



**TOWN OF DURHAM**  
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**Town Planner's Project Review**  
**Wednesday, September 9, 2020**

- X. **Public Hearing - Alpha Tau Omega Fraternity – Amendment to Plans.** 18 Garrison Avenue. Amendment for proposed changes to approved site plan and approved conditional uses establish a fraternity, exceed 30 feet in height, and place structures in the wetland buffer. Proposed changes include demolition of the former Elizabeth DeMeritt House, change in design for the new building, and various site changes. Richmond Property Group, c/o Sarah Layton, owner. Bruce Scamman, Emanuel Engineering. Isaac Schlosser, Krittenbrink Architecture. Map 2, Lot 12-12. Central Business District. *Recommended action:* Final action.
- I recommend approval as stated below.

Please note the following:

- a) A complete new set of drawings was submitted based upon the change to the building. Numerous sheets have been changed, as indicated by a new date – September 2, 2020 – in the revision box at the lower left. The bulk of the changes are adjustments driven by the change in the building design. This new plan set is complete and supersedes the old plan set.
- b) Given the extent of the changes it is easiest to simply write a new notice of decision. I have modified the notice below from May 13, 2020 accordingly.
- c) See the item about conditional uses below. Three conditional uses were granted before. I don't think the situation regarding the fraternity is changed by the amendment. The board will need to confirm that the criteria for the building height and activity in the WCOD still apply with the amendment. The applicant needs to provide the height of the building. The Conservation Commission voted on August 24 to recommend that the four criteria for the WCOD should be considered to still apply.
- d) All of the required procedures for the conditional uses were followed including posting a new sign for the public hearing and sending new notices. The board will need to determine if the specific and general criteria for the conditional uses still apply. It need not go through the individual criteria unless deemed appropriate. But I believe an affirmative vote of five members is needed to make this determination.

- e) The waivers that were granted, included in the notice below should not be affected by the amendment. However, one new small waiver is now needed. A portion of the buffer along Garrison Avenue will be 9.5 feet wide whereas 10 feet is required. I incorporated this waiver into the draft notice below.
- f) I changed the parking fee below since the site is now a complete redevelopment. It was appropriate to give credit for an existing building so the applicant is charged only proportionately for the expansion but that situation no longer applies. Thus, the fee almost doubles from \$7,927 to \$15,000.
- g) I have requested the elevation drawings for the remaining three facades.
- h) The revised plans were sent to TRG members. I have not heard of any concerns other than from Audrey, code administrator, regarding accessibility to the entrance and some interior layout issues. The accessible route to the sidewalks needs to be clarified.
- i) I am waiting for a revised lighting plan. I will forward that when I receive it. The existing plan is fine provided the details to be submitted of lighting fixtures are shielded. The rear patio should be illuminated as mentioned by Police Chief Kelley.
- j) Note that the building is closer to Garrison Avenue than it appears in the architectural rendering. There is only a short walk from the street to the entrance.

***\*DRAFT\****

**NOTICE OF DECISION**

**Project Name:** Alpha Tau Omega Fraternity – Site Plan and Conditional Uses  
**\*Amendment\***

**Action Taken:** APPROVAL

**Address:** 18 Garrison Avenue

**Property Owner:** Richmond Property Group, LLC

**Engineer:** Bruce Scamman, Emanuel Engineering

**Map and Lot:** Map 2, Lot 12-12

**Zoning:** Central Business District

**Date of approval:** September 13, 2020

*[Office use only. Date certified: \_\_\_\_\_ ; CO signed off \_\_\_\_\_ ;  
 As-built's received? \_\_\_\_\_ ; All surety returned: \_\_\_\_\_ ]*

“Applicant,” herein refers to the applicant and his/her/their/its agents, successors and assigns.

**\*Amendment.** Please note. This approval is for an amendment to the site plan and conditional use that was approved on May 13, 2020. That approval is null and void. This notice of decision is the complete approval for the project superseding the earlier one. The revised set of

plans is dated September 2, 2020. Some sheets have been revised to that date and other sheets are the original ones.

