



**TOWN OF DURHAM**  
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 DURHAM, NH 03824-2898  
 603/868-8064  
[www.ci.durham.nh.us](http://www.ci.durham.nh.us)

**Town Planner's Recommendation**  
**Wednesday, April 20, 2022**

VIII. **Public Hearing - 32-34 Madbury Road – Expansion of Apartments.** Site Plan and Conditional Use Application for new 3-story building with 6 dwelling units and 17 beds (at northeast corner of Garrison Avenue intersection). The existing apartment which is a nonconforming use can be expanded up to 50% by conditional use. AAM Durham Residences, LLC, property owner, c/o Craig Pfannenstiehl and Megan Thayer. Mike Sievert, Horizons Engineering, engineer. Market Square Architects, architect. Robbi Woodburn, Landscape Architect. Map 2, Lot 10-3. Professional Office District.

➤ I recommend approval of the application as stated below.

The board will need to discuss and vote separately on the conditional use (including eight criteria) to expand the existing nonconforming multiresidential use.

This approval includes a waiver of the school impact fees. The board has always (to my knowledge) waived impact fees for apartments expected to be rented primarily to students. There is no need to vote separately on the waiver as it is included in this notice.

**\*Draft\***  
**NOTICE OF DECISION**

**Project Name:** 32-34 Madbury Road – Expansion of Apartments  
**Action Taken:** APPROVAL  
**Project Description:** Site Plan and Conditional Use Approval for 50% expansion of nonconforming multi-residential use  
**Property Owner:** AAM Durham Residences, LLC  
**Applicant:** c/o Craig Pfannenstiehl and Megan Thayer  
**Engineer:** Mike Sievert, Horizons Engineering  
**Map and Lot:** Map 2, Lot 10-3  
**Zoning:** Professional Office District  
**Date of approval:** April 20, 2022

[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.

### **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 performing any significant site work. Once these precedent conditions 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 April 20, 2023 (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 be made except for the specific required changes that follow.

### **Plan Modifications**

Make the following modifications to the plans/plan set that were reviewed and approved by the Planning Board (Items do not need to be physically constructed as a precedent condition):

- 1) Parking Requirements. Delete this section under notes on Sheet C101 as a waiver is not needed for parking requirements. With a total of 18 dwelling units, 36 spaces are required and 40 are provided.
- 2) Footpath. Adjust landscaping area and asphalt near ADA space to provide better pedestrian access around the corner of the parking lot.
- 3) Bike parking. Show location on Sheet C101 for bike parking as shown on the landscaping plan.
- 4) Landscaping. On Sheet LA101 clarify number of inkberry shrubs and correct Tax/Tx symbol. Clarify plans for irrigation and locations of hose attachments if irrigation system is not to be installed.
- 5) HVAC. Note that any proposed or future HVAC/ground mounted utilities/transformers must be fully screened.
- 6) Trucks. Finalize notes on truck routes on Sheet C104 in consultation with Planning and Public Works.

### **Notes on Plans**

Add the following notes on the plans/plan set that were reviewed and approved by the Planning Board:

- 7) “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.” Add to Sheets C104 and C105.
- 8) “Fertilizer. Low phosphorus/slow release nitrogen fertilizers for landscaping materials shall be used.” Add to sheet LA101.
- 9) “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”. Add to sheet C104 C105.
- 10) Construction hours. All outside construction activity related to the development of this site is restricted to the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday and 9:00 a.m. to 6:00 p.m. Saturday”. Add to sheet C104 C105.
- 11) “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.”
- 12) “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.”
- 13) “Erosion and sedimentation. All erosion and sedimentation control structures shall remain in place and be maintained until vegetation is established and the ground surface is stabilized. Erosion and sedimentation control measures shall be monitored by the applicant on a periodic basis during construction and any deficiencies shall be corrected as soon as possible.” Add to sheet C104 C105.
- 14) “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. If any blasting is needed the applicant or contractor shall obtain a permit from the Durham Fire Department.” Add to sheet C104 C105.
- 15) “Weekly meetings. The applicant/contractor shall hold weekly meetings or as specified by the Town Engineer with appropriate Town departments to discuss the construction process and the schedule for the upcoming week.” Add to sheet C104 C105.
- 16) “Roads and Sidewalks. The applicant/contractor shall not obstruct any road or sidewalk without approval of the Durham Police Department. The applicant/contractor shall contact the Police Department a minimum of 24 hours prior to any such activity. The

Police Department will determine whether or not a police detail is needed.” Add to sheet C104 C105.

**Other Conditions Precedent**

- 17) Stormwater and utilities. The applicant will finalize details of the design for stormwater and utilities with Public Works and make any necessary minor changes. Any significant changes shall be brought to the Planning Board for review.
- 18) NHDES Sewer Connection Permit. The applicant shall submit a wastewater connection permit application to the New Hampshire Department of Environmental Service Wastewater Engineering Bureau and submit a copy of the approval to the Planning Department.
- 19) Recycling. Clarify plans for recycling for both existing and proposed buildings with Public Works. Include area for recycling in new dumpster area as needed. Provide nonbinding ideas for potential future composting.
- 20) Energy Checklist. Hold nonbinding discussion with Energy Committee chair and staff about the energy checklist.
- 21) Driveway Permit. The Town Driveway Permit must be obtained.
- 22) Construction Management Plan. Review the construction management plan with Public Works and incorporate any required changes.
- 23) 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.
- 24) Electric service approval. Obtain written confirmation from Eversource Energy that the plans for electric service are acceptable.
- 25) Madbury Road. Finalize coordination of the project with plans for improvements to Madbury Road with Public Works.
- 26) Addressing. Finalize a numbering system for the buildings to be approved by the Fire and Police Departments. It is recommended that the new building be 32 Madbury Road and the existing building be changed to 34 Madbury Road.
- 27) Construction Guarantee. The applicant shall post an acceptable surety to be approved by the Town Engineer. The purpose of the surety is to protect against potential damage to Town infrastructure from construction and to cover any costs for reclamation of the site should the project not be properly completed.

