

These minutes were approved at the November 14, 2006, meeting.

**Zoning Board of Adjustment
Tuesday, September 26, 2006
TOWN COUNCIL CHAMBERS -- DURHAM TOWN HALL
7:00 P.M.**

MEMBERS PRESENT: Chair Jay Gooze; Vice Chair John deCampi; Ted McNitt; Linn Bogle; Myleta Eng; Michael Sievert; Ruth Davis

MEMBERS ABSENT

OTHERS PRESENT: Zoning Administrator Tom Johnson; Minutes Taker Victoria Parmele

I. Approval of Agenda

John deCampi MOVED to approve the Agenda as submitted. The motion was SECONDED by Linn Bogle, and PASSED unanimously 5-0.

II. Public Hearings:

- A. **PUBLIC HEARING** on a petition submitted by Steven F. Kimball, Pine Ledge Holdings Inc., Auburn, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-54 of the Zoning Ordinance to increase the impervious surface ratio of the property to 65 percent. The property involved is shown on Tax Map 2, Lot 6-0, is located at 20 Strafford Avenue, and is in the Professional Office Zoning District.

Chair Gooze said he would be recusing himself for this application. He noted that the application was being heard that evening because the applicant had chosen to continue the meeting to a time when there were 5 voting members present.

Mr. deCampi was appointed as Chair for this application. He then opened the public hearing.

Mr. Kimball, spoke before the Board, and said he appreciated the fact that the application was being heard that evening. He explained that he had gone to the Planning Board for a preliminary review of his project a few months back, and said that at that time, the Planning Board had identified several areas where additional design elements were necessary. He said when these design elements were added to the plan, this increased the impervious surface percentage on the site.

Mr. Kimball next provided some details on the project itself. He said a mixed-use building was proposed, with commercial/retail uses down, and residential up, also including covered parking as well as a parking area outside. He said this had been considered a permitted use, but said based on a change to the Zoning Ordinance, it was now a conditional use.

He said his engineer had recently completed a site plan for the project in order to get a better handle on where the impervious surfaces and setbacks were. He described the extent of the Professional Office District, and explained that a 50% impervious cover ratio was allowed in this district. He noted that the original plan met this requirement, but said the additional design elements had caused that percentage to increase.

Mr. Kimball said a basic principal for developing a commercial area was to make the best possible use of the land that was available, a use that would be the most efficient and would provide the most value to the tax base of the Town. He said in order to do this, the idea was to develop the property to the maximum, but within the context of the Zoning requirements for that zone.

He said the current Zoning requirement for this district, for residential dwelling units, was 3,000 s.f. per dwelling unit. He said the lot was a little over 57,000 s.f, which would allow a maximum of 19 dwelling units, and would allow a maximum capacity of 57 residents, using the 3 unrelated provision. He said what was proposed was space for 48 residents.

Mr. deCampi noted Mr. Kimball had two variance requests that evening, and asked him to try to keep them as separate as possible.

Mr. Kimball said it was important to identify the maximum use when talking about an impervious surface ratio. He said the lot was relatively long and narrow, and explained that in order to fully access it, longer driveways and sidewalks were required, which meant additional paving was needed to reach those stretched out spaces, which added to the impervious surface ratio. He said the Planning Board had identified a requirement for an off-street loading zone and handicap parking spaces close to the building, and also wanted additional sidewalks extending to bump-outs and along the driveways.

Mr. Kimball noted there was a wet, environmentally sensitive area on the site, and said to avoid having to fill it the driveway had been moved, also noting existing culverts would be used. He said this necessitated a longer driveway, which required more impervious surface. But he said he felt there would be a net gain in terms of protecting the environment.

He said the site plan was still preliminary. He noted that the plan currently indicated there would be a 60% impervious surface ratio, but the variance request was for 65% because there were a few additional design elements that might also be added, such as a utility pad for the propane tank. He said he didn't want to have to come back separately for these things, but said they would not significantly change the conditions of the variance. He said if this additional 5% were not needed, it would be kept as open space.

Mr. Kimball noted this was an area variance being requested, and that the issue was not tied particularly to the use of the building. He said the parking requirements would turn out to be the same regardless of the use.

Mr. Bogle said he had looked at the site, and said there were obvious wetlands on the right hand border of the site.

