



**TOWN OF DURHAM**  
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***Town Planner's Recommendation***  
**Wednesday, June 24, 2015**

- XII. **Public Hearing - 15 Madbury Road – Conversion of Solarium.** A conditional use to expand a nonconforming use –slightly enlarging and closing in a glassed-in solarium. *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 approval as stated at the bottom. The board will need to review the 8 conditional use criteria prior to any approval.

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. The applicant states that there are currently 6 residents. This use is classified as a *Residence, single family* under the Durham Table of Uses.
- 3) Change to porch. The actual proposed change is quite small – closing in the sloped glassed-in solarium 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) Habitable Floor Area. According to Tom Johnson, the existing solarium is not a habitable area so the habitable square footage of the building would increase. The requirement is 300 square feet of habitable floor area per occupant (for a single family dwelling). It is possible that by doing this renovation the applicant would be able to have an additional occupant but Tom would not know that for certain until/unless the applicant submitted a floor plan to him. If the applicant were proposing a new addition to the building, the Planning Board might be wary of such a proposal, should it accommodate one or more new residents. In this case, given that the footprint of the existing solarium is not expanding (though the usable/habitable area and volume is) and that the solarium is effectively an obsolete feature for the new student housing, it seems reasonable to allow for this area to be renovated for interior, usable space. The proposed new area will measure 8 feet in depth and 18'-11" width. I included a proposed condition below that the new area must be the same footprint as the existing solarium.
- 6) Staff comments. I shared this application with other staff for their consideration. There were no comments other than from Tom Johnson, Building Inspector, who will review the application for a building permit if the expansion is approved. Tom noted that the property is classified as a single family dwelling. It was conveyed to the new owners on September 23, 2014. Occupancy is based on 1 per 300 square feet of habitable area.
- 7) 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.
- 8) 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.
- 9) No site plan or architectural 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.
- 10) 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.

**\*Draft\***

**NOTICE OF DECISION**

**Project Name: 15 Madbury Road – conversion of solarium**

Planner's Recommendation - 15 Madbury Road – June 24, 2015

Page 2 of 3

**Project Description:** Conditional use to expand a nonconforming use – expansion of square footage for a residence, single family, which is not a permitted use in the Central Business District.

**Applicant:** Golden Goose, c/o Ken Rubin and Fred Kell

**Engineer:** Mike Sievert, MJS Engineering

**Map and Lot:** Map 2, Lot 12-5

**Zoning:** Central Business District

**Date of approval:** **June 24, 2015**

The Planning Board approved the application as submitted with the following terms and conditions:

- 1) The solarium may be converted to enclosed space as described in the application. The footprint for the new space may be no larger than the footprint for the existing solarium.
- 2) All of the requirements specified for conditional uses in the Zoning Ordinance shall apply. This approval shall terminate if the authorized use has not begun by June 24, 2016 or as may be extended by the Planning Board.
- 3) The Planning Board has reviewed the applicant's statement and the criteria for a conditional use and determined that the criteria are met.