

This set of minutes was approved at the Planning Board meeting on December 12, 2007

**DURHAM PLANNING BOARD
WEDNESDAY, OCTOBER 24, 2007
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL
7:00 P.M.**

MEMBERS PRESENT: Chair Bill McGowan; Vice Chair Lorne Parnell; Secretary Susan Fuller; Steve Roberts; Richard Kelley; Wayne Lewis

ALTERNATES PRESENT: Annmarie Harris; Councilor Diana Carroll

MEMBERS ABSENT: Richard Ozenich; Councilor Jerry Needell; Doug Greene

I. Call to Order

Chair McGowan called the meeting to order at 7:03 PM. He said Councilor Carroll was filling in for Councilor Needell, and Ms. Harris was replacing Mr. Ozenich.

Councilor Carroll reminded the Board of the upcoming Energy Committees meeting, where Epping planner Clay Mitchell would be speaking on his experiences with energy conscious planning and zoning. She said she hoped Planning Board members could be there, but said the presentation would also be viewable on DCAT. She said the Energy Committee was looking forward to working with the Planning Board on this issue.

II. Approval of Agenda

Chair McGowan noted that there was a request to move Agenda item VII to after Item X. The Board agreed that this amendment should be made to the Agenda.

Richard Kelley MOVED to approve the revised agenda. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

III. Report of the Planner

Mr. Campbell reviewed documents that were at the table for Board members:

- The draft Findings of Fact and the Conditions of Approval for the Berton application
- A memo regarding the Teeri application
- court documents regarding the 99 Madbury Road issue
- parking diagrams- (he noted that some copies of the older Zoning Ordinance didn't have them)
- emails on transportation issues

Councilor Carroll said that some of these transportation related emails were concerned with the idea of bicycle paths.

Councilor Harris suggested that it would be useful for members of the public to have

access to the Planner's Report.

- IV. Public Hearing on an Application for Conditional Use Permit** submitted by Paul Berton, Fall Line Properties, Portsmouth, New Hampshire on behalf of Epsilon Holding Corporation, Ipswich, Massachusetts to convert a fraternity building into a mixed-use building with six units and retail or restaurant carry-out space. The property involved is shown on Tax Map 2, Lots 9-4, is located at 17 Garrison Avenue, and is in the Professional Office Zoning District.

Richard Kelley MOVED to open the Public Hearing on an Application for Conditional Use Permit submitted by Paul Berton, Fall Line Properties, Portsmouth, New Hampshire on behalf of Epsilon Holding Corporation, Ipswich, Massachusetts to convert a fraternity building into a mixed-use building with six units and retail or restaurant carry-out space. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

Mr. Berton thanked the Board for holding the site walk that day, and said he hoped they had gotten a feel for the parking available there, and how the development would be laid out. He provided an overview of the proposed project, which was to turn the existing building into a 24 person residence with six 4 person units, and to use a portion of the building for a commercial component. He noted that the property was surrounded by apartments and fraternities. He said his goal was to convert and stabilize the residential component of the property, and then to come back and attack the commercial component.

He demonstrated on the existing conditions plan that there was already more than adequate parking on the site. He said he hoped that pedestrian access would be a part of whatever commercial development occurred on the property.

Ms. Harris asked what Mr. Berton intended to do with the many parking spaces on the site.

Mr. Berton said that given the competitive nature of the rental market, he would have to be able to ensure that the 24 residential tenants had parking, and said he would try to find the highest and best use for the rest of it. He said the parking would be in compliance with ADA requirements, noting that a ground floor apartment as well would meet these requirements. But he said no additional parking would be added for the future commercial component.

Councilor Carroll asked if Mr. Berton could speak about energy and water conservation for this development, noting that this was a topic that was on everyone's mind.

Mr. Berton said it had always been a big concern of his, because he had to pay for the energy and the water. He provided details on water conservation measures that would be included in the development, including low flow toilets and water saving showerheads. He also provided details on energy saving measures that would be used, and noted that the biggest energy saving approach would be to make the tenants responsible for paying the heating bill. He said this had cut energy use by 75% in the existing buildings he owned and managed. He said this approach creating more

awareness on the part of students and their parents.

Chair McGowan asked if there were any members of the public who wished to speak for or against this application. There was no response.

Richard Kelley MOVED to close the public hearing. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

The Board first went through the Conditional Use Criteria Checklist for this application. There were some comments on the following criteria, but the Board had no specific issues with any of them.

