

These minutes were approved at the April 20, 2022 meeting.

TOWN OF DURHAM
DURHAM PLANNING BOARD
Wednesday March 23, 2022
Town Council Chambers, Durham Town Hall
7:00 pm

MEMBERS PRESENT: Paul Rasmussen (Chair), Lorne Parnell (Vice-Chair), Heather Grant, James Bubar, Sally Tobias (Council Rep), William McGowan, Richard Kelley, Chuck Hotchkiss (Alternate Council Rep), Barbara Dill (Alternate); Emily Friedrichs (Alternate-remote),

ABSENT: Nicholas Germain

ALSO PRESENT: Town Planner Michael Berendt

I. Call to Order

Chair Rasmussen called the meeting to order at 7:00 pm.

II. Roll Call and Seating of Alternates

Chair Rasmussen took roll call: No need to seat alternates.

III. Approval of Agenda

Vice-Chair Parnell MOVED to approve the Agenda as distributed; SECONDED by Mr. Kelley; APPROVED by a vote of 7-0, Motion carries.

IV. Town Planner's Report

Nothing to report.

V. Reports from Board Members who serve on Other Committees

Reporting from Town Council: Councilor Tobias said the Council met, seated 3 new members, Kitty Marple remains Chair and Sally Needell remains Council *pro tem*, new assignments made; report on composting; Parks & Recreation starting plans for Durham Day to be held in downtown June 4th.

Reporting from the Housing Committee – Ms. Grant said the Housing Committee met Monday and continued to review suggested changes in Zoning to be able to increase housing in Durham.

Reporting from Agricultural Commission: Chair Rasmussen said a fund raiser will be held for junior farmers coming up on April 3, 2022 with breakfast at Lee Grange Hall, Tri-Town Oyster River Agriculture Food Barn providing sustenance.

VI. Public Comments

No public comments.

VII. Review of Minutes (old): February 9, 2022, Site Walk Minutes of February 19, 2022 and February 23, 2022.

Regular Meeting Minutes of February 9, 2022: No modifications.

Vice-Chair Parnell MOVED to approve the Regular Meeting Minutes of February 9, 2022; SECONDED by Ms. Grant; APPROVED by a vote of 7-0, Motion carries.

Site Walk Minutes of February 19, 2022:

Mr. McGowan MOVED to approve the Site Walk Minutes of February 19, 2022 as distributed; SECONDED by Chair Rasmussen; APPROVED by a vote of 2-0 with 5 abstentions, Motion accepted.

Site Walk Minutes of February 22, 2022:

Vice-Chair Parnell questioned new siding being added, but Board disagreed.

Vice-Chair Parnell MOVED to approve the Site Walk Minutes of February 22, 2022; SECONDED by Mr. Bubar; APPROVED by a vote of 5-0 with 2 abstentions, Motion carries.

VIII. Durham Point Road – New Driveway. Conditional Use Application for driveway to cross wetland buffer for new single-family house. Located catty corner to the Durham Transfer Station. The lot shares a driveway with 101 Durham Point Road. Karon Walker, owner. Scott Boudreau, surveyor. Map 11, Lot 38-2. Residence Coastal Zone. Recommended action: Schedule public hearing.

Surveyor Scott Boudreau said he was proposing site plans for Karon Walker and Peter Howd for a driveway to go through the Wetland Conservation Overlay District (WCOD); currently driveway shared with McNitt property which will split off to access Walker/Howd building site. Vice-Chair Parnell asked if there was an easement and Mr. Boudreau said the deed states driveway is to be shared. Mr. Bubar asked about the suitability of a site on the western side of the property.

Town Planner Behrendt said what is before you are just the wetlands, there is a shared driveway, and per subdivision regulations no more than 3 lots can be taken off a shared driveway. Ms. Walker stated that the deed requires access to existing lots via that driveway, and Mr. Howd said they are trying not to cross the wetlands but will have to cross the buffer at some point. Mr. Boudreau said a small swale goes down and off the property to the south.

Ms. Walker said the driveway on our property is a high point with highest point for most of lot at 30 ft and general area for the house 50-60-70 ft. Chair Rasmussen asked the date of the subdivision and Mr. Boudreau said the plan is from 1986, and there is another plan showing the area of impact in more detail with contour elevations. Mr. Kelley asked the amount of impact,

and Mr. Boudreau said approximately 8,000 sq ft only in the overlay district. He said a culvert for drainage to go under the driveway will be added in areas of fill and certain areas will be leveled out as driveway is built. Mr. Howd said at one point the driveway approaches but does not reach 12 degrees.

