

**AMHERST PLANNING BOARD**  
**Wednesday, October 21, 2009 – 7:00 PM**  
**Town Room, Town Hall**  
**MINUTES**

**PRESENT:** Jonathan Shefftz, Chair; Bruce Carson, Denise Barberet, David Webber,  
Jonathan O’Keeffe, Ludmilla Pavlova-Gillham, Richard Roznoy, Stephen Schreiber

**ABSENT:** No one

**STAFF:** Jonathan Tucker, Planning Director; Christine Brestrup, Senior Planner;  
Jeff Bagg, Senior Planner

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Mr. Shefftz, Chair, opened the meeting at 7:11 PM.

**I. MINUTES – Meeting of October 7, 2009**

Ms. Barberet noted several grammatical corrections. She also noted the following substantive corrections:

Page 2 – Paragraph 1 – Replace the word “fears” with the words “is concerned”.

Page 4 – Paragraph 5 – Delete the word “imagined”; delete the word “density” and replace it with the words “building size”.

Page 8 – First full paragraph – The second sentence should read “Residents were not able to tie into the sewer because of design problems.”

Page 8 – Second full paragraph – Add the words “of 300 Flat Hills Road (a member of the Zoning Board of Appeals, but not speaking for the ZBA)” after Barbara Ford’s name.

Mr. O’Keeffe noted that on page 1, second paragraph, the word “chair” should be deleted after his name.

Ms. Pavlova-Gillham MOVED to approve the Minutes of October 7, 2009, as amended. Mr. Carson seconded and the vote was 8-0 to approve the Minutes, as amended.

**II. PUBLIC HEARINGS – ZONING AMENDMENTS**

**A-06-10 Phased Growth Sunset (Planning Board)**

Mr. Shefftz read the preamble and opened the public hearing for this proposal to amend Section 14.20 of the Zoning Bylaw to extend the ‘sunset’ period for the phased growth bylaw to November 15, 2010.

Mr. Shefftz presented the article and explained that originally the Planning Board was proposing to end Phased Growth this fall. However, because the Master Plan has not yet been approved and the zoning amendment that would replace Phased Growth needs more work, the Planning Board is now proposing to keep Phased Growth in place for one more year and replace it at that time.

Ms. Barberet asked that the Zoning Subcommittee assign a high priority to the replacement for Phased Growth and bring an article for its replacement to the spring 2010 Town Meeting.

Mr. O’Keeffe stated that the Zoning Subcommittee had voted 3-0 to recommend approval of the extension of the Phased Growth Bylaw.

Mr. O’Keeffe MOVED to close the public hearing. Mr. Roznoy seconded and the vote was 8-0 to close the public hearing.

Mr. O’Keeffe MOVED to recommend approval of the article to extend the ‘sunset’ period for the Phased Growth Bylaw to November 15, 2010. Mr. Carson seconded and the vote was 8-0 to recommend approval.

**A-07-10 Neighborhood Business (B-N) District (Planning Board)**

Mr. Shefftz read the preamble and opened the public hearing for this proposal to amend Sections 2.02, 3.3, Table 3, Dimensional Regulations, and Articles 5, 6, 7, 8, 10, and 11 of the Zoning Bylaw to create a new Neighborhood Business (B-N) zoning district including use regulations, dimensional regulations, and appropriate references throughout the Bylaw.

Mr. Shefftz noted that the proposed B-N zoning district was a “step down in intensity” from other business and commercial zoning districts. The types of businesses allowed to be located in the B-N district will be those that will serve the local residents.

Mr. O’Keeffe explained that the B-N zoning district would exclude most automotive uses (which are allowed in the B-VC district) but would allow auto parts as a retail business, with no repair on the premises. For many of the use categories that the district would allow standards and conditions are proposed that would place limitations on the scale and types of business, the number of employees, and the hours of operation.

Mr. Shefftz noted that this zoning amendment proposes to create a new zoning district but does not apply it in any specific location. The new zoning district would only have an impact if it were applied. The next article (Article 12, Depot Center Rezoning) proposes applying the zoning district to a particular part of town.

Maureen Raab of 576 Main Street commented that she is the owner of the property at the corner of North Whitney Street and Main Street, in the residential district. She is worried about traffic and the effect on the neighborhood if the zoning change is applied to the area around the depot. Ms. Raab noted that the NACUL Center is on one side of her property and that hers is one of only three single-family residential houses in the area.

Mr. Shefftz reiterated that creation of the zoning district under Article 11, being considered for this public hearing, does nothing to specific properties. The map for Article 12 shows the existing zoning and how it would change. The zoning change would only apply when someone wants to change something. Existing uses and buildings could remain. New uses would be allowed only under stringent conditions. The idea behind the new B-N zoning

district is flexibility. The B-N district will keep uses relatively compatible within the district. The idea is to create a district where business uses could mix with residential uses.

Mr. O’Keeffe noted that most of the areas along High Street that are proposed to be rezoned are currently in the Commercial zoning district, which allows the highest intensity of business uses.

Ms. Barberet expressed concern that creation of the new B-N zoning district would open every residential district in town to all of the other uses [allowed in the B-N district].

