



RECEIVED
Town of Durham

January 28, 2013

JAN 28 2013

Zoning Board of Adjustment
15 New Market Road
Durham, NH 03824

Planning, Assessing,
Zoning & Code Enforcement

Re: Zoning Board of Adjustment – Mast Road Apartments Path Extension

Dear Board:

We are pleased to submit our variance application for the Mast Road Apartments Path Extension (hereinafter "Path") where we are requesting approval to fill a small area of wetland to accommodate the Path's proposed location. The Path will serve the Mast Road Apartments, the Bryant Park West Apartments, and the University of New Hampshire (UNH) West Edge Lot and provide convenient/safe pedestrian and bicycle access to/from the UNH campus. The Path is also a Durham Planning Board condition of approval for the Mast Road Apartments.

The Path is located in the most appropriate location to serve the surrounding properties. It will be contained entirely on UNH property and connect to the existing path which currently terminates at the Forestry Service driveway. The proposed location has the least impact on mature trees, stone walls, and wetlands of any alternative location. The Path will cross the wetland at its narrowest point to minimize its impact.

In summary, the Path fills a void for safe pedestrian/bicycle connectivity on this section of Mast Road. Please feel free to contact me directly at 404-920-5361 should you have any questions or comments. We appreciate your consideration of this application.

Sincerely,

Peak Campus Development, LLC

A handwritten signature in black ink, appearing to read "Jeff Githens", written over a horizontal line.

Jeff Githens
Vice President

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

RECEIVED
Town of Durham

JAN 28 2013

Appeal for Applicant

State of New Hampshire

Planning, Assessing,
Strafford, SS
Zoning & Code Enforcement

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

Name of Applicant: Peak Campus Development, LLC.

Address: 2970 Clairmont Road, Atlanta, GA 30329 Phone # 404-920-5361

Owner of Property Concerned: University of New Hampshire
(If same as above, write "Same")

Address: 22 Colovos Road, Durham, NH 03824
(If same as above, write "Same")

Location of Property: Mast Road
(Street & Number, Subdivision and Lot number)

Description of Property (Give Tax Map number, length of frontage, side and rear lines
and other pertinent descriptive information) Tax Map 13, Lots 3-0, 3-1, 1-0. The parcels

are all owned by UNH, with approximately 1,500 LF of total frontage on Mast Road.

The parcels include West Edge Lot, the USFS building and a residence. The lots
are irregularly shaped.

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

SECTION 1: APPEAL FROM AN ADMINISTRATIVE DECISION

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

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

Decision of the enforcement officer to be reviewed: _____
_____ Number _____ Date _____

Article _____ Section _____ of the Zoning Ordinance in question.

SECTION 2: APPLICATION FOR SPECIAL EXCEPTION

Description of proposed use showing justification for a Special Exception as specified in the Zoning Ordinance Article _____ Section _____

SECTION 3: APPLICATION FOR EQUITABLE WAIVER

The undersigned hereby requests an Equitable Waiver of Dimensional Requirements as provided in RSA 674:33-A of the New Hampshire Planning and Land Use Regulations.

Please give a brief description of the situation: _____

SECTION 4: APPLICATION FOR A VARIANCE

STANDARD OF REVIEW: The New Hampshire Legislature has declared that each of the following conditions must be found in order for a variance to be legally granted. Prior to seeking a variance, the property owner must have been DENIED a building permit by the Building Inspector or approval by the Planning Board.

1. No decrease in value of surrounding properties would be suffered;
2. Granting the variance would not be contrary to the public interest;
3. Denial of the variance would result in unnecessary hardship to the owner seeking it;
4. By granting the variance substantial justice would be done;
5. The use must not be contrary to the spirit and intent of the ordinance.

A Variance is requested from Article XIII Section 175-60 of the Zoning Ordinance to permit the filling of a portion of wetland (+/- 1,645 SF) in the Wetland

Conservation District, located on Tax Map 13, Lots 3-0 and 1-0 for the construction

of a multi-use path. An additional wetland will be filled (+/- 248 SF) on Tax Map 13 Lot 3-1 for construction of this path.

Facts supporting this request:

1. No decrease in value of surrounding properties would be suffered because:
All property that will contain the proposed path extension is owned by UNH. The path extension will then serve the surrounding properties with a safe pedestrian/bike connection to UNH and Main Street.

2. Granting the variance would not be contrary to the public interest because:
The path extension will provide a safe and convenient pedestrian/bike alternative that does not currently exist in this part of Durham.

Current law requires the existence of unnecessary hardship for the granting of any variance, whether that is for a use not allowed in a particular zone or a deviation from a dimensional requirement.

3(A). Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

a. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

The proposed path extension location is the most appropriate location of all alternatives. The impact to the wetlands has been minimized to the extent possible, but crossing and filling a small area of wetland can not be avoided.

and

b. the proposed use is a reasonable one because:

It provides safe/convenient pedestrian access to this area of Durham

Or

3(B). Owing to special conditions of the property that distinguishes it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

With the existence of the wetlands and the need to cross/fill a small area of
wetlands given the lack of viable alternatives, a variance is necessary to enable
the path extension.

4. By granting the variance substantial justice would be done because:

It provides safe/convenient pedestrian access to this area of Durham where no
other viable alternative exists.

5. The use will not be contrary to the spirit and intent of the ordinance because:

The use is consistent with the Durham zoning ordinance and a condition of
approval for the Mast Road Apartments.



UNIVERSITY of NEW HAMPSHIRE

January 24, 2013

Mr. Jeff Githens
Peak Campus Development, LLC
2970 Clairmont Road Suite 310
Atlanta, GA 30329

Dear Jeff:

The University of New Hampshire grants Peak Campus Development permission to file an application with the Durham Zone Board of Adjustment for the construction of a multiuse pathway on University land abutting Route 155A/Mast Road in Durham. Peak Campus Development will be responsible for the design, construction and the upkeep of this pathway. Peak Campus Development has worked closely with the University on the design of this path and it is expected that you will continue to coordinate with the University related to the design, construction and operation of the pathway.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Douglas Bencks".

Douglas Bencks
University Architect and Director of Campus Planning

CAMPUS PLANNING

Ritzman Laboratory 22 Colovos Road Durham, New Hampshire 03824-3515
Voice: 603-862-2217 Fax: 603-862-3927