PETITON TO AMEND ZONING DISTRICT
Before the Dover City Council
April 11, 2005

Applicants/Owners	Robert M. Duncan 111 South West Street, Suite 1 Dover, DE 19904
Location:	North side of Forest Street fronting on both South West Street and South Kirkwood Street.
Property Addresses	585 Forest Street 111 South West Street 122 S. Kirkwood Street
Tax Parcel ID #:	ED-05-076.12-02-46.00/000 & ED-05-076.12-02-51.00/000
Size:	1.2177 acres ±
Present Zoning:	C-3 (Service Commercial Zone) C-2 (Central Commercial Zone) H (Historic District Zone)
Proposed Zoning:	C-1A (Limited Commercial Zone) permitting: Convenience retail stores; personal service stores, including but not limited to, barber shops, beauty shops, and tailors; service establishment furnishing services other than of a personal nature; residences in conformance with Article 3 §2 General Residential Zone; Banks or business, professional, or governmental offices; and other retail and service establishments but excluding the following: gasoline filing stations and motor vehicle storage, repair or service except that gasoline pumps shall be permitted as an accessory use (subject to conditional use approval; wholesaling, warehousing or storage; manufacturing, printing, assembling, converting, altering, finishing, cleaning or any other processing of goods on premises except as permitted in C-1; and excessive traffic generating uses such as theaters, drive-ins, bowling alleys, and other commercial, recreation, restaurants, etc. H (Historic District Zone)
Present Use:	Commercial (Service establishments, offices)
Proposed Use:	Commercial (Service establishments, offices, and retail)
File Number:	Z-05-01

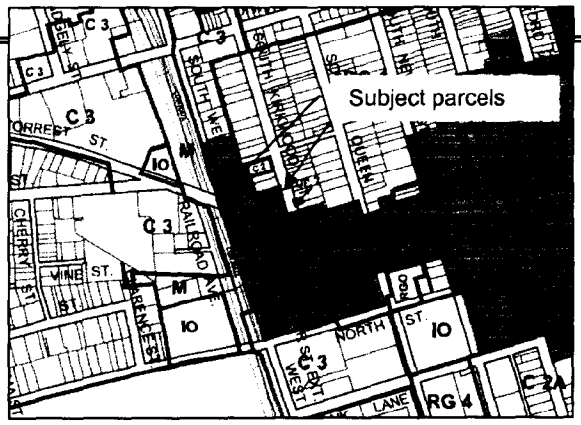
Comprehensive Plan: Mixed Use

Findings and Recommendations of the Dover Planning Commission

This petition was considered at the March 21, 2005 meeting of the Planning Commission. The following members were present: Vice Chairman Mr. DiMondi, Mr. Nichols, Mrs. Young, Mr. Tolbert, Mr. Holt, Mr. Winsley, and Col. Welsh. Mr. Friedman and Mr. vonReider were absent.

The Planning Commission recommends that this request (Application Z-05-01 Lands of Robert Duncan at 585 Forest Street, 111 South West Street, and 122 South Kirkwood Street) for rezoning from C-3 (Service Commercial zone)/C-2 (Central Commercial Zone) and subject to H (Historic District Zone) to C-1A (Limited Commercial Zone) with H (Historic District Zone) be denied. The motion for denial of the rezoning passed 7-0 of those members present.

The following information was considered by the Planning Commission in addition to the guidance provided in the *Zoning Ordinance*, Article 10 §5.111 for rezonings:



Application Summary

This application is to rezone the properties at 585 Forest Street, 111 South West Street and 122 South Kirkwood Street more commonly known as the Duncan Depot Complex. The subject area is located on the north side of Forest Street, fronting on both South West Street and South Kirkwood Street. The subject area consists of two parcels of land totaling 1.2177 acres +/-. A majority of the property currently zoned C-3 (Service Commercial Zone). A small portion of the subject area fronting on South Kirkwood Street is zoned C-2 (Central Commercial Zone). Both properties are subject to the H (Historic District Zone). The proposed zoning classification is C-1A (Limited Commercial Zone) with the property remaining subject to the H (Historic District Zone). The owner of record is Robert Duncan.



Existing Property

The Duncan Depot Complex was developed in its present form with applications MI-98-03 and S-98-02. The property consists of two existing buildings, a gasoline service island with canopy, and associated site improvements such as parking. The existing buildings are occupied with service establishments on the first floor and offices on the upper floors. The convenience store is allowed as accessory to the gas pumps. There have been retail stores in the smaller building on the corner of Kirkwood and Forest, including the jewelry/pawn store.



Surrounding Land Uses:
This property is located on the northwestern edge of the Downtown commercial area just west of the terminus of Loockerman Street as it transitions to Forrest Street. The Duncan Depot property encompasses a majority of the city block bounded by Forrest Street, South West Street, Reed Street, and South Kirkwood Street. A portion of the block fronting on South Kirkwood Street is proposed as a parking lot with application S-04-03 Duncan Depot Parking Lot Addition. South of this property across Loockerman Street/ Forest Street is the train station rehabilitated as State office space and the Office Building currently under construction at 500 West Loockerman Street known as the Duncan Center (Applications S-02-11 and S-03-30). Immediately to the west of this property are the railroad tracks. To the northeast on the opposite side of Kirkwood Street are one small retail property, several residential properties, and a vacant lot (previously part of a lumber company) proposed for development with application S-04-10 Building (Storage, Office, and Apartment) at 135 S. Kirkwood Street.



Comprehensive Plan:
In the *2003 Comprehensive Plan Update*, the Land Development Plan recommends that this property be used for Mixed Uses. The 1996 Comprehensive Plan recommended the property be part of the Downtown Mixed Use Development Area.

