

Town of Farmington  
Planning Board Meeting Minutes  
Tuesday, October 20, 2020

**Board Members Present:**

Charlie King, Chairman  
Rick Pelkey, Vice Chairman  
Bill Fisher, Secretary  
Gerry Vachon, Selectmen's Rep.  
Ann Titus  
Bruce Bridges

**Others Present:**

Kyle Pimental, Interim Town Planner

**Board Members Absent:**

Stephen Henry, excused

**BUSINESS BEFORE THE BOARD:**

**Call to Order:**

Chairman King called the meeting to order at 6 p.m.

**Pledge of Allegiance:**

All present stood for the Pledge of Allegiance.

**Review of Minutes:**

October 6, 2020 – No errors or omissions

**Motion:** (Titus, second Bridges) to accept the Tuesday, Oct. 6, 2020 Planning Board minutes as written passed 6-0.

**Voluntary Lot Merger:**

Mr. King said the property owners are Laura Johnson and Jon Johnson and the lots being merged are located on Camelot Shore Drive, Tax Map R06, Lots 71 and 72. He asked Mr. Pimental if he had reviewed the application and they have everything they need.

Mr. Pimental said everything is all set to be signed.

He said the Town Administrator wanted him to ask the board if they would like to give this responsibility to the staff. By state law it can be the Planning Board or its designee and in other communities the Assessing Clerk does a lot of the review, checks the mortgages and then the Code Enforcement Officer (CEO) will sign it and there isn't a lot for the board to review he said. Mr. Bridges said he planned to ask why the board was dealing with this.

Mr. Pimental said it was a simple decision the Town has made and by RSA it can be by the board or its designee.

Mr. King said if the Planning Board never gave it to somebody then it still comes here.

Mr. Fisher said the board had looked at possibly giving more tasks to the Planning Dept. staff

and that this is an excellent candidate for that. He said it seems to be perfectly legal to do that and he is all in favor of it.

Mr. Pimental said there is no public hearing needed and it is up to the board if they would like to do this. He said if the consensus of the board is do so he would like them to make a motion to kick this to the Town staff or a designee so it would be part of the record.

Mr. King asked if this has to go before the voters at Town Meeting.

Mr. Pimental said this is not part of the zoning ordinance so he didn't think that was necessary.

Mr. King asked if he was recommending the person to sign off on this would be the CEO, the Planning Dept. or a group if so designated by the board.

Mr. Pimental said the Town Administrator recommended that Assessing Clerk Kelly Heon would still sign as the Assessing Clerk and the line for the Planning Board Chairman's signature would be changed to the CEO's signature.

Mr. King asked if before handing it off if they want to define how they want it to be handled, who's to sign off on it and then hold a public hearing to notify the public of the potential change and give them an opportunity to express their opinions. He said he would like to see a policy on how these will be handled so if there's an issue the board or the Town Administrator can review it to make sure the procedures were followed correctly and the applicants could be given a copy so they know what requirements they have to meet.

Mr. Bridges asked for a decision on this application tonight and not to hold up these applicants and make them wait for another meeting just to put 2 pieces of land together.

Mrs. Titus asked if they handed this application over to the Planning Dept. if that would be holding it up as well.

Mr. Fisher said they would deal with this one now and the change in procedure would be for future voluntary lot mergers.

Mr. Pimental said they can review the policy on the front cover of the merger application and mark it up with changes and then bring it to the board for a hearing and if there are any public comments the board can address those then. He asked the Chair to sign this application tonight to get it moving forward and suggested the public hearing could be held at the Nov. 17 meeting.

Mr. Fisher said he wouldn't want to overload Mr. Pimental because he is still working on the Master Plan and asked if this is something that could be postponed until after the Master Plan is finished.

Mr. King said he has no problem with creating a priorities list and putting it after the Master Plan and the potential zoning amendments for the March Town Meeting.

**Motion:** (King, second Fisher) to approve the voluntary lot merger of Lot 71 and Lot 72, Tax Map R-06 on Camelot Shore Drive by Laura and Jon Johnson passed 6-0.

#### **Review Potential Zoning Amendments:**

Mr. Pimental gave the board a fact sheet put together by the Nashua Regional Planning



Commission that explains the differences between conditional uses, special exceptions, variances and waivers and a copy of his proposed revisions to certain sections of the zoning ordinance for discussion with the board.

He said there are 4 sections that they are putting forth and the conversation about the changes to the Table of Permitted Uses for the commercial and industrial zones is not going to be as straight forward as changing certain ones to something else.

Section 1.02, Authority- (D) Site Plan Review Authority- He said at the last meeting the board gave feedback on what could constitute the **Technical Review Committee (TRC)** and he added some ideas for the board to consider. He said TRC review could be required for new construction; redevelopment or expansion of activities that result in an increase of could include gross floor area of more than 2,500 Square Feet, parking that exceeds 3 spaces or 1,000 SF, land disturbance of more than 1 acre and any construction activities that require a conditional use or special use permit.