Ms. Friedrichs said she was concerned about snow removal on a gravel driveway in winter. Chair Rasmussen said the bigger problem is a rainstorm and wanting to get the rain into the wetlands quickly. He said the Conservation Commission will need to weigh in on this and asked that a site walk be scheduled with enough time for them to provide feedback. Mr. Behrendt said the Conservation Commission will see the application Monday and can be invited to join the Planning Board on their site walk.

Chair Rasmussen said if the Conservation Commission does not make a decision Monday they will not meet again before the Board's next meeting. Mr. Behrendt said they will meet April 25th and the Planning Board meets April 27th; Chair Rasmussen proposed a Site Walk for Saturday April 23, 2022 at 10:00 am. Mr. Boudreau said there is parking for 5 or 6 cars on site. Ms. Friedrichs asked if it would be appropriate to ask the applicant to include the flood zone on the land survey, and Chair Rasmussen said that would be down on the shoreline itself. Ms. Walker said they are far back from SPOD and much higher.

Mr. Bubar asked that contour elevations be provided on the first map with wetlands highlighted. Mr. Boudreau said he did not have the whole area mapped, and Mr. Bubar said he would be happy with the wetland boundary adjacent to the proposed driveway. Mr. Boudreau said it is on the map just not visible. Mr. Behrendt said the Board can require more information on the wetlands if needed in reviewing the application. Chair Rasmussen said the Board cannot make a determination that there is no other practical place to locate the driveway with what has been presented.

Mr. Boudreau said it is a huge expense to map out the entire wetland. Mr. Howd said they are trying to be very respectful of the wetlands here and said the land is very wet on the east side of the property. Mr. Boudreau said this seems the most logical place for a driveway with the existing drive there, and Mr. Howd said especially with the deed restrictions. Mr. Kelley suggested April 16th for the Site Walk as the following week was school break.

Chair Rasmussen scheduled the Public Hearing for *Durham Point Road – New Driveway* for April 27, 2022 and Site Walk for April 16, 2022 at 10:00 am.

IX. 32-34 Madbury Road – Expansion of Apartments. Site Plan and Conditional Use Application for new 3-story building with 6 dwelling units and 17 beds (at northeast corner of Garrison Avenue intersection). The existing apartment which is a nonconforming use can be expanded up to 50% by conditional use. AAM Durham Residences, LLC, c/o Craig Pfannenstiehl and Megan Thayer, property owner. Mike Sievert, Horizons Engineering, engineer. Market Square Architects, architect. Robbi Woodburn, Landscape Architect. Map

2, Lot 10-3. Professional Office District. Recommended action: Accept as complete and schedule public hearing.

Mr. Mike Sievert said the existing conditions plans were seen before in the design review. There is an existing student housing building on the property of 14,000 sq ft/134 beds, some parking spaces, and said the Site Plan is CU because of expansion of a non-conforming use. He said the applicant proposes to add a building of 2,200 sq ft footprint, 3 stories/17 beds, with everything 50% of existing.

Mr. Sievert said the access road will be relocated north on Madbury Road and the parking lot reconfigured; no work will be done behind the existing building and parking there remains the same, with exception of adding an accessible free space. A patio is proposed between new parking lot and new building with walkways for pedestrian access to existing Madbury Road sidewalk. Grading will slope from the northeasterly corner to southwesterly corner with a pond south of the new building connecting with other Stormwater treatment areas.

Mr. Sievert said since the site walk the whole design was lowered 2 ft, and all utilities have to be relocated with new sewer line and new water line. In the Landscape Plan trees are being added in front of the new building and a few in the parking lot; the Lighting Plan shows 4 low lights in the parking lot and 1 lantern-style light in front at access/entry road.

Christine Castaldo of Market Square Architects said the floor plan has not changed from the previous submission and said she came back from the site walk hearing general concerns about building height and changed the elevations and roofscape and worked with Mike Sievert to lower the building pad elevation. She said the plans are the same except windows were reorganized and resized and brick at bottom eliminated as grade was brought up and there was no exposed foundation left.

