

2014 Denial of a Conditional Use Permit: 8 Mathes Terrace/15 Madbury Road

March 22, 2022

Planning Board
8 Newmarket Road
Durham, NH 03824

Dear Members of the Board,

In June 2014 the Planning Board denied a Conditional Use Permit application for a downtown mixed-use student housing development with commercial space and garage parking. I bring this to your attention both because you are currently reviewing two Conditional Use Permit applications (for the Mill Plaza and for 19–21 Main Street) and because:

- most of you have no experience with application denials;
- some of you have little or no experience with drafting detailed Notices of Decision or Conditions of Approval; and
- some of you believe that you should make no decision that could result in legal action against the Town.

The attached [June 25, 2014 official minutes](#) (excerpted for this specific project) document a level of detail in the deliberation that I believe is critical for the record, regardless of the direction the Board takes. (A similar argument was made by New Hampshire attorneys, as you may recall from the articles that I sent to you over the years and as you may have been told by our Town Attorney.)

As far as concerns about lawsuits against the Town: First, I have it straight from Town Administrator Todd Selig that you should simply do your job; he also told me that, “We are sued all the time!” (Indeed, the Town was sued by the applicants for 8 Mathes Terrace, although the case did not make it to court. It also seems that the general belief is that, regardless of your decision on either of these two pending applications, a lawsuit is likely in the wings.)

In addition to the official minutes, I attach both the Town Planner’s official denial letter and memo detailing reasons for the decision.

For the record, the application at heart of this communication was described on agendas as:

8 Mathes Terrace and 15 Madbury Road – Student Housing Development. Site plan and conditional use for wetland buffer for redevelopment of two lots for a three-story mixed-use student housing development for 64 occupants with commercial space and garage parking. Island Diversified, LLC, c/o Chris Mulligan, applicant; BAA Realty Acquisitions, LLC and Theodore Finnegan, owners; Michael Sievert, MJS Engineering, engineer; Chris Mulligan, attorney; Somma Studios, building designer. Tax Map 2, Lots 12-5 and 12-6. Central Business Zoning District.12.

Regards,

Robin

June 27, 2014

Mr. Michael Sievert
MJS Engineering PC
P.O. Box 359
Newmarket, NH 03857

Dear Mike:

At its June 25, 2014, meeting, the Planning Board voted to deny the Site Plan application for 15 Madbury Road and 8 Mathes Terrace. A copy of my memo outlining the reasons for the denial is enclosed.

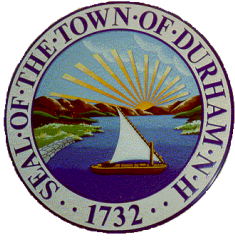
If you have any questions regarding this decision, please feel free to contact me at 868-8064 or via e-mail at mbehrendt@ci.durham.nh.us. Thank you for your cooperation in the review process.

Sincerely,

Michael Behrendt
Director of Planning & Community Development

Enclosure

cc. BAA Realty Acquisitions LLC
Theodore Finnegan
Christopher Mulligan, Esq.



MICHAEL BEHRENDT
Director of Planning and
Community Development

Town Of Durham
15 Newmarket Road
Durham, NH 03824-2898

Phone: (603) 868-8064
Fax: (603) 868-8033
mbehrendt@ci.durham.nh.us
www.ci.durham.nh.us

MEMORANDUM

TO: Planning Board

FROM: Michael Behrendt, Director of Planning and Community Development

DATE: June 24, 2014

SUBJ: **8 Mathes Terrace and 15 Madbury Road project – recommendation for denial**

- *I recommend that the Planning Board vote this Wednesday, June 25, 2014, to formally deny the proposed redevelopment at 8 Mathes Terrace and 15 Madbury Road. I recommend a vote with the motion offered at the end of this memo.*

Background

The Planning Board has worked diligently with the applicant for almost exactly one year (since the June 26, 2013 preliminary design review application) to explore ways of making the project workable.

While there are numerous problems with the design, as laid out in extraordinary detail by many members of the public (both direct abutters and members of the broader community), in letters, emails, and testimony at public hearings, the central concern is the size and scale of the project. In my professional opinion, the design fails to meet the standards for size and scale as stipulated in the Architectural Regulations contained in the Town of Durham Site Plan Review Regulations, due to its disharmony with the setting of Mathes Terrace.

The excessive size of the project is reinforced by other aspects of the project (such as the need to remove all trees from the site except for one, to combine 2 existing lots into one, to remove snow from the site rather than store it on site, and to obtain a conditional use for encroachment into the wetland buffer). I include excerpts from the Architectural Regulations, other sections of the Site Plan Regulations, and the Zoning Ordinance demonstrating how the project fails in its size and scale and in other ways.

Architectural regulations (or “architectural standards”) get to the heart of a proposal, and such standards are of special concern in Durham, where citizens are highly attuned to the impact of a project upon the built environment. The Planning Board and the community developed the Architectural Standards over many months and with great care and attention to detail. The 41- page set of regulations, replete with myriad photographs of what is appropriate and what is not appropriate, testify to the seriousness with which the Town approached the creation of these regulations.

* After much professional consideration of the project, with the Planning Board wrestling with the project over the course of a year, providing the applicant copious opportunities to address concerns, I recommend denial. With regard to the central concern of architectural character, I hold myself out as an expert in critiquing architectural design of proposed projects such as this one (I offer some of my credentials further below).

Essential shortcoming

The site is located at the corner of Mathes Terrace and Madbury Road. Mathes Terrace is a small enclave (or “pocket neighborhood”) of five structures. The structures were likely built as single family houses in the early 20th century in a style known as the “Foursquare style.” The applicant proposes to demolish two of these structures situated on two separate lots, combine the lots, and erect one large structure. Some of the architectural particulars and the site layout of the proposal have changed over the course of the last twelve months, but one essential feature has remained fundamentally the same – the large scale of the building in terms of its footprint on the site, its height, and its bulk.

