

DRAFT

**Durham Planning Board Minutes
Wednesday October 12, 2011
Durham Town Hall - Council Chambers
7:00 P.M.**

MEMBERS PRESENT: Chair Lorne Parnell; Vice Chair Peter Wolfe; Richard Ozenich; Richard Kelley (arrived at 8:09 pm); Bill McGowan; Town Council representative Jay Gooze; alternate Wayne Lewis; alternate Andy Corrow; alternate Town Council representative Julian Smith

MEMBERS ABSENT:

I. Call to Order

Chair Parnell announced that unfortunately, Susan Fuller had to resign from the Planning Board because of her work schedule. He said the Board would be looking for residents interested in taking over her position, and he asked alternates who were interested in the position to let him know. He said the Board would also need to appoint a new Secretary.

Councilor Smith said if no alternates were interested in the position, the vacancy should be announced at the next Town Council meeting and on the Friday Updates.

II. Approval of Agenda

It was noted that Item X, the discussion with the Energy Committee on the energy checklist, would be deferred, and also that Items V and VI concerning the proposed eldercare facility would be postponed.

Peter Wolfe MOVED to approve the Agenda as amended. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.

III. Planner's Report

Mr. Campbell said no date had been set yet for hearing the application for the proposed elder care facility on Mill Road.

He said Planning Board member Susan Fuller had recently resigned because of her work schedule. He noted that she'd been on the Board for some time, and said it was sad to see her go.

Mr. Campbell noted that at the most recent ZBA meeting, the variance requests relating to the Bakman subdivision were approved.

He said he and planning consultant Beth Della Valle were supposed to meet with the Energy Committee the previous evening, but this was postponed in order to give the committee more time to prepare for the meeting.

Mr. Campbell said the Planning Board would soon start work on the commercial core chapter of the Master Plan. He noted that the EDC was working on the economic development chapter, and said there would be public meetings on all of this.

He said the Traffic Safety Committee would meet the following Wednesday, and among other things would discuss the Madbury Road traffic pattern. He said they were still getting feedback on it. He said the TSC would also discuss possible speed tables on Coe Drive planned as part of the Safe Routes to School program.

He noted that Mark Henderson was looking to move forward with a project on his property located at the intersection of Main Street and Madbury Road, across the street from the Post Office. He said Mr. Henderson had previously been approved for a project at that location. He also noted that the B. Dennis charrette had called for possibly reconfiguring the intersection there into a T or a roundabout. He said Mr. Henderson would be interested in either one of those configurations, but wanted to get the conversation started so that if he came to the Board with some kind of conceptual design for a project, he'd be able to have some idea what he was doing. Mr. Campbell noted that it was the only property in the immediate downtown that was in the Historic District.

Mr. Campbell said the TSC would also discuss striping on Route 108.

He said at the next meeting Planning Board meeting, the Energy Committee would discuss its draft energy check list with the Board, and said he would send it back out to Board members before that meeting. He said there would also be a presentation from SRPC planner Kyle Pimental on fluvial hazard assessments that were completed this summer on the Lamprey River. In addition, he said there would be a discussion on possible Zoning amendments for the commercial core, possible rezoning concerning the Beech Hill area, and a proposal to make the Professional Office district smaller.

Mr. Campbell said the site plan application for Great Bay Kennel would be on the agenda for the November 9th meeting. He said the applicant did get approval from the HDC for the revised design for the site.

There was discussion that another site walk might be needed since the plans had now changed.

Mr. Campbell noted that the Planning Board generally had only one meeting per month in November and December, and said he wasn't sure if they would keep to that or not this year.

Chair Parnell asked if public comments were allowed at the Traffic Safety Committee meeting, noting that he had a new item to bring up there. There was discussion.

Councilor Gooze spoke about the upcoming Municipal Law Lecture Series to be held in Newington on October 19th.

Councilor Gooze suggested the idea of having an hour session on reading plans, noting that he'd talked with Mr. Kelley about this and asked if he'd be interested in leading such a session. He said Mr. Kelley could bring his engineering perspective to such a session.
Mr. Wolfe noted that he'd sent out an email on the question of where the Planning Board was going in regard to the draft Zoning amendments for the commercial core.

Chair Parnell said the Board could discuss this issue under Old Business.

IV. Approval of Minutes –

August 10, 2011

Page 3, line 37, delete apostrophe in edits

Page 5, line 11, should read "He said..."

Page 9, line 14, should read "...to conduct a renovation of the historic building..."

Line 29, strike "concerning the proposed exceedance of" and replace with "exceed the height limit..."

Line 34, should read 7.03 (a)(2)

Correct spelling of Kelley on that page

Page 11, line 44, should be "said", not "sad"

Page 12, line 45, should read "Mr. Kelley advised..."

