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Town Planner's Review
Wednesday, April 28, 2021

X. Other Business

- Clarification whether to establish a committee to discuss definitions related to parking and other miscellaneous zoning amendments
- I recommend that the board not establish a committee to review definitions for parking at this time.

At the April 14 Planning Board meeting the board established a committee to develop revised definitions for parking and to put forward various miscellaneous proposed zoning amendments. The intent of the latter was to address numerous mostly minor issues that have arisen over the years.

The impetus for setting up the committee was to evaluate the current definitions for *surface parking* and *structured parking* in light of the decision by the Zoning Board of Adjustment on April 13 to support an appeal from Josh Meyrowitz and Peter and Martha Andersen of a Planning Board determination that the proposed parking facility for 19 Main Street was surface parking. The ZBA found that the facility is structured parking and structured parking is not allowed in the Church Hill district.

The staff and Planning Board had considered the facility to be surface parking (hence processing the application accordingly) but the ZBA has determined otherwise. The two definitions are clearly inadequate: they are imprecise and ambiguous and it was confusing for the ZBA members to sort through the respective meanings. I think the board was also concerned that the ZBA's interpretation could have wider impacts, possibly affecting any new parking lot with a retaining wall, particularly a larger retaining wall.

I have spoken with Audrey Cline, Zoning Administrator, and we agree that this decision of the ZBA likely will not have broader impacts. I think it was a one-off interpretation of the ordinance based upon the particular nature of the design of the parking facility proposed at 19 Main Street. I am not concerned it will have an adverse impact upon construction of a typical parking lot. However, if we were to receive an application for a parking lot, even for a single family property, with a 20 foot retaining wall, then we would, of course, need to consider the application carefully. But it is extremely unlikely we will see such an application.

Since the ZBA has made its decision, based upon the current zoning ordinance, I think it best to leave this matter in the hands of the applicant to decide how they wish to proceed. I have spoken with Todd Selig and we do not think it appropriate for the Town or the Planning Board to request a rehearing of the ZBA's decision. The applicant could do that if they wish. We should revise the definitions related to parking in the future but I do not think this is pressing.

I will be presenting numerous larger amendments to the Zoning Ordinance to the Planning Board as part of a complete zoning rewrite pursuant to the Master Plan as soon as the board's schedule lightens up. If it is desirable I can still prepare a set of miscellaneous changes for items that have arisen over the years for presentation at an upcoming meeting.

Here is an email that Todd Selig sent to the Planning Board on April 16 regarding the committee and the parking definitions. (I added the italics/underline below.)

Dear Michael, Paul, and Members of the Planning Board,

As you know, the Planning Board has been reviewing a site plan and conditional use application for expansion of the existing parking lot behind 19 and 21 Main Street (behind the Red Tower) for a number of months. The project, submitted by Pete Murphy and Tim Murphy (no relation), would expand the site from 40 to 180 spaces. Attorney Mark Puffer, representing a group of abutters opposed to the project, sent a letter to the Planning Board arguing that the proposed facility is structured parking rather than surface parking because there will be a large retaining wall supporting substantial fill to bring the site up to the grade of the front of the property. Surface parking as a principal use is allowed in the Church Hill zoning district (by conditional use) whereas structured parking is not allowed in the zone.

In your professional opinion, after consulting with staff and the Town's legal counsel, you asserted in response to Attorney Puffer's letter that the proposal was for surface parking (taking a position on this finite zoning issue but not on the project itself). The Planning Board concurred with Mr. Behrendt's assessment.

Josh Meyrowitz and Peter and Martha Andersen, who live below the site on Chesley Drive, appealed the Planning Board's position to the Durham Zoning Board of Adjustment. The Town's legal counsel represented the position of the Planning Board before the Zoning Board so the ZBA would have the benefit of how/why the determination had been made.

After thoughtful deliberation, the ZBA ultimately agreed with Attorney Puffer and the appellants, finding (by a vote of 3-2) that the parking facility as proposed should be classified as structured parking. Therefore, the project is not allowed as now designed.

The applicant informed the Town Planner that they still wish to proceed. If so, they have several options:

- Request a rehearing before the ZBA;
- Apply for a variance to allow structured parking at this site;
- If they do not succeed with a rehearing, they could apply to court; or
- Modify the application/design pursuant to the ZBA's decision.

The project is continued on the Planning Board's agenda for May 12.

As I understand it, the Planning Board is now examining revising the definitions to provide additional clarity to this complex matter concerning what constitutes surface v. structured parking. Any proposed changes would represent an amendment to the Zoning Ordinance and would need to be brought through the formal zoning change process involving both the Planning Board and the Town Council, as well as public hearings before each board.

After giving this matter some thought, I believe it would be prudent for the Planning Board to set aside for now the idea of pursuing a zoning change dealing with surface/structured parking and to take it up either individually or as part of a more comprehensive zoning update review at a future time once the 19/21 Main St. application has been fully adjudicated by the Planning Board. [italics/underline added]

There is not urgency to addressing the issue now, and doing so will almost certainly create confusion and frustration for individuals following the specific parking lot application currently under review. The ZBA decision is limited in scope based upon the particular circumstances of the 19-21 Main St. application, there may or may not be a re-hearing request by the applicant before the ZBA, and the Planning Board is already stretched for time with a full load of highly complex applications under review before it.

Thank you very much for your consideration.

Todd I. Selig, Administrator