

BOSEN & ASSOCIATES, P.L.L.C.

ATTORNEYS AT LAW

May 15, 2014

Peter Wolfe, Chair
Town of Durham
Planning Board
15 Newmarket Road
Durham, NH 03801

John K. Bosen
Admitted in NH & MA

Christopher P. Mulligan
Admitted in NH & ME

Molly C. Ferrara
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Albert Hansen
Admitted in NH, MA & ME

RE: 8 Mathes Terrace / 15 Madbury Road

Dear Mr. Wolfe:

With respect to the above project, we are submitting herewith the following:

- Revised Site Plan set
- Revised Property Management Plan
- Michael Sievert's comments/responses relative to the tracking matrix

I am also enclosing a number of renderings of the project. Please note that some of these date back to earlier iterations of the project when we were contemplating basement apartments and a slightly higher roofline elevation, among other things. Please note further that we are committed to working with the Board and staff to further refine the detailing consistent with Durham's architectural regulations. That said, these renderings are submitted to provide a sense of the scale of the project within its setting. Contrary to the expressed sentiment that our project will dominate or overwhelm the "neighborhood," the building in fact will be built to an appropriate scale in relation to all of its environs, including the Greens as it exists today and Madbury Commons as it is slated to be developed.

Regarding Madbury Commons, we note Golden Goose's opposition to our project. We respectfully suggest that this opposition is misplaced. As a general matter, the Madbury Commons design sites a stand-alone building approximately seven feet from our northern boundary running nearly from Madbury Road to Pettee Brook. The ultimate density at Madbury Commons has swollen from 490 to 525 student residents, or by more than 50% of the total for our project, during the design of that project. Yet Golden Goose professes concern over the proximity of the buildings and speculates that the "attractiveness of the apartments for rent in our South building would be adversely affected creating an occupancy and/or income problem." In other words, Golden Goose believes it can leverage its own design, freely chosen and sited on a significantly larger

Please note our new address below

Peter Wolfe, Chair
May 15, 2014
Page Two

lot, to prevent the implementation of our much more modest project on an adjacent property. Golden Goose has no entitlement to restrict development on abutting properties it does not own simply because it speculates that activity on the abutting properties will be "too close" to its buildings.

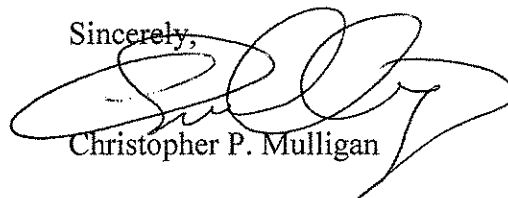
More specifically, Madbury Commons' plans identify a sidewalk similar in size to the one we are proposing on the rear of its Building B, which abuts our property line. This access point will serve almost twice the number of residents as ours will. All of the professed concerns regarding beer cans, debris, noise, rowdiness and conflict would just as equally apply in the opposite direction.

With respect to the specific comments regarding trash, the residents will NOT be required to "self-carry their trash down a long narrow alley dodging errant trash bins and bicycles." I would refer you to the Property Management Plan and First Floor Plan appended thereto. The property has been designed to provide access to the Trash Room in close proximity to the secondary north access, which reduces the distance the residents will have to carry their trash. I would also point out that Madbury Commons is designed with an interior trash room and we understand that residents in at least one of the buildings will have to "self-carry" their trash outside to access it. Again, this professed concern would just as equally apply to Madbury Commons as it would to our project. Nevertheless, as was discussed at the April 23, 2014 meeting, a similar arrangement has been in place at the nearby 9 Madbury Road development and it has not proven to be unmanageable.

In closing, over the past year during the planning process, our proposed redevelopment has undergone significant adaptations and revisions as a result of feedback from the Board and the community. We have eliminated a proposed fourth story and basement apartments, and have lowered the height of the building to match neighboring Mathes Terrace structures. We have reduced the proposed maximum number of students from 76 to 64. We have reduced the proposed wetland impacts by relocating trash service. We have effected design changes to redirect pedestrian traffic away from Mathes Terrace. We look forward to continuing to work with you in good faith to address the legitimate concerns of the community.

Once again, I thank you and the board for your continued consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Mulligan", written over the printed name.

Christopher P. Mulligan

cc: BAA Realty Holdings, LLC

8 Mathes Terrace and 15 Madbury Road Project

PROCESS			
Issue	Status/Concerns	Notes	MJS Comments
Acceptance	The application was accepted as complete on January 8, 2014		
Zoning by right	I do not believe that any variances would be needed as now proposed.		No variances are required
Zoning amendments	This project is protected against numerous recent zoning amendments as the design review occurred prior to these amendments		
ENVIRONMENTAL ISSUES			
Issue	Status/Concerns	Notes	
A conditional use is needed for several structures that would encroach into the Wetland Protection Overlay District – the transformer, dumpster, fence, underground utilities, and pavement. The Conservation Commission recommends denial.		<p>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.</p> <p>Sincerely, John Parry</p>	<p>The conditional use permit application has now been reduced. The transformer pad has been moved mostly out of the 75' buffer, the dumpster has been removed completely and additional landscape area has been added. The drainage structures and pipe remain unchanged.</p>
Conditional use for wetland buffer [continued]		<p>...I am responding to your request, asking for additional background on the DCC recommendation on the CUP for the Madbury Rd./Mathes Terrace project.</p> <p>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.</p> <p>We felt that the protection of this wetland area, and Pettee Brook is important, especially as more development occurs in the area. [continued below]</p>	<p>We disagree with this assessment especially with the comparison of several other projects with the CBD. However, we have improved the design by removing the dumpster completely and relocating the transformer pad almost completely outside the buffer. Several other transformers have been approved with the buffer significantly closer than this proposal so there is no basis for this denial. The design of this transformer pad location is approximately 73' from the wetland whereas two other recently approved projects have transformer pads within 25' and 10' of the wetland.</p>