Councilor Gooze MOVED to approve the August 10, 2011 Minutes as amended. Richard Ozenich SECONDED the motion, and it PASSED 4-0-1, with Peter Wolfe abstaining because of his absence from the meeting.

Chair Parnell said Mr. Corrow would be a voting member for the meeting, and Mr. Lewis would sit in for Mr. Kelley until he arrived.

- V. **Public Hearing on an Application for Site Plan** submitted by Sara & Albert Nadeau, Gonic, New Hampshire, on behalf of Michael & Maryse McConnell, Durham, New Hampshire to change the use of a property from a Single Family Residence to an Eldercare Facility. The property involved is shown on Tax Map 6, Lot 3-28, is located at 29 Mill Road and is in the Residence A Zoning District.

Postponed

- VI. **Public Hearing on an Application for Conditional Use Permit** submitted by Sara & Albert Nadeau, Gonic, New Hampshire, on behalf of Michael & Maryse McConnell, Durham, New Hampshire to change the use of a property from a Single Family Residence to an Eldercare Facility. The property involved is shown on Tax Map 6, Lot 3-28, is located at 29 Mill Road and is in the Residence A Zoning District.

Postponed

- VII. **Public Hearing on an Application for Subdivision** submitted by Attorney Scott Hogan, Lee, New Hampshire, on behalf of Alexander & Alexandra Bakman, Durham, New Hampshire to subdivide a property into two parcels. The property involved is shown on Tax Map 11, Lot 24-4, is located at 118 Piscataqua Road and is in the Residence C Zoning District.

Attorney Scott Hogan said the applicants had a single residential lot that was originally approved as two separate lots of record. He said they were now trying to establish the original subdivision line, with a slight deviation to include the dock structure on the lot with the residence on it. He said the ZBA had approved three variance requests from the applicants the previous evening, concerning insufficient frontage, an insufficient side setback for the greenhouse foundation, and an insufficient 65 ft setback from delineated wetlands. He also noted that both lots didn't meet the minimum lot size requirement, and had previously been granted a variance for this

He noted that the Planning Board had held a site walk that afternoon. He said what was unique about this subdivision being requested was that no construction of structures was involved, and that there would be no land alteration. He said a single driveway would access both structures, as it did now.

He said two issues for the Board to consider as conditions of approval were concerning an easement for common use of the driveway, and easement language in favor of both lots for the existing cemetery. He noted that the corner of the cemetery was nicked by the boundary line. He also said that at the previous meeting, Mr. Campbell and the Board said they wanted to see the wetland and shoreland setback lines shown on plan. He said these were shown on the new plan.

Councilor Gooze confirmed that the setback line for a cemetery was 50 ft.

There was discussion that the easement for the cemetery would allow the Town to access and maintain it.

Surveyor Adam Fogg showed how the shoreland and wetland setback concerning the Oyster River were now shown on the plans, and he noted that the 4000 sf reference area for the septic system was outside of that.

Attorney Hogan noted that the berm on the property was created by the prior owners, and said when it was constructed, Mr. Johnson was there, and made sure the berm didn't encroach on the cemetery. He said this was shown well on the plan.

There was discussion about the fact that the 4000 sf area for the septic system was located well outside of the wetland setback.

Richard Ozenich MOVED to open the Public Hearing. Wayne Lewis SECONDED the motion, and it PASSED unanimously 7-0.

Chair Parnell asked if there were any members of the public who wished to speak for or against the application. There was no response.

Bill McGowan MOVED to close the Public Hearing. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.

There was discussion that the Findings of Fact should indicate the variances that were received. There was also discussion on conditions needed concerning the easements for the driveway and the cemetery.

Chair Parnell said that all of the wetland setbacks should be shown on the plan.

Findings of Fact

1. The Zoning Board approved a variance on June 14, 2011 to create one additional house lot from an existing residential property where both lots would not meet the minimum lot size requirements subject to the following conditions: 1. the Planning Board take special care with any septic system approvals to minimize or eliminate impacts on the Great Bay; and 2. the Planning Board determine the appropriate deed restriction regarding the cemetery.
2. The Zoning Board denied a variance on September 13, 2011 to create one additional house lot from an existing residential property to allow the accessory building on the second created lot to be used for Light Manufacturing.
3. Chief of Police, David Kurz, submitted a memo on the application on September 14, 2011.
4. A Site Walk was done by the Planning Board on October 12, 2011.
5. Director of Planning & Community Development, Jim Campbell, wrote a letter exempting the application from the Conservation Subdivision Ordinance on October 3, 2011.
6. A Public Hearing was held on October 12, 2011 and no members of the public were in attendance to speak to the applicant.
7. The Zoning Board approved a variance on October 11, 2011 to create one additional house lot from an existing residential property where one lot would not meet the required frontage, and to allow the existing septic system for one of the lots to be within 65 feet of the delineated wetland with the following conditions: that the foundation remains as it is, unless further variances are granted, and that the variances would only take effect after the Planning Board approves the subdivision of the lots.

