

MINUTES
Planning Board, March 25, 2010
7:00 PM, Town Barn

MEMBERS PRESENT: Chair Bryant Warren, Dan Barker, John Bemis, Kathleen Faherty, Neil Jones, Dave Remington, Stephen Whitlow, and Elizabeth Woodman.

MEMBER ABSENT: Tom Campanella and Doug Stevenson, absence excused.

STAFF: Margaret Hauth, Stephanie Trueblood, and Bob Hornik.

ITEM #1: Call to Order and Confirmation of a Quorum.

Mr. Warren called the meeting to order at 7:04 p.m. and confirmed a quorum of the Planning Board.

ITEM #2: Additions to the Agenda and Agenda Adjustments.

No additions or adjustments were made to the agenda.

ITEM #3: Approval of minutes from the February 18, 2010 meeting.

Ms. Hauth noted that Mr. Remington had called in one correction regarding his comment on protruding garages, and she had corrected that in the draft.

MOTION: Mr. Remington moved to approve the minutes of the February 18, 2010 meeting as amended.

SECOND: Ms. Faherty.

VOTE: Unanimous.

Mr. Warren noted that Ms. Hauth had had difficulty determining who was speaking when listening to the recording of meetings, so instead of everyone talking at once he would be calling on people by name to eliminate any confusion when the minutes were produced.

ITEM #4: Discussion of UDO draft document.

Roger Waldon with Clarion Associates, the Town's consultant, stated he would be discussing the UDO draft document, which was referred to as Review Draft 2. He said when last he met with them he had talked about the format and organization and how they would be blending together the current Zoning Ordinance and the Subdivision Ordinance into the draft UDO. Mr. Waldon said they had held several major public events and stakeholder meetings and were blending those comments together to include in the draft UDO.

Mr. Waldon said they were close both in terms of the document itself and in terms of timing to be moving towards a public review of the draft and enactment of the UDO by the Town Board. He said tonight was a good opportunity for this Board to offer its suggestions and ideas. Mr. Waldon said they had identified a number of things to be adjusted, and his expectations were that they would soon be producing Review Draft 3 that would be put out for public comment.

Mr. Waldon stated that the way the UDO was organized was a new way of looking at the Town's regulations. He said he believed that the Board would very likely have some pains at the beginning of the process once the UDO was adopted because it was a different layout and different format, and it would take some time to become familiar with where certain regulations were located. Mr. Waldon said once they passed that phase, he truly

believed that everyone would find the new UDO a much more useful and user friendly document than the regulations they now had.

Mr. Waldon said in that context he wanted to review again how it was organized:

- Article I was the General Provisions, with references to State statutes, a description of what the Ordinance was and how it related to other documents.
- Article II was Administration, with all procedures and processes included in that one Article. Anything different that the Town wanted to do in regards to procedures would be included in that section.
- Article III was Definitions of the zoning districts which was mostly organizational, but also was an attempt to correct things that appeared to be broken in the current regulations. There were suggestions for some new ones that would be discussed later.
- Article IV was Use Regulations, or what was permitted under the different uses and what kind of permit the uses required.
- Article V was Development Standards and was critical, and would likely capture the most attention and was what you would be using the most.
- Article VI was what was left of the Subdivision regulations after the blending of the two documents.
- Article VII would address Nonconformities and how the Town would deal with circumstances that did not meet current regulations.
- Article VIII would deal with Enforcement.
- Article IX would be Definitions and would bring all the definitions throughout the entire UDO into that one section rather than having them spread out among the different sections as in the current ordinances. They were attempting to avoid having regulations embedded in the definition of a term.

Mr. Waldon said they believed the Town needed two documents that were separate from the UDO. He said one was an Administrative Manual that had a lot of procedures, what had to happen with an application, what the format was of an application, and things of that nature that did not need to be in the ordinance but were important to the process. Mr. Waldon said the other document was Design Guidelines, which were things that did not necessarily belong as law in the UDO but were important in defining the character of development and what was expected. He said the Design Guidelines as opposed to law provided more flexibility but it was very important to set forth those expectations.

Mr. Waldon said the purpose of the exercise they were going through now was primarily to reorganize, bring up to date, and modernize the Town's regulations and the presentation and format of the ordinance. He said in that process where there was opportunity to correct some things that were obviously wrong they would make some small changes to do so, but major changes in how the Town went about managing its growth were not a part of that process. Mr. Waldon said once that process was completed, there may be major changes to be considered.

Mr. Waldon said what he hoped to do tonight was to answer any questions from the Board, and also to go through the list he had provided that indicated some of the areas that substantive changes were being considered. He said that list contained items that had been compiled through Board and citizen comments over time that needed to be addressed, and suggested that those substantive issues be the Board's focus tonight.

Mr. Warren asked about the section on signs. Ms. Hauth responded there was almost no new language in the sign ordinance. Mr. Warren asked about the parking section. Ms. Hauth replied the parking standards were in the draft, noting the only substantive change in the draft was likely about tree preservation so they may want to spend some time talking about that. Mr. Warren said the list indicated that minor subdivisions, parking, buffers and screening. Ms. Hauth replied they were listed in the order you came across them in the draft ordinance, noting some would likely not take long at all to go through although some would take some time.

Ms. Woodman said one of their goals was to try to implement parts of or most of the South Churton Street corridor study, and asked would this process allow them to do that or was that considered a much more substantive change that would need a separate process. Ms. Hauth responded that a lot of it would likely be addressed in this process, although she and Mr. Waldon disagreed somewhat on what should be included. She said she actually had concerns about whether they wanted to keep the April 10 meeting schedule because this draft really was not ready for a substantive public meeting unless they wanted to pick out certain sections for review with another meeting or meetings to be scheduled later. Ms. Hauth said that would allow this Board to continue its review as new language was developed.

Mr. Barker stated there were quite a few things they had discussed as a Board that he did not see in the draft, and he had hoped that that would be a starting point for tonight's discussion. He said he believed there was much left to be done to the draft, and he had been disappointed with the draft in its current state. Mr. Barker said the Board had already discussed those issues, and he believed they should have been included in the draft. He agreed that April seemed too soon, noting that perhaps Review Draft 3 or even Review Draft 4 should be the one sent to the public for comment. Mr. Barker said that when Mr. Waldon had said that Review Draft 2 would be sent out for public comment that had scared him somewhat, noting they needed more work before the draft was released.

Mr. Warren agreed. Ms. Hauth commented that perhaps during tonight's discussion the Board could think about that, noting that at the end of the meeting they could consider that Saturday, April 10 date. She said that date had been selected based on feedback regarding the Board's schedule. Ms. Hauth asked if they were able to have more substantive sections ready for review, would the Board be willing to meet on April 10 for perhaps 3 hours to discuss them. She said then they could schedule another special meeting between April 10 and April 29 for public discussion. Ms. Hauth said that would allow them to keep somewhat on schedule and continue to keep July as a realistic adoption date.

Mr. Barker asked was there anything the Board could do via email to speed the process along. He suggested that the Board could independently review the draft and send their comments to Ms. Hauth. Ms. Hauth said that she and Mr. Hornik had been doing that and she would be happy to gather comments from the Board in that manner. She said she and Mr. Hornik had a working draft with comments written in, and perhaps they could pass a copy of that working draft around so that the Board could see their comments and add to it. Ms. Hauth said that if a Board member was interested in any particular section, she could provide a copy of that section for them to add comments to, adding she wanted to make sure that it was something manageable when it came back to her.

Mr. Warren stated he believed that would be appropriate, and suggested that the Board leave April 10 on their schedules to meet and continue their discussion on the draft. He said he believed the best method would be for Board members to email their suggestions to Ms. Hauth, and Ms. Hauth could share those comments with the rest of the Board. Ms. Hauth said if anyone wanted the comment version she would be happy to send it to them.

Mr. Jones asked was there a way for the Board to get the review copy and add their comments to it so that all the comments remained in the same document. Ms. Hauth said she could provide the document electronically to the Board one at a time, so that when it was electronically returned with their comments it could then be sent to the next member who had expressed an interest in adding comments. She suggested that if they did that that the members place their initials beside their comments so the Board would know who had made the suggestion.

Mr. Barker said he did not necessarily feel that he had consensus from the Board on some of his ideas, and believed there needed to be collaboration on those comments. Ms. Hauth responded they could track those comments via their initials, noting the particular member would not actually be changing the language.

Ms. Trueblood said the point of discussing the draft during meetings was to get that collaboration, noting that a lot of the concepts that were not showing up in the current draft were items that the Planning Board still needed to discuss and reach a consensus on. She said she feared that if they started a back and forth review as had been suggested that it would become difficult to determine a consensus of the Board, noting that the more they could collaborate together particularly on the bigger issues the easier it would be to move forward.

Ms. Faherty agreed, noting that sending the draft back and forth would make it impossible to determine a consensus, and her worry was that the person most determined to follow such a procedure would likely win the day and that was not fair. She said this was a big document with 300 plus pages and contained complicated language and issues. Ms. Faherty suggested that perhaps they should consider taking sections of the ordinance to public hearing so that the public would not be expected to review the entire document and comment on it all at once. Ms. Hauth said she believed that could be done through workshops where one or two particular sections were discussed, in conjunction with one formal public hearing on the entire document. Ms. Faherty said that certain people were interested in only certain areas of the new ordinance, and she would be in favor of presenting the draft in sections rather than as a whole document. Ms. Hauth said they could also use that process as they went through it as a group, noting it was obvious that during a 3-hour meeting on a Saturday morning they would not get through the entire document.

