

*These minutes were approved at the January 26, 2011 meeting.*

**Durham Planning Board  
Wednesday December 15, 2010  
Durham Town Hall - Council Chambers  
7:00P.M.  
MINUTES**

**MEMBERS PRESENT:** Chair Lorne Parnell; Vice Chair Peter Wolfe; Secretary Susan Fuller; Richard Kelley (arrived at 8:00 pm); Bill McGowan (arrived at 7:20 pm); alternate Wayne Lewis; alternate Andrew Corrow

**MEMBERS ABSENT:** Richard Ozenich; Town Council representative Julian Smith; alternate Town Council representative Bill Cote

**I. Call to Order**

Chair Parnell called the meeting to order at 7:03 pm. He appointed Mr. Corrow in place of Mr. Ozenich, and Mr. Lewis in place of Mr. McGowan.

**II. Approval of Agenda**

*Susan Fuller MOVED to approve the Agenda. Peter Wolfe SECONDED the motion, and it PASSED unanimously 5-0.*

**III. Discussion on Possible Zoning Ordinance Amendments**

Chair Parnell asked Mr. Campbell to give some background for everyone's benefit as to why these particular changes, which were quite extensive, were being done.

Mr. Campbell said as a result of the charrette and the development of a Strategic Plan of the Town's commercial core, some amendments to the Zoning Ordinance had been proposed. He noted that Ms. Della Valle was a part of the B. Dennis team that had put on the charrette, and was also hired to help the Planning Board develop the Ordinance changes.

He said the plan was to do this in basically three groups, and said the first group that possible Ordinance changes would come out of was being worked on now. He said there would hopefully be a public hearing on recommended Zoning changes early in 2011, and they would then move on to the Town Council. He said as that happened, the second group of possible Zoning changes would be considered by the Planning Board, and then the third.

Chair Parnell asked if these Zoning changes had been suggested by residents at the charrette, and Mr. Campbell said they most likely had been mentioned over the course of the 5 days when the charrette took place, and/or in the Strategic Plan.

Planner Beth Della Valle joined the Planning Board at the table and said it might be useful to start with possible Conditional Uses revisions in the Table of Uses table, because they harkened back to some definitions as well as development standards.

Ms. Della Valle first noted that she had previously discussed with the Board the large number of Conditional Uses in the Table of Uses, and that she had said she would take a stab at this. She said the premise she'd used was that many of these uses could shift to being permitted uses in districts where some additional standards were provided.

She said she'd created a few standards to go along with permitted uses, in order to give the Board a sense of what they might be like, and also noted areas where they might be appropriate. She said she wanted to see if the Board was comfortable with this approach, and then wanted to discuss with them what some of the standards might revolve around.

She then began to go through some changes to the Ordinance she had recommended.

#### **Definition of farmer's market**

Ms. Della Valle noted that under II. Rural Uses in the Table of Uses, there was currently no allowance for the sale of local agricultural products. She noted that farmer's markets were really big draws in downtowns, and said she had put out for consideration the idea of adding farmer's Markets as a permitted use in the Table of Uses, for all 5 districts in the commercial core.

She noted that there was currently no definition for this use in the Zoning Ordinance, and said she'd come up with a definition that was an amalgamation of those she had read in other ordinances. She said it suggested that there should be a licensing process that the Town Council would be involved in, and that there would be a separate site plan review process required if the market were to operate for 30 or more days. She said this was really just a starting point, and asked Board members if the definition sounded reasonable.

There was discussion that Durham was close to the border of Maine and Massachusetts, so they therefore might want to look at a different definition of what "local" was. Ms. Fuller noted that thinking of this regionally, Canada wouldn't be precluded either.

Chair Parnell asked why one would want to restrict this anyway if a farmer wanted to sell at a farmer's market in Durham, and Ms. Fuller said with a typical farmer's market, the vendors selling there should be from the region.

Ms. Della Valle said some definitions of farmer's markets were very parochial and had a strong preference for local products, while some didn't. She said she had taken a middle

of the road approach. She asked Board members how they wanted to approach this, and also asked whether, if they wanted to restrict vendors to those who came from the “region”, how this would be defined.

Chair Parnell noted that the farmer's market in Durham now was only there for a few hours, one day a week, and said he wouldn't want to put something in the Zoning Ordinance that restricted it. He said he wasn't sure what would be accomplished by putting this definition and use in the Zoning Ordinance.

Ms. Della Valle noted that the Town was very precise about all of its land uses.

Mr. Campbell said a question was what happened if the existing farmer's market closed up,

Ms. Fuller also noted that if Mr. Wolfe decided to set up a wine importing business and became a vendor at the market, this wouldn't necessarily be a local product.

Mr. Wolfe said the history of these markets was to encourage local producers by providing an outlet for their sales, and said it was a pretty important concept. He said he thought of a farmer's market as more of a locale, but said he wasn't sure what the radius should be.

Ms. Della Valle said perhaps they should start with whether there was a need to specifically reference this use in the Zoning Ordinance.

Mr. Campbell said right now, the sale of farm products could only be an accessory use to an agricultural activity, and couldn't be a stand alone use.

Ms. Della Valle noted that most of the literature she had read made no reference to the sale of marine products, such as lobsters, and said they were a big draw at farmer's markets she had been involved with in Maine. She said state laws governed the handling of such products.

Mr. Wolfe said there seemed to be consensus that Board members wanted to encourage this use, and said the question was whether having a definition for farmer's market helped or hindered this activity.

Ms. Fuller said the farmer's market currently taking place in Durham had no grounding in the Zoning Ordinance, so there should be a definition. She said what stood out to her as something that should be included in it was that the products sold there should be grown in State.

Ms. Della Valle asked if everyone agreed that there should be a definition, and said if so, they could go on from there.

Chair Parnell said he would pass on that idea.

Ms. Della Valle said she had tried to be very broad in terms of the types of products that could be sold, and the location. She said they could be silent on this or not.

Chair Parnell asked if simply saying “local farmers” was enough.