Conditional use for wetland buffer [continued]	[continued] ...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...	Everything with the exception of a small portion of the transformer pad and the drainage structures and pipes have been removed from the buffer. Therefore, the risk of contamination from the dumpster is removed. The vegetation within the 75' buffer is significantly increased with the proposed design. The newer storm criteria is not required to be use for the design.
	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.	
Conditional use for wetland buffer [continued]	The newer storm data criteria need to be considered.nd drainage from them) in wetlands setback is too much demand on the site. [continued below]	There is no parking space within the wetland setback. There was no parking space proposed in the original design. The runoff from the redeveloped site is improved from the original conditions with the new collection and treatment design in these developments. The building has been significantly reduced.
	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.	
Energy issues - suport	An alternative location outside of the wetland setback area would be feasible with a smaller building design...	
	John Parry, Chair Durham Conservation Commission	
	The Durham Energy Committee met on February 4 and held a discussion with Mike Sievert, MJS Engineering, regarding the proposed student housing project at 15 Madbury Road/8 Mathes Terrace. The DEC reviewed the Energy Considerations Checklist submitted by the project team -- recognizing that it might not be final, and discussed opportunities for energy conservation and generation.	
Energy issues - suport	Support	
	The Committee expressed its general support for measures incorporated into the current plans for this project. The positive points of the plan include:	
	<ul style="list-style-type: none">• a highly efficient exterior envelope, including the foundation slab• incentives for residents to adapt their behavior to conserve energy• the applicant's stated interest and enthusiasm for radiant and highly efficient renewable heating systems• a recognition of the good southern exposure, reserving roof space and potential for solar installations• attention to passive solar gain through flooring	

Energy issues - concerns	Concerns		A larger bicycle room has been designed with the new layout. This building is too small for serious renewable energy systems. However, provisions will be made in the design for future solar installations if the financial conditions improve.
	The Committee recognizes that there are opportunities for additional energy efficiency measures and expressed concerns about the current plans that include: <ul style="list-style-type: none">• only vague plans for a small bicycle room that could be supplemented with attention to racks in unusable (or "dead") spaces• no discussions of financing or PPA partnerships with renewable energy systems providers to make the buildings energy neutral and make full use of southern exposures and roof areas		
	Finally, the meeting seemed to be at a time when designs are very preliminary, and many things might be done or not be done, dependent, apparently, on the interaction between the engineer and the unknown client. The Energy Committee remains concerned that many of the proposed ideas that we highly supported might not make it through to the final design.		
	... Kevin Gardner, Chair Durham Energy Committee		
Trees	It appears that all existing trees would be removed except for one tree at the back rear corner		This is the case even if this project is not approved
ARCHITECTURE/SCALE OF PROJECT			
	<u>Issue</u>	<u>Status/Concerns</u>	<u>Notes</u>
Architectural elements and details		The design evokes the four square houses, which is positive. However, numerous elements and details should be adjusted/changed to reduce the scale and to better conform with the Architectural Regulations.	We believe this project meets the arch. Regs. It also meets or exceeds the zoning regulations.
From Arch. Regs: "Provide for high-quality, humanscale architecture that conforms with generally accepted traditional design principles and is sensitive to neighboring buildings, streetscapes, the broader setting, and our natural and cultural resources"			The building conforms to a human scale as being no higher than surrounding buildings. It is also sensitive to the neighborhood given the four square style and the scale with other buildings in the neighborhood.
From Arch. Regs: "Encourage design which is compatible with the architectural heritage of Durham, New Hampshire, and New England"			Meets the 4 square design style
From Arch. Regs: "Strengthen commercial vitality and promote the downtown as a welcoming, pedestrian and bicyclist-oriented destination, while maintaining the feel of a small town that is important to Durham residents."			The new layout addresses this by providing commercial space on the first floor and including indoor bike storage for both commercial and residential users
Architectural model		The Planning Board asked for a model. Mike Sievert is looking into using the one developed for Madbury Commons.	A 3d rendering will be submitted and presented to the planning board for the June 11 meeting.

