

Planning Board Workshop Minutes 11/27/12

NEWMARKET PLANNING BOARD WORKSHOP NOVEMBER 27, 2012 MINUTES

Present: Val Shelton (Chairman), Janice Rosa (Vice Chairman), Diane Hardy (Planner), Ed Carmichael (Town Council ex officio), Rick McMenimen, Eric Botterman (Alternate), Elizabeth Dudley, Jane Ford (Alternate)

Absent: Justin Normand (excused), Adam Schroadter

Called to order: 7:03 p.m.

Adjourned: 8:55 p.m.

Agenda Item #1 – Pledge of Allegiance

Agenda Item #2 - Regular Business

There will be a public hearing to amend Title III: Land Use Code and Regulations, Chapter IV: Zoning Ordinance, in accordance with RSA 675:2. The purpose of these amendments is to expand the mixed-use functions within the downtown village area and reinforce its pedestrian scale and historic character. The full text of the proposed amendments is available at the Planning Office of the Newmarket Town Hall during normal business hours and online at www.newmarketnh.gov. Property owners, abutters, interested parties and the public are invited to attend.

Chairman Shelton opened the public hearing.

Diane Hardy read a letter from Jim Phelps, an owner of property located in the area of the proposed zoning changes, into the record. He stated in his letter that, on October 9 and November 13, the Planning Board disclosed its proposal to rezone properties north and south of the town center along Route 108. He felt this would have a negative impact on the town's character and the rural landscape of Newmarket, because it would allow dense commercial development. He stated that developers would not expand the look and feel of the downtown to the north or south. He felt they would build as much as they could within the allowable confines of the zoning. He stated there were two developers at one of the meetings regarding these changes and they both spoke in favor of the changes. He felt the setbacks were not suitable. He stated this would have negative consequences to the look and feel of Newmarket.

Rose-Anne Kwaks, Wadleigh Falls Road, stated she has gotten a lot of phone calls about this change. She asked about the proposed high densities and what the water situation was. She stated one of the reasons the development did not go in at 3 North Main Street was because they would have needed about \$800,000 in infrastructure for water. She asked if extensive infrastructure was needed in that area prior to any of this type of high density development being done. She did not believe there was enough water for fire safety. Diane Hardy stated it was her understanding that the Water Department was working a proposal for funds are already available through the Water Enterprise Fund to expand and improve the capacity for water in that section of town. It is something that has to be done regardless of the development that occurs in that area. There will be a meeting next with the Regional Economic Development Center of Southern New Hampshire to see if there is a possibility of getting federal funds through the Economic Development Administration (EDA) Program to help finance the cost of the water system improvements. Chairman Shelton stated one of the issues with getting Economic Development Administration (EDA) grant money is relative to the number of jobs that are created.

Mrs. Kwaks stated knowing what has to go on in town for wastewater and water with the three million dollar warrant article coming up for the MacIntosh Well, she did not know where the Town would find the money to do a project like that. An explanation of densities followed. The density for the M-2 district is six units per acre. Mrs. Kwaks was not in favor of adding higher density for residential units with over 50% of the town already being comprised of rental units compared to the norm for a town this size in New Hampshire being 15%.

Mrs. Kwaks had a question about the change that would allow private roads on lots. Diane Hardy stated that section of the proposed ordinance has been removed. The Board needs to consult with NH Department of Transportation (NHDOT). Those requirements would also have to be included in subdivision and site plan regulations. The Board felt it required further review.

Mrs. Kwaks asked about the section under E (1). Diane Hardy stated that had also been removed.