Site suitability

External impacts

Character of the site development

Ms. Harris said that regarding the buffering criterion, there was a cut through on the property, and she asked if this was a good thing or instead should be cut off.

There was discussion about this, and it was noted that there was a fence now along the back of the property that blocked access.

Mr. Berton said this fence would be maintained. He also discussed the dumpster, and said the goal would be to remove it because others tended to use it. He said he would have a mini-dumpster and a recycling container on the property.

Character of the buildings and structures

Not applicable

Preservation of natural, cultural, historic, and scenic resources

Not applicable

Impact on property values

Availability of Public Services & Facilities

There was discussion that a future expansion of the use would require applying for permits.

Fiscal impacts

Chair McGowan next went through Section 175-23 D. Conditions of Approval. The conditions shall, if applicable, include, but are not limited to, the following:

1. Front, side, and rear setbacks in excess of the minimum requirements of this Ordinance.
2. Screening of the premises from the street or adjacent property in excess of any

- minimum requirements of this Ordinance.
3. Landscaping in excess of any minimum requirements of this Ordinance.
 4. Modification of the exterior features of buildings or other structures.
 5. Limitations on the size of buildings and other structures more stringent than the minimum or maximum requirements of this Ordinance.
 6. Footprint or lot coverage less than the allowed maximum of this Ordinance.
 7. Limitations on the number of occupants and methods and times of operation.
 8. Grading of the premises for proper drainage.
 9. Regulation of design of access drives, sidewalks, crosswalks, and other traffic features.
 10. Off-street parking and loading spaces in excess of, or less than, the minimum requirements of this Ordinance.
 11. Other performance standards as appropriate.

Ms. Harris said there wasn't easy access for future commercial uses in the proposed commercial portion of the building.

Mr. Berton said the shrubbery would be redesigned to provide proper street exposure. He said this would be addressed in the next phase.

There was then discussion by the Board on the Draft Findings of Fact and Conditions of Approval .

It was noted that the plan as it stood didn't reduce the amount of parking, but that what existed there now was more than enough. Mr. Berton said there were 24 spaces in the upper lot, and 28 in the lower lot.

Mr. Campbell explained that the commercial use would represent a change of use, which could impact the parking requirements. He also spoke about the fact that the Board had required a property management plan for two other recent applications, and said to be fair, the Board should have Mr. Berton submit something concerning this. He reviewed the proposed wording in the Conditions of Approval concerning this.

There was discussion on this condition by the Board. Ms. Harris noted the wording "if problems persist....." was somewhat subjective.

Ms. Fuller pointed out that some landlords addressed property management issues in the lease, and Mr. Berton agreed. He said although particular landlords might do things differently, the idea was to get the job of securing the property done.

After further discussion by Ms. Harris and Mr. Campbell, it was agreed that the

language in condition #1 would read “..if problems persist on the property, as determined by the Police Chief, full time security will be needed 7 days a week from 8 PM to 6 AM until the problems are rectified.”

Mr. Berton said it was important that the rules not hold the landlord hostage to the tenant base, and that the solution went back to the perpetrator. He agreed with Mr. Kelley that this was where his lease agreement and rules and regulations kicked in.

Ms. Harris noted that the concern was that this condition was needed because someone else might own the property in the future.

There was detailed discussion about whether there should be a condition of approval concerning alcohol sales on the property, with Councilor Carroll saying that she felt all liquor sales should be banned at this location.

Mr. Roberts said he disagreed, stating that this was one of the few places that was secure. He also noted the age restrictions, and the degree of screening at that property.

Councilor Carroll noted that there were dorms in that area that housed freshmen and sophomores.

Mr. Kelley asked if it would be acceptable to Mr. Berton if alcohol sales were prohibited, and Mr. Berton said he was fine with that.

It was agreed that a condition would be added “A note shall be added to the plan stating that no alcohol sales will occur on site”.

It was noted that there was a condition to be met subsequent concerning ADA compliance.

There was discussion by the Board on the hours of operation. Chair McGowan noted that the Board had come up with these hours the last time because the property was near a residential area.

Mr. Campbell said the Police Chief liked having the concentration of young people, and felt that if there were retail establishments further from the downtown core, there would need to be officers in position in these areas.

Ms. Fuller noted that Mr. Berton had mentioned the idea of a laundry facility, and said closing at 10 pm might be too early for this use.