### **PRECEDENT CONDITIONS**

All of the conditions below must be met by the applicant prior to the plans being certified by the Town Planner. Certification of the plans is required prior to issuance of a building permit or performance of any significant site work. Once these conditions precedent are met and the plans are certified the approval is considered final.

Please note. If all of the precedent conditions are not met within one year to the day of the board's approval – by September 9, 2021 (or as extended) - the Planning Board's approval will be considered to have lapsed. Extension(s) may be granted by the Planning Board for reasonable cause. It is the sole responsibility of the applicant (or his/her agent) to ensure that the precedent conditions are met by this deadline. See RSA 674:39 on vesting. No changes to the plans that were reviewed and approved by the Planning Board on May 13, 2020 may be made except for the specific required changes that follow.

### **Plan Modifications**

- 1) **Plan modifications.** Make the following modifications to the plan set that were reviewed and approved by the Planning Board (Items do not need to be physically constructed as a precedent condition):
  - a) **Accessibility.** Finalize plans for accessibility into the building, including any changes in grade and designs for ramps, and possible relocation of accessible parking spaces (with possible loss of one overall parking space) to be approved by the Code Administrator and Town Planner. At the Town Planner's option the plans will be submitted to the Planning Board for approval (without notices nor a hearing but with allowance for public comment).

*[One accessible space is moved and it is unclear how people will access the sidewalk since curbing is shown the entire length.]*
  - b) **Porous pavement.** Show a porous pavement sign at a second appropriate location. Coordinate with Town Planner on language for sign, condensed from language shown on sheet D2.
  - c) **Transformer.** Clarify whether any transformers or ground-mounted utility structures are needed on site. If so provide appropriate landscaping/fencing to screen them.
  - d) **Retaining wall.** Show height of retaining wall at northwesterly corner.
  - e) **Construction plans.** Indicate on Sheet CS1 when the existing building will be removed.

f) Landscaping plan. On the landscaping plan, sheet C3, include four River Birch (BN), in the plant list. It appears that this was inadvertently omitted with the new plans. Correct discrepancy in the number of hydrangea (9 vs. 11). Mark the two trees at westerly end as existing.

g) Architectural plans. Make the following changes/notes on the plans:

- Provide final colors and materials for clapboards, trim, shutters, porch, and railings. Materials must be substantial such as wood or Hardiboard, Azek, or Boral-type products.
- Provide detail for shutters to give the appearance of being operational.
- Make window panes in sidelights at entrance vertical, comparable to those in the transom.
- Provide details for building foundation.
- Make the beltcourse slightly narrower
- Clarify the width/reveal of the clapboard siding. It should be 4" +/-.
- Specify that black grilles on windows are mounted on the exterior of the windows. Use of an additional grille on the inside or sandwiched between panes is recommended but left to the option of the applicant.
- Provide contours, such as a cyma, for eaves/cornices at roofline and over dormers and cross gable.
- Modify double window in at the second floor to strengthen its position at the center.
- Provide detail for dentils.
- Make cornerboards on side wings narrower than on main block.
- Adjust corners of roofs to differentiate clipped main roof from roofs over wings if possible.
- Include bull's eye muntins or comparable in round window.
- Remove railing if possible in front of wing on right side.
- Submit a detail for the railing.

h) Miscellaneous. Include note or detail Note on sheet C2 or C4 that all sidewalks are to be concrete. Adjust height of seagreen juniper or species on landscaping sheet to allow for necessary sight distance at the exit. Clarify height of stop sign. Show a unit for recycling within the dumpster area and include a detail of the unit/receptacles proposed. Line up spacing of vertical posts of railing on first floor plan to match architectural elevation.

i) Fence. Submit design for fence behind retaining wall.

*[The plans state a 4 foot high iron fence. What is contemplated here? Is chain link acceptable? A detail for a detail of a chain link fence is shown on sheet D4.]*

j) Bike racks. Submit plan showing layout of the 15 bike racks confirming they will fit on site and submit a detail of an appropriate design (generally an inverted U).

