points to get a sense of the height of the proposed building with a fourth floor.

Councilor Smith said the plans showed a laundry on the fourth floor, and Mr. Sievert explained that this was to be used only by residents. Councilor Smith asked in what sense it was a commercial enterprise, and Mr. Sievert said it was coin operated, and was an adjunct to the residential use. Councilor Smith said he had made note of this because some Board members might see this as a very gray issue.

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

Annmarie Harris, Oyster River Road, said her questions had to do with her experience on the Planning Board when the Hotel NH/Holiday Inn and Libby's were approved. She noted that this was a Conditional Use application, and said the Board should be sure to verify what materials would be used on the building, and that they be consistent all the way around the building on this very prominent corner in Town.

Ms. Harris said she was also concerned about the fact that Pettee Brook Lane and Madbury Road was already a complicated intersection, and said if there was a restaurant with a patio, students would congregate on Madbury Road. She suggested the idea of cantilevering back 6 ft on the first floor with pillars to hold the second floor, in exchange for getting extra commercial space on the fourth floor, so there wouldn't be such a narrow area for kids to

congregate at that complicated intersection.

She also said she had some misgivings about the possible use of the roof area in a college town because of safety as well as noise issues. She said since this was a Conditional Use application, she hoped the Board would take into consideration the fact that the Town had issues concerning students congregating on weekends. She noted that this property was a stone's throw from the fraternities and sororities.

Councilor Robin Mower, Faculty Road, said the height of the proposed four story building didn't fit well with the neighborhood, presenting an unfortunate view from the Post Office down Madbury Road. She said the neighboring religious institutions were both shorter buildings, and also noted that that the Master Plan spoke about the importance of preserving in that area the "handsome fraternity/sorority buildings set back from the road with large front lawns", and said "The scale of these and other buildings provides a desirable transition between the Central Business District and the residential neighborhoods further down Madbury Road...."

She said this passage from the Master Plan had recently persuaded some Councilors to allow the Sigma Beta fraternity to benefit from the Community Revitalization Tax Relief Incentive Program. She said it was a reasonable question to ask if the proposed building would adversely affect that vision.

Councilor Mower next noted that as part of the Conditional Use process, a criterion needing to be considered was that "The residential use will have no measurable impact on noise, odors, vibrators, dust or fumes, etc." She said she didn't believe the applicant had addressed such potential impacts from a possible rooftop restaurant.

She also noted the purpose of the newly enacted Zoning amendment to allow a fourth floor under Conditional Use, which was that this would only be allowed if two of the proposed four stories were nonresidential. She said the proposed laundry room on the fourth floor was a residential use. She said if the Board believed this was the only possible location for it, it should consider granting a waiver in order to make it clear to future applicants that such an incursion on the intent of the Ordinance was not be assumed to be acceptable without a discussion.

Councilor Mower also said that as written, the draft Findings of Fact and Conditions of Approval for these applications might lead someone to conclude that the Planning Board had already made up its mind. She said it was important that the Planning Board and the public be clear that applications under Conditional Use need not be approved, or may be approved with conditions added after discussion of the draft FOF and COA.

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

Councilor Smith suggested that the applicant could consider the idea of making the laundry accessible to the public, in order to make it less of a gray area in terms of being a

commercial use. He also said if there was to be a viable commercial use on the fourth floor involving a deck, a laundry room might allow some people who were using the restaurant to also do their laundry.

He said it was clear that there would have to be some kind of public access to the commercial use, unless it was a very limited commercial use. He also said if the laundry was coin operated and the tenants had the option of going some place else, this took out some of the residential limitation.

Mr. Kelley suggested that the laundry could perhaps instead be put on the third floor.

Mr. Sievert said he disagreed with the idea of the laundry possibly being a residential use, stating that it was not a living area, and that the machines were coin-operated. He also said that if this would be a major problem for the Board, the applicant would move the laundry to the first floor or completely out of the building. He noted that if it was on the first floor, it wouldn't be open to the public, and would still be commercial.

Councilor Smith said this might be the kind of situation where Code Officer Tom Johnson would weigh in.

Mr. Sievert said Mr. Johnson had already weighed in on this issue, concerning the laundry on the fourth floor of the Crape building on Jenkin's Court.

Mr. Campbell said Mr. Johnson was well aware of the fact that the laundry would be on the fourth floor, and had had a chance to look at this idea for both applications.

Mr. Sievert provided details on the fire safety issues that had been discussed with Mr. Johnson concerning the laundry. He said again that if the idea of putting the laundry became a major issue, this would not be done.

Ms. Fuller confirmed that if the laundry was included, it would only be accessible to residents of the second and third floor of the building.

Councilor Smith said he was content to move on from this issue.

Mr. Kelley asked Mr. Sievert to discuss the issues Ms. Harris had raised about the proximity of the building to the street, and possible crowding problems.

Mr. Sievert said the building already was pulled back with pillars. He said there was an overhang, and said the area underneath was 6 ft 8 inches wide and allowed full access into the building. He said the sidewalk had also been pulled back to allow additional parking and loading, and noted that it had been expanded at one end.

He provided further details on this, and said there was a larger space for pulling off out of the travel lane with an 8.5 ft sidewalk and the area under the overhang. He also noted that the area under the stairs was even wider. He said the pedestrian area had been a much larger

concern when the basement was proposed, where the access to the basement was right off the corner.