Ms. Castaldo said she had addressed all concerns raised which changed the look of the building and she used 22 Madbury Road as a model to redo the façade. She said the eave height was brought down 6'6" lower than the December proposal, coupled with a 2 ft lower pad, bringing current eave height to 8'6" with overall height of the building the same and within maximum height.

Mr. Behrendt asked Craig Pfannenstiehl if he would consider using black windows; Councilor Tobias asked if the existing building would be updated at least as far as color. Mr. Pfannenstiehl said he liked the look of black windows and said they would like to update the existing building but did not want to get into a commitment for extra cost and extra time.

Chair Rasmussen asked Mr. Behrendt if this application was complete and Mr. Behrendt said it was.

Mr. Bubar MOVED to accept the application for 32-34 Madbury Road – Expansion of Apartments as complete and set the Public Hearing at the Board’s earliest convenience; SECONDED by Mr. McGowan;

Mr. Kelley asked that the Board explore the idea of an interim meeting April 20th and said he would not be at the April 27th meeting.

After discussion the Board agreed to schedule the Public Hearing for April 20, 2022.

Motion APPROVED by a vote of 7-0, Motion carries.

Mr. Behrendt said he could propose a draft notice for April 20th if there were no objections from the Board or the applicant. Mr. Sievert said they would probably need some revisions to address a few things, and Vice-Chair Parnell felt it was a bad precedent to do the draft notice before the Public Hearing.

X. Public Hearing - 74 Main Street – Mixed-Use Building. Formal site plan and conditional use application for demolition of current wood frame building and construction of a 4-story mixed-use building with nonresidential uses, 12 residential units, and 5 parking spaces. Minor site changes are also proposed for the adjacent lot at 72 Main Street. Doug Clark, applicant. Jerry Pucillo, consultant with Centergreen, representing Foundation for Civic Leadership/Democracy House, a potential partner in project. Mike Sievert, Horizons Engineering. Zach Smith, Bergmeyer Architects. Map 2, Lot 14-1-1. Central Business Zone. Recommended action: Discuss and continue public hearing.

Mr. Doug Clark said he had a revised site plan, and his primary goal right now was in trying to accommodate the needs of the Town and abutters. Attorney Sean O’Connell of Shaheen & Gordon said he would address the issue of easements and quickly review the construction plan. He said there was concern at the Site Walk about a post at the back of the building on Pettee Brook Drive and that issue has been addressed with access moved to the easterly side on current boundary with bank.

Attorney O’Connell said regarding the easement from north-south, parking spaces in front of building on Ballard Street have been flipped to Main Street to east of proposed loading zone. The easement between the buildings shows 3.67 ft with assumption easement on the other side would be the same providing approximately 7 ft of space between the buildings for ingress and egress purposes. He said concerns of neighbors focused on construction plans submitted, and the construction plan was moved away from the buildings. In short, the developer has proposed to modify the access to address concerns of abutters and work with the Town to create safer, more accessible parking access.

Chair Rasmussen said the diagonal parking has to become parallel parking as it is too close to the corner with traffic coming around Pettee Brook, and said this particular plan is decommissioning

Ballard Street and asked the Planning Board if they wanted to make a recommendation. Mr. Clark said Mike Sievert presented 3 possibilities for parking on Main Street, and this was the Town's preferred option, but they would be happy to move to option 2. He said Ballard Street was decommissioned about 30 years ago, and Chair Rasmussen said it still exists on paper and needs to be checked before going much further into this.

Councilor Tobias said perhaps Mr. Behrendt could speak with the Town Administrator so there is no longer a drive between the 2 buildings which is dangerous. Mr. Behrendt said parking will change to parallel, and if all agree, Main Street would be closed off with curb for 2 additional parallel spaces and a loading zone. Mr. Kelley asked the depth from the tip of the curb extension to the sidewalk curb, and Mr. Sievert said the stall is 55 ft long, loading zone approximately 9 ft, with walkway parallel to it.

Chair Rasmussen asked if the curb line would stay the same when it goes to parallel parking or be brought in more. Mr. Sievert said three of the spaces will temporarily be a loading zone and if a 55-ft trailer may not be needed. Mr. Kelley asked if the current rendition was a kind of concept because it was clearly not polished up and finalized, and Mr. Sievert said it was a parking concept. Mr. Kelley said the plan then is to see how this works and then fully design the balance of the plans, and Mr. Clark agreed.