Mrs. Kwaks stated she had a problem with the property at 3 North Main Street and the small residential area alongside. She asked if that area was still going to be outside of the proposed M-2 zone. With changes that have been made since the last meeting, Chairman Shelton stated that area would remain B-1. Mrs. Kwaks asked why the decision was made to first include it in the rezoning, then to take it out. Chairman Shelton stated that was made after one of the public comment meetings. She stated Mr. Homiak had spoken to the issue of missed opportunities. She explained the lots located closer to the Durham town line are located in the only area that could have large commercial development and have the concept of parking in the front, such as what was proposed for the 3 North Main project. The depths of the lots would allow that. Mrs. Kwaks stated the residential lots next to 3 North Main are really needed to develop that one lot. She stated the rezoning was not fair to those homeowners. In light of the restrictions that will be diminished with this ordinance, which include the setbacks and densities, it will be more economical for someone to develop that area if they utilize these lots. It is easier for a developer to go in and get a good return on their investment. Now you have 3 North Main that could be developed, it has enough frontage, but the homeowners next to it have the 150 foot frontage. If they were included in this change, their small size lots adjacent to 3 North Main would be worth more money. She was questioning why they were taken out. To them, they are being shortchanged by the Town. Diane Hardy clarified stating that Mrs. Kwaks meant the Board should include Lots 290, 289, 288 and 287 in the M-2 zone. Chairman Shelton stated those property owners were present tonight and they may speak to that. Mrs. Kwaks stated if those landowners were not included in this change, their property values would not go up. If they were in that zone, they are worth more, because the developer can build more with fewer restrictions.

Mrs. Kwaks asked if drive-throughs would be prohibited. Chairman Shelton stated drive-throughs would be allowed under the proposed re-zoning. There would be one access point. The drive-through would have to be an integral part of the building. This also came from the public comments. For example, Rite Aid has the drive-through at the back of the building. There can be no parking between the building and the road. Someone would have to drive into the developed lot and then the drive-through would have to be to the side or rear of the building, which wouldn't be objectionable.

Mrs. Kwaks stated the purpose states "for public access and design for pedestrian scale in the historic nature of the downtown area". She stated having a drive-through other than at a bank does not lend itself to a pedestrian atmosphere. Chairman Shelton stated the idea of pedestrian scale, especially when you look at the urban in-fill or expansion of urban downtowns, is you are moving the building closer to the sidewalk area and then lowering the building height.

Mrs. Kwaks asked what will be used to restrict just any type of building going in. She stated there is an architectural review required along Route 108, but the current process has no teeth to it. She asked what restrictions there would be. She stated it was important there be really strict language that sets out exactly what the buildings have to look like. Diane Hardy stated there is language in site plan review regulations regarding architectural/aesthetic review for structures along Route 108. Chairman Shelton stated the thing to keep in mind is, in order to do redevelopments of a mixed use type; a Special Use Permit process is required. That creates another level of review over and above what the site plan regulations are or what is generally contained in the ordinance.

Chairman Shelton asked if Mr. Homiak and Mr. Legault would like to comment, since their lots had just been mentioned by Mrs. Kwaks.

Richard Homiak, Hersey Lane, stated the question that Mrs. Kwaks brought up was quite interesting, as these lots were not included in the change. He asked if the Board could clarify why they were taken out. Diane Hardy stated they

originally looked at changing all of the zoning from the town line down to where the current M-2 district begins. They looked at land use patterns in that area. Most of the larger lots are along the northern part of Route 108 near the town line. Those lots have greater frontage. Conceivably, those lots could be developed under the current B-1 zoning. By changing that area to M-2, it would encourage those lots to be carved up into smaller lots and that is not what the Planning Board was envisioning. They want to encourage mixed-use development of a higher density closer to downtown to mirror the existing density and character of that area. Along the northern part of Route 108 there is more undeveloped land and the houses are spread out more. The lots are larger and the frontage dimensions are greater. She stated a good case could be made to include those four lots that Mrs. Kwaks has identified in the area remaining B-1. Chairman Shelton stated the Board took Mr. Homiak's comments under advisement, when they made that change. He had stated there was an issue of opportunities that may be lost. If those lots were changed to M-2, it would be difficult for someone to do a 3 North Main Street development. The M-2 zoning will prohibit any parking between the building and the street, unless the applicant went through the variance process. Mr. Homiak stated it made sense to keep these lots as B-1. He stated his comment at the last meeting was they did not want to restrict this land, because this is some of the last developable land for business along the well-traveled corridor. Chairman Shelton stated these are deep lots with mostly usable land. She asked if Mr. Homiak preferred his lot and the other three remain B-1. Mr. Homiak stated, he did not want to speak for everyone, but it makes sense to him.

