

Please send this form with Plot Plan and List of Abutters to the Town of Durham, 15 Newmarket Rd., Durham, NH 03824, Attn: Zoning Board of Adjustment.

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Appeal for Applicant

State of New Hampshire

RECEIVED
Town of Durham, NH

To: Zoning Board of Adjustment, Town of Durham NH 03824

JUL 03 2014

Name of Applicant: BAA Realty Acquisitions, LLC

Planning, Assessing
and Zoning

Address: 266 Middle St, Portsmouth NH 03801 Phone # 427-5500

Email: cmulligan@bozenandassociates.com

Owner of Property Concerned: Rose Lawn Prop. LLC, 116 King Road, Bedford, NH 03110
(If same as above, write "Same")

Address: GP Madbury 17, LLC, 1 Pleasant St, Unit 1A-21, Westford MA 01886
(If same as above, write "Same")

Location of Property: 17 & 21 Madbury Road
(Street & Number, Subdivision and Lot number)

Description of Property (Give Tax Map number, length of frontage, side and rear lines and other pertinent descriptive information) Map 2, Lots 12-3 and 12-4

Approximately 190 feet of frontage on Madbury Road and similar frontage along Pettee Brook to the west.

Fill in Section 1, 2, 3 or 4 below as appropriate. Do not fill in more than one section. This application is not acceptable unless all required statements have been made. Additional information may be supplied on separate sheets if the space provided is inadequate.

SECTION 1: APPEAL FROM AN ADMINISTRATIVE DECISION

Appeal must be filed no later than 30 days from the date of the original decision.

Relating to the interpretation and enforcement of the provision of the Zoning Ordinance.

Decision of the enforcement officer to be reviewed: Building Permits issued for 17-21 Madbury Road Number 2014-174 Date 6/5/14
(G) 2014-175

Article V Section 175-16 (F) of the Zoning Ordinance in question.
Art VII Section 175-21; -23
Art XIII Section 175-61

Art XII Section 175-41 (F) (7); -53

Art XIII Section 175-59 (A) (2) (d)

See attached narrative and exhibits.
Updated 1/1/2010

I. INTRODUCTION

The applicant herein is BAA Realty Acquisitions, LLC, the owner of 8 Mathes Terrace, Durham. This is an appeal from an administrative decision of the Code Enforcement Officer to issue building permits for the Madbury Commons project, located at 17 and 21 Madbury Road. The building permits were issued on June 5, 2014, copies are attached as Exhibit A.

II. PROCEDURAL HISTORY

The Madbury Commons project was before the Board of Adjustment in August, 2013 when it obtained five variances from the zoning ordinance. The project went through site plan review and the Planning Board issued its approval in February 2014. On June 5, 2014, Building Permits no. 2014-174 and -175 were issued for the project. For the reasons that follow, the decision of the Code Enforcement Officer to issue these permits was in error. Challenges to decisions regarding building permits must first be made to the zoning board of adjustment. *See McNamara v. Hersh*, 157 NH 72 (2008); *Sutton v. Guilford*, 160 NH 43 (2010).

III. THE PLANS UPON WHICH THE CODE ENFORCEMENT OFFICER BASED THE BUILDING PERMITS DIFFER MATERIALLY FROM THOSE APPROVED BY THE PLANNING BOARD.

Attached hereto as Exhibit B is a copy of the site plan and drainage plan, C-1 and C-2, revised January 10, 2014 as approved by the Planning Board on February 12, 2014¹. Attached hereto as Exhibit C is a copy of the site plan and drainage plan, C-1 and C-2, revised June 11, 2014, which was the basis for the issuance of the building permits. A comparison of the two plan sets reveals that certain material modifications have been made to the plan since February.

Of primary concern to the owner of 8 Mathes Terrace, which directly abuts Madbury Commons to the south, is the change in the plans nearest to the border between the properties. According to Exhibit B, the plan approved by the Planning Board calls for the installation of a drip strip on the southern edge of Building B to be constructed. On Exhibit C, this important stormwater mitigation feature is gone. In its place are a series of very deep window wells to accommodate basement apartments. Based on our understanding of the property, these window wells will reach 6 to 8 feet below the water table. This will result in significant unanticipated discharge into Pettee Brook in order to keep the basement apartments dry. It will affect the soil condition of neighboring properties as it will necessitate the continuous pumping of groundwater

¹ It is noted that the June plan revision, Exhibit C, indicate plan revisions dated February 10, 2014. Copies of these revisions were neither in the Planning Department file nor on the Town's website (http://www.ci.durham.nh.us/boc_planning/madbury-commons-site-plan-cup-site-walk-public-hearing) as of July 1, 2014. The minutes of the February 12, 2014 Planning Board meeting do not indicate that new plans were under consideration. The Notice of Decision, Exhibit G, indicates the primary set of plans was received January 2, 2014 (see page 15). Accordingly, we are assuming for the sake of this application that the January 10, 2014 revisions represent the plans approved by the Planning Board, and otherwise reserve all rights.

out of the area. Stormwater runoff onto neighboring properties and into the brook, which was to be mitigated by the drip strip, will be increased. In addition, with the window wells, the structure now encroaches closer to 8 Mathes Terrace and adjacent properties. The excavation necessary for the window wells will impact the root systems of several mature trees that hug the property line. The proposed removal of mature trees was cited as a reason for the Planning Board to deny the recent development project at 8 Mathes Terrace. See Section 175-118 of the Durham Zoning Ordinance.

Because this portion of the project is within the 75 foot wetlands protection buffer, this change triggers the need to obtain a conditional use permit, pursuant to section 175-61. The applicant has not obtained such a permit for this change, and the building permit should not have been issued.

Similarly, several features on Exhibit C which impact the wetlands buffer were not approved by the Planning Board. For example, the electrical transformers have been increased in number to two and have been moved into the buffer in the northeast corner of the property. The original site for the transformer, in the southwest corner of the site, now shows increased areas of patio and steps, within the buffer. A maintenance driveway has been added within the wetlands buffer along the northeast corner of the property. The northwest wing of the five story building is wider than originally represented. These encroachments into the 75 foot wetlands overlay buffer trigger the need for conditional use permits from the Planning Board, which the applicant has not obtained.

Durham has recently indicated a heightened sensitivity to wetlands impacts. In recommending against issuing a conditional use permit for the proposed redevelopment at 8 Mathes Terrace, which had far less impact in the wetlands buffer, Durham's Conservation Commission issued the following statement:

Our main concern, and the reason for recommending against approval of the CUP, is that in reviewing the four (4) criteria required for granting a CUP, we felt that the proposal did not meet Standard 1 – "There is no alternative location on the parcel that is outside of the SPO District that is feasible for the proposed use".

An alternative location outside of the wetland setback area would be feasible if the project was designed differently, and the scale of the building was reduced. There did not seem to be any practical reason that the construction needed to extend into the buffer area other than the developers were trying to make the building capacity as large as possible.

We felt that the protection of this wetland area, and Pettee Brook is important, especially as more development occurs in the area. See attached Exhibit D (emphasis added).

Given this professed concern by the Conservation Commission, including heightened scrutiny as more development occurs in the area, regarding proposed impacts immediately next door to Madbury Commons, it was clearly error to issue building permits based on plans which identify previously undisclosed wetlands impacts without requiring the applicant to return to the Planning Board for a conditional use permit for its new design.

IV. THE PLANS UPON WHICH THE CODE ENFORCEMENT OFFICER BASED THE BUILDING PERMITS DIFFER MATERIALLY FROM THOSE THE BOARD OF ADJUSTMENT RELIED UPON IN GRANTING THE VARIANCES.

On August 13, 2013, the Board of Adjustment granted five variances for the Madbury Commons project. The notices of decision for four of those variances make specific references to "MJS Engineering Plan dated 7/29/13." See Exhibit E. Those plans are attached hereto as Exhibit F.

As noted above in Part III, Exhibit C discloses numerous changes to structures within the wetlands buffer from what was presented to this Board last August. Because the applicant obtained a variance from section 175-59(A)(2)(d) to permit structures within the 75 foot wetlands setback per the plans then provided, changes to those structures require the applicant obtain variances for the new design.

Similarly, the parking garage on the first floor of the five story building is now commercial space. The applicant represented at the ZBA its intention of creating a low density, high square footage project in order to obtain the variances that allowed it extra student housing space. Because the applicant obtained variances from section 175-41(F)(7) and 175-53 to limit the amount of otherwise required commercial space per the plans then provided, changes to those plans that materially alter the commercial space, and the available square footage for student housing, likewise require the applicant to obtain variances for the new configuration.

Because the plans presented to the Code Enforcement Officer were neither compliant with the zoning ordinance nor consistent with the plans submitted when variances from that ordinance were obtained, the building permits should not have been issued.

V. THE BUILDING PERMITS WERE ISSUED DESPITE THE PROPERTY OWNER NOT MEETING ALL CONDITIONS REQUIRED IN THE NOTICE OF DECISION ISSUED BY THE PLANNING BOARD IN FEBRUARY 2014.

The Notice of Decision issued by the Planning Board dated February 12, 2014 is attached hereto as Exhibit G. On page 1 it states as follows:

All of the precedent conditions below must be met by the applicant, at the expense of 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. (Emphasis added).

Among the precedent conditions the applicant was required to satisfy prior to obtaining a building permit was certification that it had a fully executed lease with the UNH Interoperability Laboratory. See condition 25, page 15. To date, we are unaware that any evidence that such a fully executed lease or certification of the existence of one exists. It is our understanding that,

when specifically asked, the Code Enforcement Officer could not produce the required IOL lease. In the absence of evidence that the applicant has satisfied all precedent conditions set forth in the Notice of Decision, the applicant's plans should not have been certified and the building permits should not have been issued.

Notwithstanding that the failure to satisfy this condition should have prevented the issuance of building permits in any event, it is important for the Board to understand the circumstances surrounding this condition. The IOL was the applicant's articulated justification for many of the 11th hour changes to its project before the Planning Board. See Exhibit H. Importantly, it was cited as justification for, among other things, increasing the number of students to be housed from 490 to 525. The minutes of the Planning Board's February 12, 2014 meeting contain the following:

42) Interoperability Lab. It is expected that the UNH Interoperability Laboratory (IOL) will execute a lease for the site. In the event that the laboratory does not occupy the site, the applicant shall return to the Planning Board to amend this site plan approval (This requirement is made due to the numerous changes that have been made in the site plan to specifically accommodate the IOL). In that event, the Planning Board may stipulate reasonable modifications to the site (possibly to include changes in landscaping, signage, and minor building adjustments, for example, but not substantial changes such as changes in the building footprint) in order that it better accommodate retail usage. It was agreed that this language on the IOL was appropriate.

Clearly, the intent of the Planning Board, which attached the condition to protect the town, should not have been ignored if this condition was not satisfied.

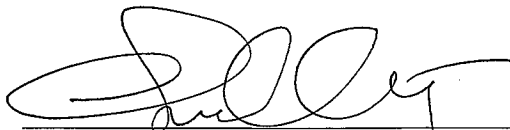
VI. CONCLUSION.

For the foregoing reasons, the building permits for Madbury Commons dated June 5, 2014 were issued in error and must be revoked.

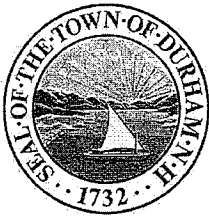
Respectfully submitted,

Date:

7/2/14

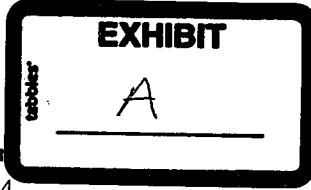


Christopher P. Mulligan, Esquire
Attorney for BAA Realty Acquisitions, LLC



Town of Durham
Building Permit
 Code Enforcement Office
 15 Newmarket Road
 Durham, NH 03824
 (603) 868-8064

Permit Number: 2014-00174
 Date of Issue: 6/05/2014
 Expiration Date: 6/05/2015



Owner: ROSE LAWN PROPERTIES LLC

Applicant: Pro Con Inc.

Location of Work: 17 MADBURY ROAD (Unit or Building)
 (No. and Street)

Description of Work: new multi use building with 28 residential units and 3-4 commercial units

ZONING DATA: District: CB Map\Lot: 02-12-4

CONTRACTOR: Pro Con Inc. 623-8811

REMARKS:

Build to 2011 NEC, 2009 IRC Residential Code, 2009 IPC Plumbing, 2009 IMC Mechanical, 2012 IECC Energy (Climate Zone 6), 2009 IBC Building, 2003 Life Safety and all state and local ordinances. Separate master electric, master plumbing, mechanical permits required. Call for inspections. Subject to further plan review. Demo and site work in June. Footing and foundation in July. Framing in August.

NEITHER THE REVIEW OF ANY APPLICATIONS OR PLANS BY OFFICIALS OF THE TOWN OF DURHAM, NOR ANY SUBSEQUENT INSPECTION OF THE PREMISES SHOULD BE RELIED UPON AS AN ASSURANCE OF CONFORMITY TO LEGAL REQUIREMENTS. THE APPLICANT SHALL REMAIN FULLY RESPONSIBLE FOR COMPLYING WITH ALL APPLICABLE UNITED STATES, NEW HAMPSHIRE OR DURHAM LAWS, ORDINANCES, REGULATIONS OR CONDITIONS.

THIS PERMIT CONVEYS NO RIGHT TO OCCUPY ANY STREET, ALLEY OR SIDEWALK OR ANY PART THEREOF, EITHER TEMPORARILY OR PERMANENTLY. ENCROACHMENTS ON PUBLIC PROPERTY, NOT SPECIFICALLY PERMITTED UNDER THE BUILDING CODE, MUST BE APPROVED BY THE JURISDICTION. STREET OR ALLEY GRADES AS WELL AS DEPTH AND LOCATION OF PUBLIC SWERS MAY BE OBTAINED FROM THE DEPARTMENT OF PUBLIC WORKS. THE ISSUANCE OF THIS PERMIT DOES NOT RELEASE THE APPLICANT FROM THE CONDITIONS OF ANY APPLICABLE SUBDIVISION RESTRICTIONS.