Garage opening	The Architectural Regulations do not permit garage openings to front on a street.	This is not a street. It has been defined as a private way and the Architectural Regulations do not address garage doors facing private ways.
Scale of the project and compatibility	There are numerous references in the regulations about this. It is highly questionable whether the design meets the standards.	The scale and compatibility of the project does meet the standards. The building height is well within the zoning regulations and matches the surrounding buildings. How can this not meet this standard when the proposed adjacent building is just as close to the 4 squared buildings, especially if these two buildings are not removed, then how does the adjacent project meet the compatibility regulations.
General design.	From Hildreth: Dr. Lenk is concerned first and foremost about the safety and convenience of his patients and employees. He is concerned that a development of the size, scale, mass, and density of that proposed by this project will make a bad situation worse. He is also convinced that a project of this scale will completely transform - and not for the better - the character of the neighborhood of Mathes Terrace and the quality of life that the people who live and work there have long enjoyed."	New layout addresses this concern
Scale of the project	From Hildreth: "In the aerial photo of Mathes Terrace above, a recently developed mixed use student housing complex (white roof) is easily distinguished as disharmonious with the surrounding neighborhood. The Project proposes an even larger student housing development across Mathes Tenace to the north, obliterating the two homes shown at the top center of the photo and covering over nearly all surrounding green space and open space. The Mathes Terrace neighborhood would be eclipsed by the student housing complex."	This proposed project is not larger than the referenced project. The project being referenced(9 Madbury Rd.) has a 600sf larger footprint, has an aditional story and has ? More students.
Building height	The maximum permitted without special board approval is 35 feet. Wil confirm the 35 feet is met	The building height is well under 35' only 28' again proving that it meets the regulations.
Scale of the project	From Tuveson: "Mathes Terrace is a private way and has over the years transitioned from residences to doctors, dentists, and architects setting up businesses in the existing buildings, maintaining the charm of this little neighborhood. Looking at the architectural drawings of the proposed structure, all of the existing buildings on the Terrace would practically fit into the footprint of this one structure, showing that the prevailing character of Mathes Court would be crushed."	This was addressed above.
Building size	Info from Mike Sievert: "The footprint of the building as shown is 8006 square feet. The breakdown of the first floor is 3950 SF for office/retail and approximately 3760 SF for the parking area, so all commercial on the first floor. The second floor is 7710 SF and the third floor is approximately 6510 SF due to the sloping roof. So commercial is 7710 SF and residential is 14, 220 SF."	

OTHER DESIGN ISSUES		
<u>Issue</u>	<u>Status/Concerns</u>	<u>Notes</u>

Landscaping	Is the proposed amount of green space and landscaping dequate?		The regulations state that the imprevious ratio can be 100%, we are under this.
General character of project.		<p>From Hildreth: "The Site Plan Review Regulations of Durham, New Hampshire (the "Regulations") provide a statement of purpose plainly expressed in Section 1.02. ...we call specific attention to the following from Section 1.02:</p> <p>A. provide for the safe and attractive development of the site and guard against such conditions as would involve danger or injury to health, safety, or prosperity by reason of inadequate pedestrian and traffic plans.</p> <p>B. provide for the harmonious and aesthetically pleasing development of the municipality and its environs.</p> <p>C. provide for open spaces and green spaces of adequate proportions."</p>	<p>The new layout addresses this concern. This project does not increase the traffic to Mathes Terrace because we are providing 8 parking spaces for commercial use only. No residential use will be allowed,unlike the existing condition which has approximately 6 parking spaces for 8 Mathes Terrace used by residents and guests. This project will decrease the vehicle traffic on a daily basis, unlike Lenk's increase from a single family home to 8000 patients per year.</p>
Loss of the Four square houses		<p>From the Heritage Commission: "...The Heritage Commission is specifically concerned about teardowns that are occurring in historic neighborhoods, whether they are designated as historic or are potentially eligible for designation at the federal, state, or local levels.</p> <p>The most obvious impact of teardowns in the Mathes Terrace neighborhood is the loss of Foursquare homes that have long contributed to the look and livability of this community. The American Foursquare shares some traits similar to the Prairie Style which was pioneered by Frank Lloyd Wright. These Foursquare neighborhood houses comprise a unique piece of Americana which are part of Durham’s identity.</p> <p>This proposed new building in the Mathes Terrace neighborhood will overwhelm neighboring homes and threaten the very qualities that make the Mathes Terrace neighborhood so attractive in the first place. Tearing down two FOURSQUARE HOMES changes the overall character and charm of this little neighborhood."</p>	<p>If the buildings are so important then how come they have been allowed significant changes to the architecture for the existing businesses. What about the impact to these two buildings if they remain and the rest of the Mathes Terrace neighborhood with the large complex proposed to the north of these properties, why does this not jepordize the neighborhood?</p>

MATHES TERRACE RIGHT OF WAY		
<u>Issue</u>	<u>Status/Concerns</u>	<u>Notes</u>
Maintenance of Mathes Terrace		
Fire Department concerns		<p>From John Powers: "Mathes Terrace is not a town road. To the best of our knowledge, there is no ordinance, easement, or record on site plans of Mathes Terrace being a fire lane or fire department access road. Although the scope of this project does not appear to encompass any of the space known as Mathes Terrace, I needed to ensure that we would not be replying on any portion of Mathes Terrace as part of the required fire department access to the property. I also need to make sure that the project does not add to the access issue to the rear buildings. Any development or redevelopment of the buildings set back from Madbury Road will need to be carefully reviewed to ensure proper fire department access is provided. We will want to keep this in mind moving forward to resolve the outstanding fire department access issue to them."</p>
Town road?		DPW would not support making Mathes Terrace a town road.

The fire department is not concerned as they can access the entire site from Madbury Road. We have offered to label Mathes Terrace as a fire lane so "no parking" can be strictly enforced.

