

This set of minutes was approved at the Planning Board meeting on May 9, 2007

**DURHAM PLANNING BOARD  
WEDNESDAY, APRIL 4, 2007  
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL  
7:00 P.M.**

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

**ALTERNATES PRESENT:** Susan Fuller; Councilor Carroll; Doug Greene

**MEMBERS ABSENT:** Arthur Grant; Annmarie Harris; Wayne Lewis

**I. Call to Order**

**II. Approval of Agenda**

Chair Kelley said Susan Fuller would fill in for Arthur Grant.

*Susan Fuller MOVED to approve the Agenda. Bill McGowan SECONDED the motion.*

Mr. Campbell recommended putting Agenda Items VI (Fogg subdivision application) ahead of V (SAE conditional use application). He also said Agenda Item III (Minutes) should be addressed between Agenda Item VI and VII.

*The motion as amended PASSED unanimously 7-0.*

**III. Report of the Planner**

Mr. Campbell said the public hearing on the Mill Plaza redevelopment would be aired on DCAT. He also noted that the Town had received a grant from the AIA concerning the redevelopment project. He said the AIA would be with the Town from the beginning to the end of the project, and said the grant represented thousands of dollars worth of services that would be received. He said the AIA was looking to use the Mill Plaza redevelopment project as a national model for other redevelopment projects.

Mr. Parnell said the AIA was looking for a project that would be implemented, and said this put some pressure on the Town to achieve this.

Councilor Carroll said the AIA might want to keep some detailed documentation on the project, for use elsewhere.

Mr. Campbell said he would be gone from April 14<sup>th</sup> –18<sup>th</sup>, and would possibly be back on April 19<sup>th</sup>.

IV. **Public Hearing on an Application for Subdivision** submitted by Adam, Troy and Jade Fogg, Durham, New Hampshire, to subdivide a property into 3 lots. The property involved is shown on Tax Map 14, Lot 7-2, is located on Packers Falls Road and is in the Rural Zoning District

Duane Hyde spoke on behalf of the Land Protection Working Group, which had worked with behalf of the Fogg Family regarding the conservation easement on the property. He said the current proposal was to create a conservation easement and to then subdivide three lots from the 100.22-acre parcel.

He said the property was under contract and was at the due diligence phase, and he explained that as part of the contract, the Foggs had the ability to go through the subdivision process. He noted that the lot lines for the various parcels had recently been adjusted somewhat, after receiving more information as a result of the wetland delineation, and from other sources.

Mr. Hyde said there would be a new lot created at the corner of the property on Mill Road, and said it would contain 5.19 acres, which was slightly larger than what had been proposed to the Town Council. He noted a pre-existing lot where Adam Fogg lived, and where Atlantic Survey operated out of, located between the 5.19-acre parcel and a 2<sup>nd</sup> new lot that would contain 3.62 acres. He said a 3<sup>rd</sup> new lot would be a 4.46-acre parcel containing the existing farmhouse and barn. He noted that there was a smaller easement area contained within this parcel.

Mr. Hyde explained that there was also a triangular shaped exclusion within the larger conservation easement area, where the Foggs had the right to put an additional house. He said this was approved by the Town Council, but he noted that the applicants had no immediate plans to build the house.

Chair Kelley said that Susan Fuller would fill in for Art Grant as a voting member of the Board.

***Steve Roberts MOVED to open the public hearing on an Application for Subdivision submitted by Adam, Troy and Jade Fogg, Durham, New Hampshire, to subdivide a property into 3 lots. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.***

Chair Kelley asked if any members of the public wished to speak. There was no response.

***Richard Ozenich MOVED to close the public hearing. Steve Roberts SECONDED the motion, and it PASSED unanimously 7-0.***

Mr. Parnell asked why the Land Protection Working Group had been interested in the Fogg parcel for conservation purposes.

Mr. Hyde provided details on this, noting among other things that the property had been identified numerous times in the 2000 Master Plan as being very important for conservation purposes, because of its scenic views, important stratified drift aquifer (Spruce Hole), and its proximity to other large forested tracts of conservation land and open space.