- k) Approval block. Change the approval block on each page of drawings to read: “Final Approval by Durham Planning Board. Certified by Michael Behrendt, Town Planner \_\_\_\_\_ Date \_\_\_\_\_”
- l) Dumpster fence. Coordinate with the Town Planner on selection of fence for the dumpster, to be either stockade vinyl or stockade wood.
- m) Roof access. Incorporate change or method to ensure that occupants will not have access to the roof over the two-story entrance porch.

**Notes on Plans**

- 2) Notes on plans. Add the following notes on the plans/plan set:
  - a) Occupants. The site is approved for 44 occupants/fraternity members plus a resident manager. This number may not be exceeded unless approved by the Planning Board.”
  - b) Fertilizer. Low phosphorus/slow release nitrogen fertilizers for landscaping materials shall be used.”
  - c) Additional information. For more information about this site plan, or to see the complete plan set, contact the Town of Durham Planning Department, 8 Newmarket Road, Durham, NH 03824. (603) 868-8064.”
  - d) Notice of decision. It is the responsibility of the applicant, site contractor, and building contractor to follow all requirements related to this site plan approval. Please review these plans and the Planning Board Notice of Decision carefully. Contact the Durham Planning Department at (603) 868-8064 with any questions or concerns.”
  - e) Blasting. Blasting and on-site chipping (of stone) is restricted to the hours of 9:00 a.m. to 5:00 p.m. Monday through Friday.”

**Other Conditions Precedent**

- 3) Other permits. Any required state permit shall be obtained with a copy delivered to the Planning Department.
- 4) Natural gas. A letter of approval from Unitil must be issued for use of natural gas.
- 5) Town Driveway and Road Permit. The permit from the Durham Department of Public Works for relocation of the driveway and activity within the Garrison Avenue right of way must be obtained.
- 6) Energy checklist. Submit energy checklist and meet with Town Planner, Code Administrator, and representative of Energy Committee to review. The applicant is encouraged, but not required, to meet as many provisions as possible.
- 7) Irrigation. Provide plan for how landscaping will be irrigated.

- 8) Utility connection. A utility connect permit application with necessary plans and specifications shall be submitted to DPW for review and approval by the Town in accordance with the Durham Water and Wastewater ordinances.
- 9) Electric service approval. Obtain written confirmation from Eversource Energy that the plans for electric service to and on the site are acceptable.
- 10) Construction Guarantee. The applicant shall post a surety in an amount to be approved by the Town Engineer to ensure the completion of all infrastructure/improvements or reclamation of site with written approval for the Town to use the surety to enter and reclaim the site if necessary.
- 11) Porous pavement oversight. Provide plan for oversight of installation of porous pavement by a qualified professional (such as Robert Roseen).
- 12) Porous pavement reporting. Provide plan for regular and perpetual reporting of maintenance and vacuuming of porous pavement acceptable to the Town Planner and Town Engineer including a strategy to ensure that the requirements for treatment of porous pavement and reporting are clear to the managers of the fraternity in perpetuity.
- 13) Lighting. Include a revised lighting sheet and clearly key each light to specific cut sheets and model. All lights must be shielded and dark sky compliant.
- 14) House Director. Clarify whether there will be a house director, the role of this person, and whether they will live on site.
- 15) Final drawings. The following complete sets of final approved drawings shall be submitted for signature (except the electronic version) by the Town Planner: a) one large set of black line drawings (plus a second set if the applicant wants a signed set); b) one set of 11"x17" drawings; plus c) one electronic version by pdf. Each individual sheet in every set of drawings must be stamped and signed by the land surveyor, engineer, or architect responsible for the plans. *Please note*. If there are significant changes to be made to the plans, as specified above, one full size paper check print must be sent to the Planning Department for review prior to producing these final drawings. (The primary set of plans was last received September 2, 2020.)
- 16) Signature. Signature by the applicant at the bottom acknowledging all terms and conditions of this approval herein.

### **SUBSEQUENT CONDITIONS AND GENERAL TERMS**

All of the conditions below are also attached to this approval. All work shall be completed and all required conditions shall be met prior to issuance of a certificate of occupancy unless otherwise specified or a surety acceptable to the Town is posted.