The presentation of the building to Madbury Road, a larger order road, is in proper scale, as many other buildings on Madbury Road, including multi-unit dwellings, fraternities, and sororities are quite large. The problem is the frontage on Mathes Terrace. Mathes Terrace is a private street that appears to be owned jointly by the owners of the five lots that front it (including the two subject lots). The proposed building would be much larger than the three Foursquare Buildings that would remain, dwarfing them, and creating a jarring, inharmonious presence.

The building at 9 Madbury Road, adjacent to Mathes Terrace, is instructive of the harmful impacts that an out-of-scale structure can have. Nine Madbury Road, adjacent to Mathes Terrace but situated on a lot just outside of this enclave, is exceedingly large and looms over the enclave in an imposing manner. At the time that 9 Madbury Road was built the Town did not have architectural regulations. Indeed, the construction of 9 Madbury Road, was an (if not *the*) impetus to crafting architectural regulations. If the proposed structure were to be built it would obliterate the small scale pedestrian friendly character of Mathes Terrace, and provide a regrettable bookend to 9 Madbury Road.

Certainly, there are many ways of developing the two subject lots which would be compatible. It would be preferable to build two smaller structures, one on each lot, to echo the existing character. Alternatively, one building, albeit a significantly smaller building could work as well. This suggestion was offered numerous times throughout the review process. The applicant made several adjustments in the design but any changes to the mass were marginal, leaving the overall bulk of the building excessively large for the setting.

As Dr. Andrew Rutter, an abutter on Mathes Terrace, stated,

“Even though the developer’s proposed number of students is slightly smaller than initially requested, it is still more than double what could be housed in appropriately sized buildings. Don’t allow them to fool us into thinking a project that is “too big” is acceptable just because we’re comparing it to something that was “WAY too big.”

* I believe that the general character of the proposal could be improved upon, but without significantly reducing the size of the building, the disharmony of scale remains.

These are the comments from Andrea Bodo, a member of the Durham Heritage Commission:

...Much of downtown Durham has been mired in a decades-long decline, and some may wonder if the best hope for the neighborhood's future is to tear down the rest of its buildings and start anew.

That process started with the construction of 9 Madbury. The community reaction to this building was one of profound disappointment . The building is out of scale with the small enclave of Foursquares that it now looms over.

9 Madbury does not reflect the character or spirit of Durham. It's nondescript character overshadows the unique American Foursquare, or the Prairie Box houses that sit in this small pocket community. These were work force housing kits designed for small city lots like Mathes Terrace . This is an interesting historical piece of Americana in downtown Durham.

Thankfully, a committed core of business owners and residents had a different idea. Embracing the offbeat character of the Mathes Terrace neighborhood, they transformed their Foursquares into thriving professional businesses that contribute to the public good. The result is a truly unique, authentic and delightful area humming with the kind of activity Durham hopes for .

The three restored Foursquares on Mathes Terrace are not Durham's only example of a preservation success story. The Grange on Main Street is a stellar example. The infill construction proposed for 25-35 Main St and 1 Madbury are thoughtfully designed to be harmonious and consistent with its surrounding structures. These small town building designs will enhance and preserve the historic character of the Town.

These little enclaves of places are the heart and soul of Durham, and we need to ensure that business and home-owners see their historic properties as viable investments and not being obliterated by massive buildings.

Justifying the construction of 8 Mathes/15 Madbury by comparing it to contemporary large scale structures like 9 Madbury or the proposed new Madbury Commons is inaccurate.

8 Mathes/15 Madbury is proposed to sit on Mathes Terrace in the pocket neighborhood of Mathes Terrace. It is part of this historic little pocket neighborhood. In that context, its mere mass and scale are not harmonious with the smaller architecture of the Foursquares that have been there."

I believe that 9 Madbury was a wrong design for that location based on its mass and scale and lack of coherence to anything around it.

8 Mathes/15 Madbury would definitely be another wrong construction based on its mass and scale sitting on the entry to Mathes Terrace creating a canyon effect with no significant green space...

Chip Noon, another member of the Durham Heritage Commission echoed Ms. Bodo's remarks, stating:

...The Heritage Commission acts as the memory of the architectural past and the guardian of the architectural future. While it has no binding authority outside of the Historic District, it does have, and must exercise, the job of review, education, and persuasion.

Durham is a vibrant college town. And now we are faced with another in a long line of a vibrant town's conflicting interests in the plans to demolish one or two of the "foursquare"

houses on Mathes Terrace and put up another large building in their place, perhaps as large as the new building at 9 Madbury Road.

The Heritage Commission recommends against this plan, especially as it involves both demolition of historic buildings and severe alteration of a charming “pocket neighborhood” off Madbury Road.

First, the buildings are of a design known as American Foursquare. The American Foursquare is an American house style popular from the mid-1890s to the late 1930s. This style incorporates elements of the Prairie School and the Craftsman styles. It is also sometimes called Transitional Period. The hallmarks of the style include a basically square, boxy design, two-and-one-half stories high, usually with four large, boxy rooms to a floor, a center dormer, and a large front porch with wide stairs. The American Foursquare or "Prairie Box" was a post-Victorian style, which shared many features with the Prairie architecture pioneered by Frank Lloyd Wright.

These homes were most likely built from Sears Roebuck or Aladdin mail-order kits – a house delivered by boxcar with a book of directions and all the parts pre-cut and numbered for self-assembly.

They are truly historic houses in every sense of the word.