Mr. Berton asked if the Police Chief would have the same concerns if there were no alcohol sales on the property.

Mr. Campbell said he did, noting that selling food after 10 pm would be another opportunity for kids to congregate.

Mr. Berton said he would hate to put that restriction on a particular retailer. He said if Breaking New grounds opened in that location, he would hate to see this restriction.

Mr. Roberts said he thought this was overzealous, and said given the fact that alcohol sales would be prohibited, he felt the closing time could be 12 am.

There was discussion on when University retail establishments closed down.

Chair McGowan noted that the retail use was not proposed right now, and that this would have to come back before the Board, so not including hours of operation as a condition right now wouldn't affect anything.

Mr. Parnell said he disagreed with the idea of taking this out, noting that other recent approvals by the Board in the same zone had required this limit on hours of operation. He said he didn't think it was fair to micromanage the competitive situation.

Mr. Campbell noted there would be a recommended Zoning change to take retail use out of the Professional Office district.

Ms. Fuller said she thought the alcohol issue was the primary concern regarding hours of operation with a previous application. She also said she thought limiting hours of operation for something like a laundromat would be too restrictive.

Ms. Harris noted that there were laundromats available everywhere.

Mr. Kelley suggested that the conditions could be phrased in such a way that they described the particular problems there could be at a facility that could put the applicant into non-compliance.

There was discussion that Mr. Berton would be coming back to the Planning Board concerning the commercial component of the development as a site plan review, so the hours of operation could be addressed with specific conditions at that time. The Board agreed that no condition was needed concerning hours of operation for the present application, and that the issue could be addressed when more was known about what the use that would occur there.

FINAL FINDINGS OF FACT

1. The applicant submitted an Application for Conditional Use Permit with supporting documents on September 18, 2007.
2. The owner of the property submitted an authorization letter for Paul Berton on September 18, 2007.
3. The applicant submitted a deed for the property on September 18, 2007.
4. The applicant submitted a copy of a letter from the University of New Hampshire on September 18, 2007.
5. Zoning Administrator, Thomas Johnson, submitted an e-mail on September 27, 2007.
6. The applicant submitted on September 28, 2007, a Site Plan entitled "Phi Kappa Theta, University of New Hampshire" prepared by William B. Schoonmaker, AIA, Durham, New Hampshire, dated February 28, 1986.
7. The applicant submitted a letter of intent on September 28, 2007.
8. The applicant submitted proposed and existing floor plans on October 2, 2007.
9. Durham Police chief submitted a letter on October 4, 2007.

10. The applicant submitted on October 5, 2007, a Site Plan entitled “Existing conditions Plan of Epsilon Holding Corporation, Tax Map 2, Lot 9-4, 17 Garrison Avenue, Durham, New Hampshire” dated October 5, 2007.
11. The Durham Zoning Board of Adjustment granted variances for mixed use on the first floor of the building with apartments and retail/office and for four unrelated people to reside in each four-bedroom apartment on October 9, 2007.
12. A Site Walk was conducted on October 24, 2007.
13. A Public Hearing was held on October 24, 2007 and no comments were received from the public.

CONDITIONS OF APPROVAL - to be met prior to the Signature of Approval on the Site Plan

1. A Property and Security Management Plan shall be submitted to include, but not limited to, the following: Rules and regulations of the Apartments 24 hour/7 day a week primary contact person to resolve security , or other issues, in a timely and appropriate manner; a secondary contact person shall be identified in case primary contact person is not available; all contact information shall be updated with the Police Department, Fire Department, and Code Enforcement Department on an as needed basis; night time security will be used for the site; if problems persists on the property, as determined by the Police Chief, full time security will be needed 7 days a week from 8 PM to 6 AM until problems are rectified; the plan shall be approved by the Town Planner with the advice and consultation with the Police, Fire, and Code Enforcement Departments and can be reviewed, modified, and updated by the owner with the approval of the above departments.
2. The applicant shall supply one mylar and one paper copy of the Site Plan for signature by the Planning Board Chair.
3. All plans must be stamped by the appropriate professionals.
4. A formal written request for the waiver of the school impact fee shall be provided to the Planning & Community Development Department.
5. A note shall be added to the plan stating that no alcohol sales will occur on site.
6. If necessary, the applicant will need to apply and be approved for a new wastewater permit.