Request for C-1A (Limited Commercial Zoning)
The types of permitted uses in the C-1A (Limited Commercial Zone) are outlined in Article 3 §12.

> Article 3 §12.11 All uses permitted in the Neighborhood Commercial C-1 Zone, (11.11 Convenience retail stores such as drug stores, grocery stores, luncheonettes, variety stores or combinations thereof. 11.12 Personal service stores such as, but not limited to, barber shops, beauty parlors, and tailors, provided that where steam pressure is used in clothes pressing it shall not exceed 60 pounds per square inch. 11.13 Service establishments, furnishings, services other than of a personal nature, but excluding gasoline filling stations and motor vehicle storage, repair, or service.) with no limitation on size of establishments.
> 12.12 Residences conforming to the regulations set forth in Article 3, Section 2.
> 12.13 Banks or businesses, professional or governmental offices.
> 12.14 Other retail and service establishments but excluding:
> 12.141 Gasoline filling stations and motor vehicle storage, repair, or service, except that gasoline pumps shall be permitted as an accessory use subject to conditional use approval by the planning commission pursuant to Article 10, Section 1.
> 12.142 Wholesaling, warehousing or storage.

12.143 The manufacturing, printing, assembling, converting, altering, finishing, cleaning or any other processing of goods on the premises except as permitted in the C-1 Zone.
12.144 Excessive traffic generating uses, such as theaters, "drive-ins," bowling alleys and other commercial, recreation, restaurants, etc.

Recommendation of the Planning Staff:
The Zoning Map presents a thoughtful approach to the specific zoning districts in this area that has been somewhat muddled by recent rezonings. There was a clear attempt to protect the integrity of the historically retail district along West Loockerman Street. From Kirkwood Street to the east along Loockerman Street the zoning preference is for retail establishments with upper floor residences and with offices permitted only after conditional approval of the Planning Commission. The zoning protected the corridor from de-concentration of a retail core area by not allowing retail beyond the historically retail area. Retail uses would be concentrated on West Loockerman Street and not diffuse onto Forest Street. This transition area is a natural segregation point for zoning purposes. The surrounding zoning, uses and proposals all are for office and service type uses or the residential neighborhoods. The existing retail convenience store on the subject site is accessory to the gas pumps (motor vehicle service station) that are allowed under the C-3 zoning classification.

The applicant had requested a Zoning Verification letter for a liquor store in the smaller building on the subject site. The C-3 Zoning does not allow retail and would, therefore, preclude the liquor store. There was a liquor store across the street on Kirkwood Street and a club down the block approximately 15 years ago along with associated customer loitering. Through a neighborhood and community effort the store was closed. There is a package store on New Street two blocks away. The now empty store fronts in the small building on the subject site were occupied. The previous tenants vacated more than one year ago.

Staff recommends that the zoning for this parcel remain service and office related (C-3 Service Commercial zone and C-2 Central Commercial zone) and that a recommendation be forwarded to City Council to deny the request for rezoning of the property to C-1A (Limited Commercial Zone). The recommendation is a rational response to the request based on the location of the property and the surrounding land uses. An alternative considered would have been to make no recommendation and allow the Commission to hear testimony from the applicant and neighbors to determine the appropriate course of action during the meeting.

Advisory Comments to the Applicant:
1) The following corrections should be made to the rezoning plan sheet so that accurate information may be provided for Planning Commission review.
   a) Correctly identify the subject site on the soils map and two location maps.
   b) Add property addresses.
   c) Add H (Historic District Zone) to existing and proposed zoning within the data column.
   d) The existing use is service commercial and the proposed use is service commercial with retail.

2) Staff requests the completion of a Minor Lot Line Adjustment Plan to consolidate the two subject parcels into one parcel of land.

3) The applicant shall be aware that approval of any rezoning application does not represent Site Development Plan approval. A separate Site Development Plan must be submitted and approved if additional development activities are proposed on the property.

4) The applicant shall be aware that approval of any rezoning application does not represent a Building Permit or other construction activity permit approval. A separate application submission showing all improvements is required before issuance of permits by the City of Dover.

5) Each business entity must maintain a current City of Dover business license in accordance with the permitted uses of the property's zoning classification and as outlined in *Dover Code of Ordinances.*

Public Comments:
The application was represented by property owner, Robert M. Duncan who spoke in favor of the rezoning.

The following individual appeared and spoke in regards to the rezoning application:

- Bishop Marion Lott, 218 Reed Street
- Mr. Theodore Henderson, 506 Wyoming Avenue
- Mr. David Rowland, 25 Slaughter Street
- Mr. L.T. Blackshear, 996 Boggs Drive
- Mrs. Brigett Evant (owns property on Kirkwood Street)
- Mr. Richard Evant
- Mrs. Terry Stone (owns properties on Queen Street)
- Ms. Sophia Russell, 20 N. New Street
- Mr. Jack Wallace, 630 Forest Street

With a large audience present, those people in opposed to the rezoning application were asked to stand (to be counted). Twenty-six (26) people stood to express their opposition to the rezoning application.

Provided with this report is a Draft Copy of the Planning Commission meeting minutes for this application, reflecting the discussion and testimony of the March 21, 2005 public hearing.

Agency Comments from DAC Report:

- Department of Public Works has no comments regarding this application.
- The City Electric Department has no comments on the rezoning application.