Second, the tiny neighborhood of Mathes Terrace is unique in itself with five of these foursquare houses still standing. Yes, there is now a large, some say overpowering, presence next door at 9 Madbury Road. But that juxtaposition further emphasizes the charm of this little neighborhood. And while the Heritage Commission is not denigrating this new building, it does create an abrupt and jarring change from one type of modern structure to these foursquares.

We feel that to remove two of these houses and replace them with a similarly large structure completely changes that small neighborhood, turning it from a charming enclave to an incongruent collection of competing styles.

...Finally, we would like to refer to the new project planned for 25-35 Main Street, the Orion Student Housing/Commercial space. When it was first proposed, it too was completely out of character with the rest of Main Street. Through careful and thoughtful planning and negotiations, that project as it is now proposed will be a model development not only for Durham, but also for any historic New England downtown.

It is not the aim of the Heritage Commission to forestall economic development, but to encourage and promote the idea that development not destroy the historic buildings in town or the character of neighborhoods that are clearly identifiable and irreplaceable.

The Heritage Commission recommends to the Planning Board that the Board deny any application for development of this parcel that would involve the demolition of one or both of these buildings.

* Since this is not a historic district, the Planning Board is not empowered to require the preservation of the two Foursquares, but it certainly can and should, under the Architectural Regulations, mandate that any replacement structure(s) be compatible with the character of the pocket neighborhood. One of the roles of the Heritage Commission is to “[a]dvise...local...government regarding, and advocate on behalf of, the identification, protection, and preservation of local historical, architectural, archaeological, and cultural resources.” (from the Historic District ordinance).

Overview and Purpose of Architectural Regulations

The Overview and Purpose statements and Authority reference follow. I have underlined several especially pertinent sections.

OVERVIEW

A) Findings. *The Town of Durham finds that:*

Much of Durham reflects 18th, 19th, and 20th century architectural styles as it has evolved over time from a small village. The town contains a handsome, historic core that embodies a fine architectural tradition, a colorful history, and much visual appeal.

Preserving and enhancing this area is essential to maintaining the character and identity of our community.

Building designs which: a) are indifferent to the defining features of our town and to surrounding context; b) do not consider the quality of the pedestrian environment; c) introduce design elements which are incompatible with our traditional character; d) aggressively seek the attention of passing motorists; or, e) are erected at very low cost without due concern for aesthetics, harm our community, depress property values, and degrade our quality of life.

While subjectivity and judgment are invariably part of reviewing architectural designs, generally accepted principles of good design among design professionals schooled in traditional architecture provide guidance.

Well-crafted architectural standards promote building design that is functional, economical, attractive, and harmonious. Quality design and sustainable economic development are not mutually exclusive; rather, they are interdependent.

B) Purpose. *It is the intent of these regulations (or “standards”) to inspire architects, designers, developers, and builders to produce beautiful structures, respectful of place, context, and tradition. Adherence to these regulations should not be burdensome and they are by no means intended to stifle creativity or variety. On the contrary, it is hoped that they will encourage applicants to produce more thoughtful designs. There is much flexibility embodied in these regulations and many ways of meeting the objectives. The purpose of these Architectural Design Regulations is to accomplish the following:*

- 1) *Provide for high-quality, human-scale 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;*
- 2) *Encourage design which is compatible with the architectural heritage of Durham, New Hampshire, and New England;*
- 3) *Enhance property values and foster civic pride;*

- 4) 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.
- 5) Minimize potential conflicts between residential and nonresidential uses and between single family and multifamily uses; and
- 6) Create a sense of order, substance, and visual clarity in the built environment.

* The great scale of the façade fronting Mathes Terrace would have a significant adverse impact on the character of the enclave. By injecting 64 students and their visitors into this small area, the proposal would aggravate conflicts between the residential student use and the existing small scale family-oriented businesses.

C) Authority. This section is adopted pursuant to the Town of Durham 2000 Master Plan, 2009 Commercial Core Strategic Plan, and 2011 Architectural Visual Preference Survey, and to the New Hampshire Revised Statutes Annotated section 674:44 - Site Plan Review Regulations.

Other Provisions of Architectural Regulations

E. Process

- ...3) Conformance with standards. All applicable design elements shall be in conformance with these regulations as reasonably interpreted and applied by the Planning Board. An application is considered to meet these regulations if the Planning Board, in its reasonable judgment, determines that the application overall demonstrates conformity with these regulations.

* I believe that the application does not meet the standards and recommend a finding by the Planning Board that it does not, for all of the reasons contained in this memo.

F) Using these regulations

- ...3) Other terms herein. The following additional terms shall also apply:
 - a) "Shall" means the element or action is required.
 - b) "Shall not" means the element or action is prohibited.
 - c) "Appropriate" means the element or action is permitted and desirable.
 - d) "Inappropriate" means the element or action is not permitted.

DESIGN STANDARDS

H) General Principles

- 5) Harmony. Designs shall be harmonious with the prevailing character of the zoning district, the surrounding streetscape, and neighboring buildings – in terms of all of the elements

discussed in this Design Standards section - recognizing that this objective can be complicated when components of the prevailing character do not conform with the goals of these regulations.

* The proposed design is not harmonious with the adjacent streetscape of Mathes Terrace and the neighboring buildings on Mathes Terrace in terms of scale. (Indeed, the other Foursquare buildings do conform with the goals of these regulations in terms of their overall character.) It dwarfs the other buildings in the same manner that 9 Madbury Road does, diminishing their stature and obliterating the character of the enclave.

The Mathes Terrace enclave is worth preserving. After substantial discussion over the course of one year and myriad public meetings, several iterations by the applicant, copious public comment and suggestions from the Town Planner and Planning Board members the applicant has failed to address numerous concerns, notably the requirement for the building to be harmonious in scale with the Mathes Terrace enclave.