Mr. Kelley asked if there had been any significant changes to the plans since September.

Mr. Sievert said everything else was the same except for the grading to lower the first floor and raise up the patio, and to remove the access to the basement. He noted that there was still a small set of stairs off the sidewalk to access the patio.

Mr. Kelley said the plans submitted in September showed a 10.5 ft sidewalk near the patio, and said half of this was on the applicant's property. He also said there appeared to be an opportunity to extend the sidewalk to the retaining wall that formed the patio, right by the stairs.

Mr. Sievert said that area was approximately an additional 3 ft, and noted that it was originally planned as a recycling storage area. He said now that the design had changed so that recycling and trash would be loaded at the upper end, that area wasn't needed anymore. He agreed that the sidewalk could be extended.

There was discussion that the sidewalk in front of Libby's was about 7 ft. wide.

Mr. Kelley asked why a bituminous sidewalk had been chosen, and Mr. Sievert said the sidewalk was already bituminous from Mathes Terrace down. He agreed that it would be nice to have a concrete sidewalk.

Mr. Wolfe said he was looking at things from a conceptual perspective in terms of what the downtown should look like, and how it should transition out from the inner core. He said this proposed building would be going into what was almost a residential area, and said the buildings there were two story clapboard home type buildings. He said going from the proposed four floor building to the neighborhood buildings involved no transition. He noted Councilor Mower's quote regarding the transition coming down from Madbury Road.

He said there was a difference between a three story and a four story building, and said he didn't think a four story building fit with the character the Town was trying to develop, and the way it should be planning. He said he didn't think they wanted to create big boxes with big transitions, and said the building would be twice the size of anything around it.

Mr. Kelley said this was also a concern for him, but said it also was important to consider what the future might bring in terms of expansion of the downtown core and the replacement of houses on Mathes Terrace. He said he was somewhat relieved by the graphic that had been provided. He noted the brook in the area and the sag in the road, and also said the fraternities were higher than what was proposed here.

Councilor Smith noted that the Planning Board had approved a high building further down Pettee Brook Lane, on the former Don Thompson property. He said this and the applicant's proposed buildings could be bookends for the redevelopment of the area immediately north

of Pettee Brook Lane. He also noted that the Greens property would be a prime area for redevelopment over the next 10-20 years, and in addition, said that as one went up Madbury Road, there were higher buildings to the left and to the right, including the Middle School.

He said he wasn't sure that the height was a terribly significant issue. He said infill was occurring in the downtown, and also said building up might be the choice the Town should be thinking of in terms of supplying housing and commercial uses close to the University.

Mr. Wolfe said he agreed with the idea of building up, but said he questioned where this should happen. He also noted that the new building on the former Thompson parcel would have a peaked roof, so the visual impact would be a lot less. He said he would be less concerned about this proposed four floor building if there was a dormer style, as was the case with the new building on Jenkins Court, so that it didn't look quite as high. He also noted that there was the multi-story medical building near the planned building on the former Thompson parcel, but said there was nothing like that within 100 yards of the applicant's property.

Chair Parnell said this was an issue to be addressed before going further, because it meant the project was a go or a no go.

Ms. Fuller said she liked the variety provided by the flat roof, and also said she thought that if the roof pitch and design were more in line with the building on Jenkins Court, the roof would be overpowering as one came around the corner. She said she didn't have an issue with it, and said she saw its location as being part of the downtown. She said she liked Councilor Smith's description of the two buildings on Pettee Brook Lane being bookends for the core, although the Town might someday expand beyond them.

Mr. Ozenich said he didn't object to the building height increase that was proposed, and noted that they were running out of land in that area anyway. He said the applicant had to have that amount of space, and the only way to get it was to go up.

Mr. McGowan said given the fact that the Board had approved the building as three stories, and a partial fourth floor was proposed, he didn't think there was an overwhelming scale to the project. He also said the fraternities nearby were pretty high buildings.

Mr. Lewis said as one headed north down Madbury Road, most of the fraternity houses were at least three stories high. He said he didn't see that height was a big issue.

Chair Parnell noted that the property was located in the Central Business District, and said while the comparison to residential buildings might be appropriate, it would not be in the future. He also said he thought the partial fourth floor made the building fit better architecturally.

Mr. Kelley noted a previous comment from the Planning Board regarding the treatments planned for the façade. He asked if the intent was still to do what was on the plans submitted in September.

There was discussion on the patios and possible views. There was also discussion on where the Central Business District ended, and on how the noise ordinance impacted businesses. There was further discussion about the possible uses on the fourth floor, including professional offices.

Mr. Sievert said the first floor was envisioned as a restaurant, and would be marketed that way.

Mr. Kelley asked if there might be an upstairs patio for a downstairs restaurant.

Chair Parnell suggested that there could be a condition that the fourth floor wouldn't be accessible to residents for residential purposes, but if there were professional offices on the fourth floor, it could be used by staff.

Mr. Campbell said the use of the deck on the fourth floor had been a concern of Town staff.

Mr. McGowan said if the upper deck on the fourth floor was used as a patio, there would be code issues that would have to be addressed. He said he didn't think there would be groups of people up there drinking beer.

Mr. Wolfe said he had had a restaurant at one time, and said the Pettee Brook Lane site was not a great location for a restaurant on the fourth floor, for a number of reasons. But he said the first floor was absolutely a great location for a restaurant.

