



TOWN OF DURHAM
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Town Planner's Recommendation
Wednesday, June 10, 2015

XII. **15 Madbury Road – Conversion of porch.** A conditional use to expand a nonconforming use –slightly enlarging and closing in a glassed-in porch. *Residence, single family* is not permitted in the Central Business District. GP Madbury 15, LLC, c/o Ken Rubin and Fred Kell, property owner; Mike Sievert, MJS Engineering, Design Engineer. Central Business District. Tax Map 2, Lot 12-5.

➤ I recommend discussion and setting a public hearing for June 24.

Please note the following:

- 1) **Conditional use.** A conditional use is needed because this is considered an expansion of a nonconforming use. *Residence, single family* is not allowed in the Central Business District.
- 2) **Single family dwelling.** According to the applicant, the building is used as a single dwelling unit and there are currently 7 residents. The Durham Tax Card says there are 6 bedrooms and classifies the use as a boarding house (for assessing not zoning purposes). I will check with the Assessing, Building, and Public Works Departments for confirmation that it is being used as one dwelling unit. This use would be classified as a *Residence, single family* under the Durham Table of Uses, as there is no boarding house or other more appropriate designation in the table. The current arrangement may be nonconforming in other ways, in addition to the use, but that is not relevant to this application.
- 3) **Change to porch.** The actual proposed change is quite small – closing in the sloped glassed-in porch with a straight wall. However, the usable area and volume is expanding (though the footprint is not changing) and thus this is considered an expansion.
- 4) **Nonconforming Uses.** Here is an excerpt from the Zoning Ordinance:
175-28. Nonconforming Uses.
Routine Maintenance. Routine maintenance and repairs of the building or structure housing the nonconforming use as well as those modifications required by applicable health and safety codes shall be permitted by the Zoning Administrator...

Continuation of a Nonconforming Use. Any nonconforming use may be continued, except that if any such nonconforming use is abandoned or desisted or voluntarily or by legal action caused to be discontinued for a period of one (1) year, then any subsequent use of the building, other structure or use of the land shall be required to be in conformity with the provisions of these regulations.

Enlargement of a Nonconforming Use. [A nonconforming use may be expanded only upon the approval and issuance of a conditional use permit](#), within the confines of the lot or parcel of land upon which it was located at the time of the adoption or amendment of these regulations; provided, however, that the land area and/or size of the building or the structure being used for said nonconforming use at the time of the adoption or amendment of these regulations is not increased by more than fifty (50) percent.

- 5) Submitted materials. The following items are included with the application: application for conditional use, a discussion of the 8 criteria, and renderings of the proposed change to the building. * **Is there any other information or documentation that would be helpful for the board in reviewing this application?**
- 6) Letter with application. On the Criteria for Conditional Use Permit submitted by the applicant, the applicant also discusses other renovations to this building and construction of a parking lot for 15 Madbury Road and 8 Mathes Terrace. Those items are not part of this application.
- 7) No site plan or achitectural review. Under state law and the Durham Site Plan Regulations, changes to single family and two family dwellings are exempt from site plan review. The Architectural Regulations do not apply to this proposed change as the regulations apply only to nonresidential and multifamily projects.
- 8) Conditional use procedure. A special procedure is required for conditional uses; notification of abutters within 300 feet, a sign must be posted on the property announcing the public hearing, 8 conditional use criteria must be met, and approval requires an affirmative vote of 5 (rather than 4) Planning Board members.
- 9) Photo. Here is a picture of the building and the glassed-in porch, as seen from Mathes Terrace:

