

This set of minutes was approved at the June 7, 2004 Town Council meeting

MONDAY, MAY 10, 2004
DURHAM TOWN HALL -- COUNCIL CHAMBERS
PROPOSED ZONING ORDINANCE REVISIONS – PUBLIC HEARING
TOWN COUNCIL MINUTES
7:00 PM

MEMBERS PRESENT: Chair Malcolm Sandberg; Arthur Grant; John Kraus; Neil Niman; Annmarie Harris; Gerald Needell; Karl Van Asselt; Peter Smith; Mark Morong

MEMBERS ABSENT: None

OTHERS PRESENT: Todd Selig, Town Administrator, Mark Eyerman, Planning Consultant

Chair Sandberg brought the meeting to order and explained that this was a continuation of a public hearing on proposed changes to the Zoning Ordinance. Chair Sandberg explained that revisions to the Zoning Ordinance had been moved and seconded two weeks prior and said deliberation on these revisions would now begin.

Administrator Selig noted that Jim Campbell had developed and organized a list of suggestions from Councilor Needell and Chair Sandberg, which could be used as the basis for discussion.

Chair Sandberg said he had created his list of suggestions as a model, but had not intended this to be comprehensive. He said the challenge would be to get to the issues of concern in the most orderly fashion possible, and asked if anyone had suggestions as to another way the Council might proceed.

Councilor Needell noted that there were very few items he had listed which were major, and said the Council might want to look at more substantive items than those he had included.

Chair Sandberg said he had asked Mr. Campbell to indicate which recommended changes on the list were considered to be substantial so that the Planning Board would want to review them.

Mr. Campbell said the majority of the items on the punch list seemed minor, and said it therefore might make more sense to focus on the substantial items. He listed those items he considered to be substantial and the Council discussed each of these items as follows:

- **Section 175-21, pages 45-46, regarding whether the Council concurs that the Town Council should be eliminated from the conditional use process.**

Councilor Smith said he had reached the firm conclusion, although always subject to persuasion from his colleagues, that if the Town continued with the Conditional Use process, the Town Council should be removed from this process. He said this was less of a close question for him than the issue of whether the Conditional Use process should be allowed. He said what had led him to the conclusion that the Council should not be involved in the conditional use process was

his service on both the Planning Board and the Town Council. He said he believed the Council was fundamentally a political, policy-making body.

Chair Sandberg asked if any Council members wished to propose to change the recommendation that the Town Council should be removed from the conditional use process, if the Town were to continue to use this process, and there was no response.

- **Section 175-21 – page 45, regarding whether Conditional Use permits are in the best interest of the Town at this time**

Councilor Smith said that in the end, there was too much uncertainty, even with the language changes, in the conditional use process, and said he agreed with Attorney McNeill that there needed to be a clear view of what could and could not be expected by persons appearing before the Planning Board.

Councilor Smith said there was an additional concern that convinced him that conditional use process should be taken out of the Ordinance. He said he did not believe there could ever be a fair balance in developing the competing views of those seeking and opposing a conditional use. He noted that substantial proposals were brought forward by professionals, and the resources brought to bear in these situations were highly relevant to the criteria set forth. He said that reams of detailed, expert information were required for this, and said what resulted was often very one sided. He said the Planning Board sat on these applications as a quasi-judicial body, and rarely could balance out the resources that were presented by the applicant.

Chair Sandberg said Councilor Smith appeared to be coming down on the side of not being in favor of the conditional use process. Councilor Smith said he was not saying there were not worthwhile aspects of the conditional use process, but said on balance he was not in favor of it.

Councilor Needell said that given past experience in recent years, he shared Councilor Smith's concerns. But he said that in looking at the Table of Uses in the new Ordinance, the number of uses that would be allowed by Conditional Use permit was so limited now that he didn't agree with the concern that only large projects with great resources would be involved. He also noted there were relatively few conditional uses allowed in the residential zones.

Councilor Smith said that the fewer the number of conditional uses, the smaller was his problem with the process. He also noted that he was trying to be fair to the concept of conditional use, and said there was something to be said for it, because one couldn't foresee every possible use.