Use of Mathes Terrace	It is highly unlikely that the applicant has any legal access to the property for the Project's		This is ridiculous. How do the other properties have access but these two properties do not? What about their increase in use and the encroachment into the ROW with parking, and structures, including utilities. We have submitted plans depicting the alternate access to the property by residential tenants to minimize the impact. As for Mr. Hildreth's comments about intentional encroachment and interference with the rights of others, what about the encroachment of his clients into the ROW. The ROW is in favor of all the properties so there encroachment interferes with my clients rights also.
	From Hildreth: "Any development, whether subject to site plan review or not, must have vehicular and pedestrian access. The Board should be cognizant of the fact that the applicant has failed to demonstrate any vehicular or pedestrian access rights for the Project, let alone adequate access. Further, the Project includes encroaching upon the right of way by eight feet with its proposed sidewalk. The proponent of the Project has no legal right to do so, and therefore has submitted plans which require intentional encroachment and interference with the rights of others. It is not the Board's responsibility to decide these issues, but the Board must consider whether an application can proceed if it intentionally encroaches onto a right of way and reduces that right of way's width by almost thirty percent (30%)."		
Fire lane	Should this be a fire lane?		
TRAFFIC			
<u>Issue</u>	<u>Status/Concerns</u>	<u>Notes</u>	
Traffic impacts	From Hildreth: "Pedestrian and vehicular access to all other properties on Mathes Terrace (business and residential) will, without question, be adversely impacted. You do not require a trafftc study to explain the chaos, confusion, and calamity that will result during each move-in week when 64 students are simultaneously arriving with a semester's worth of belongings; at each holiday break when students are preparing to head home; when residents are getting picked up on a Friday afternoon to visit füends at other colleges; on a constant basis when students are parking out front while they unload groceries, etc.; while deliveries are being made to the commercial units in the Project; while customers or employees of the commercial units are arriving to conduct business or change shifts - all while patients are coming and going from Dr. Lenk's office, or from the dental office next door.		We have addressed this in Chris' letter. Also, the management plan addresses these issues. The same things happen at every downtown property.
	From Lenk: "It is dangerous to turn left out of Mathes Terrace when SUVs or similar are parked in front of 15 Madbury Road. Traffic is travelling too fast down Madbury Road at the Mathes Terrace intersection. Raised walkways/traffic calming on Madbury Road is indicated and parking to the left should be eliminated. How could this project mitigate this public safety issue?"		
Left turns out of Mathes Terrace	From Hildreth: "Mathes Terrace is a 30 foot wide, dead-end, private way. It is barely adequate to serve the access needs of the vehicles and pedestrians who use Mathes Terrace today. Because Mathes Terrace is not a public street, it is not marked, strped, or controlled by the municipality. It is not infrequently that Dr. Lenk and other owners of property on Mathes Terrace are required to have cars towed or moved when they are carelessly parked or left unattended within the narrow right-of-way in a marjrer that interferes with safe passage."		This project is not proposing any changes to parking on Madbury Rd.
Safe passage on Mathes Terrace			What is the justification of the significant increase to Mathes Terrace traffic for the existing businesses. The proposed project will not have a significant increase as there are only 8 parking spaces for commercial use.

Traffic study	Should a study be submitted?		The board decided no traffic study was needed as the traffic is not being increased. There is no residential parking being proposed at the site.
Police enforcement		<p>From Chief Kurz: "From the police perspective one of the more challenging issues of this project pertains to the access road known as Mathes Terrace. The police deal exclusively in criminal law and the real property access and/or ownership of Mathes Terrace is not within our purview. However, I fully expect during construction and/or demolition of the buildings under review that there will be access challenges, while temporary in nature, they will occur! While the Durham Police cannot dictate that each abutter possess a mutual understanding of each other’s needs pertaining to access, there needs to be some semblance of understanding from all abutters. Absent that understanding the challenges will spill over into a police dilemma that offers no resolve. A clear understanding needs to be articulated and sustained by all abutters and property owners"</p> <p>From Chief Kurz: "Thanks for your email Dr. Rutter. I have included the Town Planner, Public Works Director as well a Code Enforcement on my response so that we are jointly aware of your concerns. I have expressed similar trepidations to them as the roadway is not a public way whereby I would have input on egress, deliveries and the other nuances associated with construction of a large complex. Since this is an easement agreement between abutters, if I am clear on the legalize, it is entirely civil in context. My concern is that if not resolved prior to construction, the police will be contacted to solve whatever we are left with! It would be my intention to proactively deal with scheduling of blockages, however minor, beforehand rather than have the police department called to deal with what in essence would be a civil matter. Whether this was part of the planning documents/requirements or something that could be arranged through my office, I would strongly concur that I would like discussions about the realities of access to these business before rather than after construction is approved by the Durham Planning Board."</p>	
Police issues			
PARKING			
<u>Issue</u>	<u>Status/Concerns</u>	<u>Notes</u>	
Parking exemption		The Planning Board grants the exemption at its discretion per the zoning ordinance.	
Parking in Mathes Terrace.		<p>From Lenk: "Given no on-site parking is proposed, what parking control signage is planned to keep non-dental patrons from trying to access Mathes Terrace in their cars?"</p> <p>From Lenk: "Our understanding is that as a private road, town police and safety officials cannot enforce the rights of abutters to maintain unobstructed access. In other words, vehicles can be privately towed but violations in the roadway cannot be prosecuted and must instead be litigated for damages"</p>	We have stated that the project would add no parking signs. We proposed a sidewalk to eliminate parking along this side of street but that was removed due to the negative response.
Parking in Mathes Terrace.			

