

*These minutes were approved at the May 21, 2014 meeting.*

**DURHAM PLANNING BOARD**  
**Wednesday, January 22, 2014 at 7:00 p.m.**  
**Town Council Chambers, Durham Town Hall**  
**MINUTES**

**MEMBERS PRESENT:** Peter Wolfe, Chair  
Richard Kelley, Vice Chair  
Lorne Parnell  
Bill McGowan  
David Williams  
Councilor Jim Lawson, Council Representative to the Planning Board  
Councilor Julian Smith, alternate Council Representative to the Planning Board  
Wayne Lewis, alternate  
Jennifer Pribble, alternate  
Linda Tatarczuch, alternate

**MEMBERS ABSENT:** Andrew Corrow, Secretary

**I. Call to Order**

Chair Wolfe called the meeting to order at 7:05 pm

**II. Roll Call**

The roll call was taken.

**III. Seating of Alternates**

Ms. Pribble was seated as a regular member in place of Mr. Corrow.

**IV. Approval of Agenda**

***Bill McGowan MOVED to approve the Agenda. Richard Kelley SECONDED the motion.***

Mr. Kelley suggested that the motion should be amended to say the meeting would end at 10:00 pm, and Mr. McGowan agreed. There was discussion that there was too much on the agenda to be able to do that, and that perhaps times could be set for each of the items this evening in order to adjourn at 10:00 pm. It was noted that there were weekly Planning Board meetings these days. There was further discussion.

***The motion as amended PASSED 6-1, with David Williams voting against it.***

## **V. Town Planner's Report**

Mr. Behrendt noted that there were miscellaneous documents available for the public at the front table.

## **VI. Public Comments**

**Emily Smith, Orchard Drive**, said last week there were two major items where significant changes came in concerning an application, just before the decision was to be made on it. She questioned whether neighbors, including merchants downtown understood what was going on concerning the blasting issue. She said another issue was a last minute, apparent increase in the number of occupants. She asked the Planning Board to be sensitive to the speed and timing of these issues coming in, and the relative importance of them to the community at large.

Chair Wolfe noted an email that had been sent around concerning possibly reopening the Orion public hearing, only on the blasting issue. He suggested that the Board should discuss this. Mr. Kelley said he wasn't averse to that idea. Councilor Smith read minutes from the December 4, 2013 meeting where the idea of reopening the public hearing if needed was suggested by Mr. Williams. Chair Wolfe said the Board could bring this idea up under the Orion agenda item.

**Councilor Robin Mower, Faculty Road**, said no agenda was posted on the website for this meeting. She suggested that the Planning Board website needed some revamping because it was tricky to find things.

She said an important point had come to her attention, regarding concerns among some residents that they didn't know what the Planning Board thought about the large projects before them. She said she hoped that before Board members voted, they would make their positions and the arguments for them clear.

She also said she continued to be troubled that information came in as late as a half hour before a meeting, some of it critical. She said this did a disservice to all parties, and asked that the Planning Board discuss this at its next planning meeting that focused on policies and procedures. She suggested that a short roundtable be added to meetings, to allow Planning Board members to ask the Planner general questions. She also said the Board didn't get the reports from Planning Board representatives to other Town boards and committees. She said these things could be helpful to members of the Board.

Councilor Smith endorsed Councilor Mower's comments, stating that it was very important for Board members to discuss general issues affecting them. Mr. Kelley agreed that it had been difficult to find the agenda on the Planning Board website.

**Maggie Fogerty, Dover, NH** said she was there to urge the Planning Board and other relevant boards to utilize leverage to hold contractors to the highest standards in the treatment of their workers and at a minimum, to the fullest compliance of state and federal labor laws. She said two years ago, she was contacted by nine carpenters who had been working for 4 months at the Cottages, mostly without pay. She provided details on this and noted that they had been threatened when they asked to get paid. She said concerns went to the Town Council, which was dismayed that this had happened. She said the concerns were taken to Capstone, which said it was the fault of the contractors on the job. She said it took a significant mobilization of faith leaders, residents, students at UNH, lawyers and State and federal officials to finally get these men paid the tens of thousands of dollars they were owed, and to get Capstone and their contractors fined for their offenses.

She said at the time, they recognized that this was a significant learning moment, and that there might be something done at the time of approvals to act against wage theft and to promote the rights of people who would be working at these jobs. She asked if that conversation had continued in Durham, as these large projects were considered, and if some concrete expression had been made to make sure this didn't happen again. She offered her support for worker rights, from the American Friends Service committee.

**Beth Olshansky, Packers Falls Road,** thanked the Planning Board for the tremendous amount of time they were putting into their work, and said she supported the idea of setting a finite ending for meetings. She also said she wanted to talk about the number of students in projects downtown. She said in putting together conditions of approval, she hoped the Planning Board would set finite numbers for each project, and as part of this should set the number of occupants, not the number of beds, noting that the number of beds could double the occupancy of some of these buildings. She said this would be useful, given the sensitivity in Town about being overrun by students.

**Councilor Diana Carroll, Canney Road,** said the property management part of the conditions of approval were very important, and said it seemed that the number of residents allowed could be put in there, and the language could be such that they didn't end up with a doubling of the population. She said it would be the responsibility of the owners to see that the property was managed in that way.

She said it was wonderful that Ms. Fogerty had spoken, noting that she had done tremendous work on the workers' rights issue in Durham. She said if it was possible to put something in the conditions of approval on this issue, she supported doing this. She noted that it came out at the time when the Council discussed that issue that the Town followed and obeyed federal labor laws. She said while the Town followed those laws, it didn't hurt to reiterate that, and also said it wouldn't hurt to be reminded of what was in those laws, and the standards that should be kept. She said there were ethical developers who wanted to follow these laws, and didn't want to be in a situation where peoples' labor was compromised.

Councilor Mower thanked Ms. Fogerty for her words. She said it was her understanding that the Board couldn't put something into the conditions of approval that said a federal law needed to be followed, but said she recalled discussions by the Council on this issue. She suggested that conditions of approval could include a reminder that the Town obeyed federal labor laws, for subcontractors who might see the document.

**VII. Public Hearing - 17 & 21 Madbury Road.** Formal site plan and conditional use application for "Madbury Commons," a complete redevelopment of multifamily site known as "The Greens" for **mixed use project** with student/multifamily housing for 126 residential units and approximately 490 beds, office/retail, and several public spaces. **Golden Goose Properties**, Barrett Bilotta, Ken Mr. Rubin, and Eamonn Healey (applicant); Rose Lawn Properties, Laura Gangwer (owner of 17 Madbury); GP Madbury 17, Barrett Bilotta (owner of 21 Madbury); Michael Sievert, MJS Engineering (engineer); Shannon Alther, TMS Architects ; Robbi Woodburn, Landscape Architect. Tax Map 2, Lots 12-3 & 12-4. Central Business District.