Mr. Waldon said one of the things this discussion had highlighted was the choices they had been facing regarding trying to consolidate the ordinance into a more user friendly document and to make more substantive changes. He said they had been collectively trying to find middle ground with those substantive changes that could be made and discussed with the public now, adding that the other more substantive changes would likely take a 12 to 15 month process. Mr. Waldon said they would need to draw a line and

decide where that middle ground was, noting trying to address all of those substantive issues now would delay the process.

Mr. Warren agreed, noting they had learned that quickly as they had begun the process. He said the timeframe they were working under would not allow for the major substantive changes to be made now, so they needed to accomplish what was reasonable and address the other issues later.

Mr. Hornik said it was more important to get it done right rather than fast, but he definitely agreed with Mr. Waldon that the more they tried to do in one bite the longer it would take to do it. So, he said, that would be a policy choice the Board would need to make, in that they would need to decide how much to bite off now. Mr. Hornik stated that up to now they had concentrated on getting the two documents blended together and making sure the two did not contradict each other. He said now they were incorporating the more substantive comments to address things that he knew could be said better and that offered a clearer understanding. Mr. Hornik said that was where they were now, and this Board was the one that would have to make recommendations about some of the more policy kind of issues, which he believed would be the same issues that the public would be concerned about.

Ms. Trueblood said for the bigger ticket items, they had been discussing them for about nine months, and they could now see the two documents blended and could identify the changes that they believed should be considered. She said it was now three weeks before the public hearing and there simply was not enough time, so she believed it made sense to add several months to the process so that potential changes could be discussed that they had been waiting to review.

Mr. Barker said he had to ask why those changes were not already in the draft, since they had been discussed for months. He said the issues that he had thought would be talked about were not in the draft document, and believed they were going in circles now because they had nothing to talk about.

Mr. Remington said he was concerned that they were rehashing a discussion he thought they had already had over the last few months, and had understood that the first thing they had to do was get the structure of the draft UDO right before they moved forward. He said he believed they had all agreed about a few things that needed to be dealt with, and some of that had been included in the draft. Mr. Remington said he believed the appropriate thing to do would be to see where they were on those issues and not worry so much about what they had not done yet. He said they were talking abstractions now, and what they should do was identify what was there and talk about them and after that perhaps they would have a better idea of how far they were away from where they wanted to be.

Mr. Warren said if everyone was agreeable they could discuss what they did have, and then as they got towards the end of the meeting they could determine how to move forward. He wondered if they needed to wait until July's public hearing or schedule some additional meetings now. Ms. Hauth said she would not want to hold a public hearing on the development proposal at the same time as the public hearing on the draft ordinance. She said that could be at the July public hearing or at a special meeting in June or August. Mr.

Warren said the Board could discuss that at the end of tonight's meeting, and suggested they move forward and discuss the changes they had before them now.

Major/Minor Subdivisions

Mr. Waldon said the memo listed items as examples of some of the areas of change that were now just a blending together of the Subdivision and Zoning ordinances. He said the first on the list was an example of a small item, but could be important and implied some policy direction. Mr. Waldon said in the current Subdivision regulations there was a definition of major versus minor subdivisions, noting they went through different processes. He said the main criterion to distinguish the difference was the number of lots. Mr. Waldon said his question was if they had a 20-acre parcel and the standard was if it was 4 or few lots being created then it was a minor subdivision, and if you carved 4 lots out of a 20-acre parcel then what happened if two years from now you carved another 4 lots out of that same 20-acre parcel. He said the way the current ordinance was structured those would all be a succession of minor subdivision applications and the full subdivision would never have gone through the major process. Mr. Waldon said the current ordinance referred to 4 lots or less created over a 2-year period from the same parcel. He said there were some communities that defined that as 4 or fewer lots ever created, and when the fifth lot was created then it became a major subdivision, regardless of the time period. Mr. Waldon said what they were suggesting was something between those two and changing the 2-year time period to a 10-year time period to make it a little less easy to circumvent the major/minor distinction.

Mr. Waldon said one of the things discussed in the past was having two categories of major subdivisions, one that would involve Board level overview and a second that would require more overview.

Ms. Hauth said she was not sure that was real clear in the process section yet, but in the permitted use table they had set up three levels of subdivision. She said that referred to those with 4 or few lots, those with 5 to 19 lots that would be considered conditional uses that would be reviewed by the Board of Adjustment, and those that were 20 lots or greater that would actually become a special use permit that would be reviewed by the Planning Board and the Town Board in a quarterly hearing process. So, she said, they were introducing a public hearing process for all subdivisions that were considered major. Ms. Hauth said that would address the concerns expressed about there not being a public hearing process and the inability to attach conditions to approval.

Mr. Hornik said that would also change the process for major subdivisions that would allow advisory boards to make the findings required for conditional use permits or special use permits and to set conditions. So, he said, it provided a little more flexibility and control by the Board by allowing them to do such things as require design features that they might not have otherwise been able to require.

Ms. Hauth said what they were looking for now was feedback on the 2 year or 10 year process as Mr. Waldon had described. She said she did not believe the 2-year period was causing a problem at present, basically because they did not have vacant large tracts of land. Ms. Hauth said that in rural areas minor subdivisions were normally the rule and were very common, but it was very easy for someone to circumvent the ordinance by using

that process. She said if you allowed someone to subdivide every two years you could have the result of someone dividing up a 100-acre tract of land without having to go through major review. But, Ms. Hauth said, they did not have any 100-acre tracts or any large tracts where someone could take too much advantage, and added that she had no strong preference as to whether it should be 2 years or 10 years.

Mr. Warren asked why then should they consider changing it. Ms. Hauth said because it had been recommended by Clarion.

Mr. Waldon said as they were looking at the Town's regulations and how they compared to best practices that had been identified as an area of difference with those best practices.

Mr. Horton said he and Ms. Hauth had discussed the 2 year period, and he had always believed that to be a short turnaround time. He said it was not something that had been a problem in the past, but it was a way for someone to circumvent the subdivision regulations over a short period of time.

Mr. Warren said with the Town limits where they were, there was no way for that to happen. Ms. Hauth said there was very limited opportunity for someone to take advantage of that, but she could not say there were no opportunities.

Mr. Remington said one advantage to changing it was that if it did not make a lot of difference then why not include it so that it made the Town's definition more consistent with what other jurisdictions were using.

Ms. Faherty asked had the County made a move to change their definition. Ms. Hauth said she was not aware of that, noting the County was only doing a reorganization of their ordinance.

Mr. Barker stated his preference would be to change the language to 10 years. Ms. Trueblood stated changing it did not seem to restrict anyone from doing a subdivision.

The Board agreed by consensus to change the language to reflect a 10-year time period to lessen the chance of the major subdivision regulations being circumvented.

Parking

Mr. Warren said there had been a meeting in the last couple of weeks regarding parking concerns, and he would like to have the Board hear what had been discussed at that meeting. As well, he said, since there was a Board of Adjustment member present he would like the Board to hear what issues the BOA was facing in regards to the County's project downtown.

Mr. Remington stated that one of the items that came before the BOA was the County's courthouse project, which had been approved in 2006 with the condition that the County would come forward with a parking plan. He said the idea at that time was that the County would have a park and ride lot at the Durham Tech campus at Waterstone and would be shuttling employees in from that lot, but the grant the County had expected to receive for a shuttle bus had not materialized. Mr. Remington said the proposal the County had now

come forward with involved several things that had been deemed to be unacceptable by the BOA, and the County had been asked to go back and work on their plan.

Mr. Remington said one of the County's ideas was to count the on-street parking in their parking plan, which had been of concern to some of the businesses as well as the Alliance for Historic Hillsborough and the Tourism Board. He said there was some concern about spaces in the deck being double counted towards the County's parking requirement, in that those spaces had already been allocated. Mr. Remington said a big concern was the proposal to encourage the public to use the park and ride lot and not requiring employees to park there, and there was a feeling that employees should be required to park there since it was the County's park and ride lot. He said basically, the big picture was that the County wanted to do some really creative things to satisfy the requirements of the parking ordinance, but the BOA had not accepted that. Mr. Remington said at the same time one of the issues was if the current ordinance requirements really realistic, in that something that was not in compliance could suddenly come into compliance if the numbers changes.

Ms. Hauth said that was the part of the discussion that was relevant for this Board, because they had talked many times about the Town's parking requirements being "heavy." She said that Ms. Trueblood had a lot of information regarding parking that she would share that would show a comparison of a lot of different numbers. Ms. Hauth said that was where the crux of the issue was with the County, in that in the past they had been allowed to count on-street parking towards their parking requirement, but the question was what did that do to downtown businesses. She said there was the argument that there were lots of parking spaces available every day in the parking deck, but that deck was sized because under the Town's ordinance those spaces were required for the uses on the west side of Churton Street. Ms. Hauth said the fact that there were unused spaces helped document the fact that perhaps the Town's parking ordinance was on the heavy side. She said in working through all of that they had produced a number of spreadsheets to see what the impact of changing those regulations might be.