Waiver

The applicant has requested a waiver from Section 5.02, Pre-application Review, Section 8, Construction Guarantee and Section 11.04, Post-Construction Maintenance Guarantee

of the Subdivision Regulations. The Planning Board has reviewed this request and hereby grants the waivers.

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

1. The applicant shall supply one mylar plan and two paper copies for signature by the Planning Board Chair.
2. All final plans must be stamped by appropriate professionals.
3. The applicant shall receive a variance for the lot frontage, wetland setback for the existing septic system, and the side yard setback for the greenhouse foundation.
4. The applicant shall apply for, and be granted, State subdivision approval.
5. The applicant shall submit a septic system design and application for the new septic system with the Durham Code Enforcement Officer.
6. Easement language for the driveway shall be submitted to the Planning & Community Development Department.
7. All Shoreland and Wetland setbacks shall be shown on the subdivision plan.
8. A certificate of monumentation shall be submitted to the Planning & Community Development Department.
9. Easement language for the cemetery shall be submitted to the Planning and Community Development Department and approved by the Town Attorney.

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

1. One copy of the Subdivision Plan and the Findings of Fact and Conditions of Approval shall be recorded with the Strafford County Registry of Deeds, at the applicant's expense, within seven (7) days of the Chair's signature on the Plan.
2. The driveway easement shall be recorded at the Strafford County Registry of Deeds at the applicant's expense.
3. The cemetery easement shall be recorded at the Strafford County Registry of Deeds at the applicant's expense.

Councilor Gooze MOVED to approve the Application for Subdivision submitted by Attorney Scott Hogan, Lee, New Hampshire, on behalf of Alexander & Alexandra Bakman, Durham, New Hampshire to subdivide a property into two parcels. The property involved is shown on Tax

Map 11, Lot 24-4, is located at 118 Piscataqua Road and is in the Residence C Zoning District. Wayne Lewis SECONDED the motion, and it PASSED unanimously 7-0.

VIII. Public Hearing on an Application for Amendment to a Previously Approved Site Plan Review submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of Ionian Properties LLC, Dover, New Hampshire to demolish the existing buildings and an accessory shed in order to construct a new five-story, mixed use building. The applicant received a variance to allow for the five stories. The additional story is still within the originally approved building height of up to 50 feet. The property involved is shown on Tax Map 2, Lot 12-11, is located at 10 Pettee Brook Lane, and is in the Central Business Zoning District.

IX. Public Hearing on an Application for Amendment to a Previously Approved Conditional Use Permit submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of Ionian Properties LLC, Dover, New Hampshire to demolish the existing buildings and an accessory shed in order to construct a new five-story, mixed use building. The applicant received a variance to allow for the five stories. The additional story is still within the originally approved building height of up to 50 feet. The property involved is shown on Tax Map 2, Lot 12-11, is located at 10 Pettee Brook Lane, and is in the Central Business Zoning District.

Mike Sievert of MJS Engineering represented the applicants. He said at the previous Planning Board meeting, he'd updated the Board on the changes to the applications. He briefly summarized these proposed changes again.

He also noted the more up to date rendering of the building that had been done, reflecting the new design. He said right now they didn't know exactly what the finishes for the building would be, but said they were leaning toward having brick fascia on the lower part, clapboard on one of the floors, and shakes to break things up. He said they weren't sure how high the brick would go, and weren't sure about the colors.

Mr. Wolfe said it concerned him that Mr. Sievert had said this wasn't the final plan yet, and that he was being asked to vote on this application when he didn't know what the building would look like.

Mr. Sievert said the roof line of the building wouldn't change from what was now proposed. He said it was the architectural treatment of the faces that hadn't been completely decided on yet, but said the design of the building structure was done.

Mr. Wolfe asked why the design had changed from a roof with a steeper pitch roof to what was proposed now.

Mr. Sievert said the steeper pitched roof and the overhang hadn't worked out, and had now been taken off. He also said that once the building was actually designed, they ended up with the idea of having a two story town house style unit, which might become condos someday and sold off separately from the rental portion of the building. He said more attic space was gained by changing the roof line, and noted that the applicants had received a variance to allow another

floor. He said in that roof area, there would be a flat spot for mechanicals, which would be hidden. He said water from the roof would run off into a rain garden, etc.

Councilor Gooze said this would be a very visible building, especially given where it would be located, and would essentially be a bookend to match the building now being constructed on Pettee Brook Lane. He said with RSA 79-E, the Town had been able to require a certain look for that new building being constructed, but said he was concerned along with Mr. Wolfe about the applicants' building, noting that the Town didn't have design standards/guidelines yet. He said he wasn't sure about whether the Board should see more final plans before making a decision.