### **Construction Management**

The following conditions apply to construction of the site:

- 17) The applicant/contractor shall meet with the Building Official at least 30 days prior to the start of construction in order to discuss the building process and to plan for the proper submittal of all structural, mechanical, electrical, plumbing and other plans. The Building Official may reduce this timeframe at her reasonable discretion for good cause.
- 18) The applicant/contractor shall hold weekly meetings with the Town Engineer and other appropriate Town departments to discuss the construction process and the schedule for the upcoming week or as specified by the Town Engineer.
- 19) Best management practices shall be followed for the protection of existing trees and vegetation that are planned to be preserved. Also, the provisions of Section 175-123 – Protection During Construction under Article XXII - Landscaping of the Durham Zoning Ordinance shall be followed.
- 20) Debris. No cut trees, stumps, debris, junk, rubbish, or other waste materials shall be buried in the land, or left or deposited on site at the time the certificate of occupancy is issued, or at any time after that.
- 21) Fire access. Access into the site for fire apparatus shall be maintained at all times during the construction process. Please contact the Fire Department at 868-5531 with any questions about access requirements.
- 22) Invasive Plants. The applicant will remove the invasive plants in accordance with the email from Bruce Scamman and plans submitted on April 24, 2020. The two Norway Maple trees in front of the existing building will be preserved.

**Conditions to be met prior to commencing site work**

- 23) Site work. No significant site work (including any significant clearing of the site) or ground disturbance may be undertaken until:
  - a) all of the precedent conditions are met;
  - b) the preconstruction meeting with Town staff has taken place (Contact Michael Behrendt, Town Planner, to arrange for the meeting);
  - c) limits of clearing have been established in the field and approved by the Public Works Department; and
  - d) all appropriate erosion and sedimentation control structures are in place.

These erosion and sedimentation control measures and designation of the limits of clearing must be in place prior to the pre-construction meeting in order that they may be inspected at the meeting.

**Conditions to be met prior to issuance of any certificate of occupancy**

- 24) Parking fee. The applicant shall pay the parking impact fee of \$15,000 under Section 175-112 A. 1. of the zoning ordinance. The fee is \$1,500 per space not provided (One space is required per resident or 44 spaces. The lot will have 32 spaces and the Planning Board gave credit for 2 spaces for the scooter parking. This is a shortfall of 10 spaces.)

*[This fee is approximately doubled from that shown in the original approval. With the retention of the existing building, which occupied about half of the total building floor area, the applicant received credit for the existing building since the project was not a complete redevelopment. Now with the entirely new building, I think the project must now be seen as a complete redevelopment which requires the fee for each of the 10 spaces.]*

- 25) As-built drawings. One set of full size, one set of 11” x 17”, and one electronic copy of as-built (“record”) drawings of all buildings, structures, infrastructure, utilities, drainage structures, roads, parking areas, and other pertinent elements shall be provided prior to the certificate of occupancy (unless a surety to cover the cost of the as-built drawings is given). The plans shall be stamped and signed by the Engineer or Surveyor and include the following language or comparable: “This as-built drawing substantially conforms with the final plans approved by the Town of Durham Planning Board and certified by the Planning Department except for the following significant modifications: ....”. If no significant modifications were made simply state “none”. Otherwise, itemize the modifications on the as-built or on an accompanying letter.
- 26) Improvements. All on-site and off-site improvements – including the crosswalk, restriping of parking spaces, and curbing within the Garrison Avenue right of way - included in this approval shall be completed prior to issuance of a certificate of occupancy unless an acceptable surety is posted.
- 27) Utility Connection Permit. The Durham utility connection permit must be issued.
- 28) Other applicable requirements. All other applicable requirements of this site plan, this Notice of Decision, and other terms and conditions must be satisfied prior to issuance of a certificate of occupancy.
- 29) Maintenance Guarantee. The applicant shall post an acceptable surety to be approved by the Town Engineer (and the Town Business Manager for form and type) to guarantee that all site work is installed in a correct and workmanlike manner. The surety shall be in an amount of two percent of the estimated site improvement costs and shall remain in effect for two years after site improvements are completed. If repairs are subsequently needed and are not satisfactorily installed by the developer, then the surety may be used to complete/install the improvements. A cash deposit or letter of credit is an acceptable form.
- 30) Landscaping Guarantee. The applicant shall post an acceptable surety to guarantee the success of the landscaping materials. The guarantee shall be for a period of two years commencing from the time the certificate of occupancy is issued or installation of the



landscaping materials, whichever occurs later. If replacements of any materials are subsequently needed, as reasonably determined by the Town Planner, within this two-year period then the applicant shall promptly replace those materials (subject to weather constraints). This guarantee and/or the other guarantees specified above may be combined at the discretion of the Business Manager.