Ms. Hauth said she would like them not to use the downtown or the courthouse situation as the sole determining factor, but rather to think about all types of parking. But, she said, the ordinance provided two different standards, one for general uses and one that was special for the Central Commercial district. Ms. Hauth said the courthouse was not zoned Central Commercial; it was zoned Office Institutional.

Ms. Trueblood suggested that perhaps Mr. Waldon provide his revised standards, noting they were noted in italics in the draft. She said those proposed standards were much reduced, and believed it may be better for those to be highlighted first. Ms. Trueblood distributed a spreadsheet she had prepared which indicated the current ordinance requirements for each use, what Clarion was proposing, and what was suggested as minimum and maximum uses by the Twenty First Century Land Development Code which was the best practices book on planning.

Mr. Waldon stated that they had suggested changing the standards wherever parking was based on the number of employees to something that was non-physical. He said looking at how parking regulations were administered and the complications of a change in use or a change in the occupancy of a structure where there might be fewer or more employees made for a moving target. Mr. Waldon said it was their recommendation that they set the

standards on how many parking spaces were needed for a use based on some physical characteristic rather than number of employees.

Mr. Waldon said the other major change was to look at areas where the current minimum parking standards were high, noting what they had heard through various feedback was that there was a lot of environmental concerns about surface parking lots and excessive parking, and if there were ways to reduce the minimum parking requirements that would be preferred. So, he said, they had gone through and looked for particular requirements that seemed to be excessive and made some changes. Mr. Waldon said a third change was that the parking in the Central Commercial district was to be significantly different that everywhere else in Town, and by different they meant lowering the parking requirements and acknowledging the fact that that district was different in its nature and there was a lot of shared use, a lot of multiple trips, and a lot of walkability.

Mr. Whitlow said in regards to the distinction between the Central Commercial district and the rest of Town, if someone were to try to build a large mixed-use development at the Truck Stop on I-85, then those standards for the rest of Town, even though the developer was building a dense, multi-use, walkable development, would still apply. Ms. Hauth said yes, but the ordinance could be set up so that those same regulations did not apply. Mr. Whitlow said he believed that kind of adjustment was critical and should be included in the ordinance, so that large, walkable, dense developments could be created outside the central corridor.

Mr. Barker said in looking at the spreadsheet and the proposal, it looked like they had one or two that were still based on the number of employees copied over into the draft UDO, calling attention to the government/non-government protected services which called for one space per employee. He asked shouldn't that be changed to a square footage number. Ms. Hauth said there were still a few that were based on number of employees because of the use. She said for instance, a fire station needed no parking except for the staff on duty, and a shelter for the homeless likely needed no parking except for staff. Mr. Barber said if it was a church shelter it had no staff, only volunteers. Ms. Hauth responded then it would most likely come under regulations for churches, noting the ordinance would not allow a shelter that did not have staff.

Mr. Barker said a change in occupancy would change the parking requirements, which was somewhat scary. Ms. Hauth said that was correct, but they were limiting it in the new UDO much more than it was now.

Mr. Hornik said if a property changed occupancy and the new occupant required more parking than was available, then the result was that the new occupant could not use the property and that became a permitting enforcement problem. So, he said, your right to parking went along with the use of the property, and the property could only be used for uses for which it had or could obtain parking. Ms. Trueblood said except for the Central Commercial district, and that was why it was important to think about the downtown. She said the ordinance said that if you occupied an existing building downtown you did not necessarily have to identify the required amount of parking. Ms. Trueblood said that was also the historic district, and the HDC did not want to see parking lots created downtown. She said that most of the existing uses would not meet the ordinance, and they needed to

think about the downtown in a more cohesive way, not just for parking uses but more as an overall environment.

Mr. Warren said for the government buildings downtown, including the courthouse, any day that the courthouse had a full docket and all the courtrooms were in use, where were all those people suppose to park. He asked did the ordinance language provide for that necessary parking. Ms. Trueblood said that because the BOA would be making its decision next month in that specific case, it was important that the Planning Board not try to make that decision tonight. But, she said, that indicated how you counted a building like the courthouse because that kind of use was not listed in the ordinance. Ms. Trueblood said they did had government offices and assembly.

Ms. Hauth said at present it had to come under government offices. Ms. Trueblood said that brought up a point she wanted to make tonight specific to what was being proposed by Clarion for the new UDO, which was 1 space per 500 square feet of gross floor area for the Central Commercial district. She said as well, for government facilities and office buildings they were proposing 1 space per 300 square feet of gross floor area. Ms. Trueblood said that was basically the current standard minus employees, so if they used that new standard it would drastically reduce the required parking for a use like the courtroom. She said their ordinance gave them the ability to count uses in a building as more than one use. Ms. Trueblood said for the courtroom, she would think that the assembly standard should capture that courtroom space, and that the office space should capture the gross floor area space. So, she said, an assembly standard could be merged.

Mr. Barker said you would have to show cubicles on your plans for construction, and if you did not put the cubicles in but instead had an assembly room, then on the plans you would not have done anything that was a structural change to the building. He said then you would have to recount somehow, but there was nothing in the ordinance to trigger that. Ms. Trueblood said there would always be ways to get around things. Mr. Barker said he had seen that done. Ms. Trueblood said one of the things done in the past that she believed was a disservice was not thinking of some of the spaces that were really assembly spaces as just that, so she would suggest they think of them as assembly spaces in the future and that they allowed themselves the ability to combine uses when in fact a building had more than one use.

Mr. Warren said then with the courthouse, they should use both assembly standards as well as office standards. Ms. Trueblood said she believed that the Twenty First Century Land Development Code was a middle ground between what the Town had existing and what Clarion was proposing. She provided the Board with a spreadsheet prepared for the downtown district that related to the 1 per 500 square feet of gross floor area. Ms. Trueblood said the spreadsheet indicated what the new standard would change about the downtown if it was applied retroactively. She said the existing ordinance for gross floor area would require 1,889 spaces downtown if developed today, and the actual parking spaces was 1,348 including the deck's 409 spaces and Weaver Street Market's paved lot. Ms. Trueblood said that number included non-public spaces and 50 handicap spaces. She said the Clarion language would require 888, so they would lose 1,000 spaces from their current ordinance if they put the suggested Clarion language in the new ordinance.

Ms. Trueblood said by placing the assembly requirements to the east campus, and adding current parking requirements as well as Clarion's "event center" language, which was 1 space per 4 seats, that would raise the requirement to 1,000 in the new UDO. She said the Twenty First Century Land Development Code, which was 1 per 300 of gross floor area, and then an assembly of 1 per 6 seats, would require 1,411, so it would be about 60 spaces more than what they currently had downtown. Ms. Trueblood said the Twenty First Century Land Development Code came down in the middle, and from having done the parking study last year she understood that if you did counts in the downtown at any given time there were empty spaces. She said they may not be the most convenient places to park but they were within an easy 5-minute walk to shops and the government offices. Ms. Trueblood said they could enhance the pedestrian environment and make it friendlier for people to walk, making those spaces more useful. She said from the study she did not believe they had a grand shortage of parking, noting that the deck had provided much relief and the more people used it the more relief they would see in terms of illegal parking.

Mr. Warren said when the County first proposed its complex parking was discussed, and that one of the things mentioned was shuttling people from Durham Tech's campus. He said he had not believed that would work then and believed that still, but requiring people attending court to be shuttled from a park and ride lot was not feasible. Mr. Warren agreed with Ms. Trueblood that the Twenty First Century Land Development Code fell somewhere in the middle of what the Town now had and what Clarion was proposing, and was in favor of that. He said providing 1,889 spaces was too much, but the 1,348 they now had may not be enough. Ms. Trueblood said it was not like they were going to build the spaces they were missing to bring the number up to Code, but each new development that came forward would bring the ratio up to something closer.

Ms. Trueblood said it only took a few minutes to find a parking place downtown, noting their customer survey had not indicated any grand problem. She said the survey indicated that there were issues with enforcement, signage, and finding a space, and the spaces that were most available were inconvenient so there was some shuffling that needed to happen. Ms. Trueblood said it seemed to her that they needed to keep the standards they now had for the downtown because that would preserve its character.

Ms. Woodman said in regards to enhancing pedestrian amenities, there were many nice sidewalks and it seemed very walkable to her. She asked what she had been referring to. Ms. Trueblood said it depended on the person, noting there were a lot of accessibility problems in the downtown, the crosswalks were inadequate, and there were sight problems in some areas. She said in those areas navigating the streets with a child stroller or wheelchair was dangerous, and the many steps in the downtown caused issues for handicap persons. Ms. Trueblood said there were ways to enhance the pedestrian environment, adding that a lot of it was just the number of trash cans, bike racks, and street trees. She said enhancing the visual experience may make people not mind the 5-minute walk to their destination.

Ms. Woodman said for people to get from the Gateway Center to the courthouse was important. Ms. Trueblood agreed, noting that the new Margaret Lane sidewalk and crosswalk when constructed would bridge that gap between the library and Churton Street.