Mr. Kimball said this was delineated on the plan. He provided details on wetland areas earmarked A and B on the plan, noting that area B, located on the site, was smaller than 3,000 s.f., but that area A, located primarily on the adjacent lot, was a statutory wetland. He said the wetland overlay district and buffer zone for the commercial zones were within the purview of conditional use, through the Planning Board, and were not within the scope of consideration by the ZBA.

There was discussion that the wetland setback was 75 ft. in this district, not 50 ft.

Mr. Kimball said in either case, this was not within the scope of consideration by the ZBA, and was a Planning Board issue.

Mr. Bogle asked Mr. Kimball if he had received the conditional use permit, and Mr. Kimball said he had not. He said he had been through a preliminary design review with the Planning Board, which was why he was now before the ZBA.

In answer to Ms. Davis, Mr. Kimball said there were currently two single-family dwellings on the lot.

Mr. Kimball next went through the variance criteria as they applied to this application. He said granting the variance would not result in a decrease in the value of surrounding properties. He provided details on the uses of properties surrounding his property, including the New England Center, a large parking lot owned by the University, a vacant lot with a large wetland on it, fraternities and sororities, XMed - a commercial entity, etc.

He also said the property abutted a residence that was owned by the Goozes, and he noted that there was no access to Meadow Road from his site, so there could be no through traffic. He said all the traffic generated by the development would be on Strafford Avenue. He also said hopefully there would be additional professional activity on the street, and said in that context, this project should lift property values, not decrease them.

He said a key issue was concern about the fact that a residential abutter would be abutting a commercial property, and said he would maintain a 75 ft. buffer between his development and the lot line. He provided a picture that showed how the trees in the summer would block the view of the residence, and he described the extent of woodlands there. He said he was not proposing to decrease the buffer in any way, and said it would protect the residential area from any visible impact of the development.

He said even with the impervious surface ratio increase, there would still be over a half acre of pervious surface remaining on the lot, which was more than was the case for the entire area for some of the other lots in this zone. He said there would not be an horrendous pavement eyesore, and noted greenspace would be preserved at the front and the back of the lot.

Mr. Bogle noted Mr. Kimball had implied that the undeveloped lot next door with the wetland couldn't be developed because of the wetland. He said that was not his observation when he had observed the property.

Mr. Kimball said the lot would not be developed where the wetland was, but said the lot itself could be developed if street access could be obtained, noting it was currently landlocked. He said since the property was in the Professional Office district, it could be developed as a commercial property.

Mr. Bogle said it was a developable lot, and had value.

Mr. Kimball said having a commercial use next door to it shouldn't be detrimental to its value.

Mr. Kimball said granting the variance would not be contrary to the public interest. He said the existing single-family houses on the lot didn't contribute much to the community, occupying a large lot in a commercial zone. He said the property clearly didn't generate the kind of tax revenues that this project would. He also said the site didn't presently conform to current design standards for stormwater runoff, etc., so there were a number of advantages to reinvesting in the property.

Mr. Kimball stated again that this was an area variance being requested, and went through the hardship criteria. He said the unique conditions were the shape of the lot, and the presence of wetlands, and said he had to work around them to the extent that he could. He said he had determined that the benefits could not be achieved in another way.

He noted he had drawn a hypothetical lot with the same frontage and the same area, but with a rectangular shape, and had determined that the same design elements could be accomplished with a 50% impervious surface ratio on a rectangular lot. He said he was not asking for anything more than he would be allowed if he had a conventionally shaped lot. He said this was a conventional example of hardship of the land.

Mr. Kimball explained that a number of different parking configurations were looked at in an attempt to see how the impact on the impervious surface ratio could be minimized while meeting the other requirements. He noted that some people had suggested that the number of parking spaces could be reduced, but said he was concerned when he heard that. He said he understood the desire to promote a walking campus, but said the reality was that if this was to be a successful commercial space, potential customers needed to be able to park.

He said whittling down the parking was not beneficial to the vitality of the whole Professional Office district. He also noted that even if the second and third floors were all office space, the same amount of parking would be needed. He said he didn't want to be in the situation once the approval process was completed of having clients tell him they wanted to occupy the second or third floors as well, and having to tell them that parking was available in the A lot. He said this was the reality of a commercial zone, and said that getting rid of some parking spaces because there would be students living upstairs was not realistic.

