



TOWN OF DURHAM
15 NEWMARKET RD
DURHAM, NH 03824-2898
603/868-8064 603/868-8065
FAX 603/868-8033
www.ci.durham.nh.us

Town Planner's Recommendation
Wednesday, July 23, 2014

VIII. **17 & 21 Madbury Road - Madbury Commons**. Minor changes (Modification or Amendment to be determined by the Planning board) to a previously approved Site Plan and Conditional Use for Madbury Commons, a mixed use project with housing, office and retail. The change involves several minor changes to the site plan and to improvements located in the 75 foot wetland buffer. (A modification is a simple, straightforward review. An amendment is used for more complex changes and involves public notices and a public hearing.) Tax Map 2, Lots 12-3 & 12-4.
Recommended action: Final action

➤ I recommend treatment of these changes as a Planning Board Modification approval of the modification as stated below.

Please note the following:

- The requested changes are itemized below as part of the modification/amendment
- *These changes are very minor and I think treatment as a modification is appropriate.* The drainage items have been reviewed and okayed by Public Works (I will get confirmation of this).
- The proposed changes are itemized in the letter from Barrett Bilotta.
- I have identified the changes on the enclosed drawings: 1) Approved A is the approved site plan; 2) Approved B is the approved utilities drawings; and 3) Proposed site plan. The items are circled and keyed to the items in Mr. Bilotta's letter. I do not have a drawing showing how Building A is being adjusted. I will request such a drawing from the applicant.
- The building permit that was issued for Madbury Commons was challenged by Attorney Chris Mulligan on behalf of BAA Realty Acquisitions, LLC. He pointed out several minor ways that the final plans differed from the approved plans and so this is being brought back to the Planning Board for approval of these changes.
- With the legal sensitivity of this project I thought it best to prepare this as an amendment for the July 23 meeting in case the board determined the changes were at the level of an amendment. Thus, public notices were placed in the newspaper and sent to abutters as an amendment with a public hearing for the July 23 meeting. If the board determines that this should really be treated as a modification then this should be announced at the meeting and there will be no

public hearing. If the board determines that this should be treated as an amendment, then we are ready to go forward with the public hearing on July 23.

- Should the Planning Board approve these changes now the route to another appeal by any party is wider for an amendment than a modification. For this reason, and given that the changes are minor and appropriate for treatment as a modification, I recommend that the board review these changes as a modification. Given that the changes are minor and appropriate for treatment as a modification, and there is potential of an appeal from an amendment, I recommend that the board review these changes as a modification. (I have consulted with Laura Spector, Town Attorney, on the process for this modification/amendment.)
- We asked the Conservation Commission to review the proposed changes to see if there were any concerns. Ann Welsh's letter follows. I believe the two transformers will be removed from the wetland buffer. The applicant will confirm this.

July 16, 2014

Members of the Planning Board, Michael Behrendt:

On July 10th the Conservation Commission reviewed the most recent site plan(6/11/14) proposal for Madbury Commons. The Commission supports the request for an amendment to an approved conditional use, with one reservation.

The amendment included these changes of interest to the Commission due to their placement in either a wetlands setback or a shoreland setback :

- 1. A transformer was removed from a shoreland setback area/wetland setback.*
- 2. A window well was added within the wetlands setback.*
- 3. As a result of the window well change, the drip strip with underdrain was changed to a gutter system, tied into the same PVC pipe outlet as the original.*
- 4. The circumference of the PVC pipe connected to the gutters was increased, proposed riprap area below the pipe was increased, and Turf matting added.*
- 5. A section of permeable pavers was changed to porous asphalt.*
- 6. Two transformers were placed within the wetlands setback area.*

The changes met the standards contained in the Wetland Conservation Overlay District or Shoreland Protection Overlay District, except for the two transformers placed in the wetlands setback area. We would prefer these to be placed outside of the wetlands setback, if possible, perhaps with screening

*Ann Welsh
Chair, Durham Conservation Commission*

NOTICE OF MODIFICATION/AMENDMENT

Project Name: Madbury Commons
Project Description: Mixed use project
Address: 17 & 21 Madbury Road
Applicant: Golden Goose
Property Owner: Golden Goose
Map and Lot: Map 12, Lots 12-3 and 12-4
Zoning: Central Business District
Date of approval: July 23, 2014

The Planning Board approved this Modification on July 23, 2014. The Modification was approved for the following changes in the Site Plan and Conditional Use that was approved by the Planning Board on February 12, 2014. The conditional use allowed for encroachments within the 75 foot wetland buffer prescribed in the Wetland Conservation Overlay District. Most of the changes occur within the 75 foot buffer and are thus changes in the conditional use and the site plan approval. Some of the changes occur outside of the buffer area and are thus changes in the site plan approval only.

- 1) The original approval shows a transformer surrounded by grass at the southwesterly corner of the building within the wetland buffer. The change removes the transformer replacing it with permeable pavers. The transformer will be relocated out of the wetland buffer, at the easterly end of the court, screened by 6 foot high lattice fencing with landscaping on one side.
- 2) Five window wells are added along the southerly side of Building B. One of the wells will be located in the wetland buffer.
- 3) A drip strip along the southerly side of Building B is replaced with a gutter system. The underground drain pipe is increased slightly in size. The rip rap at the outlet is slightly relocated and reshaped. The outlet and a portion of the drip strip and drain pipe are/were located in the wetland buffer.
- 4) The footprint of Building A is adjusted slightly. Though the amount of square footage within the wetland buffer will be decreased by 300 square feet overall, I believe that there will be a small section of the building located within the buffer where it had not been earlier (I will clarify this).
- 5) The addition of 2 new transformers at the northerly end of the site within the wetland buffer.

[The Conservation Commission recommends that these two transformers be placed outside of the buffer, if possible]