Mr. Barker said he had walked the city of Rome, and it was much easier to walk in Rome than it was in Hillsborough. He said in his view, there was the routine parking days and then you had peak times, and to him it was a question of what happened during those peak times and that was what they needed to be thinking about and addressing.

Mr. Warren asked how Faulkner's Dance Studio had been considered, as an assembly or a school. Ms. Hauth replied they had come in as a school. Mr. Warren said their requirements for a school were very low. Ms. Hauth said that was part of the problem, noting that was one of the things Clarion had changed. She said in the draft UDO a dance studio would fall in the grouping of uses along with fitness centers, which was more appropriate and more consistent and would establish a new parking standard for that use so that the parking need for that kind of use was greater. Ms. Hauth said some of the problems at Faulkner's could be addressed through their own operations; that is, if they staggered their classes their parking issues would abate.

Mr. Barker said that was true not just for Faulkner's but other businesses as well. He asked was there a way to say a business should have a low number of paved parking and a higher number of peak parking. Ms. Hauth said they would somehow have to know what uses would have that type of need, but it would not be consistent and that was the problem. She said never had Faulkner's come to the Town to say that what was required by the ordinance was not sufficient for their needs.

Mr. Barker said the other thing he had not seen in the draft was anything that would increase the requirement for a small doctor's office, such as the Hillsborough Family Care. He said if you had two doctors with staff, you could have 10 people present at a time so they would need at least 14 spaces. Ms. Hauth said that was one of the uses she had flagged as an unusual use that had high needs, but they had not yet gotten that far.

Mr. Barker said in the County's current situation, they had previously said they were prepared to use a transit system for parking, but now they were saying they wanted to contribute to a Town transit system. So, he said, did the Town have the ability to allow a fee to be paid supporting transit in lieu of meeting the parking requirements, and was that a valid path. Ms. Hauth said again, trying to solve the problem with the County facility was not for this Board to discuss and decide.

Mr. Remington invited the Planning Board to attend the next BOA meeting if they wanted to add their comments to that. Ms. Hauth said the spreadsheet that Ms. Trueblood had provided was useful in seeing how a minor change in the standards made a huge difference in a small compact area.

Ms. Trueblood said to be clear, the spreadsheet had to do with the downtown district and the standards that Clarion was proposing in the Central Commercial district.

Mr. Whitlow said the only time he had trouble parking downtown was when he did not get the exact spot he wanted and had to travel an additional block.

Mr. Warren said he believed that was everyone's feeling, in that if they did not find their ideal parking space then they had experienced trouble parking.

Mr. Whitlow said every time he traveled through the deck, it appeared that there were hundreds of spots not being used. He said he had never seen the deck full.

Mr. Warren said the problem there was that people did not want to park there and walk up Churton Street to their destination, even though it was an easy 5-minute walk. He said if the County would lease additional spaces in the deck and have their employees park there, it would leave the downtown street spaces open for everyone else which would be ideal, but that was a different discussion.

Mr. Waldon said what they were talking about here was what the requirement should be for new development and redevelopment in the downtown. He said he appreciated the spreadsheet Ms. Trueblood had provided because it helped to highlight the differences between the current requirements and the suggested requirements. Mr. Waldon said he believed the discussion was valuable, noting what they needed direction on was if what was being proposed would lower the parking requirements too far or should it be ratcheted back up.

Ms. Hauth suggested that the Board think about how the standards would be applied. She said they would not see a lot of new buildings in the downtown unless something was torn down and something rebuilt. Ms. Hauth said when the new standard would apply would be with change of use permits, and now had an inventory of all the spaces downtown and had applied the math to them so they had that fixed point in time. She said at the point a use changed, they needed to apply that math, take the spaces that a business was required to have and plug in whatever the new use would need, and then see if the new use was still compliant. Ms. Hauth said that none of the available spaces were assigned except for those that people leased, because very few uses actually provided their own parking. So, she said, they had to keep that in mind and determine if they wanted to pick a really low number like what Clarion was suggesting so that there was a theoretical plethora of parking in order to infuse a few more high traffic uses downtown and add to the vitality but making it somewhat more challenging for drivers, or did they want to keep the status quo and not see too many more impactful uses coming into the downtown. Or, she said, did they want to take a hard line and say they wanted to pick a standard that everyone had to comply with and run the risk that a really attractive use might be proposed to replace one that was not really attractive but the use could not meet the standard.

Ms. Hauth said she needed some direction as to whether the Board wanted staff to begin tracking which uses needed what number of spaces, noting that had never been done. She said they had never said to a restaurant, for instance, to identify where its customers would park or something of that nature. Ms. Hauth said the County facilities would have an impact, noting the west campus was zoned Central Commercial as was the Gateway Center, so it could impact that whole map in that area. But, she said, the bigger picture was how to deal with redevelopment in the downtown.

Mr. Whitlow said he was having trouble understanding the necessity of even doing that, noting that many of the buildings downtown were fairly small and he could not envision a change in use that would make a radical difference in parking requirements. He said to him that was something that the market would take care of. Ms. Hauth said it would not, noting that if 5 more buildings converted to a lunch and dinner restaurant, they would have a very real problem. Mr. Whitlow said the Town would not be in trouble, the businesses

would. Ms. Hauth said but the Town would be issuing the permit saying it was okay for them to operate, and some business owners come with the impression that it was the Town's responsibility to provide them parking. Ms. Hauth said if at some point the Colonial Inn opened, they would be in trouble.

Mr. Warren agreed, noting in the past when the Colonial Inn had been open for lunch cars had lined all of King Street all the way down to Hassel Street.

Ms. Woodman said that could happen again. Ms. Hauth said that was true, and if it happened they would have a very real parking problem in downtown that they were not prepared for unless there was parking provided on site, which she did not believe the Board wanted to see. Ms. Woodman said she walked downtown every day and there were always empty spaces, and she did not understand why people objected to a short walk of 2 or 3 blocks. She said trying to provide 1,889 spaces in the downtown, which was what the ordinance called for, would kill economic development in that area and it was a ridiculous requirement. Ms. Woodman said she believed the Clarion numbers were friendlier toward the downtown and its vitality, adding she did not want to see anything else get paved. She said she believed the public was locked into a strip mall mentality where they had to park very close to a business, noting she had heard someone say that Wal-Mart had lots of parking but you could not get close enough. Ms. Hauth said it was exactly those business owners who were trying to make a go of it in downtown who were telling them that they had a parking problem, and they would continue to say that especially if redevelopment was allowed to more intensive uses and did not have a mechanism to provide more parking.

Ms. Trueblood said that Ms. Woodman and Mr. Whitlow were correct in that there was available parking on West King Street. She said part of the problem with the downtown businesses was that they faced Churton Street, so what they were seeing was traffic on Churton Street and people not being able to park in front of their stores, so part of the issue was perception. Ms. Trueblood said they were working to change that perception and help the businesses understand the Town was not short on parking. But, she added, if they got too many more intensive uses they may get short on parking. Ms. Trueblood said since court was not yet fully back in session and they were not really dealing with reality now, the traffic counts would be taken again in July.

Ms. Trueblood said they needed to think about maintaining a balance, especially if the Colonial Inn or some other use were to be introduced into the mix. She said in the current ordinance they had tried to deal with that with the use, but a building could easily turn over from an art gallery to a hair salon and the employee numbers change dramatically. Ms. Trueblood said that was why the employee numbers in the current ordinance did not do anyone any good because the uses downtown could change so quickly. She said thinking of it more as not tied to the use but tied to the overall balance they were trying to maintain in the Central Commercial district was a better system.

Mr. Jones asked were they trying to determine a one size fits all regulation as far as parking spaces depending on the category a business fell into. Ms. Trueblood said for the downtown it was a one size fits all. She said for the Central Commercial district they were proposing only one parking standard, and all the other uses outside the Central Commercial area would have a separate standard.

Ms. Hauth said what that would do for them was as they considered redevelopment proposals they would not have to track anything unless someone was bringing new space into public use that was not previously public. She said uses could come and go downtown and as long as someone did not close a parking space or occupy additional square footage, then they would hold steady and not have to potentially tell someone no.

Ms. Faherty asked about the large lawn mower repair shop to the east of Churton Street. Ms. Trueblood said that business was in the Central Commercial district. She said everything located downtown was in the Central Commercial district with the exception of County offices.

Mr. Remington said one fact to think about when you talked about empty spaces in the deck was that traffic court was not yet back in Hillsborough, which he believed would be on Tuesdays and Thursdays. Ms. Hauth said that would cause a huge influx in traffic.

Ms. Woodman said she understood that would bring in 1,300 people each session. Ms. Trueblood said that number was based on the highest number they had ever experienced, so she was not sure that was a reasonable number to use. But, she said, it was a significant number but so was Last Fridays.

Mr. Waldon said he was hearing a consensus that breaking out the Central Commercial with a different standard was good, moving away from calculating parking requirements based on employee numbers was good, and lowering the required number of parking spaces in the Central Commercial district from the current standard was good. He said he believed what he was not hearing consensus on was how low the number should go.