There was discussion as to whether the Town permitted pervious parking areas, and there was some discussion as to whether this would be a good solution.

Mr. deCampi noted the parking lot at Adams Point was pervious, and although fairly old, seemed to have stood up pretty well. He said this might be a way to meet the Zoning requirements, although noting that the ZBA was bound to hear the application as it currently had been submitted.

Mr. Kimball said he had tried to comply with the Zoning Ordinance to the maximum extent possible. He said granting the variance would provide substantial justice, explaining that allowing the project to go forward meant reinvestment in a core area of Durham, which was in the interest of the Town. He said a key question to ask was what benefit there would be to the Town, in denying the variance, and said he was hard pressed to come up with one.

He said the Zoning Ordinance said the best use was a professional office space, and he said developing to those requirements seemed like the best use. He noted there were a number of other lots above the 50% ratio in the area, including the Xmed property at 16 Strafford Avenue, which had been granted a variance to allow 75% impervious coverage in order to put a substantial building there, with limited parking. He said it didn't seem that it would be just to hold his own property to a different standard.

Mr. Kimball said granting the variance would not be contrary to the spirit and intent of the Ordinance. He said the intent of requiring a maximum of 50% impervious coverage was to control stormwater runoff, and he said to that end, going to 65% would not dramatically increase the amount of runoff. He also said that because this would be a new development, stormwater controls would be part of the design for the entire site. He said his engineer had already taken a preliminary look at this, and said when the plan went to the Planning Board, the design standards would dictate that runoff would be properly controlled.

Mr. Kimball also said a purpose of the Ordinance was protecting the aesthetic values of the Town. He noted there would be 30 ft. of open space in the front, 70 ft. between the development and the residential zone, and maintenance of the sideyard setbacks. He said with the maintenance of all of these setbacks, the increase in the impervious surface ratio would not be impeding on these setbacks.

He said the project would respect the aesthetic intent of the Ordinance, while accommodating the needs of the site. He said this variance request was not about putting more on the lot than one would otherwise expect. He said the project would bring an attractive new building and much needed professional office space to the core of the Town, which would revitalize this area and would also benefit the Town overall.

In answer to a question from Ms. Davis, Mr. Kimball said on the 1st floor, there would be 3 spaces for possible businesses. He said he was currently in discussion with a local health care provider about putting in doctors' offices. He said there was no commitment to the other areas because there presently was no timeline as to when approvals would be completed. He said once

he got these approvals, he would have commercial tenants lined up for those spaces. He noted that the spaces might vary depending on what clients would want to come in.

Mr. Kimball said the best possible uses for the site would be medical/health care tenants, and he said other possibilities would be retail offshoots of this, - for example, eyeglass shops. He noted that early on he had talked about the idea of a convenience store. He said this was a possibility, but he said market research had indicated that the site wouldn't get the type of traffic that would be needed in order to support a convenience store at that location. He said office space might be a possibility for the site.

Mr. deCampi appointed alternate Mike Sievert as a voting member.

Mr. Sievert said he didn't think the Zoning Ordinance said there could be retail in this zone.

Mr. Kimball said the definition of mixed use allowed a variety of uses including retail as long as it was not the only use.

Mr. Sievert noted that he had had a question about how the layout could work on a rectangular site, and Mr. Kimball had answered this question. He asked if the 70 ft. buffer would stay that way.

Mr. Kimball said it would, and he provided details on this.

Mr. Sievert said he wondered if some of this area might be needed for a detention pond.

Mr. Kimball said the site was pretty uniformly graded to the front of the lot and down to the left. He noted that a drainage plan was being done as part of the site plan review process.

Ms. Eng asked where drainage off the site led to, and was told that it went behind the New England Center and joined Pettee Brook, and then flowed through the center of Town out to the Oyster River. She also asked what other configurations Mr. Kimball had looked at for the building, in terms of placement.

Mr. Kimball said the building had to go in at the presently proposed location, because of the wetland area. He noted the building would be 75 ft. away from the wetland across the street.

Recess from 7:55 to 8:00 p.m.

Mr. deCampi asked if there were any members of the public who wished to speak for or against the variance application.

Mr. Gooze said it was nice to be able to see some of the plans, with some numbers on them. He referred to provisions of the Zoning Ordinance that dealt with wetland issues. He said he felt the wetland setback was relevant to this application. He said an issue that related to the public interest was that not all of the wetland setback variances had been asked for. He said it was clear this buffer was important, and needed to be maintained.