Mr. Rubin first thanked the Planning Board for the weekly meetings and the overtime work they were doing. He outlined what he would like to accomplish at this meeting.

- Outline of timeline envisioned, through approval
- Sharing of outcome of technical review by Tighe and Bond
- Most recent iteration of the architecture
- Discussion of conditions of approval language, starting with resolution of the occupancy/beds issue.

Mr. Rubin said Golden Goose could live with a February approval, but he asked that tonight there be a resolution of the occupants/beds issue because it was a lynch pin issue for the project. He said they hoped to get through the remaining conditions of approval language at the January 29<sup>th</sup> meeting, and noted that there had been very little push back from Golden Goose on that process. He said in February, the Board would see the remaining deliverables, and said some of them would hopefully be precedent conditions, which would lighten the load on the Board without compromising anything.

Chair Wolfe said Mr. Behrendt would like the Planning Board to determine if this was a development of regional impact. Mr. Behrendt said he should have asked the Board to take action on this sooner, and said he had assumed it would not be, which was a bad assumption given that there were 500 new beds, and there would be a net of 350 beds on the site. He provided details on the State statute concerning projects with possible regional impact, and said it was up to the Planning Board to determine this. He said the only criterion that appeared to be germane was the number of dwelling units compared to the total number in the communities. He also said he thought it was reasonable to think in terms of the number of beds, for Durham, rather than the number of dwelling units.

He said he didn't think Orion was a project of regional impact, but said this should be clarified during that agenda item. He said he thought the Board could go either way regarding the Madbury Commons project. He provided the numbers on this in terms of

new beds, and the process that would be followed if the Board did decide that the project could have a possible regional impact.

Mr. Rubin said he would like to understand what the units in the numerator and denominator would be. He also said since the residence would be open to all age groups, both the numerator and denominator should reflect this, and said a case was therefore to be made that 8% was not the number.

There was discussion about using the regional impact statement from the Peak project in order to give the Board some idea of whether a regional study would be useful for the Madbury Commons review process.

Mr. Kelley said he had wanted to see what the regional planning commission offered the Planning Board regarding the regional impact process, for the Peak project. He noted that the big concern had been the number of houses and their effect on the regional market, but said this wasn't addressed as part of that review process. He said there seemed to be a standard checklist of items that were addressed, and said while the recommendations were valid and well received, they were very site specific. But he said didn't want to judge whether this process should be used concerning the Madbury Commons project.

Councilor Lawson said having the regional planning summary for Peak was very helpful, and said after reading it he clearly believed that the Madbury Commons project wasn't a project of regional impact. He said much of what was covered was not valid for a downtown site. He also said he agreed with Mr. Kelley that what had been evaluated relative to housing for Peak was not applicable, because they weren't looking at the impact of increasing housing in Durham on other communities, and were looking at population growth, displacement of people, and whether housing would need to be built in other places and if there would be impacts on cross border development. He said he didn't believe there was a regional impact from the project.

Councilor Smith said during the run-up to the Capstone decision, he attended the regional impact hearing at SRPC, as a representative of the Planning Board. He said Capstone was a bigger project than Madbury Commons and was close to the town border, but the decision was that there wasn't a regional impact. He said this project would have much less impact, although it was part of the cumulative impact of student housing on neighboring communities. He said presumably fewer students would rent apartments in Dover and Newmarket, but said he didn't think this impact was measurable in any significant way.

Mr. Parnell said the Board had determined with the Capstone and Peak projects that they should be considered in terms of possible regional impact because they were both located close to neighboring communities, both had traffic issues, and the Capstone project had a possible major impact on the environment, especially the Oyster River. He said none of those issues applied to the Madbury Commons project, so the Board would be correct in saying that it was not a project of regional impact.

***Richard Kelley MOVED that the Planning Board does not find that the Golden Goose-Madbury Commons project is a project of regional impact, in accordance with RSA 36-54. Lorne Parnell SECONDED the motion, and it PASSED 6-0-1, with Jen Pribble abstaining.***

Ms. Pribble said she had abstained because she hadn't been through this process before, and hadn't had the chance to review the Peak regional impact document.

It was noted that the response document to the Tighe and Bond review had just been provided to the Board, so they hadn't had a chance to review it.

#### Architectural update

Mr. Bilotta showed the Board the most recent rendition of the architecture for the project.

- Southern building, elevation along Mathes Terrace – diamond shaped windows have been added; entrance to student housing doorway has an archway
- Northern building – interior courtyard elevation now has a paneled window serving as a Victorian era accent. Also changed garage doors to become carriage style doors that will open from the middle. Courtyard area has bracketed posts for the overhang to provide more of a New England feel. The third gable has come back, in a smaller form.
- Madbury Road elevation – the style of windows on the second and third floors has been revised. The five story portion at the rear of the northern building now has a downspout option to deal with rain hitting the roof.
- Color selection – there are a variety of options, which play off of the roof color. The main vision with the use of color in the project is not to have a patchwork quilt, and also to have colors that blend in with surrounding buildings.

Ms. Tatarczuch asked about the various niches in the façade of the buildings, and whether they would be well lit at night. There was discussion, and Mr. Bilotta said they would be lit appropriately. There was also discussion about the placement of the security offices adjacent to the main entrance for residents.

Mr. Behrendt said ultimately when/if the Planning Board approved the project, it would need to approve the architecture. But he said his sense was that the Board was fairly satisfied with it, and said he believed the architecture was great, and met the architectural regulations. He said any architectural items the Planning Board thought were fairly straightforward and would be relatively easy to address and would not impact the site plan could appropriately be included as precedent conditions. He noted the color of the buildings as a good example of this.

Mr. Kelley asked about the south elevation, where there was green on the roof shingles, and Mr. Bilotta said it may have been a mistake in the printing. Mr. Kelley noted sheet P2, top graphic, south elevation, at the far left, behind the large tree there were two windows, and almost a third. Mr. Bilotta said it was a style element from the Victorian

era, and he provided some details on this. Mr. Behrendt said it probably needed to be refined a bit.

Ms. Pribble said there were a lot of different architectural styles going on. She said making it look like it was established over time was a good idea, but said some of it, for example some of the window treatments, seemed out of place and inconsistent. Mr. Behrendt suggested that the Board should email him about any additional concerns about the architecture, and said he would speak with the architect about them.

Mr. Rubin spoke next on the occupancy issue. He noted that at the last meeting, he had outlined the rationale for why 525 residents was the right number, and said he would speak further on this. He also said he would speak about the implications of whatever number they came up with. He said the reality was that when they filed the application, the formal application was for approximately 490 residents/beds, which was pretty much where they were today. He said they were off by 7%, but said their estimation had been an approximation, and said 525 was within the expected range of such estimation, and didn't result in a material change. Mr. Rubin stated that they were happy to accept a total occupancy number of 525.