Mr. Barker said in general, yes. He said outside the Central Commercial district he believed they needed a higher base and a slower increase. So, he said, every business had 10 spaces plus, per x square feet, so that it was a slower growth for a bigger structure so they avoided huge parking lots.

Mr. Whitlow said he did not completely agree with that but did not know what the answer might be. He said he could think of spots in west Hillsborough where someone could open some sort of business because it was a walkable neighborhood. Mr. Whitlow said he was worried that they would become too inflexible to allow such businesses, noting he wanted flexible creative solutions that would allow that to work without restricting an entrepreneur who might want to open a pastry shop, for example. Ms. Trueblood said currently the ordinance for the Central Commercial district had some of that flexibility, noting it said that if you were recently meeting a need downtown then they would not be held of new development standards. She said she had always thought of it as to how the standards would apply to new development, not a change of use permit, because if you started applying a change of use permit you immediately got into the problem of what happened when a hair salon became a bar. Ms. Trueblood said to her it seemed that when you were applying the standards to the Central Commercial district there had to be the flexibility to say that the parking was sufficient until you got a new development, and then the new development would be responsible for taking into account what effect it would have on the downtown infrastructure. She said if it was the type of business that needed parking

immediately outside of its door, then it probably should not locate on Churton Street but at a shopping center or strip mall, and then the market would play that out.

Mr. Hornik said with respect to some situations where they talked about establishing presumptive minimum standards, where they said 1 space very 300 square feet or whatever, they were saying that if someone could present to them information and reasons such as historical data to establish that the presumptive standard was too low or too high, then they could be flexible. He said if a business's experience at another location was that they only needed 1 space for every 1,000 square feet, then perhaps they could convince the Town that additional parking was not needed. Ms. Trueblood said an example of that would be if a business's peak hours were after 5 p.m., which would apply to bars and most restaurants.

Mr. Hornik said they needed to think about ways to address the standards but still have the flexibility to make those kinds of determinations. He said if information could be provided that convinced the Town that the parking standard was too high, then they should have a way to provide that flexibility.

Ms. Woodman asked would challenging that presumptive standard have to occur during the permitting process when it came before the Planning Board or before the Board of Adjustment. Mr. Hornik said it was easy to do when it was in the CUP or SUP process. He said what they needed to work on was whether and within what parameters they might be able to do it. Mr. Hornik said it might be possible to handle it during the administrative process, as long as they established the boundaries and criteria that staff would have to apply.

Mr. Whitlow said that would also allow them to err on the side of restricting parking from the beginning, and then the dance studio and others could say that they needed 10 more spaces. He said those people would come and ask for the spaces they needed, but if you told everyone to build more spaces than was needed then they would not come.

Ms. Woodman said she believed they had the opposite problem, in that they had said that for a particular use you needed only 12 spaces and the business said fine even though they knew they needed more than that. Ms. Trueblood said a business would not build parking spaces unless you required it because it was expensive to build.

Mr. Barker said he believed Mr. Hornik had spoken wisely, and from his explanation he believed they had a fairly high presumptive standard, that a fairly high percent could be handled administratively, and that they would allow an appeal to come forward if necessary. Ms. Trueblood said especially in the Central Commercial district, they needed a lot of flexibility to not require changes in use to have to require new parking, noting it was for new buildings that they would require new parking or large additions to existing buildings.

Ms. Hauth said what they might want to do for requirements outside the downtown was pick a handful of uses, ones they knew were problematic with either way too much or way too little parking, and apply the new standard and report back to the Board with the results. She said having those examples would make it easier for them to determine what should be done. Ms. Hauth said they would pick out 10 sites that fell on either side and apply the

new standards as well as the Twenty First Century Land Development Code and let the Board look at those examples.

Mr. Whitlow said speaking of places with too many spaces, they were not addressing in the ordinance the maximum but were talking about minimums. Mr. Waldon said that was correct, noting that many jurisdictions did have maximums but there were no maximums being considered right now. Mr. Whitlow said he had thought they had discussed in the past such stores as a Wal-Mart that used all its parking only on two days of the year, and finding ways to differentiate between that and the 20% of spaces they needed all the time with overflow parking that was more aesthetically and environmentally friendly. Ms. Hauth said they did have a provision for a maximum, it was just not in the table. She said you could not build more than 20% over what the minimum parking standards called for. Ms. Hauth said one of the items on their list to address was the overflow provisions for such instances.

Mr. Barker said in regards to maximum parking, stormwater provisions would keep the maximum parking down, as would expensive asphalt and concrete. He said in some ways that was built into other parts of the process. Mr. Barker said he believed he had seen that for sports field it was 10 spaces per field, and saying that you could not go more than 20% over that was scary.

Ms. Woodman wondered if you did have another “big box” store come to Town, was it possible to have them provide a gravel overflow lot and a smaller paved lot. Ms. Hauth said she did not see why not, noting the Town had that ability.

Ms. Faherty asked had the Town required Home Depot to have that huge lot. Mr. Warren replied yes. Ms. Faherty said that might be an example of where they may not have wanted that many spaces. Ms. Hauth said the issue was that there were future plans for additional construction on that site, so more square footage was to come. Ms. Faherty said the parking area at the Botanical Gardens in Chapel Hill was a fine example of how such parking should be provided.

Mr. Warren suggested they move on and let Clarion know what the Board’s preference was. Ms. Trueblood said what was proposed was 1 for 500 square feet of gross floor area, which was the most lenient on parking. Mr. Warren said he did not believe that was enough, and asked did that mean that they could eventually get rid of some of the parking. Ms. Hauth said that was unlikely, noting it meant that if someone was to come forward and wanted to build an addition they would not be prohibited from doing that.

Mr. Whitlow said but a completely new construction would still require new spaces. Ms. Hauth said not necessarily, noting that if they had a large parking space gap they could theoretically see a new building going up without a lot of parking being provided. Mr. Whitlow asked was it possible to make that distinction between new construction and a change in use.

Mr. Hornik said legally you probably could, noting it was a reasonable restriction. But, he said, the question was did they need to do that.

Mr. Waldon said what they were talking about was a standard that would apply to new construction, or a building expansion that exceeded a certain number of square feet. He said someone could come in and redevelop a building but not increase the square footage, so they would not trigger the parking standards. Mr. Waldon said a part of that might be addressed through nonconforming provisions as well, in that if there was a required standard and the existing building did not meet the requirement, then it could be a nonconforming feature that was allowed to continue.

Ms. Trueblood said she did not think that a change in use permit should trigger the new parking standard, that only new development or new additions should trigger it.

Mr. Barker said it would depend somewhat on what the use was. Ms. Hauth said perhaps not, if the square footage of that building was included in the numbers and the standard for the downtown was one size fits all. She said that every square foot of space in the downtown was accounted for, whether it was occupied or not, so changing a building from an office to a bar would not change the standard. Mr. Barker asked did they need to have some equation for calculating off-site parking to allow people to count existing parking spaces that exceeded the new standards so that a new business was not forced to build extra parking. Ms. Hauth said they would have to craft the language in a way to address that.

Ms. Trueblood said the BOA seemed to be moving away from counting on-street parking in terms of a particular site.

Mr. Warren said he believed the Twenty First Century Land Development Code was reasonable and would work better than what Clarion had proposed. He said he understood they would want to hold off until they received the additional information from Ms. Hauth.

Mr. Whitlow said he would want to know what their assumptions were, in that he did not know that this was considered a typical, modern, suburban American city or an historical city or what. Ms. Hauth said the 1 for 300 square feet of gross floor area was for the Central Commercial district and for urbanizing downtown. Mr. Whitlow asked how hard would it be to figure out how much developable square footage there was downtown. Ms. Trueblood said she did not know what was vacant, so she could not respond, but people could tear down buildings.

Ms. Hauth said that was true unless you were talking about someone building over top of parking lot, which was essentially the only vacant land there was. Ms. Trueblood said she believed they should think about the downtown with the possibility of one or two new developments at some strategic corners.

Mr. Warren said he believed the Board was leaning towards the 1,411 space figure. There was no objection from the Board. Ms. Trueblood said she would be happy to do some comparisons using those standards so that the Board would have examples.

Mr. Waldon said for retail sales what they had recommended was 1 space for 250 square feet of gross floor area, and removing the requirement for employees. He said if the consensus was that their recommendation lowered the required parking by too much, then they would go back and change those numbers.

Mr. Barker said if they had a free-standing Subway, would they basically need only 4 spots. Ms. Trueblood said the Clarion recommendation was one space per 4 seats for restaurants. Mr. Barker said how about for a high traffic small store, such as a salon with 700 square feet. He said that would require 3 parking spots, noting that was not enough for employees and customers, so they needed a base plus some number.

Mr. Waldon said what they had recommended was lean, and was based on the feedback they had gotten as well as best practices and the Town's objectives for the downtown of wanting to encourage new growth and development. He said if the Board wanted that standard raised then that was not a problem.

Mr. Warren suggested that once the additional information on comparisons was obtained that it be emailed to the Board prior to its next meeting. He said then if there were any questions they could contact Ms. Trueblood or Ms. Hauth.

Mr. Waldon said before the next meeting they could revise the downtown numbers for the Board to discuss.

Ms. Faherty asked when they were talking about presumptive standards would that number apply to outside the downtown. Mr. Hornik said that was most applicable outside of downtown.