There was discussion about the idea of striking the line that was proposed “Local is defined as that which is raised, produced or grown in the State of New Hampshire.”

Chair Parnell said he thought the next sentence should be stricken, regarding how long the produce had been raised in the State before being offered for sale at the market.

Mr. Campbell noted that farmer's market associations usually had rules on this.

Ms. Della Valle suggested that they look at some possible standards she had provided for farmer's markets.

In regard to one standard, which required that all farmers’ markets be licensed, Chair Parnell asked if the current farmer's market in Durham was licensed.

Mr. Campbell said the farmer’s market had to get approval from the Town Council when it originally planned to set up at the Pettee Brook lot.

Ms. Della Valle said she would check on whether licensing was required, and said if it wasn’t, the Board would need to decide if this should be required, or if the Ordinance should be silent on this.

Chair Parnell said if licensing was not required now, he wasn’t sure what would be accomplished by adding that to the Ordinance, since they wanted to encourage what had been there to develop and become a more and more useful entity in Town.

Mr. Campbell said farmer's markets had to be licensed by the State.

Ms. Della Valle said the zoning language she’d been looking at on farmer’s markets was encouraging/requiring each market to require each vendor to document that they had received the handling licenses the state required. She said some vendors didn’t need a license, but others, who were selling meat, fish, dairy and some other products did need to have one. She also noted that farmer’s market associations recommended that farmer's markets get liability protection.

Mr. McGowan arrived at 7:20 pm, and Chair Parnell said Mr. Lewis would therefore be a voting member in place of Mr. Kelley.

Ms. Della Valle referred to the 4<sup>th</sup> performance standard for farmer’s markets that she had listed “Farmer’s markets that operate more than a total of thirty days per year are subject to site plan review to ensure adequate circulation, safe access, and control of signage,

noise and lighting.” She asked Board members if they thought there was a need for that site plan review trigger, and noted that this standard could always be added in the future, if the market got too big.

Chair Parnell said at the level the market was at now, he would say the provision wasn’t needed, but said if it was operating daily, he thought the Board would want to take a look at it.

Mr. Campbell said right now, there was plenty of parking for the farmer’s market, and also said the traffic was already there at the Mill Plaza parking lot. But he said it would be a different situation if the market was located someplace else in Town.

Mr. McGowan asked about details like the possible need for police supervision, a permitting process, signage, etc.

Board members agreed that performance standard #4 should say sixty days rather than thirty days.

Ms. Della Valle noted performance standard #5 that she had included: Locally produced crafts may not be sold by more than 25% of the vendors at the farmer’s market nor may they exceed more than 25% of an individual farmer’s annual sales at the farmer’s market. She said the Zoning Ordinance should make it clear whether crafts could be sold, noting that some markets didn’t allow this.

There was discussion. Ms. Fuller said she thought this entire standard could be struck, and Chair Parnell said there wasn’t any one to enforce such a standard.

Mr. Campbell noted that selling crafts had become a problem at some farmer’s markets because a large percentage of crafts were sold, which wasn’t what was originally intended.

Ms. Della Valle said that was why she had included this standard, but said she was not seeing that it was a problem in Durham right now, so wouldn’t include it right now.

Ms. Della Valle noted the standard she had included regarding live music: “Live music may not exceed the Town’s noise standards or authorized hours of operation.” She said this was a pretty typical performance standard.

There was discussion that there needed to be a standard like what Ms. Della Valle had proposed in #7: Fresh meat, meat products, pasteurized milk, milk products, cheese, poultry, poultry products, and fish must be stored at or below forty (40) degrees Fahrenheit during transport and display at the farmer’s market. There was discussion that this standard should say these products had to be stored in compliance with State regulations.

There was also discussion that standard #7 would be combined with standards #8 and #9:

(8- Frozen meat, meat products, poultry, poultry, and fish must be stored such that it remains frozen during transport and display at the farmer's market; and 9 - Pasteurized milk and milk products must be stored in compliance with State regulations.)

Ms. Della Valle referred back to the Table of Uses, and said that under II. Rural Uses, she was proposing that "Uses Accessory to Commercial Agriculture and Animal Husbandry" be removed, and that "Farmer's Market" be included under II. Rural Uses.

**Revised Table of Use standards, shifting a number of uses from conditional or not allowed to permitted.**

Ms. Della Valle next spoke about III. Residential Uses, in the Table of Uses, and started to review A. Principal Uses. She noted a possible use category she had added there: Residence, duplex - adaptive reuse of an existing single-family residence. She said this use wasn't currently permitted in any of the 5 commercial core districts under consideration, and she proposed to make it a permitted use in the Church Hill district.

Ms. Della Valle said she had assumed that they didn't want to encourage the adaptive reuse of a single family residence in that district, and that intensifying the use was something they wanted to encourage, or they would rather see the structure go away and be replaced with a business or institutional use. She said she was taking the more general perspective that any intensification of the use would help to create the variety and diversity downtown that people were looking for.

She next noted another possible use category she had added: "Residence, multi-unit--adaptive reuse of an existing building". She said she had suggested that this use should be permitted everywhere, because of particular issues with some of the existing multi-unit buildings in those districts. She noted that there were already standards in place that limited the number of unrelated individuals that could live in these buildings. She also said the greater the critical mass of people living downtown, the more likely it would be that businesses could be supported there.

Chair Parnell said the only issue he might have with this was that the use would be permitted in all 5 districts, which got quite a ways from the downtown. He said there were a number of single family homes in the Coes Corner district, and said he didn't think the Board was trying to encourage the reuse of them. He also questioned having this use category for the Courthouse district.

Ms. Fuller said they didn't want to encourage reuse of buildings as duplexes, but said how about reusing them as multi-unit buildings.

Ms. Della Valle said she thought that at the charrette, the Central Business district, the Professional Office district, the Church Hill district and the Courthouse district were viewed as the commercial core of the downtown, and Coe's Corner was definitely considered to be different. She said this would come through with a lot of the things she was recommending, and she asked the Board to let her know, when she left this consideration out.