Mr. Pimental said when the TRC gets involved is not clearly defined and it has been at his discretion and what he feels they should get involved with. He said a lot of the changes of use and the small amendments have not needed them but new construction has kicked them in. He asked the board if he is going in the right direction with clearly identifying what thresholds would trigger the TRC to get involved in any site plan review.

Mr. King said the 1,000 SF for parking is somewhat of a low threshold and suggested it could be higher. He said he was okay with the other two ideas (an increase of 2,500 SF or more in gross floor area and land disturbance (more than 1 acre). He asked if someone were to add 3 parking spaces why that would need to come to site plan review. One thousand square feet of parking is 20' x 50' and three 15' x 20' spaces would be 500 SF and those 2 numbers don't go together and it could be increased to 6 spaces or 2,000 SF he said.

He asked how many more parking spaces a business would need to add if they added 2,500 SF of gross floor area. He said if someone added 2,000 SF it is under the 2,500 SF threshold and the parking and land disturbance should be consistent with that. He asked what number of parking spaces would be required by the site plan regulations if someone wanted to add 2,000 SF to their business and that it would probably be more than 3. He read from the regulations that one space is required for every 325 SF so if somebody were to add 2,000 SF to an office building they would need 6 parking spaces and that this could get moved up to be consistent with the potential uses that might be expanding.

Mr. Pimental said a standard parking space is 180 SF so 6 spaces would be roughly 1,000 SF.

Mr. King said you would have to add the turning areas so it would probably be double that amount of space. He said a retail store is one space per 250 SF so in that case 2,500 SF would be 12 spaces. He said he thought it should a minimum of 6 spaces but it could be a little higher.

Mr. Pimental said this not for site review but for when the TRC kicks in.

Mr. King asked if the Farmer's Kitchen wanted to add 3 parking spaces if it would need to go to



the TRC or if it should be if they wanted to add 6-10 spaces.

Mr. Pimental asked if the board wanted to change it to adding 6 spaces or more as a start.

Mr. King said it should be increased to 6-10 spaces and to bump up the sq. footage to 2,000 because redevelopment has more impact to the sq. footage of a building than on the sq. footage of parking.

Mr. Pimental asked if he was okay with starting with an increase of 2,500 SF of gross floor area and if they wanted to base the land disturbance on the lot size.

Mr. King said he was okay with the increase of 2,500 SF of gross floor area and to keep the requirement for the TRC for more than one acre of land disturbance but add "or 50% of the lot size" to provision because there could be more issues and impact to the abutters with the expansion of a small lot.

Change or Expansion of an Existing Use – Mr. Pimental proposed the following criteria would constitute a change of use: development of a residential structure resulting in an increase of 3 or more units to existing structure; expansion of an existing residential structure by more than 750 SF including additional floors or an increase of 25% of the total building area, whichever is less and expansion of a commercial structure by more than 1,500 SF including additional floors or an increase of 25% of the total building area whichever is less.

Mr. King said the second criteria regarding residential structures is more restrictive and has a lower threshold than what we have now. He said residential expansion doesn't even come before the board assuming this is a single family residential proposal.

Mr. Pimental said this is for multi-family structures not single family homes.

Mr. King said it doesn't say that and needs to be clarified as someone could misinterpret it.

Mr. Pimental said it is intended for multi-family structures that are adding additional units and that he would clarify the language.

Mr. King suggested he add "multi-unit residential" to wherever it says "residential structure".

Mr. Pelkey noted it could be a single family structure adding 3 units which then becomes a multi-family structure though it wasn't one to start with.

Mr. Pimental said if a multi-unit structure has 5 units and they proposed adding 2 units that would not trigger site plan review but adding 3 or more units would. He said the increase of 3 units stems from what the Town already considers a multi-family structure.

Mr. King said if he has a 5 unit building and wants to add 2 units bringing it to 7 units he could have a plan where the parking doesn't meet the parking regulations.

Mr. Pimental said just because it doesn't necessarily trigger site plan review it would still have to meet all the requirements. We're just saying this change of use would be handled internally and not by the board he said.

Mr. King said he could come in requesting a waiver for it.

Mr. Pimental said that can't be done by the staff and he would have to go before the board.

Mr. King said the criteria doesn't say that. He said it should say if the plan meets all of the



requirements its fine, but if it needs a waiver for any of the requirements it should be required to go for site plan review and it should be clear that only the Planning Board can grant waivers. Mr. Pimental said he would clarify that all other regulations need to be met and any plan needing a waiver would have to come before the Planning Board.