- 7) *Features of the site. Building design shall blend with other features of the site - signage, landscaping, lighting, fencing, outbuildings, natural features, and other elements - to the extent practical.*
- 9) *Preservation. Applicants are encouraged (but not required) to preserve existing structures and features that have special architectural, historical, cultural, or contextual value.*

J) Scale and Massing

- 1) *Human scale. Buildings shall above all possess a human scale, both in terms of their overall size and in their details and materials, in order to promote a sense of pedestrian friendliness.*

*This is the key issue. It's central importance is signaled by the language in the Architectural Regulations – “Buildings shall above all...”

While the building has some attractive details and a superficial effort was made to imitate the Foursquare style, the central problem of scale cannot be addressed by simply adding architectural details. There is no solution other than breaking the building into two separate buildings (preferably) or significantly reducing the mass. The elevation facing Madbury Road is fairly attractive but the elevation facing Mathes Terrace, the key frontage is grossly out of scale.

The applicant submitted several drawings of the area which did not effectively convey the relative scale of the proposed building with the existing buildings in Mathes Terrace. Despite several requests by the Planning Board to produce a scale model of the proposal and Mathes Terrace buildings, the applicant failed to do this.

Beth Olshansky, a Durham resident, prepared this table which shows the difference in scale between the proposed building and the existing five buildings. The subject property contains 8 Mathes Terrace and 15 Madbury Road. Compared to the averages of the five existing sites:

- Gross square footage of the proposed building would be **6.1 times** the size of the existing five buildings (or 5.6 times the remaining three buildings)

- The footprint (area of the building at ground level) for the proposed building would be **5 times** greater (or 4.5 times the remaining three buildings)
- The percentage of the combined lot used for the proposed building would be **65% compared to 22%** (22% also for the remaining three buildings)

	– Existing –							– Proposed –	
	8 Mathes Terrace	10 Mathes Terrace	12 Mathes Terrace	13 Madbury Road	15 Madbury Road	<i>Average (mean)</i>		8 MT + 15 Madbury combined	<i>Compared to Average</i>
Gross area sq ft	2,976	4,004	4,853	2,818	3,246	3,579		21,930	6.1x>
Footprint square ft.	1,168	2,044	2,129	1,138	1,494	1,595		8,006	5.0x>
Lot size (Acres)	0.13	0.18	0.23	0.13	0.16	0.17		0.28	1.6x>
Square feet of lot	5,663	7,841	10,019	5,663	6,970	7,231		12,251	1.7x>
% of land used	21%	26%	21%	20%	21%	22%		65%	3.0x>

(source of data: Assessor's Online Database and Applicant)

* Here is an image of the 9 Madbury Road project (in white) and the five Mathes Terrace buildings. The size of the footprint for the proposed project will be approximately the same as that of 9 Madbury, though laid out in a rectangular fashion rather than a square fashion.



- 2) Maximum height and criteria for taller buildings. On the other hand, buildings shall not be so tall as to create a canyon effect and be out of scale with the human form and surrounding buildings...

The Planning Board shall also consider the following criteria in determining whether an especially tall structure is appropriate in any of the five districts...

- ...b) The width of the building (greater height is generally appropriate with narrower buildings)*
 - ...i) The height of the adjacent buildings (great height is more appropriate next to taller buildings)*
 - ...j) The width of the street (a wider street can better accommodate greater height).*
- ...3) Height-width ratio of street. The relationship/ratio between: a) the average height of buildings on both sides of the street, and b) the average width measured across the street between those facing buildings on opposite sides of the street, impacts the feel of a street. If the ratio is too low, such as 1:4, then there will fail to be a sense of enclosure created by the low facing street walls. If the ratio is too high, such as 2:1, then a canyon effect will result. (These two examples are given for illustrative purposes only.)*

*The height of the building is exacerbated by the substantial dormers at the third level (much more expansive than in a traditional Foursquare house), the great width of the building, and the short setback to the street – 3 to 4 feet.

Peter Stanhope, the owner of an abutting Foursquare on Mathes Terrace (and the chair of the Durham Heritage Commission) says,

“... The approval of a structure of the mass proposed will create a canyon effect to the property at 13 Madbury between 9-11 Madbury Road and the proposed development.

...U) Specific Building Types And Building Elements

...2) Garages. *Garages (private and public) and garage doors shall be unobtrusive. Doors shall be placed on side facades not facing the street, doors shall be fully screened from view by landscaping or other structures, and/or garages shall be set back substantially from the street.*

Inappropriate



* The garage entry faces Mathes Terrace, making a distinctly unattractive and inappropriate element prominent. While Mathes Terrace is a private street, it is very much a “street,” in reality in terms of its impact and as defined in the Zoning Ordinance. Were the building appropriately downsized, the garage entry could be placed on the far side of the building (on the left side when facing it from Mathes Terrace), but the tightness of the building configuration does not permit this acceptable, alternative approach.

Other Site Plan Review Provisions

1.02 Purpose

The purpose of the Durham Site Plan Review Regulations, as authorized by RSA 674:44-II, is to:

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:

...5) Inadequate pedestrian and traffic plans.

* Mathes Terrace is a short, narrow, private cul de sac. It provides the sole means of access to the other properties in the enclave, including a busy and thriving dental office, orthodontia office, and architectural office. The ownership arrangement among the five abutting lot owners is not clear about maintenance and control. Introducing a new building with 64 students into this situation will create significant problems of traffic, cars parked illegally, and other activity that will have a deleterious impact upon the other owners on Mathes Terrace. The applicant never provided a plan to address these concerns.

Dave Kurz, the Durham Police Chief stated,

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.

* In spite of numerous concerns raised throughout the process these challenges have never been satisfactorily addressed by the applicant.

There should be a pedestrian access/sidewalk along Mathes Terrace on the subject lot but there is not room with the spacing of the building.