Mr. Tucker stated that none of the properties to the west of the Raab property will change as a result of this amendment. Article 12 will rezone the properties there that are currently zoned Commercial.

Michael Raab of 576 Main Street stated that his property is now completely surrounded by residentially-zoned properties and that the zoning amendment would affect properties to the northwest of his property.

Dr. Samuel Gladstone of 15 Mount Pollux Drive stated that he has an office on Dickinson Street. He asked if there is a zoning district where businesses are located next to single-family homes. He noted that Dickinson Street is now Commercial on one side of the street and Residential on the other side. Dr. Gladstone noted that there is no conflict in the neighborhood now between single-family residences and businesses.

Mr. Shefftz stated that there are now a lot of non-conforming neighborhoods with mixed uses in town.

Mr. Tucker stated that there are currently non-conformities all over Amherst. The new B-N zoning district would not include single-family residences as new uses. There would be a potential conflict if businesses were allowed next to single-family uses.

Mary Streeter of 66 Larkspur Drive asked if single-family residences would need to get a Special Permit to change the property if the homes became non-conforming.

Mr. Tucker stated that any single-family residences that became non-conforming would need to obtain a Special Permit in order to change the use or add to the building.

Ms. Streeter asked if this is meant to be a transitional neighborhood and if that meant a mix of family homes and businesses and/or a mix of residences with business uses below or next to the residences.

Mr. Tucker stated that it is meant to be a transitional zone between intense business zones and residential zones. The intent is to include those areas that have already been converted and not to include large areas of single-family homes.

Ms. Streeter asked if one potential future use of this district is to surround the Village Center districts.

Mr. Tucker explained that the B-N district is intended to provide a transition zone between existing business and residential zones or be located in other selected places. Town Meeting would need to agree to establish any other small business district within a residential area. The B-N zoning district could apply to an area like the Cushman Store or to The Amherst Creamery [on Fearing Street] which is an office building in a residential district. All changes to The Amherst Creamery building now require a Special Permit because it is non-conforming.

Ms. Streeter asked about “spot zoning” and Mr. Tucker explained that “spot zoning” refers to rezoning a “spot” without considering public intent and purpose and with no regard to the surroundings.

Ms. Streeter asked about the relative intensity of the B-N district compared to other business districts, the PRP district and the Commercial district. Mr. Shefftz stated that this is the least intensive business district, with allowances for businesses seen as serving local residents. Mr. O’Keefe stated that this is less intense than other business districts.

Mr. Shefftz reminded the group that the Planning Board does not have the final say in rezoning, but that Town Meeting does.

Ms. Pavlova-Gillham suggested that the group look at the use categories and the criteria and conditions associated with each. These criteria and conditions indicate the transitional nature of the B-N district.

Mr. Tucker noted several small changes from the Warrant to the final motions that will be made in Town Meeting:

- Medical Offices will be allowed by Special Permit (not by Site Plan Review);
- Commercial parking lots and garages will not be allowed;
- Public parking lots or garages will be allowed by Special Permit (not by Site Plan Review).

Ms. Streeter asked about uses under Sections 3.342, 3.343 and 3.344. She asked if they were allowed elsewhere in town.

Mr. Tucker stated that these uses generally fall into the category of local, state, or federal governmental uses that are allowed by Site Plan Review. Ms. Streeter asked if these uses could be by Special Permit. Mr. O’Keefe stated that the first two uses [3.342 – Government administration, police, fire; 3.343 – Water or sewer facility] were allowed almost everywhere [except in the FPC district] by Site Plan Review.

Ms. Streeter asked if the third use [3.344 – Other government use not specified] could be allowed by Special Permit in the B-N district and she encouraged the Planning Board to consider this change.

Carol Gray of 815 South East Street expressed concerns about the proposed B-N zoning district, particularly that these changes were being proposed before the Master Plan is adopted.

This change could have a major effect and could be put anywhere in town. She suggested a slower, more gradual approach. The Master Plan recommends concentration of business and commercial uses in the Village Centers. This zone is transitional. This is the opposite of smart growth in that it encourages businesses outside of the Village Centers. Inns are by Special Permit in the B-L and B-VC zoning districts. Why are they by Site Plan Review in the B-N district? Trades and repair shops are easier to put in the B-N district than in the B-L or B-VC districts. This runs counter to the Master Plan. What will be the effect on neighborhoods? Smart growth focuses growth in the Village Centers and downtown. The neighborhoods could be transformed. She urged the Planning Board members to vote no or to abstain.

Mr. Shefftz stated that zoning is not permanent and can be “un-made”. The Master Plan will be around for a long time. Town Meeting can change the zoning.

Mr. Tucker clarified the issue about inns. They are defined in the Bylaw as being located in a historic building, 75 years or more in age. They are intended to provide lodging in residential areas and have the effect of encouraging that use instead of student rentals. Trade shops already exist, sometimes as accessory uses. They developed in this area, like the Boyden and Perron garage on South Whitney Street. Section 3.356 contains conditions for trade shops, including limitations on hours and numbers of employees.

Ms. Gray stated that it was a good idea to “down zone” the area around the Dickinson Museum and that the areas on the map could be divided in Town Meeting.

Mr. O’Keeffe MOVED to close the public hearing. Mr. Roznoy seconded and the vote was 8-0 to close the public hearing.