He said this was not the case of a developer being deceptive or trying to max out the occupancy at the last minute, and was more about trying to catch up with a project that was spiraling up in its costs in an effort to respond to the Town's requirements. He said Golden Goose had been saying yes a lot over the last six months, and a lot of this had resulted in a higher quality, more valuable project, but also a more expensive project.

He said it wasn't clear what the precise number was until the floor plans and site plan were known better. He said in accommodating the Interoperability Lab (IOL), they were able to determine the actual number. He said some of the cost increases came from the increase in the cost of capital and materials, noting that the cost of materials had increased about 3%. He said this project was 27% more costly than the pentagon design was.

He said overall, the construction costs were resulting from the creation of two separate structures as opposed to the pentagon design. He said this meant more exterior walls, different foundation work, a doubling of mechanical systems, multiple different building heights to address mass issue, etc. He also said a lot of public space has been created, with pervious pavers, landscaping, a \$70,000 bridge, tree replacement, etc., which resulted in cost increases.

Mr. Rubin said when they got to the point of doing the overall floor plan, they realized that although the building utilized the site well, including making use of dead space in the back to activate the brook, the space for optimizing the square footage for residents was not ideal, and they were stuck with a lot of dead space. He said the inefficiency of the interior space as therefore part of the equation.

He said the IOL was not the icing on the cake, it was the cake. He said it was a net positive, but did bring with it some very specific IOL based costs.

- requirement of podium and steel construction frame on first floor
- special membrane, waterproof to insulate first floor from mishaps on upper floors
- special soundproofing
- loading dock
- fancier, separate entrance way
- more precise HVAC system
- dry sprinkler system
- etc.

Mr. Rubin said the difference between 490 and 525 was a result of trying to keep pace with the very costly changes. He said the difference in the numbers was in the normal range, for some sound, cost based reasons. He said they had every commitment to completing the project anywhere north of 500 residents. But he said he wanted to explain the consequences of moving away from 525. He said they were confident that with this number, they could fulfill their full vision, and would build a project that they all could be proud of for 100 years.

He said below 525, there would be a very good project, but cost engineering would need to be done to bring it within the budget. He said some compromises would need to be made, and he noted some possible examples of this:

- reduction in tenant improvement budget and rent subsidy that would have incentivized possible commercial tenants
- reduction in cost for materials - siding, shingles, etc.
- elimination furnishings for the units
- elimination of \$70,000 bridge, and replacement with a bridge that didn't cost as much
- cost reductions regarding window aesthetics
- impacts on operating expenses for security, etc.

Mr. Rubin said at 525 there would be a development that would be an asset to the Town for years, and below that, compromises would need to be introduced. He encouraged the Board not to be short sighted, and said ten years from now, the issue of 525 beds vs 500 beds would be trivial. He noted the solid property management plan and the intention behind it. He said they all wanted to have a first rate building in place. He said they had been a good partner with the Town, and had been saying yes to almost everything over the past 6-8 months. He said they were asking to be able to pay for some of these yeses.

He said this was the moment to transform the Greens, including bringing in the IOL, which would have a strategic impact on Durham, help create a sub-economy around technology, create high paying jobs and create valuable public space for the Town.

Mr. Kelley said he was under no preconceived notion that the application read nothing but 490 beds, and noted that it said approximately that number. He asked Mr. Rubin if the Board could be assured that if the 525 number was approved, they wouldn't be arguing about the 99 cents tie concerning site amenities, furniture, the bridge, etc., and would get the tie that was appropriate for the \$1000 suit.

Mr. Rubin said philosophically, the answer was an absolute yes, but said it was hard to say that with every item that came up they would go whole hog, because that wouldn't be responsible financially. Mr. Kelley said he realized that, and also said the Board needed to be reasonable regarding some items. Mr. Rubin noted Golden Goose's actions over the past year, and said the project they were prepared to fund was an expensive project. He said there were plenty of opportunities to cut costs, and said the company hadn't taken advantage of those opportunities.

Ms. Tatarczuch said it had been said that everything relied on the IOL, but said it surprised her that part of Golden Goose's agreement with the IOL wasn't for the IOL to absorb some of the costs for the specialized build-out in the structure. She noted that she had seen elsewhere that this could happen.

Mr. Rubin said it was incorrect that everything hinged on the IOL. He said it wouldn't stand on its own as a project, but said it worked within the overall context of the project. Mr. Healy explained that the decision had been made to build the cost of improvements into the future rent structure, with Golden Goose paying for them upfront.

Ms. Tatarczuch asked why the number of occupants had to be 525 rather than 500, if the buildout cost the IOL was requiring was eventually being paid through its rents. She said she didn't believe this cost should be absorbed by those renting the apartments, and instead should be paid by the IOL rent. Mr. Healy said the IOL was one of the cost factors, but said Mr. Rubin had also outlined the additional costs that had come along with the student housing portion of the project. He said it was the overall project that needed to be looked at, which the IOL was part of.

Councilor Smith noted that at the last meeting, he raised the issue of the statement in the fiscal impact analysis regarding 630 beds. He asked if this was a mistake in the analysis, and Mr. Rubin said Golden Goose had retracted this report, and it was being that regarding-published. He said they would accept approval language with a cap of 525 residents. He said there was no gamesmanship or maneuvering concerning this, and said they were shooting for that. He said anything said contrary to this at previous meetings or in publications was no longer relevant.

Mr. Healy said they hired the consultant to prepare the fiscal impact study, and had treated it as an independent document, so the first draft didn't include their participation. He said when it was realized there were errors in it, they fixed them. He noted that they were close to having a revised fiscal impact report.

Mr. Parnell said in the interest of moving things along, he would like the project description in the Notice of Decision to state as follows: "...126 dwelling units, with 525 beds/residents, office retail and parking..."

Chair Wolfe noted that he'd read the Minutes of the ZBA meeting where Golden Goose's variance application was approved. He said at that meeting, the ZBA was presented with 124 units, each with 4 beds, for a total of 496 students at Madbury Commons, and said

the ZBA's decision on the application was based on that number. He said this number was mentioned by Mr. Mr. Rubin and the attorney at the ZBA meeting. He said the number of students and their impacts on the neighborhood would be one of the factors the ZBA considered in its deliberations, and said he wondered if their decision would have been different regarding the 525 number. He said he didn't know the answer to this question.

Mr. Rubin said in July, with very immature concept designs, that was the estimation. He said nine months later, they were approximately 6% off of that number. Chair Wolfe said Golden Goose was before the Planning Board based on a variance for 496 beds. Mr. Healy said against this was that the ZBA had approved 30,000 sf of commercial space, and now they were at 43,000 sf, which more than counterbalanced the number of beds issue. Chair Wolfe said he wasn't the ZBA, and was stuck with the representations made at that meeting.