Mr. Gooze said he had been present at the conceptual design presentation before the Planning Board. He noted that this was by its nature an informal discussion, and said nothing had been granted at that meeting. He said what was said by the Planning Board as part of this kind of discussion was not etched in stone. He also noted that Mr. Kimball had said there would be no benefit to the Town from denying the variance. But he said this issue was about more than runoff issues, it was also about how the property looked. He said when the leaves were off the trees, the upper floors would be quite visible from his house.

He noted a letter from resident Amanda Merrill, who suggested the idea of taking the back end of the impervious area off, and staying away from the wetlands. Mr. Gooze said the applicant didn't seem to want to address this. But he said there was another feasible way to do things.

Marty Gooze, Meadow Road, noted she was an abutter. She said the 2000 Master Plan did not include the applicant's previously residential property in the Professional Office district, and said it, and the wooded lot next to it, had been added to this district late in the Zoning Rewrite process at the request of the applicant. She said the owner of the lot next to the applicant's site was not notified individually of this Zoning change.

She said that in terms of the spirit and intent of the Ordinance, the intent regarding impervious cover was to prevent excessive development of the site, for aesthetic reasons and to control damage to surrounding properties. She noted a letter from former Planning Board member Amanda Merrill, stating that this unique wooded property should not be granted a variance, which would detract from its character. In the letter, Ms. Merrill said discussion had occurred at the Town Council and Planning Board levels during the Zoning Rewrite process regarding impervious cover requirements, and said the conclusion for the Professional Office district was to leave it at 50%.

Ms. Merrill's letter stated there were certain small properties in the district, like Xmed, where it might be appropriate to allow an increase in impervious cover in order to attract a project, as long as the abutters were not negatively affected. Her letter provided details on this.

Martie Gooze said granting the variance would be detrimental to the public interest, because the project would impinge on surrounding wetlands and sideyard setbacks. She said there had been no request for variances for these things, and the Code officer had not been given enough information to make a formal denial of anything proposed. The letter said it would be against the public interest to grant a variance for a project that would not be allowed by other parts of the Durham Zoning Ordinance.

Mrs. Gooze said the 2000 Master Plan imagined the Professional Office district as a transitional zone, between the core downtown district and the existing residential zones. She said it stood to reason that the properties at the edge of the Professional office district were the most important part of the transition. She said one of the goals of the Professional Office district was to provide better housing arrangements by placing retail below the residential living. She said this was a lofty goal, but said this goal should not be detracted from by allowing student rentals that abutted

a residential zone to be larger than would otherwise be allowed without a variance. She provided details on her experience with issues with student rentals, noting these were well documented.

Mrs. Gooze said even with an approximate 75 ft. setback from her property line, in granting the variance, the ZBA would be allowing a larger project than would otherwise be permitted, and this would cause a nuisance and change the essential nature of the residential neighborhood. She noted a number of letters attesting to this.

She said granting the variance would not provide substantial justice, since the restriction on the proposed project was compatible with the objectives of the Ordinance, to protect properties from excessive development. She also said granting the variance would mean the project would negatively affect her property values. She provided details of a residential appraisal for her property, which indicated this.

She said regarding the hardship, there might be an alternatively feasible way to provide the same economic benefits, without violating the impervious cover requirements. She provided details on this. She said in order to grant a variance, the ZBA must find the landowner's rights outweighed the rights of the public and the abutters. She said she hoped the Board would find that protection of the public and the abutters' rights were important enough to deny the variance request. She asked that it deny the variance based on the fact that the applicant had failed to meet any of the variance criteria.

Arthur Dimambro, 49 Madbury Road, said he was against allowing an increase in the amount of impervious cover in order to allow a larger building, more parking and paving, more vehicles and other activities. He said this would adversely affect the quality of life for residential neighbors, and would impact property values.

He provided details on the fact that he owned the property adjacent to the Kimball property that had the wetland on it, and noted that it too had been rezoned to be part of the Professional Office District. He said there was a considerable amount of land on that property that was developable, and he noted that because of this project, a developer had contacted him to see if he wanted to develop it. He said he did not.

Mr. Dimambro described drainage in the area, and said the impervious coverage from the parking would increase runoff, which might increase the size of the wetlands, and therefore might decrease property values. He said he was against granting the variance.