Mr. Homiak asked how large the water main would be if they did this expansion. Diane Hardy stated she did not have a specific answer to that. She advised him to call the Water Superintendent. She knew they had done a water plan and this area was included in that study. She stated she believed it had to be over 8 inches, but she did not know exactly what the diameter was. It would be brought up to standards and meet fire flow requirements.

Mr. Homiak (a former firefighter for the Town of Newmarket) asked why the Town did not consider using the river for fire suppression in that area. He stated it did not make sense not to use the river. He stated he thought they would have learned something from the Pulaski Drive fire. They were almost exclusively shuttling water. They did have the one water main, but you can only draw so much off of that. Eric Botterman stated they have a dry hydrant as part of the mills project now, by the book exchange. That is as far as they have taken it. The old mill system was taken out. This hydrant takes water from the river, he believes.

Mr. Homiak stated, if they installed dry hydrant in the vicinity of the Community Church house on North Main Street straight to the river, about 150 yards, they could, with fire apparatus, run water to Dame Road, back to the bridge, Bay Road, Lamprey Street and they could run another six inch main right on the street. Also, on Simons Lane, where the daycare center is, which is still in that vicinity, would also be a good spot for another dry hydrant and that would probably generate some interest with Durham. That is about as far away from Durham's fire station as you can get. Newmarket is first on the running card. If you look a little further, off Stagecoach Road, there is a large development there, for which the Town of Durham would have a lot of interest in a dry hydrant. There is a dry hydrant at the rowing facility on Route 108 in Durham. With that dry hydrant and the other one, you could shuttle water both ways. The Town of Durham might be interested in some more dry hydrants, which is a relatively cheap way to get a lot of water. It's going to take a long time to pump that river down in a fire situation. From his own experience, when the Ross Farm burned, the location of which is where the Hickory Pond bed and breakfast/golf course was and is now an assisted living facility on Route 108, the only reason they were able to save that farmhouse was they put two pumpers into the river at the bottom of that hill where Big Tree used to be. That is the only way they saved that house. They were able cut the fire off at the attached ell. They wrote the barn off, but they saved the house.

Mr. Homiak also asked about the current construction on Bay Road at the foot of the hill. He asked if they were working on the sewer lift station. Chairman Shelton stated that was a private construction project.

Mr. Homiak stated Mrs. Kwaks had asked, when the project was planned for 3 North Main Street, he was told that the Town asked the developer for between \$800,000 and a million dollars to help with the water and sewer. When that was given to the developer, he pulled out of the project. Diane Hardy stated she had no information to that effect. She stated she did know they were concerned about the cost of the off-site improvements that were being required by the State of NH Department of Transportation. She was not aware of any discussions or negotiations between the Water Department, Town Administrator or the Town Council regarding the town's expectations regarding their tying into the town's water and sewer system. She, therefore, could not confirm this information. She stated the Water and Wastewater Superintendent, Sean Grieg, might be able to shed some light on that for him.

Chairman Shelton asked Ed Carmichael if he could put these issues before the Town Council. They are huge issues and critical for everyone living in that area. One is the issue of fire suppression and if the Fire Department and Water Department could look into pumping from the river, maybe they could work something out with the Community Church.

She stated they need to make sure the Town is also looking at the capacity of the sewer lift station at Bay Road and what improvements are necessary. She knows it has been a big question in the past and it never seems to go anywhere, but needs to be pushed forward. She stated she would bring these concerns to the attention of the Economic Development Committee.

Dave Legault stated Mr. Homiak pretty well covered everything for him.

