

Memorandum

To: Members of the Planning Board
From: Liz Durfee, AICP, Planner
Date: August 31, 2021

Type of Review: Initial Review of Subdivision Application

Property Owner: Michael J. & Martha A. Mulhern
Applicant/Agent: Michael J. Sievert, PE, Horizons Engineering, Inc.
Property Address: 91 Bagdad Road, Durham, NH 03824
Map and Lot #: Map 10 Lot 8-6 Durham & Map 9 Lot 32 Madbury
Zoning District: General Residential and Agricultural District
Overlay: Wet Areas Conservation Overlay District
Shoreland Protection Overlay District (TBD)

Waivers Requested: None as of August 31, 2021

Summary

A condominium development is proposed for Map 10 Lot 8-6 located at 91 Bagdad Road in Durham. A portion of the property is located in Madbury on Map 9 Lot 32. It is an existing nonconforming lot of approximately 2 acres with no frontage. The lot is currently wooded. There is an existing easement off NH Route 108 on Map 9 Lot 33 in Madbury and 91 Bagdad Road in Durham.

The applicant proposes an 18-unit condominium consisting of a combination of 1-and 2-units on Map 10 Lot 8-6. The proposed development in Madbury is 161' of roadway and associated grading and underground utilities. A portion of the private road serving the 'pocket neighborhood' and a walking trail are proposed on the Madbury portion of the property. No road access from Madbury is proposed. The project has been under review in Durham as a conservation subdivision since October 2020.

A portion of Map 9 Lot 32 is located within the Wet Areas Conservation Overlay. The only proposed development within the overlay is a small section of mulched walking trail within the 50 foot buffer to poorly drained soil. This is a permitted use within the Wet Areas Conservation Overlay District. There is a small stream located within the wetlands on the parcel and therefore the local Shoreland Protection Overlay District (Zoning Ordinance Article X Section 2) may apply. The applicant should review this article to determine whether Map 9 Lot 32 is within the district boundaries of this overlay district

Per [NH RSA 674:53](#), Land Affected by Municipal Boundaries, is applicable.

NH [RSA 356-B](#), Condominium Act, is also applicable.

Planner's Review

The following were reviewed:

- Letter of Intent dated Aug 12, 2021

- Application for Subdivision dated August 12, 2021
- “Michael & Marti Mulhern The Crossings Subdivision, Durham, NH & Madbury, NH” plan dated 12, August 2021 and prepared by Horizons Engineering

In addition, I skimmed several documents posted to the Town of Durham’s [website](#) for this project.

Lot Size, Setbacks, and Frontage:

- Map 9 Lot 32 is an existing lot of record with no frontage. Any building or use otherwise permitted in the district is permitted on a lot of record regardless of frontage and area requirements per Zoning Ordinance Article IV Section 1.

Waivers Requested:

- None at this time.

Subdivision Standards:

It does not appear that Madbury’s Zoning Ordinance, Subdivision Regulations, or Site Plan contain any provisions for condominiums or include condominiums in the definition of subdivision. Therefore, I do not believe that the Town can regulate the proposed project under the Subdivision Regulations. I would recommend that the Planning Board seek guidance from the Town’s attorney on this matter: *Given the proposed road layout, as well as the fact that the land in Madbury appears necessary to meet the density requirements of Durham’s regulations, the project is contingent on approval from Madbury. However, I have not found language in the Town of Madbury’s regulations that expressly give the Planning Board jurisdiction to regulate condos. Can the Town of Madbury Planning Board proceed with either approving, conditionally approving, or denying the subdivision application? If not, what is the course of action?*

For reference, the board may be interested in reviewing this information from NH Municipal Association: <https://www.nhmunicipal.org/town-city-article/legal-q-condominiums-and-land-use-controls>.

Suggested Discussion Items:

Given that I am not sure that review under the Subdivision Regs is the proper procedure, I am providing some general discussion items that the Planning Board can consider.

- The applicant should review the ownership information on Sheet C101 General notes. The parcel is listed as Map 9 Lot 33. I believe this should be Lot 32. Lot 33 is not owned by the Mulherns according to my review of the Town of Madbury property information. Additionally, the deed that is referenced in this note (BK 4095 PG 129) suggests that the lot (32?) is owned by the Mulherns as well as another party (Michael and Lisa Allen). If this is the case, this should be included in the application.
- The Town of Madbury has local shoreland protection regulations (ZO Article X) that include a 75’ buffer around streams. This should be added the overlay to the plan, if applicable.
- The applicant should provide a key and/or for the colors and labels of wetlands on sheet C100.
- As the easement off NH Route 108 affects Map 9 Lot 33 in Madbury, it is recommended that that the Planning Board request information about this easement.
- What is proposed for the land in Madbury other than the road and walking trail? What is permitted on the walking trail? Will land be conserved? What is included in the condo documents to prevent future development or encroachment on land in Madbury that may impact wetlands or nearby streams?

- Where is the snow storage proposed?
- Potential Impacts to surface and groundwater. An increase in impervious surfaces can have an impact on surface and groundwater. Because the land slopes from the south to the north and northeast and has a low point at the town boundary, stormwater runoff must be sufficiently managed to prevent impacts (such as increased flow, water temperature, pollutants, and/or sedimentation) to wetlands and streams in Madbury associated with the development in Durham. Earlier this year, VHB conducted a peer review/third party review of the proposed drainage and stormwater management plan and road layout plan. The [VHB review](#) and [Horizon's response](#) to and edits based on the review is available on Durham's website. It appears that the condo docs will include a stormwater maintenance plan. A copy of the most current stormwater, drainage, and maintenance plans should be provided to the Town of Madbury.
- The development will be served by municipal water, and sewer (with septic tanks), which will result in less of an impact to water resources in the immediate and downstream vicinity than leach fields and wells may.
- Under 647:53, the Planning Board may waive or vary its regulations with respect to access or interior roads in order to provide better harmony with the regulations of an adjoining municipality, whenever strict compliance would be unreasonable in light of the overall design of a proposal. It is recommended that the Town of Madbury Road Agent review the proposed road design and present any concerns to the Planning Board and applicant. The Road Agent may wish to inspect the road and/or coordinate with the Town of Durham's inspections. In light of the fact that the road will be a private road located almost entirely in Durham, a road that does not have direct access to a road in Madbury, and a road that the Town of Madbury will not maintain, the Planning Board may find it reasonable to waive Madbury's road standards. The Town of Madbury should obtain a copy of the road maintenance agreement for the private road.
- The Selectmen should review and sign off on the road name. There is correspondence posted on Durham's website on the road, E911 naming, and fire chief sign off, but per the Town's Subdivision Regs (should they be applicable), the BOS approves road names.