



TOWN OF DURHAM
8 NEWMARKET RD
DURHAM, NH 03824-2898
603/868-8064
www.ci.durham.nh.us

Town Planner's Recommendation
Wednesday, February 25, 2015

IX. **Madbury Commons - 17 & 21 Madbury Road.** Modification of approved site plan to allow outside construction on Sundays. Multi-dwelling development for 525 residents, office/retail, and several public spaces. Golden Goose Properties, c/o Ken Rubin, Eamonn Healey, Barrett Bilotta, applicant. Tax Map 2, Lots 12-3 & 12-4. Central Business District.

➤ I recommend approval with any appropriate conditions. See draft conditions at the bottom. It needs to be clarified which months/weeks this would apply to and if there should be any restrictions on the types of activities that would occur.

Please note the following:

- 1) See the enclosed request for a modification. The applicant requested approval to work on Sundays in February and March. They mentioned to me that they would probably want to extend this beyond March. They will clarify the dates/months they are requesting the modification for, since there will be no Sundays remaining in February.
- 2) The Planning Board approved a modification on September 17, 2014 to allow for work on 2 Sundays, September 28 and October 5 for steel work only. The applicant said they ended up not working on those 2 Sundays.
- 3) A request to allow work on Sunday, February 15, 2015 was brought to the Planning Board on February 11. The board denied that request under Other Business. The board said it would entertain the broader request for a modification on March 11, 2015. Given the pressing schedule, Peter Wolfe, Planning Board chair, thought it best to place this item on the February 25 agenda for the board's consideration.
- 4) In response to the applicant's request for a modification, Police Chief Dave Kurz send me an email stating: *"I wanted to let you know Michael that anything we can do that would enable Golden Goose to work on Sunday would be helpful from the police perspective. With the snow crisis that we find ourselves in, I appreciate that their work is behind. While I anticipate working with Golden Goose to determine timelines that would not have construction interfere with religious services in adjacent properties, I view this as a common courtesy and not a particular challenge. I cannot emphasis enough that from the police perspective, there are host of positive aspects to having their work completed on time and with that goal in*

mind, DPD has been working closely with the ProCon management team. I understand that the restriction for them not working on Sunday is Planning Board related as there is no prohibition regarding the noise ordinance. Had I the authority, it would be my desire to provide them the mechanism to work on Sundays, with the caveat not during church services. If you have any questions or there is a desire for me to expand upon my encouragement, please feel free to contact me!”

- 5) John Powers, Deputy Fire Chief, sent me an email stating: *“The fire department is also in support of allowing work on Sunday. There is a lot of unprotected real estate on the site; a massive amount of combustible materials being assembled into buildings. Until the buildings are nearly complete, there will not be an automatic sprinkler system or fire alarm system in place. Considering the amount of potential and risk, we strongly support working with the owners and contractors in adjusting the work schedule in order to keep up with preset timeframes and even expedite the project's completion. The sooner we can get the buildings enclosed and protected, the sooner our level of potential and risk will decline, as well as our anxiety levels.”*

- 6) Town Administrator Todd Selig approved a temporary waiver to allow for Sunday construction on February 15 and 22 as follows: *“Given Chief Kurz’s concerns about the implications of winter storm-related delays at the Madbury Commons project which he has reiterated to me with some urgency on at least three occasions on as many days, as well as the fact that there is universal agreement concerning the significant implications of the approximately 62+ inches of snowfall we have received in Durham over the last few weeks for all manner of things, under my authority as Chief Enforcement Officer of the Town of Durham and administrator for the Noise Ordinance, I am hereby granting a temporary waiver for Golden Goose to work Sundays at the Madbury Commons project, effective immediately, until such time as the Planning Board can take up the matter and discuss it as part of an upcoming agenda at a reasonable hour. I expect that Golden Goose will work closely with the Durham Police Department to ensure that church services are not interrupted and that noise issues do not create concerns for neighbors. Traffic to and from the site shall also be managed to the Police Department’s satisfaction. If these temporary conditions are not met to Chief Kurz’s complete satisfaction, the temporary waiver will be immediately revoked by my hand. This issue need not be a crisis for either the Planning Board or the property owner. A winter such as the one we are currently experiencing is unusual and as such as Administrator I must be sensitive to Planning Board conditions, neighbors, potentially impacted citizens, the property owner, as well as valid concerns expressed by the Town’s departments. Buy my action the parties will have time necessary to work through these issues in a thoughtful manner. Once the Planning Board has had an opportunity to revisit, discuss, and decide on the request, its determination will take precedent. Alternatively, if the Planning Board opts to allow the Police Department to manage this minor issue administratively, our staff can do so and at the earliest possible time, Sunday work will be administratively revoked as winter conditions warrant. Note that Durham is projected to receive another foot or more of snow this*

weekend. Please do not hesitate to contact me should you have further questions in regard to this or any other matter.”

- 7) The Town Administrator asked me to convey to the board that, if it makes sense for us to handle this issue, or these types of issues administratively, rather than bringing them to the board, please let me know.
- 8) The Site Plan condition states:

Construction hours. “All outside construction activity related to the development of this site shall be restricted to the following hours:

- Mobilization 6:00 a.m. to 6:00 p.m. Monday through Thursday
(workers on site): 6:00 a.m. to 6:00 p.m. Friday, when UNH is not in session
6:00 a.m. to 5:00 p.m. Friday, when UNH is in session
9:00 a.m. to 6:00 p.m. Saturday
- General construction activities, machinery operation, drilling, and truck loading and hauling: 7:00 a.m. to 6:00 p.m. Monday through Thursday
7:00 a.m. to 6:00 p.m. Friday, when UNH is not in session
7:00 a.m. to 5:00 p.m. Friday, when UNH is in session
9:00 a.m. to 6:00 p.m. Saturday
- Blasting, chipping of stone, and use of hoe or rock hammers: 9:00 a.m. to 4:00 p.m. Monday through Friday
- There are no restrictions on interior construction hours.
- There shall be no operation on UNH Fall move-in day, on the day of the Memorial Day Parade, nor on the day of the Spring UNH Graduation.

Draft

NOTICE OF MODIFICATION

Project Name: Madbury Commons
Project Description: Modification to approved site plan to allow exterior construction work on Sundays.
Address: 17 & 21 Madbury Road
Applicant: Golden Goose Properties
Property Owner: Golden Goose Properties
Map and Lot: Map 2, Lot 12-3 and 12-4
Zoning: Central Business District
Date of approval: Planning Board approval – February 25, 2015

The applicant's request for a modification to allow exterior construction on Sunday is approved as submitted with the following conditions/clarifications:

- 1) Exterior construction may take place on any Sunday up through and including August 15, 2015.
- 2) Exterior construction is restricted to the following hours: 9:00 a.m. and 4:00 p.m.
- 3) The applicant shall notify both the Durham Public Works and Police Departments at least 48 hours in advance when exterior construction will take place for any Sunday.
- 4) Loud construction equipment shall not be used, except where given approval of the Police Department with at least 48-hours notice.
- 5) Loud construction activities shall not occur during the hours when services are taking place at the Unitarian Universalist Fellowship at 20 Madbury Road.
- 6) Exterior construction activities shall not occur on any Sunday graduation day or any Sunday with other peak activities as specified by the Durham Police Department.
- 7) All workers must park on the site.

[This was a condition for the earlier modification for Sunday work.]

- 8) The applicant shall coordinate carefully with the Durham Police, Public Works, Building, and Planning Departments, as appropriate, to ensure minimal disruption to the neighbors and the community.