He said the property also contained a portion of a large wetland complex that was an important waterfowl area. He also noted that the Forest Society, the Nature Conservancy and the Strafford and Rockingham Regional Planning Commissions had identified the area where the property was located as being of regional significance within the Great Bay watershed.

Chair Kelley asked if there was updated conservation easement deed for the property. There was discussion about this.

Mr. Hyde noting that there were two conservation easements for the property, with somewhat different language required for each of them.

Mr. Roberts asked what the use would be for the two recently dug ponds on the property off of Packers Falls Road, and Mr. Fogg said they has nothing to do with this application.

Mr. Hyde said ownership of the entire property remained with the Fogg, and said the ponds were for the use of the property owners. He said that under the conservation easement, they could be maintained and used however the owners wanted to use them. He said the Town had no responsibility to fence them in.

Councilor Needell asked if there was a pond in easement area two, and Mr. Hyde said no.

Councilor Needell noted that he had received an email regarding concerns about changes to the layout of the property. He said that from the site walk and Mr. Hyde's description that evening at the hearing, there were changes to the lot lines, but this in no way diminished the viewscapes of the easement areas, and in fact, enhanced them.

There was discussion about where public access would be permitted on the Fogg property. Mr. Hyde also noted that for the remainder of the property, public access would be at the discretion of the landowner. He said access wouldn't be prohibited, but it wouldn't necessarily be guaranteed either.

Chair Kelley asked if other properties in the area along the lower border were accessible.

Mr. Hyde provided details on this. He said the University had been welcoming to the public on their property, and he also said the Carriage Trail conservation lands were fairly open to public access, but at the discretion of its association.

There was discussion about the triangular exclusion area within the larger easement area. There was also discussion about the second 2.80 acre easement area that went along with the new lot of where the farmhouse and barn were located.

Mr. Greene asked how the triangle of land was accessed from Mill Road, and Mr. Hyde explained that there was a farm road off of Mill Road that provided this access. He said the landowners reserved the right to use this driveway, but the driveway couldn't be paved. He said it was the only access for subdivision purposes.

Chair Kelley noted that reserve areas had been set out for septic systems, and he determined that the existing houses weren't on sewer, and that the systems had to get State approval from NHDES.

Mr. Fogg said they were in the process of getting this.

Chair Kelley asked if the Fogs had reviewed Mr. Campbell's comments, including the fact that all utilities should be located underground.

The Fogs said they had no problems with this.

Mr. Roberts thanked the Fogg family for working with the Town in such a cooperative manner concerning the conservation easements.

Councilor Carroll agreed, and said the conservation easements had added a great deal to the community.

### **Findings of Fact**

1. The applicant submitted an Application for Subdivision of Land with supporting documents on March 8, 2007.
2. The applicant submitted a Subdivision Plan entitled Subdivision/Conservation Easement Plan of the Fogg Property on Packers Falls Road & Mill Road, Durham, New Hampshire" prepared by Atlantic Survey Co., Inc., Durham, NH, dated December 2006, and last revised on\_\_\_\_\_
3. The applicant submitted a letter of intent on March 8, 2007.
4. The applicant submitted a copy of the Deed for the property on March 8, 2007.
5. The applicant submitted a copy of the Utility Easement on March 8, 2007.
6. The applicant submitted a Request for Waiver on March 8, 2007.
7. James. P. Campbell, Director of Planning and Community Development, granted exemption of this application from the Conservation Subdivision Regulations on March 22, 2007.
8. The applicant submitted a copy of the Conservation Easement Deed on March 27, 2007.
9. The applicant submitted a Request for Waiver on March 28, 2007.
10. A Site Walk was held on April 4, 2007.
11. A Public Hearing was held on April 4, 2007.
12. No members of the public spoke in favor of or in opposition to the application at the Public Hearing.

### **Waivers**

The applicant requested waivers to Sections 5.02, 9.06 of the Durham Subdivision Regulations, and for topographical information for the larger 85.58 acre conservation area. The Planning Board has considered this request and hereby grants the waivers.