**Other terms and conditions**

- 31) Recycling. Single stream recycling is required.
- 32) Commemoration. The applicant stated they are willing to explore creating a plaque or sign or another way to recognize the existing building and Elizabeth DeMeritt. Please work with the Town staff to see if some kind of commemoration can be accomplished (This is encouraged only and not required).
- 33) Recording. This notice of decision must be recorded at the Registry of Deeds within 14 days of certification of the plans.
- 34) Snow storage. If there is not sufficient room on site to store snow then the owner shall remove the snow to a legal location off site.
- 35) Energy Code. Building construction shall be in compliance with the energy efficient standards of Chapter 38 of the Town of Durham Code of Ordinances.
- 36) Litter and property maintenance. The site shall be properly maintained with any litter, debris, and rubbish on site removed in a reasonable timeframe.
- 37) Radio coverage. The requirements of the Durham Public Safety Amplification ordinance, Section 68-4 F., regarding installation of a radio repeater system for emergency service, shall be satisfied. Coordinate with the Fire Department during the building application process to determine if this ordinance applies.
- 38) Inspections. All inspection/observation services for the installation of water, wastewater, stormwater management, and other infrastructure shall be performed by authorized representatives of the Town of Durham as stipulated by the Durham Department of Public Works. The Developer shall reimburse the Town for all associated inspection/observation costs.”
- 39) Waste management. The waste management plan shall include single-stream recycling. The property owner’s waste management hauler’s name, account number, and phone number shall be provided to the Durham Building Official/Health Officer (DHO) so that the DHO can call and order an emergency pick up if necessary. The DHO is authorized to request this service at the applicant’s expense should it be deemed necessary. The DHO is authorized to contact the waste management hauler only after first contacting the property owner and allowing the property owner to order a pick up.

- 40) Wetland, buffer, and invasive species. The ATO site contains a wetland, a wetland buffer, certain invasive species, and other environmental resources and challenges. The Town of Durham encourages Alpha Tau Omega and its members to embrace the special character of this site and to work regularly to preserve and enhance these resources, including the removal of invasive species.
- 41) Parking permits. The applicant shall not sell or otherwise provide parking permits to non-tenants unless approved by the Planning Board.
- 42) Plan changes. Changes to the approved plans may be approved as described in the Planning Board's Rules of Procedures, including minor changes which may be approved by the Town Planner.
- 43) Site maintenance. All elements of the site, including but not limited to landscaping, sidewalks, porous pavement, utilities, architectural elements, and lighting shall be maintained in perpetuity.
- 44) Execution. The project must be built and executed exactly as specified in the approved application package unless changes are approved by the Town as provided in this document.
- 45) Approval. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of this approval unless otherwise updated, revised, clarified in some manner, or superseded in full or in part. In the case of conflicting information between documents, the most recent documentation and this notice herein shall be determining.
- 46) Violations. In the event of any violations of these conditions of approval or of any pertinent local, state, or federal laws the Town reserves the right to take any appropriate action, including, but not limited to, assessing a fine, withholding the building permit, withholding the certificate of occupancy, withholding the driveway permit, revocations of permits/approvals, referring violations to other agencies, and calling of sureties.
- 47) Conditional uses. The Planning Board approved these conditional uses: a) to establish a fraternity (This conditional use was approved as part of the original site plan review but is still applicable under the amendment); b) for building height to exceed 30 feet; and c) for construction within the 75 foot wetland buffer – driveways, utilities, fencing, retaining wall, sidewalks, building addition, and other accessory structures. Pursuant to Section 175-22 E of the Zoning Ordinance *the conditional use approvals will expire if a certificate of occupancy is not issued by September 12, 2022*. The Planning Board may extend this timeframe for good cause.
- 48) Variances. Variances were granted for parking in the front court and for parking within the wetland buffer.