Mr. Sievert said a member of the public had discussed the idea of the fourth floor being set in on all sides. He said this had been looked at from the standpoint of the people on Mathes Court and possible noise and access issues. He said this was the main reason for putting the closed space on that side.

Mr. Wolfe said buildings he had seen where the whole fourth floor was pulled in on all sides had looked a lot better.

Mr. Sievert said they had looked at that approach, and noted that there were some buildings in Portsmouth and Concord like that. He said this worked, but would work better as offices. He said the applicant's design worked better as a restaurant. He noted that it was envisioned that the restaurant on the first floor would be more of a low key restaurant, and the one on the fourth floor would be a somewhat higher end restaurant.

Mr. Wolfe said the restaurant on the fourth floor could be done if it was more expensive, and said the question was whether Durham could handle that type of restaurant.

Mr. Sievert next reviewed some requests the applicant had. He said he didn't want to give up the original approval, but said that typically, having two approvals for the same property was cumbersome. He said with this project, it was more like phasing that was involved. He said that instead of entertaining this application as an additional approval, the Board could perhaps instead think of it as a new approval with phasing, where either a 3 story building or

a 4 story building would be constructed. He said the 3 story building would be phase I, and the 4 story building, if it occurred, would be phase II.

Mr. Campbell said one generally didn't want to have two approvals for the same property representing different uses, if they were contradictory. But he said with this project, the first three stories would be essentially the same, and the fourth story would go along with the whole project, so he thought it would be ok to have both approvals going. But he said the Board would have to make sure in the conditions that a time limit was set, and said this shouldn't be open ended.

Councilor Smith suggested that the applicant should provide a memo of intent to Mr. Campbell so that the Findings of Fact and Conditions of Approval could be revised to reflect this approach. He said the application could be taken up again at the next meeting, and noted that the applicant had said it might be several years before the project was built.

There was discussion that the application would still be an amendment to the original plan, and Mr. Campbell provided details on how this should be handled. He said this could come back to the Board at the November 10th meeting.

Mr. Kelley said he agreed with Councilor Smith. He said the intent of the applicant had changed somewhat, and said they had to think creatively about the language that should be included in the Findings of Fact and Conditions of Approval.

Councilor Smith MOVED to continue to the November 10, 2010 Planning Board meeting the deliberations on an amendment to a previously approved Conditional Use Permit and a previously approved Site Plan application submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of CWC Properties LLC, Durham, New Hampshire to change the construction plans for a new three-story, mixed use building to remove the proposed full basement and to add a proposed fourth floor for commercial use. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.

VI. Public Hearing on an Amendment to Article XIX, Conservation Subdivision, Section 175-107(B), Applicability, of the Zoning Ordinance to add Office, Research & Light Industry and Multi-Unit Dwelling/Office Research Zoning Districts to the list of Zones where residential subdivisions are required to be developed as Conservation Subdivisions.

Mr. Campbell briefly summarized that the Town Council had previously asked the Planning Board to initiate this Zoning change, and the Planning Board had then voted not to do make the Zoning change. He noted that this Zoning change was a result of a previously approved Zoning change to make single family homes and duplexes a permitted use in the ORLI District, and to make single family homes a permitted use in the MUDOR district.

He said with this Council initiated Zoning change now, the Planning Board had 60 days to send a recommendation back to the Council. He said the Council would then have a

public hearing and deliberations on the proposal.

Mr. Kelley noted that this proposed Zoning change had come about because of the proposed Capstone proposal, and asked how it would impact that property.

Mr. Campbell said the Zoning change wouldn't impact that property at all as long as Capstone wasn't going to subdivide any portion of the property. He provided details on this.

There was brief discussion on the issue of condominium approval being handled under the subdivision regulations.

Councilor Smith MOVED to open the Public Hearing. Richard Ozenich 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 of or against the application.

Councilor Jay Gooze said he was before the Planning Board for the second time on this Zoning change idea, and he reviewed the history of this proposal. He said he had reviewed the Minutes of the Planning Board meeting where the original Zoning proposal, to allow single family homes and duplexes in both the ORLI and MUDOR district, was proposed, and said a number of possible ways to do this were presented at that time. But he said the discussion then was that it would take a long time to put any of these other approaches in place, and it was thought that this might jeopardize the Capstone project. He said the Council had been aware of this.

He said a number of residents had contacted him to say that under that Zoning change, a subdivision project would not have to follow what the Master Plan wanted regarding conservation subdivision. He said he didn't believe the Zoning change would have passed if not for the compromise he had offered, which was the Zoning change proposed now to extend the conservation subdivision requirements to the ORLI and MUDOR districts. He said at that time, the former member of the Planning Board was asked if this approach would be a problem and he said no.

Councilor Gooze said a lot of perspectives had been presented on this issue, and said they should have been vetted before the original Zoning change came to the Council. He said he was simply trying to do the right thing, and to keep things consistent. He noted that the Master Plan rewrite was coming up, and said the Master Plan distinctly spoke about conservation subdivision. He said he didn't know how the Town felt about conservation subdivisions, but said he didn't feel it was appropriate at this time to do something different than what was required elsewhere in Town in regard to residential subdivisions. He said there would not be any subdivision of the Capstone property.

Annmarie Harris, Oyster River Road, said she was on the previous Master Plan committee that had addressed conservation subdivision, and was quite sure that

subdivisions in the ORLI and MUDOR zones would have been required to be conservation subdivisions. She said she was in favor of this proposed Zoning change.