**Conditions of Approval – prior to the Signature of Approval on the Subdivision Plan**

1. The applicant shall supply two mylar plats and one paper copy for signature by the Planning Board Chair.
2. The approval of the Conservation Easement by the Durham Town Council is required for the approval of this Subdivision.
3. State subdivision approval shall be given to the applicant and provided to the code enforcement officer.

Chair Kelley asked the applicant for an updated copy of the subdivision plan with the information Mr. Campbell had requested.

**Conditions of Approval – to be met subsequent to the Signature of Approval on the Subdivision Plan**

1. The referenced Subdivision Plan and these Findings of Fact and Conditions of Approval shall be recorded with the Strafford County Registry of Deed, at the applicant's expense, within seven (7) days of the Chair's signature on the Plan.

Chair Kelley asked that the Planning Board be provided with an updated copy of the site plan.

*Steve Roberts MOVED to grant approval of the Application for Subdivision submitted by Adam, Troy and Jade Fogg, Durham, New Hampshire, to subdivide a property into 3 lots subject to the Findings of Fact and Conditions of Approval, as amended at tonight's meeting. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.*

- V. **Deliberation 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.

Chair Kelley noted that at the March 28<sup>th</sup>, 2007 meeting the previous week, there had been a long Agenda so the Planning Board hadn't deliberated on this application that evening.

Mr. Campbell said he had provided the Board with copies of the Compliance Checklist for Conditional Use Permit, as well as the draft Findings of Fact, and Conditions of Approval.

Chair Kelley went through the first 5 procedural items on the Compliance Checklist. He then went through the following Checklist categories with the Board.

**Site suitability**

- Adequate vehicular and pedestrian access - **Yes**
- Adequate public services - **Yes**

- Absence of environmental constraints - Mr. Ozenich asked if there had been consideration given to possible asbestos, lead paint, etc. in the building, given its age, and Chair Kelley noted that this was discussed at the site walk.

Mr. Isaak said an environmental assessment of the property was required in order to get financing for the project, and said these kinds of things would be looked at as part of this assessment.

Chair Kelley asked if the applicant planned to mitigate any asbestos and other hazardous materials found at the property, and Mr. Isaak said yes, noting that Mr. Johnson would be involved with this as well.

Mr. Campbell suggested that this could be listed as a condition of approval.

- Availability of appropriate utilities – **Yes**

Chair Kelley noted that the applicant should be sure that the roof leaders didn't tie into the sewer.

Councilor Needell asked if this was the appropriate place to discuss placing utilities underground, and if this was worth considering for the property. There was discussion about the Board possibly requiring the applicant to put electrical wiring underground.

Mr. Campbell said this could be listed as a Condition of Approval.

There was further discussion on this, with Councilor Needell stating that this did seem to be the direction the Town wanted developers to go in.

Chair Kelley said he supported placement of electrical utilities underground, but said there should be some flexibility on this for the applicant, if ledge was encountered.

**External Impacts. The external impacts of the proposed use on abutting properties and the neighborhood shall be no greater than the impacts of adjacent uses or other uses permitted in the zone.**

- Excessive traffic generation – **No greater**
- Noise or vibration – **No greater**
- Dust, glare or heat – **No greater**
- Smoke, fumes, gas or odor – **No greater**
- Inappropriate hours of operation – **No greater**
- Other

Mr. Campbell said what was planned for the property should be a better situation than had existed there in recent years.

**Character of Site development. The proposed layout and design of the site shall not be incompatible with the established character of the neighborhood, and shall mitigate any external impacts of the use on the neighborhood.**

- Relationship of the building to the street – **Yes**, not incompatible
- Screening of off-street parking – **Yes**. There was discussion that there wasn't much landscaping along Garrison Ave. Chair Kelley said the applicant should consider landscaping of the asphalt area that was to be removed. Mr. Isaak said the applicant would make an effort to screen off-street parking.
- Treatment of yards & setbacks - **Yes**.
- Buffering of Adjacent properties. – **Yes**.
- Provisions for vehicular and pedestrian access – **Yes**.