Peter Stanhope, a direct abutter in Mathes Terrace (and chair of the Durham Heritage Commission) describes problems with situating a building of this size on Mathes Terrace.

First life safety: Mathes Terrace is a private street. There are no parking restrictions on either side of it, nor any authority to enforce vehicles parked in a manner restricting life safety vehicles moving to the rear of the Terrace.

By example, on the first weekend in June this year, the street was effectively blocked with trucks and trailers of the move in traffic of 9-11 Madbury.

There is nothing in the application to address either resident or guest traffic and parking on the Terrace that is enforceable by the developer, nor does the legal right exist.

Additionally, there is no way to ensure the Terrace will be maintained in winter months as the municipality does not plow it presenting the possibility of blockage during a major storm. The lack of reasonable and continuous life safety access is grounds to not approve the application.

Increasing the occupancy on the terrace will only exacerbate what is already a problematic and a risk loaded situation on a regular basis.

B. *Provide for the harmonious and aesthetically pleasing development of the municipality and its environs;*

Carol Tuveson, a Durham resident stated,

I have many concerns about the proposed Mathes Terrace/Madbury Road development. Having slept through the approval of 9-11 Madbury Road and now having to live with the monstrosity that in no way reflects its neighborhood and dwarves its abutting properties, leaving them in shadow, I am unwilling to sit back and let another such structure spring up without at least voicing my concerns.

The architect indicated that Mathes Terrace would be a counterpoint to 9-11 Madbury. Having made one huge mistake by approving 9-11, I am sure the Planning Board isn't anxious to repeat it.

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.

Were my children still young and in need of the orthodontist, I would be very reluctant to have them walking past student housing of this size. I grew up here, and I know that college kids get drinking and start mouthing off inappropriately to passer-bys and it can feel very threatening to younger people. And to further complicate things, this very narrow lane would be asked to support more traffic as cars drove to and from the parking garage, creating one more hazard for pedestrians to be on the lookout for. Thus, while we have a small community of buildings operating commercially, I fear this particular use of this property would fail to promote or maintain the friendly, pedestrian-oriented destination it currently is.

C. Provide for open spaces and green spaces of adequate proportions;

* The project does not provide any meaningful open space or green space for the residents. Nearly all of the existing green space on the site is eliminated.

D. Require the proper arrangement and coordination of streets within the site in relation to other existing or planned streets or with features of the official map of the municipality;

E. Require suitably located streets to be of sufficient width to accommodate existing and prospective traffic and to afford adequate light, air and access for fire fighting apparatus and equipment to buildings and be coordinated so as to compose a convenient system;

...G. Require that the land indicated on plats submitted to the Planning Board shall be of such character that it can be used for building purposes without danger to health;

H. Include such provisions as will tend to create conditions favorable for health, safety, convenience and prosperity; and

* The back half of the proposed building is 3 to 4 feet from the lot line adjoining an adjacent approved student housing development called Madbury Commons. The front half of the proposed building has a retaining wall on the property line and a narrow 4-1/2 to 6-1/2 foot wide walk to the secondary entrance. There will be expected impacts from this onto the residents in the side apartments at Madbury Commons in terms of noise, light, safety, and trash (which will be stored in this area and removed along the sidewalk). Ken Rubin, principal of Madbury Commons, cites numerous problems with this approach including impacts of trash, lighting, security, and noise in letters to the Planning Board and testimony at public hearings.

As Megan and Jason Lenk, proprietors of the orthodontia practice on Mathes Terrace said, *We're in favor of redevelopment for the two lots at 8 Mathes Terrace and 15 Madbury Road, however we believe that the intensity of the proposed development, increasing the student population to 64, coupled with insufficient parking will overwhelm this small drive and cause harm to our business. Our primary concerns for protecting our patients and our business are:*

- 1. Maintaining convenient access for our patients to Lenk Orthodontics*
- 2. Maintaining safe access for our patients to the practice (for cars and pedestrians, such as kids walking from school)*
- 3. Maintaining an appropriate business climate on Mathes Terrace*
- 4. Preserving the current neighborhood feel of Mathes Terrace*

Thomas Hildreth, attorney for the Lenks, states:

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, striped, 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 manner that interferes with safe passage.

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."

9.1 Preservation of Natural Features and Amenities

A. General Requirements

1) Grading and clearing should be minimized so as to avoid creating undue erosion or interruption of natural drainage ways. Particular attention should be given to natural features suitable as buffer strips between residential subdivisions abutting commercial or industrial areas. Similar natural features that provide buffers between lots, or sections of a development should be preserved to enhance privacy and attractiveness. Provision for clearing may be made for southerly exposure for solar access to dwellings or buildings.

Zoning Ordinance Provisions

175-3. Purpose.

The provisions of this chapter are intended to regulate the use of land for the purpose of protecting the public health, safety, convenience and general welfare of the residents of the Town of Durham. This chapter is adopted in accordance with and in order to implement the Master Plan and other policies designed to ... ensure that development is commensurate with the character and physical limitations of the land.

175-11. Scope and Interpretation.

In interpreting and applying the provisions of this chapter, they shall be held to be the minimum requirements for the promotion of the health, safety, convenience and general welfare of the Town of Durham and its residents. Where a provision of this chapter differs from that prescribed by any other applicable statute, ordinance or regulation, that provision which imposes the greater restriction or the higher standard shall govern...

175-41. Central Business District (CB)

A. Purpose of the Central Business District

The purpose of the Central Business District is to maintain the mixed-used, pedestrian-oriented character of the downtown area while accommodating new development, redevelopment, and enlargement of existing buildings in a manner that maintains and enhances the small town character of the downtown. Downtown Durham should be an attractive and vibrant community and commercial center where desirable residential, retail, office, and other nonresidential growth can occur in a clean, safe, pedestrian-friendly environment.