Eric Chinburg, Newmarket Mills LLC, stated he generally thinks the rezoning effort as it relates to his property is a good thing. He has a couple of concerns that are specific to the parking lot parcels adjacent and behind the library back to Spring Street. The maximum road setback has language regarding keeping fronts of buildings facing main roads. From his parcel, even though it is surrounded by three roads, Spring, Elm and Main, clearly Main Street is the main road. They have been working for a long time getting their approvals for the mills. They always envisioned the rear, Spring Street end, of those lots as being a commercial development, with some sort of retail or shopping area. Any business that goes back there would want to face Main Street. Signage will be key. They already built all of their parking as part of the other project in between the road and where that building would logically go. The very nature of his lot would require some sort of hardship or variance. He thought the Board had done a nice job with the rezoning. In paragraph D of the 2.02 M-2 section, they allow the Planning Board to waive setbacks from both front and side and structure heights. He thought it would be appropriate to also allow waivers to the design standards in paragraph C, at the Planning Board's discretion and having to meet the parameters and the spirit of the ordinance. He stated, as it stands in this revision, his parcel could not have the parking face the main street or the frontage. It would be a shame to create a rule that would require getting a variance, if it could be handled by a waiver granted by the Planning Board. He stated he assumes the Board has done what is best for the M-2 zone and the possibility that waivers could be granted if something doesn't work would be a good thing. Chairman Shelton clarified that the lots were all B-1 and the "Regal" lot was M-2. That was already developed as parking. The area in question is where the Quonset huts were. Their access is between Riverdale Auto and the library.

Mr. Chinburg stated the Special Use Permit is defined and is normally used when you are dealing with permitted uses. You would use the permit to introduce mixed uses into this zone, which makes sense. It is the impacts of the use, the fiscal impact analysis and all of the conditions that go with a Special Use Permit which are important to a particular use. The Board also has paragraph D, which includes waivers from studies that are required for a Special Use Permit. He did not understand that, because typically the Planning Board would grant waivers like this as part of a normal site plan application. Diane Hardy explained these requirements are in the Zoning Ordinance, so the Planning Board would not have that authority to waive them. Zoning requirements can only be waived by the Zoning Board of Adjustment.

Mr. Chinburg stated he did not understand all of the idiosyncrasies between zoning and site plan regulations. He asked if parking between the street and a building was usually handled in site plan regulations or zoning ordinance. Diane Hardy stated that was typically in the site plan regulations and maybe this requirement should not be in the Zoning Ordinance. Chairman Shelton restated his issue was if he was to construct a retail strip development on the Spring Street side under the current proposal, it would need to face Spring Street. Otherwise, he would have to build it up on the Riverdale lot and have the parking behind it. The building would have to be moved to Main Street, which is the concept of the proposed zoning. Eric Chinburg stated that was correct, but it was not do-able on his site, because the primary purpose of those parking lots are to serve as parking for the mill across the street. He stated it was already difficult to get people to walk that far from the lot to the mills, but if they can't even see where they are going and have to walk around a building, that would be challenging. Chairman Shelton stated his lots fall more into the premise of retaining the northern lots along Route 108 as B-1. Eric Chinburg stated there were some things about setbacks that were great. There is good and bad. If that new rule requiring that no parking occur between Main Street and a building was not a zoning issue, but a site plan issue, it could be waived based on a reasonable look at the individual lots. You would not have to go through a variance process. Chairman Shelton stated that circumvented the intent of this change, which is to move the buildings to the street. Eric Chinburg stated Riverdale Auto is a separate parcel and there is already a building of value there. All they really have is a right of way between Riverdale and the library to access the other lots. Chairman Shelton stated the lot he is referring to is the lot with frontage on Spring Street. Eric Chinburg stated that was correct and it also has narrow frontage on Main Street. Chairman Shelton stated the large lot has the frontage on Spring Street. Eric Chinburg stated he couldn't remember if he had fee simple title with access to Main Street or if it is an easement. Chairman Shelton stated the building would face Spring Street and the parking would be where it is now. Eric Chinburg stated that would be a challenge, because Spring Street would stay whatever zone it is. He asked what the zoning was for Spring Street. Someone stated R-3 (note: Spring Street is zoned entirely M-2). He stated it seemed illogical for the front of a commercial building to be facing residential. Chairman Shelton stated the issue could be dealt with by making a modification to the proposed ordinance that relates to buildings fronting along Main Street. Diane Hardy stated she thought that was the intent, which was to get away from the idea of having a commercial strip. In this case, they are talking about a back lot that has frontage on more than one street, so it really doesn't apply. If anything it should only apply on the Main Street frontage. That is where the frontage should be measured from. Chairman Shelton asked if that lot is developed under the proposed ordinance the big parking lot has the opportunity to be redeveloped or to have some

kind of commercial building on it. The building would be way to the back of the lot. If this ordinance change would apply to lots fronting Main Street, it would deal with Mr. Chinburg's issue. Mr. Chinburg stated that was correct. Diane Hardy stated the original language applied just to Main Street. Mr. Chinburg stated if this change applied only to lots with frontage on Main Street that would solve his problem.