**Character of buildings and structures. Is the design of any new buildings or structures and the modification of existing buildings or structures compatible with the established character of the neighborhood, including scale, height, massing, roof line, architectural treatment, principal entrance, and material and colors? Yes.**

Mr. Roberts said the site inspection had revealed that the portico was in a state of self-demolition, and said he assumed this would be brought into conformance with the code.

**Preservation of natural, cultural, historic and scenic resources. - Yes**

- Wetlands; Floodplains; Wildlife Habitat; Stonewalls; Mature tree lines; Cemeteries/graveyards; Historic buildings or sites; Scenic views/view sheds

It was noted that this was an historic building, and that it would be more aesthetically pleasing to look at when the work was done. There was discussion that some of the trees on the property would be trimmed.

**Impact on property values. The proposed use will not cause or contribute to a decline in property values of adjacent properties. Yes**

Chair Kelley noted that he didn't see that any members of the public had raised this issue. He said this criterion was the reason why he had asked Officer Kelley if he envisioned any trouble with the property in the future, which would tend to bring down the value of adjacent parcels.

**Availability of Public Services & Facilities. Adequate and lawful facilities or arrangements have been made for sewage disposal, solid waste disposal, water supply, utilities, drainage and other necessary public or private services. Yes.**

**Will these services cause excessive demand on municipal services including but not limited to, water, sewer, waste disposal, police protection, fire protection & schools? No.**

Mr. Isaak noted that the property was on Town sewer and water, and he said no issues had been raised by the Department of Public Works concerning this.

Mr. Campbell said that a Condition of Approval was that "The applicant shall provide a review of the water and sprinkler system to ensure they are adequate." He noted that the Fire Department, during the technical review, had raised the issue of the ability of the water line to

handle existing water usage plus water for the sprinkler system. He said a condition of approval might be that a 4-inch wide line would be needed. There was discussion on possible wording for such a condition.

Concerning solid waste disposal, it was stated that the dumpster would be screened. Councilor Needell noted that because this was a multi-unit dwelling, the Town didn't service it. He also asked about possible recycling of solid waste generated at the property.

Councilor Carroll explained that the Town would pick up recyclables free of charge if they were put out. She said the Town didn't pick up trash however, since it was seen as a business expense.

It was noted that the need for an additional catch basin would be indicated under Condition #6. There was discussion that there was currently a lot of runoff coming from the site to the adjacent street. Ms. Fuller spoke about the idea of pervious pavement for the site.

There was discussion that water demand would not be increasing at the property, and in fact, because the common area was being taken away, there would be less use of the facilities.

**Fiscal Impact. Will the proposed use have a negative fiscal impact on the Town? No**

Councilor Needell said the role of the house parent was key concerning this criterion, and he said language was needed concerning this. He also said that recognition of the fraternity needed to be tied in, in order to be able to answer no concerning this criterion. He said he was not ok with this criterion if those things were included.

Chair Kelley and other Board members agreed with this.

There was discussion as to why UNH hadn't stepped in to shut down SAE when things became so bad there. Mr. Isaak said it was his understanding that the procedure to be followed was that UNH notified the national fraternity when there were problems, which then shut down the local fraternity.

Mr. Campbell noted the administrative changes UNH had undergone regarding fraternities, which could facilitate the process of shutting down a fraternity.

**Conditions of Approval for Conditional Use Permit:**

- Front side and rear setbacks in excess of minimum requirements of this Ordinance.
- Screening of the premises from the street or adjacent property in excess of any minimum requirements of this Ordinance. Chair Kelley noted that the dumpster and the driveway opening would be screened.
- Landscaping in excess of any minimum requirements of this Ordinance
- Modification of the exterior features of buildings or other structures. It was clarified that the goal was to maintain the look of the existing building.
- Limitations on the size of buildings and other structures more stringent than the minimum or maximum requirements of this Ordinance. Chair Kelley noted that nothing was proposed outside of the existing structure.

- Footprint or lot coverage less than the allowed maximum of this Ordinance.
- Limitation on the number of occupants and methods and times of operation.
- Grading of the premises for proper drainage. The Planning Board said the Public Works Department would check this.
- Regulation of design of access drives, sidewalks, crosswalks, and other traffic features. Chair Kelley noted that the driveway on to Garrison Road would be revisited.
- Off street parking and loading spaces in excess of, or less than, the minimum requirements of this Ordinance. There was discussion that there were currently 27 spaces, which was less than the 40 spaces that the code required.