Beth Olshansky, Packers Falls Road, said the Master Plan clearly stated that all residential subdivisions should be conservation subdivisions. She noted the letter she had previously provided to the Board, which clearly stated her ideas concerning this Zoning change.

She said over many public hearings, they had all been dealing with the wishes of a single landowner versus the wishes of the whole Town. She said it made her nervous that the vision created by the Master Plan committee would be ignored on the basis of the wishes of a single landowner.

She said what the Master Plan stated needed to be in the Ordinance, and not left as simply an assumption that a subdivision would never actually happen in those districts. She also said that although some people argued that the Conditional Use process was enough, from a legal perspective Conditional Use was a matter of discretion as compared to having an enacted law.

She quoted from where the Master Plan said the Town should “consider extending standards for the conservation subdivision approach to Office Research districts for site planning to be allowed by right.”

She said the Town had gotten itself into a precarious situation because of time pressures. She then handed the Board her written comments.

Malcolm McNeill, Colony Cove Road, noted that the proposed Zoning amendment was the same as the one the Planning Board had elected not to recommend on September 16, 2010. He said there were no new facts, and no new circumstances that should result in a different decision than had occurred at that time. He reviewed the process by which this Zoning amendment had been created, and said no study on the proposed overlay had occurred prior to the recommended change.

He spoke against the proposed Zoning change in some detail, as he had done previously at the public hearing when this change was initiated by the Planning Board. (Mr. McNeill’s detailed comments are available from the Planning Department).

A key argument presented by Mr. McNeill was that further study was needed before making this Zoning change now. He said nothing should be done to limit the potential for commercial development in these two zones. He said just because a simplistic change was made to accommodate Capstone, there should not be a simplistic Zoning change with unintended consequences to overlay significant development constraints on the one zone (ORLI) in the community where significant tax generating development could occur.

Mr. McNeill suggested the following, if action was to occur now:

- He said multiunit residences, all elderly housing, as well as duplexes should be excluded

from the Ordinance, either by revisions to the definition of “residential” or by specific action in revising the conservation subdivision provisions. He said this would assure the uniformity of application of the overlay throughout Durham only to single family dwellings, which was presently the status of the conservation subdivision ordinance.

- He said all commercial subdivisions should be excluded, as they had been in the past.
- He said the common open space provision of Section 175-107(I) should be reviewed to determine the amount of open space required. He said in the absence of such determination, it was likely that the ordinance would be determined to provide 50% open space, which was totally inappropriate for these two zones, and could readily frustrate development there.
- He said the Ordinance should clearly provide that the conservation overlay should only occur if in fact there was a subdivision of the land. He said a single owner project similar to the Capstone project, and projects that utilized the condominium form of ownership, which did not involve a subdivision of the underlying land, should clearly be excluded.
- He said there should be no provisions that further complicated development in these tax stabilization zones, without comprehensive planning and study of the impacts through the Master Plan revisions and Zoning rewrite.

Mr. Kelley noted that Mr. McNeill had said that this Zoning change would have the ability to kill developmental potential. But he said the development potential was strictly related to residential development in these two zones.

Mr. McNeill said that was the way he read it, but said the Zoning Ordinance’s construction of what was residential was of concern to him.

After discussion between Mr. Kelley and Mr. McNeill on the issue of whether a condominium was a subdivision, Mr. McNeill said it would be in the interest of flexibility that condominiums should be allowed in this particular zone without being considered a subdivision.

Councilor Mike Sievert said he had been the only Councilor to vote against the idea of this proposed Zoning change. He said he didn’t feel the change should be made without taking a more in-depth look at the Zoning Ordinance and the inconsistencies in the Master Plan.

He said he didn’t think conservation subdivision was a good approach to take in all areas, noting that it shouldn’t apply in the Residence A and Residence B districts because it wasn’t possible to put a conservation subdivision there because of the criteria involved and the soils limitations there. He said a more extensive review of conservation subdivision needed to be done.

Harvey Woodward, said he was curious as to how this Zoning change would affect

property owners in the area. He said he remembered when the Town got a federal block grant to put sewer and water lines in for Data General, and said it didn't seem that the intent of that money was to get student housing.

Beth Olshansky said the concept of conservation subdivision was to look at the land and what it would support. She said the density of housing that was calculated didn't get reduced because 50% of the land was set aside as open space, and said the density was based on the potential of the remaining land to support development. She said the theory was that the building area was condensed so there could be a combination of conserving land and a more dense development area.

She also noted that the ORLI zone had gotten very large, and said most of the acreage in it was either Spruce Forest, a prime forest that abutted the Oyster River, or agricultural land on Route 155A, which also abutted the river. She said both areas were prime prospects for doing conservation subdivision.

Councilor Robin Mower, Faculty Road, said to a certain extent, they had painted themselves into a corner by accepting single family homes in a commercial zone. She provided details on this, but said the underlying issue was that they shouldn't be looking for ultimate flexibility in these zones, which were designated as commercial. She said to the extent that conservation subdivision might restrict the building of single family homes there, that was therefore a good thing, because that wasn't what they were looking for out there.

Councilor Jay Gooze said the things Mr. McNeill was saying didn't really pertain to what this Zoning change was asking for. He agreed that the other things people were talking about should be addressed in a community wide way, as part of updating the Master Plan, but said this could take awhile.