Mr. Wolfe said he didn't have the expertise or the ability to give an opinion on whether this use should be permitted in all 5 districts, and asked Mr. Campbell for his thoughts on this.

Mr. Campbell said the Master Plan called Route 108 to the Madbury town line a part of the commercial core.

Ms. Fuller said she liked what was proposed.

Mr. Campbell said he was apprehensive about this use being permitted in the Central Business district, because he could see that with it, instead of tearing down buildings and doing mixed use developments, developers would only put up new multi-unit buildings with no commercial uses in them. He said he didn't think that was what they all wanted.

There was further discussion on whether this use made sense for the Central Business district. Mr. Campbell said he would prefer that this use not be allowed in the Central Business district, and Board members agreed.

Mr. McGowan said he thought this use was allowed right now in the Professional Office district for any building, as long as adaptive reuse was done.

Board members agreed with a suggestion by Ms. Della Valle that the Table of Uses should say "Residence, multi-unit-adaptive reuse of an existing residence", rather than "...an existing building".

There was further discussion.

Chair Parnell referred back to the "Residence-duplex-adaptive reuse of an existing single-family residence" category that was proposed, and said there seemed to be an aversion to duplexes in Durham. He asked what the reason was for this.

Mr. Campbell said there was the fear that it would be student housing, and he noted the battle he had lost during the Zoning Rewrite process, which had resulted in duplexes not being allowed anywhere but in the MUDOR district.

Chair Parnell suggested allowing this use in all 5 districts except the Central Business district, and said the Planning Board could then see if there was an objection to this.

Mr. Campbell noted that the Board would soon be discussing the issue of workforce housing.

Ms. Della Valle asked Board members if they thought this should be a permitted use in the Professional Office district and the Courthouse district. There was discussion about whether there were single family homes in these districts, and Mr. Campbell said there was perhaps one single family home in the Church Hill district.

Ms. Fuller said even though the idea of attached housing for affordable housing didn't thrill her because of possible problems with maintenance and financing, she could still see duplexes as a permitted use in the Coes Corner district.

Mr. Wolf said he didn't mind the idea of duplexes there, and Chair Parnell also said he had no objection. He said he thought it would be somewhat controversial to permit this use in the Courthouse district as well as in the Professional Office district. But he recommended again putting it in for now for all 5 districts except the Central Business district, and the Board could then see what people thought.

Ms. Della Valle next spoke with the Board about the existing "Elderly housing, single family" use category in the Table of Uses. She asked what its purpose was, and if it was needed.

Mr. Campbell explained that the purpose of this use category was to avoid having more kids in the school system, while still getting taxes from this kind of housing. He said the Town had been trying to encourage that type of development, rather than non age restricted residential development.

There was further discussion about this elderly-related use category and the others in the Ordinance, as well as one that Ms. Della Valle had suggested: "Elderly housing, duplex - adaptive reuse of an existing building".

Ms. Fuller said she could see taking "Elderly housing - single family" out of the Table of Uses.

Ms. Della Valle noted that many elderly people didn't want to drive, and that society didn't want them to drive. She said if they weren't living in a place where they could walk in order to meet their basic daily needs, they were forced to be prisoners in their homes or develop a social service network. She said this was the premise behind the idea of allowing elderly housing in downtown districts. She noted that single family elderly housing was currently allowed in the Coe's Corner district and the Church Hill district, but not in the Central Business district or the Courthouse district.

Ms. Fuller said she understood the idea of wanting to allow elderly housing in close proximity to the downtown, but said they didn't want more single family homes in the Central Business district and the Courthouse district. She suggested that the elderly could live in multi-unit buildings in those districts. She stated again that she thought the entire "Elderly housing, single family" category could be taken out of the Table.

Ms. Della Valle said she could take this category out. She also said for "Elderly housing, duplex - adaptive reuse of an existing building", she could change the Table to indicate that this use would not be allowed in the Central Business district, but not change this for the other 4 commercial core districts.



Concerning “Elderly housing, multi-unit in accordance with the provisions of Article XX”, Ms Della Valle asked Board members whether they wanted to see that use in the Central Business district.

Chair Parnell said he would like it to remain as a Conditional Use there, because of concern that a building would revert to student housing even if it started out as elderly housing.

Ms. Della Valle asked if it could be made a permitted use with standards, rather than a Conditional Use.

Chair Parnell said he didn’t think people would trust that, noting that they didn’t trust this for the Hotel project a few years back.

Mr. Campbell said without Conditional Use, he didn’t think the Planning Board would have authority to make a development elderly forever.

There was further discussion with Ms. Della Valle on this issue, including the issue of enforcement of the percentage of elderly who lived in an elderly housing development. Ms. Della Valle said enforcement of this was likely to be complaint driven, so if there weren’t calls about it, it wasn’t a problem. She asked if this would still be a problem for the larger community.

Mr. Campbell said he thought people were looking at elderly housing as taking away possible commercial activity that could happen in the commercial core. He said elderly housing wouldn’t have as much value as there would be for a mixed use development with commercial below and student rentals above, which would provide more income. Ms. Fuller noted that there had to be people in the Central Business district in order to attract businesses, and said some of them could be elderly.

Mr. Campbell said they could live in any mixed use building that was there.

Chair Parnell noted for the record that Mr. Kelley had arrived at 8 pm.

Mr. Campbell said right now, a lot of housing was being built, but it was all student housing.

Ms. Fuller said that was why having elderly housing, multi-unit in the Central Business district was a fine thing.

Mr. Campbell said he doubted that anyone would build it.

Ms. Della Valle asked if it would be a problem to allow it, and also asked if there was a way to address some possible concerns by adding some additional standards. She noted that right now, the Ordinance talked only about not creating a traffic hazard.

Mr. Wolfe said he didn’t think Durham wasn’t going to get that kind of development

downtown, at least not in the Central Business district, because there was more money in student housing.

Ms. Della Valle asked if not being sure the market would support this use was a reason to prohibit it.