Mr. Bubar said the Planner's Review talks about fewer parking spaces and mentions applicant would need a waiver for the number of compact parking spaces. Mr. Behrendt said regulations provide a maximum percentage of compact spaces; Mr. Sievert said it was 30%. Mr. Behrendt said they would need to pay a fee for shortage of parking, and felt they needed 30% compact on site and would need a waiver for that.

Stephen Sylvain, of Martini Northern, distributed copies of the Construction Plan to Board members and said they were doing the new building on 74 Main Street. He said the first sheet shows the overall construction area, construction zone, and where overall lay-down area will be on the parking behind the bank, secluded away from construction zone as well as out of front parking area. He said they also came up with a way of managing pedestrian traffic to get it away from the construction zone altogether.

Mr. Sylvain showed the construction area itself, with fencing over by the park, pushing as close to the building as possible to keep away from existing trees. He said the fence would be pushed out and some jersey barriers added outside the 5 parking spaces for trucks to unload and said Benson wood panels would be lifted by cranes. Chair Rasmussen asked where the crane would be sitting, and Mr. Sylvain said they are working on location and timing to keep access to adjacent property for trucks and trash pickup.

Chair Rasmussen said this is an old map and the Town added to the dirt lot shown; there is a stairwell now which runs right down to the middle of your construction trailers and will need to be appropriately boarded off from the top. Mr. Kelley asked the owner of the lot being used as a

staging area and Mr. Sylvain said the Town. Mr. Kelley asked the length of the lease required for the 2 areas in question, and Mr. Clark said it would be about a year during the construction period. Mr. Kelley also emphasized the importance of the size and location of the crane on the site and said security will be paramount.

The Board discussed events in town that might cause increased traffic and asked about the working schedule, hours of operation, and whether blasting was required. Mr. Pucillo, consultant for Centergreen, said they will work with the Board to figure out hours, may request weekend work if they fall behind. He said they will need to hammer out some ledge but there will be no blasting. Mr. Kelley recommended they have a construction schedule in mind for the next meeting and lay out the different places of work so the Board can understand the ledge removal operations.

Mr. Behrendt asked how this will affect activity on the adjacent Aroma Joe's property. Mr. Sylvain said they will do their best to keep the existing driveway open with access to back of building, coordinating with abutters for trash pickup. Mr. Pucillo said as long as we coordinate with abutters, they should be able to get to the back area, and the front parking there will remain until the end of construction operation when we would shift to the new parking arrangement.

Mr. Sylvain said the goal is to just do standard construction fencing with a scrim for vision barrier, and a jersey barrier will be outside the fence. Mr. Bubar asked if the fence would exceed 6 ft, and Mr. Sylvain said it would not. Mr. Clark pointed out that their building was narrowed by 3.67 ft, but the construction documents have not been updated to reflect that.

Chair Rasmussen opened the Public Hearing at 8:52 pm.

Suzanne Brunelle of Devine Millimet & Branch said she was attorney for the Gangwer family, the abutters next door at 72 Main Street. She said she was very confused as to whether the applicant was building in the easement area, and assumed they were 3.67 ft into the easement. Mr. Clark said the easement was never defined by dimensions and was just a space between 2 buildings for ingress and egress.

Attorney O'Connell said the applicant does not agree that the easement is as the abutters describe it, as the property line is depicted down the center; the new building is 3.67 ft in and satisfies the easement requirements for ingress and egress. Attorney Brunelle responded that they are building 3.67 ft into the easement. She said the driveway easement in the back to pass and re-pass is not a question; there is an easement in back of 72 Main Street for deliveries and trash removal as well as for parking spaces, and there is a permanent easement over 74 Main Street for utilities/electric/sewer/telephone with maintenance access, and all easements run with the land in perpetuity and cannot be unilaterally infringed upon by Mr. Clark.

Attorney Brunelle said questions on the most recent plans are lack of measurements and detail on Site Plan, failure to address utilities as reductions of parking spaces in back for Gangwers, a

door shown in the easement area which is a safety issue, a new transmission pad in back of access area which they are trying to keep open for deliveries; the dumpster is a safety issue for emergency vehicle access and snow removal; lack of identification for staging area; no updated Construction Management Plan; lack of locations of easements and rights of way which should be shown on Site Plan. She said the development as proposed will have a negative impact.