Mr. King said or the use may need a variance and they would need to seek relief from the ZBA. Mr. Pimental said if they need to get a variance from the ZBA they still have to come before the Planning Board. He said the intent here is to allow the staff to move through changes of use to not have to come before the Planning Board but they have to meet all the requirements.

Mr. King gave an example of an owner who wants to expand the number of units but it doesn't meet the setback so he would need a variance from the ZBA. He asked if he gets the variance and meets the other requirements why the Planning Board would need to see him. It should say that if they need relief at the ZBA they can go there and then come back to the staff or if they need a waiver it would be done by the Planning Board he said.

Mr. Pimental said he was fine with that if it is the consensus of the board.

Mr. Fisher suggested it could say if the site plan does not meet the above listed requirements it would be forwarded to the ZBA or Planning Board as appropriate.

Mr. Bridges said he has a problem with holding people up for nothing.

Mr. Pelkey asked if the site plan would be reviewed by the Planning Dept. staff.

Mr. Pimental said the Planning Dept. would do the review just like he does now for the board where he would check all the criteria, write notes on where they are compliant or non-compliant and what they need to do. His memo would be to the applicant to address any issues and if they meet all of the site plan regulations they could approve the change of use without it having to come to the board he said.

He said what they are talking about here is what the threshold is for what can be handled in-house and what is a change of use that is enough to trigger it to come to the board and usually that is an increase in the number of units or structures increased by a certain percentage and these numbers can change. He said he was trying to find out where the board was comfortable with a project is big enough where they want to have some oversight or this is small and we trust that the Planning Dept. can handle it the review because there is not a big enough impact for the board to have any oversight.

He said there have been a lot of applications that came before the board in the last year with not a lot for the board to review and it's cost them for public hearings and in time when it could be done in-house if the board is comfortable with coming up with some thresholds.

Mr. Pelkey asked if they would still have an application and notices would go out to the abutters.

Mr. Pimental said they would still have to go through all that other stuff such as noticing the abutters it just wouldn't come from this board.

Mr. King said they still need to have public notice so the abutters would be aware of the plan



and have an opportunity to raise a concern. He asked if there would still be public notice during a staff review of a site plan.

Mr. Pimental said that is something to discuss on whether or not they would trigger the abutter notices. He said they would have to write in a process for that into the amendment as it doesn't exist right now.

Mr. King said this is very important because if somebody is going to do something on an abutting site it is our duty to at least alert the abutters that an adjacent parcel is going to change use and intensity whether it is for staff review or Planning Board review.

Mr. Fisher asked if somebody wanted to come to the Planning Board with a proposal if they could request that it come to board instead of having the Planning Dept. review it.

Mr. King said the applicant should be able to request that.

Mr. Pimental asked if that is the case if they would revert to how they would handle any site plan and it would have to have a public hearing.

Mr. King said that is correct.

Mr. Fisher agreed and said he also agreed with Mr. King that those site plans reviewed by the Planning Dept. should be noticed.

Mr. King said he did not know how they would handle the opportunity for the abutters to express themselves after they have been notified.

Mr. Pimental said they could put at the bottom of the notice that they have "x" amount of days to submit comments along with whoever the comments would be sent to.

Mr. King said then there would have to be a "gate" that says based upon the abutter notice the Planning Dept. may feel that this should go to a public hearing before the Planning Board.

Mr. Pelkey said there are changes of use the TRC does now in the Village Center that don't come to the board and asked how they handle public input on that.

Mr. Pimental said they don't do a notice for the expedited review of changes of use in the VC.

Mr. King said the expedited review is for uses already permitted there.

Mr. Pelkey said they are saying the same thing here with if it meets all of the site plan requirements it can be done and anything outside of the requirements has to come to them.

Mr. King said this would be dealing with a much wider array of scenarios in different zones. You could have somebody wanting to put in a dog kennel that meets all the requirements next to a residential structure and those abutters would want to know about it. They still need abutter notices and an opportunity for comments, a threshold for if there's concerns from the community that can't be resolved by the staff then it needs to come here he said.

He said there may be other reasons to do that such as if an abutter came in with issues with the plan and the staff said they meet all the requirements so we're going to do it. Then the applicant takes us to court and he makes the case that they did not provide him with an adequate opportunity through a public hearing process even after he raised a concern.

Mr. Pimental read that the change of use for the VC says the CEO shall have the right to request



comments from other Town dept. staff and professionals deemed necessary. If the application is denied by the CEO the applicant must submit an application to the Planning Board for site plan review. He said it also says that any person aggrieved by a decision regarding the application for the change of use may appeal said decision to the Planning Board within 30 days of the decision date. It does provide that opportunity but it does not say anything about notifying abutters about the change of use he said.