Mr. Whitlow said he could see it being beneficial downtown as well, noting that if a bank building converted to a bar and they wanted to add 1,000 square feet that was a good example where they wanted to build an addition but did not want to add spaces because it was a nighttime business. He said he would like to see that kind of flexibility built in, noting he was much less concerned about the Clarion numbers and the Twenty First Century Land Development Code numbers if they had that flexibility everywhere.

Mr. Waldon said he believed they could provide that flexibility, so that if someone came if with a proposal they could change the standard on a case-by-case basis. He said that flexibility would argue for raising the standard from what was proposed.

Mr. Hornik said it might be better to require more parking presumptively, and allow applicants to make their case for a lower standard based on their model or past experience that could be documented.

Mr. Barker asked did they then need two standards if they had a presumptive system. Mr. Hornik and Ms. Hauth both responded yes.

Buffers and Screening

Mr. Waldon stated he would skip over the buffers and screening section, noting there was still work to be done before the Board discussed it. He said they wanted to have one set of requirements, but at present that was not the case. Mr. Waldon said the standards were conflicting and redundant, and more work was needed.

Cluster Subdivisions

Mr. Waldon said they had included language that they were seeing used more effectively and successfully elsewhere that encouraged conservation, encouraged individual lots to be smaller, and encouraged more land to be set aside as open space. He said the major change they were suggesting was that a Conservation Subdivision could be used anywhere as opposed to just select areas.

Ms. Hawth said that was with the caveat that it still had to meet the 20 unit standard which made it a SUP, noting that had been recently added to the ordinance. She said the only part that was not yet in the draft was the standard asking the applicant to provide the argument of why they should be entitled or allowed to do it that way, or what was special about their property that would convince the Town to allow it. Ms. Hawth said it required a little more open space than the current ordinance, and they would add in the provision that the open space was the 35% or the sum of all the lot reductions proposed.

Ms. Hawth said the contention with previous cluster subdivisions was that the applicant was not making an argument about the quality of whatever it was they were preserving that was sufficient to sway the Board to give it to them. She said for instance, if there was a large rock outcropping or a stand of significant trees or some natural feature you were preserving. But, she said, saving a stand of pine trees was not terribly persuasive. She said her issue with cluster subdivisions was that they had never had someone really push the envelope or take full advantage of the lot size reduction, so they had never gotten a huge piece of open space. Ms. Hawth said it had not worked the way they had wanted it to and they did not have that example to point to, and that was why they had wanted to have developers make the argument regarding what they were trying to preserve.

Ms. Faherty asked could they structure it so the developer did not even have to come in and explain it but the ordinance say that for a certain size lot they would have to provide x amount of green or open space. She said in other words, the Town would be providing the template. Ms. Hawth said they could, and that was why she believed they needed to talk about increasing the amount of open space required, or require a larger reduction in lot size in order for it to classify.

Mr. Barker said he believed that was a good suggestion, so why not do that. Ms. Hawth said the question was how much.

Mr. Whitlow said he would like to see some examples, such as here is a plot of land and this is what it would look like if we required 50% or whatever. He said the examples should include the setbacks as well.

Mr. Remington said the language that was in the ordinance said to have no minimum individual lot size, which was likely a good direction. He said whether the 35% was the right number or should be higher he did not know, but wondered if given what was just said should there be some restriction on how many pieces it could be. Mr. Remington said if it was 10 acres, would a half acre be in one place and a half acre be somewhere else, or did it have to all be in one place.

Ms. Faherty said she was assuming the figures noted came from best practices or came from some established standards from similar sized jurisdictions. Mr. Waldon said that was correct. Ms. Faherty asked what the incentive was that made a developer want to have

a cluster subdivision as opposed to a subdivision. Ms. Hauth said they wanted to do it because you held the density constant, so if they had 10 acres zoned R-10 then theoretically they could put 40 houses there. She said you could never do that in reality because you had to take out for roads and setbacks and other things. Ms. Hauth said if you hold the density constant and allowed them to make the lots smaller, then they could get closer to that number of 40, and they had done it by building less infrastructure.

Mr. Waldon said one of the big advantages of doing a conservation subdivision was that the infrastructure could be made more compact, the streets were less long, it was more environmentally friendly, and there was more open space.

Ms. Faherty said this section did not have specific language about setting aside one large area as opposed to several small pockets. She said she would think they would rather see that one large area.

Mr. Barker said they had the example of Fish Dam Road, and asked could this be used to preserve an historic roadway. He said depending on how they crafted the language they should keep that in mind. Ms. Hauth agreed, noting wildlife corridors and others should be addressed. She said she believed they could set up a framework in which that would work.

Tree Protection

Mr. Waldon said there were significant changes they were recommending for the Board's consideration, noting the main one focused on a percentage of retention. He said in addition to looking at individual trees, they would be looking at a site proposed for development and requiring a determination of what the existing tree canopy was and then applying the percentages to that existing tree canopy estimate.

Mr. Bemis asked what the difference was between a specimen tree and a significant tree. Mr. Barker said that was industry terminology.

Ms. Hauth said the more normal word was "significant" rather than "specimen," and there was a definition provided on page 5-27 of a significant tree, which was a tree with a 12" diameter measured at 4 feet above ground.

Ms. Faherty said in landscape/gardening terms a specimen tree indicated one that was thought to be important because of its species, so that it was planted or preserved because it was of a particular species and was meant to be set off and protected as a specimen of that kind of tree. She said a significant tree was a tree that was very large or quite mature or in a certain place, regardless of what kind of tree it was, as long as it was healthy and viable. Ms. Hauth said what they had in the ordinance was likely an inconsistent standard, noting they were probably all meant to be specimen trees with a 12" diameter, but she could be wrong.

Mr. Waldon noted they would come back with clarification on that and how those terms were used.

Mr. Barker said the tree protection applied only before the homeowner purchased the lot. Mr. Waldon said that was correct.

Mr. Remington said the thing that was missing for him that he was hoping would be there was relevant to such places as Oakdale Village and Corbington Commons, which was the timing of when clearing would be done. He said the big issue was someone coming and getting a permit, and the next day they've cleared out the lot and 3 years later nothing had happened on the lot. Mr. Remington said he had wanted to see some mechanism put in place that would require construction to take place once the lot was cleared, so that clearing did not occur months or years prior to any construction. Mr. Waldon said Mr. Remington was talking about phasing the different parts of construction.

Ms. Faherty said that was important particularly in regards to the trees. Mr. Waldon agreed, noting it could be managed on a case-by-case basis with conditions of approval, or if the Board believed it was necessary it could be addressed in the ordinance.

Mr. Barker said you quickly got into issues like you had to grade to get your drainage in right, and if you were grading then everything was cleared. So, he said, in order to comply with stormwater rules the trees had to be removed.

Mr. Remington said he did not believe that had been the case with Corbington Commons. He said he wanted to see a clock start to tick once clearing took place, even if it was done to install drainage facilities or something necessary to begin construction of buildings. In other words, he said, everything had to be done in a certain length of time.

Mr. Warren noted they had done that with the Forest Ridge development.

Mr. Barker said that brought you back full circle to parking, with questions like could you get more trees in parking lots.

Mr. Warren said the ordinance should address when mature trees were removed and similar trees were replanted.

Mr. Remington said to keep in mind that if you required large trees that they had a bigger root system, and the rule of thumb was however wide the crown of the tree would grow was the amount of space needed for the root system.

Ms. Faherty said that was also true for construction, because many trees died a few years after construction because their root systems had been compromised during that process. She said she would like to see some language that required maintenance of such trees. Ms. Faherty said theoretically the developer had saved such a tree, but in reality they had damaged it and it eventually failed.

Mr. Barker said there were standards for construction to address that.

Exterior Lighting

Mr. Waldon said the Town had minimum standards for exterior lighting, and they were suggesting that the Board consider including maximum standards. He said they had included that in the draft on page 5-37, noting the language said the maximum should not exceed one foot candle at the property line. Mr. Waldon said that staff had indicated that

might not be a realistic standard, so their recommendation was to think about establishing a maximum outdoor lighting level. Ms. Hauth said she did not know how you would calculate the average intensity, noting she had seen at least two different ways to show those kinds of light levels. She said one was points on a grid, and the other was like a topo map where the light intensity went out so far. Ms. Hauth said so, depending on the map of how you actually calculated the average, and based on some of the intensity she had seen which were extraordinary, she could not image how you would average that. She said she was not trying to put everyone out of compliance, so they needed to understand that the number they were setting as the maximum was attainable, but she did not have the knowledge base to do that.

Mr. Barker said there was software that figures could be plugged into that would tell you if you were over or under the standard and do an average. But, he said, if you changed a bulb then everything changed. Ms. Hauth said that was good to know, because they had people fighting them on doing lighting plans because they had never heard of such a thing. Mr. Barker said instead of using the word "average" they could use the word "maximum." Ms. Hauth said that was fine at the property line, but she was concerned about the locations you drove by at night such as a convenience store where there was such a bright light under the canopy that it was almost blinding. She said you look at the light and look away and you could see only spots. Ms. Hauth said they needed to pull the maximums down under such canopies, noting that 100 foot candles were unnecessary.