Mr. Campbell said he didn't think the Board wanted to require that number, and there was discussion about the idea of setting a maximum number of parking spaces.

There was discussion about on-street parking that was available in the area for residents of the building.

Councilor Carroll said she would like it if the number of parking spaces were not increased.

Mr. Isaak said the applicant didn't want to increase the footprint of the parking lot.

Mr. Campbell said it could be stated as a condition that the footprint of the parking space would not increase.

- Other performance standards as appropriate. There was discussion on whether there was exterior lighting at the property. Mr. Isaak said there would be full cutoff lighting, to minimize light pollution for the neighbors. He also noted that safety lighting was needed for the parking area, so there was a tradeoff involved. He said that providing lighting at the pedestrian level would address this.

Mr. Campbell said that at the corner of Garrison Ave. and Madbury Road, the Town was increasing the lighting there to make it look like daytime at night. He said the police wanted adequate lighting there for safety purposes. Said police would want there to be adequate lighting for safety.

It was noted that doors and exits on the property would be lit as well.

### **Findings of Fact**

1. The applicant submitted an Application for Conditional Use Permit with supporting documents on February 7, 2007.
2. The applicant submitted a copy of the Deed for the property on February 7, 2007.
3. The applicant submitted a letter from SAE Services Inc. On February 7, 2007, giving Nick Isaak permission to represent SAE Services Inc. before the Planning Board.
4. The applicant submitted an updated Application for Conditional User Permit with the Approval Criteria on February 15, 2007.
5. The applicant submitted a site plan and floor plans on February 19, 2007.

6. The applicant submitted a graph of site data for the property on February 27, 2007.
7. A Site Walk of the property was held on March 10, 2007.
8. A Public Hearing was held on March 14, 2007, and was continued to March 28, 2007.
9. The applicant submitted a job description for the “House Parent” on March 28, 2007.
10. Testimony was given by the University of New Hampshire and the Durham Police Department supporting the efforts of SAE Services, Inc.

**Discussion on Conditions of Approval – to be met prior to the Signature of Approval on the Site Plan.**

Mr. Campbell asked Mr. Isaak to check Article XXII concerning screening.

There was discussion that the project was pending approval of the Conditional User Permit, and that the contract was not yet signed. Chair Kelley noted that in order for SAE to finance the project, they needed to get approvals from the University and the Town. He said if the application was approved this evening, he would like some latitude when he saw the site plan, noting that there still might be some inaccuracies or omissions that needed to be taken care of.

Concerning Condition #1, Councilor Needell said the handout provided by the applicant concerning the house parent job description had gone a long way toward understanding what their plans were. But he said two questions still needed to be answered, - what happened when the house person was not there; and what the provisions were for how the house would be managed when the house parent was temporarily away from the fraternity house, or if the person left the position and it couldn't be filled for a period of time.

Mr. Campbell said he had spoken with SAE about this, and was told the national SAE chapter would probably have the property management company fill in the gaps. He noted the role UNH might also play in terms of filling in the gaps.

Councilor Needell said this was a critical point, noting that Officer Kelley had had a question about it as well. He said there would be a tremendous risk at this property if the house parent didn't do her/his job, and he said things could unravel pretty quickly. He noted that in the past, there were regulations that weren't lived up to at the fraternity house, and the fraternity ended up losing the use of the property. He said this could happen again if the house parent position was not maintained appropriately.

Mr. Isaak said the national SAE chapter understood that this was a conditional use, and that if they didn't live up to the conditions, they would lose the use of the property as a fraternity.

Mr. Roberts said in his experience, the housemother would train some fraternity members to take her place when she was gone. He said he didn't know how this would work in today's world.

Mr. Campbell said he thought this was an approach UNH was thinking about.

Councilor Needell said there should be a house parent, as defined here, and not just someone living in the house. He said there needed to be a clear understanding concerning this, but said he didn't know how the Board could codify this.