Mr. King said this is a grievance after the fact which is usually an uphill battle. He said they haven't had an issue where it hasn't worked well but there are a lot of other possible scenarios where we would be well served by having a notice period where they could comment and if there are any major issues that should be remanded to the board.

Mr. Pimental said he noted that if we are going to make this change we need to look at Section 5.1 in the Site Plan Regulations because they are proposing that the process for this change of use within the VC be included for all zoning districts so this would be an opportunity to re-write this section. He said if the board is more comfortable with instead of a person appealing a decision after it's made, making this more of a public process in which the abutters are notified about the change of use that is being handled internally we can do that. He said he would rather do it in the site plan regulations as opposed to writing it into the zoning.

Mr. King said that would make the process consistent where there is a notice period, complaint period and then remand it so they are handled the same.

Mr. Pelkey said part of the reason we do it that way is to make sure it is expedited as we don't want to stick too many hoops in their path or we've defeated the purpose for doing it.

Mr. Pimental agreed and that allowing the changes of use to be handled in-house as long as they don't meet these thresholds will speed the process up but they'll have to talk about how long the abutters will have to comment and if 30 days is reasonable.

Mr. King said if an issue is going to come up it needs to come up relatively quickly and that 2 weeks is reasonable.

Mr. Fisher noted most people make up their minds pretty quickly as to whether they like or don't like something.

Mr. King said it would add more time to the process for the VC but they could change those requirements for that district to reduce the response time to expedite matters a little.

Mr. Pimental said they will have to talk about that and he would recommend that the expedited process for the change in use be consistent and not to treat the VC differently.

Mr. Pelkey suggested they keep the language for an appeal at the end of the requirements.

Mr. Pimental said they have to have the changes to section 5.1 ready to go with this change if it makes it through Town Meeting and be ready to hold a public hearing and that would give them an opportunity to spell out the process for public notices, how many days they have to respond and appeals.

Mr. Pelkey said the abutters should be notified that this is being done by an expedited process



so they need to have an expedited response to it.

Mr. Pimental asked the board to give some thought to the numbers for now (750 SF for multi-family units and 1,500 SF for commercial uses) and anything below that is going to be an expedited review and anything over that will be done the way it has always been done.

Mr. Fisher asked why they would make it more restrictive for residential uses than commercial uses and why they wouldn't put them both at 1,000 SF or 750 SF.

Mr. King said right now they would have to come in if they were changing it by 10'. He said the sq. footage needs are different and that commercial, manufacturing and industrial uses could use up 1,000 SF just with equipment or storage and parking is 1 space per 10,000 SF and retail stores are 1 space per 200 SF. He said depending on how the sq. footage is utilized that 1,500 SF commercial vs. residential use the impact is totally different and 750' is typically 1 or 2 units.

Mr. Pimental said the way it is written he didn't know if that is gross floor area but adding 750 SF on to the building with 2 or 3 stories you may be getting more units.

Mr. King said they need to clarify that it is the total impact to the floor space. He said it could be written as 750 total SF or whatever number they choose to use.

Mr. Pimental asked if the board wanted to increase the residential to 1,000 SF and change the language to 1,000 SF of total increase of floor space.

Mr. Fisher said using total sq. footage makes a difference in that includes entryways, hallways, walls, stairwells, etc. If you say increase in floor space then you're not counting stairwells and wall thicknesses he said.

Mr. King said you would count them as they are floor space.

Mr. Fisher asked if they count hallways now when including new units.

Mr. Pelkey noted the board had this discussion a while back.

Mr. Pimental agreed and said that some of the definitions were changed.

Mr. Fisher said he thought they no longer included halls, etc.

Mr. King said that was in the Accessory Dwelling Units (ADU) section.

Mr. Pimental said gross floor area is defined as the sum of all of the physical areas of all floors of a building as measured by the exterior surface of the exterior walls but does not include cellars, attics, porches, decks, garages, balconies, open-sided roofed over areas or occupied by heating and ventilating equipment.

Mr. King suggested they use "gross floor area" here and put the number they like.

Mr. Pimental said he would add that and make sure to clearly identify that for residential structures they are talking about multi-family structures and that they must meet all site plan regulations and then he will start work on section 5.1 of the Site Plan Regulations.

**Section 1.10, Interpretation, Administration and Enforcement** – Mr. Pimental said in section A, item #1(a) he explicitly stated that the Director of Planning and Community Development in conjunction with the CEO or designee have the authority to interpret, administer and enforce this ordinance as well as Planning Board and Zoning Board of Adjustment decisions. Together all



interpretative decisions must be unanimous. If unanimity cannot be reached the Planning Board will serve as a third party to make a final decision.

He said #1(b) says the CEO has the authority to interpret, administer and enforce all local codes; issue building permits as provided in RSA 676:11-13 and any certificates of occupancy and to perform inspections as may be necessary to assure compliance with the local building code.