Mr. Wolfe spoke further about the idea of keeping “Elderly housing- multiunit” as a Conditional Use.

Ms. Della Valle said she was trying to get the Board away from Conditional Use, and substituting in its place a permitted use with an established set of standards the Board, similar to what the Board would normally have in mind when looking at a Conditional Use application.

Mr. Campbell said with Conditional Use, the Board could apply basically any performance standard it wanted. There was further discussion.

Ms. Della Valle said it was a question of whether the Board thought this would be a desirable use downtown.

Mr. Wolfe said allowing this use would provide a more diverse population downtown. He said if there was more to offer people of that age group there, perhaps the use would occur.

Ms. Fuller said if people of that age group moved in, there might be some businesses that would be created for them.

After further discussion, Ms. Della Valle suggested that a condition of having this use could be that the first floor would have to be renovated for nonresidential use. Board members agreed with this idea. She also said some additional standards could be added, or they could rely on the variance process to deal with some proposed developments.

Mr. Campbell said the Town was going to be encouraging workforce housing, but said no one wanted to build it in Durham because they would make more money with student housing.

Ms. Della Valle said that was the reality, until they turned a corner with the downtown. She summarized the options for dealing with Elderly housing - multi-unit, and 4 of 7 Board members then said it should be left as a Conditional Use. They also agreed that it should be a Permitted use in the Coe’s Corner district.

Ms. Della Valle next spoke about III B. Residential Uses: Uses Accessory to Any Residential Use. She noted that currently, first class home occupations were not allowed in the Central Business district or the Professional Office district (incorrect). She said these were small businesses where everything happened inside the structure, and which had only one other employee besides the owner. She asked if something like a craft

business, which technically was light manufacturing, would be a problem downtown, and said something like this could add to the activity and diversity of the downtown.

Mr. Wolfe asked Ms. Della Valle why she would want to encourage this in the Central Business district, and she said she simply didn't see the need to discourage it.

Ms. Fuller said if a student rental was creating widgets, she didn't see a problem with that.

Ms. Della Valle suggested that the Board also think about the idea of a young graduate looking to start a business there. She said allowing this use was another form of business incubating.

Mr. Wolfe noted that someone could take a private residence and make a home occupation there as an accessory use. He considered whether this was something the Board wanted to encourage, rather than encouraging the modification of a house to make it a real business.

Mr. Campbell noted that if home occupations were allowed in the Central Business district, anyone in Matt Crape's building could have a home occupation there.

Ms. Fuller said she had no problem with what was proposed.

Mr. McGowan noted that in some places, it wouldn't even be feasible to have this use.

Ms. Della Valle read some possible performance standards for Home Occupation.

Mr. Kelley said that said it all, and said he thought this use should be permitted in the Central Business district.

Ms. Della Valle next spoke about her proposed recommendation concerning III C Residential Uses - Uses Accessory to Single Family Residential Use - Accessory dwelling unit in accordance with the provisions of Article XX. She said she had proposed that this be made a permitted use in the Courthouse district, and said the idea was to intensify residential uses, which was probably a good thing, while not doing a full duplex. She said this use might be something like a carriage house, garage, barn, etc.

Board members agreed with the idea of making this Zoning change.

Ms. Della Valle next spoke about her proposed recommendations concerning IV. Institutional Uses. She asked why an Art center wasn't currently allowed in the Professional Office district, yet was allowed as a conditional use in the Coe's Corner district.

Mr. Kelley said he believed this was because the Town had wanted to see professional offices in the Professional Office district, and there were currently so few of them there.

There was discussion about how Art center was defined in the Zoning Ordinance.

Ms. Fuller asked why someone wouldn't want to walk to an Art center from a professional office in that district.

Ms. Della Valle said at the charrette, this use was viewed as not really being that different, and as something that would create some vitality, keep things within walking distance and reduce vehicle use in the commercial core. She said that was why she had suggested that it be a permitted use for all 5 districts. She noted that she had recommended that this be a permitted Use rather than a conditional Use in the Coe's Corner district, and said it could be thought of as a kind of community center.

Ms. Fuller said she was ok with all the permitted uses that were proposed under Section IV. Institutional Uses. Other Board members agreed with her.

Ms. Della Valle noted that each of the uses in Section IV said "In accordance with provisions of Article XX" (Performance Standards).

Mr. Kelley asked if what was being proposed for the Coe's Corner district fit with what the Master Plan said about that district.

Ms. Della Valle said she hadn't checked that, and would do so.

Mr. Campbell reviewed wording in the Master Plan concerning Coe's Corner.

Mr. Kelley said he no problem with changing uses there from conditional uses to permitted uses, but asked if this was perhaps a situation where the Master Plan should be changed first.

Mr. Campbell said he thought it would be all right to proceed as was being recommended, stating that there were a number of situations where the Planning Board did something that was different than what the Master Plan called for.

Ms. Della Valle noted that some performance standards could be added for the Child care center or nursery use category. She said for each of the Institutional uses listed, a question was what kind of provisions there should be. She said they would probably want some scale limits for Clubs, depending on the club, as well as provisions concerning hours of operation and noise levels.

Mr. Campbell noted the issue of the sale of alcohol.

Mr. Kelley said the noise level could be an issue of concern, given the proximity there would be in some cases to residential uses. He said there were quality of life issues for abutters.

Ms. Della Valle asked if there should be additional setbacks for that use, in addition to

having performance standards.

There was discussion about limiting hours of operation to 1:00 am on weekends. It was noted that lighting levels were addressed elsewhere in the Ordinance.

There was discussion that for the Community Center use, the same issues concerning scale, hours of operation, the sale of alcohol, etc. would need to be addressed.

Regarding Educational facilities, Ms. Della Valle asked how broadly the Board interpreted this, and if they didn't want it to include small private schools, dance schools, etc.

Mr. Campbell read the definition of Education Facility in the Zoning Ordinance, and Ms. Della Valle asked if it meant there couldn't be a dance school. There was discussion. She asked if it would be a problem if there was a Montessori school.