CONDITIONS OF APPROVAL-to be met subsequent to Signature of Approval on Site Plan

1. These Findings of Fact and Conditions of Approval shall be recorded with the Strafford County Registry of Deeds, at the applicant’s expense, within seven (7) days of the Chair’s signature on the Plan.
2. All permits must be obtained by the applicant from the Code Enforcement Officer/Building Inspector prior to the commencement of any work, including all ADA requirements.

Richard Kelley MOVED to approve the Application for Conditional Use Permit

submitted by Paul Berton, Fall Line Properties, Portsmouth, New Hampshire on behalf of Epsilon Holding Corporation, Ipswich, Massachusetts to convert a fraternity building into a mixed-use building with six units and retail or restaurant carry-out space, for the property shown on Tax Map 2, Lots 9-4, located at 17 Garrison Avenue, in the Professional Office Zoning District, as amended this evening. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

- V. **Acceptance Consideration on an Application for Subdivision** submitted by James L. & Kathleen R. Adams, Durham, New Hampshire to subdivide one lot into two lots. The property involved is shown on Tax Map 20, Lots 8-1, is located at 401 Bay Road, and is in the Residence C Zoning District.

Mr. Campbell noted that there was a letter from the applicants that asked that their Subdivision application be withdrawn.

- VI. **Acceptance Consideration on an Application for Conditional Use Permit** submitted by James L. & Kathleen R. Adams, Durham, New Hampshire to construct a shared driveway within the 100 foot wetland buffer. The property involved is shown on Tax Map 20, Lots 8-1, is located at 401 Bay Road, and is in the Residence C Zoning District.

Mr. Campbell said a letter had been received from the applicants requesting a continuance to the next available meeting, which he said was November 14th. He explained that they might be submitting an amended application. He noted that as part of this, there would no longer be a shared driveway for the project, and instead, a new driveway was proposed.

Richard Kelley MOVED to continue to the November 14th Planning Board meeting the Acceptance Consideration on an Application for Conditional Use Permit submitted by James L. & Kathleen R. Adams, Durham, New Hampshire to construct a shared driveway within the 100 foot wetland buffer for the property located at 401 Bay Road, in the Residence C Zoning District. Ms. Fuller SECONDED the motion, and it PASSED unanimously 7-0.

- VII. **Acceptance Consideration on a Conditional Use Permit Application** submitted by Attorney Christopher A. Wyskiel, Dover, New Hampshire on behalf of Robert S. & Gale S. Teeri Living Rev. Trust, Durham, New Hampshire to expand a non-conforming use as per Article IX, Section 175-28(D) of the Durham Zoning Ordinance. The property involved is shown on Tax Map 5, Lot 2-2, is located at 15 Main Street and is in the Church Hill Zoning District.

(This Agenda Item was moved to occur after Item X.)

- VIII. **Design Review on a Site Plan Application** submitted by Henderson Properties, Madbury, New Hampshire to build a mixed-use structure with apartments and office/retail. The property involved is shown on Tax Map 4, Lot 1-0, is located at 1 Madbury Road and is in the Central Business Zoning District.

Mike Sievert, of MJS Engineering represented the applicant. He said the existing structures were located on the southerly corner of the site. He said the proposal was to

add an additional 9700 sf footprint mixed use building, which would have office/retail uses on the bottom floor and residential uses on the upper two floors. He said there were 2 residential units in the building now, and said an additional 13 residential units were proposed, which fit with the density allowed on the property. He said the existing access to the property was off of Madbury Road, at the northerly end, and said this access would remain.

He said there were currently 22 parking spaces on the site, and said this would remain in the same location, only would be located in a parking garage underneath the new building. He said a variance would be needed concerning residential parking on the site, because the required amount for the apartments (42 spaces) couldn't be fit there. He noted that commercial uses were exempt from parking requirements

Mr. Sievert also said that Historic District Commission (HDC) approval would be needed because the property was located within the Historic District. .

Mr. Kelley pointed out that according to what Mr. Henderson had previously said to the Board, the 22 existing parking spaces would be for the office/retail uses.

There was discussion that the previous conceptual plan described to the Board had residential on the first floor. Mr. Henderson explained that after hearing the Planning Board's comments on this during the conceptual review, he had changes the plan so that there was now no residential on the first floor, and instead it was proposed for the 2nd floor and an additional 3rd floor. He also provided details on the two accesses for the commercial uses on the property, one from Main Street and the other from Madbury Road.

