



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

Town Planner's Recommendation
Wednesday, August 26, 2015

- IX. **Public Hearing - 35 Madbury Road – Conversion of Common Room to Bedrooms.** Application for conditional use to convert second-floor common room in the fraternity into six single bedrooms. The applicant proposes to not increase the number of residents but rather to have more single in place of shared bedrooms. Golden Goose, property owner; Rob Harbeson of DeStefano Architects, architect. Map 2, Lot 8-11. Professional Office Zone. I recommend discussion and setting the public hearing for August 26.
- I recommend that the board review comments from Tom Johnson, including recommended conditions, below, and those from Ken Rubin, below, and approve the project with appropriate conditions.

Please note the following:

- 1) * This is all presented to the Planning Board for its consideration. I think it appropriate to approve this change given that the applicant is improving the property overall, providing for separate bedrooms is desirable, and we can set a limit on the total number of occupants (though monitoring and enforcement in the future can be challenging). Tom Johnson raises some important issues. It would be helpful for the board to review these and the related conditions that he proposes carefully. Can we pinpoint very specific concerns that should be addressed? What kinds of conditions are reasonable and proportionate given the scope and nature of this application?
- 2) See draft conditions of approval at the bottom, which include those recommended by Tom Johnson.
- 3) The applicant proposes to convert a second floor living area to 6 bedrooms. See the floor plans included in the prior packet (also on the website). All are shown as bedrooms with a bed, chair, and a built-in closet. The applicant does not propose any changes to the site associated with this change.
- 4) In response to this application, Tom Johnson, Durham Building Official, sent this email to me (paragraphs added). Todd Selig and Deputy Police Chief Rene Kelley concur with Tom's statement.

Michael,

In spite of our current great relationship with Golden Goose, we have a chance to right a regulatory wrong from the last century with this application in 2015 based on my 14 year history with this particular house.

Please keep in mind this is a Zoning “grandfathered” fraternity house which does not require UNH recognition as per the current Zoning definition; nor in house management; nor actual fraternity/sorority membership. Also as a “grandfathered” Fraternity House, it is not subject to the current density table of the Zoning ordinance of 2 occupants per 300 sq. ft.. I am not sure what year it was constructed or what Zoning Ordinance edition it is subject too. So we are taking what was former Common or Assembly floor nonresidential area and converting it over to residential habitable floor area.

The current owner and/or fraternity’s business plan proposal is asking for single occupant bedrooms now; however, the grandfathered status of the property still does not require UNH recognition and they may still be grandfathered to an old grandfathered density per available habitable floor area. What happens when they have a very successful rush season and they now have more brothers than bedrooms; or the current fraternity tenant changes to a non UNH recognized rogue fraternity; or the current owner sells to a rogue landlord; or the current owner redevelops the property based not on the current business plan of one per bedroom; but the increased residential area grandfathered density? (think Riversedge/Davis Court/SAE/SigNu, etc.).

I would suggest as part of this CUP process some newer/stricter conditions/documentation be placed on the eventual PB approval to require UNH recognition now and any future fraternity/sorority; all former zoning grandfathered status is abandoned; and no occupancy of the house unless they are a member of the recognized fraternity/sorority. By that I mean, no subletting of bedrooms or habitable area to non-fraternity/sorority members at any time of the year, either by the landlord or the tenant/fraternity/sorority. We have a history in town of these older grandfathered fraternity and sorority houses accepting any rent paying bodies, or UNH status coming and going, and the Landlord/fraternity sorority signing leases with anyone and not providing any on site supervision.

These grandfathered fraternity/sorority houses have been an annual problem or eyesore generating complaints from UNH, the compliant cooperating Greek System members, neighbors, and staff. Also for our permanent records, we should require a full set of professional floor plans with dimensions and rooms/areas labeled for our files along with perhaps Police and Fire. In addition a site plan delineating the entire parking plan, dumpster location/enclosure, landscape area, etc. since we have none from the 30’s or 50’s whenever this traditionally problem house was built. I have copied Maryanne from UNH’s staff who is very familiar with the Greek/UNH concerns with this property and others that are “grandfathered”.

Thomas F. Johnson, CBO

- 5) These are the conditions that Tom is recommending, above:
 - a) newer/stricter conditions/documentation be placed on the eventual PB approval to require UNH recognition now and any future fraternity/sorority;

- b) all former zoning grandfathered status is abandoned;
 - c) no occupancy of the house unless they are a member of the recognized fraternity/sorority. By that I mean, no subletting of bedrooms or habitable area to non-fraternity/sorority members at any time of the year, either by the landlord or the tenant/fraternity/sorority.
 - d) we should require a full set of professional floor plans with dimensions and rooms/areas labeled for our files along with perhaps Police and Fire.
 - e) a site plan delineating the entire parking plan, dumpster location/enclosure, landscape area, etc. since we have none from the 30's or 50's whenever this traditionally problem house was built.
- 6) MaryAnne Lustgraaf, of UNH, sent me this email in response to Tom's email to her:

I am still out of town and on vacation until the 24th but I did want to comment that anytime you want to require only recognized groups in these properties we are all for it. In addition anything that keeps the properties safer for these students is also fully supported.