The Board discussed the proposed zoning amendment. Mr. Webber responded to Ms. Barberet’s concern that the new B-N district would open all neighborhoods to “up-zoning”, noting that Town Meeting can already rezone the entire town.

Ms. Barberet stated that this change would make rezoning easier and cited her belief that neighborhoods are being targeted, especially the R-G district. It was her understanding of the Master Plan that the R-G district had been slated to be preserved and now she believes it is slated for mixed-use development. She characterized this zoning amendment as a “veiled attack on neighborhoods” and stated that neighborhoods will not be livable. This amendment goes too far. She mentioned a developer’s intent to purchase property on Sunset Avenue to create student housing.

Mr. Webber noted that many people would prefer to live in a neighborhood that has residential uses and businesses together, that it was that mix which made neighborhoods viable.

Mr. O’Keeffe stated that he did not see how the existence of the B-N district represented an attack on neighborhoods. We already have zones that Town Meeting could apply to neighborhoods. A district that doesn’t allow single-family houses is unlikely to be applied to areas with single-family houses. It will only be applied to areas that are reasonable for it to apply to. It won’t create islands of business in residential districts.

Ms. Pavlova-Gillham agreed with Mr. O’Keeffe. She stated that this tool will make it easier to change zoning. It will maximize the town’s investment in certain infrastructure. She supports this article.

Ms. Barberet stated that she had been in agreement with the proposed amendment, but changed her opinion when asked the question “Would you like this district next door to you?”

Mr. O’Keeffe MOVED to recommend that Town Meeting approve this article. Ms. Pavlova-Gillham seconded and the vote was 7-1 (Barberet opposed) to recommend approval.

**XI. REPORT OF THE CHAIR** – Mr. Shefftz reported, regarding Article 14 on the Fall 2009 Special Town Meeting warrant, that Mr. Tucker had been interviewed by the Boston Globe regarding Amherst’s offer to take in released prisoners from the Guantanamo Bay Prison. He noted that a right-wing broadcaster had characterized the citizens of Amherst as “the criminally insane jihadists of Amherst”.

**II. PUBLIC HEARINGS – ZONING AMENDMENTS (continued)**

**A-08-10 Depot Center Rezoning (Planning Board)**

Mr. Shefftz read the preamble and opened the public hearing for this proposal to amend the Official Zoning Map to rezone various properties in the vicinity of the Amherst Depot on Main, Dickinson, College, Railroad and High Streets from General Residence (R-G) and Commercial (COM) to Village Center Business (B-VC), Limited Business (B-L), and Neighborhood Business (B-N).

Mr. Shefftz stated that the impetus behind this zoning map change was to have a zoning map that better matches the uses that exist in the area.

Mr. O’Keeffe stated that this is an area where the bulk of the property is zoned Commercial. Most of this zoning change involves taking property that is zoned Commercial and changing it to other districts, in an attempt to balance various concerns. He described the existing zoning of the area and explained that Commercial zoning allows an intense type of usage, much of which is incompatible with residences. This proposal leaves some Commercial zoning, such as Leader Home Center and the property behind it. The other properties would be rezoned to B-L, B-VC or B-N. The property that contains Classic Chevrolet and two adjacent properties is proposed to become B-L (Business Limited). This is an intense use, but is located next to residential uses. The proposed change to B-L reflects a desire not to create non-conformities, but to allow for a wider future pattern of mixed uses, including residences. The bulk of the area north of this site and around the Depot itself would be B-VC (Business Village Center), which was chosen to respond to the mix of uses existing there now.

Mr. O’Keeffe stated that other areas in the vicinity would be rezoned as the new B-N (Business Neighborhood) district. Some of these are outside of the existing Commercial district, such as the building [at 321 Main Street] that currently houses The Claw Foot Tub,

where there has been commercial activity for years. That property extends south to Spring Street, but only the upper portion of the site along Main Street is proposed for rezoning. Other properties proposed to become B-N are the VFW property and the current COM properties lining Main Street between Gray and High Streets. Many non-residential uses are taking place there already.

Mr. Tucker presented a packet of materials illustrating past zoning and historic land use in the area, indicating the mix of uses that has occurred on these properties over the years.

Ms. Brestrup stated that there is not much “up-zoning” being proposed here. With the exception of four properties, most of the properties being considered for rezoning are being “down-zoned” [indicating a decrease in intensity of use].

Michael Raab of 576 Main Street stated that most of the changes being proposed make sense. However, now his property is surrounded by residentially-zoned properties. He questioned the rezoning of properties 14B-234 and 14B-129, and suggested that portions of these properties should remain residential.

Mr. Shefftz stated that the zoning of these two properties was split between Commercial and Residential and the change to B-N would be a downgrade in intensity for the Commercial portions of the properties.

Mr. Tucker noted that the two properties are currently owned in common. The front could currently have an intensive use, while the back would need to comply with residential zoning. He noted that the setback requirements would be 20 feet because they abut a residential district. The changes to zoning in this neighborhood have been carefully considered for three years. Property owners have been involved during that time. Property owners in this area requested the rezoning.