Attachments to the Report:

- **Development Advisory Committee Application Review Commentary (comment sheets) from the following:**
  Department of Public Works
  City Electric Department

- **Exhibit Location Map**

- **Draft Planning Commission Meeting Minutes of March 21, 2005**

CITY OF DOVER PUBLIC WORKS

CITY OF DOVER

DEVELOPMENT ADVISORY COMMITTEE

APPLICATION REVIEW COMMENTARY

APPLICANT D.A.C. MEETING DATE: March 3, 2005

APPLICATION: **Lands of Robert Duncan at 585 Forest Street, 111 South West Street, and 122 South Kirkwood Street - Rezoning from C-3/C-2 and H to C-1A and H**

FILE#: Z-05-01 **REVIEWING AGENCY: City of Dover Public Works**

CONTACT PERSON: Scott Koenig or Andrew Riggi **PHONE#: 736-7025**

THE SUBJECT PROPOSAL HAS BEEN REVIEWED FOR CODE COMPLIANCE, PLAN CONFORMITY AND COMPLETENESS IN ACCORDANCE WITH THIS AGENCY'S AUTHORITY AND AREA OF EXPERTISE.

THE FOLLOWING ITEMS HAVE BEEN IDENTIFIED AS ELEMENTS WHICH NEED TO BE ADDRESSED BY THE APPLICANT:

CITY AND STATE CODE REQUIREMENTS:

1. Our office has no comment regarding this application.

RECOMMENDATIONS SUGGESTED AS CONDITIONS OF APPROVAL TO MEET CODE OBJECTIVES:

ADVISORY COMMENTS TO THE APPLICANT:

IF YOU HAVE ANY QUESTIONS OR NEED TO DISCUSS ANY OF THE ABOVE COMMENTS, PLEASE CALL THE ABOVE CONTACT PERSON AND THE PLANNING DEPARTMENT AS SOON AS POSSIBLE.

CITY OF DOVER
DEVELOPMENT ADVISORY COMMITTEE MEETING
APPLICATION REVIEW COMMENTARY

MARCH 3, 2005 - 10:00 A.M. - CAUCUS ROOM

DOVER ELECTRIC

APPLICATION: LANDS OF Robert Duncan – 585 FOREST ST, 111 S. WEST ST., 122 S. KIRKWOOD STREET

FILE NO.: Z-05-01 **REVIEWING AGENCY:** CITY OF DOVER ELECTRIC

CONTACT PERSON: STEPHEN A. ENSS **PHONE #:** 736-7091

THE SUBJECT PROPOSAL HAS BEEN REVIEWED FOR CODE COMPLIANCE, PLAN CONFORMITY AND COMPLETENESS IN ACCORDANCE WITH THIS AGENCY'S AUTHORITY AND AREA OF EXPERTISE.

THE FOLLOWING ITEMS HAVE BEEN IDENTIFIED AS ELEMENTS WHICH NEED TO BE ADDRESSED BY THE APPLICANT:

CITY & STATE CODE REQUIREMENTS:

The Electric Department reviewed the application and has no comments.

RECOMMENDATIONS SUGGESTED FOR AS CONDITIONS OF APPROVAL TO MEET CODE OBJECTIVES:

ADVISORY COMMENTS TO THE APPLICANT:

If you should have any questions or need to discuss any of the above comments, please contact Stephen Enss at 736-7091 or contact the Planning Department at 736-7010 as soon as possible.

City of Dover

Application No. Z-05-01

Department of Planning & Inspections



Applicant: Robert M. Duncan

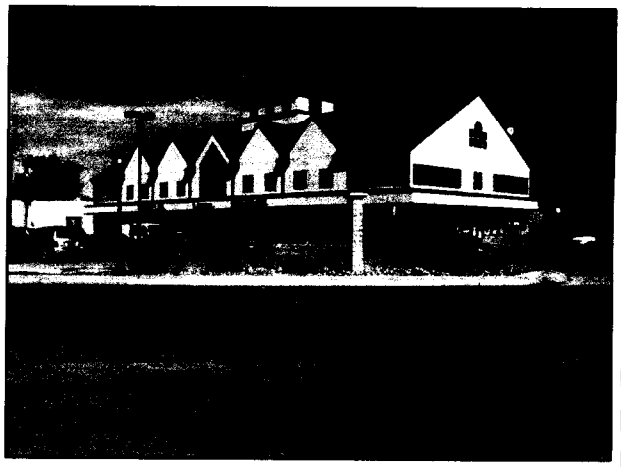
Owner: Robert M. Duncan

Date: 3-5-05

Tax Parcel No. ED-05-076.12-02-46 & 51

Site Area: 1.2177 Acres

From: C3, C2, H **To:** C 1A, H



CITY OF DOVER
PLANNING COMMISSION
MEETING OF MARCH 21, 2005
DRAFT MEETING MINUTES

Z-05-01 Lands of Robert Duncan at 585 Forest Street, 111 South West Street and 122 South Kirkwood Street - Rezoning from C-3/C-2 and H to C-1A and H - Public Hearing and Recommendation regarding a rezoning application for two parcels consisting of 1.2177 acres +/- of land. The properties are currently zoned C-2 (Central Commercial) and C-3 (Service Commercial), both located in the Historic District (H). The proposed zoning classification is C-1A (Limited Commercial) zoning classification. The subject area is located on the north side of Forest Street, fronting on both South West Street and South Kirkwood Street. The owner of record is Robert Duncan.

Representative: Mr. Robert Duncan, Property Owner.

Ms. Melson stated that the action that the Planning Commission will be taking this evening is a formulation of a recommendation and that recommendation along with the application materials will be forwarded to City Council for final action. The project consists of two parcels of land, the larger one is zoned C-3 (Service Commercial) zone and there is a small portion of the parking lot area adjacent to Kirkwood Street that has a C-2 zoning. The project also falls within the City of Dover Historic District zone currently and will maintain that Historic District zone classification. The applicant has proposed a zoning classification of C-1A which is a Limited Commercial zone. The Limited Commercial zone has a list of uses that would be permitted within it which include the opportunities for retail, personal service stores such as a beauty shop, and types of service establishments as well as the use as offices and other types of services, some of which are subject to Conditional Use approval.