Councilor Needell asked what alternative Councilor Smith saw to the conditional use process. Councilor Smith said there were two alternatives: 1) propose an amendment to the Zoning Ordinance in situations where there was a use that was not permitted, but was desired by an applicant; and 2) where failure to be able to make that use created an unlawful taking of property, so that there was the opportunity for a variance, which should be construed narrowly. He noted that the first alternative especially was time consuming.

Councilor Needell said the Planning Board struggled with whether this was an invitation to the conditional uses since they were not ruled out, but he said in determining that it was an invitation, he was not convinced that the door should be totally shut. He also noted that the

amendment process was open to anyone at any time who disagreed with the Zoning Ordinance. He said he hoped that the intent was an invitation, but was not a guarantee that these uses would be granted.

Councilor Van Asselt said if the reason being given to remove the conditional use process was that the one who wanted the conditional use permit would generally have more resources than the one who didn't, he was not sure that was a fair reason to remove it. He asked, if that was the problem, whether there was a way to correct that imbalance and still have conditional uses. He also asked whether, when an applicant wanted a conditional use, the Town presented its response, and those in the Town who didn't want the use had no resources, if there was a way to balance this so the conditional process would work properly.

Councilor Smith said the resource issue was important but was not his entire argument. He noted steps that could be taken by the Town to balance resources more evenly, but said he was not sure the Council would want to go down such a path.

Councilor Grant noted, concerning the issue of available resources, that the Planning Board had the authority to require studies, and to require that the applicant pay for them. He said the problem he saw was that the applicant often argued that the Board was going too far in its requirements of studies, etc., but said that the provisions were there, and if used would address part of what Councilor Smith was speaking about.

Councilor Grant said the problem he had with the Conditional Use provisions was that a number of uses formerly allowed by conditional use had been eliminated, while some uses had now been added that had not been defined or mentioned in the previous ordinance. He gave the example of museums, veterinary clinics, and elder care facilities, noting that if they threw out the conditional use process, they would be throwing out these uses. He said that when the Board had discussed these items, it was realized some were uses the community might want to have at some point, and if put in the right places, with conditions attached, they would be an asset to the community.

Councilor Grant said that kennels and veterinary clinics were important services in the community, so some kind of provision needed to be made for them. He also said he was generally opposed to the conditional use process, preferring an ordinance where things were more clearly spelled out for property owners, etc. He said the Town's real problems with conditional use arose in the residential districts, and said a possible way to go was to prohibit conditional uses in those districts. He noted that 5 office research districts had been created, and said the flexibility that conditional use provided was more important in those areas. He suggested that the Council could say the conditional use process should not apply in residential districts, but uses now specified as conditional use (in residential districts) should be examined as to whether they would fit in an OR district.

Chair Sandberg asked whether, if Council members agreed the Conditional Use process was not to be approved, there would still be the option to recommend changing the conditional uses to P's in the Table of Uses.

Councilor Grant said there probably would be, but said some of these uses were very controversial as permitted uses.

Councilor Kraus said Councilor Grant had spoken of an ordinance as preferably being more black and white, but said he believed that was impossible with something as complex as this. He said conditional uses were a way of providing flexibility, which was needed as a general rule.

Councilor Harris said she recalled that there was an effort by the Planning Board to keep the five commercial zones for the highest and best uses in terms of their potential to generate taxes. She noted that some of the conditional uses that could be allowed would use up some of that limited amount of commercial land.

Councilor Morong said the conditional use was the best vehicle the Town had so that it didn't have to totally open the door to these kinds of uses, yet it wasn't shutting the door either.

Chair Sandberg asked if any Council members advocated removal of the conditional use process across the board.

Councilor Van Asselt asked if the Council kept the conditional uses in as they were, and then went through the Table of Uses and wanted to change some conditional uses to a P's, at what point this would be considered a substantive change. Mr. Campbell said that changing even one of the conditional uses would be considered a substantive change.

Councilor Needell said that if they took the conditional use process out, and someone then decided to amend the Zoning Ordinance because of a particular land use, the resource imbalance Councilor Smith had spoken about would still exist. He noted that amending the Ordinance was a much harder process, and said that if one was considering taking the conditional use process out, this might be more than a substantial change, and instead was a fundamental change, which might not be separable from the document as a whole.