Ms. Raab asked about what will happen if the neighborhood starts to change. There are already a lot of rentals. She asked about the Planning Board’s long-term vision for this area. She asked about the potential for a lot of traffic if this area becomes busy.

Mr. Tucker noted that any change involves a community process. He described the process that is required for zoning changes.

Mr. O’Keeffe stated that the long-term vision for this area is for small scale retail and commercial activity. The model is Amherst Grocery Store and Wheatberry Bakery. There is also a train station in the area. Amherst wants to retain and expand its rail service. We will need services for train travelers in this neighborhood.

Mr. Tucker noted that train travelers often come by foot or by taxi and so the effect of any increased rail service on traffic is not expected to be great.

Ms. Pavlova-Gillham stated that she would like to begin the process to get the community involved in a completely different type of zoning, form-based zoning, which is a new way of

conceiving of a community. We ought to start envisioning what we really want in terms of what the buildings in a neighborhood should look like.

John Edwards, owner of 437 Main Street, (Parcel 14B-65) asked that the Planning Board reassess the use categories and allow uses under Section 3.340.3 [Rail or bus depot and Taxi or Limousine Service] by right. He also requested that uses under Section 3.380 [Auto/Truck Rental] be permitted. He asserted that Zip Car rentals and other car rentals would be an appropriate use for the depot area, for people arriving by train who then need a car to get around.

Mr. O’Keeffe noted that Transportation Facilities are proposed to be allowed under Special Permit, and that these uses span a wide range of types of uses.

Mr. Edwards asked if these changes could be made at this time. Mr. Tucker suggested that Zip Car rental could be an accessory use to a public parking facility. He also noted that further changes to allow uses that are not already in the Warrant would not be within the scope of the article at this time.

Mr. O’Keeffe noted that Mr. Edwards’ suggested changes would require a change in the uses allowed in the B-VC zoning district, which is not being considered under this article. This could be considered in the future.

Mr. Webber expressed concern that the town was proposing to remove one of the last remaining Commercial zoning districts in town and that the uses being discussed by Mr. Edwards are currently allowed by right in the Commercial district.

Mr. Tucker explained how amendments to allow truck and auto rental uses could be added to the zoning for the depot area, but stated that this would be beyond the scope of the article under consideration.

Mr. O’Keeffe added that the Warrant is a legal document that serves notice to the town on what may be acted on at Town Meeting. Town Meeting cannot add things to the Warrant and cannot do more than is contained in the Warrant. To respond to Mr. Edwards’ request there would be a need to amend the B-VC zoning to allow rental of cars and trucks. Mr. Shefftz stated that this could be taken up at the Annual Town Meeting in the spring.

Mr. Edwards asked if the Planning Board would support this type of change in the B-VC zoning. Ms. Barberet noted that while this type of change may make sense for Mr. Edwards’ property, the Planning Board would need to consider the change over the entire B-VC zoning district. Mr. O’Keeffe stated that the Board is not in a position to speak on the topic of this change at this time.

Jerry Guidera of the Center for Cross-Cultural Study at 446 Main Street stated that this new level of zoning really helps. The B-N district can act as a buffer between commercial and residential uses. He commended the Planning Board for doing the right thing.



Ms. Streeter stated that she was concerned about the “up-zoning” of the building across from the Dickinson Museum. This museum is a significant draw for tourists and it supports our economy. Currently the Zoning Board of Appeals can say “yes” or “no” to a type of use. She views Special Permits as a “protective tool” and expressed concern about what would happen to the property if it were sold, particularly with respect to what tourists would see. She urged the Planning Board to remove the “Wheatberry” parcel from the B-N zoning proposal. She expressed concern for the rezoning with respect to its effect on the houses that were recently moved across the street and asked if bed and breakfasts are allowed in all zoning districts in town.

Mr. Tucker stated that bed and breakfast lodging is allowed at different levels in residential zones in town. He went on to describe the various types of bed and breakfasts and where they are allowed.

Ms. Streeter asked about the properties at Map 14B-234 and 14B-129 and whether a public parking garage could go in by Special Permit. She urged the Planning Board to reconsider rezoning Map 14B-28.

Ms. Gray asked if there were any projects being contemplated in this area. She also asked if notices had been sent out to property owners in the areas to be rezoned.

Mr. Tucker stated that there were no projects currently being contemplated. Mr. Tucker also stated that, although not required by law, it is the Planning Department’s practice to notify property owners whose properties are proposed for rezoning and to notify all landowners within 300 feet. This is true for neighborhood meetings and public hearings.

Ms. Barberet noted that when a change was proposed to a property near North Whitney Street, one property owner had not been notified.

Ms. Gray made the following comments:

- Zoning should be taken seriously since it will be in effect for decades;
- Zoning should not be changed for one parcel to accommodate car and truck rental;
- The Planning Board should think about how it can make transit fit in;
- The Planning Board should think carefully about Site Plan Approval vs. Special Permit;
- The Planning Board should think carefully about allowed uses, such as kindergartens and day cares, because of the traffic and parking implications.

Mr. Tucker cited examples of uses that are allowed by right in all zones, such as kindergartens and day cares, and noted that laundry and dry-cleaning establishments would have conditions placed on them.

