

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

## ATTORNEYS AT LAW

April 18, 2014

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

**John K. Bosen**  
Admitted in NH & MA

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Admitted in NH, MA & ME

***RE: 8 Mathes Terrace / 15 Madbury Road***

Dear Mr. Wolfe:

With respect to the above project, Michael Sievert has or will shortly be submitting a revised design concept which will relocate the proposed egress/ingress points off of Mathes Terrace and onto Madbury Road and the north side of the proposed building. It is our hope that this proposed modification will substantially alleviate much of the expressed concerns regarding the use of Mathes Terrace associated with this project.

Regarding that topic, we must respectfully disagree with Attorney Hildreth's contention that we lack the legal right to use Mathes Terrace for vehicular and pedestrian access to the site. Attorney Hildreth argues that the anticipated increased number of residents is not consistent with past use nor reasonable under the circumstances. It is worth noting both that Attorney Hildreth cites no authority for this position, and that Dr. Lenk's use of his property has itself burdened Mathes Terrace with a significant intensification of use. Dr. Lenk's property has been developed from a single family dwelling into a commercial enterprise which accommodates approximately 8000 patients per year, most of whom presumably access the property via Mathes Terrace. The development of Dr. Lenk's property has resulted in a number of physical encroachments into Mathes Terrace, including the placement of a handicap ramp, propane tank and parking spaces within the thirty foot common right of way. Perhaps Dr. Lenk maintains these encroachments are reasonable under the circumstances and consistent with past use. Nonetheless, he was not required to provide sidewalks or adequate parking as a result of this intensification of use. Again, while the applicant is hopeful that the concerns articulated regarding the use of Mathes Terrace may be allayed with the present design revisions, ultimately we can only agree with Attorney Hildreth's general statement that it is not the Board's responsibility to determine the applicant's access rights in connection with this application.

*Please note our new address below*

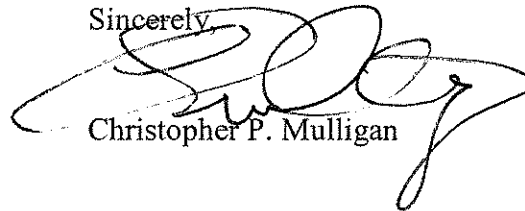
The applicant is in the process of revising the Management Plan previously submitted. The Board's reaction to the proposed design revisions will have a substantive impact on the Plan, particularly with respect to the management of student move in/move out. However, we feel it is worth noting several points. Private student housing developments are different from dormitories in that the move in period can run from June through May and it is not simply an intense weekend event. Further, a number of downtown properties contain student housing without parking and in close proximity to local businesses -- i.e. Libby's, the Grange, Jenkins Court, among others -- and there is little evidence that move in presents an unworkable hardship to surrounding businesses. Approximately 12,000 undergraduates matriculate at UNH each year. The proposed project would house no more than 64 of them. There is no reason to believe that anything other than a similar affect will result from this development. That said, the Management Plan will be clear that staging for move in/move out will not occur on Mathes Terrace.

The site plan review thus far has prompted a number of references to Mathes Terrace as a "pocket neighborhood" whose distinct characteristics must be protected against incompatible development. The zoning ordinance defines a neighborhood in general terms as an area local to the use concerned generally lying within a radius of one thousand feet. We maintain, therefore, that viewing Mathes Terrace in isolation, as the photographs recently submitted do, without reference to the properties in close proximity, such as the Greens/Madbury Commons development, and others nearby on and across Madbury Road, is improper. When viewed in this larger context, the project is entirely in scale with the surrounding neighborhood. The use proposed by the applicant is permitted in this zone by right. The proposed project requires no dimensional variances whatsoever. Durham's architectural regulations specifically do not supersede its zoning ordinance and may not be used to effectively rezone Mathes Terrace.

Related to this point, it has been suggested that the proposed building is "significantly larger" than the one located at 9 Madbury Road. This assertion is demonstrably incorrect. First, Madbury Road consists of over 32,000 square feet and houses 76 students. The Madbury Road building consists of four full stories with a flat roof and an overall height of 48 feet. The proposed project consists of 24,000 square feet and will house between 62 and 64 students. It is three stories with gabled rooflines. The eaves have been designed to match the height of the other buildings on Mathes Terrace. It is simply inaccurate and misleading to state that the proposed building is larger than 9 Madbury Road, to say nothing of the existing and contemplated buildings on the adjacent parcel to the north.

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Thank you for your continued consideration of this matter.

Sincerely,  
  
Christopher P. Mulligan

cc: BAA Realty Holdings, LLC  
MJS Engineering, Inc.