There was discussion about the fact that "residential subdivision" was not defined in the Zoning Ordinance, with Mr. Wolfe stating that it could create a problem to pass something that wasn't defined.

Councilor Gooze said what bothered him was that the original Zoning change was brought to the Council as the expedient way to handle things, and said this had caused a lot of controversy.

Mr. McNeill said the basic issue was whether expediency would be the controlling factor a second time, and what landowners in these zones could predict they could do with their property. He said his sense was that the Council would pass this Zoning change regardless of what the Planning Board did, but said it appeared to him that one mistake should not result in a second mistake. He said if there were to be flexible, commercial type developments following after something like Capstone was doing, there needed to be the appropriate authority to do it.

Councilor Smith asked Mr. McNeill if the Zoning change to extend single family residences to ORLI was a mistake.

Mr. McNeill said there might have been a better process, such as adoption of a PUD ordinance, or a multi-use development ordinance. But he said the expediency involved related to Capstone. He said there should be creative opportunities in the ORLI/MUDOR zones, but also felt Capstone shouldn't be the only developer that was allowed to do this. He also said any further revisions to the Zoning Ordinance needed to be studied. In addition, he said the Conditional Use criteria allowed the Planning Board to do whatever it wanted with regard to a project, so provided enough controls.

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

Chair Parnell said deliberations on the Zoning change would be postponed until the next meeting.

Break from 8:57 to 9:06 pm

- VII. Acceptance Consideration of an Site Plan Review** submitted by McEneaney Survey Associates Inc., Dover, New Hampshire on behalf of Geoff Sawyer, Durham, New Hampshire to permit an accessory building currently used as part of the kennel operation to be approved as an accessory structure. The property involved is shown on Tax Map 6, Lot 11-7, is located at 27-35 Newmarket Road, and is in the Residence C Zoning District. Ms. Fuller recused herself, noting that she was friends with the owners.

Mr. Lewis replaced Ms. Fuller as a voting member.

Kevin McEneaney explained that the applicant had previously gotten a lot line adjustment so the kennel building on the property would be in conformance with the setback requirements. He said a condition of approval at that time was that a site plan application would be submitted for the existing day kennel accessory structure.

He reviewed the waivers being requested concerning the site plan application, given the nature of the project. He then noted that there had been discussion at one point about the fence on the property, and said this was referred to the HDC, which ruled that it didn't have jurisdiction and kicked it back to the Code Officer, who then said the fence conformed because it was less than 6 ft high.

Mr. Campbell said Mr. Johnson's concerns were regarding code issues, and not the site plan. He said Mr. Johnson's concern was that the accessory structure was supposed to be temporary, and that it needed to be legal as part of the process of getting the setbacks right.

Chair Parnell asked if there was anything in writing about the fence not being an issue for Mr. Johnson.

Mr. Campbell said he could get something in writing for the next meeting. He asked Mr.

McEneaney if there was any storage in the accessory structure, and Mr. McEneaney said no. He said there was a small shed adjacent to the main kennel building that was used for storage.

Richard Kelley MOVED to accept an Application for Site Plan Review submitted by McEneaney Survey Associates Inc., Dover, New Hampshire on behalf of Geoff Sawyer, Durham, New Hampshire to permit an accessory building currently used as part of the kennel operation to be approved as an accessory structure, and schedules a Public Hearing for November 10, 2010. The property involved is shown on Tax Map 6, Lot 11-7, is located at 27-35 Newmarket Road, and is in the Residence C Zoning District. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

The Board scheduled a site walk for Saturday, November 6th at 9 am.

VIII. Conceptual Consultation on a Site Plan Review submitted by Appledore Engineering, Portsmouth, New Hampshire on behalf of Capstone Development Corporation, Birmingham, Alabama and William S. Woodward Rev Trust, Durham, New Hampshire, to create a neighborhood style housing development with various-size three, four and five-bedroom cottages and multi-unit buildings for a total of approximately 630 bedrooms. The property involved is shown on Tax Map 9, Lot 10-3, is located on Main Street/Technology Drive, and is in the Office Research/Light Industry Zoning District.

John Acken of Capstone Development Corporation said the company had been working very hard on the conceptual plan. He provided background on the kinds of student housing developments Capstone did, explaining that it had broken the conventional wisdom by starting to provide cottage style developments that created a sense of community for the residents.

He spoke about the setting for the proposed development in the ORLI district, describing it as a key growth area for the Town that had existing utilities and bus service, and was secluded in some ways but was still convenient to the downtown.

Mr. Acken said the company had done a market study, and had found that there was a strong demand for student housing because of UNH. He said the Town's housing stock was aged for the most part, and said there was nothing in Durham that was similar to the type of development that Capstone proposed.

He noted that he had heard that student housing in single family homes in residential neighborhoods was an issue for the Town, and said that kind of housing could be provided with their development, along with property management.

Mr. Acken said an issue for the designers was how to create a community feel on the site, and said new urbanist planning ideas had been utilized in the design that was developed. He said another issue was how to minimize environmental impacts, and said although there were extensive wetlands on the site, only 6300 sf of wetlands would be impacted by the

development. He noted that Appledore Engineering was working to come up with a good stormwater management plan, which included the use of porous pavement and rain gardens across the site.