<p>Parking in Town lot on Pettee Brook Lane.</p>		<p>From Lenk: "...the applicant has stated that the bridge over Pettee Brook is part of their commercial business plan. The applicant has no contiguous connection to the public parking lot and is referring to a bridge that is private property. The footbridge was constructed, and is maintained and insured by a private party. The applicant has not asked for an easement and is not likely to be granted one. Therefore, suggesting the footbridge serve as access to commercial space is not a reasonable plan..."</p>	<p>We are not proposing to use the bridge.</p>
<p>Parking study?</p>	<p>Should a study be submitted?</p>	<p>From Golden Goose: "Since the onset of the entitlement process for Madbury Commons we have noticed a substantial amount of both pedestrian foot traffic and vehicular traffic in the Mathes Terrace neighborhood and we believe that to have construction on an extremely tight site with such high flows of both pedestrian and vehicular traffic. We believe the Applicant should prepare a traffic study to not only review existing traffic but projected traffic after the property has been built. It will also be important to clearly identify how traffic will be effected during construction." From Hildreth: The Project does not have adequate vehicular and pedestrian access for the intended use. Mathes Terrace is a private way intended and historically used for residential and professional practice uses within single family structures. Mathes Terrace has no lines, no shoulders, no sidewalks, and has not been constructed for sustained use by an apartment complex. By no means can it support a 780% residential population increase compounded by an additional4,000 square feet of commercial space. Further, as set forth below, the Project's applicant has failed to show that it has any legal access for the intended Project, let alone adequate access."</p>	<p>A traffic study is not necessary for the construction process. The construction manangement plan addresses offsite parking and traffic during construction.</p>
<p>General access.</p>		<p>From Chief Kurz: "Parking for tenants is not a concern for the police department as the location of the complex is extremely convenient for walking and/or bicycling to downtown and the UNH campus therefore lessening the need for on-site tenant parking... It is imperative that the applicant understand that there is no overnight parking for any potential apartment renters on any adjacent streets or property owned and/or controlled by the Town of Durham. The fact that there is little or no parking on site should be well-articulated in any lease agreements with tenants. While the Town will not provide parking permits for residential apartment dwellers, there is the opportunity to purchase annual business permits for those associated with the commercial enterprises located in the area. This will enable employees to park at several satellite locations reserving the closest parking for customers.</p>	<p>Residential pedestrian access is now from Madbury Road. Only commercial employees and their partons will access the site from Mathes Terrace.</p>
<p>Parking demand</p>			

Managing parking and traffic.		<p>From Hidreth: "Following construction, the Project proponent claims to mitigate impacts on the neighborhood through the policies stated in its Property Management Plan. Similar to the Construction Management and Mitigation Plan, the Property Management Plan offers only lip service to the acknowledged issues of parking and access. On the very first page, the plan states that "Additional Staff will be available during peak move in hours to assist in moving and managing traffic flow." It is not disputed that there is no parking provided for students on Mathes Terrace. If there is no parking, there should be no traffic flow as there is no reason to drive down Mathes Terrace. Contrary to the representations made in its letter of intent and application, the Project proponent is now acknowledging that it fully anticipates and plans for students to be using Mathes Terrace as a loading and unloading area" for move-ins and move-outs. Mathes Terrace will be a grid-locked parking lot during peak move-in periods, with access to the rest of the neighborhood shut down."</p> <p>From Hildreth: "The "Onsite Parking Management" section of the Property Management Plan (See Page 6 - document not numbered), provides: "There shall be no parking by tenants on Mathes Terrace. This restriction shall be prominently posted on the property and in common areas. The residential leases will specify this restriction and that violation will be grounds for eviction. "</p> <p>It is fanciful, at best, to assert that "no parking" signs will prevent parking. The sign informs the violator of the rule; parking tickets or towing enforce the rule and deter future violations' The Project proponent, however, proposes that it will instead evict tenants for parking violations. Clearly no thought has gone into this so-called plan. With the slightest consideration, it would have realized that (a) a residential tenant cannot be evicted for a parking violation and (b) an eviction proceeding takes many months. It appears that the Project's proponent has made no genuine effort to devise a plan for mitigation of the parking issue. Instead, it has hastily put words in paper to create only the illusion that a mitigation plan has been created.</p>	<p>The property management plan has been rewritten and the construction management plan is being reviewed by an outside consultant.</p>
PEDESTRIAN AND BICYCLE ISSUES			
<u>Issue</u>	<u>Status/Concerns</u>	<u>Notes</u>	
Pedestrian access to site.		<p>From Lenk: "Please consider some town planning to enhance two proposed projects, e.g. a commercial courtyard/pedestrian walkway between this project and the Golden Goose project. This would provide access from the north side of the building. Please consider making all access to your building on the north side to mitigate its impact on an already over-burdened private drive."</p>	<p>The newly proposed plan addresses this concern</p>