APPROVED PLANS MUST BE RETAINED ON JOB AND THIS CARD KEPT POSTED UNTIL FINAL INSPECTION HAS BEEN MADE. WHERE A CERTIFICATE OF OCCUPANCY IS REQUIRED, SUCH BUILDING SHALL NOT BE OCCUPIED UNTIL FINAL INSPECTION HAS BEEN MADE. WHERE APPLICABLE SEPARATE PERMITS ARE REQUIRED FOR ALL ELECTRICAL, PLUMBING AND MECHANICAL INSTALLATIONS.

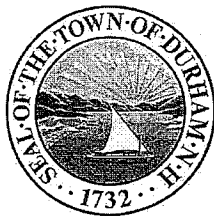
PERMIT WILL BECOME NULL AND VOID IF CONSTRUCTION WORK IS NOT STARTED WITHIN SIX MONTHS OF DATE THE PERMIT IS ISSUED AS NOTED ABOVE.

Permit Holder: Pro Con Inc.
 (Taking Responsibility for the Work)
Company/Affiliation: Contractor **Job Site Phone Number:**

Constr Cost: \$8,535,000 **Permit Fee:** \$68,280.00 **Check No.:** 1193/1199 **Cash:** \$0.00

The Permit Card Shall be Posted and Visible From the Street During Construction

Code Official _____ Permit Holder _____ Date _____



Town of Durham
Building Permit
 Code Enforcement Office
 15 Newmarket Road
 Durham, NH 03824
 (603) 868-8064

Permit Number
 2014-00175
Date of Issue
 6/05/2014
Expiration Date
 6/05/2015

Owner: GP MADBURY 17 LLC

Applicant: Pro Con Inc.

Location of Work: 21 MADBURY ROAD
 (No. and Street) (Unit or Building)

Description of Work: new multi use building with 98 residential units and 1 commercial unit

ZONING DATA: District: CB Map/Lot: 02-12-3

CONTRACTOR: Pro Con Inc. 623-8811

REMARKS:

Build to 2011 NEC, 2009 IRC Residential Code, 2009 IPC Plumbing, 2009 IMC Mechanical, 2012 IECC Energy (Climate Zone 6), 2009 IBC Building, 2003 Life Safety and all state and local ordinances. Separate master electric, master plumbing, mechanical permits required. Call for inspections. Subject to further plan review. Demo and site work in June. Footing and foundation in July. Framing in August.

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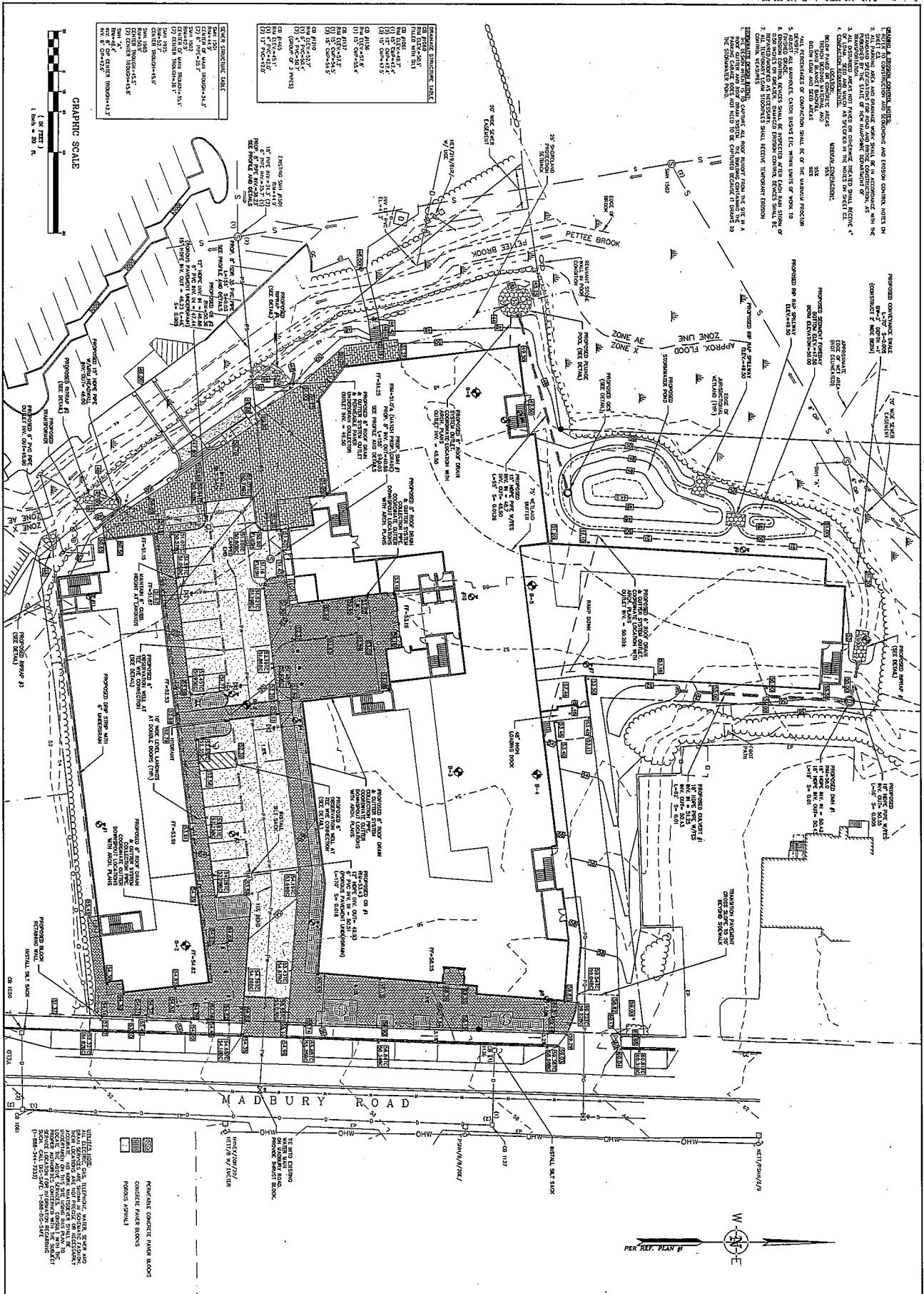
PERMIT WILL BECOME NULL AND VOID IF CONSTRUCTION WORK IS NOT STARTED WITHIN SIX MONTHS OF DATE THE PERMIT IS ISSUED AS NOTED ABOVE.

Permit Holder: Pro Con Inc. (Taking Responsibility for the Work)
Company/Affiliation: Contractor Job Site Phone Number:

Constr Cost: \$16,465,000	Permit Fee: \$131,720.00	Check No.: 1193/1199	Cash: \$0.00
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UTILITIES, GRADING, DRAINAGE & EROSION CONTROL PLAN
 prepared for
MADBURY COMMONS
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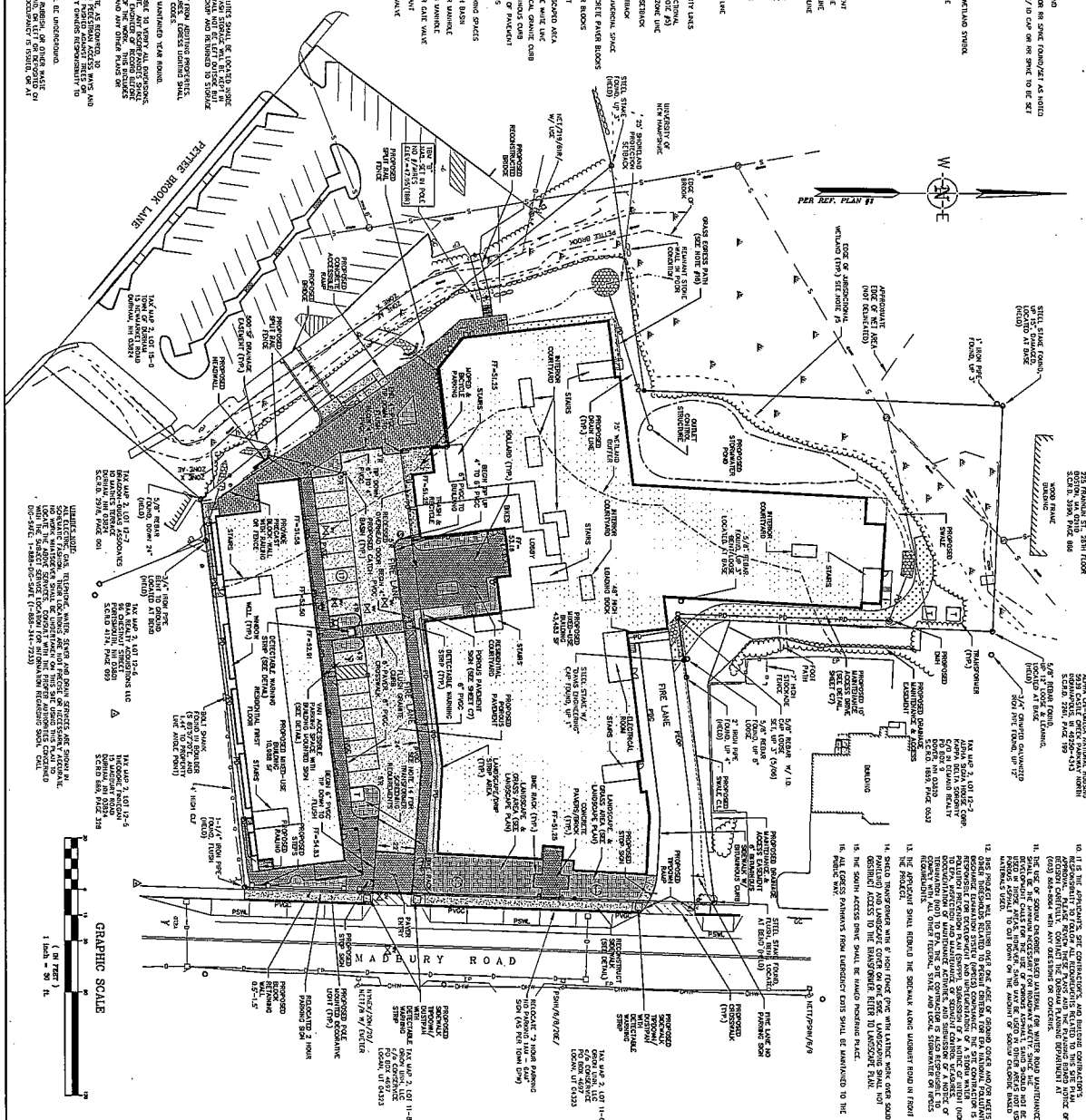
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NO.	REVISIONS	DATE	INT.
1.	REVISED PER COMMERCIAL OCCUPANCY REQUIREMENTS	11/20/14	MJS
2.	SUBMISSION FOR SITE PLAN REVIEW	10/16/13	MJS

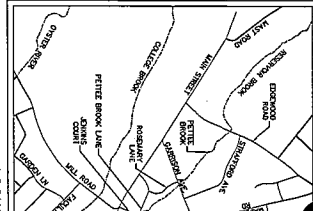
FINAL APPROVAL BY THE DURHAM PLANNING BOARD
 CERTIFIED BY _____
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LEGEND

- 1. QUARTER PLY GYM FLOOR
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GENERAL NOTES:

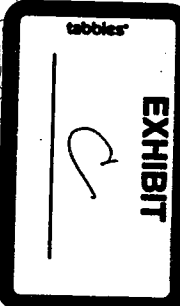
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MJS ENGINEERING, PC
 1500 S. RAYBURN AVENUE, SUITE 100
 DURHAM, NC 27704
 PHONE: (919) 487-1111
 FAX: (919) 487-1112
 WWW: MJS-ENGINEERING.COM