Mr. Kelley said there could be, and said the issues would be what the size of the school was, and how much traffic came in and out.

Ms. Della Valle said this could be addressed with conditions concerning scale limits, traffic, access and safety.

Mr. Kelley asked if Educational Facility could include a martial arts center, and Mr. Wolfe said not according to the definition, which was really restrictive.

There was discussion about the Structured parking category in the Table of Uses, and the fact that Ms. Della Valle had recommended that this be a permitted use in the Professional Office district, which in some places abutted the RA district.

Ms. Della Valle noted that she was beginning to explore the issue of Structured parking, in terms of the height of such a structure in the Professional Office district because it abutted a residential district. She said she was looking at some interesting ways to approach this with standards, such as the idea that within a certain distance of the property line the building would have to be stepped down in terms of height.

She said another possible standard was buffering, and not just in terms of providing a screen, but providing an aesthetic face as a result of a nice landscaping plan, rather than a fence. She said there was also the issue of where to put access to the parking structure, and providing a reasonable transition plane from nonresidential to residential.

Mr. Kelley asked whether the concern with making structured parking a conditional use was that this would make a developer reluctant to submit an application.

Ms. Della Valle said mostly, it was the issue of the time involved.

Mr. Kelley said if someone was going to build a structured parking garage, there was a

significant amount of capital involved anyway. But he said he could see that there could be a time issue.

Ms. Della Valle said it was the time involved and the uncertainty as to whether the application would be approved. She said if a developer knew it was a permitted use, and saw the standards involved, this could be built into a design from the beginning. She said what a developer would say wasn't that he was being asked to do something, but that with conditional use, he wasn't being asked to do it until he was so invested in the project that it cost an unreasonable amount of money.

Ms. Fuller said with a permitted use, a developer could calculate the risk based on his plan and the Zoning Ordinance.

Mr. Kelley said he supported Structured parking being a permitted use in the Central Business district. He noted that it could be made to look pretty sharp. But he said he wondered about this for the other districts.

Ms. Della Valle noted that she had proposed some standards.

There was discussion that there were already a lot of surface parking lots in the commercial core, and Ms. Della Valle said her inclination would be to be harsher regarding surface parking. She noted that her recommendation was to make Structured parking a permitted use in all 5 districts, and that she was not proposing anything regarding surface parking.

Mr. Kelley said he could be an advocate of structured parking that had access onto Madbury Road, but said he questioned whether they would want to spill traffic onto other streets in the Professional Office district.

Ms. Della Valle said she would talk with Mr. Campbell about the geography involved, and whether they might want to restrict access on some of these roads.

Mr. Kelley said he could go along with allowing Structured parking to be a permitted use in the Courthouse district and perhaps the Coe's Corner district, but said he was reluctant to permit it in the Professional Office district. He said in some cases, the streets it abutted were in residential neighborhoods. He said the Church Hill district and the Courthouse district would need to be more like the Central Business district in terms of zoning if the downtown was going to go anywhere.

Ms. Fuller said if they really wanted to have a lot of professional offices in the Professional Office district, it would make sense to have structured parking with it. She said there wouldn't necessarily be a lot of inflow and outflow of traffic all at same time.

Ms. Della Valle suggested the idea of not allowing access from a Parking structure onto residential streets, which would mean that this use wouldn't be allowed if the only access available was onto a residential street.

Mr. Kelley said that would make it easier to swallow.

Ms. Della Valle spoke about the fact that she was trying to dance between a form based code with a regulating plan, and what they were actually trying to do with the Zoning Ordinance.

She suggested that additional controls were needed concerning mixed use with parking, and asked the Board to think about what they would want the first floor of such a development, which would provide access to parking, to look like. She said it could look like a fortress or could be wrapped with stores, offices, or architectural tricks to make it look like those uses were taking place.

Board members agreed that they were ok with what Ms. Della Valle had recommended concerning Structured parking.

Mr. Campbell said he didn't see that there would be that much Structured parking coming in.

Ms. Della Valle noted that a central part of the strategic plan was the need for Structured parking. She said she didn't want to discourage someone from doing this, but wanted it to be done right. She noted that it was a big investment.

Ms. Della Valle next spoke with the Board about VII. Commercial & Industrial Uses. She said she had recommended that Hotels and Conference centers should be permitted in all 5 districts, including where they were currently conditional uses. She said there were ways that both activities could bring life, energy, and customers downtown.

She said with these uses, the primary issues were scale and surface parking limits, and said there were some additional aesthetic issues regarding landscaping and buffering. She asked if there were any other types of standards, or issues that standards should be developed around, which the Board would like to see.

Ms. Della Valle said there were also the issues of scale and surface parking limits with Restaurants, as well as possibly hours of operation. She noted that the issues were the same for Conference centers.

Mr. Campbell said Restaurant was not considered an acceptable use for Coe's Corner according to the Master Plan.

Ms. Della Valle asked if a restaurant could perhaps be accessory to another kind of use there, stating that this was how she saw it.

Mr. Campbell said perhaps it could be accessory to a hotel. Ms. Della Valle asked if perhaps there could be a coffee shop at a museum in the Coe's Corner district, and Mr. Kelley said yes.

Ms. Della Valle asked Board members if they were ok with this use not being a permitted use, and some Board members said no.

Mr. Campbell noted that the definition for museum in the Ordinance was that it was a nonprofit institution, and also said there could be incidental retail sales of items related to its principle purpose.

Mr. Wolfe said he saw restaurants as something that would draw people in.

Mr. Campbell said the concern for Coe's Corner was possible strip malls, and sprawling restaurants like Applebee's.

Ms. Della Valle said this could be addressed by not allowing the restaurant to be free standing. She asked Board members if they cared whether there was an Applebee's if it was in a building the Town wanted. She said there could be some standards that limited free standing restaurants that weren't in some way integrated in with a use, and said this forced a mixed use.

Ms. Fuller said she liked that idea, and asked what the Master Plan said about it.

Mr. Campbell read from Section 3.34 of the Master Plan concerning Coe's Corner, and the fact that it was considered a gateway to the Town.