Inclusion of a sidewalk		From Hildreth: "Dr. Lenk is not opposed to construction of a sidewalk. He believes it would promote pedestrian safety. Given the pattern of pedestrian use of Mathes Terrace, good planning would support inclusion of a sidewalk. However, the applicant is obliged to construct that sidewalk on its own lot, not within the 30'-wide cornmon right-of-way"	The sidewalk was proposed to provide a safer pedestrian access to all of Mathes Terrace given the existing heavy use, including the proposed project. However, with the design changed for residential pedestrian access from Madbury Road, this project no longer requires a sidewalk on Mathes Terrace. The need for a sidewalk may still exist but it is not my clients responsibility and especially not on their lot. Precedent has been set for encroachment into the ROW as evidenced by the existing commercial expansion ? Mathes Terrace and the current parking within the ROW
Emergency access		Dr. Rutter has stated he has occasional emergencies and is concerned about access to his building during that time.	This project does not propose to block or narrow the current width of Mathes Terrace
Garage parking for businesses or students?			
HOUSING			
<u>Issue</u>	<u>Status/Concerns</u>	<u>Notes</u>	
Nubmer of beds	62-64 beds are now proposed	This was reduced from 72 beds proposed earlier	
Density. Per Attorney Mulligan's letter and Town Planner's review of the zoning ordinance the allowable number of dwelling units is 13		The original plan called for using a portion of Mathes Terrace toward density.	
Habitable floor area per student		200 sf is required. The project is protected against the increase to 300 sf	
Number of bedrooms		Mainly 4 bedroom units is proposed	
Floor plans	These should be submitted		Floor plans will be provided
No basement units		The applicant removed the basement units proposed earlier	
CONSTRUCTION AND BUILDING ISSUES			
<u>Issue</u>	<u>Status/Concerns</u>	<u>Notes</u>	
Oversight during construction		Because our business has recently endured the negative impact of an abutting construction project, and because Mathes Terrace is a private road with a high volume of vehicle and pedestrian traffic, preventative action is needed to avoid this situation again. Specifically, we feel a uniformed officer would be required to ensure safe passage of vehicle and pedestrian traffic during business hours. In the current situation, it's dangerous to make a left turn out of Mathes Terrace when a truck is parked along the uphill slope of Madbury Road. Vehicles are moving fast despite heavy pedestrian use of the crosswalk. Many middle school aged children walk unattended to our office from school for appointments. Also, due to the nature of medical procedures being performed in the dental offices, access on Mathes Terrace must remain unobstructed to allow EMS to respond, if needed. A uniformed officer is the appropriate solution. We request a meeting with the developer of the proposed project and the Durham Chief of Police to create a memo of understanding for keeping Mathes Terrace unobstructed, accessible and safe during	A construction management plan has been prepared and is currently being reviewed by the Town consultant. Any issues will be discussed and addressed with the consultant.

Can construction vehicles use Mathes Terrace? It is a private issue but wise for the Planning Board to avoid approving a situation that is counter to what is allowed.

Parking for construction vehicles and transportation to the site

Stormwater management during construction

General concerns

General concerns

Impacts upon Mathes Terrace

From Lenk: "In a practical way, how does the developer intend to access the site? For instance demolition – where is it possible to offload and where is it possible to park large equipment such as a dump truck, tractor trailer, backhoe, etc., that would allow continued safe passage of pedestrians and vehicles? Given that Mathes Terrace is a private drive – abutters have deeded right of ways that will not be waived – parking in the right of way is not acceptable or feasible. How does the developer intend to not interrupt existing businesses? Will you seek a construction easement from your abutter on the north side?"

The construction management/mitigation plan lays out the access from Madbury Road

This will be set up offsite

From Lenk: "Last year, the construction project abutting our business on Mathes Terrace [9 Madbury Road, possibly by same developer] caused significant disruption to our business day, impacting the delivery of patient care throughout the construction phase. Problems were poor on-site monitoring of construction worker parking, and use of our property for loading/unloading of materials and positioning of heavy equipment. Work vehicles routinely blocked access for our patients to enter and/or leave our parking spaces. Our repeated attempts to communicate with the owner, project engineer, or the 24-7 on site manager were ineffective."

From Stanhope: "When 9-11 Madbury was under construction both the Link property and my property were constantly subjected to contractor issues. There is no way to enforce any document on a private street and no one party with an ownership right has a right to enforce any use of the street without concurrence from the other owners. I am confident that my tenants as well as both dental practices will experience economic damage from both the construction and the use of the two properties as proposed."

From Bragdon: "...I think the main issue is not the plan, although that is important, but the actual enforcement of it. If it works as well as the Kostis or Creape(SP?) properties it will have a huge impact on the two dental offices. Both of those properties had a huge impact. Dr Lenk was impacted by the one and the Kostis property really affected traffic and parking at the town lot. I appreciate the Planning Boards good intentions, but a contractor from Mass on a deadline gets deliveries when they come. By the time someone shows up to tell them to stop the damage is already done."

From Tom Johnson, CEO: "I also believe the site can be developed without significant impact on the private way. ... This project is similar to the Henderson and Pauly's projects, and the Libby's project for that matter; lot frontage on a single public road/sidewalk. The private way easement on this project provides a legal access for the unknown owner and significant concerns for other easement holders. The PB Conditions of Approval will have to be very specific as to their use of their easement rights during construction. Many details have to be worked out..."