Ms. Melson further stated that as mentioned previously a majority of the property is zoned C-3 (Service Commercial) zone which allows for personal service stores and service establishments, which the initiative is providing of a service rather than a product. Our Code recognizes that retail is providing a product. The surrounding land uses in this area are adjacent residential areas, and properties across Forest Street in the area of the train station and the multi-story office building that are in the Institution and Office zoning.

Ms. Melson further stated that the report from the Development Advisory Committee specifically lists all the uses that would be permitted in the commercial zoning district which also includes what is the recommendation of the Planning Staff with regards to this application. In making its recommendation, the Planning Staff notes that there are specific reasons for zoning properties the way we do in the City of Dover. In this area, we recognize the current zoning and what is termed "an attempt to protect the integrity of the historic retail district" which is located along Loockerman Street to the east of this property. At this area at the intersection of what is Forest Street, South West Street, and Kirkwood Street, the Staff sees it as more of a transitional area for the purposes of zoning. At this point, there is a change from what is the focused retail area to what is residential to the north and then more industrial type activity right along the

railroad track in that area. Staff feels that the C-3 zoning existing on the property is appropriate for the property. Staff is recommending that the existing zoning of C-3 and the small area of C-2 be maintained and that a recommendation for denial of the rezoning request be considered.

Ms. Melson further stated as part of the project, Staff is also recommending that a Minor Lot Line Adjustment Plan be completed to consolidate what are these two parcels of land into one parcel of land. This is an administrative process that helps to clarify property ownership in that area. The two other City Departments that provided comments include the Department of Public Works and the Electric Department who each reviewed the application and had no specific comments related to the rezoning of the property.

Mr. Duncan stated that he came here with no notes on how he was going to present his case. He did pick up two ideas while waiting and they are "to stimulate your memory" and "vested interest." He is extremely disappointed with Staff's position. If you can jog your memories as to what it was like before we developed this area and think of what it was like to what it is now. When we completed the Depot this changed the west end of town significantly.

Mr. Duncan further stated that it was two years before they finally rented the second floor of the Depot which was obviously a huge investment and strain on he and his wife. We were fighting the stigma of this area as it is very hard to combat and we are still fighting it. Then we built the other building across the street, which we would have been far better off financially if we would have built a two story building; however, we felt that the area needed more than that.

Mr. Duncan further stated that he had no problems with the Planning Commission or City Council when they reviewed all the things that he has been working for; however, he has an extremely difficult time dealing with the Planning Department. When he read their recommendation he feels that it is back to the same old thing. C-3 zoning went out 30 years ago when self service gasoline came along; service stations are gone and this is an antiquated zoning to begin with. With regards to the Historic District if you go into the City of Dover down State Street there are signs entering the Historic zone and there are buildings in this area that are registered with the National Register. There are no signs located on the west end that you are entering the Historic District because there isn't any. The only thing that the DAC came up with in the hearing was that the railroad track area was the historic district and that is the reason the Historic District is there. The train left the station many years ago. When you build things such as this that will change the neighborhood. You have to have something there that will bring people there. Retail is the only way you are going to get people to build your business and change the neighborhood.

Mr. Duncan further stated that he read in the Dover Post where Mr. Zimmerman would be putting up another building for Wesley College and stated that the first floor would be for retail. Of course it has to be for retail because this is what draws. He is always hammered with C-3 and Historic District and it does not apply to this particular case. The Depot that currently houses the convenience store is nothing but a large retail establishment. If you want to have empty stores then keep it the way it is as it won't help the neighborhood or me, it won't help anyone. This is really out of the context of where we should be as he is not the applicant requesting a liquor license, they came to me. It is when they went to get the letter of zoning verification that they

realized they had a problem, he always assumed that it was possible.

Mr. Duncan further stated that in the Staff's recommendations they state that it was the applicant who requested rezoning. I did not request the rezoning, the people who want the liquor store did. Furthermore, it is not this Commission or the Planning Department to say if a liquor store goes there, this is not their business. If people don't want a liquor store you have to go to the Alcohol and Beverage Control Commission. They are the ones that approve or disapprove liquor licenses not the Planning Commission and certainly not the Department of Planning who have blown things way out of proportion. Nothing should have been addressed as far as a liquor store in this particular case. If he stated that he wanted to put in a dress shop or a candy store there would be no person behind him. But, because it is a liquor store there is no license as it has to go before the ABC, which has nothing to do with this here tonight.

Mr. Duncan stated that he feels you have to take what they have done in this area and say retail for where it is at which will help the area. Whatever goes in there is fine, if it is liquor, this application has nothing to do with that. We have made major strides in this area and to deny retail is wrong. If you want to have someone invest in this area, you will never get anyone to invest in this area if they have to fight for approval every time. The City of Dover spent a good deal of money preparing the property across from the Depot to sell the property. This property has been for sale for a very long time because who would want to invest the money and have to fight through this process.

Mr. Nichols stated that Mr. Duncan is the applicant according to the paperwork. It says that the applicant had requested a zoning verification letter for a liquor store in the smaller building on the subject site. Responding to Mr. Nichols, Mr. Duncan stated that this is wrong, Staff falsified these documents. A zoning change has nothing to do with the liquor license.

