



**TOWN OF DURHAM**  
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***Town Planner's Recommendation***  
**Wednesday, June 24, 2015**

XIII. ***Public Hearing - The Lodges – Addition of Beds and Landscaping.*** 259 Mast Road. Application for amendments and conditional use to add 26 beds and landscaping and make other changes to the approved site plan for a 142 unit/460 bed housing development. A conditional use is needed to expand *residence, multi-unit*, a nonconforming use. Peak Campus Development, LLC, c/o Jonathon Barge and Jeff Githens, developer. Tax Map 13, Lot 6-1. Office Research Light Industry Zoning District.

➤ *I strongly recommend approval as shown on the bottom.*

\*\*\* This is a highly unusual and – in my long experience as a municipal planner - unprecedented situation. There has been substantial concern and deep disappointment expressed by innumerable Durham citizens about the negative impact upon the Mast Road gateway of the Lodges project. The pastoral nature of this area has been degraded by the open views over the high retaining wall toward several tall, prominent buildings, as well as by views into the project along Mast Road, which turned out to be more transparent than expected.

Rightly, the community is resistant to increasing the number of student beds in town given the tremendous growth in multi-unit development in recent years (as evidenced by several recent zoning changes restricting the potential for new off-campus student housing), but given the need to correct shortcomings in the review process for the development, I think that adding 26 new beds in a manner that will not require any site changes is a worthwhile trade off to make. We have an important opportunity now to (at least partially) restore this critical gateway.

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Please note the following:

- 1) Application. The applicant submitted an amendment and conditional use to add landscaping and make related site plan changes and to add 26 beds. Peak will be attending the meeting on June 24.
- 2) Conditional use. The conditional use is required because this is an expansion of a nonconforming use, *residence, multi-unit*, which is no longer allowed in the ORLI zone. On May 19, 2014, the Town amended the zoning ordinance to prohibit residence, multi-unit in the ORLI (and MUDOR) district.

- 3) Community concern. For many months, the community has been asking Peak to add landscaping to better screen the views toward the development both from the west (toward the retaining wall) and along Mast Road.
- 4) Earlier submission. Peak submitted a similar application at the October 22, 2014 Planning Board meeting to add beds and landscaping. That proposal was for an additional 54 beds. A public hearing was held on November 12, after which, the Planning Board designated a committee to work with the applicant in enhancing the proposed landscaping plan. A committee was also convened by Todd Selig to talk with Peak about the number of beds being proposed. The application was continued to January 14, 2015, at which time Peak withdrew the application because they questioned whether it would be possible to come to mutually acceptable terms with the Town. Peak kept open the possibility of coming back to the board at a future date though.
- 5) Beds and landscaping. Peak has thus come back to the board now. While the addition of beds and enhancement of landscaping are separate items, they are tied together because:  
a) It is very unlikely that Peak would install the landscaping if additional beds are not approved; and b) I believe there would be little support for approving additional beds without the highly beneficial landscaping installation. The additional beds – increasing from the 460 approved beds to 486 beds - will be added/created within the existing interior of the buildings without any exterior changes to the buildings. Peak will add a third bed in the 2-bedroom units.
- 6) Submission. The following items are included in the submission: an amendment to the approved site plan and conditional use to add the beds and make changes to the landscaping and related site items; a conditional use to expand a nonconforming use (*Residence, Multi-Unit*); a proposed landscaping plan; and responses to the 8 conditional use criteria.
- 7) Landscaping plan. The landscaping plan is similar, but not identical, to the one developed earlier.
- 8) Parking. No new parking is proposed. If the board approves a conditional use for the expansion of the nonconforming use, it can reduce the parking requirements per allowable conditional use terms, if it sees fit (including in condition at the bottom). The Zoning Ordinance requires 1 parking space per resident in the ORLI district. The applicant presently has at least 1 per resident, with 470 spaces. If this change is approved there would be .967 spaces per resident. The Planning Board can approve this as part of the conditional use review (see condition). I think this is reasonable given that: a) there would still be close to 1 space per resident; b) there are 105 covered parking spaces on site; c) Peak constructed a multi-use path linking the project with Main Street; and d) Peak has contracted with UNH's Wildcat Transit to provide frequent service to the site.
- 9) Nonconforming Uses. Here is an excerpt from the Zoning Ordinance:  
175-28. Nonconforming Uses...

Enlargement of a Nonconforming Use. *A nonconforming use may be expanded only upon the approval and issuance of a conditional use permit*, within the confines of the lot or parcel of land upon which it was located at the time of the adoption or amendment of

these regulations; provided, however, that the land area and/or size of the building or the structure being used for said nonconforming use at the time of the adoption or amendment of these regulations is not increased by more than fifty (50) percent.

- 10) Conditional use procedure. A special procedure is required for conditional uses; notification of abutters within 300 feet, a sign must be posted on the property announcing the public hearing, 8 conditional use criteria must be met, and approval requires an affirmative vote of 5 (rather than 4) Planning Board members.
- 11) TRG comments. I forwarded the application to the Technical Review Group but have received only the following comments (incorporated into conditions below). Tom Johnson, Building Official: *The interior of the units may need some minor construction and a permit from us since the CO's have been issued for all buildings.* John Powers, Deputy Fire Chief: *Just need to verify that the additional landscaping will not interfere with emergency apparatus movement on the site (i.e. areas where the architect had originally anticipated the front or rear of the apparatus to pass over curbing and greenspace that may now be occupied by proposed vegetation).* John is fine with the applicant pruning as needed.
- 12) Rationale for the request. It is appropriate to entertain this proposal for the following reasons:
  - a) It is vitally important to preserve the Mast Road gateway.
  - b) The landscaping subcommittee appointed by the Planning Board in the prior submission held numerous meetings with the applicant to develop the plan.
  - c) We have received a large amount of community feedback supporting addressing the views toward the project, deemed by many to be a problem.
  - d) The additional beds would add value to the tax base without requiring any new buildings or site changes.
  - e) Additional density at the Lodges would be located away from residential neighborhoods.

