

These minutes were approved at the April 4, 2007 meeting.

**DURHAM PLANNING BOARD
WEDNESDAY, FEBRUARY 28, 2007
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL
7:00 P.M.**

MEMBERS PRESENT: Chair Kelley; Arthur Grant; Steve Roberts; Richard Ozenich; Bill McGowan; Lorne Parnell; Councilor Needell

ALTERNATES PRESENT: Susan Fuller; Annmarie Harris; Councilor Carroll

MEMBERS ABSENT: Wayne Lewis

I. Call to Order

II. Approval of Agenda

- A. Mr. Campbell noted that the public hearings had been put further down on the Agenda than they were supposed to be. He also said a letter had been received from Stonemark Management that day, dated February 27th, regarding a scheduling conflict. He said they requested that the application be continued until the March 14th meeting, and said the tentative schedule was to present the traffic study on that evening, and to give the stormwater presentation on March 28th. Mr. Campbell said the letter stated that the postponement would allow additional opportunities to meet with the neighbors regarding their outstanding concerns.

Councilor Needell MOVED to move Item VII to Item II B. Bill McGowan SECONDED the motion, and it PASSED unanimously.

- B. **Continued Public Hearing on a Site Plan Application and a Subdivision Application** submitted by Cuthartes Private Investments, Boston, Massachusetts, on behalf of Stonemark Management Co. Inc., Stratham, New Hampshire to build a 78-unit, age-restricted condominium development. The property involved is shown on Tax Map 1, Lot 6-8, is located at 97-99 Madbury Road and is in the Residential A Zoning District

Bill McGowan MOVED to continue the Public Hearing on a Site Plan Application and a Subdivision Application submitted by Cuthartes Private Investments, Boston, Massachusetts, on behalf of Stonemark Management Co. Inc., Stratham, New Hampshire to build a 78-unit, age-restricted condominium development to March 14, 2007 at the request of the applicant. Susan Fuller SECONDED the motion.

Councilor Needell said for those who were there to speak that night on this application, it was unfortunate that they wouldn't have this opportunity.

Chair Kelley said this had not been the information the Board had received from the applicant the previous week, and he apologized to those people who had come to participate in the public hearing.

Councilor Carroll asked if the people who had made an effort to get there concerning this application could raise their hands. 12 people were counted.

There was discussion as to whether the Board could hear from members of the public on this application if the applicant was not present.

A member of the public noted that some residents had already heard that the hearing would be continued, and had not come to the meeting as a result of this.

The motion PASSED 7-0.

III. Report of the Planner

Mr. Campbell said the Economic Development Committee had met the previous Thursday, and had voted to recommend that the Council move forward with the proposal submitted by Chinburg Builders. He said the company would give a presentation to the Council on March 5th, and said at that time, the Council would possibly direct Administrator Selig to negotiate a purchase and sale agreement. Mr. Campbell outlined a tentative schedule of how things would proceed from there, and said more would be known about this schedule after the March 5th meeting.

Mr. Grant asked what role the Planning Board would presumably play in this process.

Mr. Campbell said the Planning Board would have a representative on the design review committee, to help ensure that anything that was proposed met the Design Guidelines. He said the project application that was developed would then come before the Planning Board for site plan review.

Mr. Campbell said the Housing taskforce had met that day, and said most of the meeting centered around some possible draft changes to the Zoning Ordinance that were similar to what he had shown the Board some time ago. He said he and Tom Johnson would work on some proposed language. He explained that the tentative plan was that the draft Zoning changes would be a Town Council initiative, which would later come to the Planning Board for review, and would then go back to the Council.

Chair Kelley noted that Board member Susan Fuller would not be able to continue to serve as the Planning Board representative to the Housing taskforce, and said that other Board members that might be interested in filling this position should let him know.

IV. Acceptance Consideration on an Application for Conditional Use Permit submitted by Nick Isaak, Durham, New Hampshire on behalf of SAE Services Inc., Evanston, Illinois, for the re-instating of a building into a fraternity house. The property involved is

shown on Tax Map 2, Lot 11-2, is located at 28 Madbury Road and is in the Professional Office Zoning District.