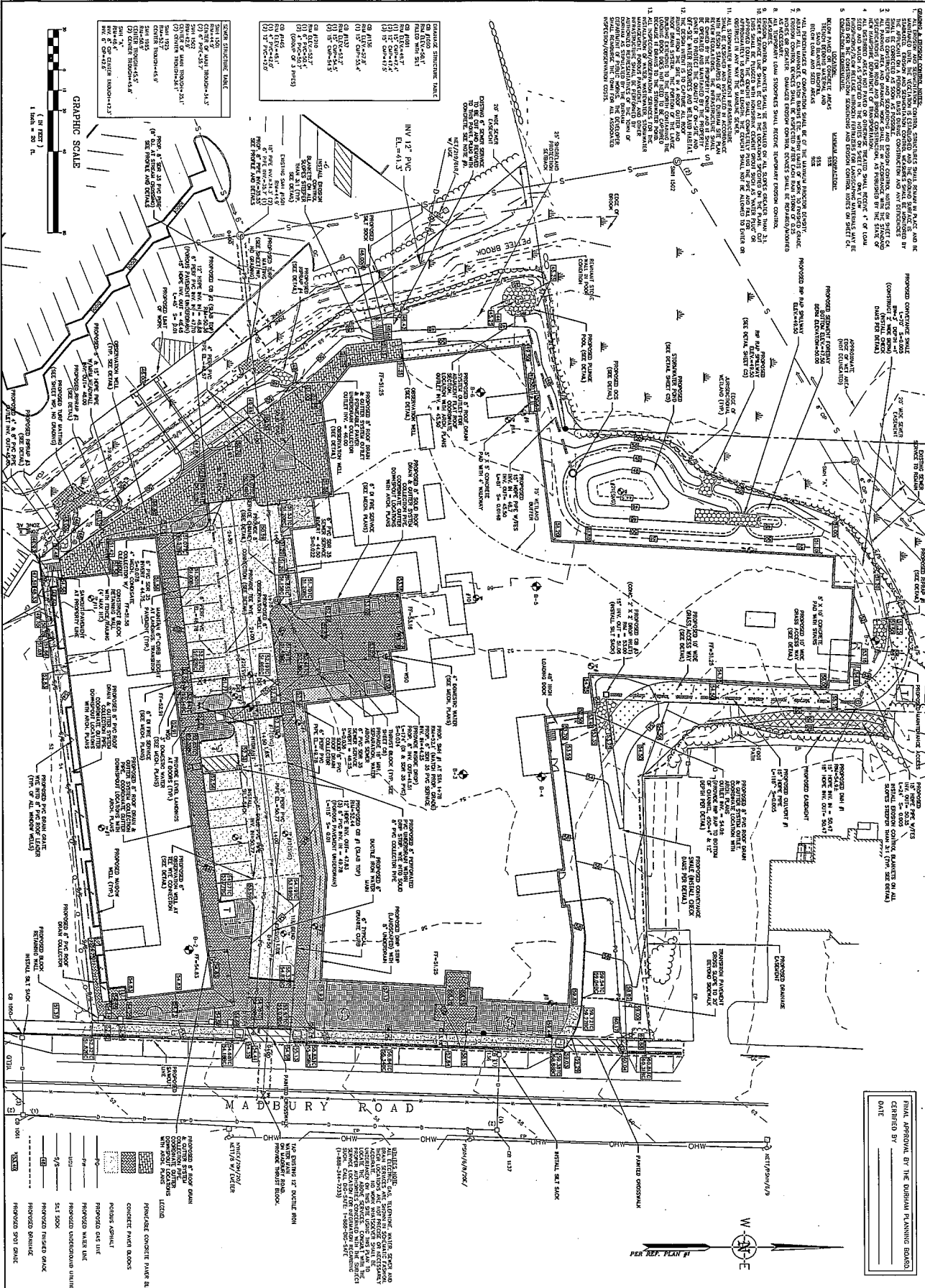
PROPOSED SITE PLAN
 prepared for
MADBURY COMMONS
 17 & 21 MADBURY ROAD DURHAM, NH

DATE: 10/16/13
 SCALE: 1"=20'
 DESIGNED BY: MJS
 DRAWN BY: MJS
 APPROVED BY: MJS
 DWG FILE: 13-007_C1K.dwg

NO.	REVISIONS	DATE
9.	REVISIONS PER 8/10/14 CDA REVIEW MEETING WITH TOWN PLANNER	8/11/14
8.	INITIAL SUBMISSION FOR CDA REVIEW BY TOWN PLANNER	3/28/14
7.	SEWER REVISIONS	3/7/14
6.	REVISIONS PER 10/14/13 BUREAU	4/29/14
5.	REVISIONS PER TIME & BOND REVIEW LETTER DATED 1/21/14	1/21/14
4.	ADDITIONAL REVISIONS PER CONSTRUCTION OCCUPANCY REQUIREMENTS	1/15/14



JOB: 13-007
 C1



GRAPHIC SCALE
1" = 20' LT

- SCALE STRUCTURE TAKE**
- 1. 12" CONC. WALL
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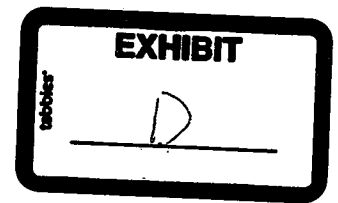
FINAL APPROVAL BY THE DURHAM PLANNING BOARD
 CERTIFIED BY _____
 DATE _____

MJS ENGINEERING, PC
 CIVIL ENGINEERING
 13-007
 17 & 21 MADBURY ROAD DURHAM, NH

UTILITIES, GRADING, DRAINAGE & EROSION CONTROL PLAN
 prepared for
MADBURY COMMONS
 17 & 21 MADBURY ROAD DURHAM, NH

DATE: 10/16/13
 SCALE: 1"=20'
 DESIGNED BY: MJS
 DRAWN BY: MJS
 APPROVED BY: MJS
 DWG FILE: 13-007_CIK.dwg

NO.	REVISIONS	DATE	INT.
1	REVISIONS PER 5/10/14 CDA REVIEW MEETING WITH TOWN PLANNER	6/11/14	MJS
2	REVISIONS PER NHDES WASTEWATER ENGINEERING BUREAU LETTER DATED 6/23/14	6/26/14	MJS
3	FINAL SUBMISSION FOR CDA REVIEW BY TOWN PLANNER	12/28/14	MJS
4	SUBMISSION FOR SEWER CONNECTION PERMIT	1/21/14	MJS
5	SUBMISSION TO AOT BUREAU	4/29/14	MJS
6	REVISIONS PER TIGHE & BOND REVIEW LETTER DATED 1/21/14	12/10/14	MJS



----- Forwarded message -----

From: **Michael Sievert** <mikesievert@mjs-engineering.com>

Date: Thu, Jun 19, 2014 at 4:56 PM

Subject: Fwd: Mathes Terrace - conditional use permits

Here is the denial from the original meeting

Mike

Forwarded conversation

Subject: **Mathes Terrace - conditional use permits**

From: **Michael Behrendt** <mbehrendt@ci.durham.nh.us>

Date: Wed, Mar 12, 2014 at 11:24 AM

To:

To the PB (and app),

Please see John Parry's email below regarding the Conservation Commission's recommendation to deny the request for a conditional use for the Mathes Terrace project

Michael Behrendt, AICP
Director of Planning and Community Development
Town of Durham
15 Newmarket Road
Durham, New Hampshire 03824-2898
(603) 868-8064 (phone)
(603) 868-8033 (fax)
mbehrendt@ci.durham.nh.us
www.ci.durham.nh.us

From: John Parry [<mailto:dccparry@gmail.com>]

Sent: Monday, March 10, 2014 3:41 PM

To: Michael Behrendt; Peter Wolfe

Cc: Ann Welsh; Coleen Fuerst; David Williams; external forward for dcarroll; Otho Wells; Peter Smith

Subject: Re: FW: Conditional use permits

Hi Peter and Michael - I am responding to your request, asking for additional background on the DCC recommendation on the CUP for the Madbury Rd./Mathes Terrace project.

Our main concern, and the reason for recommending against approval of the CUP, is that in reviewing the four (4) criteria required for granting a CUP, we felt that the proposal did not meet Standard 1 - "There is no alternative location on the parcel that is outside of the SPO District that is feasible for the proposed use".

An alternative location outside of the wetland setback area would be feasible if the project was designed differently, and the scale of the building was reduced. There did not seem to be any practical reason that the construction needed to extend into the buffer area other than the developers were trying to make the building capacity as large as possible.

We felt that the protection of this wetland area, and Pettee Brook is important, especially as more development occurs in the area.

We did not discuss this project in relation to other past projects that involved requests for conditional use permits. I think each is reviewed on its own merit, and there are tradeoffs and compromises with each. We learn things with each new development, so as time goes on viewpoints can change.

As I mentioned before, due to a snow storm the night of our meeting (Feb. 18) our note taker and the DCAT technician did not make it to the meeting, so we do not have a detailed record of the discussion. My brief summary of that discussion is below.

Commission Members present were; Colleen Fuerst, Otto Wells, Anne Welsh, John Parry – Chair, Diana Carroll - Council Representative, David Williams - Planning Board Representative.

Mike Sievert, MJS Engineering gave an overview (approximately 20 minutes) of this project. The project was submitted for site plan review and conditional use permitting and it is scheduled for a public hearing.

DCC members discussed the project and asked questions (approx. 25 minutes)

Comments/Questions/Discussion;

Capacity? - designed for 64 beds.

Pets allowed? – No.

Snow removal and use of chemicals? - Snow will be removed from the site. No de-icing.

Are design criteria sufficient to protect area in the buffer ? - There is a small area impacted within the 75' WCO buffer. The proposed uses (transformer, dumpster, fence, underground utilities, and pavement) are permitted as conditional uses in the WCO District. The design includes some improvements over the existing conditions. Drainage from some of the uses in the buffer will move in the other direction (north) and into the designed drainage system.

Is there risk of contamination/pollution to Pettee Brook? - Mike explained design of drainage structure towards Pettee Brook.

Are trees or vegetated areas on the property saved and protected? One or two trees will be protected.

The newer storm data criteria need to be considered.

A dumpster and parking site (and drainage from them) in wetlands setback is too much demand on the site.

There is increasing development pressure along Pettee Brook. The Brook and Wetland are important and need to be protected.

An alternative location outside of the wetland setback area would be feasible with a smaller building design.

John Parry will draft a response to the planning board and share that with DCC members.

Please let me know if you have additional questions or need additional information.

Sincerely,
John Parry, Chair Durham Conservation Commission

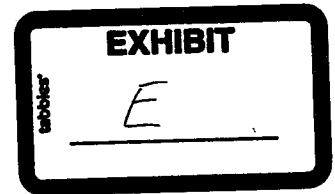
From: John Parry [mailto:dccparry@gmail.com]
Sent: Wednesday, February 26, 2014 11:11 AM
To: Michael Behrendt; Peter Wolfe
Cc: Ann Welsh; Coleen Fuerst; David Williams; external forward for dcarroll; Otho Wells; Peter Smith
Subject: 15 Madbury Rd. and 8 Mathes Terrace project

The Durham Conservation Commission is concerned that the project construction will occur within the Wetland setback area. Protection of this area and nearby Pettee Brook is important. The DCC has reviewed the four (4) criteria required for granting a CUP and believes, in regards to Standard 1, an alternative location outside of the wetland setback area is feasible when the size of the building is reduced. We do not recommend granting a CUP. [emphasis from MB]

Sincerely, John Parry



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



Property Referenced:
Tax Map 2, Lot 12-3

ZONING BOARD OF ADJUSTMENT

RE: PUBLIC HEARING on a petition submitted by Golden Goose Capital LLC, Westford, Massachusetts, on behalf of themselves and Rose Lawn Properties, Bedford, New Hampshire for an APPLICATION FOR VARIANCE from Article XIII, Section 175-59(A)(2)(d) of the Zoning Ordinance to permit the redevelopment of two properties into a multi-building, mixed-use development so that the proposed buildings shall be located within the wetlands setback. The properties involved are shown on Tax Map 2, Lots 12-3 & 12-4, are located at 17 & 21 Madbury Road, and are in the Central Business Zoning District.

DECISION OF THE BOARD

After review of the pertinent sections of the Zoning Ordinance of the Town of Durham, and after full consideration of the evidence submitted by Golden Goose Capital LLC and testimony given at a Public Hearing on August 13, 2013 a motion was made and seconded:

that the Zoning Board of Adjustment approve a petition submitted by Golden Goose Capital LLC, Westford, Massachusetts, on behalf of themselves and Rose Lawn Properties, Bedford, New Hampshire for an APPLICATION FOR VARIANCE from Article XIII, Section 175-59(A)(2)(d) to permit the erection of structures within the 75 ft wetland setback as shown on the MJS Engineering Plan dated 7/29/13, Exhibit 2.

The motion PASSED on a vote of 4-1-0 and the application for variance was granted.

8/21/13

Date

Sean Starkey, Chair

Durham Zoning Board of Adjustment

NOTE: Any person affected by this decision has the right to appeal this decision. If you wish to appeal, you must act within thirty (30) calendar days from the date of the hearing. The necessary first step before any appeal may be taken to the courts is to apply to the Zoning Board of Adjustment for a rehearing. The motion for rehearing must set forth all the grounds upon which you will base your appeal. See New Hampshire Statutes, RSA Chapter 677, for details.

Any questions should be directed to Tom Johnson, Zoning Administrator/Code Enforcement Officer.





TOWN OF DURHAM
15 NEWMARKET ROAD
DURHAM, NH 03824-2898
603-868-8064 • 603-868-8065
FAX 603-868-8033

Property Referenced:
Tax Map 2, Lot 12-3

www.ci.durham.nh.us
ZONING BOARD OF ADJUSTMENT

RE: PUBLIC HEARING on a petition submitted by Golden Goose Capital LLC, Westford, Massachusetts, on behalf of themselves and Rose Lawn Properties, Bedford, New Hampshire for an APPLICATION FOR VARIANCE from Article XII, Section 175-41(F)(7) and Section 175-53 of the Zoning Ordinance to permit the redevelopment of two properties into a multi-building, mixed-use development so that some of the proposed buildings shall contain some residential units on the first floor. The properties involved are shown on Tax Map 2, Lots 12-3 & 12-4, are located at 17 & 21 Madbury Road, and are in the Central Business Zoning District.


DECISION OF THE BOARD

After review of the pertinent sections of the Zoning Ordinance of the Town of Durham, and after full consideration of the evidence submitted by Golden Goose Capital LLC and testimony given at a Public Hearing on August 13, 2013 a motion was made and seconded:

that the Zoning Board of Adjustment approve a petition submitted by Golden Goose Capital LLC, Westford, Massachusetts, on behalf of themselves and Rose Lawn Properties, Bedford, New Hampshire for an APPLICATION FOR VARIANCE from Article XII, Section 175-53 and 175-41 (F)(7) to permit a mixed use development with residential on the first floor; the proposal offers first floor commercial space in no less than half of the proposed first floor square footage, not to include the northern most wing of the development as shown on the MJS Engineering Plan dated 7/29/13 Exhibit 2.

The motion PASSED on a vote of 5-0-0 and the application for variance was granted.

8/21/13
Date


Sean Starkey, Chair
Durham Zoning Board of Adjustment

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Any questions should be directed to Tom Johnson, Zoning Administrator/Code Enforcement Officer.