Before it was not clear and this was my attempt to try to clarify it he said.

Mr. King said there are some scenarios that may be problematic with this. He said it says "The Director of Community Planning and Development in conjunction with the CEO or designee..." and if the CEO isn't available his designee can fill in and asked what happens if the Director isn't available.

Mr. Pimental asked if he wanted him to add "or designee" after the Director of Planning as well.

Mr. King said it needs to say who is doing the designating.

Mr. Fisher suggested adding a sentence saying all designees are appointed by the Town Administrator.

Mr. Pimental said the RSA says the Selectmen establish the Dept. of Planning and Community Development and that has already been done. He said they're saying who the actual staff members are that will administer, enforce and interpret the ordinance.

Mr. King said that authority rests with this board by statute not the Selectmen. He said the Selectmen set up the Planning Dept. and Planning Board is delegating their authority to interpret the ordinance to others. He said he is not opposed to having the delegating done by the Town Administrator but was asking if it should be the Planning Board.

Mr. Fisher asked what happens if the CEO wants to go on vacation for a few weeks or take one week off a month for the next 3 months and that would take 3 Planning Board meetings to appoint the designee which would delay the applicant process. He said if it's legal they could have the Town Administrator appoint the designee just like when the Police Chief fills in for him.

Mr. King said it should read "The Director of Community Planning and Development in conjunction with the Code Enforcement Officer or their designees as determined by the Town Administrator..." He added that the current Town Administrator has experience as a Building Inspector and could consult with Selectmen as to if it would be appropriate for him to designate himself to fill for the Director or the CEO.

Mr. Pimental said the recommended amendments will also be reviewed by legal counsel and they will then know if they can't do this. He said if there is an issue where the 2 people don't agree on it and it comes to the board they should flag the issue because it is unclear and may need to be addressed that year.

Mr. King said there could be a situation where there is a new Director/CEO that may have an opinion based on their inexperience and after a discussion with the board they have a better understanding of what the true intent was so it might not need to be changed or clarified.



Mr. Pimental said he would make that change and check with the Town Administrator to make sure that he agrees that he should be the one to appoint designees for the Director and CEO.

Mr. Fisher said that in section D, Appeal of Decisions it says decisions of the Planning and Community Development Dept. may be appealed to the ZBA and asked if they should add the 30 day time limit for appeals so that people are aware of the deadline.

Mrs. Titus asked if when an applicant comes in to do their application if they tell them about the 30 deadline for appeals.

Mr. Pimental said they usually point applicants to the RSA but maybe they could make it clearer that the RSA says they have 30 days to appeal a decision.

Mr. King said what Mr. Pimental struck from section D (~~Building Inspector/Code Enforcement Officer~~) needs to be left in because they are the ones listed as interpreting the local codes in the above section in case there was an issue with their opinion. He said the stricken words should remain and that "and/or" should be inserted following "Department".

Mr. Pimental said he would make sure both of them are called out in the ordinance and that he would add in about the 30 timeframe and the relevant RSA.

**Section 2.00 Table of Permitted Uses** – Mr. Pimental said this stemmed from looking at potentially changing the commercial/industrial uses and that one of his previous comments was that some of these could be changed from a special exception to a conditional use permit which would stay within the Planning Board.

He said a conditional use and a special exception are essentially the same thing in many ways except they are done by 2 different boards. He said the conditional use permit can offer a little more flexibility in that the Planning Board can waive certain criteria but the ZBA cannot waive any of the criteria for a special exception and you have to meet all of the criteria.

He said if the community wants the Planning Board to play more of a role in these uses that need more oversight then they should be conditional uses. If they want a different board to be looking at that that is when you make them a special exception. Conditional uses are also for innovative land uses and those all trigger with the overlay districts he said.

Mr. Pimental said the first thing he did was to try to clean up the language in Table 2.00 (B)- Permitted Land Use Table Codes. He said the way that it originally reads is a little misleading saying uses Permitted by right (**P**) without review by the Planning Board is not necessarily true. If a barber shop is a permitted use in the VC that doesn't mean that someone can just build a barber shop and not come for a site plan review so I cleaned that up to just say "Uses allowed by this ordinance" he said.

He said he has not seen the next table code, Permitted by Review (**PR**) in other ordinances and defined it as "uses permitted by Conditional Use Permit (**CUP**), uses permitted by Special Exception (**SE**) as uses that require a special exception from the ZBA and uses not permitted in the zone without a variance from the ZBA as Prohibited (**"\_"**).

Mr. Pimental said if they take this approach they need to consider which of these use really



need conditional use permits or if they should just be allowed. He said in the commercial/industrial uses there are a lot of uses that are either special exception or permitted with review that the board may want to think about changing but he didn't want to start doing that. He said for example there are financial institutions and financial institutions with a drive-thru and asked if someone wanted to do that in the commercial business district why that use would need additional scrutiny (PR) instead of just allowing it.