Greg Sommers, Associate Director of SAE Services, provided background information on his organization. He said it was created 2001 as an entity that focused on housing for chapters of the national fraternity, and had an endowment of about \$5 million that could be leveraged to get additional financing to buy fraternities that were mismanaged, burnt out, etc. He said when they bought a house, they then fixed it up, and also tried to institute rules that would ensure the success of the fraternity house in the future.

He explained that the SAE chapter in Durham had gotten into some problems in recent years, but was very independent, and wanted nothing to do with the national SAE fraternity. He said the national fraternity ultimately decided to close the local chapter, and rented out the house to another fraternity. He said the national fraternity later learned that the house was in foreclosure, but the local house corporation still wanted nothing to do with them. He said that after providing some assurances to the local house corporation, it was convinced to deed the house over to the national chapter.

Mr. Sommers said when he had come to see the house, he had seen that it was in terrible shape, and had been badly mismanaged. He said he met with Tom Johnson and discussed some possible options, and said among other things, found out that the property had lost the Zoning it had previously had. He said he had been surprised to hear this, and wanted to know what had to be done to get it back.

He said his organization wanted to partner with the community and the University, to enforce rules that would satisfy their needs. He also explained that his organization had been working with local architect Nick Isaak on a remodeling design. He said a key aspect of this was to eliminate two existing areas in the house that were conducive to parties. He described plans to add additional bedrooms on the third floor, and to subdivide the basement and create a library, which would eliminate the larger open areas.

He said he had spoken to Paul Ramsey of UNH, who wrote a letter in support of the fraternity coming back. He said his organization wanted to work through the various issues with the Planning Board.

Chair Kelley said the Board would establish that evening whether the application was complete, and said this would also be a good time to get questions and concerns out on the table, in advance of the public hearing.

Mr. Campbell explained that the fraternity was previously zoned as RA, but was now zoned as part of the Professional Office District. He said the fraternity use had been a nonconforming use as part of the RA district, and was grandfathered, but he said that when the fraternity vacated the house for a year, it lost this grandfathered status. He said the option now was to bring it back as a conditional use in the Professional Office District.

Chair Kelley noted that this seemed to fit with what SAE Services wanted to do.

There was discussion that a previous variance for the property had been revoked by the ZBA. It was also noted that in 2005, an appeal of Administrative Decision Mr. Johnson had issued concerning the fact that non-fraternity people were living at the house was denied.

Councilor Needell asked if it was true that the original conditions of the variances regarding no alcohol, etc, were not relevant now, and Mr. Campbell said yes. There was discussion regarding how it was that the variance and its conditions had been voided.

Mr. Sommers said his organization supported some of the variance conditions, such as the requirement that there be a house director, and that common areas would be alcohol free. He said residents 21 and older would be able to drink a beer in their rooms. He said the goal was to prevent parties from happening in the chapter house, but he said it was difficult to tell a 21 year old that he couldn't have beer in his room, noting also that this would be very hard to enforce.

Ms. Harris said she had seen the inside of the house in recent years, and how bad it had become there. She also said that allowing alcohol in private rooms was as dangerous to the community as having it in common areas, and she provided details on this. She said she was not sure SAE Services was being realistic about this.

Mr. Sommers said that hopefully, they would now be getting a different caliber of students. He said they were trying to be realistic, but he said the decision on this would be up to the Board. He said he had dealt with over 150 SAE chapters around the country, and said 98% of the local chapter houses had the rules he had described. He also noted that there would be a housemother, and also said a local property manager would be hired to manage the property.

Mr. Grant said he thought SAE Services' proposal concerning drinking went further than what most fraternities and sororities in the community followed, and said it was a model in that respect. But he asked that there be some input from the University regarding this issue.

Chair Kelley asked Mr. Sommers if the organization had been in touch with **Scott Chesney of UNH**.

Mr. Sommers said he had contacted him, and had explained that they were trying to be a role model in Durham, and that the rules would be enforced. He said they had been given the go ahead by the University to recruit new members for the fraternity.

Councilor Carroll said the housemother idea sounded good, but she said the devil was in the details.

Mr. Sommers provided details on what the job description and qualifications for this position would be, as well as how the person would be recruited. He said the person chosen would be instructed to call the police when there were alcohol problems. He noted that an attractive living area would be provided for the housemother.