Councilor Smith said if someone wanted to change the categorization of one or two particular uses in the Table of Uses, that didn't seem to be more than minor substantive changes.

Chair Sandberg said when they got to this section, they would have to discuss the details of the Table of Uses, and also whether the Council concurred that any changes to the Table would be minor substantive changes. He explained that if the Council wanted to recommend more than minor substantive changes to a provision, the process might be to refer this back to the Planning Board and then have the Board come back to the Council and either agree or not agree to make the change. He said this would keep the change within the Planning Board initiated process.

Administrator Selig said it wasn't the number of changes the Council made to the document that triggered a problem, it was whether the changes the Council might make would affect the rights someone might otherwise have had under the proposed revisions to the Ordinance.

Chair Sandberg said he had not heard any Council members say that the conditional use concept should be removed from the Ordinance.

Councilor Kraus received clarification that if the majority voted yes at this point on the motion on the table, the Ordinance would pass. It was also clarified that subsequent to this, it would then be a matter of making Planning Board, Council, or citizen initiated amendments to the Ordinance.

Administrator Selig said that if the Council voted to approve the Planning Board's draft Ordinance, future amendments by the Council would not be made to this draft, but said that instead, a new process would begin.

Chair Sandberg said that absent any motion that the Conditional Use concept should be removed from the Ordinance, the Council could move on to the next item.

- **Section 175-53, page 85-90, concerning TABLE of USES - Conditional Uses, – consideration of pros and cons for each Conditional Use, vs. P (permitted) or X (excluded)**

Councilor Kraus said his preference was to leave things as they were in the Table, and if Council members wanted to recommend changes following this process, the Table could be changed then.

Councilor Smith asked whether Councilor Kraus meant that the Ordinance should be passed and the Council should not think about it again unless someone questioned it in the future; or that the Ordinance should be passed, and the Council should make a list which would then be the subject of proposed changes. He said his view was that if they did the former, it would be 5 years before any change would be made, but if they did the latter, there changes would be made sooner than that.

Councilor Kraus said it would seem likely that some changes would be developed directly.

Councilor Smith asked whether Councilor Kraus favored at that time, for the purpose of developing a list, a detailed discussion about the Table of Uses, and Councilor Kraus said that would be fine.

Councilor Needell said he didn't feel there was anything in the Table that worried him so much that it made him want to risk problems with the whole Ordinance. He also wondered if it would be worthwhile to first get a sense from the Council if it agreed that the best approach to take was to make a list of possible changes, but to make the actual amendments after the Ordinance was passed. He noted he preferred the latter. He said the detailed discussion was important, but said the Council should keep the process going.

There was additional discussion about the process. Councilor Niman suggested taking as conservative an approach as possible, which meant adopting the Ordinance as it was written. He said Council members could subsequently initiate the amendment process if they wished.

Councilor Smith said he did not think this approach reflected the realities of how governing bodies operated. He also noted, in answer to Councilor Needell, that he was in favor of developing a list, and said when this was completed, he was in favor of passing the motion on the table. But he said that given the realities of what Council members were faced with, if they did not take a reasonable amount of time to highlight the issues of concern, they would move away from the Ordinance. He said they owed it to the process to spend some time developing the punch list.

Chair Sandberg noted that if they adopted the Ordinance as is, and someone the next day came in and filed an application that a Council member didn't want, there would be a time lag before the amendment process got to the point of posting. He said there might be an argument in favor of saying a Council member felt strongly about not allowing a particular use, and might find concurrence on this with the Planning Board, which would keep the window of opportunity for that use closed.

Councilor Niman said he was concerned that the Charter didn't say anything about sending things back to the Planning Board, and so when balancing risk, that was a more serious risk than someone wanting a particular land use.

Councilor Smith said he did not see the conflict described by Councilor Niman, if in fact they were planning to pass the Ordinance. He said the issue was not sending back everything to the Planning Board under the same process, but was taking the time to identify things that the Council otherwise would not deal with for a very long time.

Councilor Niman said he had no problem with that.

Councilor Kraus asked Councilor Smith what the Council would do with this list.