- 28) Architectural plans. Submit two final sets of 11x17 paper copies in color of the approved architectural elevations in color. Include all details (such as for windows grilles) and specifications of materials and dimensions on the plans or on a separate sheet(s). Show wider trim in between two double windows above the entrance.
- 29) 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.
- 30) 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.

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

- 31) Site work. No significant site work (including any significant clearing of the site) or ground disturbance may be undertaken until:
  - a) all of the conditions precedent 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.

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

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.

- 32) Recording. Evidence of recording of all documents at the Registry must be provided.
- 33) Contact. The applicant shall provide contact information for a primary contact person, who can resolve security and other issues and be reached 24 hours a day/7 days a week.

- 34) As-built drawings. One set of full size and one electronic copy of as-built (“record”) drawings of all buildings, structures, infrastructure, utilities, drainage structures, 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.
- 35) Improvements. Completion of all on-site and off-site improvements included in this approval unless an acceptable surety is posted.
- 36) Landscaping Guarantee. The applicant shall post an acceptable surety to be approved by the Tree Warden/Director of Public Works (and the Town Business Manager for form and type) 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 Tree Warden/Director of Public Works, within this two-year period then the applicant shall promptly replace those materials (subject to weather constraints). Nonetheless, the applicant is responsible to maintain the landscaping materials in perpetuity.

**Other terms and conditions**

- 37) Conditional Use. This approval includes approval of the conditional use to expand the existing nonconforming multiresidential use. The conditional use shall terminate if construction has not substantially commenced within 36 months of this approval.
- 38) Recording. This notice of decision must be recorded at the Registry of Deeds within 14 days of certification of the plans.
- 39) Building Code. This approval is for the site plan only. Life safety code and building code review will be required as part of the building permit process when the construction plans are submitted. Various requirements regarding the building design may be specified at that time. The applicant is strongly encouraged to meet with Building and Fire Officials early to expedite the review process.
- 40) School Impact Fee. The school impact fee (Ordinance 75-9B) has been waived and this approval herein includes approval of this waiver. The waiver was granted consistent with established Planning Board practice upon a finding that strict conformity would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of these regulations because the units are expected to be occupied primarily by college students.

- 41) Occupancy. The existing rear building has 12 dwelling units and 34 beds. The new building herein is approved for 6 dwelling units and 17 beds. This addition is the maximum allowed under the current zoning ordinance which allows an expansion of the nonconforming multiresidential use 50% by conditional use.
- 42) Signage. The Building Official administers the Town of Durham Sign Ordinance. If any primary sign is proposed for the front of the property as shown on the site plan it will be presented to the Planning Board for nonbinding recommendation in accordance with the Site Plan Recommendations. A monument-style sign is preferred. There shall be no fee, notice, or public hearing for the presentation.
- 43) Recommended safety measures. It is recommended (but not required herein) that the applicant install video monitoring in any interior common stairwells or hallways or exterior walkways as it would be helpful for theft prevention and resident safety and to enhance the police department's ability to resolve criminal acts. It is also recommended that hardware include window locks, dead bolts for doors, interior door hinges and well lit interior corridors, and that all common building entrances have locks that automatically catch when the door closes.
- 44) 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.
- 45) Parking permits. The applicant shall not sell or otherwise provide parking permits to non-tenants.
- 46) Sprinkler. The new building will have a sprinkler system as specified by the Durham Fire Department.
- 47) Weekend clean ups. It is requested that the applicant inspect and to clean up the site, as needed, on Friday, Saturday, and Sunday mornings (in accordance with Chapter 118 of the Durham Town Code).
- 48) Execution. The project must be built and executed exactly as specified in the approved application package unless changes are approved by the Town as described in the Planning Board's Rules of Procedure.
- 49) Approval. All of the documentation submitted in the application package by the applicant are part of this approval. In the case of conflicting information between documents, the most recent documentation and this notice herein shall be determining.
- 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)

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 Planning Board accepted the application as complete; **C)** The Planning Board held a public hearing on the application on April 20, 2022; **D)** The applicant revised and updated the plans and other documentation several times pursuant to comments from the Planning Board, public, and Technical Review Group; **E)** 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; **F)** the Planning Board found that the eight criteria for conditional uses outlined in the Zoning Ordinance section 175-23 C. are adequately addressed in the applicant’s application to expand the nonconforming use; **G)** The Planning Board reviewed the design in accordance with the Architectural Standards contained in the Site Plan Regulations; and **H)** This project is not considered to be a Development of Regional Impact; **I)** The Planning Board duly approved the application as stated herein, including the conditional use on April 20, 2022; and **J)** The Planning Board also conducted a preliminary design review prior to submission of the formal application to consider any concerns prior to the formal application and provided preliminary comments to the applicant at that time. 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 applicant	date
_____	
Printed name of applicant	
_____	_____
Signature of Planning Board Chair	date
_____	
Printed name of Planning Board Chair	