Mr. Kelley asked whether with 525 beds, commercial space on the entire first floor of the southern building could be accommodated. He noted some suggestions made during the public hearing about this issue. Mr. Rubin said they believed that if they had 525, they could add about 1200 sf of commercial space on the first floor and still be within their financial constraints.

Councilor Lawson said bringing that into the equation, the 525 number became more workable. He said one of the benefits to the community was the commercial space, and said an additional 1200 sf of commercial space in that building and location would be very important. He said it was a reasonable benefit to the community, with the additional students.

He also noted that the property management plan for the development was excellent, and was the benchmark for future plans. He said after reading it, he didn't have concerns that Golden Goose would be able to manage 35 additional students. He noted that the number in the site plans had been 490, and said early concepts included similar numbers. He said the additional 1200 sf of space along with the property management plan made the 525 number workable.

Ms. Pribble asked how the number could be increased to 525 while the available apartment rental space on the first floor of the southern building was being reduced. Mr. Healy explained that they had been struggling with the dead space in the interior of the northern building, and said once they had the final number of beds/residents, they could finalize the drawings. He said they would find room for the additional numbers by expanding some of the bedrooms in the dead space.

Mr. Healy explained that the 1200 sf of commercial space would be put at the brook side, so would round out the back of the building, which was a very attractive place to put a nice retail space. He said there would be no amendment of the site plan, in including this additional 1200 sf of commercial space, and said there would be a more efficient use of

the interior space. Mr. Behrendt said a portion of the area at the back of the southern building that was currently residential would become commercial.

Ms. Pribble asked about the increase in height proposed with this project, and Mr. Behrendt explained that special approval by the Board was needed in order to go up to 50 ft.

Mr. Williams said if the lease with the IOL didn't mature, a question was whether Golden Goose would go back to plan B. Mr. Rubin noted that Golden Goose had agreed at prior meetings to make the IOL lease a precedent condition. He said if the lease didn't go through, they would have to go back to plan B. Mr. William said it seemed that Golden Goose held tight to the 525 number because it fulfilled their vision and validated the construction up to 100 years. Mr. Rubin said they had done the math, and 525 was the number they were comfortable with in order to sign up for all of the obligations that had been discussed.

Mr. Williams asked if Golden Goose would still want the 525 number if there was no IOL. Mr. Rubin said no, and said the number would be higher. Mr. Williams summarized that the 525 number was tied to the IOL being part of the project. He asked what percentage of occupancy they were anticipating, and Mr. Healy said they projected 90% over the long haul. He provided details on this.

Councilor Smith said before the IOL was involved, 490 was on some documents and 460 was on others. He said only after the IOL was involved did 525 come to the surface, and he asked why more tenants would be needed if they had to go back to the original design without the IOL. Mr. Rubin said there had never been a 460 number associated with this project. He said the information learned through this process included the IOL but also include other factors. He said it was all of the pieces coming together that resulted in the cost. He also said a 7% fluctuation should be an expected tolerance level to get from an estimation to an ultimate outcome.

Councilor Smith asked if there would be another 7% increase over the 525 number at some point. Mr. Rubin said Golden Goose believed that 525 residents/occupants was sufficient to allow them to fulfill the 2015 version of this project and for the ensuing years. He said they had no intention to come back with alternative plans, although noting that their crystal ball wasn't transparent, so they didn't know what would happen in 25 years.

Ms. Pribble asked what the 525 number worked out to in terms of square footage per resident. Mr. Healy said once they got the number tonight, they would design the floor plans and follow-up with the Board on exactly what that was. He said it would be greater than what was in the Zoning Ordinance. Mr. Kelley said what was put out in the past was 75 units at 1035 sf, 17 units at 1200 sf, and the rest of the units were at 850 sf. Mr. Rubin said this came out to a square footage in the mid-200's, and said the exact number would be known when they knew the number of residents that were allowed.

Mr. Kelley asked how Golden Goose was doing with the list of items to be addressed. Mr. Rubin said after the number of residents issue, they would like to start going through and agreeing on the draft COA. Mr. Kelley said he didn't think the Board would get to the COA this evening, but would like to hear what the public had to say on the issue of the number of occupants.

The Public Hearing was re-opened concerning the issue of the number of occupants/beds. It was noted that the hearing would also be continued to the next meeting.

**Steve Fink, 11 Fellows Lane**, commended the Planning Board for listening to what people had to say. He noted that there were going to be 17 units with 5 occupants, and said it might be better if the apartments were designed so that there was 4 occupants and the remaining space from the 5<sup>th</sup> bedroom was put toward the common space area in the apartment. He said perhaps it could therefore be 525 beds minus 17 beds.

**Nancy Webb, Woodridge Road**, said at a public hearing this fall, Ms. Olshansky was told that Golden Goose was committing to a 295 sf unit. Ms. Webb said she would like to see that number honored. She said Steve Fink had suggested a way to re-envision the space, and said if this was adopted, there would be 16 higher quality units, fewer students and a square footage figure that was more in line with what they were originally told.

**Beth Olshansky, Packers Falls Road**, said that regarding the number of students and square footage, they couldn't have both. But she said it was important for the Board to remember why the Zoning was changed downtown to encourage larger units. She said she realized Golden Goose was grandfathered concerning this, but said they were hoping the apartments created would be more attractive and viable for other populations down the road.

She said it was important to consider what the square footage per occupant was going to be and if it had gotten considerably smaller. She noted that there had been discussion recently about building non-weight bearing interior walls, so that if in the future UNH became a major online university and there were fewer students living in Town, there would be an opportunity to turn some of these units into other kinds of residential living. She said the Board should think about the number of beds, the square footage, and whether the units could be retrofitted to accommodate other populations.

Mr. Rubin said each of the 126 units would have a self-contained living area, which was a common room integrated into a kitchen area. Ms. Olshansky said she still thought it was an interesting idea that some of the odd shaped units could include a study area or additional community space, as a way to play with the square footage per occupant number.

Mr. Rubin said even though the project was grandfathered, they weren't going down to what was previously allowed in terms of the square footage per person, and he provided details on this. He also said the attractiveness of a unit shouldn't be looked at in terms of square footage. He said there were a lot of lousy units in Durham that were large, and

said Golden Goose intended to invest in the quality of the units in terms of construction, furnishing and security.

**Councilor Diana Carroll, Canney Road**, said she'd been away, and when she got back had learned that the units would have either 4 or 5 occupants. She said a few months ago, Mr. Rubin had said there would be a variety of units with different numbers of bedrooms. She noted that there had been discussion about putting 1 or 2 bedroom units in, which might be available to non-students.