**\*Draft\***

### **NOTICE OF APPROVAL**

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|-----------------------------|--|
| <b>Project Name:</b>        | <b>The Lodges – Landscaping and Beds</b>                       |
| <b>Project Description:</b> | Amendments and Conditional Uses to add landscaping and 26 beds |
| <b>Address:</b>             | 259 Mast Road  |
| <b>Applicant:</b>           | Peak Campus Development, LLC                                   |
| <b>Map and Lot:</b>         | Map 13, Lot 6-1  |
| <b>Zoning:</b>              | ORLI   |
| <b>Date of approval:</b>    | <b>June 24, 2015</b>   |

The application as submitted was approved by the Planning Board with the following clarifications, terms, and conditions:

- 1) Approval. This approval includes the following:
  - a) Amendment to the approved site plan
  - b) Amendment to the original conditional use for the multi-unit residence
  - c) Conditional use for expansion of a nonconforming use (residence, multi-unit)
  - d) Reduction of the parking requirements, as described by the applicant, below the minimum requirement (per Section 175-23 D. 10.) of the Zoning Ordinance as part of the conditional use
- 2) Landscaping plan. The landscaping plan labeled, “Revised Landscape Buffer Sketch Plan,” revision May 26, 2015, is approved as rendered (and is not a schematic design). The following are clarifications/corrections to the landscaping plan:
  - a) There are eight rather than nine 7-8 foot white spruce (This appears to be an error in the count)
  - b) The 11 hemlocks at the base of the retaining wall are presently in place.
  - c) The tree labeled “1GT” in the peninsula to the west of the volleyball court is an existing tree - Gleditsia Triacanthos ‘Skyline’ – Skyline Honeylocust.
  - d) The tree labeled “1PC” in the peninsula to the north of the volleyball court is an existing tree - Pyrus Calleryana ‘Chanticleer’ – Chanticleer Flowering Pear.
- 3) Site changes. This approval includes all of the site changes shown on the landscaping plan, including changes to the bike shelter location, relocation of sidewalk, parking configuration next to the sidewalk, volleyball court relocation, relocation of the area drain, and foam protection on post (subject to approval of pertinent details by the Town Engineer, below).
- 4) Detail drawings. Submit detail drawings to the Town Engineer for approval for changes to the sidewalk, relocation of the area drain, and any other details which she may specify.
- 5) Building permit. The interior of the units may require some minor construction. If so, a building permit may be required. Consult with the Building Official.
- 6) Maintenance of plantings. All of the landscaping materials including in the landscaping plan must be maintained in a healthy condition in perpetuity. If any materials die or become unhealthy such that they cannot be restored to health, they shall be replaced with new plants in kind expeditiously.
- 7) Surety. The applicant shall submit a maintenance surety to cover reasonable replacement for a period of two years from installation (notwithstanding the requirement above to maintain in perpetuity). The amount shall be specified by the Town Tree Warden.
- 8) Completion. The plants shall be installed and the other site changes must be completed by October 1, 2015. If any of the beds are added prior to installation of the plantings and site changes, an adequate surety shall be placed for the plantings and site changes.
- 9) Emergency access and pruning. The applicant shall prune any new and existing trees, as necessary, in the future to maintain emergency access.

- 10) Conditional use. All of the requirements for a conditional use, as specified in Article VII of the Zoning Ordinance apply.
- 11) Original approval. All other pertinent conditions of the original Site Plan approval still apply.
- 12) Findings of fact  
The Planning Board has approved this application due to the following highly unusual circumstances. It is recognized that:
  - a) It is vitally important to preserve the Mast Road gateway, one of the most visually sensitive corridors in Durham.
  - b) The Town has received an extraordinary amount of community feedback supporting addressing the views toward the project, deemed by many to be a substantial problem.
  - c) There were mistakes made by various parties and oversights that occurred in the course of the original review of the Peak project resulting in significant impairment of the Mast Road gateway.
  - d) Exceptional mutual efforts have been made by the Town and the applicant to mitigate these impacts. By the Town granting additional beds, the applicant has been willing to work with the community in addressing this concern. The additional beds will also help to pay for the new landscaping.
  - e) The Town, rather than the applicant, initiated this process, encouraging the applicant to develop a landscaping plan to mitigate the impacts of the project.
  - f) The landscaping subcommittee appointed by the Planning Board in the prior submission held numerous meetings with the applicant to develop the plan.
  - g) The additional beds would add value to the tax base without requiring any new buildings, changes to the interiors of the buildings, or site changes.
  - h) There is not a concern about parking supply due to the number of spaces provided, the large number of bicycle storage units, the frequent transit service, and the creation of a multi-use path linking the project with Main Street.
  - i) There is substantial community support for adding this landscaping.
  - j) Additional density at the Lodges would be located away from residential neighborhoods.
  - k) The 8 conditional use criteria are satisfied.