Mr. Barker said at the same time, the higher the contrast the worse your eye responded, which made it more hazardous. He said there were professional handbooks that stated what the light should be indoors, and if you track those over the years it had gone up by 50% every 20 years.

Mr. Warren said there were problems with such places as Wal-Mart and Home Depot, as well as the parking garage. Ms. Hauth said that was light pollution off the property, and in Wal-Mart's case it was much more of a topography issue because it was impossible to build any kind of barrier. She said that parking lot was barely compliant and she would bet there was a large part of it that was not compliant. Ms. Hauth said that was one of the darkest parking lots she knew of, and she was surprised they had not received a lot of complaints about it.

Ms. Woodman asked was there any remedy for when a building was constructed and the lighting was put in and it was not put in as the plans had shown. Ms. Hauth said that was an enforcement issue, in that if they went out and measured it and it did not match the plans or was in violation of the ordinance, then they would cite them. Ms. Woodman said she wanted to make sure that language stayed in the ordinance and possibly strengthened.

Ms. Faherty said it seemed to her that one of the issues was the height as well as brightness, and the angle that the light met your eye as you were walking or driving or even living nearby. She said the calculations of the candle power and grade and whatever could still be problematic, and believed it would require a lot of thought and care. Ms. Faherty said what had happened in the past was unsatisfactory, because you never knew what you were going to get until the lights were turned on. She said interior lighting that bled outside should be taken into account as well.

Mr. Barker said having a simple test backed up with a simple enforcement system should take care of that. He said for about \$65 the Town, or anyone, could obtain an instrument that would measure light in any particular direction. Ms. Hauth said the Town already had that tool, but the problem was that the standards they now had did not match up with what was problematic for people.

Ms. Faherty said if that was the case, then they should set the standard based on what was problematic. Mr. Waldon reiterated that the existing ordinance did not have maximums.

Ms. Hauth said that was correct, but they did have off-site standards.

Mr. Barker said when they had discussed this months ago, they had come up with full-moon as one measurement and so one, and the question was did they want it to be equal to a quarter moon, a full moon, or how bright was acceptable. And, he said, they needed to figure out what the brightness was.

Administrative Powers

Mr. Waldon said they were strongly recommending that staff be allowed to make minor changes to plans after they had been approved when circumstances required a change, using certain parameters. He said for example, there could be limits set on how much of a percent change to the floor area could be made to an approved development through an administrative adjustment. Mr. Waldon said one of their observations was that however they did it, they clearly needed to allow for some administrative flexibility with limits so that staff could deal with changes after the approval of a project that were not anticipated. He said that would mean that a project would not have to go back through the process if it fell within the administrative parameters.

Mr. Remington said he liked that idea, and could think of some cases where something had to go before the BOA that might have been handled much more efficiently by staff with this type of system. He said his one worry was that in looking at it one way it was an organized system for creating new nonconformities, and believed they needed to make sure that the parameters were clear. Mr. Remington said for instance, if there was a setback change did that mean that the Special Exception permit provisions would kick in that would let something be added as long as it did not encroach any further into the setback. Mr. Waldon said he did not believe that this system suggested that staff should allow anything below the minimum standards in the ordinance, so if there was a minimum or maximum setback or building envelope then that could not be administratively changed. He said what the system did suggest was that once something had been approved, that changes could be made as long it complied with the ordinance.

Ms. Hauth said that was not exactly how it read.

Mr. Remington agreed, noting it said staff could deviate from those things. But, he said, that was likely appropriate at times. He said he was wondering if others had concerns about what they set up in terms of someone looking at it in the future and saying there was an issue with interpretation. Mr. Hornik said there were two different ways to deal with that in the draft, with one being the administrative adjustments and the other with the minor changes and modifications to plans. He said minor modifications would be where

you say to the staff that if an applicant showed a good reason why they had to change the way the building was placed on the lot but the change was only about 10%, then staff could do that, but any change greater than 10% would result in the plan having to go back through the process with the permit-issuing authority. Mr. Hornik said what was being suggested was significantly different.

Ms. Hauth agreed, noting they had wanted to get feedback from this Board to see how they felt about that. She said they had talked about the sidewalk requirement and parking requirement being the presumptive standard, and this is where that presumptive standard would come into play. Ms. Hauth said this may be an issue that should be set aside and talked about more at the meeting on April 10, in terms of what they wanted to do and whether they were creating nonconformities, and if they were then were they providing flexibility in the future or was it a one-time deal.

Mr. Hornik said this was almost a built-in special exception that was broader than what they already had. He said what it would allow was that once a site plan had been approved and you began your site work and construction and you came upon some changed condition, then if it was within the set parameters it would allow the developer to come to staff and explain the changed condition and ask if that was possible. Mr. Hornik said the suggested process would allow staff to say yes you can within those certain parameters, or no you cannot and you have to go back to the permit-issuing authority to get approval.

Mr. Barker said then it had to be for cause. Ms. Hauth replied yes, noting that the standards did not necessarily presume it was a project that had been approved by the Board, noting it could be someone bringing to staff a Zoning permit and applying for an administrative adjustment as a part of that Zoning permit. So, she said, conceivably someone could come in and want to modify their setback up to 20% because they wanted to preserve a tree, but it was a small enough project that staff would have handled it and it had never come to a board. Ms. Hauth said a 20% change in a setback was not insignificant.

Ms. Trueblood said from a staff perspective, when something like that came in and if it seemed from the ordinance that staff had the authority to do it then it was very hard to say no. She said she ran into that problem often with the HDC because the Design Guidelines said that changes deemed not substantial by staff may be approved as a Minor Work. Ms. Trueblood said that was as subjective as you could get and it was problematic.

Ms. Faherty agreed, noting that developers would likely always pressure to go the maximum allowed that staff could approve, so she could see that becoming a tricky situation. She agreed with Ms. Hauth that a 20% change in setback was significant.

Mr. Warren said he believed anything having to do with the setback should have to go back through the process.

Mr. Remington said if it could be allowed up to a particular amount did not necessarily mean that was what had to be approved, noting there were guidelines that spoke to that. He said if someone was proposing a building and said that in order to save particular trees or not do as much grading they would need to put their parking lot closer to the street than what was allowed, or to have a sign that a truck would not back into it would have to

encroach 4 feet into the 10-foot sign setback, then it seemed reasonable in such a case that perhaps staff should be able to approve that. He said staff could say the sign encroached only somewhat into the setback and they were saving more trees with less grading, so the changes were justified. Mr. Remington said that might be much better than having the plan come to the BOA.

Mr. Hornik said it may be that the percentages were too much or the circumstances under which it could be used was too broad, but the focus needed to be on setting the parameters. He said should it be 5% or 10%, should it only be used in certain circumstances, or the like. Mr. Hornik said if the Board did not like the concept then they should scrap it, but if they liked the concept but believed it needed to be refined somewhat, then that should be the focus.

Mr. Barker said the example that came to mind was one that he may not have all the facts just right, but a survey wasn't quite right so when you constructed your building you didn't have as much grass in front of it as you had intended. He said that made the building look bad and made the grocery store not as profitable downtown. Mr. Barker asked would that fall within this, in that a survey was wrong and it really changed the intent of what ended up being built. Ms. Hauth said that would really fall under the modifications to an approved plan probably more than this process. She said this process was more for when someone came to staff and said they wanted to build an addition to their house and the lot line between his property and the neighbor was odd and had a weird jag in it that was not allowing him to build the addition he wanted to the back of his house.

Ms. Trueblood said what staff did many times was go through the ordinance and help people figure out how to do what they wanted to do. She said if they had the ability to change something by 20%, then there would be situations where that was applied. Ms. Trueblood said the Board needed to decide if it was comfortable with that percentage, and if it was 20% total or 20% per side.

Mr. Whitlow said they also needed to consider how the numbers worked if someone was both changing a setback and the physical dimensions at the same time, in that should the percentage standard be applied to each of those or were they cumulative. Ms. Hauth said she would try to come up with some examples to show what that would look like, noting that she saw this as being different than modifications to an approved plan.

Special Use Zoning

Mr. Waldon said that the findings that had to be made for a conditional use permit and a special use permit were not exactly parallel in the existing regulations, and they were suggesting some language that would be better from the Town's perspective. He said what they were doing was making the findings applicable for both permits the same and tightening them somewhat, and making the burden of proof rest with the applicant. Mr. Waldon said in one case in the current language, it said that the Board shall approve unless it found that the development did not promote, health, safety, and general welfare. He said they were suggesting that that language be changed to say that in order for the Board to be able to approve a special use permit or a conditional use permit that the applicant had to demonstrate that it promoted health, safety, and general welfare and preserved the value of contiguous property.