Mr. Holt questioned if we approve the zoning, does this necessarily mean that they would be approved for a liquor store, is this correct. Responding to Mr. Holt, Mr. DiMondi stated that by approving the rezoning to C-1A you would be approving any of the permitted uses and a retail environment as Mr. Duncan has indicated. Those uses are listed on the cover of the DAC comments that you have before you. Any and all of those uses would be permitted subject to those intended uses which would require further regulatory review involving other state agencies such as the Delaware Alcoholic Beverage Control Commission. Any and all permitted uses should be considered by this Commission in taking this matter under advisement.

Mr. Holt further stated that what the Commission is afraid of is the kind of traffic that is going to be generated for a liquor store. To clean the area up there has been a lot of time and money invested in getting the street cleaned up from a bad element. They do not want to see it go back to the way it was. He is aware that the ABC has regulations on the number of liquor stores in a certain area and other things that they could not do.

Mr. Winsley stated that he agrees that the West Side in the past few years has improved in service and appearance. It has changed the area and when he read Planning Staff's recommendation, the information that was provided to him was that the C-1A asked for is so that a liquor store can be established. It took them approximately ten to fifteen years to remove a

liquor store which was within proximity of this site. He understands that once it is rezoned to this zoning you would have the option of putting whatever retail store that answers to retailing. According to the information he has, it cites the Historic District zone, he would think that the Historic District Commission should also be privy to information that he has so that they can also make a determination to say whether this would be complimentary to the historic zone.

Mr. Winsley further stated that in the past we have stated that the Historic District does or does not exist in terms of what we think of as preservation. There is a Historic District Commission that stands as we do and in the past, we have had some oversights in which we have been put on notice in terms of legalities of overlooking the suggestions of the Historic District Commission. This puts us in a competitive form of overlooking what they stand for. He is concerned with what their reaction would be to this area in terms of the information that he has.

Responding to Mr. Winsley, Ms. Melson stated that the Historic District Commission focuses on construction activities. A rezoning application is not required to go before that body to receive their recommendation. Their charge in our Zoning Ordinance is more related to construction activities and Design Standards and Guidelines that are established for items such as choice of materials, placement of the building, and form of the building. The Zoning Ordinance does not charge them in focusing on the types of uses that are occurring within the said building on the property. Those responsibilities related to the types of uses and zoning of the property rely upon the Planning Commission and their recommendation to City Council. The Historic District Zone is an overlay which focuses on design elements such as the AEOZ zone which is tied to provisions for flight activities in those areas or the Corridor Overlay Zone which focuses on landscape and building placement related to a specific corridor.

Mr. Winsley further stated that through a neighborhood community effort the store was closed in referring to the liquor store. Should we repeat that? I know that they say this is not for the liquor store; however, that information was presented. Responding to Mr. Winsley, Mr. DiMondi stated that for those who have served on the Planning Commission for a number of years you will recall that the Commission has been faced with situations where individual applicants seeking a rezoning are not required by our ordinance to disclose the intended use or occupancies for the property that is sought to be rezoned. The only legal issue properly before the Commission essentially revolves around the permitted uses of the proposed zoning classification and its compatibility with the adjacent zoning districts and in particular, the adjacent land uses. Before any formal action is taken, he will read to you the charge as expressed in the ordinance itself which identifies the elements that should be of great concern in expressing and articulating the burden that an applicant like Mr. Duncan would have in order to prevail in a setting like this on a recommendation to City Council.

Mr. Winsley further stated that the community was up in arms and they had to come afterwards to rectify a situation that was probably overlooked because of what the zoning could have been or may not have been. Now it comes to his understanding that we can prevent something from happening in the future. This is what he understands from the information that was submitted.

Mr. DiMondi stated that they need to determine what their legal obligation for consideration this evening is. He would like Ms. Melson to read an excerpt from the Zoning Ordinance that should

give and provide us with guidance in determining this matter as well as guidance for those individuals expecting to offer their opinions in the context of the public hearing that will be opened.

Ms. Melson stated that what she is reading from is part of the Zoning Ordinance: Appendix B of the City of Dover Code of Ordinances specifically Article 10, Section 5.1 "Report of Planning Commission." "In making such a report after a public hearing on the proposed amendment the Planning Commission shall make inquiry and determination concerning the items listed below." In this case, this type of amendment, as there are various types of amendments, is a change to the zoning map and is focused on in Article 10, Section 5.111 and continues reading as such: "Concerning a proposed amendment involving a change in the zoning map by way of a petition to rezone property or by way of annexation: (then there is a list of items:) item A: whether the uses permitted by the proposed change would be appropriate in the area concerned; Item B: whether adequate proposed public school facilities and other public services exist or can be created to serve the needs of any additional residences likely to be constructed as a result of such change; Item C: whether the proposed zoning is in accord with any existing or proposed plans in the vicinity; Item D: the affect of the proposed amendment upon the growth of the City as envisioned by the Comprehensive Plan; and Item E: whether the proposed amendment is likely to result in an increase or decrease in the total zoned residential capacity of the City and the probable affect thereof." This is the information and guidance that is given to the Planning Commission and ultimately to City Council in considering a rezoning action.

Mr. Winsley further questioned that the paragraph that states "Staff recommends the zoning for the parcel to remain Service and Office related C-3" and then in the next paragraph it says "the alternative considered would have been to make no recommendation and allow the commission to hear testimony from the applicant." When he read Staff's recommendation that the zoning remain as C-3 he would like to know what the conditions were that they made that recommendation from? Responding to Mr. Winsley, Ms. Melson stated that the items of consideration are best reflected if Planning Commission members are following along in the Development Advisory Committee report. The first paragraph under the recommendation of the Planning Staff reflects that in considering the proposed change is the change appropriate for the area? Our feeling was that there is a concentrated area of retail along West Loockerman Street; however, this area is an area of transition where retail is perhaps not the appropriate use to be happening there. The zoning in the area, as it exists, would protect what we have termed as the "de-concentration of retail" from a retail core area. This retail core area being the first immediate blocks of the Loockerman Street corridor moving from South State Street through to the next three to four blocks. It is a very specific retail area that is zoned C-2 and allows for retail uses on the first floor with residential activities above.