There was discussion on what the height would come to, with a third floor added. It was noted that if it was above 30 ft, a waiver would be required.

Mr. Roberts said the scale of the proposed building overwhelmed the existing historic structure on the property, and said there would essentially be a new structure that needed to follow the Durham historic motif. He noted that this was one of the prime spaces remaining in the downtown area.

Mr. Kelley noted the significant amount of traffic going by the site, and coming in and out of the Post Office located across the street. He asked how the proposed driveway lined up with the Post Office accesses. He also said it was important to make sure there was adequate sidewalk width and view corridors for people crossing Madbury Road.

Mr. Henderson asked if a traffic study would be needed and the Board said yes. He said he thought there was more traffic coming into the site now than there would be if it was commercial site where some cars would only go in and out once a day. .

Ms. Harris said the traffic study would provide information on this.

There was discussion on the fact that the parking spaces there were often used by people going to Wildcat Pizza

Mr. Kelley said he thought the transformation in the design of the development was

an improvement, but he said the existing barn on the property looked smaller, with a lower roof line, than the new building that was proposed.

Mr. Henderson said the barn didn't change. He noted that with the original concept, the scale of the design was much better, and said he would have preferred that. But he said the current design was based on the economics of the situation, and also based on the Zoning Ordinance, and he provided details on this.

There was detailed discussion by the Board on the scale of the proposed building, on the architectural details, and on efforts to tie the new building in with the existing Ballard building. There was discussion on whether it made sense to match up the new building with the old one, or if perhaps it was better not to do this.

Mr. Henderson said he would do the best he could, but he pointed out that there was currently a mish mash of architecture styles in this part of Town.

It was noted that Nick Isaak, the architect for the project, was also the Chair of the HDC.

Mr. Kelley said he thought some kind of traffic analysis was warranted for the proposed development, not so much traffic counts, but making sure that vehicle flow would work.

Mr. Kelley also suggested that the applicant should get involved early with obtaining water and wastewater permits.

Mr. Henderson said he had already contacted the Public Works Department.

Mr. Kelley asked that details be provided on what the span was over the parking garage. He also said he would like to get a better idea on what the building height would be.

Mr. Campbell said the Public Works Department had said that a new driveway permit might be needed.

There was discussion on loading zone requirements. There was also discussion on the proposed breezeway between the Ballard building and the proposed new building.

Mr. Roberts asked if an outdoor café space might be located where the greenway area was proposed on the site.

Mr. Henderson noted that this idea had been mentioned previously. But he said he had gotten a lot of calls from people interested in putting in professional office uses on this property. He said there therefore might be outdoor seating for these office uses, but not outdoor seating for a retail use.

Mr. Kelley said he saw an existing cut through on the property as an advantage.

There was discussion about this, with Mr. Henderson providing details on the fact that there were advantages and disadvantages to this access.

In response to a comment from the Board regarding dumpsters for the property, he said there would possibly be rollout dumpsters.

Mr. Henderson said he would be coming forward with his application soon, and said the construction schedule was dependent on how the application did before the various boards.

IX. Conceptual Consultation on a Site Plan Application submitted by Rose Realty LLC, c/o Anthony DiBerto, Durham, New Hampshire, to build a 41-unit townhouse apartment. The property involved is shown on Tax Map 9, Lot 8-1, is located at 278 Main Street, and is in the Office and Research and Light Industry Zoning District.

Rick Lundborn of Norway Plains said the proposed use, a 41 unit townhouse apartment complex, was allowed as a conditional use in the ORLI District. He said the property was located across the street from the Rivers Edge student housing development that had recently been approved by the Planning Board.

He said the townhouse apartments that were proposed were intended to be higher end units that would target junior UNH faculty and other young professionals. He said although a maximum of 53 units would be allowed on the site, approximately 41 units were proposed. He said the exact number of units would depend on what worked with the overall design for the site.

Mr. Lundborn said he had spoken with Doug La Rosa, the engineer who had overseen the River's Edge application. He said Mr. LaRosa had emailed him the digital mapping of the site plan for River's Edge, in part so the driveways could be matched up. He also said that a survey of the property would be done before the applicant came back to the Board, and said it would pick up any changes since the last survey that had been done. He noted that the site hadn't changed much since that time.

Mr. Kelley said it would be good to see the location of the Oyster River on the plan, noting that there was a 250 ft shoreland buffer zone. He also said that treatment of stormwater would be a significant issue for the development, given the proximity to the river, and said he would expect the design to be able to address water quality and quantity issues.