000132





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Property Referenced:
Tax Map 2, Lot 12-3

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ZONING BOARD OF ADJUSTMENT

RE: PUBLIC HEARING on a petition submitted by Golden Goose Capital LLC, Westford, Massachusetts, on behalf of themselves and Rose Lawn Properties, Bedford, New Hampshire for an APPLICATION FOR VARIANCE from Article XII, Section 175-41(F)(7) of the Zoning Ordinance to permit the redevelopment of two properties into a multi-building, mixed-use development so that some of the five-floor proposed buildings shall contain one floor of non-residential units and the other buildings shall contain all residential floors. The properties involved are shown on Tax Map 2, Lots 12-3 & 12-4, are located at 17 & 21 Madbury Road, and are in the Central Business Zoning District.

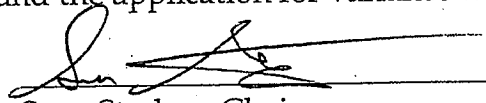
DECISION OF THE BOARD

After review of the pertinent sections of the Zoning Ordinance of the Town of Durham, and after full consideration of the evidence submitted by Golden Goose Capital LLC and testimony given at a Public Hearing on August 13, 2013 a motion was made and seconded:

that the Zoning Board of Adjustment approve a petition submitted by Golden Goose Capital LLC, Westford, Massachusetts, on behalf of themselves and Rose Lawn Properties, Bedford, New Hampshire for an APPLICATION FOR VARIANCE from Article XII, Section 175-41(F)(7) to permit the development of a 5 floor building in the northernmost wing of the development, where only the first floor is a nonresidential use as parking, per the plan submitted by MJS Engineering dated 7/29/13 and as shown in the conceptual designs during the presentation.

The motion PASSED on a vote of 4-1-0 and the application for variance was granted.

8/21/13
Date


Sean Starkey, Chair
Durham Zoning Board of Adjustment

NOTE: Any person affected by this decision has the right to appeal this decision. If you wish to appeal, you must act within thirty (30) calendar days from the date of the hearing. The necessary first step before any appeal may be taken to the courts is to apply to the Zoning Board of Adjustment for a rehearing. The motion for rehearing must set forth all the grounds upon which you will base your appeal. See New Hampshire Statutes, RSA Chapter 677, for details.

Any questions should be directed to Tom Johnson, Zoning Administrator/Code Enforcement Officer.

000133



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ZONING BOARD OF ADJUSTMENT

Property Referenced:
Tax Map 2, Lot 12-3

RE: PUBLIC HEARING on a petition submitted by Golden Goose Capital LLC, Westford, Massachusetts, on behalf of themselves and Rose Lawn Properties, Bedford, New Hampshire for an APPLICATION FOR VARIANCE from Article XII, Section 175-41(F)(2) of the Zoning Ordinance to permit the redevelopment of two properties into a multi-building, mixed-use development so that a portion of the front wall of the proposed principal buildings shall be set back up to 24 feet from Madbury Road. The properties involved are shown on Tax Map 2, Lots 12-3 & 12-4, are located at 17 & 21 Madbury Road, and are in the Central Business Zoning District.

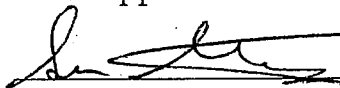
DECISION OF THE BOARD

After review of the pertinent sections of the Zoning Ordinance of the Town of Durham, and after full consideration of the evidence submitted by Golden Goose Capital LLC and testimony given at a Public Hearing on August 13, 2013 a motion was made and seconded:

that the Zoning Board of Adjustment approve a petition submitted by Golden Goose Capital LLC, Westford, Massachusetts, on behalf of themselves and Rose Lawn Properties, Bedford, New Hampshire for an APPLICATION FOR VARIANCE from Article XII, Section 175-41(F)(2) to permit a portion of the front wall of the principal buildings to be set back up to 24 feet from Madbury Road, as proposed on the MJS Engineering Plan dated 7/29/13, Exhibit 2.

The motion PASSED on a vote of 5-0-0 and the application for variance was granted.

8/21/13
Date


Sean Starkey, Chair
Durham Zoning Board of Adjustment

NOTE: Any person affected by this decision has the right to appeal this decision. If you wish to appeal, you must act within thirty (30) calendar days from the date of the hearing. The necessary first step before any appeal may be taken to the courts is to apply to the Zoning Board of Adjustment for a rehearing. The motion for rehearing must set forth all the grounds upon which you will base your appeal. See New Hampshire Statutes, RSA Chapter 677, for details.

Any questions should be directed to Tom Johnson, Zoning Administrator/Code Enforcement Officer

000134

DATE: 7/29/13
 SCALE: 1"=50'
 DESIGNER: MJS
 DRAWN BY: MS
 APPROVED BY: MJS
 DWG FILE: 017C1F

PROPOSED CONCEPTUAL
 DEVELOPMENT PLAN
 prepared for
 ROSE LAWN PROPERTIES, LLC &
 GP MADBURY 17, LLC
 17 & 21 MADBURY ROAD DURHAM, NH

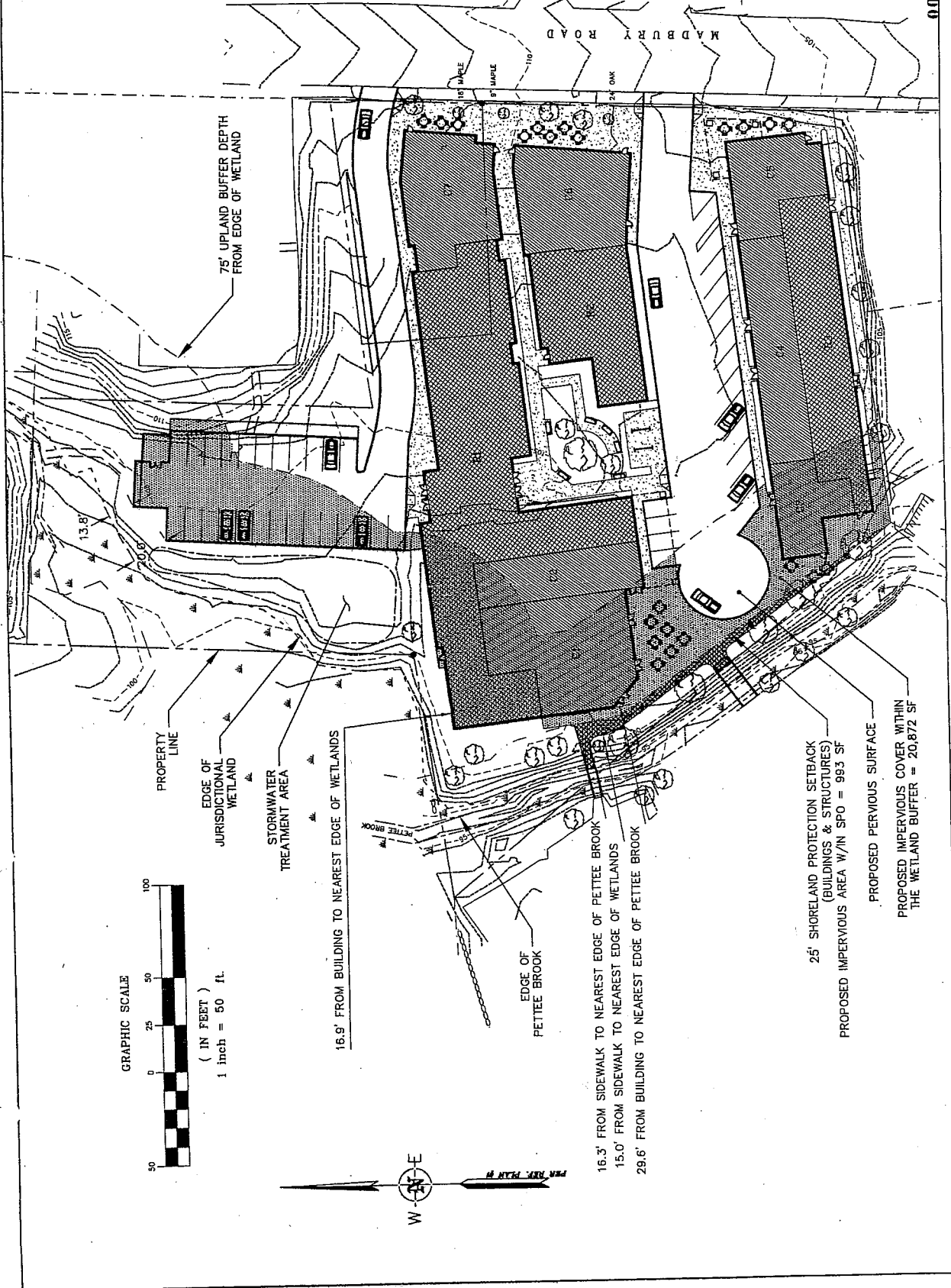
MJS ENGINEERING, PC

CIVIL
 ENVIRONMENTAL
 CONSULTING ENGINEERING

5 HARRISON STREET, P.O. BOX 339
 NEWBURY, NH 03850
 PHONE: (603) 659-4979, FAX: (603) 659-4627
 E-MAIL: MJS@MJS-ENGINEERING.COM

JOB: 13-007
 EXHIBIT 2

000047

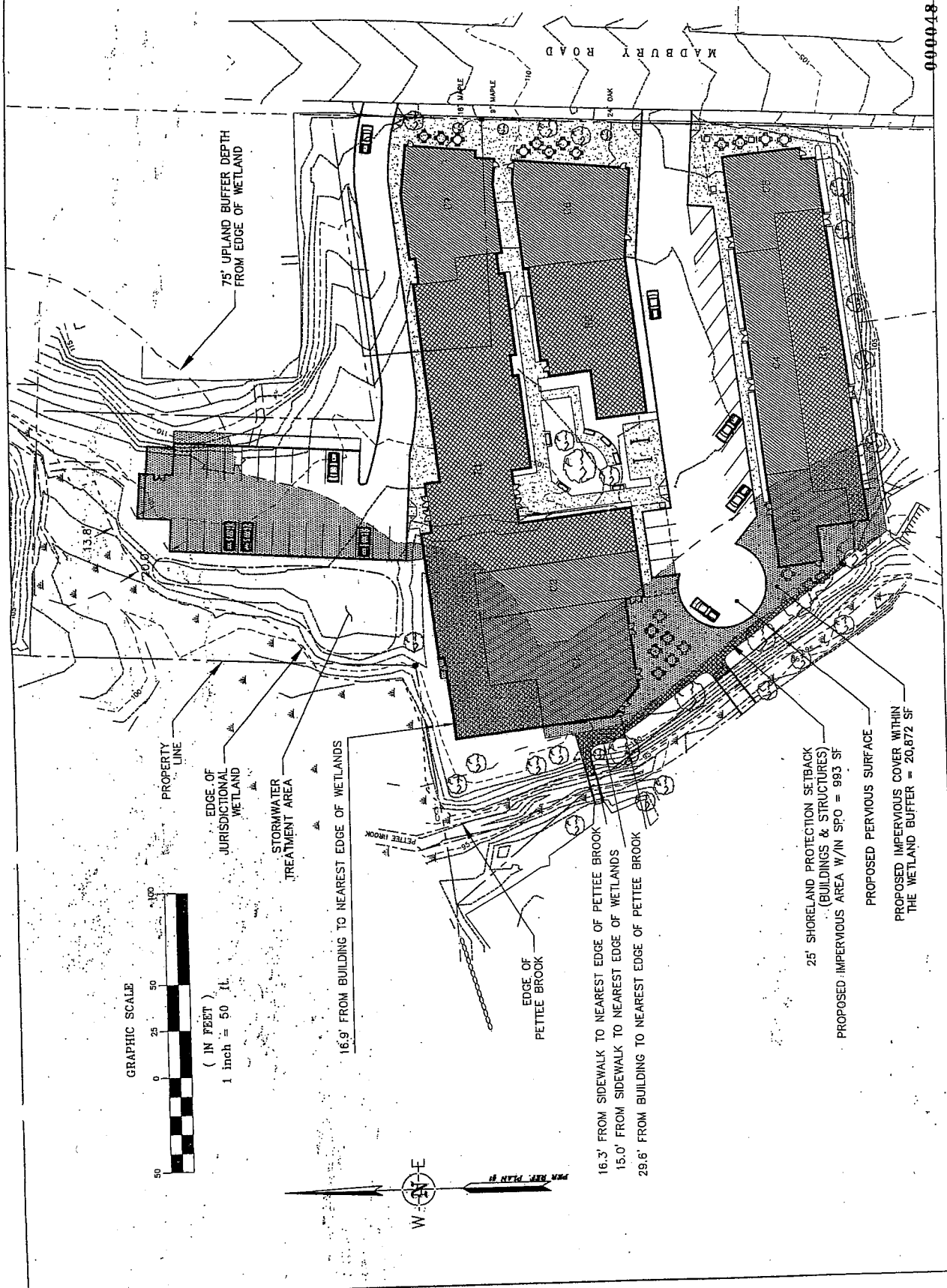


DATE: 7/29/13
 SCALE: 1" = 50'
 DESIGNER: MJS
 DRAWN BY: MS
 APPROVED BY: MJS
 DWG FILE: 017C1E

PROPOSED CONCEPTUAL
 DEVELOPMENT PLAN
 Prepared for
 ROSE LAWN PROPERTIES, LLC &
 GP MADBURY 17, LLC
 17 & 21 MADBURY ROAD
 DURHAM, NH

MJS ENGINEERING, PC
 CONSULTING ENGINEERING
 CIVIL
 ENVIRONMENTAL
 5 PARKROAD STREET, P.O. BOX 359
 NEWHAMPSHIRE, NH 03857
 PHONE: (603) 659-4979, FAX: (603) 659-4827
 E-MAIL: MJS@MJS-ENGINEERING.COM