Mr. King said if it is a permitted use it doesn't require a site plan.

Mr. Pimental disagreed and said that any non-residential use requires a site plan review which is why the PR code is not real and is confusing. He said just because it's permitted does not mean they can build a bank without having site plan review and then asked if they were okay with a bank going up somewhere in the commercial business district why they wouldn't make that use permitted.

Mr. King said a financial institution is permitted in the VC and he took that to mean it is permitted without review and if it's in the CB it's permitted by review and Mr. Pimental's interpretation is that both of them have to come before the board for site plan review.

Mr. Pimental said any non-residential use is required to have a site plan review by state law.

Mr. King said in the Agricultural zone forestry management is permitted across the board and that doesn't mean it will come for site plan review and logging is permitted with review in the commercial business district and permitted with no review in the remaining zones.

Mr. Pimental said the agricultural uses are a little different in that if a logging business was to go there site plan review would be required but not for timber harvesting.

Mr. King said in residential zone two family dwellings are permitted in all zones.

Mr. Pimental said a two family is a duplex so it doesn't require a site plan review and shouldn't be included in the chart.

Mr. King said this is a table of all uses not just those needing a site plan review.

Mr. Pimental then rephrased his comment to say that a 2 family dwelling would not trigger a site plan review but that has nothing to do with it being permitted by right, it has to do with the Planning Board doesn't have the authority to review it.

Mr. King asked if all the PR's would change to CUP.

Mr. Pimental said not necessarily and asked what additional criteria the board would want to see if someone wanted to build a bank in the VC, CB and Industrial Business zones.

Mr. King said a bank in the VC with a drive-thru could be problematic with traffic patterns, flow and lights and asked if this use would be permitted by a CUP.

Mr. Pimental said for the financial institutions he would change the PR in the Urban Residential zone to a CUP and for the VC, CB and IB zones he would change it to a P. I don't see any reason why you wouldn't allow a bank in the CB and IB zones he said.

Mr. King said with the current system if it meets the requirements it's approved.

Mr. Pimental said every use in the CB and IB would trigger site plan approval because they are



non-residential uses.

Mr. King said home occupations are non-residential uses and are permitted without review in 6 zones. He said there have been some changes made in the last 10 years and there is a difference between a home business and a home occupation.

Mr. Pimental said those 2 uses are defined later in the ordinance.

Mr. King said the way this chart was intended is it is permitted-period. He read off several other non-residential uses that are permitted in certain zones and asked how someone would determine what has to come before the board for review.

Mr. Pimental said he didn't start making any of the changes because he realized if they go in this direction it would be an overhaul of the entire table. He said the way that it is written now is confusing with permitted uses and uses permitted with review and if someone were to say because the use is permitted they don't need site plan review that is not going to fly. Everything that says PR needs to change to something else whether it's to P, CUP or SE he said.

He asked the board to think about the uses and if they make sense in those districts they should be allowed and if they think there are going to be challenges, such as Mr. King's point about the traffic hazards created by a drive-thru maybe that should be a CUP so the board would have more oversight and put additional requirements on that drive-thru.

Mr. Pelkey said it is two different entities- the use is what is in this table not what is put there to accomplish that use. He said what they put there to accomplish that use is what the site plan review is about.

Mr. King said if someone wants to put in a commercial building and due to a coverage area or wetlands setback issue they need a conditional use permit and site plan approval. He said they need the CUP because something specifically needs additional review and approval and the way this is being proposed the CUP is needed for the site and we have CUP's for specific items.

Mr. Fisher suggested they call it a conditional use review instead a conditional use permit. He said they could say these are items we wouldn't normally permit in this district but if we review it we could override it if it's not permitted and allow it. He said the term CUP is being used for specific items so they can't use it for this when it is already being used for something else.

Mr. King said if they go back through the other tables they would see other things that are permitted that have no review meaning it's permitted to do without Planning Board approval.

Mr. Pelkey asked if there are any permitted uses without review in the industrial zone.

Mr. King said all the uses in IB district require review but some accessory uses are permitted.

Mr. Pelkey said if a dry cleaner in the VC wants to tear something down and put up a new building you will get a site plan and he can't just put up a new building because it's permitted.

Mr. Pimental said Mr. King is correct that there are uses in the table that have a P that would not require a site plan review but there are also a lot uses with a P that would absolutely require site plan review. So it doesn't mean anything with a P means you're not going to see it he said.



Mr. King said he didn't think are any that are P now that would be coming forward for review except for those uses he cited in the VC.