Councilor Smith said he would recommend that the list be given to Administrator Selig, who would send it on to the Town Attorney, who would then develop text for proposed Ordinance changes. He said the Council would then review that text and then forward it to the Planning Board for consideration. There was additional discussion about this process, and Councilor Smith clarified that it would be a Council initiated process at that point, but stressed that Town staff would do the drafting of the amendments.

Councilor Needell said he agreed with Councilor Smith that the Council should make the punch list, and have this discussion then, but said he would like to see the discussion continue whether or not the Ordinance was adopted that evening.

Council members discussed specific land uses in the Table of Uses that were categorized as Conditional Uses under the new Ordinance.

Councilor Harris said that religious uses should not be allowed in all five residential zones, noting that this land use was preferable in outlying areas.

Councilor Kraus said that from some materials he had read, this was problematic, because of guarantees of religious expression.

Chair Smith noted there had been a previous Council discussion on this, and questions were raised about case law on this issue.

Councilor Smith said the material he had read made it clear that one could not overburden the free exercise of religion through zoning, but said zoning could regulate religious institutions as long as this was not considered to be an overburden.

Councilor Grant provided background information on this use category, and said he didn't see the harm of allowing religious uses in all districts in Town.

Councilor Harris said she was concerned that the commercial districts, and downtown area, which was quite limited in space, should not be used for something that didn't provide taxes for the community. She suggested the Rural, RB or RC zones would be more appropriate.

Councilor Kraus said he appreciated Councilor Smith's legal opinion on this issue, but said there might be legal opinions on the other side as well. He said he looked at this as an issue of religious expression, and said he didn't see a religious facility would be a problem anywhere in Town. He said he was concerned that the Council might be sending a message that it was all right to have a religious facility out in the woods, but not near the downtown.

Councilor Morong said he didn't see a problem with a religious use in any zone, and said the Town could limit where a religious use could be, based on whether the area it would be in could support that use.

Councilor Needell said part of the concern, since it was a conditional use, was the tax base issue, but said he didn't think a reason to allow it in all five zones was fear of litigation.

It was clarified that the only change in the new Ordinance concerning religious uses was that it would now be allowed by conditional use in the Residential Coastal Zone.

Chair Sandberg noted that a goal of the Master Plan was to grow the Town from the central core outward, and questioned what happened when a 200-car facility was built in an outer area of Town. He asked whether the conditional use process provided a substantial enough check to protect some of the most valuable, highly taxed property in Durham.

Councilor Smith said he was inclined to allow religious facilities as a permitted use in some zones, but to excluded them from other zones. He said the burden presently for religious uses might well be that they needed conditional uses if located any place in Town, and also said he was in favor of having them in the core area of Town, for the reason noted by Chair Sandberg.

Chair Sandberg said if it was not the Council's intention to resolve that issue that evening, it could be noted that religious uses needed further discussion.

Councilor Smith asked if the excavation and mining categorization was in full compliance with the State Excavation and Mining statute, which prohibited Towns from completely closing off all land for this use. It was noted this was a question that needed to be looked at.

There was a brief discussion about public utilities uses, veterinary clinics, kennels, adaptive re-uses, and marinas.

Chair Sandberg asked if the Planning Board had had much discussion about marina sales and service, noting this would allow the opportunity for them as a conditional use in the RC zone and in the OR zone. He asked if there was a lengthy discussion about this by the Planning Board. Jim Campbell said Board members had agreed this was appropriate. It was clarified that marine sales and service was a new Item, but boats and boat yards had previously been allowed by conditional use.

Councilor Kraus asked for clarification concerning the land use – heliport. Mr. Campbell said it had been a permitted use in the Office Research zone, and now would not be permitted in Residential or OR districts.

Councilor Harris said it would probably be a use that was allowed in the Commercial districts.

There was clarification that anything under OR was not being considered that evening. Mr. Campbell explained that some uses said OR in the draft Ordinance, but said this was simply a generic categorization, to make sure the land wasn't used for something else. He said the next draft of the Zoning Ordinance would break out OR into several different sub-categories.

Councilor Van Asselt noted that the revised Ordinance prohibited galleries and museums in the RA and RB zones, and asked what the reason for this was.

Councilor Grant said the reason was that they might require a parking area that would be larger than what one would want in those residential zones.