There was further discussion about how this kind of situation should be handled. There was further detailed discussion on Condition #1 and how much detail should be included in it.

Councilor Needell said it had been clarified by the national SAE chapter that the role of the housemother was to do more than call the police, and he said that hopefully when there were infractions, these would be handled internally. He said that hopefully there would be a chain of authority for dealing with behavioral problems. He said if there were illegal activity, hopefully the Police Department and the national SAE chapter would be involved.

There was discussion about how illegal activity was handled by UNH And the national SAE chapter.

Mr. Parnell asked whether the wording concerning providing a timetable was necessary, and there was discussion on this.

Mr. Isaak said this condition was acceptable.

Concerning Condition #2, Councilor Needell asked if Board members were comfortable with it.

Ms. Fuller noted that UNH was trying to change its reputation as a party school, and that it wanted SAE to be a model for other fraternities. She asked why it therefore couldn't be a requirement that there be no alcohol there. She said she had heard arguments that it would be hard to attract fraternity members if alcohol was not permitted, but said she wasn't completely comfortable with permitting alcohol there.

Councilor Needell said in general, senior fraternity members would be the only residents that would be of drinking age, so would be the only residents that would be allowed to have alcohol. He said the question was whether it was a big hardship to fraternity if it were to not allow alcohol at all.

Mr. McGowan said he thought this issue should be taken care of internally, through requirements and guidelines in place for fraternity members.

There was discussion as to whether underage occurring would occur at the fraternity house, whether alcohol was allowed there or not, and whether there was anything the Board could really do to prevent that.

Ms. Fuller said the house parent's job would be less complicated if alcohol use was not involved. She said allow alcohol did nothing to turn around the reputation of the University, and almost promoted the existing reputation of the school.

Chair Kelley noted that there would no longer be a common room at the fraternity house, and that problems were expected to be managed inside the house.

Mr. Campbell noted that house members would have to pre-pay their rent, and if they got kicked out of the house, they wouldn't get their money back.

Mr. Parnell asked if there was any relevant experience from the University dorms regarding allowing drinking by 21 year olds.

Councilor Carroll said the best that could be hoped for was discretion, moderation and control.

Mr. Isaak noted that that the applicant had said that if other fraternities allowed alcohol and SAE didn't, it would be hard to attract members.

The Board agreed that Condition #2 would stay as it was.

**Conditions of Approval – to be met prior to the Signature of Approval on the Site Plan.**

1. Provisions, in writing, shall be made to have a house parent (or similar), who shall reside in the house and shall adhere to the job description provided to the Planning Board. In the temporary or short-term absence of the house parent, the house parent shall delegate the authority to a specific person or persons.
2. A contingency plan shall be provided to the Durham Planning & Community Development Office in the case of long-term absence of the house parent.
2. Provisions shall be provided prohibiting alcohol from all common areas, including the entire parcel outside of the house.
3. The applicant shall obtain and maintain recognition from the University of New Hampshire to be a fraternity.
4. The applicant shall provide an analysis of the water and sprinkler system, for review and approval by the Durham Public Works Department and the Fire Department.
5. The fire alarms and all safety equipment need to be in place and functioning.
6. The final grading and drainage for the parking lot shall be approved by the Durham Public Works Department (with a maximum 22-foot driveway at Garrison Ave.
7. The parking shall be adequately screened at the rear of the lot in accordance with Article XXII of the Zoning Ordinance.
8. If asbestos, lead paint or other hazardous material waste needs to be removed, the material shall be mitigated, removed or disposed of in accordance with all Town, State and Federal regulations.

**Conditions of Approval – to be met subsequent to the Signature of Approval on the Site Plan.**

1. These Findings of Fact and Conditions of Approval shall be recorded with the Strafford County Registry of Deed, at the applicant's expense, within seven (7) days of the Chair's signature.
2. Building permits shall be obtained for all work being performed, and the building shall meet all building, fire and life safety codes.
3. If any of the conditions of approval for the Conditional Use Permit are not adhered to, the Conditional Use Permit may be suspended or revoked by the Zoning Administrator.