Chair deCampi asked Mr. Kimball if he would like to provide a rebuttal to these comments.

Mr. Kimball noted that people had said they were concerned about property values decreasing as a result of this development, but also said developers were asking to buy their land. He said he therefore didn't see where the problem was.

He also said it was unfortunate that people had not maintained an awareness of the Zoning Rewrite process, but he said the zone was what it was, and said they all needed to move forward. He said he had gone to great effort to do an analysis that showed he was not asking for more for

the site than would be reasonable if there was not a unique situation. He said he didn't feel it was accurate to say that he was trying to cram more on the site.

He said he was sensitive that his property was a transitional property, and said the design met the standard for a 70 ft. buffer. He also noted the variance request didn't deal with this.

Mr. Kimball said that runoff flowed to the front of the site, in a way that didn't impact the upper areas of the site. He said runoff would add to the outflow into the brook, and would not increase the saturation of wetland soils in the back area.

Mr. Kimball noted that members of the public had expressed concern about not knowing the numbers. But he said the expectation of the variance was that the buffer would be maintained, and was part of the design standard for the site. He said the original application contained a sketch that was not necessarily to scale, as compared to the site plan. But he said the number itself was in the application, and was what stood.

Mr. Gooze said there was no mention of sideyard setbacks in the site plan, and said this related to the public interest. He also noted that although the same design would fit on a square property without needing a variance, the numbers used were maximum numbers, and he said the Ordinance didn't say that an application shall be granted those kinds of numbers.

Mr. Kimball said the setbacks were delineated on the site plan. He provided details on this, and said the plan met all the setback requirements. He also said it was not improper that he was before the ZBA at this point. He said if Mr. Johnson did a formal review of his plans and he had to come back to the ZBA, that was his risk to take.

Mr. deCampi closed the public hearing.

He said he felt Mr. Kimball was at risk without a review by Mr. Johnson or someone else as to the variances needed, given the site plan. But he said the ZBA found the application as it came to them. He said the issue was impervious cover, and said this was what the Board had to consider. He said if the Board found that Mr. Kimball had missed something that impacted this variance application negatively, that was the risk.

Mr. Sievert said it was good to see more detailed plans for the project. He said that looking at the criteria, and seeing the site, he thought the increase in impervious cover being requested was fairly small. He said if one couldn't say that having 50% impervious cover would negatively impact abutting properties, it would be hard to convince him that 65% impervious cover would. He also said he thought there were ways to handle stormwater runoff, although stating he didn't know if this could be done on the site. He said he was not sure whether there was enough room to do stormwater detention, which was why he had asked about the buffer. He said there could be a negative impact.

He said if a detention area were put next to the wetland on the adjacent property, it would change the hydrology of that area, and said it would be for the Planning Board to determine that this didn't have a negative impact. He said a big question he had had was regarding the shape of the

lot, and whether the same design could fit on a rectangular shape lot. He said he believed the applicant had answered that question very well.

He said there were other issues that came with an increase in impervious cover, regarding aesthetics. But he said he felt that drainage issues could probably be dealt with properly, noting that it was mandatory as part of the site plan review process that they would be.

Mr. Bogle said he had problem with the validity of saying that if there was a perfect lot, one could do everything he wanted to do, but if there was an imperfect lot, one should still be able to do what he wanted on the lot. He said the applicant was jamming more into this lot than it could really take. He said he felt Mr. Gooze was correct regarding the 75 ft. setback - that there was a problem in that this was so conceptual. He noted that was why he had asked if Mr. Kimball had a conditional use permit, and had determined he did not have one. He said the applicant had showed a concept to the Planning Board, but hadn't gone through the application process to see if those plans stood up to the Ordinances in terms of what was allowable.

Regarding the issue of impervious surface, Mr. Bogle said he saw this issue as being related to the second variance request, because it depended on the number of people in the building, and accommodating commercial activity. He provided details on this, and said he wondered if the second variance application should therefore have been heard first.

Mr. Bogle noted that Mr. Kimball had made reference to the Xmed variance. But he said every case was different, and said that variance that had been granted did not constitute a new standard for impervious cover.

He also said he had concerns about runoff going into the Dimambro lot. He said Pettee Brook was an open stream, and said pollution from cars parked in the parking lot of this development would wash down into the brook.