JOB: 13-007
 EXHIBIT 2



GRAPHIC SCALE
 (IN FEET)
 1 inch = 50 ft.
 0 25 50 100

75' UPLAND BUFFER DEPTH
 FROM EDGE OF WETLAND

PROPERTY LINE
 EDGE OF JURISDICTIONAL WETLAND
 STORMWATER TREATMENT AREA

16.9' FROM BUILDING TO NEAREST EDGE OF WETLANDS

EDGE OF PETTEE BROOK

16.3' FROM SIDEWALK TO NEAREST EDGE OF PETTEE BROOK
 15.0' FROM SIDEWALK TO NEAREST EDGE OF WETLANDS
 29.6' FROM BUILDING TO NEAREST EDGE OF PETTEE BROOK

25' SHORELAND PROTECTION SETBACK (BUILDINGS & STRUCTURES)
 PROPOSED IMPERVIOUS AREA W/IN SPO = 993 SF

PROPOSED PERVIOUS SURFACE
 PROPOSED IMPERVIOUS COVER WITHIN THE WETLAND BUFFER = 20,872 SF

000048

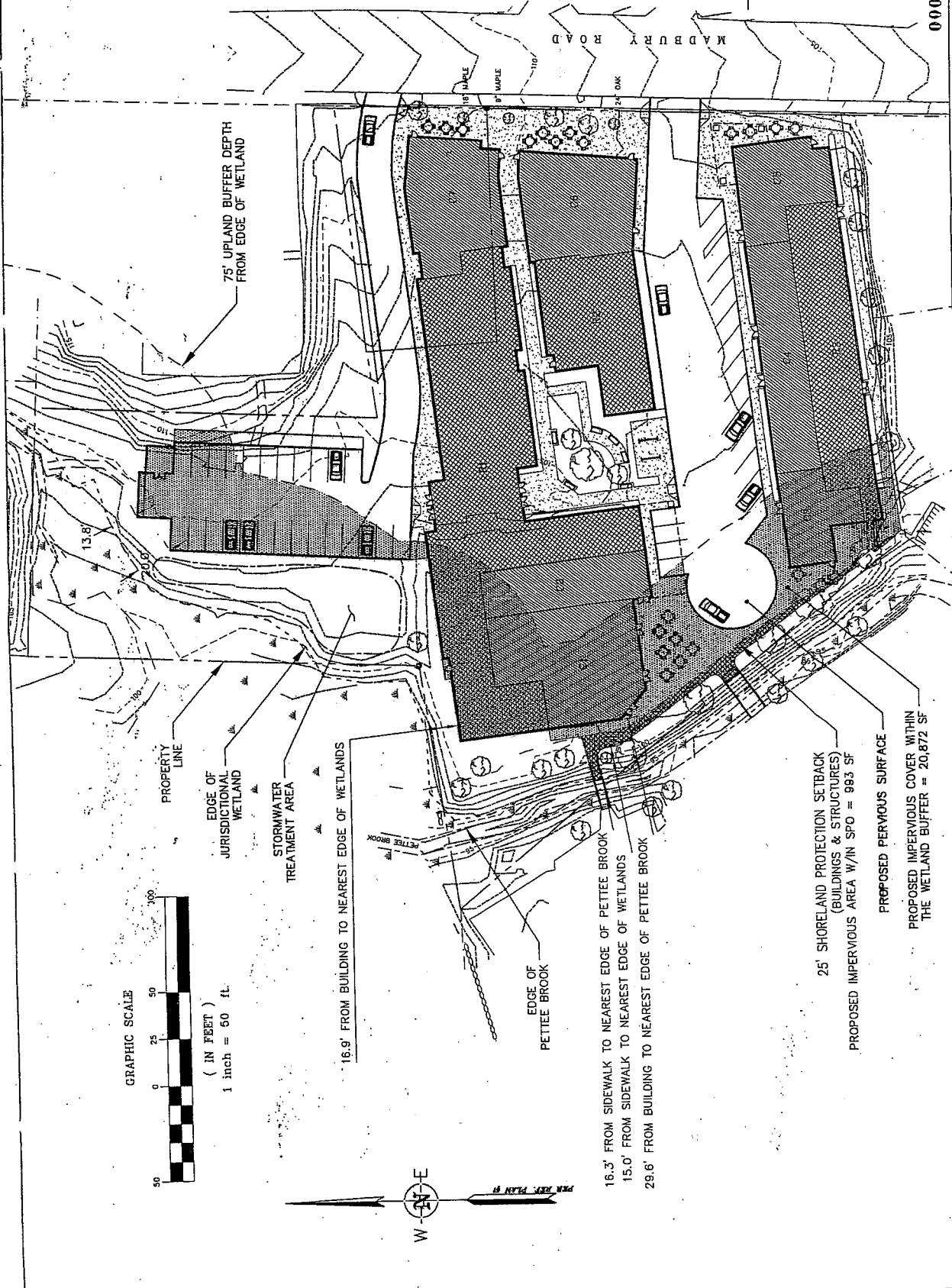
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 DRAWN BY: MS
 DESIGNER: MJS
 SCALE: 1"=50'
 DATE: 7/29/13
 SEAL:

PROPOSED CONCEPTUAL
 DEVELOPMENT PLAN
 prepared for
 ROSE LAWN PROPERTIES, LLC &
 GP MADBURY 17, LLC
 17 & 21 MADBURY ROAD
 DURHAM, NH

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 CIVIL
 5 HARRISON STREET, P.O. BOX 359
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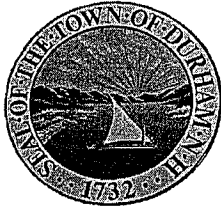
JOB: 13-007
 EXHIBIT 2

000049

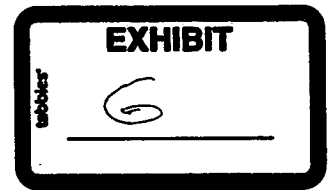


GRAPHIC SCALE
 (IN FEET)
 1 inch = 60 ft.

16.9' FROM BUILDING TO NEAREST EDGE OF WETLANDS
 EDGE OF PETTIE BROOK
 16.3' FROM SIDEWALK TO NEAREST EDGE OF PETTIE BROOK
 15.0' FROM SIDEWALK TO NEAREST EDGE OF WETLANDS
 29.6' FROM BUILDING TO NEAREST EDGE OF PETTIE BROOK
 25' SHORELAND PROTECTION SETBACK (BUILDINGS & STRUCTURES)
 PROPOSED IMPERVIOUS AREA W/IN SPO = 983 SF
 PROPOSED IMPERVIOUS SURFACE
 PROPOSED IMPERVIOUS COVER WITHIN THE WETLAND BUFFER = 20,872 SF



TOWN OF DURHAM
15 NEWMARKET RD
DURHAM, NH 03824-2898
603/868-8064 603/868-8065
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NOTICE OF DECISION

Project Name: Madbury Commons
Project description: Redevelopment of multifamily site formerly known as "The Greens" for mixed use project with student/multifamily housing for 525 residents, office/retail, several public spaces, and parking.
Address: 17-21 Madbury Road
Applicant: Golden Goose Properties, c/o Barrett Bilotta, Ken Rubin, and Eamonn Healy
Engineer/Designer: Michael Sievert, MJS Engineering
Landscape Architect: Robbi Woodburn
Architect: Shannon Alther, TMS Architects
Map and Lot: Tax Map 2, Lots 12-3 & 12-4
Zoning: Central Business District
Date of approval: February 12, 2014

PRECEDENT CONDITIONS

[Office use only. Date certified: _____; CO signed off _____;
As-built's received? _____; All surety returned: _____]

All of the precedent conditions below must be met by the applicant, at the expense of 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. Note that no precedent conditions involve actual construction (except where otherwise specified). All work shall be completed prior to issuance of a certificate of occupancy unless otherwise specified or a surety acceptable to the Town is posted. "Applicant," herein refers to the applicant and his/her/their/its agents, successors and assigns. Numerous precedent conditions require Planning Board approval. All of these items may be reviewed and approved together after standard notification to abutters and the public and a public hearing.

Please note. If all of the precedent conditions are not met within 18 calendar months to the day of the board's approval, i.e., - by August 12, 2015 (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.

Plan modifications

- 1) Plan modifications. Make the following modifications to the plan drawings, on the appropriate sheet(s) (Items do not need to be physically constructed as a precedent condition):
 - a) Fire lane. Provide appropriate signage for the fire lanes that shall be approved by the Fire Department.
 - b) Fire connections. Show fire department connections to be approved by the Fire Department.
 - c) Irrigation. Show information for irrigation or hose bibs.
 - d) Granite Curbing. Clarify that all vertical curbing will be 6" except where otherwise shown.
 - e) Transformer. Show screening from public view of the transformer.
 - f) Lighting. Submit lighting plan, including security lighting in pedestrian areas, and design of lighting fixtures (both poles and wall sconces) to be approved by the Planning Board.
 - g) Access to Basin. Provide access to the drainage basin and easements, as appropriate, for approval by the Durham Department of Public Works. Include a plan and cross section of any driveway, as appropriate.
 - h) Name for Court. Submit a name for the main court ("court," "way," "boulevard," etc.) to be approved by the Town and show on the plans.
 - i) Utility pole. Remove utility pole near northerly bridge.
 - j) Architecture colors, materials, street furniture, pavers, glass front and IOL lettering. Final colors and materials, street furniture, pavers [See condition 5, below] the exact design of the glass front above the IOL entrance, and the IOL lettering shall be approved by the Town Planner (An ad hoc committee, including two Planning Board members, shall be formed to work with the applicant, architect, and Town Planner on this). The siding is to be cementitious fiber or equivalent and the trim is to be cellular PVC or equivalent, or as approved by the Town Planner. [The Committee may also make a recommendation on the aesthetic of the bridge design, below.]
 - k) Approval block. Add/change the approval block on each page of drawings to read: "Final Approval by Durham Planning Board. Certified by Michael Behrendt, Town Planner _____ Date _____"
 - l) Porous pavement. Show porous pavement sign(s) at appropriate locations, which shall read as follows, or equivalent: "Porous asphalt pavement for stormwater management. Semi-annual vacuuming is required. The following are prohibited: winter sanding, seal coating, tractor trailers/heavy load vehicles, and handling of hazardous waste."
 - m) Solar zones. Architectural drawings shall include dotted lines that identify solar zones on southern-exposure portions of the roofs of each building. These solar zones shall be

spaces that are unshaded, un-penetrated, and free of obstructions and may thus serve as a suitable place where solar panels can be installed at a future date. Systems may be installed in the future without need for the property owner to return to any Durham land use board.

- n) Egress details. Show all doors, concrete pads, and egress paths.

Notes on plans

2) Notes on plans. Add the following notes on the plans, on the appropriate sheet(s):

- a) Inspections. "All inspection/observation services for the installation of water, wastewater, stormwater management, porous pavement, 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."
- b) Underground utilities. "All utility piping and wiring shall be located underground."
- c) Debris. "No cut trees, stumps, debris, junk, rubbish, or other waste materials shall be buried in the land, or left or deposited on site at the time the certificate of occupancy is issued, or at any time after that."
- d) Maintenance of Landscaping. "The provision for maintenance of landscaping materials as specified in Section 175-124 – Maintenance Requirements of the Article XXII – Landscaping in the Durham Zoning Ordinance, shall apply. The property owner shall be responsible for maintenance of the landscaping in perpetuity."
- e) Tree Planting. "Trees should be planted using commonly accepted best management practices, such as those listed in ANSI A300 Part 6: Tree Maintenance Standard Practices (Transplanting), which is available from the International Society of Landscape Architects." Add to the Landscaping plan.
- f) BMP's for Trees. "Best management practices shall be followed for the protection of existing trees and vegetation that are planned to be preserved. Also, the provisions of Section 175-123 – Protection During Construction under Article XXII - Landscaping of the Durham Zoning Ordinance shall be followed."
- g) Space for Trees. "The contractor shall ensure that there is adequate rooting space and overhead space and fit for the trees to be installed." Add to the Landscaping plan.
- h) Tree Protection. "All existing trees on the property shall be inspected by a certified arborist after construction. Remedial tree care shall be applied as needed to mitigate any damage caused by construction (pruning of broken branches or exposed roots, mulching, wounds addressed, watering, etc.)."
- i) Protective Fencing. "Protective fencing shall be installed around all existing trees and wooded areas."
- j) Mulching. "Trees, ground cover, and shrub beds shall be mulched to a depth of 3 inches on level ground and 4 inches on sloped ground and brook banks."

- k) Mulching During Construction. "Prior to construction: apply 3- 4 inches of bark mulch or wood chips to cover the root system of the existing trees that are enclosed within the temporary fencing. Maintain this mulch until construction is completed."
- l) Tree Treatment After Construction: "Upon completion, provide water and other tree care as appropriate during the first growing season (May through October)."
- m) Pettee Brook Fencing. "Erect protective fencing outside of the brook bank on the 17-21 Madbury property to keep construction equipment from this area and protect root systems."
- n) Pettee Brook Invasives. "For those invasive plants appropriate for manual removal the contractor shall carefully excavate smaller stumps, roots and vines using hand tools as needed, while preserving and protecting the root mass of the native trees and shrubs. Larger stumps that are not possible to excavate by hand shall be left, but treated with an appropriate herbicide to kill the plant and prevent resprouting. The contractor shall store, remove and dispose of all parts of invasive species from the site, using commonly accepted practices, so that those plants do not spread via roots, fruit or any other part."
- o) Arborist. "A qualified arborist shall oversee construction work around existing trees to be preserved and work shall be conducted in accordance with the arborist's guidelines. "
- p) Tree Impact. "If feasible, conduct construction near existing trees during the winter or dormant season, when stress to trees will be less."
- q) Vegetation Root Zone. "To the extent feasible, trees and shrubs to be preserved shall be protected at or along the critical root zone by fencing sufficiently substantial to make clear the intent to protect them. (The critical root zone is a circle with radius equal to 1.5 feet per 1 inch of trunk diameter. If more than 40% of that critical root zone will be disturbed, the tree may be damaged beyond recovery.)"
- r) Severing Roots. "Where roots of existing trees will be disturbed, sever roots cleanly by hand or with a rock saw, rather than using heavy equipment, to minimize tree root system damage. (If too much of the tree root system is removed or damaged by construction, the tree may decline or die.)"
- s) Compacted Soils. "Care shall be taken to avoid passes by heavy equipment near planted areas and trees to be preserved, especially when the soil is wet. (Compacted soils have less open pore space, and hence less space for moisture and oxygen needed to sustain tree health. Even one pass with heavy equipment can cause soil compaction.)"
- t) Damage to Trees. "In the event that any trees to be preserved are damaged or destroyed the applicant shall notify the Durham Department of Public Works who may stipulate remediation, as appropriate."
- u) Sidewalk Replacement. "The applicant shall rebuild the sidewalk along Madbury Road in front of the project."