Mr. O’Keeffe noted that the Zoning Subcommittee had conducted lengthy discussions about including dry cleaners in the B-N district.

John Coull of Precinct 2 [20 Sheerman Lane] stated that he is not an abutter to the depot area, but that he used to be a commercial tenant of Map 14B, Parcel 28. His business could

have been more successful if not for the vacancies in the other spaces in the building. He urged the Planning Board to consider up-zoning this property, and stated that it is an issue of economic development. He cited two businesses that incubated in this location – The Claw Foot Tub and the Footwear Den – both of which later moved uptown to more visible locations. This property was a good location for his bicycle business, since the available parking worked well. He noted that the property sometimes provided parking for visitors to the Emily Dickinson Museum and that the property was an extension of the business district. The building had historically housed auto repair establishments and an oil and furnace service business. This rezoning is not a threat to the neighborhood. He noted that Zip Car is not a rental company but rather a membership operation.

Matt Cornell of 34 Dickinson Street stated that he had been involved in the rezoning process for 2 ½ years. He had seen the proposed rezoning turned into something he could be comfortable with. He was impressed by the work done by the Planning Board and stated that the issues had been considered carefully. The neighborhood is not under threat.

Mindi Sahner of 20 Dickinson Street, owner of the White Barn, which contains a design studio and a dance studio, stated that she had also been involved with the process for two years. The Zoning Subcommittee had listened to the concerns of the residents. These concerns have had an impact on the final result. The current map proposal reflects what is going on in the neighborhood. She supports the rezoning to B-N across from the Dickinson Museum. This has been a prolonged and thoughtful process.

Mr. Schreiber MOVED to close the public hearing. Mr. O’Keeffe seconded and the vote was 8-0 to close the hearing.

The Board discussed the proposed rezoning. Mr. Webber restated his concern about the down-zoning of commercial land and reiterated that there was so little commercial land in town now. He asked if this proposal was consistent with the Master Plan and how it would improve the economic situation of the town.

Mr. Shefftz noted that the current zoning of this area has commercial zoning located in the middle of a residential neighborhood.

Mr. O’Keeffe noted the area’s proximity to the Emily Dickinson Museum and stated that Commercial zoning is a threat to the Museum. The rezoning will provide more control.

Ms. Barberet stated that she didn’t have a problem with the rezoning for this area, but shares Mr. Webber’s concern about down-zoning of the Commercial district.

Mr. Shefftz noted that the proposed map change was contingent upon the establishment of the B-N district being approved by Town Meeting.

Mr. O’Keeffe MOVED to recommend the adoption of Article 12 to Town Meeting. Mr. Carson seconded and the vote was 6-0-2 (Webber and Barberet abstaining).

Mr. O’Keeffe stated that if Article 11 doesn’t pass then one option is to go forward with this rezoning map without the B-N district. He noted that the Zoning Subcommittee had talked about this option and had decided not to recommend it.

Mr. O’Keeffe MOVED to recommend to Town Meeting that if Article 11 fails then Article 12 should be referred back to the Planning Board for further study. Ms. Pavlova-Gillham seconded and the vote was 8-0.

### **III. PUBLIC HEARING – SITE PLAN REVIEW APPLICATION**

#### **SPR2010-00004/M3410-SPP2010-00001/M3411 – 43-51 North Pleasant St., Boltwood Place – Archipelago Investments, LLC**

Mr. Shefftz read the preamble and opened this combined public hearing to consider the following:

Site Plan Review for a request to construct a new mixed-use, LEED-certified building in downtown Amherst on the lot with Judie’s restaurant; the ground floor is to be retail/commercial with eleven (11) residential units above;

Special Permit for the modification of the dimensional requirements for maximum building coverage, maximum lot coverage and maximum floors;

(Map 14A/Parcel 48; B-G zoning district).

Dave Williams of the IAT Partnership began the presentation and introduced those who accompanied him – Judy Teraspulsy, owner of Judie’s Restaurant, and her partner Katy Day Egan; Kyle Wilson, of Archipelago Investments; John Holmes and Alan Jones of Holst Architects; Marion Williams, Mr. Williams wife.

Mr. Williams stated that Holst Architects was the first firm in the country to achieve LEED certification for a project, in 2002.

Mr. Williams presented information about the expansion of Judie’s Restaurant in 2006, into the area formerly occupied by Barselotti’s. The expansion filled the area between the buildings. The area in back is the only lot in downtown Amherst that has not been built upon. The proposed building will give Boltwood Walk an identity by forming a continuous façade along the west side of the parking lot. The other adjacent properties might be in-filled in the future.

Mr. Wilson stated that he is a partner in Archipelago Investments. This is a pioneering infill project that will activate street life, increase the tax base, and improve the quality of design in the area. The developers are seeking LEED certification for the project in the “LEED for Homes Mid-Rise Pilot Program” and are aiming for gold or platinum certification. The architects were hired because of their expertise in LEED design. The project will fit into the existing context in the downtown business district. Mr. Wilson has a lot of experience working with the Building Commissioner’s office and has resolved many issues with the town.

Mr. Shefftz noted that the Planning Board had conducted a site visit and he summarized the contents of the Site Visit Report with respect to views, the structure of the parking garage, complementary uses on the site, materials and limited planting areas.