Mr. Sievert said he would rather get conditional approval and come back with the final look, instead of dragging this current process out. He spoke about the schedule the applicants were hoping to meet, stating that they were hoping to put the project out to bid between Thanksgiving and Christmas, and start the project by June of 2012.

Councilor Gooze asked what happened if the applicants came back with a final plan that didn't look good, and wasn't what the Board was thinking of.

Mr. Sievert said they could say they wouldn't approve it. He suggested that the Board could say what it would like to see changed, keeping in mind that there weren't design standards. He noted that this was a conditional use permit application, but questioned whether the Board could get very specific concerning architectural design details.

He said there would likely be three different types of siding treatments in order to break up the building so it didn't look so tall. He said the Board could suggest guidelines in terms of providing more or less brick, etc. He noted that Nick Isaak, the architect for the project, wasn't able to be present that evening.

Mr. Wolfe said it would have been helpful to see the design in perspective with the rest of the neighborhood. He said he couldn't visualize this.

Mr. Campbell said there wasn't really much of a neighborhood there, and he spoke further on this.

Mr. Wolfe said it was hard to visualize how the development would look from Pettee Brook Lane.

Councilor Smith agreed, and noted that what had been provided was the view that pedestrians would have of the development. He said most people who would go by it would be approaching it from the other direction, unless the Town made Pettee Brook into a two-way road.

Councilor Smith asked that architect Nick Isaak not put fake shutters on the building. He also asked if the windows would open and would have screens, and Mr. Sievert said yes.

Chair Parnell asked what in the design was potentially changeable.

Mr. Sievert said it wasn't the shape of the building, the placement of the windows, or the porch. He said what was changeable at this point was the exterior finish of the building, and said a couple of different iterations had been developed for the applicants to think about. He said they were working with Mr. Isaak on this.

There was discussion about the uses proposed for the building, and Mr. Sievert said this configuration wouldn't change.

Councilor Gooze said he assumed that the window design wouldn't change, and Mr. Sievert said he didn't see that this would change.

Peter Wolfe MOVED to open the Public Hearing. Andy Corrow SECONDED the motion, and it PASSED unanimously 7-0.

Chair Parnell asked if there were any members of the public who wished to speak for or against the application. There was no response.

Bill McGowan MOVED to close the Public Hearing. Peter Wolfe SECONDED the motion, and it PASSED unanimously 7-0.

The Board first reviewed the proposed Findings of Fact and Conditions of Approval for the Site Plan Application. There was discussion that the most recent variance received needed to be listed under the Findings of Fact. Chair Parnell also said they should note the most recent elevation of the building design that had been submitted.

Site Plan Application - Findings of Fact

1. The applicant received approval for three variances from the Zoning Board of Adjustment on May 12, 2009. One approval was to permit the location of two accessible residential units on the second floor of the proposed 4-story mixed-use commercial/ residential building, one was to permit parking (F.1) and associated vehicular access (F.2) between the front building wall and front property line on Rosemary Lane, as per the proposed plan, and one was to permit construction of a mixed-use residential/commercial building within the 75-foot upland buffer strip from the edge of wetlands, with the exception of the proposed 20-foot by 55-foot bump-out within the buffer zone, according to the submitted plan which includes the acquisition of the adjoining Town owned land.
2. The applicant received approval for one variance from the Zoning Board of Adjustment on July 28, 2009. The approval was for the redevelopment of the parcel with a new 4-story, mixed use, commercial/residential building within the wetland setbacks with the conditions that the purchase and sale agreement presented to the Board be finalized and that the Planning Board approves the submitted plan.
3. The applicant received a portion of land from the Town of Durham through a Warranty Deed recorded at Strafford Registry of Deeds on March 16, 2010, Book 3819, Page 840.

4. A Site Walk was done by the Planning Board on June 12, 2010.
5. James Houle, Conservation Commission Chair, submitted a memo stating that no determination on the application could be done at the June 10, 2010 meeting.
6. James Houle, Conservation Commission Chair, submitted a memo on the application on July 13, 2010.
7. Public Hearings were held on June 23, 2010, July 28, 2010 and October 12, 2011 and no public comment was received.
8. The Planning Board waived the school impact fee.
9. The Planning Board exempted the applicant from providing 63 parking spaces with the requirement that the applicant pay \$750 per parking space not provided.
10. The Planning Board has approved a building height up to fifty (50) feet.
11. The applicant received an approval for a variance from the Zoning Board on March 8, 2011 to permit the maximum height of a mixed use building to five stories as per application and plans submitted of February 4, 2011.
12. Police Chief, David Kurz, submitted a memo on the application on September 14, 2011.