Martin McKinsey, 6 Washington Street, stated, as someone who lives in the neighborhood of Spring Street, everything on the other side of Spring Street and the other side of Elm Street are residential units. He stated he did not see anything in the proposal saying it has to face the frontage if it is on Route 108. It seems like it would enhance the character of that neighborhood if there was an additional entrance, rather than have it from a parking lot where pedestrians are expected to walk in order to get to the businesses. He did not see why a business could not have two fronts, rather than have the back of the buildings facing the residential units on Spring Street. He knows that Mr. Chinburg has put in some very nice landscaping there and it is possible that will obscure the view from Spring Street.

Mr. McKinsey stated they should be encouraging pedestrian culture and this is in the downtown corridor. He lives on Washington Street and that is affected by the ordinance. He was curious, as Washington and Lincoln are off of Elm Street. He did not understand the point of removing restrictions on building in this residential zone that has a defined architecture and special arrangement. On Spring Street, there is a new multi-unit development with condos or apartments. That got rid of any setback requirements; it is right on the sidewalk. He stated that dramatically changed the character of that neighborhood. By removing restrictions, the historical, residential or pedestrian character of the neighborhood will not be enhanced. He stated, south of downtown, he did not believe this would ever support that kind of culture. When you look down there, there are businesses like Rite Aid, McDonald's, Irving and some other more tasteful development. The available space for development is made up of older structures that have character and historical roots. By removing restrictions, what you will be doing is encouraging demolition of these houses and putting in structures and, from what he has seen, that will have very little oversight by the Town. In developing this area as a continuation of Main Street, he felt it was fairly improbable. These properties to the south are on the other side of the tracks and it is a long way away. He felt the only way to make a continuation of Main Street would be to redirect Route 108 and make a low traffic volume drive from the top of Main Street at the beginning of Exeter Street. The whole notion of somehow continuing that development to the south is doubtful.

Mr. McKinsey stated his concern was, if the Board is trying to enhance pedestrian and historical character, removing restrictions is not the way to do it. He has not known that to happen unless something like a historic district was proposed with real oversight by the Town. His sense is that is not the purpose of this rezoning.

Chairman Shelton stated he spoke to point of rezoning particularly the area around Rite Aid. The current zoning there, which is B1, insists that buildings are torn down and then redeveloped for commercial. The town has lost historic buildings from that area. By rezoning to M-2, it allows for an opportunity for some of those buildings to be created into mixed use, where they could retain the original building. It allows someone who has a residential building an opportunity to develop it for mixed use. If someone wanted to redevelop that property, they would not have to tear the building down. Under the B-1 zoning, tearing the building down is the only way to develop it. Rezoning to M-2 would, at least, give an opportunity for that not to happen and retain the existing architectural and historic character of the area.

Mr. McKinsey asked if any subdivision of those properties would have to go through a Planning Board process. Chairman Shelton stated that was correct. She stated many of the lots would still be nonconforming.

Mr. McKinsey asked if, on Washington Street, the Board is removing restrictions there. Chairman Shelton stated, right now, the land that is across from his area is like a pocket of B-1. A redevelopment of that area would be a business across from him. For example, an auto repair shop would be allowed. She was not sure that was an appropriate business. It does not make sense, in a nice residential neighborhood like that, to allow an island of business. Mr. McKinsey asked if this would still allow an auto shop to move in there. Chairman Shelton stated it would be difficult to do, as it would have to meet all of the design standards. Those standards will apply to all non-residential development. There are no design standards currently in the B-1 zoning.