Councilor Carroll asked what SAE Services saw its role as, if the rules were broken.

Mr. Sommers said corrective action would be taken, and people would be kicked out of the house. He said they would also consult with the Town on this. He stated that they really hadn't had these kinds of problems in other chapter houses where they had done this kind of thing.

Mr. Roberts (who had arrived at some point during this discussion) said what Mr. Sommers had said regarding controlling alcohol contradicted his own experience. He also questioned whether perhaps eliminating common areas meant that this behavior would now spill over onto Town streets.

Mr. Sommers explained that there would be smaller common areas in the house, and said in his experience, these common areas were well managed, and there was no spillover into the streets of a town. He also said his organization encouraged fraternities to rent locations with third party vendors in order to keep partying out of the fraternity house.

Ms. Harris noted that it had been said that the housemother wouldn't do any of the enforcement for drinking behavior, but she said this then shifted the cost of enforcement onto the Town. She said the Town was a third the size of the University, and shouldered a significant burden because of this. She said this was a big issue for the Town of Durham.

Councilor Needell said this would be a fraternity that was recognized by UNH, and said its enforcement methods would therefore come into play if needed.

Mr. Campbell said the police had been very concerned about this house. He provided details on this, and said if the plans for this property worked out, the costs the Town had been paying out because of this property should decrease.

Mr. Sommers said he wanted to apologize for the behavior of the previous house corporation that had owned the property, and said they simply didn't know what they were doing in terms of managing the property. He said his organization wanted to work with the Town, and had the funds to fix up the house in a way that would make the Town proud. He said it was hoped that Governor Lynch, who had been a member of this fraternity, would attend the rededication that was planned for August.

Mr. Campbell said the application was complete, and said he recommended acceptance, as well as scheduling a site walk and the public hearing.

Ms. Harris said she hoped that perhaps some green technology could be included in the house where possible.

Mr. Sommers said the property had been seriously mismanaged, but he said a different entity was involved now, and its reputation was on the line with this property.

Ms. Harris said the inside of this building was magnificent, and said she hoped it would be restored. She also said she hoped it wouldn't be painted purple.

Mr. Sommers said the building would be restored, and he noted that the alumni would be holding a fundraiser to help pay off the mortgage.

Arthur Grant MOVED to accept the Application for Conditional Use Permit submitted by Nick Isaak, Durham, New Hampshire on behalf of SAE Services Inc., Evanston, Illinois, for the re-instating of a building into a fraternity house. Bill McGowan SECONDED the motion, and it PASSED 7-0.

- V. **Acceptance Consideration on a Conservation Subdivision Application** submitted by Joseph Caldarola, Portsmouth, New Hampshire for subdivision of one lot into 9 lots. The property involved is shown on Tax Map 10, Lot 7-0, is located at the corner of Bagdad Road and Canney Road and is in the Residential B Zoning District.

Board member Susan Fuller said she would recuse herself because her company was associated with Mr. Caldarola. Board member Richard Ozenich recused himself because he lived in a house built by Mr. Caldarola's company.

Mr. Caldarola provided a summary of how things had evolved in terms of wanting to develop this property. He said the current subdivision application involved the same land as his application that had now been tabled. He said there were still the same usable area, and the same constraints, which were dictated by the land itself.

He explained that the type of development he wanted to do had changed because in recent months he had come to a different opinion on the market for age restricted condominiums. He said it didn't seem wise now to proceed with this kind of development. He said what was now proposed was a similar project, but involved single family houses on separate lots. He said sewer would still need to be brought up the street, and also said the drainage design would be essentially the same. He said because there would now be lot lines, they were able to put a series of small detention areas on the lot lines, so infiltration would occur in localized areas of the site. He said this would eliminate the need for the larger detention areas that had previously been designed.

He said the private road hadn't changed, and provided details on how the roadway would be reconfigured to reduce the impact on the buffer. He also noted that as part of this, the retaining wall would no longer be needed.

Mr. Caldarola said the open space regulations would be satisfied with this development. He noted that he had now decided not to have an open space lot deeded separately, and instead would include some open space in each lot. He said this had been done primarily for insurance purposes. He also said that there would be an easement to allow passive public access to the open space area.