Mr. Kelley said that in terms of the existing scale in Coe's Corner, there was the Pine's, the apartments on Young Drive and the pump house, and the rest was residential.

Ms. Della Valle said the Strategic plan specifically called for restaurants in this area, for example at Old Town Landing, in order to attract people to that area.

Mr. Campbell noted that everything north of Route 4 was called a gateway as well, but he said the Strategic plan said that south of Route 4, there was the opportunity to do some smaller scale commercial development.

Ms. Della Valle said that in addition to calling for a restaurant at Old Town Landing, the Strategic plan called for a seasonal café at Jackson's Landing, and spoke about encouraging an architecturally appropriate commercial establishment that looked like a house or a barn and was used as roadhouses, family restaurants or a welcome center. She said there was also a strong focus on this area being a center for civic uses. She said she would try to come up with some language that reflected this.

Mr. Wolfe said some conditions could be developed that would maintain the local character and avoid a cookie cutter look.

Ms. Della Valle noted that the Coe's Corner area was pretty pristine. She asked if the Board wanted her to go after franchise architecture, noting that the Town hadn't let any of this in yet, and that it was harder to prevent it when a town already had some of it.



Mr. Wolfe said he thought the Town could win if it did this.

Board members agreed to make Restaurants a permitted use in all 5 districts, as Ms. Della Valle had recommended.

There was next discussion on the issue of the Craft shop with accessory production use, and whether the crafts could be sold on the premises. Ms. Della Valle note that she had proposed that this use be allowed in all 5 districts but Coe's Corner, and that the only change from the current Zoning Ordinance was that the use was currently prohibited in the Professional Office district. She recommended allowing craft shops there as part of trying to make the Professional Office district feel more like the downtown.

Board members agreed that they were ok with this proposed change.

Ms. Della Valle spoke about the fact that when she discussed the third group of topic areas with the Board over the next few months, she would discuss the idea of creating a single downtown district. She said this didn't mean that all of the geographic areas of the 5 commercial core zones would be included in it. But she said it might mean that the Professional Office district got split up, with some of it going to the Central Business district and some staying as it was.

Ms. Della Valle noted that she had proposed that Gallery go from being a conditional use to a permitted use in the Coe's Corner district, with standards regarding traffic generation, quality of life issues, architecture, etc.

Mr. Kelley confirmed that architectural design standards were still being pursued, and might be able to address some of these issues.

Ms. Della Valle said she would take a look at these draft design standards. She noted again that she was looking for ways to take concepts that had been brought forward and put them into the more conventional Zoning language. She warned that this approach probably wouldn't work as well as a form based code would, to get the constructed form that people wanted. She said while a form based code was more restrictive and precise, it was also more freeing. She said without it, it was harder to craft a standard that reflected differences in topography and context in particular zones.

She said with a conventional code, a developer and the Planning Board wouldn't know the answer to some questions until they were in the midst of the review process. She said with a form based code, they would have these answers ahead of time. She noted that only a few New England towns had adopted form based codes, and said it was hard to know if it was going to work.

Board members agreed that Gallery should be a permitted use in the Professional Office district, just as they had said Art center should be a permitted use.

Ms. Della Valle next spoke about the Retail store use category, and said the key issues

involved were scale and surface parking limits.

Mr. Campbell asked if part of the proposal with this use was to amend the definition of Retail store in terms of its allowed size.

There was discussion. Ms. Della Valle said right now, the definition said the size could be between 5,000 and 20,000 sf of gross floor area. She noted that the December 14, 2010 memo she'd provided noted some things for the Board to consider regarding under what conditions they would allow retail over 20,000 sf. She said the first thing was requiring a minimum of 3 stories, and not allowing a building to expand out unless it expanded up.

She said a question was whether the Board would want to put in place a minimum and/or a maximum setback. She said typically when this was done, the idea was to try to create a consistent street front. She said an alternative was to have a build-to line. She said all of these techniques related to the way a building sat on a site and what it looked like. She spoke about the idea of doing infill in places like the Church Hill district.

She said there might be a situation where there was a relatively wide lot with respect to other lots around it. She said if there was a maximum building width requirement, a building could be required to be treated so it visually looked like separate buildings, with a maximum building width for each section.

Ms. Della Valle said that regarding minimum distances between buildings, if they wanted standards that allowed for variability, they would have to go out and do some measuring of the largest, average, and smallest distance between buildings in a district. She said that would involve a lot of work, but would probably get the best result, unless they went with a form based code. She said the idea was to measure and then establish standards that reflected the neighborhoods they liked and wanted to emulate.

She said another approach was to put the onus on the developer to provide data to the Planning Board on what was going on to the left, right and across the street from his property, and to make the case of fitting the structure in. She noted that there might be situations where there weren't properties around for a developer to mimic. She also said some variability in the streetscape could be nice, and that they didn't want to force a developer to go with a cookie cutter model and give up that variability.

Mr. Kelley said he did not support the idea of Retail in the Professional Office district being a permitted use.

Ms. Della Valle asked what Mr. Kelley would think of this if it was an ancillary use in an office building. There was discussion. She asked if other Board members didn't think this should be a permitted use in that district.

Ms. Fuller asked what would happen if someone bought a property in the Professional Office district, built a 2-3 story building with parking underneath, wanted a restaurant for

employees and other people coming in and out of the building, and as part of the restaurant, wanted to sell carry out food.

Mr. Kelley said his concern was the possibility of a Rite Aid on Madbury Road. He noted that he wasn't sure that a 20,000 sf building could fit there.

Mr. Campbell said there were Rite Aids that were small, although the newer ones were larger.

Chair Parnell said the Professional Office District was distinct from the other 4 districts in that the road infrastructure there was different. He agreed with Mr. Kelley that there could be problems, and said even a 10,000 sf building could cause a major disruption. He noted that with the prior Pine Ledge Holdings mixed use proposal that included retail. He said the issue was the use, not the building.