I also want to speak on behalf of the current fraternity occupying 35 Madbury. Lambda Chi Alpha is fully recognized and I'm sure your records will show that since they have occupied the property following TKE's year long loss of recognition, the problems and incidents have declined to almost nothing. They are a strong chapter within our community.

- 7) Ken Rubin, the applicant, sent me this email in response to Tom's comments:

Michael,

We strongly oppose the notion of regulating the occupancy of 35 Madbury. Below is our Company's perspective.

All we are trying do is to convert common space (party room) into single bedrooms while we improve the property – all without changing the occupancy. It is our intention to rent to recognized fraternities; however, we have no idea what the fraternity / sorority landscape will be in the future. Fraternities can gain and lose recognition at any time and the ability to only rent to only “ UNH recognized fraternities” poses an enormous economic risk exposure to the occupancy and hence viability of the property. Without having autonomy to rent to the student organization of our choosing, there is a heightened possibility that the property could be vacant. It is my understanding that fraternity houses cannot have non-member occupants in the property, i.e. the house can't be used a student boarding house therefore our only option is to rent to a fraternity / sorority recognized or unrecognized by UNH. Additionally, if the fraternity expands, we are limited by the current zoning in terms of number of occupants. Based on the current layout and proposed bedroom construction it would be near impossible to have more than 26 occupants within the property. We feel Durham would be overstepping its

purview by dictating who we can our rent property to. Regulating the occupancy to recognized fraternities would create an untenable risk exposure; that we'd sooner retract our application and back-off the property improvements than create a long-term viability problem that would devalue the property.

Ken Rubin | President | Golden Goose Capital

- 8) 35 Madbury Road is zoned Professional Office District. A fraternity is allowed in the PO district as CUA, a conditional use provided it is contained in an existing building (which this is).

- 9) The Zoning Ordinance gives these definitions:

FRATERNITY/SORORITY – A fraternal organization officially recognized by the University of New Hampshire, and organized to benefit the Durham/University of New Hampshire community through the efforts of its members, who are students currently enrolled at the University of New Hampshire.

FRATERNITY/SORORITY HOUSE – A building used to provide lodging facilities for the exclusive use of the bonafide members of a fraternity or sorority.

- 10) The Zoning Ordinance requires a minimum of 150 square feet of habitable floor area per occupant in a fraternity.
- 11) The Zoning Ordinance requires that any alteration of a conditional use requires a new conditional use permit, as discussed in my prior write up on this application.
- 12) The applicant says they are not increasing the number of beds nor occupants. They are changing the interior to create 6 individual bedrooms and will be updating bathrooms and interior space. According to the applicant, this change will enable single occupant sleeping units, rather than the shared configurations that exist.
- 13) The Planning Board will need to review the 8 criteria prior to approving this conditional use. See the letter from the applicant speaking to the criteria. A vote of 5 Planning Board members is required to approve a conditional use.

Draft

NOTICE OF DECISION

Project Name:	35 Madbury Road
Project Description:	Conditional use for conversion of common road to bedrooms
Applicant:	Golden Goose
Property Owner:	Golden Goose
Map and Lot:	Map 2, Lot 8-11
Zoning:	Professional Office
Date of approval:	August 26, 2015

The application is approved with the following conditions:

- 1) The six new bedrooms may be occupied by only 1 person each.
- 2) The maximum number of occupants permitted in the house is 26.
- 3) The applicant shall confirm that the minimum required habitable area for 26 occupants is met prior to obtaining a building permit.
- 4) The application is approved as submitted (though the Building Official and Town Planner together may allow for any minor changes clearly consistent with the intent of this approval, such as adjustments in the layout of the bedrooms)
- 5) The applicant shall submit a full set of professional floor plans with dimensions and rooms/areas labeled prior to issuance of a building permit. *[per Tom Johnson, for the board's consideration]*
- 6) A site plan delineating the entire parking plan, dumpster location/enclosure, landscape area, and other pertinent elements shall be submitted to the Building Official prior to issuance of a building permit. *[per Tom Johnson. Are there specific items that would be especially useful?]*
- 7) All former zoning grandfathered status is abandoned prior to obtaining a certificate of occupancy *[per Tom Johnson. Or are there specific concerns and solutions that can be incorporated here instead?]*
- 8) UNH recognition of the fraternity (or a sorority) must be maintained (It is presently recognized). *[per Tom Johnson. This is challenging as a "fraternity" is defined by the ordinance as being officially recognized by UNH. Lambda Chi Alpha is currently recognized. What happens if it loses recognition? Note that multi-unit residential is allowed in the Professional Office District as CUA – conditional use/adaptive reuse]*
- 9) There shall be no occupancy of the house except for members of the recognized fraternity/sorority. There may be no subletting of bedrooms or habitable area to non-fraternity/sorority members at any time of the year, either by the landlord or the tenant/fraternity/sorority. *[per Tom Johnson]*