Mr. Lundborn spoke about existing infrastructure hookups available to the site, stating that there was a sewer line on the project side, and that the water line was across the street.

There was discussion about the capacity of the existing water and sewer infrastructure in this part of Town. Mr. DiBerto said water pressure was almost too great, given the location of the site relative to the Lee well, so this shouldn't be an issue.

Mr. Kelley said there were some sewer issues, given a bottleneck to the southeast. Mr. Campbell provided details on this, and Mr. Kelley noted that the development across the street had to put in a holding tank, and release sewer flows during off peak hours. He said the proposed development would have to do this as well.

Mr. Roberts asked about the proposed marketing of these apartments to teachers, and whether they would be able to afford these units.

Mr. DiBerto said the idea with the proposed development was to avoid a dorm style set up and renting to students, and instead to gear the apartments to graduate students and other young professionals, which there definitely was a market for in Durham.

There was discussion by Mr. Roberts and Mr. Campbell on some previous situations in Town where developments intended for renters other than students had eventually been rented to students.

Mr. DiBerto spoke about how the lease would address this. He also said he was very aware of the management issues surrounding student rentals.

Councilor Carroll said this kind of development could encourage workforce housing and responsible graduate students. She also said she wondered if some kind of formal arrangement could be made with the University concerning the provision of this kind of housing in Durham.

Mr. Kelley suggested that there could be a dialogue with the University to get at that kind of thing.

Mr. DiBerto said he was planning to keep this property and manage it as a long term investment. He spoke in detail about the fact that he didn't think there was a lot of competition for this kind of housing in Durham, and said he didn't think he would have a problem getting the kind of clientele he was looking to market to.

Mr. Roberts noted, concerning the idea of renting to families, that there was an average of 0.6 children per household in New Hampshire these days.

Mr. Kelley said the applicant would be well advised to incorporate adequate screening of the property into the site design.

Mr. Lundborn said that concerning the storm water management issue, he would need to look at the site details in more depth before developing a particular design.

Mr. Campbell recommended doing a traffic analysis, noting that River's Edge had done such an analysis.

Mr. Lundborn said he would be getting some traffic data from River's Edge, and said he would be developing an accurate portrayal of the traffic interaction between the two developments. He spoke about how the driveway(s) would line up. He also said the thinking was that UNH buses would stop at this apartment complex, as it would for River's Edge.

It was noted that the applicant would have to obtain driveway permits from the State.

On another issue, Mr. Campbell said that although there were no wetlands on the site, Section 175-64 of the Zoning Ordinance said that somewhat poorly drained soils were not considered part of the buildable area.

Councilor Carroll noted there were some duplexes across from Coe Drive that had been built for affordable housing, but had turned into student housing over time. She described some of the problems that had resulted at this property. She said given that experience, while the proposed development had merits, it was important to see how what Mr. DiBerto was proposing that this would be realized.

Mr. DiBerto said he envisioned that this would be a rental property he would have full control of, noting that problem properties that had been discussed had been sold off.

Ms. Harris said it was important to incorporate parking requirements and road maintenance requirements so these things didn't become problems down the road, regardless of ownership.

Mr. DiBerto said he was well aware of these kinds of issues, and said this was a reason he wanted to keep this under private ownership

There was discussion on whether the development might turn into condominiums at some point, and it was noted that this would have to come back before the Planning Board.

Mr. Kelley said he thought the Planning Board would be able to use conditional use language to protect the community if the development became student housing. He noted the language used for the Berton application.

There was further discussion on the issue of not having younger UNH students rent the proposed apartments. Mr. DiBerto said his idea is to be highly selective in his marketing while not prohibit these students from renting there.

Mr. Campbell noted there were a lot of driveways proposed for the development, and suggested that the applicant look for ways to cut this down somewhat.

X. Deliberations on Changes to Planning Board Rules of Procedure.

Richard Kelley MOVED to continue deliberations on the Proposed Changes to the Planning Board Rules of Procedure to the next meeting. Lorne Parnell SECONDED the motion.

Mr. Campbell noted that Councilor Needell had no further problems with the proposed changes.

Councilor Carroll said Councilor Needell had read this latest document, and was happy with it the way it was, and was pleased to see the changes that were made and not made to it. She noted that he wouldn't be at the next Planning Board meeting either.