**Ethan Ash, 9 Madbury Road LLC**, said he supported the idea that the variances granted were based on a plan from August, including the 460/490 number and a particular number of parking spaces. He said they couldn't support the plan with the changes that had been made.

**Councilor Robin Mower, Faculty Road**, said she had listened carefully to Mr. Rubin's justification for the larger number of beds than anticipated, and said it was hard to argue with the reasoning. She said she was concerned about the larger number of beds but said on the other hand, she would much rather have good quality, and said she was concerned that if they cut too tightly on the project they would end up with lesser quality. She also noted an issue beyond the purview of the Planning Board, and said she wished that the property owner would listen very carefully to what the community was saying, and would reconsider the terms of the agreement with the developer.

Mr. Kelley asked Mr. Behrendt what he thought the best course of action was for the Planning Board in order to establish the number of residents on the application. Mr. Behrendt said it would be useful for the Board to come up with a number now, and to take a vote on this. He said the applicant was coming forward in good faith, and said he thought they had said yes a lot, during a long process. He said it was a great design and was much more expensive.

He said if the Board wanted to change this number later, the motion would have to come from someone on the prevailing side of the motion. There was discussion about possibly voting on an amendment to the current description in the Notice of Decision. Chair Wolfe said he would only support a motion if there was language concerning increasing the commercial space on the southern building by 1200 sf. He said that would be in line with what the ZBA had been looking at.

Councilor Lawson suggested that the motion could memorialize this discussion, with the anticipation that when the Notice of Decision was finalized it would reflect that.

***Richard Kelley MOVED that the Madbury Commons development has no more than 525 residents, provided that the site plans and architectural plans submitted to date do not change significantly; provided that a minimum of 1200 additional square feet of commercial space is established in the southern building; and provided that a minimum of 75 units achieve 255 sf per resident. Lorne Parnell SECONDED the motion.***

Mr. Williams said he had heard from Mr. Rubin that the 525 number was contingent on the IOL lease. There was discussion that the application before the Board included the IOL, and if the lease didn't go forward, there would need to be another site plan.

Ms. Pribble said even though the 255 sf per resident was grandfathered, it was small. Mr. Kelley said Durham was a series of contradictions, in that they discussed increasing the density in the Town, sustainable living, energy efficiency, etc. He said additional space for the units would require additional HVAC requirements and would mean increased energy costs. He also noted that the applicant was within 50 ft of meeting the current Zoning requirement. Ms. Pribble said she had lived in a 300 sf apartment, and it was tight.

Councilor Lawson said the metric he would use was that with the floor space the project had now, Golden Goose could have 627 residents but was asking for 525. He said this was a material demonstration that the applicants had tried to move closer to the current Zoning Ordinance than what they were grandfathered for.

***The motion PASSED 6-1, with Jen Pribble voting against it.***

***The Board agreed to continue the Public Hearing to January 29, 2014.***

Mr. Kelley asked the applicants to challenge the architect to find as much dead space as possible, and to convert as much of the southern building to commercial space as possible.

**VIII. Public Hearing - 49 Main Street.** Design Review for redevelopment of a commercial site with a three-story **mixed-use building**. Paul Eja, proprietor of **Pauly's Pockets**, applicant; Michael Sievert, MJS Engineering, engineer; Clint Forrest, building designer. Tax Map 5, Lot 1-2. Central Business Zoning District.

Mr. Sievert said he was there to continue the design review process with the Planning Board.

- The site plan now shows how the project would work and fit into the corner space, including access by pedestrians. Plan now shows how building will fit on lot, allows a 9 ft plus area as patio along Madbury Road, and smaller area in 4 ft range; integrates with and enhances the park area, and tie in better to Durham Market Place property.
- The quitclaim deed has been provided that allows the DPW to work on that property; and shows the easement area, which covers a triangle as well as a 10 ft strip to Mill Road, all the way down to the entrance of Mill Plaza. The easement addressees grading, landscaping, etc.
- The draft landscape plan shows how the triangular piece could be utilized. Mike Lynch has met with owner rep of Mill Plaza to start the discussion on exactly how this space would work out. Plans will be sent to the owner for his review.

- The hardscaped plaza area is all on private land, which the Town has an easement to do grading and landscaping on
- Updated architectural elevations have been provided.

Mr. Sievert stressed that this plan was not the final plan, but showed how things could lay out and how the grading worked. He said there were ongoing discussions with the owner of Mill Plaza on possible options.

Mr. Kelley said the ramp off of Main Street going to the back of the building needed a level landing, where the path split, given the 7% grade for some distance. There was discussion, and Mr. Sievert provided details on what was proposed. Mr. Kelley asked about the PSNH issue, and Mr. Sievert provided details on how a truck would be able to come in and access the transformer.

Ms. Tatarczuch asked what the ADA requirement was, and Mr. Sievert said the maximum grade for a ramp was 8.33%, and could only run for 30 ft before there was a level landing. He said they were under the maximum slope, at 7%, but might not be meeting all of the related criteria right now. He said anything over a 5% slope required railings, which also wasn't shown on some of the plans.

Councilor Smith asked if there were plans to widen the sidewalk out into the street, noting that right now it was quite narrow in front of Pauli's Pockets. Mr. Sievert said he didn't believe the Town was interested in doing this based on discussion so far. There was discussion. Mr. Sievert said the applicant proposed not to widen the sidewalk. He said the granite walls would go away and become steps up to the patio area. Councilor Smith noted that the property line got closer and closer to the street, going up the hill on Main Street.

There was discussion that the plan in the packet didn't include the most recent landscaping information the Board was now looking at.

Chair Wolfe asked if Planning Board members had suggestions for inclusion in the plan. Mr. Kelley said he liked the direction the architectural renderings were going in, and liked the design for the park area. He asked Mike to speak to Town staff about the Plaza section of the park. He said while it was a public park, but would be tied to private use and the commercial elements in the building. He also said a remaining question was what to do with the curb line on Main Street/Mill Road.

Chair Wolfe asked if there was anything lacking in the design at this point. Mr. Sievert said he would like to have one more design review, given discussion with the Mill Plaza owner on alternative design options. He said it would be appropriate to bring some of these forward for the Board to look at. Chair said the project was a great addition to Durham, and said he would like to see the engineering for the project started.

Mr. Sievert noted that the construction timing would ideally be at the end of April. He said he had wanted to show some updated architectural renderings with slides, but the

computer wasn't working. It was agreed that these could be shown at the February 12<sup>th</sup> meeting.

***Richard Kelley MOVED to open the Public Hearing. Jen Pribble SECONDED the motion, and it PASSED unanimously 7-0.***

**Allison Adamczyk, 74 Madbury Road**, noted pedestrian crossing issues in the area near Pauli's Pockets, and said she had seen in other communities where some type of posts/fencing could be used to guide pedestrian flow more safely. She asked that the Town consider doing this, as an improvement to the Town and the project. Mr. Kelley supported Ms. Adamczyk's comments, noting that pedestrians didn't use the crosswalk in that area. There was discussion about how small the crosswalk in front of Libby's was.