Councilor Van Asselt said he had recently visited a museum in a residential area which was also an historic district, and said the facility had been welcomed by the neighbors. He said something like this might come up in Durham, especially in an historical district.

Councilor Morong noted that the Parsonage gallery across from the Three Chimney's was residential, and said he didn't notice parking problems there.

Chair Sandberg said conditional uses so far that needed further discussion/consideration were: Religious uses; Excavation and Mining; and Galleries and museums.

- **Section 175-23, C, 1-8, pages 49-51, regarding criteria for the Conditional Use process.**

Jim Campbell said the Board's discussion on Conditional Use had tried to look at previous language, and strengthen it. He said the Board believed it had done so with the revised criteria.

Councilor Smith noted that on page 50 of the former Ordinance, items a-e were crossed out, and asked if each of these items was viewed as covered in some way by the revised Ordinance. Mr. Campbell said yes, that was something the Board had looked at.

Councilor Needell asked about the use of the words "significant", and "excessive" on page 51, items 6 and 7, and said he was uncomfortable about them for legal reasons. There was detailed discussion between Councilor Needell and Mr. Campbell on this language.

Chair Sandberg said if this language turned out to be problematic, it might come back to the surface, and said the Council might want to indicate this was an Item that needed clarification.

Councilor Van Asselt suggested that pages 49-51, if applied at even a minimal level when making an application for conditional use, was going to be a struggle, and said he couldn't imagine it needed to be strengthened in any way. He said it all came down to the application of criteria when one applied for conditional use, and said the Council put the trust in the Planning Board to follow this process.

Chair Sandberg noted the recommended change to Section 175-23, D, and asked if there was any objection to changing the word “may” to “shall”. Mr. Campbell said this was considered a minor change.

Councilor Grant MOVED to change the word “may” to “shall” in Section 175-23, D. The motion was SECONDED by Councilor Van Asselt.

Councilor Kraus asked why amendments for word changes were necessary, if an item was not substantial. Chair Sandberg said in this case, and for other minor changes, he would ask for a motion to amend the document.

Councilor Kraus said perhaps this wasn’t necessary because the record of the meeting was in the minutes, but said if other Council members wished to do this, he did not have a problem with it.

Councilor Smith said this process was necessary, in order to change wording in the statute.

Councilor Needell said he accepted that this language change was considered to be minor, but said he had not had time to fully consider the implications of the language.

Councilor Morong suggested that the rest of the non-substantive changes to the Ordinance should be moved in one motion.

The motion PASSED unanimously.

Councilor Smith noted the criteria – “of benefit to the Town” on page 49, Section 175-23, C , and asked where there was a definition of the meaning of this phrase. Mr. Campbell said there was not such a definition in the Ordinance.

Councilor Smith said he had raised this issue in the past, and said it was one of the most troublesome provisions of the conditional use process. He asked if the Planning Board had discussed this longstanding language problem. Mr. Campbell said he believed the Board had discussed this, and had determined that if an application for conditional use met all the criteria, this would mean that the use would be of benefit to the Town.

There was detailed discussion about the meaning of this wording, its placement in the Ordinance, and its possible implications.

Councilor Van Asselt MOVED to removed “as submitted, is of benefit to the Town and..” The motion was SECONDED by Councilor Morong, and PASSED unanimously.

- **Section 175-53, page 85-90, concerning TABLE of USES - consideration of uses of P (permitted) or X (excluded).**

Councilor Needell noted that community centers were excluded from all residential zones in the Table of Uses. He asked if it was correct that the Town could put such a center anywhere it wanted, and also that there was no such thing as a private community center, especially if the

Ordinance passed. Mr. Campbell explained that if the Town wanted such a facility, it could put one anywhere in Durham.

Chair Sandberg explained that it had been the practice of the Town, although not required to follow its own ordinance, to hold itself to the standards that were expected of the rest of the community.

There was additional detailed discussion on community centers, including whether they were public or on public, and how this was addressed in the Ordinance.

Councilor Harris said she did not believe it was the Planning Board's intention to not allow non-public community centers.

Councilor Smith said the definition of community center confused things, and also said it was important to understand whether the intent of the Planning Board was to eliminate the possibility of having a community center in a private development. Mr. Campbell said he believed it was.