Mr. Waldon said the other issue with special use zoning districts was that they were proposing that for the Neighborhood Business district and the Central Commercial district that they establish parallel special use districts, called the Central Commercial-Special Use. He said that would mean that if a property were zoned to that CC-SU then any development on that property had to have a special use permit. Mr. Waldon said that meant that if someone had a piece of property that they wanted to put a commercial use on and they had requested a rezoning to a CC or an NB, then theoretically any use that was permitted under CC or NB would be permitted on that site after it was rezoned. He said he had seen that used very effectively in other communities where someone looked at that property and wanted to put something there but it would require a rezoning, but the community was not comfortable with all the possible uses that might be permitted on that site under that zoning. Mr. Waldon said then the applicant would say that he only wanted to do a particular thing, but once the property was rezoned there was no guarantee of that. He said what this would allow would be for someone to request a rezoning for CC or NB for a very specific purpose, so if it was rezoned to that zoning district it had to be accompanied by a special use permit.

Ms. Hauth said it was very similar to the process they had set up for Event Centers as a special use in the Central Commercial district, in that it would require a rezoning to Central Commercial plus the special use permit for an events center.

Mr. Hornik said this process would allow someone to say they wanted to take a property now zoned R-20 and rezone it to the CC district, and only wanted to use it for a specific use which had to be one of the uses allowed in the CC district. He said that would allow the Board to approve the rezoning to CC-SU, and the only use that would be allowed on that property would be the use they were requesting. Mr. Hornik said if someone came along 20 years later and wanted to change the use, they would have to come back before the Board and get a special use permit to change the use on that particular property.

Mr. Hornik said the change in the language in the standard for a special use permit may seem insignificant, but it was huge and it was really very important.

Mr. Remington said it might have prevented losing a couple of lawsuits. Mr. Hornik said it was very possible, noting what was suggested shifted the burden. He said at present the language said an applicant was entitled to a special use permit unless the public came forward with substantial competent evidence to prove that one of the standards was not met. Mr. Hornik said this change would place the burden on the applicant to come forward with substantial competent evidence to show that they did meet the standards. So, he said, it was a big, bit change in where the leverage was.

Mr. Remington said he had always been baffled by that language because the burden clearly should be on the applicant and not the public. He said the BOA could not approve it unless they found that the applicant met the findings, but with a special use permit there was really very little flexibility.

Signage

Ms. Hauth said she had sent the Board the minutes from the meeting regarding signs, noting that she saw four topics on signage to talk about. She said one was the strong desire at least from merchants to have provisions for temporary signs for commercial events and other events. Ms. Hauth said they allowed such signs for non-profits, but now they had requests for such events as Ladies Night Out and a sidewalk sale in Daniel Boone and others, so there was a strong desire from merchants to have provisions for temporary signs for those types of events. She said such provisions should include limits to the number a group could have per year, how long they could be displayed, how quickly they needed to be removed after an event, where they could be displayed, and that sort of thing.

Mr. Whitlow asked where such signs could be displayed and if it was off their property. Ms. Hauth said off their property or in the right-of-way adjacent to their property, or something like that. She said merchants wanted some mechanism to let the traveling public know about an upcoming event. Ms. Trueblood said there had been 3 very vocal people at the meeting who were asking for those regulations. Mr. Barker said he had been at the meeting and agreed. Ms. Hauth said the provisions had been requested and it was something to think about. She said they needed to discuss it and see if they could come up with some provisions, and if not or if they were just opposed to it for whatever reason then that needed to be said. Ms. Hauth said she was only reporting that the interest had been expressed.

Ms. Trueblood said while they were thinking about it, she said they had been talking only about temporary signs in the right-of-way, but there may be a way for businesses to advertise those types of temporary sales using something like a banner, similar to what was allowed for a grand openings, as opposed to signs in the right-of-way to accomplish the same thing. She said she was “anti signs in the right-of-way” because they became an enforcement problem in her opinion, but there may be other ways to do the same thing.

Mr. Warren said he did not have a problem with temporary signs per se and believed they could come up with some guidelines, but there were some around Town such as Jack’s that had such signs up all over Town.

Mr. Hornik asked if those kinds of temporary signs were allowed. Ms. Hauth said yes, with limitations. She said they were only supposed to be at 4 locations and there were size limitations, but no one paid any attention to them. Mr. Hornik said they needed to look at that because there may be some constitutional problems with allowing it for one group but not others. He said it may be that they did not allow them at all, or they were allowed for everyone with a certain set of standards. Ms. Hauth said they could discuss that at length at the meeting on the 10th unless the Board did not want to consider it at all. She said at present the ordinance did not allow temporary signs.

Ms. Faherty said she had thought that the idea that was brought up was workable, in that if you were having a special event then you registered that event and got permission, and then you were given a set of guidelines and were allowed to display the temporary signs for whatever the time limit might be. She said the persons at that meeting had seemed to think that allowing that type of privilege 3 or 4 times a year was acceptable, but there was also a very clear feeling that allowing signs to be posted all over Town for unlimited time periods was not acceptable.

Mr. Barker said that did come up, but he had never gotten a read for how feasible that was for Town permit issuance of 10 signs every week or the like. He said it was mentioned that fees could be placed on that, and the group seemed to be okay with that. Ms. Hauth said she would need some time to think about that. Mr. Barker said he was going to suggest a sticker system where every sign displayed had to have a sticker that was obvious from a distance.

Ms. Hauth said there was also language in the draft ordinance that was new in regards to sandwich board signs, but staff wanted to spend some more time working through that. She said if the Board was interested in allowing sandwich boards then staff wanted to recommend that they use basic materials such as metal or wood, that they were not considered temporary signs, that if they were in the historic district then they had to be reviewed by the HDC, that they could only be out when the business was open, that they should have some sort of changing message, and should only be allowed for restaurants and/or nightclubs. Mr. Warrens suggested letting staff continue to work on that language and discuss it at a later time.

Mr. Whitlow said that sounded to him like the same issue, in that they were allowing certain people to advertise. Ms. Trueblood said that was why they wanted to work on the language.

Mr. Barker asked was there an issue with a sandwich board sign at a shopping center, in that should the rules be different from the rules for the downtown. Ms. Hauth said in some ways walkways in a shopping center was different, one being that it was not a public right-of-way. Mr. Warren said most of the shopping centers had their own regulations governing what could be placed on the walkways.

Ms. Hauth said the next big issue was multi-tenant developments, because that was really where the problem was. She said that the multi-tenant development signage regulations they currently had were written to fix a nonconforming sign, so it was not meant to create a positive situation for multi-tenant businesses but was meant to avoid a lawsuit. Ms. Hauth said a lot of their multi-tenant situations were not standard situations, noting they did not have a Southpoint Mall or a large group of buildings that became a destination in people's mind and therefore did not need a sign. She said the basic question was if they were they going to try to find a solution for their existing multi-tenant facilities, especially the ones that they did not expect to be here very long, or were they going to try to really solve the problem. Ms. Hauth said that was something they really needed to think about, in that could they live with something that gave a development what it wanted and knowing that it would only be there for 5 or 10 years, or did they want to solve the problem and not make those developments happy.

Mr. Warren said they all needed to think about that. He said if anything new came on board they would have to comply with whatever the new language was, but for those that were existing and were likely short lived and it might be better to leave them as is. Ms. Hauth said they did need to think about that, but they also needed to consider if there was something that could be crafted as sort of a quick fix that might help.

Ms. Hauth said the last issue, and she wanted to give Ms. Trueblood credit because she believed it was a fantastic idea, was the amortization of nonconforming signs. She said she

wanted the Board, if it was legal, to think about that applying only to free-standing signs and not wall mounted signs, because free-standing signs had the greatest impact. Ms. Hauth said if they focused their attention on enforcing that and requiring the removal of nonconforming free-standing signs, their impact would be much greater and they would be able to do it in a way that did not tie a staff person up for an entire year and did not subject the Town to multiple lawsuits.

Ms. Woodman asked what she meant by amortization. Ms. Hauth said that was the removal of nonconforming signs, in that they would have 3 or 6 years to come into compliance. She said if they focused on free-standing signs rather than wall mounted signs they would get there faster and see a bigger impact, and hopefully stay out of court.

Mr. Barker said as he drove around and looked at wall mounted signs, he actually thought allowing them to be larger would be okay. Ms. Hauth said that wall mounted signs did not impact your view as you drove down the street, but free standing signs certainly did. She said they were not suggesting a lot of changes to wall mounted signs, although they would likely be recommending that they not be allowed at the current 32 square feet.

Mr. Whitlow asked what if one of their old mills decided they wanted to do a wall mural. Ms. Trueblood said if the mural was advertising something then it would have to meet the size standards for a wall sign.

ITEM #5: Committee reports and updates:

Due to the late hour, the Board agreed by consensus to not hear committee reports and updates.

Announcements


Mr. Remington said that next month appointments for liaisons to other boards would need to be made. He said his appointment on the Planning Board would be up in a few months, so his appointment to the BOA as this Board's liaison would have to be passed to someone else. Ms. Hauth said they would usually do the election of new officers in April, but due to the workload it would be in May. She said liaisons to other boards would be made at the same time.

Mr. Warren said that next Wednesday the Rail Station Task Force would host a public information meeting at the Library with the doors opening at 5:15 pm and the first presentation scheduled for around 6 p.m.

ITEM #6: Adjourn.

Upon a motion by **Ms. Woodman**, seconded by **Ms. Faherty**, the Board moved to adjourn the meeting. The vote was unanimous. The meeting was adjourned at 10:08 p.m.

Respectfully submitted,


Margaret A. Hauth
Secretary