Elizabeth Dudley asked Mr. McKinsey what restrictions he was most concerned about. Mr. McKinsey stated he would have to get back to the Board on that. Diane Hardy stated the idea was not to remove the restrictions. The idea is to give the Planning Board the option to waive some of the restrictions in the event it is necessary to respect the existing character of the neighborhood. If the setbacks on Washington Street are 15 feet and someone wants to build and maintain that setback, they would be allowed to do that. It is to respect the existing character of the neighborhood. Mr. McKinsey stated he understood the setback was waived in the case of the apartments on Spring Street. Diane Hardy

stated they received a variance. Mr. McKinsey stated, in the case of the Planning Board, it would be a matter of saying, "I'm sorry, we are going to have to prevent you from building this close to the road, even though it is allowed, because it is not in keeping with the character." Diane Hardy stated that was right and there are conditions under which the Planning Board would waive those requirements. It would have to be consistent with the purpose of the district, suitable for the location; it could not cause adverse impacts and would have to be consistent with applicable setbacks, the height of existing buildings located on adjacent lots. It is not a carte blanche.

Mr. McKinsey stated, as far as the part of Route 108 south of town, some of those houses are quite close to Route 108. The newer developments have parking lots in front and are set back. It talks about the adjacent structures, if someone is developing a property on the west side of Route 108 before you get to the police station, there are houses there and there is some variation of how far back they are. He asked how the notion of adjacent buildings would affect development of a lot, if you have three houses that are set back and someone wants to build in the middle area out to the curb, which might encourage some pedestrians if there is a business on the first floor. He asked how that would affect development, which is in keeping with the idea behind this, but out of keeping with its immediate neighbors. Diane Hardy stated it was a judgment call on the part of the Planning Board. They would look at it in terms of the overall site plan and design considerations.

Rose-Anne Kwaks stated if this ordinance is put into effect with the new densities, in the areas of the rezoning, how many additional rental units can be built if this ordinance is approved compared to the units allowed under the current ordinance. Chairman Shelton stated the number of units under the current ordinance is zero. There is no residential use allowed in B-1 zone. The theory is to direct the projected growth of the town into the built-up area of town, as opposed to out into the rural area which would result in sprawl. We know there will be growth in Newmarket, where does it make the most sense to have the growth? Mrs. Kwaks stated there is very little land left in Newmarket for residential growth. Diane Hardy stated the Board is working on a Future Land Use chapter update of the Master Plan with Strafford Regional Planning Commission (SRPC). They are putting together a buildout analysis, so that we can get an understanding of what the growth potential is in various areas based on existing zoning and the suitability of land for development. That should be made public in the spring. Mrs. Kwaks asked if it would behoove the Planning Board and Town Council to wait until that information becomes available before deciding on anything as drastic as this zoning change. She would like to see extremely strict architectural requirements before this ordinance is put into place. She knew the site plan requirements were not as stringent as she would like to see.

She stated the Town is against the wall regarding water. She could not see trying to have all these apartments built when their numbers are currently four times above the norm. She stated that would be detrimental to this town. She wants to see properties developed, such as the one at the corner of Main and Elm Streets. He is doing a beautiful job. She stated if we had responsible developers that took to heart the nature of a historic area, she would not have any problems. She stated Mr. Cheney's development in the Newmarket Business Park with the Wentworth Douglass building and Dan Wright's building are very nicely done. But just to allow willy-nilly all these apartments, when the town is at 54% apartments already is not smart growth for Newmarket and she has a lot of concerns. She would also like to have the water problems completely resolved before rezoning. There are no water reserves. The mills took up the last 35,000 gallons that we had for reserves. There are no water reserves for this many apartments in this town.

There were no further public comments and Chairman Shelton closed the public hearing.

Chairman Shelton stated the Board should go through any changes they want to make to the proposed rezoning. She stated the Board should go over the map first.

She stated they have heard some comments, pros and cons, on the issues regarding the lots that will remain B-1. They also heard from a landowner, with concurrence from another landowner in the area that the zoning should remain B-1.