Sam Gangwer said he would like to have more details in the plans and needs measurements for the size of parking spaces and distance from the building. Chair Rasmussen said part of our earlier conversation was that this is just conceptual and with feedback the applicant will provide a more detailed actual proposal. Mr. Gangwer asked if it would be possible to do a land swap to move the building more in the direction of Main Street or Pettee Brook.

Chair Rasmussen said moving the building toward Main Street or Pettee Brook would create more space for access to rear area of Gangwer property and is a reasonable suggestion but a Town Administrator item and not a Planning Board item. Mr. Gangwer said they are also attached to their rights of way and land rights which needs more discussion.

Zack Smith said he is representing Bergmeyer Architects as original architect of this building design and wanted to clarify that the door in question would not open out past the edge of the building. He said the building was shifted and moved so the drive under the building no longer exists and access to Gangwer site is not impeded by air rights basically.

Mr. Sievert explained that the applicant has moved the electrical transformer pad lower near access which is now going straight out where the pad is now, and you do not go underneath the building. He said the distance is approximately an 18-ft straight shot into this property now, but the parking should be designed along a horizontal line. Chair Rasmussen said if the 3 parking spots were full there would be no way to get to the dumpster. Mr. Clark said it is pretty common in Durham to have dumpsters on wheels and said they would need to talk about having one trash area for the entire site.

Mr. Gangwer said there is a fenced-in dumpster back there now and taking away something convenient also reduces the property value. Mr. Bubar asked the applicant if they would be agreeable to moving the building if the Town agrees, and Mr. Pucillo said they would if the Town were agreeable.

Mr. Behrendt said the applicant stated that this was a conceptual plan and they were hoping to get a sense of the Board on whether this might be workable before spending significant monies on engineering. He said he felt the Board would need to meet with the Town Attorney regarding the issues affecting the abutting property owners and need guidance regarding parameters for things that might impact the abutter. He suggested the Board meet with the Town Attorney on April 13, 2022 and said he would provide her with all the information.

Vice-Chair Parnell said he thought the question about whether the design is within the easement would be crucial. Mr. Bubar said until that is done, he did not see how the Board could send them away to do detailed engineering. Mr. Behrendt said he was less concerned about the easement on the property line and more concerned about how the rear is handled with access to parking and dumpster.

Chair Rasmussen said Mr. Gangwer's suggestion about a land swap and a shift of the building would also change everything, and the applicant would need to talk to the Town Administrator to see if it would be possible or not, and which way they would be moving the building. Mr. Bubar said the easement needs to be on the Site Plan but there is no agreement on where it is. Vice-Chair Parnell said if the Board approves something to go on that easement that is an issue, and Chair Rasmussen said at that point it becomes a court issue.

Mr. Clark pointed out that there was a 4-foot grass area between the sidewalk and the property line owned by the Town and might be a possibility to create more space. The Board discussed the possibility of moving the building towards Main Street or Pettee Brook and Mr. Clark felt they would gain more by moving the building towards Pettee Brook. Mr. Pucillo said they are very open to that idea.

Chair Rasmussen continued the Public Hearing for 74 Main Street to April 27, 2022.

XI. *Public Hearing - 19-21 Main Street – Parking Lot.* Formal site plan and conditional use application for parking lot as principal use on four lots and reconfiguration of the entrance. Toomerfs, LLC c/o Pete Murphy and Tim Murphy, owners. Mike Sievert, engineer. Robbi Woodburn, Landscape Architect. Map 5, Lots 1-9, 1-10, 1-15, and 1-16. Church Hill District. *Recommended action:* Discuss and decide how to proceed from here.

Chair Rasmussen recused himself and passed the gavel to Vice-Chair Parnell.

Vice-Chair Parnell seated Barbara Dill to replace Paul for this application at 9:22 pm.

Tim Phoenix of Hoefle Phoenix Gromley & Roberts said he represents the Toomerfs and said he was here for a decision on final impact, to get through the final Public Hearing, and to answer all questions so the Board can begin deliberations on site review determination and CU Permit application. He said this project is approaching 2 years with numerous submissions and felt the Board should consider wrapping this up.

Vice-Chair Parnell asked him to keep in mind that it is almost 9:30 pm and the Board has to have a Public Hearing this evening.