He said an important aspect of the design was to have complete streets that provided accessibility for pedestrians, bikes and autos, in that order. He said a great pedestrian experience would be created and maintained throughout the site. He provided some details on the proposed design for the private drive for the development, and said it would look and feel like a public right of way.

Mr. Acken said the cottages would be close to the street, with trees on either side of the street, to create a neighborhood feel. He said there would be parallel parking on the street, which along with the trees, would create a buffer between the sidewalk and moving traffic. He said with the cottages facing onto the street, this created a safer street. He said there would be alleyways with parking behind the cottages. He also said a trail system would be created that looped the entire site, and said some of the cottages would face on them.

He also said there would be pocket parks/green space areas which the cottages that didn't face on the street or the trail system would face on. He explained that the company had found at its Creekside development that the students took ownership of these green spaces from a management standpoint, viewing them as part of their unit.

He said that looking at things from a pedestrian perspective, they had tried to create outdoor rooms, where the buildings served as the walls, and the trees on the street served as the canopy. He said 3D modeling capabilities had been used to visualize this and other things, in order to create great vistas and interesting spaces for students. He also said they had paid careful attention to screening parking areas behind the cottages with green space so these areas would feel smaller and less like parking areas.

Mr. Acken also spoke about how the clubhouse would be the focal point of the development. He noted that the development would be within the radius of the UNH campus, which meant that students living at the development wouldn't be able to purchase parking passes. He said this was a good thing, and said Capstone believed that robust transit service was critical to the success of the project. He said they were working closely with UNH on this, and had designed the development so buses would come right up to the clubhouse. He provided details on this.

He said opportunities for biking would be included throughout the development, and said the trail network would serve as a great biking trail. He also noted that a brainstorming session with some UNH students the previous evening had resulted in the suggestion of having a Nordic track, which Capstone and its designers thought was a great idea.

Mr. Acken said Capstone wanted to ensure that there was adequate parking on site, and explained that the Capstone required amount of parking for a site like this was 1.05 spaces per bed. He said this meant every resident would have a parking space, with a bit of overflow. He said this would assist the company in getting bank financing, especially in the

current economic climate, because banks were concerned about developments having adequate parking. He also said the company had found that with only 0.75 space per bed, this became a life safety issue. He said this was a big concern.

He said two types of green space were being planned for the project. He said one was the large natural areas that would serve as a buffer to the Oyster River and the wetland areas, which would be untouched other than having trails running through them. He noted that a boardwalk type wetland crossing was being considered, which might be a nice amenity. He said the second green space areas being planned were the internal pocket parks he had previously mentioned.

Mr. Acken next spoke in some detail about the proposed building designs, first noting that the lead architect, site designer, lead engineer and the head of procurement for Capstone were all LEED accredited. He said this meant that even if the development wasn't a LEED certified project, Capstone would be employing as many LEED strategies as possible.

He spoke about a small project Capstone was doing for wounded veterans that would be the first LEED certified project it had done. He said going through the certification process with this project had helped the company identify different LEED strategies to employ on other projects like the one planned for Durham. He briefly reviewed these strategies.

Mr. Acken next spoke about the units within the cottages, first explaining the importance of market differentiation in order to ensure success in today's student housing market. He said every bedroom would have its own bathroom and walk in closet, and noted that although there would be different floor plans for the cottages, every bathroom, bedroom and closet in the development would be the same size, so the residents wouldn't argue over this. He noted that the company had found in talking to students that they weren't concerned with how many people they shared a kitchen with, but were concerned about how many people they shared a bathroom with.

He explained that the architectural team had studied Durham's architectural style in order to tailor the design of the cottages to this. He said there would be three bedroom, four bedroom and five bedroom cottages, and said each cottage would have a living area and full kitchen with 9 ft ceilings, balconies and patios. He said the square footage of the living area would fluctuate depending on the number of students living in a particular cottage.

Mr. Acken said the most popular dwelling unit was the "manor house", which was 2 five bedroom duplexes placed side by side. He provided details on their design and the site design they would be part of, stating that they would line the street toward the clubhouse and so would provide a dramatic entrance into the development.

He said the clubhouse would be the hub of the overall development, and would have amenities that included a gym, volleyball courts, bocce ball courts, tanning beds, saunas, a heated pool, food service, a game room, function rooms, etc. He said this kind of student housing development created a sense of community and resulted in higher retention rates, because residents didn't want to leave.

Mr. Acken next provided details on the robust property management that would be provided. He said there would be a minimum of two managers on site, a leasing agent, a head of maintenance and an assistant in maintenance. He said they were planning on about 619 beds right now although they were still making adjustments. He said establishing expectations up front with residents was critical, and said it would be clear that this was not a place for out of control parties. He said fines were a big way that the company enforced the property management rules.

He said he and the design team were looking forward to delving into the details of the project with the Planning Board over the next several months.

Chair Parnell asked if there would be phases to the development.

Mr. Acken said all of the cottages would be constructed in one phase. He said the company planned to begin construction in 2011, with the intent to complete the development for the fall of 2012.

Councilor Smith said he had noticed that Capstone's website said the cottages it had built at the University of Florida, and at Creekside at Auburn had the motto "Your house, your rules", and asked what that meant.

Mr. Acken said it was meant to imply a sense of ownership for the residents, but with rules that set expectations.

Councilor Smith said he hoped that slogan wouldn't be used for the development in Durham because it would be misinterpreted.