Mr. Williams reported on the applicant's meeting with the Design Review Board, noting that the west and north walls were shown on the renderings as concepts. They need to be a fire-rated, solid wall, with no penetration from roof to ground, for fire separation. The Design Review Board had commented on how the surfaces could be treated and the architects will look at various options, which might include "green walls". The architects have an ability to treat the wall with texture, to use up-lighting or down-lighting. Mr. Williams does not wish to use brick on this building, because it is a 21<sup>st</sup> century building. However, the design will pick up the proportions and the fenestration patterns of the buildings in the vicinity.

Mr. Tucker stated that Section 3.01 of the Zoning Bylaw prohibits two principal uses on one property unless they are clearly complementary to one another. He stated that the Building Commissioner and Planning Department staff had discussed this issue with the applicant. Many properties in the downtown General Business district have several uses on a single property. This is the densest block in the center of the densest area of mixed uses. Mr. Tucker believes that the issue of complementary uses has been resolved.

Mr. Tucker noted that a fire lane had been established when the parking garage was built. The lane was built into the pedestrian path on the south side of Boltwood Walk. Mr. Tucker offered to research this issue and provide more information to the Board. He noted that the newer ladder trucks are smaller and lighter than the older ones. He described the path for the ladder truck and showed the access points, stating that they were wide enough and there was nothing that would impede access.

Mr. Schreiber stated that he is an architect in Massachusetts and serves on the state licensing board. He asked the architects about their qualifications to practice architecture in Massachusetts.

Mr. Wilson stated it was the applicant's belief that the legal issue with respect to coming before the Planning Board has been resolved.

Mr. Schreiber referred to the Rules and Regulations from Mass. General Law Chapter 112, Section 60A, regarding the definition of an architect. He expressed concern that the Planning Board was being asked to make a legal decision based on drawings that were prepared by an architect who may not be licensed to practice in Massachusetts.

Mr. Tucker noted that staff had met with Town Counsel. There is nothing in the Zoning Bylaw nor in the Planning Board's Rules and Regulations that requires the participation of an architect licensed to practice in Massachusetts. However, the plans that will be prepared for the Building Commissioner's permits must be prepared by an architect licensed to practice in Massachusetts.

Mr. Schreiber stated that he is an architect asked to make a decision and that he cannot act until he knows the qualifications of the person who has prepared the submittal.

Mr. Shefftz noted that this is a case of potential unlawful practice, but that the Planning Board has had applicants come before it in the past with crudely sketched diagrams.

Mr. Schreiber stated that any structure larger than 35,000 cubic feet requires an architect.

Mr. Tucker stated that Town Counsel did not see this as an issue for the Planning Board. However, the Planning Board may wish to amend its Rules and Regulations to require the participation of an architect licensed to practice in Massachusetts. He further noted that Planning Board members can abstain or recuse themselves if they do not wish to participate in the vote.

Ms. Barberet questioned a number of things about the project, such as emergency access to the site and other sites in the vicinity, soil erosion, and areas outside of the site that might be affected by the construction.

Mr. Wilson stated that the applicant would like to engage consultants to answer questions about the project and is willing to come back to the Board with answers and details.

Mr. Roznoy stated that he appreciated Mr. Schreiber's comments and he noted that the Site Plan had been prepared by a Landscape Architect registered in Massachusetts.

Mr. Schreiber stated that Massachusetts has a "title and practice" law regarding architects and that someone who calls himself an architect must be licensed to practice here.

Ms. Barberet asked about the requirements for granting a Site Plan Review approval and stated that her questions have not been answered fully.

Mr. Tucker stated that this is a matter of judgment for the Board and that if the Board feels that it has enough information to make a decision it can render a decision and list conditions that will provide further information, or the Board can continue the public hearing and ask to have the information brought back at the continued hearing.

Ms. Pavlova-Gillham requested that the public hearing be kept open and that the Board have an opportunity to continue the discussion.

Elisa Campbell [of 27 Pine Grove] stated that she was a former chair of the parking garage building committee and she spoke in favor of the proposal. This kind of use is exactly what the committee wanted to happen. This should be a place for the densest development and mixed use. The committee had hoped that the parking garage would stimulate just this type of development.

Barry Roberts of 200 Bay Road spoke in favor of the proposal. He owns the property nearby, known as the Cook Block. He also owns other downtown properties. This proposal is exactly what the downtown needs. He commended the Williams Group and hoped that the Planning Board would grant the waivers.

Tony Maroulis, Executive Director of the Amherst Area Chamber of Commerce, and resident of 2 Bray Court in Pelham, spoke in favor of the proposal. This is exactly the kind of project that the town needs. The project stands on its own merits. He urged the Planning Board to support the application.

Mr. Shefftz noted that the Board had received a supportive email from Ira Bryck of the UMass Family Business Center.

Clare Bertrand of 610 Bay Road urged the Planning Board to support the project. She noted that the project would help to support the schools by supporting growth in the tax base. This project answers the recommendations of the Master Plan. Living in the downtown makes downtown businesses and services more accessible to residents.

John Coull spoke in favor of the project noting that the Williams Group was expressing a vote of confidence for the downtown by proposing this project in uncertain times.