Attorney Phoenix said there is a demand for parking with 2,430 new occupants and 1,200 beds in downtown with no parking for a net loss of 119 spaces and they are providing to make

up for that loss. He listed the permits required: Site suitability, external Impacts, character of site development, character of buildings/streets, preservation of identified resources, impact on property values, availability of public services, and fiscal impact for Site Plan approval.

Attorney Phoenix said for the Site Plan Review, Mike Sievert is here to address most of that and issues have been addressed over time. He said the applicants want to rent parking spaces and are not in conjunction with any other proposals and must be addressed alone as one separate project. He said they have a great deal of expert opinion and review and a report from the Town Assessor; evidence in the record includes survey design and engineering plans, expert opinion, and the applicant's professional team, all vetted by Town officials, outside consultants, and traffic engineers.

Attorney Phoenix said there is little evidence against the plan and said the lay opinion is subjective, and said opposition is not about the parking lot but about Mill Plaza. He said parking demands exist and this lot offers benefits to any existing or proposed nearby development but stands independent of them. He said there is no objection from 3 out of 5 abutters with most opposition from a group actively opposing Mill Plaza who do not live by the site.

Attorney Phoenix said the Zoning Ordinance states CU is a permitted use if conditions are met and shall be approved if applicant is in compliance. For site suitability: vehicle and pedestrian access approved by redesign, public services not needed, absence of environmental constraints or plan to mitigate. Existing features: site not in flood plain and no jurisdictional wetlands on property, buffers maintained to offsite wetlands, some steep slopes; man-made or short discontinuous bowl topography which any commercial development would require to be filled.

Attorney Phoenix said steep slopes is a CU consideration but there is no definition or concept about what is to be considered about them, and there is no particular value to steep slopes because it is a parking lot. The Town Engineer said the design is reasonable and consistent with what would be expected for this site, and includes grading, filling, and lighting. He said the power lines are buried, applicant has offered to replace aging sewer lines for neighbors, and the project meets low intensity development (LID) standards and State and local requirements.

Attorney Phoenix said the proposed use externally impacts the neighborhood, and said the lot is smaller than other parking uses shown in aerial map. He said the lighting is low and showed the placement in the lighting plan; there will be a 6-foot high fence at the top of the parking lot to block any car lights from Urso property and to south blocking Chesley Drive. They have the Pernow report for traffic backed up by VHB, and noise is not greater than

existing adjacent uses. He said a row of giant arborvitae will be planted in addition to the fence for additional buffering of noise and light on easterly side of parking lot.

Attorney Phoenix showed a rendering of the slope and parking through the trees and said lights will not shine on Chesley Drive. He said the character of site development is not incompatible with the neighborhood and they are mitigating external impacts, with a 50-70-foot buffer to Chesley. The character of buildings and structures is also not incompatible with the neighborhood, and parking has generous setbacks. Grading and drainage were reviewed by the Town Engineer with a fence for Urso and Chesley sites.

Attorney Phoenix said for preservation of resources there are none identified, area natural with no wetlands, trees may be cut on private property, preservation of buildings and stone walls; Main Street buildings are historical, untouched and HDC approved; private property is shielded from street and streetscape is improved. The project cannot cause or contribute to a significant decline in adjacent property values and services and facilities must be adequate and lawful; only needs drainage and electrical, no solid waste generated; project has DPW and DFD approval and drainage is reasonable.

Attorney Phoenix said there is no negative fiscal effect on the Town unless Planning Board determines otherwise; deteriorated sewer line will be replaced adding \$1.4 to \$1.7 Mil in added assessed value. He said there is a question raised about fill reduction for the project and Mr. Sievert estimates a 25.6% reduction in fill from original. Steep slopes have to be worthy of some kind of protection balanced against owner's right to develop his property, and we are creating a steep slope.

Attorney Phoenix compared the proposal to other approved Town projects and said there is no rational basis to classify this project differently from others presenting similar issues. He addressed the constitutional rights of the property owners and said this plan is rationally related to the Town's legitimate goals.

Vice-Chair Parnell said the Public Hearing is intended for public to say what they have to say, then the Board will close the Public Hearing and work toward deliberations, but there is not enough time left tonight to allow the public to have their say.

Vice-Chair Parnell re-opened the Public Hearing at 9:55 pm.

William Hall, abutter, said he is pleased with what the applicants will do with the entrance between 19 and 21 Main Street and felt the proposal was a terrific solution as parking is desperately needed. He said the applicants were coming to some very agreeable understandings and it is important to get the sewer line replaced for all of us.