Ms. Melson further stated that these are the reasoning's for the Staff recommendation of keeping this as C-3. C-3 zoning is best given the location of this subject parcel and its surrounding zoning elements and existing uses. This also reflects other criteria that would have to be considered such as whether it is in accord with the existing plans that are proposed in this area and the Comprehensive Plan. The downtown area calls for a mixed use approach and certainly the existing zoning would comply with a mixed use approach to land use activities in this area as would the proposed zoning classification of the applicant.

Colonel Welsh stated with regards to Section 5.111, Item A states that one of the considerations is whether the permitted uses are appropriate for the neighborhood. He would assume that this would be all inclusive and the answer in this case is not all obviously from the people in the audience. He has spent his life dealing with regulations and regulations were always the least restrictive. In other words, you could require no less then what the regulations were. You could be more restrictive, in other words, you could impose additional restrictions on those regulations. Can the approval be granted with a specific restriction for a liquor store?

Responding to Colonel Welsh, Ms. Melson stated that in this instance the proposal as you have noted to specifically eliminate a potential use by name of a liquor store would constitute what in the planning realm she believes is referred to as a contract zoning. It would not be permitted under our Code that this additional restriction be placed on the application. A rezoning application is very different than a Conditional Use application for Site Plan development activities where our Code includes provisions for additional conditions to be placed on the project or the development activity in the best interest of health, safety, and welfare concerns as evaluated by you as the Planning Commission. In this instance, you cannot specifically eliminate one of the uses on the permitted use list. It is either all or nothing.

Mr. DiMondi opened a public hearing

Bishop Marion Lott - 218 Reed Street - Stated that he was here as a homeowner. He is here to make sure that all voices are heard and that we do not want a rezoning because we do not want to re-create the opportunity for a liquor store. There has been a process going on now for sixteen (16) years to improve the quality of living in our community. There has been a joint effort with the City Council, Police Department, and with programs that have been established within the community and with other organizations to improve the quality of living. If we would permit a rezoning and create an opportunity for a liquor store to come into our community it would be just as devastating as permitting a crack house to be established in our community. We would like for the Commission to take into consideration as homeowners and the City of Dover who is encouraging homeownership in Downtown Dover that we have a lot of concerns about whether there is a possibility of a liquor store being in our community. Mr. Duncan did not say and he

cannot say that there will not be a liquor store in the community providing that the rezoning is permitted. We would like the Commission to know that as homeowners we support a denial of rezoning.

Mr. Theodore Henderson - 506 Wyoming Avenue - Stated that he is currently the Pastor of the Dover Christian Church. He grew up in two communities that were both intercity communities in Washington D.C. and Columbus, OH. What was prominent in both of those communities was liquor stores. What he knows about retail is that retail cares nothing except profit and profit upon the lives of people. The gentleman made a very accurate statement that if it were a dress shop or a candy store none of "us" people would be here. You are right, it is a no brainer, had you been raised in intercity areas like he was where he has seen the affect of alcohol and what it can do to a family. Dover does not have an intercity yet, but it can develop one. He has no problem with

the area being rezoned if he could be assured beyond a doubt that there would be no liquor stores. If we were talking about Wild Quail or Pennwood, we also would not be having this discussion. In the name of God we need to consider what we are doing and consider the area itself which is a high risk sensitive area. There is already prostitution, drugs, and other types of things that are going on in this area; it is already there. If you could assure me without a doubt that there would not be another liquor establishment. Retail only cares about profit, they care nothing about lives, or about morality. We as a community need to be responsible for the community and the lives of our children.

Mr. David C Roland - 25 Slaughter Street - Stated that he was here in behalf of New Jerusalem Baptist Church which is located at 25 Slaughter Street. His home is not in this area; however, his church is. Earlier we talked about whose business is this that this plot of land be rezoned. He thinks it is the community's business as to what goes in it and what is allowed in it. We have a transitional area there as most of us in this room well know. We know what a liquor store will do. Surely Mr. Duncan is not requesting that he establish a liquor store. He is saying that there will be a business put there; however, we already have the news that there will be a liquor store involved. The parishioners at New Jerusalem Church do not want that. Slaughter Street, as you know, is directly located next to these streets that we are talking about here. He certainly hopes that Mr. Duncan and the Planning Commission would hear our plea; we do not want a liquor store adjacent to our church. The area in which they live in has already been stigmatized and they do not want it get any worse. It has been cleaned up fairly good at this point. A liquor store would not help the community. We are banded together in unity stating that we do not want a liquor store in our area.

Mr. L.T. Blackshear - 996 Boggs Drive - Stated that he concurs with the previous two speakers. He differs that this is not a historical area. The Historic District does not make those kind of mistakes. For those of us who have lived in the area and received help, he feels that this Commission and Staff deserves recognition for their service to the community. When we came to Kirkwood Street it was the worst area in Dover and most people already know that. With help from the Police Department, they cleaned up the area. We have improved Kirkwood Street so that it is a safe street now and there are plans to make it better. We are not in accordance with the rezoning at this time. We feel that this will make opportunities for us to go back into conditions that we have already come out of. We are in the process of doing other things along with the City to make it a better place for our citizens. When we first came to Kirkwood Street there were people drawing guns in the street and we have come a long way to rectify these situations. We are against this rezoning for the permitted uses. We are concerned with improving the living conditions and beautification of our City.