**Councilor Robin Mower, Faculty Road**, said this project presented an opportunity to make an improvement in the traffic pattern there for pedestrians and bicyclists. She said the narrow sidewalk could be widened, and not necessarily at the expense of the property owner. She noted discussions on a bike plan for the downtown, as well as the issue of one way or two way traffic on Main Street. She said it would make sense for Mr. Behrendt to discuss ideas for this location with the TSC, and to consider this area in an overall sense rather than looking at things on a piecemeal basis.

**Councilor Julian Smith, Packers Falls Road**, said he would speak as a member of the public, and he went up to the podium. He said during the development of the Plaza project in the 1960's, he attended the public hearings. He said the applicant had just presented two interesting documents, one of which showed a bone of contention at that time, which was the fate of the Isabella Smart cottage.

He said it was torn down, and said a reason the developers were able to get what they wanted was shown on the quitclaim deed, which explained how the Town got the easement for the public space being discussed now. He said he appreciated it that the applicant was doing much more with the interface of his property, and said Ms. Smart would be very pleased with what was proposed for what used to be her yard.

**Beth Olshansky, Packers Falls Road**, said this project was an exciting opportunity for the Town, and said it was really important that this be a really nice building, and that the commercial space would be viable. She noted the issue of the setback commercial space, which would be hard to see from the street. She said she understood why it was proposed to be constructed this way, but said at the end of the project, a wall could be built there that would eliminate the setback, and the area could be used for display for merchandise, etc. She said it was basically dead space because it didn't get any sun, and said as designed now. She could imagine it being used for spillover from Libby's.

She determined that this area was 9 ft deep. She said perhaps there could be interior café seating there that looked out on the road, so the space could be utilized better for the benefit of the businesses. She said she liked some of the architectural details that had been added, but said the building still had a blockiness to it so there could be more detail.

She noted that Libby's trim wasn't white, and suggested that the trim for the proposed building should be like that or some other color than white.

***Richard Kelley MOVED to continue the public hearing to February 12, 2014. Lorne Parnell SECONDED the meeting and it PASSED unanimously 7-0.***

- IX. Modification to approved site plan for mixed-use building to use one of two on-site parking spaces for a utility trailer that will transport solid-waste containers.** Michael Sievert, MJS Engineering, engineer; Matt Crape, property owner. Tax Map 4, Lot 8-0. Central Business Zoning District.

Mr. Sievert said he represented Mr. Crape, and said they were ready for approval. He said the payment of the parking fees had been taken care of.

Ms. Pribble recused herself because she wasn't at the meeting where this matter was discussed. Ms. Tatarczuch was appointed as a voting member.

There was discussion on condition #4, and the Board agreed that it should say: "The no parking strip for pedestrians to the south of the building shall be kept open at all times".

Mr. Kelley suggested a revision to the wording in condition #5 to address possible blockage of the end of the sidewalk that would prevent wheelchairs from getting down to the pavement: "No vehicle or trailer may extend beyond the western face of the building and obstruct the sidewalk along Jenkins Court."

***Richard Kelley MOVED to approve the Modification to the approved site plan for a mixed-use building located at 2-10 Jenkins Court Tax Map 4, Lot 8-0 in the Central Business Zoning District, to use one of two on-site parking spaces for a utility trailer that will transport solid-waste container, along with the conditions of approval as amended this evening. Lorne Parnell SECONDED the motion and it PASSED unanimously 6-1, with Linda Tatarczuch voting against it.***

Ms. Tatarczuch said she didn't like the looks of the containers on the trailer, when they were shown to the Board. Mr. Parnell noted that the conditions of approval said the trash receptacles could not be kept on the trailer. Ms. Tatarczuch said she was still concerned about that.

- X. 25-35 Main Street. Formal site plan application to redevelop three lots into a mixed-use student housing project.** The proposal involves rehabilitating the houses at 25 and 35 Main Street, demolishing the houses at 27 and 29 Main Street, demolishing/relocating the barn in the rear, erecting two new houses fronting on Main Street, erecting two large new buildings, one in the rear and one fronting on Main Street, for 179 residents (exact number to be determined) and commercial. **Orion Student Housing**, Bill Fideli and Philip Wills, applicant; Bob Clarke, Allen and Major, engineer; Lisa DeStefano and Adam Wagner, DeStefano Architects, architect; Tim Phoenix, attorney. Tax Map 5, Lots 1-6, 1-7, and 1-8, Central Business District.

Chair Wolfe noted that there had been discussion about reopening the public hearing so residents could have the opportunity to comment on the blasting issue.

Bill Fideli of Orion said Ken Smith of Maine Drilling, which was the pre-eminent company in New England that did this kind of work, would speak with the Board about the blasting issue. He also said there were four outstanding items to be addressed with the Board, three of which related to conditions of approval and the fourth that was concerning blasting. He said Mr. Clarke and Mr. Smith had spoken extensively with Mr. Behrendt, Mr. Cedarholm and Mr. Power from the Fire Department, and said the discussion had gone extremely well. He said he didn't think the public hearing was warranted, but said he would defer to the Board on this.

Mr. Smith said he'd been in the industry for almost 40 years, and provided details on his background. He noted the following:

- Main Drilling doesn't look at all projects on the same scale, in terms of the blast design.
- Charges are determined by the proximity of the closest structure that is not controlled by the project. Blasting vibration and audio levels are required to be kept to a safe level, which is dictated by the closeness to the closest structure
- With this project, the distance across the site is 160 ft, so at the very most remote location on it, it won't be more than 80 ft away from the offsite structures.
- The charges therefore have to be very small; the zone of influence is drastically reduced here compared to a project that is more remote. This has nothing to do with the total volume of rock that is there, and has to do with amount of energy that can be release in a given instant.
- Pre-blast surveys - over the years, the concept has been that small is good but bigger is better. The state of New Hampshire has a 100 ft radius level, and Massachusetts is 250 ft. Towns in southern NH have increased beyond 100 ft to make sure that everything is covered.
- For this project, a scale distance 50 would only allow charges less than 20 lbs per delay, which would suggest that at 250 ft, there could be charges of 25 lbs per delay. He said 250 ft seemed like a more than adequate number based on the scale of this project. He said he didn't see a reason not to scale the pre-blast survey to what the project was.
- The information circulated to the Planning Board regarding the carbon monoxide issue is very accurate. If there isn't ventilation, the gases released with blasting can migrate. Blast mats and other techniques are used to provide the ventilation, and a CO detector will be put in adjacent structures during construction. This approach has been very successful.