Joshua Meyrowitz said there have been misleading claims and unrealistic renderings, and said the current plan shows 35% more fill with an 8 ft higher elevation than the first plan yet is described as 25% less fill. He said the number of cubic yards of fill estimated in 2021 was increased to get to the 25% reduction, arguing this plan is not ruinous of natural resources because it is less ruinous than an earlier plan, an absurd argument. He said this project will be massive and wild animal habitats will be destroyed, and destruction of Church Hill Woods would damage the ecosystem of the entire Town and the Great Bay watershed, with the faculty neighborhood most adversely affected.

Matthew Komonchak said Mr. Phoenix went out of his way to describe the strength of the Toomerfs' legal case and said he strongly disagrees that this project and Mill Plaza are distinct, and said a court will see things differently when it looks at the history of the Toomerfs and Mill Plaza. Mill Plaza was rejected by CDA's anchor tenant Hannaford primarily on the basis of inadequate parking; the Toomerfs' lot came on the scene only after CDA's Mill Plaza; the 2 projects came together before TRG in unison as well as to the Planning Board, same meeting and date; Colonial Durham's engineer referenced the Toomerfs' lot in their presentation; the anchor tenant referred to Toomerfs' lot as "an essential element" of CDA plan. He said Mr. Phoenix overstated the case and it is difficult to sit back and say these 2 plans are not linked. He felt the Planning Board made a big mistake when it accepted the fiction that the projects are not one and the same

Eric Lund stated that in Mr. Phoenix's presentation he was careful not to show what I consider to be the entire neighborhood, which does extend back into the faculty neighborhood. He said this parking lot, if constructed, would be a significantly higher location than any other nearby parking lots. He said views from his house show the hill is very visible, and said the applicants need to consider the broader neighborhood and remember that elevation matters.

Attorney Nathan Fennessy of Preti Flaherty in Concord said he represents the Ursos, Anderson and Meyrowitz as well as residents in the faculty neighborhood and other people in Durham, and said he was here to discuss the revised Toomerf plans and said he submitted 2 letters to the Planning Board today in advance of this meeting. He said the first letter addresses the inclusion of a retaining wall as part of the revised plan, and the second letter addresses some of the issues identified in Attorney Phoenix's letter of last month.

Attorney Fennessy first addressed the retaining wall and said his colleague Mark Puffer raised the issue that the inclusion of the retaining wall made the project structured parking versus surface parking. The Planning Board considered the issue and determined that the plan with the retaining wall still constituted surface parking, and my clients appealed that to the ZBA who ruled that it was structured rather than surface parking but did not specify any height or length for the retaining wall. The Toomerfs appealed the ZBA decision to Strafford Superior

Court but eventually dropped their appeal, thereby waiving their right to challenge the ZBA decision, and the Planning Board is bound by that Zoning Board determination in considering the Site Plan application.

Attorney Fennessy said the new plan brings back the retaining wall as part of the proposed design and is considered to be “structured parking” by ZBA decision; Toomerfs then suggested the parking lot is “at grade” from the front but not in the back. He addressed the issues in the memos from Attorney Phoenix: (1) who is going to be parking in the lot; (2) where is the Urso easement on the plans; (3) Planning Board does have an obligation to consider public input; (4) Attorney Phoenix’s claim that the Toomerfs have a constitutional right to develop their property any way they see fit is just not true.

Vice-Chair Parnell said there is one more person wishing to speak, and it is 10:30 pm and felt the Board could not legitimately closed the Public Hearing tonight.

Vice-Chair Parnell continued the Public Hearing for 19-21 Main Street to April 20, 2022.

Mr. Bubar asked that the applicants include the Urso easement on the plans. Attorney Phoenix said there is an easement in the deeds relating to Urso Plan, but nowhere does it say where it is, and it cannot be located on the ground. He said the surveyor submitted a letter explaining that point and it is a private issue not before the Planning Board.

XII. Other Business

XIII. Review of Minutes (new) – No new minutes

XIV. Adjournment

Mr. McGowan MOVED to adjourn the meeting; SECONDED by Mr. Kelley; APPROVED 7-0, motion carries.

Chair Rasmussen adjourned the meeting at 10:34 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker
Durham Planning Board

Richard Kelley, Secretary