Mr. McNitt said a lot of work had been done concerning this project, and said it would be an impressive addition to the neighborhood. He said some people would say it would decrease the value of surrounding properties, but said this was the kind of thing where improving the area should have a positive benefit. He said having more water on the abutting property was a negative, but said he didn't think there would be an obvious decrease in property values.

Regarding the public interest criterion, Mr. McNitt said a number of people had written to the Board who were against granting the variance. He said the gain to the Town in tax revenues would be substantial, but he noted that multifamily housing was also expensive in terms of Town services required.

He said there was no question that there was an area hardship, but said he felt there was never a lot that was big enough so that a project couldn't be developed that was too big for it. He said the project that was proposed seemed too big for this lot.

He said that regarding the substantial justice criterion, this depended on where one was sitting. He said that regarding the spirit and intent of the Ordinance criterion, there was no question that

the intent of the Professional Office district was to create a space for offices and business services. He said one of the considerations for this district was that wetland requirements had to be met, and said no one had solved the problem of the setback. He said part of the issue of this concept being too big for the lot was that setbacks were being invaded with accessory structures. He said the project was a good one, but was simply too big for the site the applicant was trying to put it on.

Ms. Eng said she felt that granting the variance could decrease the value of surrounding residential properties, depending on what went into the building. She said the plan was still conceptual, and said perhaps the application to the Planning Board should have happened first. She provided details on this. She said she thought granting the variance would be contrary to the public interest, and contrary to the spirit and intent of the Ordinance, stating that potential problems could be created down the road in terms of polluting Pettee Brook and Great Bay. She said incremental increases in impervious cover did have an impact.

Ms Eng said that in terms of being an area hardship, the shape of the lot was a special condition of the property. But she said if the plans were scaled down, the applicant would still have reasonable use of the property. She said she was not in favor of granting the variance.

Mr. McNitt noted that some people had said there would be a 15% increase in impervious cover, but he said that in going from 50% to 65%, there would actually be a 30% increase.

Ms. Davis said financial issues could be considered with hardship, and said a question was whether this would be a feasible project if it were scaled back. She said her gut feeling was that it didn't really meet the hardship criteria because the hardship was self-imposed, in that she thought the project could be scaled back without having a financial impact. She said she agreed with what other Board members had said about the other variance criteria.

Mr. Sievert said he agreed with a lot of what had been said. He said he did feel the area variance criteria were met, given the long, narrow property. He also said he felt the substantial justice criterion was met, and said given the intent of the Professional Office district, the variance request also met the spirit and intent of the Ordinance.

He said he still felt drainage issues could be dealt with, noting that was the business he was in. He said that regarding possible impacts on the values of surrounding properties, he didn't think what was proposed would result in a decrease in the value of Strafford Avenue. properties. He said he didn't know about the possible impact on residential properties.

He said he struggled with the public interest criterion, in trying to determine whether this meant the few abutters to the property, or the Town at large. He said it seemed to him it was the Town at large, but said he didn't know this for sure. He said when the Town had spent time on the Master Plan, and the Professional Office district had come out of it, it seemed like the public interest was met if the applicant was developing something that was allowed in that zone.

Mr. Sievert said it was troublesome that there appeared to be other variance issues involved with this project, but he said he didn't know that the ZBA could say it couldn't make a decision

without having these other issues resolved. He said he felt this was the applicant's responsibility to deal with. He said he didn't think the Town had a procedure where it could go to Mr. Johnson to get a denial letter, although noting that some towns had this procedure.

Mr. Sievert said it cost the applicant a lot of money to get to this point in the process, and said he thought what the applicant was trying to do was weigh the options. He said he didn't think the applicant was trying to circumvent anything.

Mr. Bogle said he simply thought the applicant was incorrect.

Mr. Sievert said he didn't think that mattered in the context of the variance request.

Mr. Bogle said if the applicant had to meet the 75 ft. setback, this would dramatically alter the plan currently before them.

Mr. deCampi said this was an issue each of the Board members had to wrestle with.

Mr. McNitt said the key issue was whether the ZBA wanted to allow the applicant a 30% increase in impervious cover.

Mr. deCampi read a letter from real estate agent Irene Bragdon that provided details on how allowing a development beyond what was allowed under the current Ordinance would impact value of properties.

