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November 23, 2016

Town of Durham  
Planning Board  
8 Newmarket Road  
Durham, NH 03824-2898

Michael Behrendt, Town Planner  
Town of Durham  
8 Newmarket Road  
Durham, NH 03824-2898

RE: 2 Brook Way, Durham, NH  
Tax Map 2, Lot 9-4 - Professional Office District Zone  
Planning Board Applications to Change Use to Sorority

Dear Planning Board Members and Town Planner Behrendt:

This office represents and serves as legal counsel for:

Phi Sigma Sigma National Housing Corporation  
8178 Lark Brown Road, Suite 200  
Elkridge, MD 21075  
ATTN: Sandy Grossman, Vice President  
e-mail: [sgrossman@phisigmasigma.org](mailto:sgrossman@phisigmasigma.org)

which is currently negotiating for the purchase and/or long term lease with option to buy the above referenced property owned by:

Fall Line Properties, LLC  
32 Madbury Road  
Durham, NH 03824  
ATTN: Paul E. Berton, Member  
e-mail: [pauleberton@gmail.com](mailto:pauleberton@gmail.com)

for the conversion of the property from its current apartment building use to a sorority, a zoning allowed use upon approval by the Planning Board of applications for:

1. Change of Use/Site Plan Review
2. Conditional Use Permit/Adaptive Reuse of an Existing Building

Although technically two applications come before the Board for approval of this use change, by phone I confirmed with Town Planner Behrendt the collective fees to be paid (abutters being noticed for both applications at the same time) and number of plan copies to be submitted to avoid duplication. Submitted with this letter are:

1. Authorization by owner, Fall Line Properties, LLC
2. Application for Site Plan Review
3. Application for Conditional Use Permit
4. Abutter List (with portion of tax map to confirm inclusion of abutters within 300 feet of project)
5. Owner's deed (to Fall Line Properties, Inc.), together with records from NH Secretary of State confirming conversion from corporate to limited liability company, and First Right of Refusal waiver
6. 2-page Schedule B (from owner's First American Title Insurance Company title insurance policy) listing deed restrictions/title encumbrances
7. Site Plan/Existing Conditions Survey (Note: 5 copies, 24" x 36," 10 copies 11" x 17")
8. Floor Plans (10 pages) by Gibian Design Group (10 copies of 11" x 17"):
  - (i) Face page identifying list of drawings, and calculating habitable floor area;
  - (ii) Proposed/renovated floor plans (to scale, with each room's habitable floor area listed)
  - (iii) proposed/renovated floor plans (to scale) with proposed furnishings
  - (iv) Existing floor plans
9. Filing fees (confirmed with Michael Behrendt):

\$500.00	Application Fees
\$150.00	Publication Fees
<u>\$147.00</u>	Abutter list notifications (\$7 x 21 listed abutters)
\$797.00	Total

## **Background**

This property was originally built and developed as a fraternity. In 2007, the current owner (as Fall Line Properties, Inc.) obtained Planning Board approval to convert the property to its current apartment building use. Currently, there are two apartment units on each of the building's three floors. Each apartment has four bedrooms, with one student per bedroom, for a total of 24 students/occupants.

Phi Sigma Sigma is a nationally recognized sorority which has in recent years reestablished its presence and increased its membership at the University of New Hampshire. The Applicant is the National Housing Corporation which owns and/or leases houses at colleges and universities throughout the nation to provide housing for a portion of each school's sorority membership, as well as a home base for meetings and other functions. It is both the National Housing Corporation's policy and the sorority's national organization policy for sororities to be alcohol free.

The property's conversion from an apartment to a sorority is a natural adaptive reuse of the property's originally intended purpose. The criteria to be addressed for granting the Conditional Use Permit are more specifically addressed below.

Presently, no changes to the site (besides building permit required ADA access improvements) are intended besides building interior and exterior renovations. This application does not include specific proposed plans for exterior renovations. Gibian Design Group representatives have not yet been on site with Applicant VP Sandy Grossman to confirm intended renovations. Preliminary focus has been on internal designs to confirm the viability of a needed 37 person occupancy. The submitted floor plans confirm that zoning required habitable floor area calculations can be met.

A planned on-site meeting of Gibian designers with the Applicant is scheduled for the weekend of December 3/4, following which specific exterior renovations will be planned/designed. The Applicant intends to submit supplemental information to confirm its materials choices, color and any design modifications of its intent to completely re-side the structure. Present inspections have found the roof and windows to be good. The Applicant will do its best to share additional design information prior to the December 14 meeting date.