He also he said had heard that there was some concern about the fact that the development would back up to the Durham cemetery. He asked Mr. Acken how tenants would be discouraged from partying there.

Mr. Acken said an adequate buffer would be maintained with berms and interlocking pine trees, so the development wouldn't be associated in any way with the cemetery itself.

Mr. Kelley said the proximity to the cemetery would be concern of his, and said a buffer would be critical. He challenged the design team to reorient the cottages to get them away from the property line on that edge. He then asked if the buildings would be sprinkled.

Mr. Acken said typically not, and said they followed the code.

Mr. Kelley said would be interested to hear about traffic impacts from this development on Technology Drive and on Concord Road, and said he hoped Capstone intended to have a traffic consultant involved.

Ms. Fuller asked if anyone would be able to go out there and park on the property.

Mr. Acken said parking was intended for residents only. He said he understood that parking was a issue in Durham, and said if it did become an issue at the site, the company could consider having a resident sticker. But he said right now, he didn't think that one would be necessary.

Ms. Fuller asked how access to the community amenities would be controlled, and Mr. Acken said residents would have a key fob, but he also said this hadn't been a problem for the company.

Councilor Smith asked Mr. Acken to speak about the parking issues in Chapel Hill, North Carolina, where another Capstone development was proposed.

Mr. Acken provided details on this.

Mr. Wolfe determined that the furthest north that the cottage design had been used by the company was in Missouri, and said Durham would become the furthest north the company had gone with it. There was discussion on the kinds of things that therefore needed to be considered.

Mr. Ozenich asked if the clubhouse would be alcohol free.

Mr. Acken said alcohol would not be served there, and said there would be a bring your own alcohol policy.

Mr. Kelley said the wetland impacts sounded minimal, but said it seemed that there were are a lot of areas where the development would be encroaching on the wetland setbacks. Greg Mikolaities from Appledore Engineering said there would be a total of 1.15 acres of encroachments into the wetland setbacks.

Mr. Kelley said he would be interested to hear more specifics on how stormwater would be treated and where it would go. He also asked whether the parking would be assigned or instead would be a free for all.

Mr. Acken said the company hadn't found the need to have assigned parking, but said it was an option if there was a problem.

Mr. Kelley asked what kind of security there would be at night, noting that several landlords in Town hired private security for this.

Mr. Acken agreed that having that presence was important, and said the company would ensure that there was security, whether it was handled privately or the Town provided it. He said Capstone was open to discussion on this.

Chair Parnell said the developers the Board had dealt with handled security privately.

Councilor Smith asked how many Capstone employees would actually live on the property.

Mr. Acken said usually the manager lived there, and said whether any of the other employees would live there varied from site to site.

Councilor Smith noted that this development would be built next to the largest industrial employer in Town. He said the State had mandated that the Town provide some level of workforce housing, and asked if Capstone would consider having a workforce housing component .

He suggested that the company might talk to Goss about accommodating some of their employees who presently lived outside of Durham. He said perhaps some of the smaller cottages could be put aside for couples with a few small children, and said this could add to the neighborhood feel of the development.

Mr. Kelley said his understanding was that the company couldn't discriminate against a family that wanted to live there, and Mr. Acken said that was correct. He asked what it would cost to live in one of the units.

Mr. Acken said the rates hadn't been established yet, but said they would be in line with the market. He said typically with their other developments, they rented on a per bed basis and not on a per unit basis, and had a 12 month lease.

Mr. Kelley asked how the leases would address subletting during the summer.

Mr. Acken said that was a good question, and said he would have a good answer when the application was submitted. In answer to a question from Mr. Campbell, he said there was a parental guarantee on a lease.

Councilor Smith said the conceptual plan provided specified 663 beds and 663 parking spaces, but he said the Board had been told that the ratio was actually slightly more than 1 parking space per bed. He said he had watched online the conceptual consultation the company had undergone in Chapel Hill, North Carolina, where the issue came up that a unit Capstone proposed was right on the bus line that went to the University of North Carolina. He said there was concern that a big parking lot that was proposed would become a place where students who didn't live there would pull in and catch a bus.

He said he could see a situation like that in Durham if there wasn't a permit system, where students who lived outside of Town would park at the Capstone development and then take the free Wildcat transit to UNH. He suggested that Capstone should consider having fewer parking spaces than beds in order to assist the University and the community in encouraging students to come to the University without a car. He said this would cut down on infrastructure and maintenance costs. He also said having more than 1 parking space per bed was likely to facilitate big parties, where people came in from outside.

Councilor Smith received clarification from Mr. Acken that the number and location of

handicapped parking spaces hadn't yet been decided on.

Mr. Kelley asked if the intent would be to provide ADA compliant units, and Mr. Acken said this would be addressed in the application.

Mr. Kelley asked how the construction would occur in terms of management and use of contractors.

Mr. Acken said typically there was a Capstone employee who was the overall site superintendent, and that person, working with the company's procurement officer, would hire local subcontractors.

Mr. Campbell made note of some issues for Capstone to consider. He suggested that the company make use of the traffic model the Town shared with the University. He also said the Fire Department would like to see sprinkler systems throughout the development, so the company should be prepared to talk with them about this.

He also said parking would be an issue that would have to be worked out. He noted that the Police Chief was very happy with the idea of going with 1.05 parking spaces per resident and didn't want anything less than this because he felt that if enough parking wasn't provided, people would go there anyway, which would create a safety issue.