Based on this, the Board decided to vote on the proposed changes to the Planning Board Rules of Procedure that evening.

Richard Kelley MOVED to amend the motion , and that the Planning Board

***approves the Planning Board Rules of Procedure submitted on October 7, 2007.
Lorne Parnell SECONDED and PASSED unanimously 7-0.***

- XI. Acceptance Consideration on a Conditional Use Permit** submitted by Attorney Christopher A. Wyskiel, Dover, New Hampshire, on behalf of Robert S. and Gale Teeri Living Rev. Trust, Durham, New Hampshire to expand a non-conforming use as per Article IX, Section 175-28(D) of the Durham Zoning Ordinance. The property involved is shown on Tax Map 5, Lot 2-2, is located at 15 Main Street and is in the Church Hill Zoning District.

Mr. Campbell noted that this application had been posted as a conditional use because it was nonconforming based on the more than three unrelated provision. He said it needed to be treated as a single family use with an accessory apartment, and said if the Board agreed to amend the application to reflect this, he felt it could be accepted that evening.

He said Mr. Johnson wanted the Board to consider it as single family dwelling with 10 proposed occupants, and said Mr. Johnson would be willing to either come to the November 14th meeting concerning this, or put something in writing.

Mr. Campbell explained that the applicant had applied to the Planning Board in May as a boarding house, stating that the property had always been treated as one, and would continue as this use. He said the Board had disagreed, not wanting to go against Mr. Johnson's opinion that this was a single family home. He said the Board had felt that this was a ZBA issue.

Attorney Christopher Wyskiel representing the applicant, said that after this was appealed to the ZBA, and Superior Court, there had been a meeting with the Town to see if there was a way the application could move forward. He explained that the applicant had decided not to apply as a boarding house, and was more than happy to proceed as a single family home with an accessory apartment.

He provided details on work that had been done on the property, and that there had been significant discussion with Mr. Johnson as part of this. He said the applicant was close to getting a certificate of occupancy, and was very agreeable to safety stipulations that would need to be met. He also said the applicant would be willing to withdraw the court cases as part of this current application process.

There was detailed discussion on the historical use of the building, and that it was a single family house where a varying number of people, between 7 and 11, had lived over many years, before the Town put occupancy limits in place.

Attorney Wyskiel provided details on the current rental use of the property, and noted that there were currently no management problems. It was noted that the current leases were strict, and Attorney Wyskiel said the applicant would be glad to submit the leases as part of the current application.

Chair McGowan said property management could be addressed as part of the conditional use process, and he recommended accepting the application. Mr. Kelley asked if the application was complete and Mr. Campbell said yes. Mr.

Kelley also said it had been noted by the applicant that virtually none of the abutters were single family uses. He said he had gone through the photos provided with the application, and said that depending on what one considered to be a single family use, between 16-30% of the properties were single family homes. He agreed that the clear majority of the residents were not single families.

Mr. Campbell told the Board that the applicant was requesting a waiver of the surveyed site plan, but that a floor plan would be submitted. It was noted that it was ok to do this because there were no proposed changes to the exterior of the building.

Richard Kelley MOVED that the Planning Board waive the requirement of a surveyed site plan for the Conditional User Permit application that had been submitted. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

Richard Kelley MOVED to accept the Conditional Use Permit application submitted by Attorney Christopher A. Wyskiel, Dover, New Hampshire, on behalf of Robert S. and Gale Teeri Living Rev. Trust, Durham, New Hampshire to expand a non-conforming use as per Article IX, Section 175-28(D) of the Durham Zoning Ordinance, for the property located at 15 Main Street in the Church Hill Zoning District, including the amendment that it is a single family home with an accessory apartment. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

It was noted that the public hearing would be held on November 14th, and that the site walk would take place the same day, at 5 pm.

XII. Other Business

Old Business:

Mr. Campbell noted that the Planning Board had decided, and Attorney Mitchell had agreed that the Board would not be pursuing an appeal of the ZBA's recent decision concerning its Request for Rehearing the 99 Madbury Road property. He said Stonemark Management most likely would be pursuing its own appeal, and that the Planning Board would follow this process. There was brief discussion concerning this.

XIII. Approval of Minutes – September 26, 2007

The approval of the Minutes was postponed.

XIV. Adjournment

Steve Roberts MOVED to adjourn the meeting. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.

Adjournment at 9:26 pm

Victoria Parmele, Minutes taker

Susan Fuller, Secretary