DRAINAGE AND UTILITIES		
<u>Issue</u>	<u>Status/Concerns</u>	<u>Notes</u>
Stormwater management		<p>From Lenk: "What site engineering is planned to mitigate storm water runoff? Our 12 Mathes Terrace property was significantly impacted by increased storm water runoff when 8 Mathes Terrace paved over their lawn to add parking."</p> <p>This has been addressed and submitted to meet the required deadline of November ?2013, yet the engineering review of the plans and design has not yet begun.</p>
Will new sewer run down Mathes Terrace or connect directly at Madbury Road?		<p>From Lenk: "Will you interfere with current utilities to existing abutters: water, sewer, electrical, phone? Are you aware that the water line upgrade on Mathes Terrace is the private property of 12 Mathes Terrace LLC? Our understanding is that the sewer hookup on 13 Mathes Terrace is also not available for your use. Interruptions to utilities present health risks for appointed patients."</p> <p>Connect from Madbury Road only</p>
Stormwater management	The drainage plan will be reviewed by DPW or an outside consultant.	<p>From Lenk: "Storm water runoff is unresolved. The applicant's response was "not that much of a change" was anticipated. Effectively, roofing for 2 additional houses is proposed between the existing buildings. Doubling the runoff impact for downhill abutters and Pettee Brook will have a significant impact. How is it possible to mitigate runoff given a footprint that is 2 feet from the road?"</p> <p>Stormwater is not unresolved, it has been designed in accordance with the site plan regulations. Several months have gone by without any effort by the Town to properly review the submitted information and now it has been decided that the engineering review will be conducted by a consultant at a cost to the clients.</p>
Blasting and foundation piles.	It appears that blasting will not be needed or it would be minimal. However, it is likely that foundation piles will need to be pounded into the ground.	<p>From Lenk: "Is blasting anticipated for ledge? If needed, and based on our experience with the 9-11 Madbury project, we request that it occur after hours or on weekends when patients are not being seen for delicate dental procedures."</p> <p>Other foundation options are being reviewed in an effort to try to minimize any construction impacts with alternate construction techniques.</p>
Satellite parking for workers		<p>From Hildreth: "In Section 7.2,the plan states that "deliveries will be scheduled between the hours of 7:00am and 4:00pm to avoid impact on trafhc." This is not a limitation nor does it</p>
Deliveries		<p>in any way address the impact that the Project would have on the neighborhood and current businesses. The Project proponent is saying that deliveries will be limited to all business hours of every day. It is an illusion to think that this proposal is considerate of the rights of others, when in fact it is expressly stating that it intends to make deliveries at the times that will be most disruptive to neighborhood businesses."</p> <p>From Hildreth: "The construction project will operate as follows: Regular work week - Monday through Friday, between the hours of 7:00 AM and 6:00PM. Saturday work - Between the hours of 7:00 AM and 6:00 PM, Inside Work only - no limitations. Sundays - No Work Allowed. Holidays - No work Allowed. IINH Graduation Day - No work allowed"</p> <p>We are proposing to work during the regular workday like everyone else is allowed to within there rights.</p>
Hours of construction		<p>This schedule does not in any way mitigate the effects and impacts that the Project will have on the neighborhood. Construction will occur during every single minute that anv business in the neighborhood is open.</p>
Per the Planning Board's request a peer review will be conducted on the construction management plan.		

<p>Stormwater impact on Madbury Commons</p>	<p>From Golden Goose: "The Madbury Commons re-development includes two buildings, the smaller which is directly adjacent to 15 Madbury Road / 8 Mathes Terrace. If you recall our smaller building anticipates garden level apartment units along the Mathes Terrace side and due to the grade difference between Madbury Commons (lower) and Mathes Terrace we are concerned about Storm Water runoff percolating into these garden units which would directly impact our development and the residents who will occupy these units. During the Planning Board Meeting we didn't hear remedies to control the runoff from the new building being proposed at 15 Madbury Road / 8 Mathes Terrace. We are concerned that this issue was ignored by the Applicant and we seek protection against the oversight."</p>	<p>There are no surfacewater drainage impacts from Mathes Terrace to Madbury Commons because the grade at Mathes Terrace is lower than Madbury Commons. As for groundwater issues,the Mathes Terrace project will not have any impact on groundwater conditions. As you will recal, the Mathes Terrace project originally proposed basement level units but removed them due to soil and groundwater conditions and a request by the planning board to not have the below grade units.</p>
<p>Coordinating construction with Madbury Commons</p>	<p>From Golden Goose: "After reviewing the Construction Management Plan we felt the plan was written in a vacuum and didn't recognize that the direct abutter will be undergoing a major redevelopment simultaneously. It didn't mention any coordination of planning and shared access to the sites that may be required. Additionally, we didn't see trucking routes identified and believe that the routes should be the same routes approved for Madbury Commons. The plan should be written with full anticipation of Madbury Commons as a construction site. The failure to even mention Madbury Commons in the Applicants plan leads us to believe that no potential issues were considered."</p>	<p>The reason the construction management plan did not address coordination of planning and access is that the two project owners will not cooperate. MJS Engineering has been requesting cooperation from both parties throughout the design process. Access routes are defined in the management plan</p>
LIGHTING AND SIGNAGE		
<p><u>Issue</u></p> <p>Lighting plan.</p>	<p><u>Status/Concerns</u></p> <p><u>Notes</u></p> <p>From Golden Goose: "We understand that the Applicant hasn't yet submitted a Lighting Plan for the project but would like to ensure that "fugitive light" is minimized on the site. Given the close proximity between the Mathes Terrace building and Madbury Commons, we want to guard against a lighting problem whereby the residents of Madbury Commons are adversely affected by the lighting from the adjacent property."</p>	<p>A lighting plan has been submitted with this submission</p>
MANAGEMENT OF THE PROPERTY		
<p>Police perspective</p>	<p>From Chief Kurz: "The Durham Police support the construction of well managed student apartment dwellings. In addition, this is an appropriate location due to the proximity of other student dwellings, distance away from residential neighborhoods with fewer residents to disturb and in an area of the downtown where late night activity is prevalent. As I have maintained, the Durham Police continually strive to meet the demands of its citizens while remaining fiscally responsible. It is our belief that a sound and well structured and conceived planning process in these matters can not be understated. The end result of this process equates to diminished demands for governmental monitoring by police, fire and code enforcement.</p>	