Mr. McNitt said he felt this letter was more applicable to Mr. Kimball's second variance application, and there was discussion on this.

Mr. deCampi said that regarding the public interest, he found that the opinions of the neighbors were important, and noted the signatures of 26 people against the variance, and one in favor of it. He said he also felt the developer had the responsibility to live within the Ordinance, and to scale the buildings accordingly. He said there might be other solutions, including pervious paving, and said he thought this made the situation fall into the category of self created hardship. He said there was a blank piece of paper, and it was the developer's job to make the project work. He noted he was not saying that no variances would need to be granted as part of this.

Ms. Eng said the purpose of the Professional Office district was to be pedestrian focused, with a strong connection to the UNH campus. She said this was another reason she felt the increase in impervious cover was not necessary.

Mr. deCampi said he would be happy if Mr. Kimball could get professional businesses to occupy his building, and said he understood that if he couldn't, he would put students there. He said the planning process was complicated, and said he had great respect for what he had done, but he said he felt the project was over-designed for the property. He also noted that he had voted against the Xmed variance application.

Ted McNitt MOVED to deny the variance request from Article XII, Section 175-54 of the Zoning Ordinance to increase the impervious surface ratio of the property from 50% to 65%. The primary criteria are the clear evidence of neighbors on the question of the public interest, the fact that the result of the drainage is going to go onto the adjacent property, and subliminally that it would certainly impinge on the wetland buffer area. Linn Bogle SECONDED the motion, and it PASSED unanimously 5-0.

- B. **PUBLIC HEARING** on a petition submitted by Steven F. Kimball, Pine Ledge Holdings Inc., Auburn, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article II, Section 175-53(B)(1) of the Zoning Ordinance to increase the occupancy of a dwelling unit to four unrelated people for up to 12 dwelling units. The property involved is shown on Tax Map 2, Lot 6-0, is located at 20 Strafford Avenue, and is in the Professional Office Zoning District.

Mr. Kimball said in light of the ruling on his first application, he said it was not appropriate to address this application. He said he would prefer to withdraw the application at the present time.

Mr. McNitt said what had been proposed was a very attractive project, and said he hoped Mr. Kimball could come up with something to move forward with.

Mr. Kimball's application for a variance from Article II, Section 175-53(B)(1) of the Zoning Ordinance to increase the occupancy of a dwelling unit to four unrelated people for up to 12 dwelling units was withdrawn.

III. Board Correspondence and/or Discussion

IV. Minutes

July 25th Minutes

Page 3, second paragraph from bottom, should read “..was originally a 13 x 16 sf cottage; same page, bottom paragraph, should read “..an attic in which 135 sf of windows..”

Page 4, 5th paragraph, 4th line, should read “...had seen nothing on what the Town engineer had concluded....”

Page 5, bottom paragraph, should read “ Ms. Eng said she.....”

Page 8, 7th paragraph, should read “ ..whether this was a reasonable use...”

Page 10, 3rd paragraph, should say “Mr. Rief explained...”

Mr. Sievert was appointed as a voting member for the Minutes.

Linn Bogle MOVED to approve the July 25th, 2006 Minutes as amended. Myleta Eng SECONDED the motion, and it PASSED 5-0.

V. Other Business

Mr. Johnson noted the upcoming Law Lecture series, and said there was still time to sign up. He also noted that a committee set up by the Town Council a few months back to look at housing/economic development issues. He said an invitation had been extended for ZBA members to be involved in this process, and said the next meeting was October 10th, at 3 p.m. Chair Gooze asked if any ZBA members would like to be involved in this, and Mr. Sievert agreed to be the ZBA's representative to the committee. Chair Gooze said other Board members would also be welcome at the committee meetings.

There was a brief discussion on issues being addressed by the committee. Chair Gooze said the concept were great, including those involved in possible ordinance changes, but he noted that the ZBA had to deal with the Zoning Ordinance as it currently was. Said would let Todd know that Mike is official rep, and others are welcome as well.

There was a brief discussion on the status of the Christensen cases. Mr. Johnson also said the SAE situation was on hold because the building was for sale.

John deCampi MOVED to adjourn the meeting. The motion was SECONDED by Ted McNitt, and PASSED 5-0.

Adjournment at 9:30 p.m

Victoria Parmele, Minutes Taker

Myleta Eng, Secretary