175-118. Preface.

Trees are recognized as a valid asset to the community, providing a more healthful and beautiful environment in which to live. Trees and other vegetation provide oxygen; shade; protection from wind, glare and noise; view barriers; aesthetics; and a priceless psychological counterpoint to the man-made urban setting. Landscaping is economically beneficial in attracting new residents, visitors and industry. When grown on the right place and of proper varieties, landscaping enhances the value and marketability of property and promotes the stability of desirable neighborhoods and commercial areas.

Landscaping

175-119. Purpose and Intent.

- A. *The purpose of this Landscape Article is to establish procedures and practices governing the protection, installation and long-term maintenance of trees, vegetation and other landscape elements within the limits of the Town of Durham...*
- B. *Development oftentimes requires the removal of trees and other plant material. The protection and enhancement of the natural beauty, environment and green space within the Town of Durham is an important aspect of the economic base of the community in that it is instrumental in attracting*

residents and nonresidents who come to visit, trade, vacation or attend conventions and educational programs.

C. The purpose and intent of this Article is as follows:

- ...2. To ensure that the local stock of native trees and vegetation is protected and replenished.
3. To provide visual buffering and enhance the beautification of the town.
4. To safeguard and enhance property values and to protect public and private investment.
5. To preserve and protect the identity and environment of the Town of Durham and preserve the economic base attracted to the Town of Durham by such factors.
6. To conserve energy.
7. To protect the public health, safety and general welfare.

175-120. General Requirements.

The objectives of this section are to encourage the planting and retention of existing trees and other vegetation to improve the appearance of off-street parking areas, yard areas and other vehicular use areas; to protect and preserve the appearance, character and value of surrounding properties and thereby promote the general welfare, safety and aesthetic quality of the Town of Durham; to establish buffer strips between properties of different land uses in order to reduce the effects of sight and sound and other incompatibilities between abutting land uses; and to ensure that noise, glare and other distractions within one area do not adversely affect activity within another area.

- A. No landscape plan submitted pursuant to this section shall be approved unless it conforms to the requirements of this Article.
- B. Landscape plans shall be submitted for all commercial and commercial residential uses.
- C. A detailed snow-removal plan shall be submitted with the landscape plan.

175-121. Commercial Areas.

The existing natural landscape character shall be preserved to the extent reasonable and feasible. As an example of this, in a yard area containing a stand of trees, the developer shall use care to preserve such trees. In determining whether there is compliance, the Planning Board shall consider topographical constraints on design, drainage, access and egress, utilities and other factors reasonably related to the health, safety and welfare of the public which necessitated disturbance of the property without the disturbance of its natural character, the nature and quality of the landscaping installed to replace it and such other factors as may be relevant and proper.

A. Landscaped yard area requirements.

...3. Shrubbery, ground cover and other planting materials shall be used to complement the tree planting but shall not be the sole contribution to the landscaping. Effective use of earth berms, existing topography and existing trees is also encouraged as a component of the landscape plan and shall be considered as a part of the landscaping requirement.

C. Buffer/barrier. Abutters will be protected against undue noise, glare, unsightliness or other nuisance detrimental to property values. Where a commercial lot abuts a residential area, a screen along the lot line must be provided consisting of either a row of evergreens at least four (4) feet in height at planting, which will grow into a thick hedge not less than six (6) feet high, or of an opaque and neatly maintained fence not less than six (6) feet in height.

* All of the existing trees on the site will be removed except for one at the rear of the lot. All of the proposed landscaping along the main façade on Mathes Terrace will be shrubbery (except for one tree in the Mathes Terrace right of way), as there is no room for trees here. Most of the shrubs will not be planted on the subject property but on the lot line or in the Mathes Terrace right of way. There is no buffer proposed between the subject lot and the adjacent businesses nor the Madbury Commons project where the rear walkway will be located right on the lot line.

Town Planner's Qualifications

I have worked as a Town Planner/Planning Director for 23 years and in the related planning profession for an additional 5 years. I consider myself an expert in architectural review: a) I wrote the Architectural Regulations for Rochester, NH, a community that is considered very development friendly and administered them successfully for 14 years on many projects citywide; b) I wrote the Architectural Regulations for the Town of Durham, under the Planning Board's direction and with substantial community participation; c) I wrote the book, The Architectural Jewels of Rochester, New Hampshire, published by The History Press of Charleston, SC; and d) I have served as staff to historic district commissions in 4 municipalities and wrote the ordinance for Rochester, NH (The review process for new construction in a historic district is similar, though not identical, to outside of a district).

Proposed Motion of Denial

I recommend the following motion. "I move that the application for a mixed-use redevelopment at 8 Mathes Terrace and 15 Madbury Road be denied because the proposed building design is substantially out of scale with the existing character of Mathes Terrace and would thus cause substantial harm to this pocket neighborhood. As such, the proposal substantially violates the Town of Durham Architectural Regulations. Furthermore, the application fails to meet various other standards contained in the Architectural Regulations, the Site Plan Regulations, and the Zoning Ordinance, all as discussed in the memorandum from the Town Planner on this subject dated June 24, 2014.



These minutes were approved at the July 23, 2014 meeting.

DURHAM PLANNING BOARD
Wednesday, June 25, 2014
Town Council Chambers, Durham Town Hall
7:00 p.m.
MINUTES

MEMBERS PRESENT:

Andrew Corrow, Vice Chair
Richard Kelley (participated by speaker phone until 8:51 pm)
Lorne Parnell
Bill McGowan (arrived at 7:59 pm)
David Williams, Secretary
Councilor Julian Smith, Council Representative to the Planning Board
Wayne Lewis, alternate
Linda Tatarczuch, alternate
Councilor Kathy Bubar, alternate Council Representative to the Planning Board

MEMBERS ABSENT

Peter Wolfe, Chair

I. Call to Order

Planning Board member Andy Corrow served as Chair of the meeting in place of Peter Wolfe. Vice Chair Corrow called the meeting to order at 7:00 pm.