There was additional discussion about the language "community center" - in the Definitions section and other sections, as well about the fact that it was banned in the Table of Uses.

Councilor Grant recommended sending the definition of community center back to the Planning Board.

Chair Sandberg said if the Council adopted the Ordinance that evening, if the Planning Board looked at something like this and saw there was a problem in terms of what was intended, it might immediately initiate the appropriate changes.

Chair Sandberg asked whether, keeping in mind that the Master Plan advocated growing the Town from the center outward, if there were any permitted uses that were jumping too far into the future, too fast.

Councilor Morong said structural parking (garage) – p. 88 was an excluded use, so that if the Town wanted to build such a garage, it would be violating its own ordinance

Chair Sandberg noted this would be true for surface parking as well.

There was discussion about the existing category, "government facility", which was permitted in all residential zones, and the possible need for the category – "governmental use". Councilor Smith said a definition on page 13 for government facility defined something that was not a facility, but a use. He said the language should be changed to say government use, and also suggested adding the words "or development" after the word use.

There was discussion as to whether this wording should be changed in the Definitions section as well as on page 88 in the Table of Uses.

Councilor Smith moved to change "government facility" to "government use" on page 13 of the Section 175-7, Definitions, and also to change this definition to read "the use or

development of ...”. The motion was SECONDED by Councilor Van Asselt and PASSED unanimously.

Chair Sandberg called for a five-minute recess at 9:02 PM.

The meeting reconvened at 9:07 PM.

Councilor Van Asselt said if there was no interest (other than his own) in changing museum and gallery from an X to a P in the Table of Uses, he would be willing remove it from the punch list.

Councilor Grant said Councilor Van Asselt had raised a good question, and said he believed the Planning Board had been thinking in terms of a large gallery or museum, one that would require parking, as compared to a smaller, in house gallery.

Councilor Smith asked if it was understood by the Planning Board that a gallery was something very different than a museum, and Councilor Grant said it was.

Mr. Eyerman noted that someone might be able to operate an artisan type of gallery, under the home occupation provision if they lived there. He said a gallery as a principal use was different, and it was important to make the distinction.

Chair Sandberg noted that elderly housing duplexes were permitted across the board, while residence housing duplexes were excluded across the board, and asked Mr. Eyerman to share the Planning Board’s discussions about this.

Mr. Eyerman said the issue relative to the various forms of elderly housing was that they were a desirable use and were produced in various forms, so the Town should try to accommodate them. He said the issue around non-elderly duplexes was the concern about occupancy by unrelated individuals, so this was made a non-permitted use.

Councilor Smith asked if there was a legal problem with this, and Mr. Eyerman said he did not believe there was.

Chair Sandberg asked why elder care facilities were permitted by conditional use in the RA and RB districts, and also asked why this didn’t extend to the other residential districts. Mr. Eyerman said that this scale of development could be accommodated in the Rural and RC districts without creating a problem, but in the RA and RB districts there were more compatibility issues to address.

Chair Sandberg asked if an eldercare facility were allowed in the RC district as a permitted use and not a conditional use, how traffic issues would be addressed. Mr. Eyerman said it would have to go through the development review process and get Board approval.

Chair Sandberg asked what the consequence might be of having a large parking area, and multiple units out in the rural area. Mr. Eyerman said the Board had grappled with this, but decided the potential benefits outweighed potential liabilities, and also realized that because of the lack of sewerage out there, the chance that there would be a large, high intensity use facility was small.

Councilor Van Asselt asked why elder care facilities had not been categorized as conditional use across the board. Councilor Harris said the Board didn't think of it.

Mr. Eyerman said there was an intention to only use the conditional use concept in situations where there might be concern about a location or the way a particular use would be developed. He said the goal was to minimize the exercise of the conditional use process, and to make uses either permitted or not allowed as much as possible. He said that when the Board considered elder care facilities, it felt that permitting them in the Rural and RC districts was appropriate because there were natural limitations on what might occur there.

There was discussion about the various categories of elder care facilities.