- v) Fertilizer. "Only low phosphorus/slow release nitrogen fertilizers for landscaping materials may be used."
- w) SWPPP. "This project will disturb over one acre of ground cover and/or meets other thresholds related to permit criteria for EPA National Pollutant Discharge Elimination System (NPDES) compliance. The site contractor is responsible for development and implementation of a Storm Water Pollution Prevention Plan (SWPPP), submission of a Notice of Intent (NOI) to EPA, inspection and maintenance of sediment control measures, documentation of maintenance activities, and submission a Notice of Termination (NOT) to EPA. The site contractor is also responsible to comply with all other Federal, State and Local stormwater or NPDES requirements."
- x) 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."
- y) 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".
- z) 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."
- aa) Stormwater infrastructure. "All stormwater management infrastructure shall be designed and installed in accordance with Design Standards of the Durham Site Plan Review Regulations. The infrastructure shall be owned by the property owner and it shall be operated and maintained by the property owner to protect the quality of on-site and off-site water resources and wetland habitat.
- bb) Snow removal. "Snow shall be removed from the site, as needed, and shall not be pushed against trees or other vegetation."
- cc) Additional information. "For more information about this site plan, or to see the complete plan set, contact the Town of Durham Planning Department, 15 Newmarket Road, Durham, NH 03824. (603) 868-8064."
- dd) Notice of Decision. "It is the applicant's, site contractor's, and building contractor's responsibility 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."
- ee) Road maintenance. "The use of sodium chloride based materials for winter road maintenance shall be the minimum necessary for roadway safety. Since the development calls for the use of porous asphalt, sand should not be used in those areas. However, sand

may be used in other areas not using porous asphalt to cut down on the amount of sodium chloride based materials used.”

Construction Management

4) **Construction Management Plan.** The Construction Management Plan shall be reviewed and approved by Durham Public Works. Modify the Construction Management Plan to include all of the following information/statements:

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

- Mobilization
(workers on site):

6:00 a.m. to 6:00 p.m. Monday through Thursday
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
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- 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.

b) **Laydown.** Show the laydown and delivery area to be used.

c) **Signs.** Show where construction zone signs and pedestrian crosswalk signs, if applicable, will be posted, if appropriate.

d) **Construction Schedule.** Include a detailed construction schedule. Alternatively, this may be provided with the building permit application to the Building Official.

e) **Trees and Landscaping.** See the landscaping plan and notes in the Notice of Approval for requirements regarding trees and landscaping.

f) **Trucks.** “All truck traffic will follow standard State and Town posted trucking laws and requirements. Trucks (serving the project) accessing the site from outside of Durham shall be restricted to the following route, unless otherwise approved by the Town Management Staff: for trucks coming to the site - NH Route 108 to Main Street (over Church Hill), right onto Madbury Road; for trucks leaving the site - right onto Madbury Road, right onto Pettee Brook Lane, left onto Main Street, to Route 108.”

g) **Parking for Workers.** “Workers shall park on site, may use public parking if they pay for it as required, or may make other arrangements if acceptable to the Police Chief.”

- h) Meeting with Building Official. "The applicant/contractor shall meet with the Building Official at least two months (60 days) prior to the start of construction in order to discuss the building process and to plan for the proper submittal of all structural, mechanical, electrical, plumbing and other plans. The Building Official may reduce this timeframe at his reasonable discretion for good cause."
- i) Construction Management Plan. "The applicant/contractor shall comply with the provisions contained in the Construction Management Plan. The Durham Notice of Decision shall take precedent where there is any conflict between the Durham Notice of Decision and the Construction Management Plan."
- j) Weekly meetings. "The applicant/contractor shall hold weekly meetings, or talk by phone as mutually agreed upon, with the Durham Department of Public Works and other appropriate Town staff (as determined by the Durham Department of Public Works) to discuss the construction process and the schedule for the upcoming week. In addition, the applicant/contractor shall be responsible for communicating with appropriate Town staff should issues arise in the interim."
- k) Road and Sidewalk Obstruction. "In accordance with Planning Board requirements, 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 activity or delivery that would obstruct any road or sidewalk and the Police Department will determine whether or not a police detail is needed. In all cases, the Police Department shall determine when a police officer is needed on site. Police details shall be billed for a minimum of 4 hours at the prevailing billing rate used by the Police Department."
- l) Lane Closure. "The Durham Police will not allow any construction or delivery that would cause any lane closure during the period of the last week in August through Labor Day weekend that would coincide with UNH 'move-in'."
- m) Departures from Plan. "In accordance with Planning Board requirements, the Durham Department of Public Works may approve reasonable departures from the provisions in the Construction Management Plan for good cause."
- n) Construction Violations. "In accordance with Planning Board requirements (and pursuant to RSA 676:15), upon failure of the applicant/contractor to comply with the requirements of the Construction Management Plan or other orders related to the construction of the site made by the Durham Public Works Director, Police Chief, Fire Chief, or Building Official, the Town Administrator, upon recommendation of the Durham Public Works Director, Police Chief, Fire Chief, or Building Official may order the job site closed and/or assess a fine. The first fine shall be \$275.00. Each subsequent fine shall be \$550.00. Each day that a violation continues shall be considered a separate offense unless the Town determines that a remedy is in process and grants and waives a fine in recognition of corrective effort put forth in the time allotted to implement such remedies."
- o) Expedited Review. "In accordance with Town policy, the applicant's building permit fees cover the plans review conducted by the Durham Building Official at the building

permit stage. It is understood that should the applicant seek a quicker turnaround than what is available with an in-house review, the applicant has the option of paying additional fees to enable the Building Official to hire an outside reviewer.”

- p) Fire Inspections. “The Town of Durham Fire Code Official, or designee, shall perform on-site inspections during fire code and life-safety matters. The applicant shall pay the costs of any supplemental staff hired by the Town to assist the Fire Department in its inspection of this project.”
- q) Occupancy. “There shall be no occupancy on the site of existing buildings while construction is ongoing unless approved by the Building Official.”
- r) Plan – Porous Pavement. Include a construction sequencing plan to protect the porous pavement and porous paver section and subsoil during construction. Due to the limited space on site it is anticipated that this area will be trafficked during construction. Include post construction soil testing be performed to ensure that the sand "filter course" and stone courses maintain the infiltration capabilities assumed in the design.
- s) Pro Con. There are multiple references to "Pro Con". Unless this is the contractor for the project this should be revised or a note added that the plan will be revised once the actual contractor is selected.
- t) Pettee Brook. “Due to the proximity of the property to Pettee Brook, all stockpiles, concrete washout areas, chemicals, fertilizers, hazardous materials, etc. shall be located as far from the brook as possible and at a minimum of 50 feet away.”
- u) Fencing. “The site is to be fenced in during the duration of project along Madbury Road and other pedestrian traffic areas, or as stipulated by the Building Official.”
- v) Knox Box. “If the construction site is to be closed in, a Knox Box, Knox Lock, or Town Lock shall be incorporated into the fence gates during construction to allow for emergency access by the Fire Department.”
- w) Phasing. The applicant may phase the project and receive multiple Certificates of Occupancy with the approval of the Town Building Code Official. In the event of a phased development, the exterior construction of all buildings must be complete such that only interior work to residential dwelling units or commercial units remain. Further, the site must be free of debris or other safety hazards in order to receive a Certificate of Occupancy.
- w) Blasting BMP's. Add the following language to the Construction Management Plan, after obtaining approval from the Fire Department. Modify language as stipulated by the Fire Department.

A Town of Durham Blasting Permit shall be obtained from the Durham Fire Department prior to conducting any blasting, and all blasting activities shall be conducted as follows:

- I. **General Procedure**. Blasting and on-site chipping or hammering (of stone) is restricted to the hours of 9:00 a.m. to 4:00 p.m. Monday through Friday (See *Hours of Construction* in this document). There shall be no processing of stone on site. A

notice of intent to blast shall be provided at least 24 hours in advance via signage placed in appropriate places and other appropriate media provided by the Town (such as the Town's website and Friday Updates). The applicant is encouraged (but not required) to do all blasting during the summer when UNH is out of session."

II. Best Management Practices for Blasting. All activities related to blasting shall be performed in accordance with the following New Hampshire Department of Environmental Services Blasting Best Management Practices (BMPs) to prevent contamination of groundwater including preparing, reviewing and following an approved blasting plan; proper drilling, explosive handing and loading procedures; observing the entire blasting procedures; evaluating blasting performance; and handling and storage of blasted rock. The blasting plan shall be approved by the Durham Fire Department. In addition, the blasting plan shall be reviewed and approved by a Third-Party Consultant who shall provide nonbinding comments to the applicant and to the Fire Department. The Town of Durham shall propose three names for the Third-Party Consultant who shall then be selected by the applicant.

1. **Loading practices.** The following blasthole loading practices to minimize environmental effects shall be followed:

- (a) Drilling logs shall be maintained by the driller and communicated directly to the blaster. The logs shall indicate depths and lengths of voids, cavities, and fault zones or other weak zones encountered as well as groundwater conditions.
- (b) Explosive products shall be managed on-site so that they are either used in the borehole, returned to the the delivery vehicle, or placed in secure containers for off-site disposal.
- (c) Spillage around the borehole shall either be placed in the borehole or cleaned up and returned to an appropriate vehicle for handling or placement in secured containers for off-site disposal.
- (d) Loaded explosives shall be detonated as soon as possible and shall not be left in the blastholes overnight, unless weather or other safety concerns reasonably dictate that detonation should be postponed.
- (e) Loading equipment shall be cleaned in an area where wastewater can be properly contained and handled in a manner that prevents release of contaminants to the environment.
- (f) Explosives shall be loaded to maintain good continuity in the column load to promote complete detonation. Industry accepted loading practices for priming, stemming, decking and column rise need to be attended to.

2. **Explosive Selection.** The following BMPs shall be followed to reduce the potential for groundwater contamination when explosives are used:

- (a) Explosive products shall be selected that are appropriate for site conditions and safe blast execution.

- (b) Explosive products shall be selected that have the appropriate water resistance for the site conditions present to minimize the potential for hazardous effect of the product upon groundwater.
3. **Prevention of Misfires.** Appropriate practices shall be developed and implemented to prevent misfires.
4. **Muck Pile Management.** Muck piles (the blasted pieces of rock) and rock piles shall be managed in a manner to reduce the potential for contamination by implementing the following measures:
- (a) Remove the muck pile from the blast area as soon as reasonably possible.
 - (b) Manage the interaction of blasted rock piles and stormwater to prevent contamination of water supply wells or surface water.
5. **Spill Prevention Measures and Spill Mitigation.** Spill prevention and spill mitigation measures shall be implemented to prevent the release of fuel and other related substances to the environment. The measures shall include at a minimum:
- (a) The fuel storage requirements shall include:
 - 1. Storage of regulated substances on an impervious surface.
 - 2. Secure storage areas against unauthorized entry.
 - 3. Label regulated containers clearly and visibly.
 - 4. Inspect storage areas weekly.
 - 5. Cover regulated containers in outside storage areas.
 - 6. Wherever possible, keep regulated containers that are stored outside more than 50 feet from surface water and storm drains, 75 feet from private wells, and 400 feet from public wells.
 - 7. Secondary containment is required for containers containing regulated substances stored outside, except for on premise use heating fuel tanks, or aboveground or underground storage tanks otherwise regulated.
 - (b) The fuel handling requirements shall include:
 - 1. Except when in use, keep containers containing regulated substances closed and sealed.
 - 2. Place drip pans under spigots, valves, and pumps.
 - 3. Have spill control and containment equipment readily available in all work areas.
 - 4. Use funnels and drip pans when transferring regulated substances.
 - 5. Perform transfers of regulated substances over an impervious surface.
 - (c) The training of on-site employees and the on-site posting of release response information describing what to do in the event of a spill of regulated substances.
 - (d) Fueling and maintenance of excavation, earthmoving and other construction related equipment will comply with the regulations of the New Hampshire

Department of Environmental Services [note these requirements are summarized in WD-DWGB-22-6 Best Management Practices for Fueling and Maintenance of Excavation and Earthmoving Equipment" or its successor document. (see <http://des.nh.gov/organization/commissioner/pip/factsheets/dwgb/document/s/dwgb-22-6.pdf>)

III. Pre-Blast Condition Survey: a minimum of 30 days prior to conducting any blasting, the applicant shall prepare a Pre-Blast Condition Survey Plan (PBS Plan) and submit it to the Third-Party Consultant and the Durham Fire Department for review and approval. The approved PBS Plan shall be implemented accordingly. The PBS Plan shall include pre-blast structural condition inspections of all existing structures and conditions on the site, adjacent to the site or in the vicinity of the site. The approved PBS Plan shall extend to such structures or conditions as may be affected by the applicant's construction operations and the inspections shall be performed on all structures, including homes, foundations, driveways, roadbeds, swimming pools, wells and mobile homes, within a radius of 250' of the subject lot. The blasting contractor and the owner of the property being inspected shall sign all such inspections once completed. If an owner refuses to allow for the conducting of a pre-blast conditions inspection or sign a pre-blast conditions inspection form for whatever reasons the applicant shall note this on the form. The blasting contractor shall make at least three attempts to notify the owner of the need for such inspections, the last such attempt shall include a written notification by certified mail and individual to contact.