II. Roll Call

The roll call was taken. Mr. Kelley participated in the meeting by spider phone, and noted that he was in Toronto on business. The Planning Board's attorney, Attorney Laura Spector Morgan, was seated at the table.

III. Seating of Alternates

Chair Corrow said Mr. Lewis would serve as a regular member in place of Mr. Wolfe, and Ms. Tatarczuch would serve as a regular member in place of Mr. McGowan until he arrived.

IV. Approval of Agenda

Councilor Smith MOVED to approve the Agenda. Lorne Parnell SECONDED the motion, and it PASSED unanimously 7-0.

VI. Public Comments

Councilor Robin Mower, Faculty Road, said she was at the TSC meeting. She noted that the Board would hear from Administrator Selig on some additional reasons for making the traffic design changes. She said the Town anticipated working with UNH on installing a roundabout at the intersection of Pettee Brook Road and Quad Way, and explained that this design change would result in a single lane of traffic going down Main Street anyway.

She spoke about the fact that there would be an increasing number of residents living downtown as a result of the recent applications that had been approved, and said it was hoped that many of these new residents would find that there was a more pedestrian friendly environment downtown.

Chair Corrow asked if there was a timeline for the roundabout, and Mr. Behrendt said no. He said this was a joint concept between the Town and UNH, but explained that it wasn't anticipated that there would be federal funds available to help pay for it in the near future. He said if the Town and UNH wanted to go forward with the roundabout on their own, the cost would be \$400,000-500,000.

Steve Fink, 11 Fellows Lane asked what the arrangement would be for fire trucks to get through on Main Street, given this new traffic design. Councilor Mower noted that Chief Landry was at the TSC meeting today, and she said he was pleased with the traffic pattern, and didn't seem worried about cars being able to pull over to allow a fire truck through. Mr. Behrendt agreed. Councilor Mower said these kinds of things had been carefully considered, and she spoke further on this. She said the traffic design/flow would continue to be monitored.

VII. 8 Mathes Terrace and 15 Madbury Road – Student Housing Development. Site plan and conditional use for wetland buffer for redevelopment of two lots for a three-story mixed-use student housing development for 64 occupants with commercial space and garage parking. Island Diversified, LLC, c/o Chris Mulligan, applicant; BAA Realty Acquisitions, LLC and Theodore Finnegan, owners; Michael Sievert, MJS Engineering, engineer; Chris Mulligan, attorney; Somma Studios, building designer. Tax Map 2, Lots 12-5 and 12-6. Central Business Zoning District.

Chair Corrow noted that the public hearing was closed and the Planning Board would be deliberating.

Councilor Smith thanked Mr. Behrendt for the memo he had sent out to the Planning Board yesterday, which recommended denial of the applications. He said it was a detailed document on the history of the application, and included comments from abutters and other members of the public, etc.

Councilor Smith MOVED that the Site plan and conditional use applications submitted by BAA Realty Acquisitions, LLC for redevelopment of two lots for a three-story mixed-use student housing development for 64 occupants with commercial space and garage parking be denied, because the proposed building design is substantially out of scale with the existing character of Mathes Terrace and would cause substantial harm to the pocket neighborhood. As such, the proposal substantially violates the Town of Durham Architectural Regulations. Furthermore, the application fails to meet various other standards contained in the Architectural Regulations, the Site Plan Regulations, and the Zoning Ordinance, all as discussed in the memorandum from the Town Planner on this subject dated June 24, 2014. The property is located at 8 Mathes Terrace and 15 Madbury Road, Tax Map 2, Lots 12-5 and 12-6 and is located in the Central Business District. David Williams SECONDED the motion.

Councilor Smith referred to provisions in Section 1.02 Purpose, of the Durham Site Plan Regulations:

- 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 5) Inadequate pedestrian and traffic plans*

Councilor Smith said what the applicant had presented didn't convince him that the great number of tenants in the building and visitors had been planned for adequately.

- B. *Provide for the harmonious and aesthetically pleasing development of the municipality and its environs.*

He said what was proposed was not harmonious with this small neighborhood.

- D. *Require the proper arrangement and coordination of streets within the site in relation to other existing or planned streets or with features of the official map of the municipality.*

Councilor Smith said Mathes Terrace was a private street, and said there were enforcement problems because of this.

- G. *Require that the land indicated on plats submitted to the Planning Board shall be of such character that it can be used for building purposes without danger to health.*

Councilor Smith said given the size and tightness of the site, there was significant possibility of danger, including a situation if there was a fire in the building.

- H. *Include such provision as will tend to create conditions favorable for health, safety, convenience and prosperity.*

Councilor Smith said he thought the prosperity of abutting businesses would be affected, and that the safety and convenience of the small neighborhood would be affected by what was proposed.

Mr. Lewis said the key to the issues with this application was that there was a very small private driveway, and he said this would lead to serious complications concerning health and safety. He also noted that the Heritage Commission had recommended that the application be denied, and he said that in itself was a key reason for the Planning Board to not approve the application. He said the proposed building was out of scale with this small neighborhood, and said he would vote to deny the application.

Mr. Williams said he had expressed concerns about this application, and noted that over the past 12 months, members of the public had expressed their concerns about it as well. He said this review process had challenged residents' sense of civic pride, and said the project put somewhat in jeopardy Durham's sense of itself as a small New England town. He said with the proposed scale of the project, he wasn't sure that the design would make it easy for the established residents on Mathes Terrace, who had professional businesses there. He said these residents deserved to be respected.