He said the traffic impacts from this site design would be essentially the same as the impacts that would have been expected from the previous design. He said there would be fewer residences, but more trips per residence.

He said a water pressure test had been scheduled, noting they were waiting for warmer weather in order to do this. He said that concerning the private road issue, he would be looking into the idea of shared driveways, and said his engineer would have something on this at the next Board meeting.

Mr. Campbell said he had suggested the idea of shared driveways, and noted there might be some sight distance issues involved with this. He said the Board would have to decide whether it would perhaps be willing to waive some of the sight distance requirements in order to have shared driveways.

Chair Kelley noted that with shared driveways, this would result in some breaks in the stone wall. There was further discussion on driveway options for the development. There was also discussion about options for garbage and recyclable pickup.

Councilor Needell said a concern he had at this point was that there were a lot of design review questions like this that needed to be answered. He noted that the applicant had requested that this stage of the process be waived, and said if the Board did this, these questions would have to be asked during the application process.

Chair Kelley said this project was similar to the project the Board had previously seen, so the issues were familiar. But he said he agreed there were some design issues that needed to be resolved.

Councilor Needell said he wasn't satisfied with the way the process was started for Mr. Caldarola's last application, and he provided details on this.

There was discussion that the conservation subdivision aspect of this application was more relevant than it was for the previous application, so it should be looked at more closely now.

Mr. Campbell said the applicant had requested a waiver regarding the first two phases of the review process, and said he felt this could be granted because the Board had already gone over a lot of what was being proposed now. But he said the Board should vote on this one way or the other.

There was discussion as to whether the Board could pick up the process at the Design Review stage, and skip the Conceptual Consultation stage.

Ms. Harris said she thought the Planning Board should be very careful about following the correct procedure. There was further discussion on this by Mr. Campbell and members of the Board.

Chair Kelley and Mr. Grant said they supported starting the review process at the Design Review stage. Mr. Grant also said they might as well start this now, in order to get some questions out on the table. But he said he needed to ask again why there were multiple applications from Mr. Caldarola, and what the purpose was of keeping the earlier application alive.

Mr. Caldarola said he was simply doing this to be cautious, in case the present application wasn't approved by the Board.

Mr. Grant said he was concerned that when the Board acted in this fashion, the perception was that the current application was of less concern than the previous application, and that the Board would therefore approve it because there were a lot of problems with the first application. He said he was not saying this to be critical of Mr. Caldarola, but he said if the Board were presented with two applications for the same property from another applicant, it wouldn't be doing this. He said that to him, it was not the developer's right to do this, and instead was the Board's decision to make.

Mr. Campbell said there was nothing in the law that prevented this. There was further discussion about this, and about how to proceed. The Board decided to vote on the waiver that evening, and to have Mr. Caldarola come before the Board for Design Review at the next meeting.

Councilor Harris was appointed as a voting member for the two motions that followed, in place of Mr. Ozenich, who had already recused himself.

Bill McGowan MOVED to grant a waiver to Section 7.01 Phase 1 - Preliminary Conceptual Consultation Submission. Councilor Needell SECONDED the motion, and it PASSED unanimously 7-0.

Bill McGowan MOVED to not grant a waiver to Section 7.02 Phase 2 - Preliminary Design Review Submission, and to have the applicant come back before the Planning Board on March 14th, 2007 for Design Review. Councilor Needell SECONDED the motion, and it PASSED unanimously 7-0.

Chair Kelley stated that the acceptance of the application would therefore not take place at the present Board meeting.

- VI. Approval of a Voluntary Lot Merger** per RSA 674:39(a) submitted by Arthur R. & H. Celeste Dimambro Trust. The properties involved are shown on Map 2, Lots 7-1 and 7-2, are located at 49 Madbury Road and 18 Strafford Avenue respectively and are in the Residential A and Professional Office Zoning Districts.

Mr. Dimambro said he lived on Lot 7-1, and wanted to combine it with lot 7-2. He explained that before he purchased lot 7-1, the two lots were one lot. He said the former owner subdivided the property and had planned to build a home on lot 7-2, but he said she had not done this, and had then asked him if he wanted to buy it. He said he had done this, and for a time had rented out a Quonset hut on the property to students.