Mr. Kelley noted building A along the eastern property line and said the grading there would require rock excavation adjacent to the property line. He said on the other side was a fieldstone foundation that sat on the same ledge that was to be removed. Mr. Smith said the calculations would have to be done to determine if the charge weight could be small enough to preserve that structure. He also said there might need to be some mechanical removal of ledge. He described line drilling, which created a weakened plane, and said a honeycomb of holes could then be drilled to break up the rock. There was discussion on how long it took to send a drill bit 6 ft into hard ledge.

Chair Wolfe asked what the Board needed to do to ensure that the abutters were protected. Mr. Smith said a pre-blast survey should be done, and also said to ensure that the blast design was safe, a seismograph would be used. He said they would collect site specific information on energy transmittal so they could predict and design the intensities of each blast, and scale them as they moved closer. He said as the process was ongoing, typically they had to produce a blast report of energy levels from each blast. He said this information was relatively easy to interpret.

Councilor Smith said the presentation had been reassuring. He asked if the historical building to the east of the site and across Main Street had been looked at. Mr. Smith said no, but said the compliance graph called out horsehair plaster construction. He said the blast would need to be designed to make sure it was safe for that most fragile material. Councilor Smith said he hoped the fieldstone wall would be looked at as well. Mr. Smith said in doing the preblast survey, they needed to evaluate those things into the design.

Ms. Tatarczuch asked if Main Drilling would be doing the blasting, and Mr. Fideli said it was highly likely that this would be the case. Ms. Tatarczuch said the Board had heard a variety of numbers about what the blast range might be. She said she had lived in a house that was in an area that was blasted, and said there was a significant amount of damage to basement in nearby homes. She spoke in some detail on her experience concerning this, and asked how restitution would be provided if there was some damage from the blasting.

Mr. Smith said if a claim was made, it had to be investigated, and said there had to be a relationship between the level of energy released from a blast and the damage created. He said the technical answer was that blasting could cause damage, but said not all the things that could happen to a home were from blasting. He said he couldn't fault anyone for wanting such an investigation.

Ms. Tatarczuch asked how natural gas lines were managed and protected during blasts. Mr. Smith said if the blasting was held to a level that would be safe for horsehair plaster, a gas line, unless it was right in the blast zone, would be ok. He provided details on this. He said truck traffic, freeze/thaw factors created much greater strains than the amount of blasting they were allowed to do.

Chair Wolfe asked who oversaw Main Drilling's work to make sure it was adequate, and Mr. Smith said this varied from community to community.

John Powers of the Durham Fire Department said there was a simple permitting process in Durham for blasting, and said the documentation was provided to Planning Board members. He said the Fire Department didn't necessarily see a pre-blast survey for a project, but said he expected that they would see one for this project. He said if abutters or others in the area thought something went awry, the department would keep a catalog of that and follow up. He said the Fire Department wasn't typically there to monitor a blast. He said blasting was one of the more heavily regulated operations in the State, and

said local communities could add additional requirements. He said there was a good process in place.

Mr. Kelley asked for a range of time needed to remove 10,000 cubic yards of ledge. Mr. Smith said he would need to actually look at the site and the various factors involved in order to determine this. Mr. Kelley asked for a wide range estimate, and Mr. Smith spoke further about the technical aspects to be considered in order to determine this.

Mr. Kelley asked what percentage of Mr. Smith's jobs resulted in a claim. Mr. Smith said while there could be damage from blasting, it wasn't a common occasion with a reputable company. Jason Riley said he'd been Maine Drilling's Division Manager for NH for five years, and said although claims were sometimes filed, no damage claims had been paid out during that time. He said in his four years in MA, there were no damages paid out.

Mr. Clarke said they did some preliminary estimates, as did Mr. Cedarholm, and were in the 6,000-8,000 cu yard range concerning ledge to be removed. He said after the geo-tech report was received in about two weeks, they would have more precise information on this.

Mr. Williams asked if the Town had formal guidance as to what to expect contractors to observe. Mr. Powers said there were local requirements in terms of notifications and permitting, and he provided details on this. He said he hadn't done a pre-blast survey since coming to work in Durham and provided details on how it was done, indicating pre-blast conditions that could be compared to conditions after the blasting. There was discussion about a possible overlap of two different blasting operations in Town.

Councilor Smith was told there would need to be about 300 truckloads for 6,000 cu ft of ledge. Mr. Clarke said the State regulation was a 100 ft radius, and said Orion was comfortable with 250 ft. He noted the conditions of approval regarding the blasting, and said they were ok with them. He said the biggest item they had an issue with was requiring a 500 ft radius and another 500 ft beyond that.

Mr. Behrendt said the bad news was that there were some very historic, delicate buildings very close, but said because of this the charges were required to be very low, so the distance the energy would travel would be minimized.

***Councilor Smith MOVED to reopen the public hearing, and limit it to discussion on the blasting issue. Richard Kelley SECONDED the motion.***

Mr. Fideli said Orion had been before the Town for 3 years, and had sat through numerous public hearings during that time. He asked if another public hearing was needed now. He also said Town departments had had ample time to bring this issue up.

***The motion PASSED 5-2, with Lorne Parnell and Bill McGowan voting against it.***

Chair Wolfe said the public hearing was being reopened because residents hadn't heard about the blasting issue in regard to this project until recently.

**Councilor Robin Mower, Faculty Road**, said she personally was very disappointed to hear the applicant lay at the feet of the public the responsibility for extending the time during which the application was being considered. She noted the time spent regarding historic district issues, and said she greatly appreciated the fact that the applicant was so responsive. But she said the blasting issue had come up recently, and most members of the public had known nothing about it. She said she hoped the information about the blasting would be communicated to the public. She said the detail heard tonight was helpful, and said this was not a question of delaying the application.

**Andrea Bodo, 20 Newmarket Road**, said she wanted to calm some of the fears about blasting. She said she had personal experience with blasting projects around her in Durham, and she spoke about them. She said the professionals were very careful, and said it was a highly regulated industry.

**Wayne Burton, Madbury Road**, spoke about his experience with blasting, and asked why mechanical means couldn't be used in place of blasting, when the work to be done concerning the ledge was close to houses.

**Allison Adamczyk, 74 Madbury Road**, said when Perley Lane was going on, in November of 2012, her whole house shook. She said she didn't know what the cause was, so had the furnace checked, thinking it might be the cause. But she said the shaking occurred again the next day. She said she found out that the cause was the blasting at Perley Lane, and she asked why she hadn't been notified that this was going to happen. She said she didn't appreciate having to pay to get her furnace checked for no reason.

**Councilor Smith *MOVED to close the public hearing. Richard Kelley SECONDED the motion.***

Mr. Williams said he didn't think it was fair to the public to close the hearing, and said there should be further opportunity for members of the public to speak on this issue.