Police perspective - additional comment	<p>From Chief Kurz: " ... constant and consistent concern about the right of way. It is not a police matter since it is not a public roadway but that I was convinced that if passage and blockage was not minutely designed and agreed to in the planning documents that the disagreements between property owners would resort to a police matter putting us into an untenable situation! Since at the last meeting of the TRC Mike Sievert ... stated emphatically that they could work on their property and would have minimal impact upon the right of way and those times would be negotiated with the abutters, my concerns were made moot!"</p>	
Snow storage/removal		Minimal snow removal is required from the walkways and rear parking area. It has been addresses in the management plan.
Shared maintenance of Mathes Terrace with other property owners	<p>From Lenk: "As a neighbor on Mathes Terrace, what do you feel would be your collective responsibility for maintaining snow removal for the road?" From Lenk: "When you had the properties surveyed on a business day, why didn't you alert abutters that you would have a crew obstructing the private roadway? Should this be taken as an indication that you are unaware of the impact of your activity on private property and existing business operations?"</p> <p>Response from Mike Sievert:</p> <p>"I received your email from the neighbors. I notified everyone on Monday morning that a survey crew would be on the site on Monday afternoon. The survey crew was given specific instructions not to block the roadway nor park their vehicle anywhere on the road and only park in the driveway of 15 Mathes Terrace. I spoke specifically with the survey crew and they stated that there were no traffic impacts during there work on the ROW. Given the fact that Mathes Terrace is a pedestrian thoroughfare throughout the day, I did not think that a two man survey crew would impact traffic on the ROW, and according to the surveyors it didn't. My understanding is that the concern from the neighbors is not to have their parking and access interrupted during l</p>	The deeds require an equally shared maintenance commitment
What assurances are there the site will be managed carefully?		The management plan has been prepared.
Garbage	<p>From Lenk: "What is your plan for garbage storage on-site and garbage removal? Can a full-size garbage truck enter/exit/park without obstructing the roadway or crossing onto private property?"</p> <p>From Golden Goose: "We understand that the Applicant hasn't submitted a Property Management Plan at this time, but would like the Planning Board to ensure that the same standard of staffing and security is applied to this project as Madbury Commons. There will be a significant increase in the number of students in the immediate neighborhood given pending and recent developments. The proper security lens should anticipate a general increase in residents, guests and overall traffic on all residential properties as student migrate between residential areas. This is a broader perspective than focusing on a single building. Therefore, a high security climate needs to be developed that is consistent between residential buildings. This will breed and reinforce the right behaviors among residents. We therefore call for on site security personnel, video surveillance and related best security practices with respect to access controls, etc."</p>	This has been relocated to the north side and will be handled by moving the trash bins to a truck on Madbury Road and reomving the trash from the site like all other downtown mixed use buildings.

OTHER ISSUES

<u>Issue</u>	<u>Status/Concerns</u>	<u>Notes</u>
Impact on businesses on Mathes Terrace.		<div><div>From Lenk: "The applicant has stated the difficulty of attracting and retaining business/commercial activity in downtown Durham. Abutters will attest that it's a constant challenge to maintain a business climate even during daylight hours, particularly for community/family centered entities rather than those that are student focused. This project presents a business retention issue in that it puts two successful entities at risk.</div><div>This new design plan provides for the elimination of residential tenant use on Mathes Terrace to the maximum extent possible by changing the entrances to Madbury Road and the north side of the building. It limits the access from the garage and removes the need for residential tenants to come in or go out by having keyed door access. The commercial space is minimal and being on the first floor and right on Madbury Road will have higher success of retaining business rentals.</div></div>
Commercial uses - question by Lenk whether they would be viable		<div><div>From Lenk: "Is your proposed commercial space truly viable? It appears marginalized in the drawing with no parking or roadside visibility. What will commercial signage look like? What public benefit and value to the community does this building serve if its commercial space is marginalized and has poor visibility, parking, and access? If the intent of the Town Council and the Economic Development Committee was to create community value that appealed to full-time residents with dynamic and various commercial offerings while balancing the tax base, does this proposed commercial space do that?"</div><div>There are two small commercial spaces with direct access from Madbury Road and the public sidewalk. In addition, there are 8 parking spaces for these two commercial spaces.</div></div>
Communications.		<div><div>From Golden Goose: "Finally, we would also like to mention that we have made repeated attempts to contact the Applicant to work together in a mutually beneficial way to see if there was any way that this project could be incorporated with Madbury Commons. Unfortunately we have had no success of reaching anyone."</div><div>MJS Engineeirng has also made efforts to facilitate comunications</div></div>
Identity of developer	While it is not legally required to divulge the name of the developer, can this unknown element have a negative impact upon the effectiveness of any approval?	<div><div>From Diane McCann, citizen: "I am writing to express my concern regarding the unknown partner in the Mathes Terrace project. I do not understand why someone would not want to be identified unless there is something about the project that would not reflect well on the individual or group. Perhaps there is a conflict of interest present. In any event I would hope the individual would step forward and I would hope Durham town government would not permit these kind of arrangements now or in the future. Please express my concern to the Planning Board and Town Council members."</div><div>There is no legal requirement for the developer to identify themselves. The developers are committed to accepting and abiding by the conditions of approval.</div></div>

General impacts

From Schoonmaker: "...I won't bother addressing the scale issues with the proposed development on Mathes Terrace except to say: way too big in every respect. It would dramatically alter the character of what is now a very nice compound of buildings. I will say that the sought for new building will require the removal of a dozen large trees and about 4,000 SF of grass, an unfortunate loss in an area so close to downtown. Throwing some vinca and black-eyed susans into a 3' planting bed doesn't make up for the loss. These concerns have been addressed above

At present there are probably 6 or so tenants in 8 Mathes Terrace. However, when they party, the driveway is frequently littered with cans and broken bottles. I realize this is a management issue but I can't imagine what this place would look like with 70 + beds."