Mr. Shefftz clarified that this application includes a request for a Special Permit, not just Site Plan Review approval.

Walter Wolnik of 8 Hillcrest Place expressed support for the project and questioned whether the inclusionary zoning section of the Bylaw required that some of the units be affordable.

Mr. Tucker stated that this issue had come up in the [staff] review process and that he had consulted Town Counsel. Town Counsel agreed that the inclusionary zoning section of the Bylaw was intended to refer to uses that require a Special Permit in order to occur, as opposed to dimensional requirements that require a Special Permit to be modified. In this case the Special Permit is ancillary or secondary to the use and the inclusionary section of the Bylaw does not apply in this case.

Carol Gray commended the Planning Board for asking a lot of questions. She stated that she supports infill and that building up is good. However she thought that this process should require a Special Permit, not Site Plan Review. She asked where people will park. She stated that Hadley requires an impact study for transportation and other impacts and then requires a contribution to mitigate the impacts. She encouraged the Planning Board to require an impact study and more information about parking. She questioned the renderings that had been submitted by the applicant, asserting that it is "not quaint" to have a five-story building that towers above everything else. There are no windows on the north side. The building has the aesthetics of the towers at UMass. She suggested painting a mural on the blank walls. She asked to have Town Counsel's opinion in writing.

Mr. Wilson stated that the applicants had discussed various treatments for the north and west facades with the Design Review Board and that they planned to have further discussions on this issue. He noted that the building was "pulled back" from the property line on the first and top floors.

Mr. Tucker stated that there is a request to modify the dimensional requirements as to number of floors. He stated that the effect of the height of the building is diminished on the

North Pleasant Street side due to the site being lower in elevation than North Pleasant Street. In addition, the nearby Ann Whalen Apartments has five stories and the Clark House, across Boltwood Walk, has six stories. He asked the Board to consider how the town should allow appropriate change over time in the dense downtown business district.

Andy Churchill of 59 Pine Street stated that the fiscal situation in town is worsening. He served on the Comprehensive Planning Committee. This is exactly the kind of project that the Master Plan envisions, bringing more business to the downtown, to support the services that we have come to expect. He echoed the comments of the other supportive speakers and noted that the “main drag” (North Pleasant Street) currently has former single-family houses serving as commercial buildings to house businesses.

Mr. Roznoy acknowledged that the property is located in the Municipal Parking District which doesn't require off-street parking, but he asked where tenants of the new building would park their cars.

Mr. Wilson stated that the town has a program by which downtown tenants can purchase downtown parking permits.

Mr. Williams stated that for the level of service and quality of the building the developers must offer parking to tenants. There are spaces in the parking garage available for rent.

Mr. Tucker stated that the lower level of the parking garage has more than half of its spaces available for rental to downtown residents and businesses. He also noted that, after the public hearing closes, the Board can only ask questions and receive information to clarify previously submitted information, but cannot receive new information.

Mindi Sahner, of Dickinson Street, an architectural designer with Blue Line Design, stated that she understands the need for this building, but she has major reservations about this building being constructed in the most beautiful part of town. She also noted that the area of Pleasant Street north of the center of town should have a requirement for more floors. This building will look big from the street. She understands the LEED requirement to keep the building a light color, but noted that the brick buildings on Pleasant Street and Main Street are the most beautiful. She recommended that the Planning Board take a look at what the whole town looks like, develop a vision for what it should look like and not ignore the historical nature of the downtown.

Ms. Pavlova-Gillham stated that the Planning Board is not required to discuss these issues at this time. The Design Review Board will continue to discuss these issues. A developer has a hard time getting funding for a project like this without approval from the Planning Board. The developer won't get full funding to proceed with proper design until he receives Planning Board approval. The Planning Board can approve the project with conditions. The look of the building could change. The drawings presented represent conceptual development by the architects. She is interested in learning how and why it is necessary to exceed the dimensional requirements in the Zoning Bylaw. She noted that the applicant is requesting to exceed the maximum building coverage from 70% to 95% and to exceed the maximum lot coverage from 95% to 100%.

Mr. Wilson stated that the applicant is looking for conditional approval. He stated that the number of stories is based on insuring an active street level for a small parcel of land in the downtown area. Mixed use development is a central tenet of the project. On such a small lot it is necessary to have first floor retail and then build up to provide the number of apartments necessary to make the project financially successful. The building only has a footprint of 4,000 square feet. He noted that some of the parcel may be devoted to landscaping and that the actual lot coverage may end up as 97% rather than 100%.

Ms. Pavlova-Gillham asked for confirmation that in order to have the funding to finance the project it is necessary for the developer to have eleven units of residential development. Mr. Wilson asserted that the zoning requires mixed use, that eleven units are necessary and that with fewer units the project would not be viable.

Ms. Pavlova-Gillham asked about the "return on investment" for the town. Mr. Williams stated that the tax situation has yet to be reviewed. However, he noted that the building will bring additional people downtown and that the developers have already received five requests to reserve units in this building.

Mr. Wilson stated that the developers had worked to develop a proposal with no dimensional variations. However building code issues reduced the value of the project and caused the need to "push the zero lot line allowances". There is a difference in the economic impact between a four-story and a five-story building. If the project is required to have only three stories of residential development it will not be viable. The retail space will provide an opportunity for another business to move downtown.