4. Utilities coming from the poles to the SAE House, between the SAE property, Map 2, Lot 11-2 and the abutting property, Map 2, Lot 11-4, shall be placed underground, unless ledge or other technical difficulties prevents this from occurring.
5. Dumpsters must be screened.
6. The existing footprint of the parking lot shall not be increased in size.
7. Full cutoffs shall be used for lighting the parking area while maintaining adequate light for safety.

Councilor Carroll suggested that green building solutions might be incorporated as part of redeveloping the property, such as solar flood lights, pervious pavement, low flow showers, etc. which would be a win-win situation for the fraternity, the Town and the environment. She noted that a lot was going on right now concerning this at UNH.

There was discussion about this.

***Bill McGowan MOVED to approve the Findings of Fact and the Conditions of Approval 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. Steve Roberts SECONDED the motion.***

Councilor Needell said his advice to the national SAE chapter was to seriously reconsider this project. He said he believed the risks of the project were huge, considering the investment that was being made, and the long-term likelihood of success of the local fraternity. He said he hoped it would in fact be a model, and said only time would tell. He also said he hoped it had been made clear to the community to keep this fraternity use on a very short leash, and if it didn't work out, the repercussions would be swift and fairly severe.

He said that when this project had first come forward, he had referred to the Master Plan concerning why this area of Town had been rezoned to Professional Office. He said the idea was to encourage fraternities to not be located in this part of Town anymore, and to move them out further onto University property. He said it was recommended in the Master Plan, although not strongly stated, that fraternities should be a conditional use in the Professional Office zone, so this application was a reasonable request.

He said the complete support of the project by the Police Department, and by UNH, had swayed his opinion heavily, and said if it did not exist, he would be much more reluctant to agreed to this. He also noted that there had been no public input opposing the application. He said he would vote to approve this, but said he thought there were better uses for this site.

***The motion PASSED 7-0.***

There was detailed discussion of the process that the national SAE chapter would follow from here concerning the approved application.

## **VI. Other Business**

## **VII Approval of Minutes**

### January 24, 2007

Page 7, 3<sup>rd</sup> paragraph, 1<sup>st</sup> sentence, should read “Chair Kelley asked Attorney Hogan if he ha contributed to...”. 2<sup>nd</sup> sentence should read “..and asked Attorney Hogan if the ruling in those cases was applicable in the present situation.”

4<sup>th</sup> paragraph, should read, “He said that in the entire line of cases, the Board had the authority.....”

Page 8, 3<sup>rd</sup> full paragraph, should read “to immediate abutters and their neighbors,..”

Page 17, 2<sup>nd</sup> paragraph, should read “..at the Rochester landfill, would there be a pipeline..”

***Councilor Needell MOVED to approve the January 24, 2007 Minutes as amended. Steve Roberts SECONDED the motion, and it PASSED 6-0-1, with Richard Ozenich abstaining because he was absent from the meeting.***

### February 21, 2007

Page 7, after the motion “***Arthur Grant MOVED to reconsider the previous vote***”, it should say “This motion resulted from the fact that two of the affected landowners in the audience had asked that the public hearing date be changed.”

Page 9, 7<sup>th</sup> paragraph, should read, “..that there be no conceptual review of this project..”

***Steve Roberts MOVED to approve the February 21, 2007 Minutes as amended. Bill McGowan SECONDED the motion, and it PASSED 6-0-1, with Susan Fuller abstaining because of her absence from this meeting.***

### February 28, 2007

From Page 3-6, the spelling of “Summers” should be replaced with “Sommers”.

***Bill McGowan MOVED to approve the February 28, 2007 Minutes as amended. Councilor Needell SECONDED the motion, and it PASSED unanimously 7-0.***

#### **A. Old Business: Discussion on “Citizen Planner” Initiative**

Councilor Needell said he had received an email concerning this initiative, explaining that the idea for it had been developed at the University of Michigan. He explained that an exploratory committee was being put together, and said they were looking for someone from a real planning board to be part of this committee, so were inviting someone from the Durham Planning Board to participate.

He asked if any Board members would be interested in doing this, noting that he might be interested in doing it himself, but was a Town Council representative to the Board, so perhaps someone from the Planning Board should do it.