Mr. Pimental said the idea with CUP and SE is that these are uses that there might be some benefit to them being there but they might cause some issues. He used Durham as an example of how they can look at site suitability, external impacts and character and can change the minimums for front and rear setbacks, screening requirements, landscaping, size and modifications to the building because it is a conditional use and the board could have more control over what's allowed beyond the site plan regulations.

He said he would not want to see as many CUP's replacing the PR's and suggested that if they are fine with a use to make it an allowed use and those that may need additional requirements a CUP. He asked the board to think about the entire table, consider how to restructure it to put more emphasis on the Planning Board and what they want the ZBA to look at because there should only be a few SE.

Mr. King agreed some of the SE could be changed to CUP. He gave another example of commercial/agriculture including animal husbandry is permitted without review in the AR zone, and in RR zone which is a one acre zone and permitted with review in the IB. He said this is a perfect example of a use we don't want to see here because of the zoning or impact to the density. He said in the commercial/agricultural zone it's permitted and you don't need to get a Planning Board review if you're going to put up a barn and have 100 cows. But if you're going to put it in a 1 acre zone that's more populated the board might want to sit on that and that's how this is interpreted he said.

Mr. Pimental said there is more gray area for agriculture uses but a commercial agricultural operation on vacant land should have site plan review even if it is in the AR zone. He said a commercial operation is a non-residential use so you would have to have site plan review.

Mr. King said a farm stand is also a non-residential use but it has been designated by the state to be in its own class that is exempt.

Mr. Pimental said the table needs a lot more work than just changing some of these things around and he didn't know if they can get it done in time for March. He said maybe they could but they first need to reach consensus that "P" doesn't necessarily mean it doesn't have to come before the board.

Mr. King said they could disagree on principle but when he was sitting on the board and put the P on a use he was saying we don't want to see them. He said renting rooms and cemeteries are non-residential uses and asked why we want to have them here.

Mr. Pimental said he would review the table and determine which uses would not need site plan review and get clarity on the agricultural uses for the next meeting. He asked the board to review the handouts he provided, to note that everything Farmington has as part of SE is what Durham has in their CUP and to think about what uses they would want to have additional criteria on and which ones don't need it because they will have a site plan review.



**Section 3.23 Storage Units** – Mr. Pimental said the board has had previous discussions on this issue but there still doesn't seem to be a consensus on how this is being interpreted right now. He said the Land Use Assistant informed him that the way this is written in B is exactly what is being done now it's just spelled out and more clearly sets up the process for dealing with this. He said he also tried to clarify what a temporary storage unit is by adding it includes but is not limited to shipping containers, converted truck bodies, school buses, and box trailers to make it apparent that this is what they are focusing on and not coming after someone's shed. He said there was some disagreement on how to handle something that has been there prior to the adoption of the amendments put in place. It's still going to require a minor building permit, that's what they're doing now and what they recommend moving forward he said. Mr. King asked if the minor building permit would be granted no matter what. Mr. Pimental said it would be granted if it meets the setbacks and that it will be taxed. Mr. Fisher asked for the cost for the permit. Mr. Pimental said he didn't know but he didn't think it was much. Mr. Fisher said he hated to see somebody that has had a storage unit on their property for 30 years have to spend money to allow them to have what they've already got. Mr. Pimental said it was never allowed even though they've had it for 30 years. Mr. Fisher said he wasn't going to sit on the Planning Board and tell somebody that something they got 30 years ago they can't have now. There were no rules or laws 30 years ago telling them what they could not have on their own property and to tell them now here's a permit you've got to pay me \$10 for so you can have what was already legally yours is asinine and I don't care what the Planning Dept is doing now-they're going to do as we tell them he said. Mr. Bridges said the Land Use Asst. told him if somebody is doing a site plan they can put it (storage unit) on their site plan and then they don't have to do a minor building permit. Mr. Pimental said that may be true if the unit is just going to be there temporarily. He said the difference is the units that are permanent and if it is going to stay there forever that's when it triggers the building permit. Mr. Vachon asked how you would prove it if someone bought a container tomorrow and said it was there previously. Mr. Pimental said he would agree with Mr. Fisher if the container was there prior to zoning and if so there is not much the Town can do. He said if it was there when zoning was in place then the Town would grounds to say it wasn't allowed. Mr. King said they have the authority to say until a lawyer shows him case law where they can't, that the storage containers that meet the requirements for permanent storage containers and existed prior to the adoption of this amended ordinance would not require a permit. Mr. Pelkey said if they need to change the ordinance to read that way then they should move forward with doing that. I think we all feel that way he said. Mr. Pimental said going the route of providing an exemption would be an avenue to pursue as



opposed to grandfathering them. He said the legal opinion on grandfathering was no because of the way the zoning is written that it was never an allowed use therefore they cannot grandfather them.