Mr. O'Keeffe stated that the exceptions to the dimensional requirements are of concern to him. The building meets the height requirements but not the floor requirements. He noted that the developers could have proposed a four-story building at 50 feet, rather than a five-story building at 50 feet. There are potential problems with mass from the height but not from the number of floors. He noted that lot coverage in the downtown area frequently exceeds the dimensional requirements. He asked staff to quantify this for the Board.

Mr. Tucker stated that the Board should direct its attention to the Sketch-Up model #1, the Cook Block, and see that the property is all paved or covered with building. He also noted that the adjacent historic Thompson and Dickinson Blocks were examples of extensive lot and building coverage. The setback requirements are driven by the Building Code requirements and fire access.

Ms. Barberet directed the Board's attention to the zoning map submitted by the applicants to illustrate the building and lot coverage issue in the vicinity.

Ms. Gray stated that more information, including an impact study, is needed. The economic impact and the impact on parking should be studied. This project will take over the available garage spaces and may require the construction of another garage. More drawings are needed to show what the building will look like from the street.



Mr. Tucker stated that there are 180 parking spaces in the Boltwood Parking Garage. He referred to the definition of the Municipal Parking District in the Zoning Bylaw.

Mr. Tucker noted that, in the event of a continuance of the hearing, there is a need for six affirmative votes on the Special Permit request and five affirmative votes on the Site Plan Review. A sufficient number of members participating in the first hearing would need to be present.

Mr. Holmes stated that although he is not currently licensed to practice architecture in Massachusetts, the process is in progress. He has had an NCARB registration since 1990. This will allow him to obtain reciprocal licensure in Massachusetts.

The Board discussed and confirmed that eight Board members are available for a continued public hearing on November 10<sup>th</sup>.

Mr. Roznoy asked if the lot coverage and building coverage calculations included both buildings on the parcel. Mr. Wilson stated that the calculations included both buildings.

Mr. Webber asked for alternative diagrams for the west-facing facades. Mr. O’Keeffe asked for a letter from the Fire Department regarding the fire protection access issues.

Mr. Wilson noted that he had made repeated efforts to contact the Fire Department to discuss the concerns of the Assistant Fire Chief but had not been successful in contacting anyone. Mr. Tucker offered to contact the Fire Department.

Ms. Barberet also asked for a letter from the Fire Department, noting that it was a public safety issue. She asked to see where the fire trucks can drive in the area.

Ms. Pavlova-Gillham stated that she generally supports this proposal. She asked that the applicant take the Development Application Report and address all of the issues. She suggested the use of a green roof to help with the issue of building and lot coverage. She noted that LEED has performance standards that deal with green roofs.

Mr. Roznoy MOVED to continue the public hearing for Boltwood Place to November 10, 2009. Mr. Webber seconded and the vote was 8-0 to continue the public hearing.

## **VI. FORM A (ANR) SUBDIVISION APPLICATIONS**

### **ANR 2010-00002, Amir Mikchi, 126 South East Street**

Mr. Shefftz endorsed the plan for ANR 2010-00002, Amir Mikchi, 126 South East Street. This ANR was filed as to complete the permitting process for the Auto Express facility. Ms. Brestrup noted that in researching the lot she had spoken with the Building Commissioner and had determined that the property containing the Auto Express had received Site Plan Review approval (SPR2005-00003) as well as a Special Permit to modify the side setback requirement (SPP 2005-00001). However, the Special Permit did not apply to the adjacent parcel at 126 South East Street. Therefore the parcel at 126 South East Street will not be a

legal conforming lot and this fact should be noted on the plan. The applicant will be informed that he will need to obtain a Special Permit to modify the side setback requirement for 126 South East Street.

**IV. NEW BUSINESS**

Town Warrant Review – The Planning Board reviewed Article 5 of the Warrant for the Fall Special Town Meeting.

Mr. Webber MOVED to recommend to Town Meeting that Lawrence Circle be accepted as a town way. Mr. O’Keeffe seconded and the vote was 8-0.

**V. OLD BUSINESS**

The Board discussed setting aside time to discuss the Master Plan. They discussed holding a meeting on November 18<sup>th</sup> that would be solely focused on the Master Plan.

**VII. UPCOMING ZBA APPLICATIONS** – There were no upcoming ZBA applications.

**VIII. UPCOMING SPP/SPR/SUB APPLICATIONS** – No upcoming SPP/SPR/SUB applications were noted.

**IX. PLANNING BOARD SUBCOMMITTEE REPORTS** – There were no Planning Board Subcommittee Reports.

**X. PLANNING BOARD COMMITTEE REPORTS** – There were no Planning Board Committee Reports.

**XI. REPORT OF THE CHAIR** – This report was given earlier in the evening.

**XII. REPORT OF THE DIRECTOR** – There was no Report of the Director.

**XIII. ADJOURNMENT** – The meeting was adjourned at 11:30 p.m.

Respectfully submitted:

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Christine M. Brestrup, Senior Planner

Approved:

\_\_\_\_\_  
Jonathan O’Keeffe, Acting Chair

DATE: \_\_\_\_\_