Councilor Smith said that typically elderly facilities, depending on how they are designed, have three levels, with the first level being ordinary or independent living, the second level being assisted living and the third level being nursing care. He asked Mr. Eyerman if the first level of care, or independent living, would be permitted under the category of elderly care facility. Mr. Eyerman replied that if it is built as a continuum of care facility that included independent living, then it can be an elder care facility. He said the intent is if it is all independent living, then it is elderly housing. If it is a continuum of care in which independent living is part of a variety of living style service packages, then it is included under the elderly care facility.

Councilor Van Asselt said he felt strongly that all elder care facilities should be conditional uses across the Board. He said it was important to consider a whole range of issues concerning these facilities, because they essentially became communities unto themselves.

Councilor Smith said the Table of Uses assumed it was better to put these facilities in the Rural and RC zones, and asked whether it might actually makes more sense to locate them closer to other facilities in Town.

Councilor Grant explained that the Board could attach conditions and requirements to every application. He said in this case, the Board was saying the applicant did not have to go through the whole conditional use process. He also noted that if as part of an application for a facility in the RC zone, it was realized there was no water, sewer, was too far from the fire station, etc., the application could be denied.

Councilor Smith asked why elder care facilities should be put through the conditional use process in the RA and RB zones. Councilor Grant said this was because the facility would be located in a more crowded zone, and also noted that the requirements associated with such facilities were generally that they not be located next to student housing.

Chair Sandberg noted that off street parking was permitted in all of the Residential zones, and asked if there was anything to prevent someone from using his property as a parking area.

Mr. Eyerman said there was, noting p. 88-89 said that structural parking, surface parking, as a principal use, was prohibited. There was detailed discussion about this issue.

Chair Sandberg said he had just wanted to make sure that this didn't represent a problem.

- **Section 175-55 E, page 92, concerning General Dimensional Controls, - wording used in discussion on calculation of usable area – contiguous area, rectangular shape.**

Councilor Needell said he wanted to understand more about the rationale for this.

Mr. Eyerman said the concern, under the conservation subdivision approach - where individual lots were allowed a great deal of flexibility in terms of size, was that someone could essentially create lots of usable land here and there, for example throughout a wetland area. He said it was an attempt to say that in creating a lot, there had to be a reasonable sized area of land that was contiguous, and said the specification that the land had to be rectangular was also included after significant discussion by the Board.

Councilor Needell said he was particularly concerned about inclusion of the word “rectangle”. Mr. Eyerman explained that if the wording just said contiguous, there could essentially be a spider or snake shaped contiguous area, so requiring a rectangular shape made sense.

Councilor Needell said the provisions already contained considerable restrictions, so this was one more thing that could be challengeable. Mr. Eyerman said the Board would probably not be against seeing this on the punch list.

Councilor Morong suggested some kind of mathematical formula could be included in the Ordinance, which said something to the effect that the perimeter of a lot could not be more than a certain percent of its area.

Councilor Kraus said perhaps a good example of an approach like this could be found in some other zoning ordinances.

Councilor Smith said this idea had been discussed by the Planning Board in the early 1990's, when Steve Burns of the Strafford Regional Planning Commission had obtained an ordinance that followed an approach similar to what Councilor Morong had described.

Council members agreed that this Item should be put on the punch list.

- **Section 175-109 G-1, page 138, concerning Performance Standards for Hotels and Motels, - consideration of whether language is too restrictive.**

Councilor Needell said this language seemed too restrictive.

Mr. Campbell said the Board discussed this at length, and also heard a lot of comments from the public that allowing stays longer than this was too long, and there was room for abuse. He said the majority of Board members felt 14 days was long enough.

There was additional discussion about this matter, and Chair Sandberg said he would put this on the list for future review.

Discussion of minor substantive issues

- **Section 175-6, p. 4**

Councilor Kraus MOVED to change apply to imply, in Section 175-6. The motion was SECONDED by Councilor Grant and PASSED unanimously.

- **Section 175-14 F, 6, p. 41**

Council members agreed this item was not a problem.

- **Section 175-14, G 2, b p. 42**

Council members agreed this Item should be put on the punch list, to consider how this wording might need to be changed.

- **Section 175-18 B p. 44**

Councilor Grant MOVED to change Section 175-24 to Section 175-23. The motion was SECONDED by Councilor Kraus, and PASSED unanimously.