Mr. Campbell suggested that perhaps Wayne Lewis could do it when he got back from Florida, for his own education, but also in order to bring back to the Planning Board some of the things he learned on the Committee.

Councilor Needell said he thought they were actually looking for an experienced planning board member to participate, in order to help them design the Citizen Planner program.

Mr. Ozenich volunteered to serve on this Committee.

Chair Kelley noted an upcoming lecture in Cambridge on April 12<sup>th</sup>, concerning the cost of development vs. the cost of conservation. He said the speaker at the lecture was an educator at the University of Wisconsin.

B. New Business:

Councilor Carroll noted a representative for Patsy Collins had recently come before the Board looking for letter from the Planning Board to take to the ZBA concerning two issues, one of them having to do with somewhat poorly drained soils. She noted that the Board had said it would not provide a letter concerning this issue.

She noted a ZBA decision within the past few years concerning allowing non-fraternity members to live at a fraternity house, which was later reconsidered by the ZBA. She said in that instance, the ZBA hadn't understood the ramifications of the issue in its first ruling on the property.

She said she saw an analogy between that situation and the somewhat poorly drained soils variance application coming up. She said if the ZBA didn't understand the ramifications of the somewhat poorly drained soils issue, there would be a dilemma. She suggested that perhaps the Planning Board could speak on this issue at the hearing.

Chair Kelley noted that he hadn't supported removal of somewhat poorly drained soils from usable area, but had lost when this was voted on by the Planning Board. He said it would muddy things if he were to speak before the ZBA on this.

Councilor Carroll said regardless of the history of Board discussion and votes on this issue, it was in the Zoning Ordinance. She noted that Chair Kelley had handled the issue well when the representative for Ms. Collins had recently come before the Board.

Councilor Needell noted that there had been discussion by the Town Council about whether in general, the Town should have more representation before the ZBA, but no action was taken on this. He said the ZBA had to enforce the Ordinance before it. He also said he had watched the replay of the ZBA meetings concerning the fraternity on Madbury Road. He said the initial decision was successfully appealed, and said the Ordinance eventually was changed as a result of the process.

Councilor Needell said they had to give the ZBA the benefit of the doubt in this instance, and let the Zoning Ordinance stand on its own merit. But he said the Planning Board should pay attention to what happened at the ZBA meeting, and should be ready to take further action if necessary if it felt the ZBA made an error.

Ms. Fuller said the process that occurred concerning the Madbury Road process did clarify some issues concerning the Ordinance for the Planning Board.

Mr. Roberts discussed the complexity of interpreting a Zoning Ordinance these days, and that a ZBA had to look not just at what the Ordinance said, but what its intent, etc. was.

Councilor Needell said the questions that came before the ZBA were not whether something was allowed in the Zoning Ordinance, but whether an applicant met sufficient criteria to be allowed to receive a variance. He said it might be that in this instance, the applicant deserved a variance, and said just because one might be granted, this didn't mean that the ZBA had undermined the Ordinance, or that the Planning Board had to challenge the decision. He said it was only if the reasoning the ZBA used ignored the spirit and intent of the Ordinance that the Planning Board would raise questions.

Mr. Roberts noted that during the proceedings for the Hotel application, the Planning Board decided that it would try to attend other board meetings where issues concerning the project were addressed. He said there were questions at that time as to how Planning Board members should function at those meetings, and it was noted that it was a touchy situation. He agreed that the ZBA interpreted the Zoning Ordinance in the best way that it could.

Councilor Carroll said that sometimes, granting a variance wouldn't make that much of a difference, but she said with something like this, with the somewhat poorly drained soils, there would be greater ramifications. She also spoke about how hardship would apply concerning this issue.

C. Next meeting of the Board: **April 11, 2007**

## **VIII. Adjournment**

***Richard Ozenich MOVED to adjourn the meeting. Bill McGowan SECONDED the motion.***

There was discussion that the Board would discuss the idea of possibly scheduling a Zoning Rewrite meeting at the next meeting.

***The motion PASSED unanimously 7-0.***

Adjournment at 10:00 pm

Victoria Parmele, Minutes taker