Ms. Della Valle suggested that there could be standards that said retail would be allowed as part of a mixed use structure, and not as a free standing structure.

Mr. Kelley said it might be beneficial to have Mr. Johnson involved in some of these discussions with the Board on possible Zoning changes, in order to see how he would interpret and apply what was being proposed.

Chair Parnell, Mr. Wolfe, and Mr. Kelley recommended not making Retail a permitted use in the Professional Office district.

Mr. Kelley noted that he would be fine with saying it could be permitted for the first two blocks of Madbury Road, and said he was more in favor of Zoning map revisions than changing uses. He spoke about the small cookie cutter lots in the Professional Office district, and said the uses they were looking at would require someone to purchase several of them, knock down buildings and create something new.

Ms. Della Valle said that wasn't likely to happen until there was enough pressure that the downtown was expanding.

Mr. Kelley noted that there was waterfront property that was currently in the RA district, and asked about the idea of making it a part of a commercial district. He said if that happened, there would be a better chance of seeing redevelopment there.

Ms. Della Valle agreed, and said if the Board was going to do this, she would encourage going with mixed use there.

Ms. Della Valle said she would change Retail store back to being a prohibited use in the Professional Office district, so the only change to that category would be to allow it as a permitted use in the Coe's Corner district. But she said it didn't sound like that would fit with the Master Plan, and it also wasn't that close to what was in the Strategic plan.

She then suggested striking the entire line of her proposed changes for Retail store, which meant that it would be prohibited in the Coe's Corner district, would still be a permitted use in the Central Business district and Courthouse district, and would still be a conditional use in the Church Hill district.

Ms. Della Valle noted that she had proposed that Financial institution be a permitted use in the Church Hill district rather than a conditional use with adaptive reuse. She suggested that there could be some standards so that if needed, a project would have to be an adaptive reuse of a building.

Board members agreed with allowing Financial institution to be a permitted use in the Church Hill district as well as the other districts except the Coe's Corner district, and that there could be conditions to address the character of the building.

They also agreed that Business Services should be a permitted use in the Church Hill district, and a conditional use in the Coe's Corner district, as Ms. Della Valle had proposed.

They agreed that Funeral homes should be a permitted use for all 5 districts, and that there should be standards concerning scale, surface parking, etc. Mr. Kelley noted that funeral homes had often been located in old historic homes, whereas the one in Newmarket was a big box with only one story and a big roof line.

Ms. Della Valle spoke about the importance of providing a homey environment in a building that was a funeral home. There was discussion about the issue of funeral processions, and the importance of timing the so they didn't coincide with peak traffic.

Concerning the Medical Clinic use category, Ms. Della Valle said she had recommended making it a permitted use in all 5 districts, including in the Church Hill district and the Coe's Corner district, where it was currently a Conditional Use. She again recommended standards regarding the character of the building.

There was discussion about the recommended changes in the Table of Uses regarding Cinema and Theatre. Ms Della Valle said there would need to be parking standards for these uses, among others standards. There was discussion that there probably wouldn't be many cinemas proposed in Durham, and that the Seacoast Repertory Theatre and the University theatres were located in Town.

Ms. Della Valle said she had been seeing a number of small theatres opening up in Portland, some of them in buildings that had been vacant for a few years. She also noted that in Bridgeton Maine, there had been an old funky cinema that was burnt in a fire, and it was then taken down and rebuilt as a new cinema. She said it wasn't impossible that Durham could get something like this.

Ms. Fuller noted the theatre in Portsmouth across from Strawberry Bank, which was an adaptive reuse of a building there.

Ms. Della Valle pointed out that she wasn't proposing that Cinema be a permitted use in the Coe's Corner district, but said an amphitheatre might work there. She asked the Board where they might want to allow this use.

Mr. Kelley noted that Cinema and Theatre were currently permitted uses in the Professional Office district but not in the Church Hill district, and were conditional uses in the Courthouse district. He said he was not adverse to what was proposed.

Ms. Della Valle said she had recommended conditions concerning scale, parking, and architecture for both the Cinema and Theatre uses.

Mr. Kelley asked if allowing a cinema or a theatre in the Coe's Corner district was against the Master Plan, and Mr. Campbell said the Master Plan didn't say not to allow these uses there. He noted the second lot that the Jacques owned, next to the Pines.

Ms. Fuller said she could picture a little theatre down by Jackson's Landing.

After further discussion, Ms. Della Valle summarized that the Board was ok with what she had proposed for the Cinema and Theatre use category, including not allowing cinemas in the Coe's Corner district but allowing theatres there as long as there were scale limitations and architectural standards.

Ms. Della Valle noted that she had proposed that Personal Sales be a permitted use in the Professional Office district, where it was now prohibited, and a permitted use in the Church Hill district, where it was current a conditional use. She said there should probably be some kind of standards concerning architecture.

Board members discussed what the Personal services use category entailed, and then said they were ok with the proposed changes to the Table of Uses.

Ms. Della Valle noted the separate Pet Grooming use she had proposed, and that she had recommended that it be a permitted use in all 5 districts but the Coe's Corner district.

Mr. Kelley noted that there might be noise issues with this use, and there was discussion.

Ms. Della Valle said she would develop a definition for Pet Grooming.

Ms. Della Valle noted that the Office, business and Office, professional use categories were treated exactly the same, and recommended combining them into one category.

She noted that there was a very broad definition for Repair Services, and suggested that more distinctions between these services could be made. It was noted that there was also a Marine sales and service use category.

Ms. Della Valle said she had proposed making Repair Services a permitted use in all 5

districts except the Coe's Corner district. She also said there should be standards to address the aesthetics of outdoor storage, specifically for the Professional Office district but perhaps also for all 4 districts. She asked the Board if there should perhaps be any other kinds of limits on this use.

Chair Parnell suggested the requirement that the work be done within the building.

Concerning the Research facilities and labs use category, Ms. Della Valle asked Board members if they thought this would be a good use to have downtown as long as it was small and in scale concerning parking, and potential odor, hazard and environmental issues had been addressed.