Councilor Smith withdrew his motion.

**Bill McGowan *MOVED to close the public hearing. Richard Kelley SECONDED the motion.***

Councilor Smith noted that blasting could be a lot quieter and less disturbing to the public than mechanical drilling, etc. He said he was ready to vote.

***The motion PASSED 4-3, with Jen Pribble, Councilor Smith and David Williams voting against it.***

Mr. Fideli said the only issue with blasting was concerning the 250 ft radius, and said hopefully Mr. Smith's presentation was persuasive. He said the State regulation was 100 ft, and Orion was recommending 2.5 times that.

He said two outstanding issues regarding the conditions of approval were condition #31 on page 20 concerning parking leases and #30 concerning parking permits. He asked that they be struck, and noted that Code Officer Tom Johnson agreed with Orion that they could use the parking spaces as they saw fit, and were allowed to park there 24/7.

He said the last outstanding item was the number of residents. He said Orion had been asked to come back with language for the maximum number of residents in the buildings, and said there was language on this in the conditions of approval on pages 2, 6, and 18. He said there were going to be 179 bedrooms, and said by law they were allowed to have 431 residents. He said they were asking for a maximum of 200 residents, and explained that they wanted the flexibility in case a married couple or a family lived wanted to live there. He said it was hard to know what the market would be like over the next few years.

Mr. Behrendt said he thought the Board could get the application done tonight. There was discussion.

***Richard Kelley MOVED to continue the meeting to 11:00 pm. Councilor Smith SECONDED the motion and it PASSED 5-2, with Jen Pribble and Chair Wolfe voting against it.***

Chair Wolfe asked what Orion had told the ZBA about the number of beds. Architect Adam Wagner said this wasn't represented to the ZBA because they weren't applying for a variance concerning the residential space.

Mr. Fideli said the strategy was to have single bed occupancy, but said they wanted to keep things open for a married couple or family. He said they wanted to be able to market to everybody, and didn't think it would be much of an issue.

Mr. Parnell said he thought to go from 179 to 200 residents was too much, and said he would be more amenable to 190. He said if something changed in the future, Orion could come back to the Planning Board.

Mr. Fideli said the average square foot per resident was 380 ft, which was almost 30% greater than what the Zoning Ordinance now required. He said they weren't trying to jam residents into the development.

Chair Wolfe asked about allowing a maximum occupancy of 200 residents, and Mr. Fideli said Orion would be happy with that. It was noted that Mr. Behrendt had recommended this. Mr. McGowan said he was ok with this. Councilor Smith suggested that the conditions of approval should say maximum number of bedrooms.

Ms. Tatarczuch said several people came before the Planning Board who were against the 179 beds. She also noted that there would be no parking available there, so it was likely that the people living there would be students rather than families. She said they would be doing a disservice to residents to expand this to 200 residents, and said she wouldn't be inclined to support this.

Chair Wolfe noted that Orion would provide more square feet per resident than any other project in Durham, which was a credit to them. Ms. Tatarczuch noted the variance Orion had received concerning the amount of commercial space that needed to be provided.

Mr. Fideli said Orion would be happy with a maximum of 197 residents, which was a 10% increase.

Ms. Pribble asked whether if Orion got requests for married couples and was approved for 179 beds, it could come back to the Planning Board. There was discussion that this could be done.

Councilor Smith said no one would be happier than him to hear that 32 families wanted to move in. Mr. Fideli said Orion currently rented to a family, so it was a reality. Councilor Smith recommended giving Orion the 10% increase, which was a maximum of 197 residents for 179 bedrooms. Chair Wolfe determined that all Planning Board members agreed with this except for Ms. Pribble.

There was discussion on condition # 1i on page 3 concerning sprinklers, and it was agreed that it should say "...All buildings within the development shall have sprinkler systems as required by applicable codes", so it referenced more than the building code.

Mr. Behrendt noted items conditions 4-l - Expedited Review, and 4-m- Fire Inspection on page 8, and said while Orion had made some notes concerning this in its review of the draft conditions of approval, the condition should read as stated there. He said this was wording that had been before the Board before, and said it was Orion that had wanted the change.

He said that concerning blasting, one of the two remaining questions was concerning the radius for the pre-blast survey. He said the 250 ft radius made sense based on the presentation tonight. He said Orion also suggested that if there was drilling for blasting, it should be done during regular construction hours. He said he didn't know if there was a question about drilling being comparable to other construction activities. He asked if drilling should be limited to the same hours that blasting was allowed, which was Monday-Friday from 9:00 am to 4:00 pm.

Mr. Smith said there was construction equipment that was more annoying than drilling, and he spoke further about the work his company did on several college campuses. Mr. McGowan said based on what he'd heard, the drilling could be allowed during construction hours. Others agreed.

Mr. Behrendt recommended deferring to Mr. Smith's guidance concerning the 250 ft radius for the survey. There was discussion. Mr. Behrendt asked if Orion would be willing to have a neighborhood meeting to notify the public about the blasting.

Mr. Behrendt noted condition #25 on page 16: "Work in Right of Way. Execute a Memorandum of Understanding or other acceptable approach for encroachment into the Main Street right of way for as stated in Note 23) of the January 10, 2014 letter from Michael Malynowski responding to the Tighe and Bond review."

He also noted condition #26 on page 16: "Porch encroachment. Obtain approval from the Town for encroachment of portions of the new porches into the right of way, as stated in Tighe and Bond review, or modify design, as appropriate." Mr. Fideli said Orion hadn't objected to this language, and said it was fine.

Chair Wolfe said he hadn't been present for discussion on these things, and said Ms. Tatarczuch should therefore vote in his place, since she'd been at the meetings. There was discussion that some Board members might not have the most up to date condition of approval document.

Mr. Orion expressed frustration about the process, and spoke in some detail on this. Chair Wolfe said he understood the frustration, but said it was important for Planning Board members to know exactly what they were voting on. He asked if Board members were comfortable voting now, and several said no.

Mr. Kelley said the applicant had the burden to apply for a water and sewer permit, and didn't do that in a timely manner. He also said the issue regarding ledge was brought up at a site meeting, the Board asked how much ledge there was, and no information was brought forward. He said the Board had to do due diligence, and said if Mr. Fideli couldn't respect the fact that they had an obligation to the Town, they had a serious disagreement. He said he was going home.

**XI. Other Business**

**XII. Review of Minutes:** September 25, 2013  
October 2, 2013  
October 9, 2013  
November 6, 2013  
November 13, 2013

The review of the minutes was postponed.

**XIII. Adjournment**

***Lorne Parnell MOVED to adjourn. Linda Tatarczuch SECONDED the motion, and it PASSED unanimously 7-0.***

Adjournment at 11:07 pm

Victoria Parmele, Minutes taker

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David Williams, Secretary