He said he would follow up on using an exemption in the zoning to see if it would be legal if the Town explicitly spells out that the process is you will need a temporary building permit moving forward but looking backwards we are going to exempt them.

Mr. King said that would address his and Mr. Fisher's concern about adding restrictions that weren't in place and things that were never enforced. You can say it was never permitted but if it was never permitted and it was never enforced then by default it's been allowed he said.

Mr. Vachon asked if it would be the resident's responsibility to prove it such as with aerial photography.

Mr. King said it would have to be their responsibility and if this passes with the exemption those units are already known to be there before the adoption date because they are already a "bone of contention".

Mr. Pimental asked if the board had any comments on the criteria they put in for the permanent storage units. He said he added that storage units will not be located on the front portion of the lot where it is readily visible from the roadway in residential districts, that it shall be encouraged to locate the units in the back portion of the lot in commercial districts but if not feasible their appearance must be masked by landscaping or other means, there must be fencing or screening around the unit and it must be maintained in good condition. He said he removed the requirement that it be placed on an impervious surface.

Mr. Pelkey suggested that the units that were in place prior to the adoption of the ordinance would be considered permanent and would be controlled as such so they could say they have to screen it, maintain it in good condition, etc. Not just an exemption to rules but they will be considered permanent and must be maintained in accordance with the ordinance he said.

Mr. King asked what happens if someone has a storage unit on the front portion of their lot that has been there for 30 years and we're now saying they have to move it.

Mr. Pelkey said they designate it as permanent and they would be required to screen it or landscape it and conform to the criteria for permanent storage units. It says they must be maintained in good condition which may address some of the issues the CEO has he said.

Mr. Pimental said he would follow up with legal counsel on this because with the way that it's phrased now once it's reclassified as permanent it is then taxable and in order to get there the way they define permanent storage is you have to have a building permit for that. He said he didn't know exactly how that would work if they are exempting them from the ordinance.

Mr. King said if it has been there before the zoning change it would be noted on their tax card that it was placed prior to the amendment to the ordinance and is considered permanent and is taxed as such.

Mr. Pimental asked how they would handle it if the storage unit is on the front portion of the



lot in a residential area and they are exempt and they don't need a building permit but permanent storage units are not allowed on the front portion of the lot.

Mr. King said a question for the CEO would be if we currently have any temporary storage containers that are located on the front of the lot that are an issue.

Mr. Pelkey said he read the criteria a little differently in that says it is not to be located on the front portion of the lot where it is readily visible from the roadway but if he screens it, it is no longer readily visible and it is still on the front portion of lot.

Mr. Pimental asked if there was a unit in the front portion of a lot and they're exempt and permanent and now they have to put up a fence around it if that is more expensive than applying for a minor building permit.

Mr. King said if it is permanent they don't want it in the front and if it is temporary it can be. Basically we are saying if it's going to be permanent it's not going to be an eye sore or a safety issue he said.

Mrs. Titus said asked if abutter issues come before the board such as an unattractive view or having an effect on property values if there is anything they can do about it.

Mr. Bridges said that why they are required to screen it.

Mr. King asked if the units have to fall within the setbacks.

Mr. Pimental said the CEO would say (as is stated in A) the reason for the permit is to verify that the unit will meet the zoning setbacks for the district it is located in but this is for new units.

Mr. King said he could also put that requirement down further in the ordinance so that the permanent units also have to meet the required setbacks.

Mr. Pimental said they could add that in but the challenge would be how to enforce it if they don't have some sort of permit to show they're out of the setbacks.

Mr. King said they wouldn't know until somebody files a complaint.

#### **Any Other Business before the Board:**

**EDC Rep.** -Mr. Pimental said the Town Administrator asked him to ask the board about appointing a Planning Board rep to the Economic Development Committee as Stephen Henry who is the current rep has been unable to attend their meetings.

**Motion:** (King, second Fisher) to nominate Ann Titus as the Planning Board rep to the EDC; Mrs. Titus accepted the nomination.

**Vote:** The motion passed 5-0-1 (Titus abstained).

**New Member** - Mr. Pimental said they received an application from resident Jeremy Squires who is interested in joining the board. He said the Selectmen approved his application as an alternate member at their meeting the previous night and he will fill in for Mr. Henry. He then asked if Mr. Henry has resigned or if he will return after his classes are done in December. Mr. King said Mr. Henry notified him that if the board wants him to resign he would and asked what the board's wishes are on this matter.



Consensus of the board was to allow Mr. Henry to finish his schooling and then return to the board when he becomes available.

**Adjournment:**

**Motion:** (Bridges, second Titus) to adjourn the meeting passed 6-0 at 8:10 p.m.

Respectively submitted  
Kathleen Magoon  
Recording Secretary

  
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Charlie King, Chairman