Mr. DiMondi asked for those people who were in agreement with those comments already given during public testimony to please stand so that Staff could take a count. There were twenty-six (26) people who were in attendance in support of denial of this rezoning.

Mrs. Bridgett Evant - Stated that she owns property on Kirkwood Street and her family owns five pieces of property between West Street and Fulton Street. She appreciates all that the City has done in rehabbing the properties themselves and the Police with helping our properties become better as a community. She appreciates Mr. Duncan for what he has done for the

community; however, she believes as a homeowner and a citizen that the rezoning should stay as is.

Mr. Richard Evant - Stated that he is the Pastor of the Calvary Baptist Church located on Queen and Fulton Street, which is next to Kirkwood Street as well as another Church located on Route 8 off of Forest Avenue. He is also the President of their Inter-denominational Ministerial Alliance where they have fifteen (15) churches that are represented in that alliance. On Saturday, they had a meeting where this issue came up and he is here to represent them in asking the Planning Commission not to change the zoning in that area. In 1989, he worked with then Mayor Hutchison to clean up Kirkwood Street and he feels that they have done a fairly good job. We do not want to see regress as this is near and dear to their hearts. They are concerned about their community and those that live there and want to keep improving it. One other thing that Mr. Duncan said was that it was a mistake that the liquor store was placed in the request for zoning. It is also pointed out to us that you can't select what retail store would go there; we can only vote it up or down. For that reason, we are requesting that the zoning request be denied.

Mrs. Terry Stone - Stated that she owns five properties on Queen Street: 41, 47, 49, 51 & 53 S. Queen Street. We are asking that you do not put any more new businesses up. We have a Downtown that has several empty stores that if people want to have retail then they could go to one of the empty stores Downtown instead of building new buildings that can in years become problem places. We are trying to clean up Downtown Dover and things are slowly moving towards one direction. We are trying to clean it up for people to raise their children and not have more places for crime, places going out of business, and buildings run down. If things are not kept up it becomes more of a problem. We would ask that you deny the request.

Ms. Sophia Russell - 20 N. New Street - Stated that she is a property owner on New Street and is here on behalf of the New Street Civic Association. Her request is that the Planning Commission take the consideration under their authority and deny the request to rezone it as a liquor store.

Mr. Jack Wallace - 630 Forest Street - Stated that he has counted at least twelve churches that are in the neighborhood within about a two or three block radius. This is not a place where we would want to have alcohol sold in this area. Some people can be enticed simply because they see it. If it were not there, then they would not be involved with it. In looking at it in that respect, we would say no, we do not want it in that area. The House of Pride houses former alcoholics and he feels that they are getting good treatment there with the advice and prayers that they are receiving which has changed their lives in a positive manner.

Seeing no one else wishing to speak, Mr. DiMondi closed the public hearing.

Mr. Duncan stated that there are two key items that he is hearing. He stated that Mr. Holt stated that it is up to the Liquor Commission to decide not the Planning Commission. If we have the zoning approval we can put anything in there that we want but a business containing liquor has to go before the ABC.

Mr. Duncan further stated that Mr. Winsley hit it right on the head when he stated that if you

read the Staff's report it zeroed right in on liquor that should never have been done. You did me a huge injustice to put this in the report and he really resents this. Every comment here tonight has been because of liquor and that is not an issue here. When he hears someone say that they do not want the zoning changed, that is fine; however, what about a reason. He never heard any reasons why. He also heard that they do not want any new businesses. How are you going to change the area if you do not want any new businesses, this is unbelievable.

Mr. Duncan further stated with regards to "vested interest," they feel they should dictate what he puts in these various stores. They have no vested interest as they have not one cent invested in his projects; this is wrong. If you try and decipher the answer given by Staff, he does not know how you would find an answer as it was a bunch of mismatch. It is just not fair what he has been subjected to. He has vehemently lost a lot of respect for what took place here tonight. He understands the people's position 100% here tonight. Do you think that he is going to invest all of this money and then have someone come in and downgrade his investment; you have got to be crazy. Busy stores you have no problems with. He has fifteen (15) stores located in Maryland that are convenience stores with liquor with no problems because busy stores do not have problems. The Depot is a very busy store and it does not have problems. He is extremely disappointed that this turned into a liquor hearing which it never should have done in the first place.

Mr. Tolbert questioned what Mr. Duncan's role is with regards to the types of businesses that would come into the area? Responding to Mr. Tolbert, Mr. Duncan stated that he is the landlord and would be responsible for what comes in. There have been people who have come to him wanting to bring in a business. He has turned them down if he does not feel that they are best for the area or for the property. Why would you lower your standard; that does not make any sense?

Ms. Young stated that Mr. Duncan has really turned around this side of town and she feels that he has done a wonderful job. What kind of businesses would you target for your store if this type of zoning were changed? Responding to Ms. Young, Mr. Duncan stated that the way it is now, he is very restricted. When you open up for retail you put whatever retail store would compliment the area.

Ms. Young further questioned, do you solicit for businesses? Responding to Ms. Young, Mr. Duncan stated that no, he does not. Anyone in business knows what would fit in any particular location.

Ms. Young further questioned as it stands right now, what type of businesses would you be attracting? Responding to Ms. Young, Mr. Duncan stated that a pizza shop would do extremely good; however, there are a lot of good businesses coming on stream all the time. He feels that an ice cream store would do very well there; however, he is not in the business of putting in a store and trying to rent it.

Mr. Tolbert stated that you still have the responsibility to determine what businesses will come in. No matter who wants to come in, it is up to you whether you lease it to them. Mr. Duncan was in agreement with this statement.