Site Plan Application – Waiver

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

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

1. The applicant shall supply one mylar plan and one paper copy for signature by the Planning Board Chair.
2. All final plans must be stamped by appropriate professionals.
3. All Previous Conditions of Approval from the July 28, 2010 recorded Findings of Fact and Conditions of Approval document are hereby incorporated into these Conditions by reference.

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

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

2. All Previous Conditions of Approval from the July 28, 2010 recorded Findings of Fact and Conditions of Approval document are hereby incorporated into these Conditions by reference.

Bill McGowan MOVED to approve an Application for an Amendment to a Previously Approved Site Plan Review Application submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of Ionian Properties LLC, Dover, New Hampshire to demolish the existing buildings and an accessory shed in order to construct a new five-story, mixed use building. The applicant received a variance to allow for the five stories. The additional story is still within the originally approved building height of up to 50 feet. The property involved is shown on Tax Map 2, Lot 12-11, is located at 10 Pettee Brook Lane, and is in the Central Business Zoning District. Councilor Gooze SECONDED the motion, and it PASSED unanimously 7-0.

The Board next deliberated on the Conditional Use Permit application. They agreed that they did not need to go through the Conditional Use checklist.

Councilor Gooze said he was comfortable with what was proposed, as long as the applicants kept to the plan in some way. He said if there were significant changes from it, the applicants would have to come back.

Mr. Ozenich asked whether, since the architecture of the roof, etc. had changed, another stormwater approval was needed. He said although the same amount of water would be involved, it would be dispersed differently on the site based on these changes. He said the way it came off the roof counted.

Mr. Campbell said it would all be collected by the gutter system and go into the rain garden system.

Mr. Kelley arrived at the meeting at 8:09 pm.

Chair Parnell noted that the Board had a stormwater management system dated September 7, 2011, and asked if it included this new design.

Mr. Sievert said it was approved by Town Engineer Dave Cedarholm, who he said really loved this project. He said the approval was based on the design the Board was looking at, and said there was actually less roof area to drain now. But he noted that there would be pavement under where roof area had previously been proposed, so nothing had really changed in terms of runoff generation.

Conditional Use Permit Application - Findings of Fact

(Same as for Site Plan Application – see above)

Conditional Use Permit Application - Waiver

(Same as for Site Plan Application – see above)

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

(Same as for Site Plan Application – see above)

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

(Same as for Site Plan Application, and also includes #2 below)

1. The Findings of Fact and Conditions of Approval shall be recorded with the Strafford County Registry of Deeds, at the applicant's expense, within seven (7) days of the Chair's signature on the Plan.
2. The Code Enforcement Officer shall issue a Conditional Use Permit.
3. All Previous Conditions of Approval from the July 28, 2010 recorded Findings of Fact and Conditions of Approval document are hereby incorporated into these Conditions by reference.

Bill McGowan MOVED to approve an Application for Amendment to a Previously Approved Conditional Use Permit submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of Ionian Properties LLC, Dover, New Hampshire to demolish the existing buildings and an accessory shed in order to construct a new five-story, mixed use building. The applicant received a variance to allow for the five stories. The additional story is still within the originally approved building height of up to 50 feet. The property involved is shown on Tax Map 2, Lot 12-11, is located at 10 Pettee Brook Lane, and is in the Central Business Zoning District. Andy Corrow SECONDED the motion, and it PASSED unanimously 7-0.

[IT WAS NOTED EARLIER DURING THIS AGENDA ITEM THAT MR. KELLEY WASN'T PRESENT FOR THE PUBLIC HEARING. AM NOT SURE IF HE VOTED ON THESE MOTIONS OR MR. LEWIS DID.]

X. Discussion with Energy Committee on Checklist

Deferred to a future meeting

XI. Other Business

A. Old Business:

Mr. Wolfe said before the draft Zoning amendments went out to public hearing, he thought there should be agreement among Planning Board members on what approach they should take concerning them. He said he'd like to hear what other Board members thought about the approach they were currently taking.

Mr. Kelley said whatever the Board chose to do, he thought the work should be done as part of Zoning rewrite meetings. He said the Board seemed to be cramming too much into their regular meetings, and said there should be a special meeting to just discuss zoning.

Councilor Gooze said a lot of what Mr. Wolfe had asked for was now in the communication from Ms. Della Valle and Mr. Campbell. But he said he agreed that the first thing the Board should do was decide what direction they were going in with the Zoning amendments.

He said Ms. Della Valle could come back to talk with the Board on October 26th if that was what they would be concentrating on. He also said what was proposed right now was too bulky, and said the design standards/guidelines needed to be separated out. He noted that he liked design standards, but said he thought this section should be taken out of the Ordinance itself.

Councilor Gooze also said he had heard the Board talk about the issue of having conditional use versus permitted uses.