Eric Botterman stated, after listening to the landowners, he is fine with leaving that area zoned as B-1. Rick McMenimen and Janice Rosa agreed. Elizabeth Dudley was confused about whether the landowner wants it to be B-1 or M-2. Chairman Shelton asked Mr. Homiak to clarify his position. Mr. Homiak stated he agreed with the Chairman's explanation and was fine with the current zoning of B-1. Elizabeth Dudley was also concerned with the lot behind the library being changed. The Board discussed leaving certain lots as "islands" where they are zoned differently than surrounding lots and the Board clarified they were trying to avoid that. Diane Hardy stated that would be spot zoning. Chairman Shelton

explained the rationale of transitioning between zones and how the Board was trying to create more transitional type zoning. If you go from M-1 on the water and all of a sudden there is a jump to B-1 across the street, it wouldn't make sense. There would be a business zone in the middle of two residential zones. There is no transition. Eric Botterman stated he understood what Elizabeth was saying, but in the further discussion the Board will have on wording, it might help address her concerns.

Ed Carmichael stated, for the most part, he was comfortable with the map. He stated if Mr. Chinburg wanted to, he could put something where the Riverdale Auto building is now. He had a problem with that. He would like to see some development, but he was not sure about these changes. He expressed concern regarding the effect on the lots around that one. Diane Hardy stated the surrounding lots are already zoned M-2.

Chairman Shelton stated the Special Use Permit amendment is within Section 1.09 of the Zoning Ordinance. She stated that is just an amendment to clarify the definition of Special Use Permit and the sections in the ordinance to which it applies.

She moved on to Section 2.02 M-2, the proposed language. Eric Botterman stated Section C is the design standards. All things being equal, he would rather allow the Planning Board to have the flexibility to grant waivers than to force the applicants to have to go to the ZBA. Under Section D, where there are waivers to setbacks and structure height, he would suggest they add design standards, so if there is a development the Board wants to grant waivers to, they can without having to send an applicant to the ZBA, where they may or may not get the waivers. They may not get them from the Planning Board either, but it would be more efficient if it is kept at the Planning Board level. Rick McMenimen and Janice Rosa stated they were in agreement. Elizabeth Dudley asked if someone could enlighten her about Zoning Board variances. Diane Hardy explained the Zoning Board's purpose and procedure for variances. She stated it would provide much for flexibility in the quality of the design if it was left to the Planning Board to make decisions about design standards. The Planning Board would be looking at it as part of an overall plan. This should be the Planning Board's domain. The Zoning Board is required to meet certain rigid legal requirements that are based upon well-defined legal principals. She stated the most difficult criterion for a variance is the hardship test. It can be a cumbersome process for a developer, when we are trying to provide some flexibility and promote quality design.

Ed Carmichael asked if the Planning Board had the authority to overrule the ZBA. He felt like that is what the Planning Board was doing. Chairman Shelton stated if anything is in an ordinance and someone does not meet the terms of the ordinance, they have to go through the ZBA to get a variance. With the mills, there was a Special Use Permit process that came through the Planning Board. These changes will be very similar to the zoning in the M-1 district. There would be more flexibility to allow someone to not do a development by the Dimensions Table or Permitted Uses listing, but to come to the Planning Board with a design concept under an M-2 zone that gives the Planning Board more authority. If the applicant can meet certain conditions and the Planning Board believes the project meets the intent of the ordinance; there is no negative fiscal impact on the town and that it works within the particular area relative to adjacent properties, the Planning Board should be able to move that project forward. An applicant should not have to go to the ZBA to get variances. Ed Carmichael said he was not disagreeing with that concept, he thought it was a great idea.

Elizabeth Dudley asked what the mission of the Zoning Board was. Chairman Shelton explained it to her. Elizabeth Dudley asked if hardship was difficult to prove. Chairman Shelton stated it was. Elizabeth Dudley stated the Zoning Board could slow things down and the Planning Board's concern was that it would slow things down to the point where a potential developer would not want to bother to prove a hardship and take the project elsewhere. Chairman Shelton stated they may be concerned because they can't prove a hardship. Eric Botterman explained hardship had to do with the land. He went on to explain hardship. He stated he has been to a lot of ZBA meetings where they say that an applicant has a great idea and they would love to see it move forward, but they cannot approve it because it does not meet one of the five criteria that must be met in order for a variance to be granted. It is a much more stringent process.