- 49) Waivers. The following waivers were applied for and granted under the original approval and still apply with this amendment:
- a) for the foundation planting strip (This is no longer needed under the amendment)
  - b) for a portion of the parking to be forward of the building;
  - c) for fewer than the required number of parking spaces and payment of the parking fee;
  - d) for planting trees along the road (Section 5.7.2);
  - e) to reduce the width of the drive aisle from 24 to 22 feet; and
  - f) A waiver is also needed to retain the existing electric line across Garrison Avenue leading to the pole at the northeast corner of the lot. This waiver was also granted.

In addition, a waiver was granted on September 9 for the buffer along the front of the building to be less than 10 feet wide. A part of the easterly landscaping peninsula at Garrison Avenue is 9.5 feet wide (per Section 5.8.10).

These waivers were granted upon a finding that specific circumstances relative to the site plan or the conditions of the land in the site plan indicate that the waiver will properly carry out the spirit and intent of these regulations.

- 50) Tax Implications. It is recommended that the applicant contact Jim Rice, Durham Tax Assessor, to learn about any tax implications of this project. You can contact Mr. Rice at (603) 868-8064 or [jrice@ci.durham.nh.us](mailto:jrice@ci.durham.nh.us)
- 51) University Standing. Jamie Silverstein, who oversees fraternities for UNH, stated in an email to the Town Planner on February 14, 2020: “Alpha Tau Omega is in good standing and an official recognized chapter at UNH. I had been in the original planning meetings when they were looking to build onto the remaining structure as well. Thank you for sending over these plans. I have no reservations and believe they are a wonderful addition to our community (the new version of this chapter) and will have a good oversight advisory board and housing corporation overseeing the house. I know they will have their national house corporation overseeing the management of the property and use best practice in making sure this will become a place of community and brotherhood rather than just a place for social events.”

Findings of fact. As part of this review and approval the Durham Planning Board finds the following: **A)** The applicant submitted an application, supporting *documents*, and plans for the project; **B)** The applicant submitted a *preliminary* design review application. The Planning Board *accepted the application* as complete; **C)** The applicant presented both the preliminary and formal applications to the *Technical Review Group*; **D)** The Planning Board held a site walk; **E)** The Planning Board held one or more continuous *public hearing(s)* on the application; **F)** The applicant revised and *updated the plans* and other documentation several times pursuant to comments from the Planning Board, public, and Technical Review Group, and other Town boards and committees; **G)** The Planning Board reviewed the application in accordance with state law, the Durham Zoning Ordinance, the Durham Site Plan Regulations, and other applicable law and found that the application *meets all requirements* (except where waivers or variances may have been granted); **H)** The Planning Board found that the eight criteria for *conditional uses* outlined in the Zoning Ordinance section 175-23 C. and the four specific

criteria in the WCOD are adequately addressed in the applicant’s application for conditional uses; **I**) The Town Planner reviewed the design in accordance with the Architectural Standards contained in the Site Plan Regulations; and **J**) This project is not considered to be a Development of Regional Impact; **K**) The building meets the required habitable floor area for a fraternity (150 square feet per occupant x 44 occupants). 70% of the gross floor area of the building exceeds 6,600 square feet; **L**) The Planning Board did not believe that a traffic study was needed for this project; **M**) The Planning Board duly approved the application as stated herein, including the conditional uses and waivers; and **N**) Amendment. A significant amendment was submitted and approved herein on September 9, 2020. Substantial records are maintained of the process and documentation submitted in the Planning Department. A record of documentation and a timeline of the project will be prepared as needed.

Signature(s). As the applicant(s), I/we accept and acknowledge all of the terms and conditions of this approval herein.

\_\_\_\_\_  
Signature of applicant

\_\_\_\_\_  
date

\_\_\_\_\_  
Printed name of applicant

\_\_\_\_\_  
Signature of Planning Board Chair

\_\_\_\_\_  
date

\_\_\_\_\_  
Printed name of Planning Board Chair