Councilor Smith said when some members of the Council said the Town should hire a consultant to see if there were things in the Ordinance that might be discouraging redevelopment, he thought the idea was to hire someone to go through the Ordinance and make it less complicated and less intimidating. But he said the draft might now be perceived as being more complicated and intimidating.

He said meanwhile, a number of projects downtown had been approved. He said he thought the Board needed a reality check, and said he wasn't sure that they needed to go much further with what Ms. Della Valle was doing. But he noted that he didn't get to vote on this.

Mr. Kelley first pointed that Councilor Smith would have a vote if here were on the Zoning Rewrite subcommittee. He then said he liked the design standards/guidelines Ms. Della Valle had been working on. He said they were something that had been missing, and noted that the public was very concerned about the way things looked. He said he thought the design standards/guidelines were a great benefit.

Mr. Wolfe said he wasn't sure how he felt about this. He said there could be design standards and they could bring back conditional uses and definitions, or there could be the full blown performance standards Ms. Della Valle was proposing. He said the bottom line for him was that it scared him when he looked at documents with a lot of verbiage. He said developers might be turned off by this as well.

Mr. Campbell said Ms. Della Valle had spoken about this. He said she had mostly been steered away from the form based code approach, which used more graphics rather than verbiage, so this draft had a lot more of the verbiage to describe what could otherwise be shown in a picture.

Mr. Kelley said he was all for pictures and graphics rather than verbiage, noting that they could show different window treatments, etc. He also said Durham was different in that with conservation subdivision, this drove the density on a parcel. But he said the regulations then said how many square feet there could be per person. He said the Town didn't seem to want to go one way or the other.

Mr. McGowan said there was the issue of the appearance as well as the issue of what the use was. He said there might be a great looking building, yet some people might not want the use in a particular area.

Mr. Kelley noted that this had come up as part of the discussion on the form based code, and said he had to give it a lot of thought. He said within certain limits, what the use was didn't concern him that much, in certain zones. As an example, he said he was willing to entertain the idea of light industry in some zones. He said the issue was whether a particular use caused quality of life issues.

Councilor Gooze said he agreed, unless the use was next to a residential area, and said perhaps conditional use was needed for those situations. He also agreed that there had been a lot of development recently, and said people were noticing it now. He said he didn't think they needed to go overboard and say anything a developer wanted could come in.

Mr. Kelley said the Planning Board had previously had a reputation for being extremely difficult. He said the process in place now, if followed, allowed developers to hear the Board's concerns early on, and they could then make a decision as to whether or not they wanted to make an investment in a project.

He said he didn't think an additional 25-30 pages for the Zoning Ordinance, or a separate book for the design standards/guidelines would scare anyone away. He said the reputation the Board once had had scared developers away, as had conditional use, since there were uncertainties associated with it. He noted that while he was a proponent of conditional use, he realized it had some down sides.

Councilor Gooze asked if the Planning Board should ask for separate design guidelines/standards. He noted again that he preferred design standards. He also said Ms. Della Valle could work on simplifying the Ordinance itself, and include language on buffers for residential areas, which would apply to uses in commercial districts. He noted again that the Board could require a conditional use permit for these uses as well.

After further discussion, Chair Parnell agreed that the Board should resolve the issues Mr. Wolfe had raised at its meeting on October 26th.

Mr. Wolfe said he thought there was probably agreement now that the design guideline/standards portion should be taken out of the Ordinance.

Chair Parnell agreed that this was a good idea.

Mr. Wolfe said if they were in the Ordinance, they were called standards, and if they were separate, the question was whether to call them standards or guidelines.

Chair Parnell said he thought there would be a great deal more discussion if they were called standards instead of guidelines. He said he'd have to think about the qualifications of the people making the standards, and said he wasn't sure if he personally was qualified to make them.

Mr. Wolfe said what Ms. Della Valle was doing now was incorporating them into the Zoning Ordinance.

Mr. Campbell noted that consultant Roger Hawk was also working on the design standards/guidelines.

Chair Parnell agreed that getting into a discussion on Zoning items was difficult during regular meetings, and he suggested that there should be an extra meeting on them in early November. He said he wasn't sure what they could accomplish in having Ms. Della Valle come to the October 26th meeting, with what already seemed to be a full meeting. He also said perhaps the Planning Board could proceed on its own.

Councilor Gooze noted that the Planning Board was going to be doing the Master Plan update, and that Zoning rewrite typically followed from the Master Plan. He asked if they were perhaps putting the cart before the horse.

Mr. Campbell said people did mini plans all of the time outside of master plans.

Councilor Gooze said if they were going to do the Zoning rewrite and then the Master Plan changed, they'd have to look at whether these changes went along with the Zoning Ordinance. He said this should be done the other way, with the Master Plan coming first. He said that was certainly the ZBA's perspective.