Mr. DiMondi stated before any further questions are asked, upon the Commissioner's approval, he would like to go over what is permitted under the present zoning. C-2 zoning includes retail stores, financial institutions, theaters and restaurants, photo copy and film processing, formal wear rental shops, travel agencies, personal service stores including but not limited to barber shops, beauty shops, tailors and other similar establishments, professional governmental offices and other businesses related to professional occupancy, and apartments. C-3 zoning includes all service establishments including dry cleaning and laundry plants, wholesale storage and warehousing establishments, bowling alleys, animal hospitals, motor vehicle, boat or farm equipment sales or service would be appropriate under this current zoning category. Motor vehicle service stations are subject to a series of seven (7) different conditions and regulations as a proposed use. Newspaper, job printing, manufacturing assembling, altering, cleaning and processing products for sale on or off the premises and mini storage facilities are permitted as well. This is a summary of those uses that are currently permitted under the present zoning conditions applied to the several lots that we are considering this evening.

Mr. Duncan stated that the ones that you just referred to under C-3 almost all of them do not apply to his location. We are only talking about a couple little stores. If it were zoned retail you could put a lot of things here. If you leave it as is, you are going to have empty stores. Do you want an empty store or would you prefer something in there.

Mr. Tolbert stated that Mr. Duncan made mention that the decision is spinning around the liquor store issue. The Planning Commission he feels has to make their decision predicated on what the Code says. Although a liquor store would be allowed under the revised code, we will still make our decision predicated on what the regulations say; it is not just the liquor store issue.

Mr. Winsley stated that his concern is how and where did the concept of the liquor store come from in relationship to the Zoning Code change that is requested? The community has been informed and the Planning Commission has been informed and it was according to what he is reading, the basis for the change of zoning.

Responding to Mr. Winsley, Mr. DiMondi stated that in connection specifically with this application, there is the intent of a third party, who is not even here this evening, who could potentially be the real party interested with regard to the potential occupancy of a storefront for use as a liquor store is in and of itself a red Herring. What we all need to consider as Commissioner's this evening is a much broader template against which all permitted uses as we discussed earlier identified by a thorough reading of C-1A and whether those meet the five (5) enunciated areas of a much broader perspective in terms of compatibility, the existing neighborhood, available services, (public and private), compatibility with proposed and existing uses, and whether it is consistent with the Comprehensive Plan. To the extent that we continue to dwell deeper and deeper into exploring one out of probably hundreds of potential uses permitted under C-1A is not serving any particular and fruitful purpose. You need to consider the broader template that we are charged with, take it under advisement, and render a decision with recommendation to City Council.

Mr. Winsley stated that he knows that it was not a request; however, he has a recollection of one

of the items that we had approved which the Historical Society challenged us legally in that we over stepped our bounds. He is concerned that the Historic Commission may or may not have comments regarding this application. Can we submit this to the Historic District Commission by referring this to them for their approval with the information that we were presented with?

Responding to Mr. Winsley, Ms. Melson stated that Mr. Winsley's comments are making two statements. The first is the question of can the Planning Commission refer this to the Historic District Commission, which is another appointed body of the City, for their recommendation. The answer is no, because this is not a review responsibility of the Historic District Commission. That appointed body deals with Design Standards and Guidelines not the type of use that is occurring in the building. Those responsibilities fall to the Planning Commission and City Council related to use.

Ms. Melson further stated that the second question is regarding knowledge of this one type of use in particular, the liquor store. The liquor store would be considered a type of retail establishment.

Mr. Winsley stated that he is concerned about what is behind the Planning Staff recommending that this property remain zoned as it is and what was the reasoning of providing the liquor store information if not to influence or to give us information.

Responding to Mr. Winsley, Mr. DiMondi stated that whenever Staff is induced to go out on a limb and make a recommendation he as a Commissioner invites Staff. Staff has seen so much more than we have as we are only educated in the process and much more in the concept of a public hearing than we are in any way of transmitting information to us. It is just one more item of guidance and one more item that represents an information flow in the exchange of ideas. This was a Staff recommendation and we have now had the benefit of hearing from many members of the public. It is now a matter of how we integrate what we have heard this evening and what we have heard from Staff into these issues. We are charged by the ordinance of making specific findings in the context of a motion this evening.

Colonel Welsh stated that he would like to commend Mr. Duncan on what he has done for the City of Dover and that part of town. You mentioned that you have a "vested interest" in that area and certainly you do a strong financial investment. You also stated that the people sitting behind you don't have a vested interest in this and I disagree with you, I think they do. He feels they have a very strong vested interest in it because for sixteen (16) years they have invested their heart and souls into cleaning up this neighborhood. He is very impressed with what has taken place in this area, not only in this specific area but on Kirkwood Street and along the other side streets. He sees people taking pride in their homes. There is a lot of cleanup and painting to fix up the homes and he feels that they have done a great job.

Colonel Welsh further stated that twenty-six (26) people are here tonight in the audience. Nine of them spoke against the proposed rezoning and when asked for a show of hands all twenty-six (26) stood as opposed to your proposed rezoning. In looking at Section 5.111, specifically item

A, it states that we are charged with looking at the proposed rezoning and determining whether the permitted uses are appropriate for the neighborhood. Well, the neighborhood has answered and the neighborhood has said no. Not all the permitted uses are appropriate, not to mention that it does not comply with the Comprehensive Plan. *(Staff note: zoning complies with the Comprehensive Plan under the mixed use land use category.)*

Colonel Welsh moved to recommend forwarding a motion to City Council for denial of Application Z-05-01 Lands of Robert Duncan at 585 Forest Street, 111 South West Street and 122 South Kirkwood Street, seconded by Mr. Tolbert and the motion was unanimously carried.