6. The pre-blast structural condition inspection shall be performed in the presence of the property owner or an owner's representative and shall consist of photographs and a written description of the interior and exterior condition of each of the structures examined. Descriptions shall locate any existing cracks, damage, or other defects, and shall include such information so as to make it possible to determine the effect, if any, of the construction operations on the defect. A good quality videotape survey with appropriate audio description of locations, conditions, and defects can be used in lieu of a written form. Copies of all inspection forms and photographs shall be submitted to the Durham Fire Department and kept for a minimum of seven (7) years on file with the Durham Fire Department. The Third-Party Consultant shall review the data collected as part of the PBS Plan to ensure completeness and compliance with the PBS Plan.
7. The individual person conducting the inspections shall give written notice, not less than 10 days in advance, to the owner of the property concerned and tenants of the property. The notice shall state the dates on which inspections are to be made. Copies of all notices shall be provided to the Durham Fire Chief.
8. A Blasting Permit shall only be issued after all pre-blast structural condition inspections have been performed.
9. Upon completion of all earth/rock excavation and blasting work, the applicant shall conduct a post-blast condition inspection of any properties, structures and conditions for which complaints of damage have been received or damage claims have been filed. Notice shall be given to all interested parties so they may be

present during the final inspection. Records of the final inspection shall be distributed in the same manner as the original pre-blast structural condition inspection.

10. The Third-Party Consultant shall verify and assess the monitoring equipment utilized and calibration records.
11. The applicant shall hold a neighborhood meeting prior to any blasting to educate the neighborhood about the proposed blasting. The applicant shall send a letter in the mail, in advance, to all property owners within 250 feet of the subject lot notifying them about the neighborhood meeting.

Other precedent conditions

- 5) Pavers. Submit physical samples of final approved pavers to the Planning Department, as presented to the Planning Board. Submit pattern and final colors (if more than 1 color is to be used) of pavers to the Planning Board for approval.
- 6) Signage. Submit a sign master plan to the Planning Board for approval.
- 7) Utility Connection Permit. The applicant shall submit a complete Utility Connection Permit Application for connection to the Town's water, stormwater, and wastewater systems to the Department of Public Works for review and approval in accordance with the Durham Water and Wastewater ordinances. The applicant shall provide all necessary information and documentation for a public hearing (if required) to be held in support of the proposed sewer extension and wastewater connection as required by Chapter 106 of the Durham Town Code. Representatives of the applicant shall be present at the Public Hearing to describe the project and answer questions.
- 8) Tighe & Bond. The applicant shall address all substantive comments included in the design review letter prepared by Tighe & Bond to the satisfaction of the Department of Public Works. All subsequent Plan revisions shall be incorporated into the project Construction Plans and Specifications and provided for review and approval by the Department of Public Works.
- 9) Stormwater Plan. The applicant shall submit for review and approval an updated Stormwater Management Plan in accordance with the Durham Site Plan Review Regulations Section 9.03 to the Department of Public Works. The Stormwater Management Plan shall include an operations and maintenance plan with a description of how all components of the stormwater management system shall be accessed for maintenance. No point discharges are to be directed toward abutting properties and provisions are to be made to prevent short circuiting between infiltration structures and foundation drains. Any discharge to the Town's stormwater management system shall not increase the discharge rate or volume above what is discharging from the site, nor violate any aspect of the Town's MS4 Permit.
- 10) Utility Easements. Where applicable, the applicant shall grant utility easements of adequate width for the purpose of access and maintenance to all underground service connections and public water and wastewater infrastructure (piping, valves, manholes, etc.) located on the premises.

- 11) Fire Access. NFPA 1, 2009 Edition requires access to the buildings. Since it has been indicated that the buildings will have sprinkler systems, then all exterior doors must be accessible within 450 feet from a fire department access road, fire lane, etc. Also, one exterior door from each building must be accessible within 50 feet. Obtain confirmation from the Fire Department that this condition is met.
- 13) 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.
- 14) Addressing. Develop a numbering system for the buildings to be approved by the Fire and Police Departments.
- 15) Lot combination. The two lots shall be combined (merged) in conformance with RSA 679:39a and Town policy (providing for administrative review).
- 16) Outstanding fees. The applicant shall pay any fees that are due (except for the parking impact fee which is due prior to the CO, unless modified per subsequent condition 4, below).
- 17) Construction Guarantee. The applicant will provide completion assurance that is satisfactory to the Town. Such assurances will be provided either through the General Contractor, the lending Bank or Golden Goose Capital in the form of a surety, performance bond, letter of credit or cash deposit to be approved by the Department of Public Works (and the Town Business Manager for form and type). The assurance shall be in an amount sufficient to ensure the completion of all driveways, water service, sewage disposal, drainage, erosion control, and other infrastructure/improvements, and shall be effective until work is completed by the applicant. The surety may be released in phases as portions of the secured improvements are finalized. A cash deposit or letter of credit is an acceptable form.”
- 18) Maintenance Guarantee. The applicant agrees that all site maintenance work will be installed in a correct and workmanlike manner. To satisfy the Town that the applicant meets this obligation, the applicant agrees to create a General Maintenance Reserve bank account from operating cash flow sufficient to fund necessary maintenance work during the first two years of operations. The General Maintenance Reserve Fund shall be in an amount of two percent of the estimated site (not building) improvement costs and shall remain in effect for two years after site improvements are completed. If repairs are subsequently needed and are not satisfactorily installed by the developer, then the General Maintenance Reserve Fund may be used to complete/install the improvements. Applicant will deposit cash into a designated account at Citizens Bank which will be in the control of the Town of Durham. Unused funds will be returned to the applicant upon the expiration of two years.”
- 19) “Landscaping Guarantee. The applicant agrees that all site maintenance work will be installed in a correct and workmanlike manner. To satisfy the Town that the applicant meets this obligation, the applicant agrees to create a Landscape Maintenance Reserve Fund account from operating cash flow to guarantee the success of the landscaping

materials. The Landscape Maintenance Reserve Fund account shall be funded 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 within this two-year period, as reasonably determined by the Department of Public Works, then the applicant shall promptly replace those materials (subject to weather constraints). If the applicant does not replace those materials within a reasonable period as determined by the Department of Public Works then the Town may use the Landscape Maintenance Reserve Fund account to pay for and install the materials.

Applicant will deposit cash into a designated account at Citizens Bank which will be in the control of the Town of Durham. Unused funds will be returned to the applicant upon the expiration of two years. The funds for this guarantee and/or those specified above may be combined with the approval of the Business Manager.”

- 20) Property and Security Management Plan. The property management plan shall be modified to incorporate the following elements, if these are not already included in the plan. The plan may be modified by the applicant in the future with the approval of the Town Planner in consultation with the Police, Fire, Public Works, and Building Departments, as appropriate (pertinent and substantive elements of the plan as determined by the Town Planner).
- a) rules and regulations of the development;
 - b) night-time security for the site from Thursday night through Saturday night, from 9:00 p.m. to 2:00 a.m. (the following morning);
 - c) acknowledgement that if problems persist on the property, as reasonably determined by the Police Chief, with timely notification to the property owner, then: i) the property owner shall provide full time security 7 days a week from 8:00 p.m. to 6:00 a.m. until the problems are rectified, as reasonably determined by the Police Chief; or ii) an alternative corrective measure, as approved by the Police Chief, may be implemented until the problems are rectified, as reasonably determined by the Police Chief;
 - d) contact information for a primary agent with authority to resolve security and other issues and who can be reached 24 hours a day/7 days a week;
 - e) contact information for a secondary agent, who can address the concerns, above, if the primary agent is not available;
 - f) assurance that all information will be updated with the Police, Fire, and Building Departments, as needed;
 - g) permission for the Building Official to have access to the development to enforce the Durham Town Code Section 118:11 for Offensive Material (Waste Material), as needed; and
 - h) signature and title of the party responsible for the plan and date

- i) provision that at least one full-time staff member and at least one courtesy officer shall reside on-site, or that there be somebody on site, or immediately available to the site, overseeing the operation, 24 hours a day, 7 days a week.
 - j) The following statement: "It is understood that professional management of the site is critical and the Town of Durham expects that the ownership/management will be highly diligent in overseeing and suppressing any activity on the part of residential tenants or their visitors or any other parties on site which would be unreasonably disturbing to any of the residents or neighbors of the project, including loud parties, especially late at night, and other unruly and disturbing behavior. Owner/Manager agrees to cooperate with the Town of Durham to ensure all appropriate measures are being followed to suppress unruly or noisy behavior."
 - k) Clarify the discrepancy between the plan which refers to 2 outside bike storage areas and the drawings which show 3 outside areas.
- 21) Architectural plans. Submit two final sets of 11x17 paper copies in color of the approved architectural elevations in color (one for the Building Official).
 - 22) 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 mylars; b) one large set of black line drawings; c) one set of 11"x17" drawings; plus d) one electronic version by pdf or CD. Each individual sheet in every set of drawings must be stamped and signed by the land surveyor, engineer, or architect (licensed in the State of New Hampshire) 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. (The primary set of plans was last received January 2, 2014.)
 - 23) Alteration of Terrain. Obtain an Alteration of Terrain permit. If significant changes are stipulated by NHDES the changes will be reviewed by the Planning Board.
 - 24) Bridge Maintenance. Finalize ownership/maintenance/contractual arrangements for the two bridges, as appropriate, with the Town Administrator to implement maintenance responsibilities. The Planning Board recommends the following: a) The Town of Durham shall maintain the entire large bridge and appurtenant structures (including the steps and handicap ramp) including snow removal on the bridge itself; however the applicant shall be responsible for removal of snow on the steps and handicap ramp; and b) The applicant maintain the small bridge and appurtenant structures.
 - 25) Interoperability Lab. The applicant must certify that it has a fully executed lease with the UNH Interoperability Laboratory.
 - 26) Beer Kegs. At the Police Chief's request modify Property Management Plan to add under "Community Rules" that there is a no beer keg policy.
 - 27) Bridge Designs. Final engineered plans for the two bridges, with elevations, plans, and cross section(s) and samples of materials shall be presented to the Planning Board for approval. The final designs will be based upon the drawings shown to the Planning Board on January 29, 2014. (Note that the design of the spanning arch should appear to be

support the arch, through use of voussoirs or other appropriate methods.) It should be verified that all components are outside the 100 year flood plain. [The Color Committee, above, may make a recommendation on the aesthetic design of the bridge.]

- 29) Fire Department Requirements. Confirm with the Fire Department that the following requirements will be met:
- a) Access. NFPA 1, 2009 Edition requires access to the buildings. Since it has been indicated that the buildings will have sprinkler systems, then all exterior doors must be accessible within 450 feet from a fire department access road, fire lane, etc. One exterior door from each building must be accessible within 50 feet. The plans appear to meet these requirements but this must be confirmed with the Fire Department.
 - b) Yard Hydrant. The fire department has no objection to having the hydrant set back towards the sidewalk to accommodate a tree or other vegetation provided that the hydrant is still installed per NFPA 1 specifications and is angled in a manner that will allow unobstructed access to each outlet now and when the vegetation matures.
- 30) Work on Town Property. Complete a Memorandum of Understanding (MOU) or similar agreement between the Town and the developer for any work within the Madbury Road right of way including the reconstruction of the sidewalk, bridges, sewer main, Pettee Brook rehabilitation and any other work on Town owned land.
- 31) Easements. Obtain easements, if needed, for: a) the drainage rip rap proposed on the Town property adjacent to Pettee Brook; b) on Tax Map 2, Lot 12 2 for the construction and maintenance of the Stormwater swale at the northeast of the site; and c) other items as required.
- 32) Signature. Signature by the applicant below acknowledging all terms and conditions of this approval herein.

Golden Goose Capital, LLC

Ken Rubin, President

Date

Eamonn Healy, Chief Financial Officer

Date

Barrett Bilotta, Chief Operating Officer

Date

Peter Wolfe, Planning Board Chair or designee

Date

SUBSEQUENT AND GENERAL TERMS AND CONDITIONS

All of the conditions below are also attached to this approval.

Conditions to be met prior to commencing any site work

- 1) Site work. No significant site work or ground disturbance may be undertaken until:
 - a) all of the precedent conditions are met or relieved by the Town
 - b) the preconstruction meeting with Town staff has taken place (See below);
 - 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.
 - e) All Utility Connection fees are be paid and approvals of Town of Durham Utility Connection and Driveway Permits are obtained.
 - f) A copy of the SWPPP is provided to the Durham Department of Public Works (See above).
- 2) Preconstruction meeting. Contact Michael Behrendt, the Town Planner, at (603) 868-8064 to arrange for the preconstruction meeting.
- 3) Pettee Brook Restoration. A preconstruction conference, as called out in the Brook Restoration Notes #1 and #5 on sheet L1 of the plan set, which calls for flagging trees and shrubs to remain, shall be held with the Landscape Architect, contractor, Durham Tee Warden, and, if available, Chair of Conservation Commission.

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

- 4) Parking fee. The applicant shall pay the parking impact fee under Section 175-112 A. 1. of the zoning ordinance. The applicant may propose an alternative arrangement that guarantees full payment. Any alternative arrangement proposed by the applicant shall require approval by the Town Administrator.
- 5) Natural gas. If natural gas will be used, provide a letter of approval from Unitil.
- 6) Tenant leases. Draft tenant leases shall be submitted to the Town Planner and include provisions stipulated below. See waste material, inspection of units, and parking permits, below.
- 7) As-built drawings. One set of full size, one set of 11" x 17", and one electronic copy of as-built ("record") drawings of all buildings, structures, infrastructure, utilities, drainage structures, roads, 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.