Mr. Dimambro noted that lot 7-2 was listed as being 18 Strafford Ave., but he said the lot didn't actually touch that road, and that there was no outlet onto Strafford Ave. for the property.

Mr. Campbell explained that there was a point of the property that touched Strafford Ave., but there was no access, and no right of way.

Mr. Dimambro said he was not interested in developing Lot 7-2, and just wanted it to be what it originally was, combined with Lot 7-1. He also noted that Lot 7-2 had been rezoned as Professional Office, but he said he had not been notified that this would happen. He said he would like the two lots merged into one lot, and would also like Lot 7-2 to be put back in the RA district.

There was discussion that Mr. Dimambro could petition for the Zoning change, but that the current lot merger would not get involved with this possible change. Mr. Campbell also said Mr. Dimambro knew that if he wanted to subdivide the property in the future, he would have to go through the subdivision process.

Mr. Dimambro said there would be no dividing line between the districts if Lots 7-1 and 7-2 were merged. It was clarified again that the lot merger issue and the Zoning issue were separate, and that Mr. Dimambro could petition to make this Zoning change separately.

Mr. Campbell said such a request for rezoning had been received from Mr. Dimambro, and could move forward separately.

Ms. Harris noted that Xemed, a nearby property owner, was having some difficulty finding enough parking, and Mr. Dimambro said he had been approached about this.

Councilor Needell said the request for the Zoning change was reasonable, but he said the Planning Board couldn't suggest what would happen concerning this. He said the request had to go through the process.

Arthur Grant MOVED to approve the Voluntary Lot Merger per RSA 674:39(a) submitted by Arthur R. & H. Celeste Dimambro Trust, for the properties shown on Map 2, Lots 7-1 and 7-2, which are located at 49 Madbury Road and 18 Strafford Avenue respectively, and are in the Residential A and Professional Office Zoning Districts. Councilor Needell SECONDED the motion, and it PASSED unanimously 7-0.

VII. Discussion on Excavation Regulations and on Change in Table of Uses to make Excavation a Conditional Use in the Rural District.

Councilor Needell said that after re-reading the State excavation statute, he thought there was in fact a good case to be made to adopt local regulations similar to what had previously been proposed. He provided some detail on this, but said he thought more discussion was still needed on where in Town to allow this use.

The Board agreed this discussion would be on the Agenda for the March 14th meeting.

VIII. Other Business

A. Old Business:

B. New Business: Request for Technical Review for the addition of a carryout ice cream business at Durham Marketplace, Map 5, Lot 1-1.

Walter Rous spoke for the applicant, Durham Marketplace, and noted a site sketch he had provided of what was planned. He said the only impact from this addition was that the fire lane contour would have to be changed slightly to accommodate a waiting area in front of the take-out window. He also said one parking space would be lost as a result of the addition. He provided details on how the ice cream area would be utilized in the winter.

There was discussion on access issues, and on the proposed design of the roof for the carry out area.

Mr. Roberts said he questioned the idea of having this application go before the Technical Review Committee, because this part of Town had such a public face. He said he loved the idea of the carryout ice cream business, but said he felt the application should go through site plan review before the Planning Board.

Mr. Parnell said he agreed. He also said this seemed to be a congested area at times, which needed to be considered. There was discussion of the dimensions involved, and the proposed location of the bollards and other possible design elements such as curbing, which might be needed to protect customers and other pedestrians in this area.

Mr. Grant noted there were a number of accidents that occurred with this kind of situation, and he asked if the bollards were strong enough to stop a car.

Mr. Rous said yes, and provided details concerning this. He also noted that there would be no difference in the distance between pedestrian and cars than there was for the rest of the mall.

Mr. McGowan noted that there could be lines formed in front of this particular use, and asked what could be done to minimize the traffic flow in that area.

Chair Kelley provided details on the importance of laying out pedestrian areas carefully and distinguishing them from car traffic areas. There was further discussion by the Board on this.

Steve Roberts MOVED to require that the applicant submit plans for the site plan application to the Planning Board. Lorne Parnell SECONDED the motion.

Mr. Roberts stated that he was in favor of this application, but wanted an informed public involved in this process. He said the process would take place as speedily as possible.

Councilor Carroll said she agreed with Mr. Roberts, and noted her concerns about cars in front of Durham Market Place. She said it was important to separate moving vehicles from people standing there, especially children. But she said she thought the carryout ice cream business would be a great addition to that area.