## **Waivers**

Durham's general Site Plan Review requirements for traffic studies, parking studies and fiscal impact studies are unnecessary for this application. Waivers for all are requested.

Durham Site Plan Review Regulations at Section 5.1.1(b) allow the Planning Board to grant waivers from such requirements when specific circumstances relative to the Site Plan, or conditions of the land and the Site Plan, indicate that the waiver will properly carry out the spirit and intent of the Regulations.

The Planning Board members and the Town Planner should be very familiar with the property. Just this past summer, the owner submitted a Change of Use/Site Plan Application to convert what is shown on the enclosed plans as the proposed sorority dining room to a performing arts venue with refreshments and external hardscape improvements, including improving the current lawn area between the building and Garrison Avenue with concrete pavers. This application was not approved. In the course of considering that application, Planning Board members conducted a site walk during which the exterior grounds and common area room (to become the sorority dining room) were inspected. The owner also toured members through one of the apartment units.

The present Applications focus on internal renovations and exterior improvements to the building. Consequently, a site walk should not be necessary. The current Application was reviewed by Durham's Technical Review Group on October 18, and presented to the full Planning Board for conceptual review on October 26. No traffic, parking or fiscal impact issues were raised during technical review that could not easily be handled during the building permit and building inspection process. Once exterior renovations are planned, Gibian Design Group and/or JSN Associates, Inc. will develop detailed construction plans for building permit approval and subsequent renovation inspection.

There is adequate parking on site, and final purchase and/or lease with option to purchase negotiations can accommodate whatever specific parking conditions the Planning Board makes as a condition of approval.

With respect to fiscal impact, while the Phi Sigma Sigma sorority is a non-profit membership entity, the National Housing Corporation does not enjoy real estate tax-exempt status. It plans to be fully assessed for ad valorem taxes and to pay taxes to the Town of Durham.

Further studies are not needed, and it is appropriate to grant waivers.

### **37 Person Occupancy**

The Gibian Design Group drawings are scaled floor plan drawings demonstrating the Applicant's ability to support its desired 37 person (36 students, one resident director) sorority occupancy under Zoning definitions of "floor area, habitable" and the density limit of two people per 300 square feet of habitable floor area pursuant to the Zoning Ordinance's Table II-1 "Dwelling Density by Type" under the Household and Unrelated Household Zoning definitions.

Sororities are allowed in the Professional Office District as a conditional use as an adaptive reuse of an existing building. The Zoning definition for adaptive reuse is:

"the use of an existing building for a new type of use in which the exterior appearance and the structural and architectural elements of the building remain essentially unchanged except for minor renovations needed to provide access or to comply with Code requirements"

As explained above, the majority of renovations will be internal, as shown by the floor plans. The exterior building upgrades will improve the building's ability to fit into the neighborhood for years to come.

**Conditional Use Permit Criteria**

Section 175-23(c) sets forth the criteria required for consideration of a Conditional Use Permit. All are met by this application.

1. Site Suitability. The site is adequate for vehicular and pedestrian access for its intended use, has no environmental constraints, and already has adequate public services and utilities.
2. External Impact. The change in use is appropriate to the neighborhood. The property is surrounded by University buildings and/or other fraternities and sororities. Originally built for a fraternity use, its return to a sorority use is appropriate for the neighborhood. Impact on surrounding properties is in no way adverse.
3. Character of Site Development. No new site design is contemplated. Improvements to the exterior and the building's intended use are compatible with the neighborhood.
4. Character of the Buildings and Structures. The above comments are applicable to this criteria.
5. Preservation of Natural, Cultural, Historic and Scenic Resources. The proposed use is not adverse to any of the resources addressed by this criteria.
6. Impact on Property Values. The property's return to sorority use does not adversely impact abutting properties. Its improvement will positively impact the neighborhood. Its continuation on the tax rolls will not adversely impact the Town as a whole.
7. Availability of Public Services and Facilities. Addressed in TRC and to be addressed in building permit/inspection phase. All adequate.
8. Fiscal Impact. Addressed above.

The undersigned and a representative of the Applicant will further address the above and answer questions of the Planning Board at public hearing. The Applicant respectfully requests approval of its Applications for all the above reasons.

Respectfully submitted,

Phi Sigma Sigma National Housing Corporation

By its Attorneys,

Wyskiel, Boc, Tillinghast & Bolduc, P.A.

By:   
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Christopher A. Wyskiel, Esquire

CAW/nl  
Enclosures

cc: Sandy Grossman, Vice President,  
Erin Sweeney, Esquire, General Counsel  
Steven and Thresa Gibian, Gibian Design Group  
Paul E. Berton, Member, Fall Line Properties, LLC