- 8) Improvements. All on-site and off-site improvements included in this approval shall be completed prior to issuance of a certificate of occupancy unless an acceptable surety is posted.
- 9) Other applicable requirements. All other applicable requirements of this site plan, this Notice of Decision, and other terms and conditions must be satisfied prior to issuance of a certificate of occupancy.

Other terms and conditions

- 10) Recording. This notice of decision must be recorded at the Registry of Deeds within 14 days of certification of the plans.
- 11) 525 Residents. This project is approved with a maximum of 126 dwelling units per Zoning Ordinance and 525 residential tenants. No additional residential tenants may be accommodated on this parcel without specific new approval from the Planning Board.
- 12) Draft Lease. Provide a draft lease to the Police Chief to give him an opportunity to make recommendations (not required to incorporate except as otherwise provided herein).
- 13) Water infrastructure. All public water system infrastructure extensions as depicted on the plans shall be designed and installed at the expense of the developer in accordance with Town Water Ordinance Chapter 158, AWWA guidelines and applicable State regulations. Once installed and approved by the Town this infrastructure shall be owned by the Town of Durham (except where otherwise specified) and operated by the UNH/Durham Water System including all water mains, valves, fire hydrants, water meter assemblies (1 per each building), and master meter (prior to water main branch at entrance), and associated appurtenances. Water service lines and plumbing internal to each structure shall be owned and maintained by the applicant/property owner.
- 14) Wastewater. All public wastewater system infrastructure extensions shall be designed and installed at the expense of the developer in accordance with Town Sewer Ordinance Chapter 106 and applicable State regulations. Once installed and approved by the Town this infrastructure shall be owned and operated by the Town of Durham (except where otherwise specified) including all sewer mains, sewer manholes, and associated appurtenances. Sewer service lines and waste lines internal to each structure shall be owned and maintained by the applicant/property owner.
- 15) 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/Health Officer (DHO) so that the DHO can call and order an emergency pick up if necessary. The DHO is authorized to request this service at the applicant's expense should it be deemed necessary. The DHO is authorized to contact the waste management hauler only after first contacting the property owner and allowing the property owner to order a pick up.
- 16) Waste material. The tenant leases shall reference the Durham Town Code Section 118:11 for Offensive Material (Waste Material).

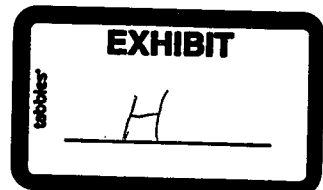
- 17) Start of construction. The Building Official recommends starting the project during the school year, if practical (subject to his approval of proper fencing and other appropriate measures), to facilitate desired completion of the project by August 2015.
- 18) Building Plans. Expecting the review of the building plans during the normal work schedule is not recommended. It is strongly recommended that an expedited plan review by an outside agency retained by the Building Official be conducted (as stated in Construction Management Plan, above).
- 19) Energy Code. Building construction shall be in compliance with the energy efficient standards of Chapter 38 of the Town of Durham Code of Ordinances.
- 20) Solar Panels. Solar panels are shown on the roof. The applicant is strongly encouraged to install solar panels but installation shall depend upon financial feasibility as determine by the applicant.
- 21) Inspection of units. The tenant leases shall include notice that Durham Town Officials may randomly inspect any residential units annually. Five percent of the units, or as determined by the Town, shall be inspected annually. Inspections shall be randomly selected by the Durham Building Official/Health Officer (DHO) and may be scheduled with "notice that is adequate under the circumstances" as stated in the lease.
- 22) Amenity inspections. Any common amenities shall be inspected at least once a semester, or as determined, by the Durham Health Officer.
- 23) Sprinklers. All structures within the development will have sprinkler systems installed in accordance with applicable code or as specified by the Durham Fire Department.
- 24) Security. The applicant shall install video monitoring in any interior common stairwells or hallways or exterior walkways would be helpful for theft prevention and resident safety and to enhance the police department's ability to resolve criminal acts.
- 25) Weekend clean ups. The applicant agrees (in accordance with Chapter 118 of the Durham Town Code) to inspect and, as necessary, to clean up the site on Friday, Saturday, and Sunday mornings, and as otherwise needed.
- 26) Building Egress. The means of egress from the buildings terminate at a public way. The egress paths on the outside of the buildings shall be maintained, including during the winter months.
- 27) Fire Lane Enforcement. The property owner is responsible for maintaining and enforcing the fire lane requirements
- 28) Alarms. Final locations for the fire alarm control panels will be determined during the building & systems plan review process
- 29) Radio coverage. The requirements of the Durham Public Safety Amplification ordinance, Section 68-4 F., regarding installation of a radio repeater system for emergency service,

shall be satisfied. Coordinate with the Fire Department during the building application process to determine if this ordinance applies.

- 30) Parking permits. The applicant will not sell, lease, convey or otherwise provide parking permits for the parking spaces located on this site except to the property's commercial non-residential tenants, security officers and building management.
- 31) Parking and Leases. The apartment leases shall state that for apartment tenants there is no overnight parking on site, and no overnight parking on any adjacent streets nor on Town property.
- 32) Commercial users. Any commercial/nonresidential uses that are allowed under the Zoning Ordinance may occupy nonresidential spaces without further site plan review.
- 33) Sustainability Recommendations. The following sustainability measures are strongly recommended (but not required):
 - a) Installation of smart thermostats with occupancy sensors and provide educational materials about managing the heating and cooling costs of living in the complex.
 - b) Installation of electricity-monitoring devices to provide feedback for student tenants on their energy use with their major electricity uses such as clothes washing and drying.
 - c) A review of the technology selected for the individual heating and air conditioning units and consideration of Ductless Air-Conditioning and Heating Units based on air source heat pump technology.
 - d) Exploring the use of heat pump water heaters
- 34) Minor changes. Minor changes to the approved plans and the provisions of this document may be approved by the Code Enforcement Officer, Durham Department of Public Works, or Town Planner, as appropriate. Staff shall inform the Planning Board of all such approved changes.
- 35) Execution. The project shall be built and executed exactly as specified in the approved application package unless changes are approved by the Town as provided in this document (See Minor Changes provision herein).
- 36) Approval. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of this approval unless otherwise updated, revised, clarified in some manner, or superseded in full or in part. In the case of conflicting information between documents, the most recent documentation and this notice herein shall be determining.
- 37) Violations. In the event of any violations of these conditions of approval or of any pertinent local, state, or federal laws – such as those regarding erosion and sedimentation control, wetlands, stormwater management, construction, and general site development standards – the Town reserves the right to take any appropriate permissible action, including, but not limited to, assessing a fine from the construction compliance deposit,

- 44) Fire Department Connections. Fire Department Sprinkler Connection and control panel locations will be determined during the building and systems plan review. It is the intent to have them installed in close proximity of the fire lane and near the yard hydrant between the northern and southern buildings.
- 45) Transformer Location. Should the location of the transformer change or if a second transformer is to be added, the change and/or addition shall be brought to the Planning Board for review and approval.
- 46) Bicycles. There shall be parking/storage for a minimum of 60 bicycles outside and a minimum of 75 bicycles inside the building.
- 47) Habitable Area. At least 75 dwelling units shall have at least 230 square feet of habitable floor area per resident (as defined in the Zoning Ordinance).
- 48) Windows. All bedrooms will have at least one window.
- 49) Knox Box – Permanent. For buildings that will have a fire alarm or sprinkler system or if otherwise required by the Fire Department, the building shall include a Knox Box, Knox Lock, or Town lock to allow the Fire Department to enter in emergency situations.
- 50) 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 on September 25, 2013 and held two site walks; **C)** The Planning Board held numerous continuous public hearing(s) on the application; **D)** The applicant revised and updated the plans and other documentation numerous times pursuant to comments from the Planning Board, public, and Technical Review Group, and other Town boards and committees; **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 (except where waivers or variances may have been granted); **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 for a conditional use; **G)** The Planning Board reviewed the design in accordance with the Architectural Standards contained in the Site Plan Regulations; and **I)** This project is not considered to be a Development of Regional Impact; **J)** The Planning Board duly approved the application as stated herein, including the conditional uses; **K)** This approval includes an approval by the Planning Board of a reduction in parking spaces under Section 175-112 A. 2. **L)** This approval includes an approval for the building to exceed 30 feet per the Dimensional Table for Maximum Permitted Building Height with Planning Board approval. **M)** The applicant met with the Economic Development Committee on to discuss the project. **N)** The Zoning Board of Adjustment granted 5 variances on August 13, 2013 for 1) locating the building beyond the front 15 foot line, 2) building height, 3) nonresidential uses, 4) buffers in the Wetland Conservation Overlay District, and 5) setbacks in the Shoreland Protection Overlay District **O)** After due deliberation and consideration of RSA 36:54, the Planning Board determined on January 22, 2014 that this project is not a Development of Regional Impact. **P)** The applicant prepared a precise architectural scale model of the site and neighboring buildings. **Q)** All pertinent Town departments provided final comments about the project (Fire, Police, Building, Public Works) and all such comments were incorporated into the final plans/conditions, as

appropriate. **R)** Substantial records are maintained of the process and documentation submitted in the Planning Department. A record of documentation and a timeline of the project would be prepared as needed.



Karen Edwards

From: Michael Behrendt
Sent: Tuesday, January 14, 2014 6:35 PM
Subject: Madbury Commons - response to additional issues ***

To the PB (and TC, TRG, EDC, and app),
I think a key issue for the Planning Board tomorrow evening is to finalize the maximum number of bedrooms for Madbury Commons. Please review Ken Rubin's email below very carefully. Thank you.

Michael Behrendt, AICP
Director of Planning and Community Development
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(603) 868-8033 (fax)
mbehrendt@ci.durham.nh.us
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From: Kenneth Rubin [mailto:krubin@goldengoosecapital.com]
Sent: Tuesday, January 14, 2014 4:21 PM
To: Michael Behrendt
Cc: Eamonn Healy; Barrett Bilotta
Subject: Response to issues raised by Robin Mower

Michael,

We wanted to respond to Robin's email because we are concerned about further delays in this project and the real risk that we may be forced to abort because we miss the construction window. We also want to demystify the bedroom count issue and correct some misunderstandings.

Regarding bedroom and occupancy... This project has changed and grown since the Pentagon version and has become better and more costly. The Pentagon-related estimate was at 460 beds plus a 10% swing factor. Thus, the upper limit became 506 six beds, which is about a net increase of 350 beds over today's occupancy on the property. We always strove for 506 beds if we could architect them into the floor plan. In fact, the cover letter of our Application form October 15 cited our intent to construct 126 units and 490 beds and our communication to

the ZBA had similar language. We take issue that we are increasing bedrooms 14%. The 460 +/- 10% figure became legacy content from the Pentagon project that continued on your Town Planner's agenda well after we moved on from the Pentagon. We do acknowledge that we are increasing bedrooms by either 3.75% (525/506) or 7% (525/490) depending on how you look at it. This increase should be seen as immaterial and is discussed below.

The current site plan represents an increase in square footage, a more complicated multi-building concept, security, more public space, other increases to accommodate the IOL and a slew of other scope changes that have substantially ramped-up the cost. Many of these costs are in direct response to meeting the Town's goals. As you know, it is only until the design is clearly understood that floor plans can be laid out and that you accurately estimate costs and understand the true space utilization and occupancy issues. Because of the IOL and other issues moving around, it wasn't until very recently that we got clear visibility to both cost and space issues, such that we could become precise with bedroom counts and units.

That said, we have always been planning for 126 units (as referenced in our Application and numerous communications) and we have always articulated our plan to have four single bedrooms as part of our product offering proposition. When we laid out the floor plans with our architect, a certain volume of dead space was revealed. This created the need to have 16 out of our 126 units to have more than 4 bedrooms, lest we have orphaned space resulting from the quirks of the building geometry. With 16 odd sized units with 5 bedrooms, we arrived at 525 bedrooms (110 units w/4 bedrooms + 16 units with 5 bedrooms).

We'd like to remind everyone that the zoning ordinances in which we submitted under had no restriction on the amount of bedrooms per unit and it is possible to have over 760 bedrooms on site; we are constructing only 69% of the maximum bedrooms allowed by zoning regulations. Additionally, we are voluntarily limiting the units to primarily 4 bedrooms, with exceptions by necessity. We'd also like to remind folks that we've made numerous concessions and accommodations to fulfill a vision greater than that of a student housing complex.

Regarding the IOL and the first floor: The IOL is calling the shots...and they should be as they are the tenant. They are committing to a long-term lease and paying the bills. As an anchor tenant, we need to accommodate their requirements to the extent possible, reasonable and economic. That's how it works. However, their requirements are reasonable and the impact to Durham will be extremely positive.

Regarding room sizes: This is our business and we are designing units that students will appreciate and will respect. We have a couple of different unit layouts at varying rent levels and sizes to appeal to a wider range of budgets and to de-risk the property for decades of unknowns. Plus, unit size is only one strategy to affect tenant satisfaction and smart

developers think in multidimensions rather focusing solely on square footage. We will offer amenities and overall price-value that will make Madbury Commons the most sought after residence for students in Durham.

Michael, thanks for your continued support and leadership on this project. We know that we cannot please everyone but we believe that the greater Town interests are being served with Madbury Commons. In order for us to be online for business for the 2015 year, we are already behind schedule and on the edge of not being able to deliver this project. Our corporate culture is to create a win-win proposition for our partners and we have bent our budget to meet dozens of compromises. The town should understand that there is no perfect project and that Golden Goose has a contractual window which expires. Sadly, further weeks of delay and potential loss of revenue will be the killer of Madbury Commons.

Ken Rubin | President | Golden Goose Capital
m: 617 290 1269 | krubin@goldengoosecapital.com