Councilor Smith said having a gated community would solve that problem.

Mr. Campbell suggested that there could be discussion about the idea of having shared, leased parking with Goss, so some spaces wouldn't have to be created on the site.

Mr. Acken said the company had looked into this idea in other places, and hadn't found it to be successful. He said the reason for this was that typically students wanted to be able to keep an eye on their cars.

Mr. Kelley said he had noticed that the design included curb bumps at intersections to shorten the distances of the crosswalks. He asked if any other traffic calming measures were proposed.

Mr. Acken said the most effective measure the company had found was parallel parking of cars on the street, along with street trees, which made the road feel narrower and slowed traffic down. He said there would also be stop signs and additional crosswalks to break the traffic up in certain areas.

Mr. Campbell determined that the travel lanes were 11 ft wide.

Councilor Smith suggested that having ceilings for the cottages that were lower than 9 ft would be much more energy efficient for a development in New England.

He also noted that he had been on the Planning Board eight years ago at the beginning of the

planning process for the Hotel NH/Holiday Inn. He said a question asked at that time was what would happen in terms of the success of the project if after it was built, it turned out that the student rental market was saturated.

Mr. Acken said Capstone did due diligence to ensure that this would not happen, and he noted that it hadn't happened to the company to date in a variety of different markets. He said if this was 2005, the concern would be there, but said today, the financing of a development was scrutinized at many levels, so the possibility of this happening was miniscule.

Councilor Smith said he had made this same point to someone earlier in the day.

Mr. Lewis asked if the company had given thought to the issue of snow storage.

Mr. Acken said the company would make sure that there was a good snow storage plan in place. He noted that they would get feedback on this issue from local snow contractors, and would adjust the plan based on this feedback.

Councilor Smith noted that the Oyster River was part of the Town's water supply, and Mr. Acken said this was understood.

Mr. Ozenich noted that the cottages would be built on slab. He also asked if there would be enough storage in the closets, and Mr. Acken said yes.

Mr. Wolfe asked where the furnace, water heater, etc. would be located, and Mr. Acken said this would depend on the particular cottage. He said there would be a mechanical room in each unit.

Mr. Lewis asked if each unit would have a stand alone HVAC system, and Mr. Acken said that was typically what would be used. He said tenants would pay for heat and electricity, which helped to ensure energy efficiency.

Mr. Campbell noted that the Energy Committee had brought up the idea of incorporating a bike share program on the site, and Mr. Acken said the idea had been mentioned as part of the discussion with UNH students the previous evening. He said it was a great idea.

Mr. Campbell also said Zip Cars were being used at the University, and suggested that Capstone could contact them and perhaps a couple of the cars could be parked at the development. Mr. Acken said that too was a great idea.

In response to a question from Chair Parnell, Mr. Acken said that the Planning Board would be seeing an application from Capstone within the next 30 days or so.

Before going on to the next Agenda item, Mr. Wolfe asked Mr. Campbell what he perceived would happen in Town with over a 1,000 new beds coming in, and with all of the existing beds.

Mr. Campbell said he saw the new student housing developments downtown and the ones like Capstone proposed as two separate markets. He said the market for the new downtown units was very strong, but said for the owners of some of the existing, older units, it might be a good time to consider doing something else with their properties.

Mr. Kelley said the additional units Mr. Wolfe had mentioned might also stabilize costs. He noted that some of the bedrooms in the older units were essentially walk in closets, and said they might see a variety of pricing levels for apartments in Town. It was noted that Durham apartment rates had been high compared to those in Newmarket and Dover.

Mr. Campbell said his hope was that with a neighborhood that Capstone proposed, this would draw kids out of traditional neighborhoods in the downtown area, so that single family homes currently housing students would be available for families. He said hopefully it would also draw kids from other towns back to Durham.

IX. Other Business

A. Old Business: 1. Appoint a new representative for the Master Plan Advisory Committee

Mr. Campbell said the Master Plan Advisory committee would meet once every month, and the two subcommittees would be meeting every other week.

After discussion, Chair Parnell determined that there were no volunteers from the Planning Board to serve on the Committee. He then volunteered to serve on it himself.

B. New Business: 1. Discuss Extending the Deadline for the Conditions of Approval for the Boundary Line Adjustment for 27-35 Newmarket Road, Map 6, Lot 11-7.

Mr. Campbell said the current Great Bay Animal Hospital site plan was a result of this boundary Line Adjustment application. He said the deadline for meeting the conditions of approval ran out on Friday, and said the applicant had asked that the deadline be extended for 90 days.

***Councilor Smith MOVED to extend the deadline for the Conditions of Approval for the Boundary Line Adjustment for 27-35 Newmarket Road, Map 6, Lot 11-7.
Richard Ozenich SECONDED the motion.***

Ms. Fuller recused herself from voting, and Mr. Lewis was a voting member in her place.

The motion PASSED unanimously 7-0.

There was discussion that the Planning Board would have a second meeting in November, on November 17th, to discuss some possible Zoning changes based on the B.

Dennis recommendations. Mr. Campbell said Board members should also consider meeting a second time in December, on December 15th, to work on these on these items.

C. Next meeting of the Board: **November 10, 2010 (Only meeting in November)**

X. Approval of Minutes – No minutes

XI. Adjournment

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

Adjournment at 10:21 pm.

Victoria Parmele, Minutes taker

Susan Fuller, Secretary