- **Section 175-22, B, 6 p. 46-47**

Councilor Kraus MOVED to change the wording to read “Where development approval for a conditional use includes subdivision or site plan approval by the Planning Board...” The motion was SECONDED by Councilor Smith, and PASSED unanimously.

- **Section 175- 26, A 4 p. 53**

Chair Sandberg noted the question was raised as to whether the Technical Review Committee should have the authority to do technical reviews and then make the recommendation to the Planning Board.

Mr. Campbell explained that the language said that if someone went to the ZBA for a special exception, that person needed to get the approval from the appropriate Board, either the Planning Board or the Technical Review Committee, before being heard by the ZBA. He said the special exception itself was not being granted by the Planning Board or the Technical Review Committee.

Chair Sandberg said this item was therefore not a problem.

- **Section 175-28 A p. 54**

Councilor Needell referred to the sentence which reads: “Codes shall be permitted by the Code Administrator”. He said the process for how one acquires a permit is vague and asked if a permit is required. Mr. Campbell said that depending on the extent of work needing to be done would determine if a permit was required. He said that in most instances, owners will contact Zoning Administrator Tom Johnson and ask him if a permit is needed.

Council members agreed the wording was all right as it was.

- **Section 175-41 D p. 78**

It was agreed this was a clerical error that needed to be fixed.

- **Section 175-42 D, p. 80**

It was agreed this was a renumbering problem that needed to be fixed

- **Section 175-42 C 4, p. 79**

Councilor Needell MOVED to delete the word “Accessory” before home occupation. The motion was SECONDED by Councilor Kraus and PASSED unanimously.

- **Section 175-54 , p. 91**

Councilor Needell asked why minimum lot size is specified when a single-family house is not permitted. Mr. Campbell explained that this was for the nonconforming issue. He said it gives the Zoning Administrator a benchmark to decide whether a lot is nonconforming.

Chair Sandberg said there was therefore no need to change this.

- **Section 175-107 C , p. 129**

Councilor Grant MOVED that the wording should say “within 5 business days after making a determination”. The motion was SECONDED by Councilor Kraus, and PASSED unanimously.

- **Section 175-107 I p. 133**

Council members agreed to put this on the list for future refinement.

Councilor Grant noted there was allowance in the conservation subdivision provisions for community centers.

- **Section 175-109 C4 p. 137**

Mr. Campbell said Code Administrator Johnson had wanted to make sure that the Ordinance was talking about the entire dwelling unit.

Chair Sandberg asked if the language should perhaps say - entire building.

Mr. Eyerman said he did not recommend using the word building, because an accessory unit could be in a separate building.

It was agreed to put this item on the punch list.

Chair Sandberg noted the Council's current list of items to be considered was now completed, but said this did not preclude adding other items in the future, immediate or otherwise. He asked if Council members wished to add any other items to the list.

Councilor Smith said he had another issue relating to section 175-5, "Applicability to governmental uses including the University of New Hampshire", which he felt was very important and should be addressed.

Councilor Needell said that regardless of whether the Council votes on the proposed revisions at this meeting, he would suggest scheduling a meeting in two weeks to continue to refine the list of items Councilors would like to address.

Chair Sandberg said the agenda for the next Council meeting was not especially heavy, and the Council could allocate some time to raise Councilor Smith's issues, as well as those of other Councilors.

Councilor Kraus MOVED the question to cease debate on this matter. The motion PASSED 7-2, with Councilor Smith and Councilor Needell voting against it.

The motion to approve the proposed revisions to the Durham Zoning Ordinance, as amended, PASSED unanimously 9-0.

Chair Sandberg said the Planning Board and planning staff deserved high praise for the work they had put in to this document, and said the Council was eager to work with them on the next version of the Ordinance.

Administrator Selig said if Council members wanted to talk about other aspects of the Ordinance that might go on a future list, they could spend some time discussing this at the next regular Council meeting.

Councilor Van Asselt encouraged Councilor Smith to bring his UNH materials for this discussion, and Chair Sandberg asked Councilor Smith if he could provide this material in written form for Council members before the meeting.

Councilor Kraus MOVED to adjourn the meeting. The motion was SECONDED by Councilor Grant and PASSED unanimously.

The meeting adjourned at 10:00 pm