Mr. Roberts said he thought the design criteria could address the traffic/pedestrian issues.

Mr. McGowan asked if there were design guidelines for buffer spaces, and there was discussion about this. Chair Kelley said a loss of some parking in order to provide more of a buffer was a tradeoff, and also said that creating a larger pedestrian venue might create more business there. He provided details on this.

The motion PASSED unanimously 7-0.

C. Next meeting of the Board: **March 14, 2007**

X. Approval of Minutes –

December 13, 2006

Arthur Grant MOVED to approve the December 13, 2006 Minutes as submitted. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.

January 10, 2007

Councilor Carroll noted that she had not been at this meeting, but the Minutes did not indicate this.

Arthur Grant MOVED to approve the January 10, 2007 Minutes as amended. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.

February 13, 2007

Arthur Grant MOVED to approve the February 14, 2007 Minutes as submitted. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.

X. Adjournment

Mr. Campbell outlined what was planned for the next Board meeting, to be held on March 14th. He said there would be 3 public hearings: the David Hills application; the SAE conditional use application; and the Stonemark Management application. He said there would also be a Design Review for the Caldarola application.

He said traffic consultant Steve Pernaw would arrive by 9:00 pm to do the presentation on the traffic study for the Stonemark Management application.

Mr. Grant asked that there be input from the Traffic Study Committee on this application, noting that this committee had recently focused on cracking down on traffic problems on Madbury Road.

Chair Kelley noted that Mr. Grant had previously said there hadn't been enough input from the Police Chief concerning traffic issues with this application.

Ms. Harris asked if the Planning Board had requested that an independent traffic study be conducted, and Chair Kelley said that pending getting the traffic study, this might be very appropriate.

Mr. Campbell said the Planning Board needed to start discussion of the issues on the Zoning list, which kept growing. He suggested that some time should be spent soon addressing the simpler issues on this list.

Chair Kelley agreed, and said they should be able to get through the simpler issues relatively quickly.

Ms. Harris asked if it would be appropriate for Planning Board members to make additional suggestions for Zoning changes. She said she personally would like to see the conditional use process re-instated for the RA zone, where there was the potential for a development to impact on adjacent neighborhoods. She said this needed to be on the Zoning list, and not at the bottom of it.

There was discussion about a letter the Planning Board had recently received regarding the area where Stonemark planned to develop, and various possible plans for developing the area.

Councilor Carroll said she hoped the conversations between the applicant and residents of the neighborhood were successful, so everyone could win with this development.

Mr. Campbell noted that the Office of Energy and Planning annual planning conference would take place in Manchester on April 28th.

Mr. Parnell noted the comment made by Mr. Dimambro about not knowing about changes to the Zoning districts, and he also noted that this kind of thing had also come up concerning the Goss property.

Mr. Campbell said everyone above Beech Hill Road would be notified about the upcoming public hearing on possible rezoning of the Goss property.

Chair Kelley said a Zoning Rewrite committee meeting would be scheduled for March 21st.

Mr. Grant said he hoped the Board could have more meetings in order to clean up the applications currently before it. He said he was concerned they were losing track of the details of some of these applications. He said there was also the perception that the Planning Board took months to do an application, but he noted that it was the applicant that often requested deferrals. Mr. Grant said he wanted the Planning Board to be able to be helpful to applicants, but he said there was a limit to this.

There was discussion about this.

Ms. Fuller said with the Stonemark application, the delays were more a function of the whole process, including the outpouring of comments from the public.

There was discussion as to whether the Board was currently overwhelmed with the number of complexity of applications, and whether the review process was as efficient as it could be.

There was also discussion about the fact that there was no Conceptual Consultation with for the Stonemark application, and that no formal motion had been made by the Board to waive this step in the process.

Mr. Campbell said that in the future, he would provide more structure and guidance to the Board up front concerning waivers, and the Board could then vote on them, instead of having them come up later.

Arthur Grant MOVED to adjourn the meeting. The motion was SECONDED by Steve Roberts, and PASSED unanimously 7-0.

Adjournment at 9:45 pm

Victoria Parmele, Minutes taker

Susan Fuller, Secretary