There was discussion that this use was also allowed in the ORLI, MUDOR, Office Research Route 108, and Durham Business Park districts.

Ms. Della Valle asked if the Board wanted to allow this use in all 5 districts but the Coe's Corner district, with scale, surface parking and various environmental and safety standard. Board members said yes.

There was discussion on Ms. Della Valle's recommendations concerning the Manufacturing, light use category. Board members agreed to permit this use in all 5 districts but the Coe's Corner district, and to include outdoor storage limit standards, environmental and safety standards, etc.

Ms. Della Valle next spoke about the three Mixed Use categories in the Table of Uses, and said she had tried to figure out why there were three of them. She said in regard to the downtown area, the Zoning Ordinance seemed to be over-defining mixed use. She said she had done some research and had come up with one definition for Mixed use.

MIXED USE: A building with a variety of complementary and integrated uses, such as, but not limited to, residential, office, manufacturing, retail, public entertainment, and public uses in a compact urban form that is pedestrian-oriented and contains elements of a live-work-play environment. It maximizes space usage, has amenities and architectural expression and tends to mitigate traffic and sprawl. The public faces of the first floor of the building, including areas that face on streets, alleys, and pedestrian ways, shall be used for office, retail, parking, or similar publicly accessible non-residential uses. The upper floor(s) shall be used, in whole or in part, for multiunit residential use.

She said this definition talked about the relationship among uses so they were complementary and integrated, and not just slapped together. She said it also made it clear that the issues of compact urban form and being pedestrian friendly were being taken into account, and that there should be nonresidential uses on the first floor. She noted that the definition didn't include anything in regard to facing onto parking areas.

Mr. Wolfe said he thought this definition was gobbledygook, and didn't provide direction. He said he wasn't sure what the words meant, and said the definition needed to be articulated in a way so that those reading it had objective standards, and would know

what was permitted and what wasn't.

Ms. Fuller said she liked the definition.

Ms. Della Valle said her thinking had been that the definition wasn't where the specific standards would be, and said they would be in Article XX. But she said she appreciated the comment that she was not getting her point across.

She said there were some ideas to be considered regarding Mixed use, one of which was whether they could free up the idea of requiring the whole first floor to be nonresidential, and could require that some minimum percentage be nonresidential. She said a question would be what to base that percentage on, and said it might be more performance based.

She said a second idea was whether the Board wanted to increase the flexibility of the description on residential units. She said she'd proposed a minimum lot area per bedroom, but didn't limit the number of bedrooms per unit. She asked the Board to consider whether they wanted her to come up with some limit. She spoke about possible unintended impacts this might have on the development of family apartments.

Ms. Della Valle said another idea regarding mixed use buildings was that if the first floor was constructed to office standards but then couldn't be rented commercially, it could be rented as an apartment at first. She noted that Burlington, VT allowed this, and required a specific period of time during which the owner had tried to rent the building commercially.

Mr. Kelley asked if the regulations in Vermont asked about the amount of rent being asked for, and there was discussion.

Ms. Della Valle said once the lease expired and the space became vacant or there was a change in the residency, the owner had to prove again that he had tried to rent the building commercially.

Ms. Della Valle said another issue for the Board to consider was whether there should be some controls on the size of structured parking for mixed use buildings, so there would be some life in the public spaces of such developments.

She referred to some language she'd provided to the Board on the idea of a Maximum height of Mixed-Use buildings in each of the 5 districts except the Coe's Corner district. She noted that she'd used the same language for each district.

Mr. Campbell questioned the wording "If the proposal is for a four (4) story building, first floor areas that face on streets, alleys, and pedestrian ways shall be nonresidential and the remaining three (3) floors shall consist of two residential and one nonresidential", and he and Ms. Della Valle discussed this.

Mr. Wolfe asked if everyone agreed with the idea of allowing 4 stories in all 4 districts.

Ms. Della Valle said when the Board had previously discussed this issue, the primary concern had been about allowing this near residential districts. She said she was looking at ideas like scaling such a building back and stepping it down, requiring deeper setbacks and greater buffering, and restricting access. She said it would be good to get some feedback on this.

She asked Board members if they liked the general way she'd approached how to deal with the first floor. She also noted the possible idea of allowing a 5 story building in the Central Business district, and suggested that that the first story of such a building on Main Street could possibly be hidden because of some elevation changes there.

She also said where there was a terminated vista, they had to figure out a way to name it. She said they would need to cull out those locations fronting on internal community spaces, where a building with presence was needed. In addition, she said they should think about the idea of facades around parking structures on the first floor.

Ms. Della Valle asked the Board for feedback on the idea of revising the dimensional standards for minimum lot size based on the number of bedrooms, rather than the number of units, and whether they wanted her to put a limit on the number of bedrooms per unit.

There was discussion that 4 bedrooms per unit would be more acceptable, and was the minimum of what developers wanted. Ms. Della Valle noted that developer Matt Crape had gone with 6 bedrooms per unit because the Zoning Ordinance only allowed him so many units. She said the Board might want to test that a bit more.

Mr. Kelley said what he was hearing was that students wanted a wide variety of options, with some wanting to share a unit with 4 others, and some not wanting this.

Mr. Campbell said not all landlords wanted to get as many students in a building as they could, and would sacrifice some in order to have more control over things.

Ms. Della Valle said the mixed use parking standard wasn't quite ready yet, and said she would have better direction on that after next week. She noted that she was still working her way through the standards.

Chair Parnell he thought the Mixed Use definition read more like a standard than a definition.

Mr. Wolfe said a simple statement was needed, and said there then could be the standards.

Ms. Fuller said she liked the wording in the Mixed Use definition on "public uses in a compact urban form."

There was further discussion on the wording in this definition, and Ms. Della Valle said she would move the standards wording to the standards section.



Mr. Wolfe said he liked the aspirational part of the definition, but said he thought it belonged in the introduction to the Mixed use standards.

After further discussion, the meeting adjourned at 10:05 pm.

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Susan Fuller, Secretary