Mr. Kelley said if a proposal for a form based code was put on the table, and the Planning Board threw out the Table of Uses, that would be a pretty big leap of faith. But he said he was prepared to go forward with some Zoning rewrite within some constraints the Board was comfortable with, because there was nothing in the Master Plan that would disrupt that.

Chair Parnell said the adjustments to the Master Plan had started with the B Dennis Charrette, and said the proposed Zoning changes they were talking about now were concerning the commercial core, so this had all been going on already.

Mr. Campbell said he didn't see anything from the Master Plan survey results or forum that went in the opposite direction from the B Dennis charrette.

Councilor Gooze said they were taking the charrette as what the Town wanted to do. He said while there was discussion at the charrette, it wasn't a public hearing. He said some of the discussion at the charrette was ok, but some of the ideas didn't make a lot of sense. He said the Town was doing a lot of things concerning parking, which came out of the charrette, and said he thought these things were very good. He said he didn't think they decide they wanted a form based code, based on the charrette, and said they didn't really come up with anything specific about what they wanted.

Mr. Campbell said at the time, he thought the decision was not to go with a form based code.

Mr. Kelley agreed. He also said the Master Plan survey was another attempt to hear from the community, and said he didn't think there was anything in it that surprised him. He noted that one thing heard at the charrette was that there was some disagreement about what people wanted in terms of building heights. But he said he didn't see much other than that.

Mr. Ozenich said when people drove down Madbury Road and saw 4 stories, it would be scary.

Mr. Kelley said the idea of increasing density downtown and doing infill was in the Master Plan, and was part of the charrette. He said right now the building would seem out of place, but said in 15-20 years, it would be different.

Mr. Wolfe said his sense was that there was consensus on the Board concerning taking the design standards out of the Ordinance in order to keep things simple, but to move forward with the Zoning changes.

Board members agreed with Mr. Wolfe.

Councilor Gooze asked if Board members thought they should keep at least some conditional uses, stating that he thought this was still necessary in Durham.

Mr. Kelley said he liked conditional use for situations where a nonresidential use abutted a residential use. But he said outside of that, he was willing to entertain the idea of getting rid of them.

Mr. Campbell made the distinction between a residential use as compared to a residential district.

Mr. Kelley said he was talking about a situation involving a residential property in a residential district, which abutted a commercial district. He said other than those situations, he was willing to entertain losing the conditional use process.

Councilor Gooze suggested looking back at conditional use applications that had been approved, and thinking about where it had resulted in something that otherwise wouldn't have been done.

Mr. Kelley noted that with the Irving application, without the conditional use process, the development would have been oriented differently and designed differently. He said those things could be included in design standards. He also noted that property and security management plans could be required as part of conditional use applications for multi-unit buildings. He spoke in some detail on this.

Mr. Wolfe said now, to get the benefits of conditional use, they were writing 20 extra pages of code on performance standards and design standards in order to cover all of the contingencies. He said they were essentially hiding conditional use in the verbiage.

Councilor Gooze said if it was in the code, developers knew what they needed to do. He spoke in some detail on this.

Mr. Wolfe asked if anyone had backed out of a proposal because of the uncertainty about conditional use, and Mr. Campbell said this hadn't happened lately. Mr. Wolfe asked if they were finding a solution for a problem that didn't exist, and Mr. Campbell said he thought there were some developers who said from the beginning that they wouldn't go through the review

process, because of conditional use as well as Durham's previous reputation as being a difficult place to do anything.

Councilor Gooze noted the application to put a deck on Scorpios. There was discussion about the fact that the Board couldn't require soundproofing because it wasn't a conditional use application.

Mr. Kelley said there was a developer in Town who owned a lot of properties, and had told the Planning Board that conditional use was the most powerful thing it could have, but that it did create uncertainties for a developer.

Councilor Gooze stated again that it would be useful to go through the conditional use projects that had come before the Board. He spoke further about applying conditional use to uses that were located on the periphery of a commercial zone and abutted a residential zone, but not to all uses in the zone.

Mr. Ozenich asked if the Board should consider extending the boundary of the commercial core.

Mr. Kelley said he thought that when the Board did the last Zoning rewrite, it let the Central Business district down by not extending its boundaries.

Councilor Gooze said he would like to see it extended out.

Mr. Kelley said it complicated things to have the commercial core chopped into very small district, and said it was hard to achieve the different looks in all of them.

Mr. Campbell said that during phase 3 of the Zoning rewrite process, possible consolidation of districts would be discussed.

There was further discussion on the issue of design standards versus design guidelines, and that there could be a separate document for them which could be referenced in the Zoning Ordinance.

Mr. Kelley asked if Council approval would be needed for them if they were in a separate document, and Mr. Campbell said because they would be a part of the Zoning Ordinance, this approval would still be needed.