Mr. Parnell said he supported the motion. He said he thought Mr. Behrendt had produced a good document that contained a lot of information, and said he agreed that the principal impact was in regard to the architectural issues, including the proposed size of the building.

He said he'd seen a lot of projects come before the Planning Board in recent years and said he thought the projects the Board had approved were, on balance, a benefit to the Town, with some more beneficial than others. But he said this project didn't strike him that way, and said he had concerns about issues that would result from it in the future.

Mr. Parnell noted his concerns from the beginning about the issue of the project being built on a private road. He said he had thought at the time that the neighbors and the applicant would need to have some serious discussions about how things would proceed during construction. But he said he didn't think those discussions or any agreement had occurred, and said he thought that was a sign that this project would not be good for Durham.

He noted that the third party review of the construction management plan indicated that the Town should hire someone to monitor construction, and that this would be paid for by the applicant. But he said there was nothing from the applicant that said this was a good idea, and said he thought this was an example of how things would go in the future. He said he supported the motion to deny the applications.

Mr. Kelley said he was in favor of the motion to deny the applications. He said given the specific location of the project in the Town, and with the details the Planning Board had seen in the site plan and concerning the architecture renderings, he couldn't support the applications. But he said he recognized that the site plan application wasn't out of

conformance with the dimensional requirements. He said if the project was proposed to be located somewhere else along Madbury Road, he could view it favorably, but stated again that given the proposed location, he couldn't support the applications.

Councilor Bubar said since she'd been on the Planning Board over the last few months and during that time had heard a lot of opposition to this project. She said the developer had in good faith tried to work on some of the things the Board had suggested. But she said in considering the scale of the project, the road to look at was Mathes Terrace, not Madbury Road.

Ms. Tatarczuch said she would like to echo many of the things that other Board members had said. She said she'd been on the Planning Board since October, and said this application had been before the Board on a regular basis during that time. She said there had been concerns about the scale of the project and fitting it in on a tiny street, and she said it would create a canyon effect with a building of that size on Mathes Terrace. She said looking at the revised drawings, she couldn't see that the project would be in compliance because of the scale problem.

She noted that there had also been concerns about the safety of pedestrians on that street as a result of this project, especially young pedestrians. She said the proposed access in and out of the building for residential tenants didn't make sense and said she was concerned about impacts from this on Mathes Terrace. Ms. Tatarczuch said she supported the motion.

Councilor Smith noted that he was on the Planning Board when Paul Berton proposed a project to redevelop the Shell site, which the Planning Board turned down. He said this was one of the very few times the Planning Board had turned down an application. He said Mr. Berton then went back to the drawing board and came forward with an application to build the Hotel New Hampshire, which was successful. He said denying the current Mathes Terrace application didn't mean that the Planning Board would not look favorably upon an application that was more consistent with this small neighborhood and with the kinds of uses that were well established there.

Chair Corrow said he supported the motion, and concurred with issues that other Board members had brought up. He said his main reason for supporting the motion was that what was proposed conflicted with and was not in keeping with the Architectural Design Regulations. He said the proposed building was not sensitive to neighboring buildings on Mathes Terrace.

He also said he didn't know that this project would strengthen commercial vitality downtown, and questioned what the project would add to the Town. He noted that other projects in recent years had for the most part been of benefit to Durham. He said he didn't think this project would minimize potential conflicts between residential and non-residential uses, and also said he didn't think it was harmonious with the prevailing character of neighboring buildings.

The motion PASSED unanimously 7-0.

VIII. Public Hearing - 90 Bennett Road – Thompson Inn. Amendment to approved site plan for new parking lot and driveway for 10-room inn. Stephen and Lori Lamb, applicant; Rokeh Consulting, Site Designer. Tax Map 14, Lot 34-1. Rural Zoning District.

Mr. Lamb said there were updated plans based on the suggestions given during the recent technical review meeting with Mr. Behrendt, Mr. Johnson, the assistant Fire Chief and DPW staff. He noted that there was a recommendation that a stormwater drainage analysis should be done, and he said it should be done by the end of this week. He reviewed the changes that had been made to the plans as well as other details concerning the project:

- details added on the culverts; analysis done on the culverts to make sure a 55,000 lb fire truck could pass over without crushing them.
- inclusion of handicap van access parking off of the barn
- addition of geothermal wells for heating
- details have been provided on the drainage swale to the left of the drive; the proximity of the drainage swale to the well has been checked and is not a problem
- a gate/cable at the bottom of the drive has been added to the plan.
- burying of electrical service to the barn from the pole is noted on the plans
- detail has been added for the pedestrian walkway from the parking lot down to the porch
- the foundation for two concrete structures will be removed and this area will be that re-graded

Mr. Williams noted item #22, concerning special events, and said he recalled that at the site walk, there was discussion that there would be 18 special events. There was discussion about what an event would be, and Mr. Lamb said they felt an event would be something like a wedding or family reunion. Mr. Lamb noted that this number was approved by the Planning Board at an earlier meeting. Lorie Lamb explained that they received a variance for up to 18 events annually in a tent. Mr. Williams asked about the demand on the driveway, given this number of events. He noted the vulnerability to stormwater runoff, given the steep grade up to the back parking lot.

Mr. Williams asked what else they expected besides the 18 events. Mr. Lamb said they hoped there would be a good number of events. He noted that they were planning to renovate the barn and said in the winter months functions would take place there. He said it was hard to anticipate the number of events there would be. He said he thought the parking and driveway were satisfactory for what they proposed to do. He noted that some events would require additional hotel rooms, and said they had spoken with the Holiday Inn Express on this.

He explained that the Inn only had ten rooms so economic benefits from their events would come into Durham. He said they had also spoken with the Durham Boat Company, and they had agreed to let them use the parking area for events, so there was