Diane Hardy stated the more she looks at the proposed design standards, she questions whether they belong in a zoning ordinance. They really should be in site plan review regulations. These are design considerations that are taken into account as a site is being reviewed by a Planning Board. She does not disagree with what was being said, she just questions whether the design standards belong in the zoning ordinance. It would be more appropriate in site plan review regulations. Elizabeth Dudley stated it could be in zoning as kind of a mood setter to show what the Board is looking at in terms of goals. Diane Hardy stated zoning requirements should be black and white and very clear. They should not require that you use discretionary judgment in order to apply them.

Eric Botterman stated they should keep paragraph D which respect to waivers to road, side, and rear setbacks, and

structure height. Everyone was in agreement.

Elizabeth Dudley stated she would like to test out what the maximum residential unit development could be. She thought the Board should do their own build-out scenario before okaying it. She would like to see a more detailed build-out analysis to understand the impacts of shifting from a B-1 to M-2 zoning classification. Chairman Shelton stated what the Board would do then would be to take each of the lots that would be changed, look at the acreage of that lot and then propose the maximum residential that could go on it. Eric Botterman suggested the Board take the total area, for example, along the river, because there is nothing preventing someone from buying all of those parcels. So the maximum build-out would be if someone bought everything and re-developed it. Diane Hardy stated the table reflects the "worst case" scenario. The number of actual units created would be based on whether the Planning Board allows it. Chairman Shelton stated they could calculate out how many units are actually there now, also. Then they will have a comparison. She said to keep in mind that the data is grossly overestimated, because there are so many different setback issues and development constraints.

Elizabeth Dudley stated she was not sure the Board wants to be absolute about design standards. She would like to discuss on-site parking. She understands the principal of the standards, but was not sure the Board wants to definitively say something has to be a certain way. She thought the Board would rather allow for some flexibility in some situations. Chairman Shelton stated right now, if they keep design standards in the ordinance, they have the right to waive any of them. That would give the flexibility. If the standards move to site plan review, they have the ability to waive them. Elizabeth Dudley stated she was thinking it made sense to bring the design standards into site plan review, as suggested by Diane Hardy. Diane Hardy stated the design review standards should be in the site plan review regulations. However, as far as setbacks and heights and dimensional controls, the idea is there is some flexibility and the Special Use Permit provides that.

Elizabeth Dudley asked if there was a way to refer people from the Zoning Ordinance to the design standards if they were to go into site plan regulations. Chairman Shelton stated the Zoning Ordinance contains laws. Anyone doing a development will take the Zoning Ordinance and Site Plan Regulations into account. Chairman Shelton stated they would not want the Town Council to adopt the regulations into the Zoning Ordinance without having the Planning Board incorporating the design standards into the Site Plan Review Regulations first. Everyone said they were comfortable with the design standards going into the site plan review regulations instead of the Zoning Ordinance.

Diane Hardy explained the proposed changes to Section 7.02 Mixed Use Development. The wording changes were to keep it consistent with 2.02. That section refers to the Table of Permitted Uses and the Dimensional Table.

Elizabeth Dudley stated she thought there had been some discussion of allowing automotive uses in the zone. Diane Hardy stated that is not an allowed use in the M-2 zone currently, but is allowed in B-1. Elizabeth Dudley stated she wanted to make sure it was allowed somewhere in town. She stated she did not have a preference where it was allowed.

There was discussion of the Dimensional Table. Chairman Shelton stated the change to that was reducing the height requirement from 50 feet to 35 feet. The reason for that was to have better transitions over to residential areas.

Chairman Shelton went over the changes that had been discussed. There had been a substantial change, so another public hearing was necessary. The Board decided, at the next meeting on December 11, 2012, they will include a public hearing on what was discussed tonight and a public hearing on the design standards being incorporated into the current site plan review regulations.

Agenda Item #3 – Adjourn

Action

Motion: Eric Botterman made a motion to adjourn at 8:55 p.m.

Second: Janice Rosa

Vote: All in favor