After further discussion, it was agreed that answers on how this all worked were needed before the Board decided on whether to pull the performance and design standards/guidelines out of the Zoning Ordinance.

Mr. Wolfe said he would like to see the wording simplified. There was discussion on this.

Board members agreed that they would meet on November 2nd for a Zoning rewrite meeting, and would also meet on November 9th.

On another matter, Mr. Campbell said with Susan Fuller's resignation, the Board needed to elect a new Secretary. He said alternates wishing to fill this position should send a letter on this to the Town Council. He also said Ms. Fuller had been the Planning Board representative to the Economic Development Committee, so another person on the Planning Board would need to take on that role.

Mr. Corrow said he was interested in filling the vacancy, but would need to decide if his schedule could handle it because his wife would soon be heading over to Afghanistan.

Mr. Lewis noted that he still planned to go to Florida for 90 days, as he had done the past few years.

Mr. Campbell said the Board received a technical review request from Mr. Lamb regarding the Thompson Inn at Highland Farms. He said Mr. Lamb had previously gotten approval to allow the accessory building on the property to be used as a function hall, but said with the kitchen space and bathroom space required in it, more room was needed for the weddings that would be held there. He said the application was to allow a tent behind the function hall. He noted that the Hickory Pond had been sent to the Technical Review Committee for approval of this use.

Mr. Kelley said he didn't remember the Board simply sending that on to the Technical Review Committee. He noted that there were concerns about parking on the streets in that area.

Mr. Campbell said as part of the technical review, the committee had said that no parking would be allowed on the street.

Councilor Gooze asked if variances would be needed for this. He said it was a big deal when the Mill Pond Center was going to put up a temporary tent.

Richard Kelley MOVED to grant the Applicant's request regarding the Thompson Inn at Highland Farm being used for erecting a tent for up to six events in a calendar year. Peter Wolfe SECONDED the motion.

Councilor Gooze asked if a neighbor complained, what happened if the application had been approved by the Technical Review Committee.

Mr. Campbell said this could be appealed to the full Planning Board.

Councilor Smith said there were no close-by neighbors.

There was discussion that the Technical Review Committee was a public meeting, and Councilor Gooze said he was therefore fine with approving the applicant's request.

Mr. Kelley noted that there was a 30 day window to appeal the committee's decision.

Mr. Campbell said if there was a problem from an event that wasn't covered by the noise ordinance, or wasn't part of the conditions of approval, the recourse for abutters was iffy.

Councilor Gooze said this was same situation as would be the case if a variance was approved.

Mr. Campbell said with the Hickory Pond Inn, the committee had said the tent could be put up the day before an event, and had to be taken down the day after it. He also described the code issues involved in putting up a temporary tent, which Mr. Johnson oversaw.

The motion PASSED unanimously 7-0.

Councilor Smith said last week, he had gone with Mr. Johnson to a Capstone inspection, and he suggested that it would be worthwhile for other Planning Board members to do this as well. He said Mr. Johnson went to the project site 2-3 times a day to do inspections, because there were about a 100 buildings being built there. He said it was a very interesting process

Mr. Kelley said he'd been visiting the site periodically, and said they had done a pretty good job of protecting the Oyster River, from what he could see.

Councilor Smith said he walked the periphery the day after the hurricane, below all of the berms, and didn't see any silt getting out of the containment area. He said technically, they were doing a very good job.

Mr. Kelley said he had heard developers say that Mr. Johnson added value to their projects. He said Mr. Johnson was a real benefit to the community and developers.

Councilor Gooze spoke about the sound coming from the University's wind tunnel, which he'd been able to hear near his house.

Councilor Smith said he was able to hear the sound as he was driving on Mill Road. He said the issue would be coming before the Town Council, and noted that the person bringing it forward was a new resident of Durham who had recently bought the property nearest to the wind tunnel facility.

B. New Business:

Mr. Wolfe said he would like to see the Planning Board look at the concept of transferring development rights.

There was discussion that this was probably already on the list of items for the Board to look at.

Mr. Wolfe said it allowed more options for developers to use the space they had. He also said it would allow people living in Town to purchase undeveloped property and get the transfer of rights that way. In addition, he said it would allow Planned Unit Developments (PUD).

Mr. Kelley said he was a big advocate of Planned Unit Development, and said it fit the mold of what the Town wanted.

Mr. Wolfe said conservation subdivision didn't make sense for Durham, but PUD's did.

There was discussion about how the issue of transfer of development rights had come up a few years back as part of the 99 Madbury Road project.

There was brief discussion by Board members on the new speed tables that had been installed in Town.

C. Next meeting of the Board: **October 26, 2011**

XII. Adjournment

Peter Wolfe MOVED to adjourn the meeting. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.

Adjournment at 9:12 pm

Victoria Parmele, Minutes taker