

From: [Matt Komonchak](#)
To: [Karen Edwards](#)
Subject: Letter to Mr. Behrendt and Durham Planning Board
Date: Wednesday, April 28, 2021 1:59:29 PM

Hi Karen, could you please forward this note, which relates to both the Mill Plaza application and the 19-21 Main St application, to Mr. Behrendt and the Planning Board?

Dear Mr. Behrendt and Members of the Planning Board,

Your work on complex matters on behalf of the town, much of it on a volunteer basis, is much appreciated by the many of us who are following the Mill Plaza and Toomerfs applications which, as you know, relate to two adjacent lots in Durham. These two applications were initiated on the same date, at the same meeting and have proceeded essentially in lock step through separate Planning Board processes under the fiction that they are separate, independent proposals. In fact, they are one project masquerading as two. Even the attorney representing the Mill Plaza applicant attorney has acknowledged before you that the two projects are related or linked and, more than once, he referenced moving residential parking "off-site" (a reference to the Toomerfs lot that was so obvious that no Planning Board member bothered to ask to what off-site location he was referring to). Early paperwork from the Toomerfs application explicitly references Mill Plaza.

The Town Administrator and his attorney have gone to great lengths to divorce these twin proceedings and handle each in strict isolation, even removing a professional planner from the Mill Plaza matter so that -- incredibly -- the two related matters regarding adjacent lots are now presided over by two separate professional planners. Public comment about one application or the other has frequently been forbidden or discouraged under the guise that the projects are independent, while applicants are allowed to mention the other parcel when it serves their interests.

As you are aware, recently, in violation of his recusal and basic conflict of interest principles, the Planning Board Chair sent an email to other members of the Planning Board within 90 minutes of a ZBA decision on April 13th, making it clear that he disagreed with the decision related to the Toomerfs application, from which he was supposedly recused. He urged Planning Board members to review a video of the ZBA hearing, specifically in regard to the ZBAs consideration of the definitions of structured parking and surface parking. The Chairman wanted the Planning Board to consider changing the definitions to accommodate the Toomerfs's proposed parking facility and was in a hurry to do so, until he met opposition from a number of reluctant Board members and the Mr. Behrendt, who noted that the definitional changes were "not hugely pressing".

On the next day, April 14th, the Planning Board Chair continued his campaign against the definitions that formed the basis of the ZBA decision (Toomerfs). First, he initiated the discussion at the Planning Board meeting about the definitions brought up in the Toomerfs matter with other Planning Board members. Second, he offered to form his own subcommittee -- *a subcommittee of one!* -- to address the definitions of structured parking and surface parking (1:24, PB Meeting, 4/14). Again he was rebuffed by fellow Planning Board members, although I believe a committee of three was established which included the Chair.

The described actions, to my knowledge, have triggered no action by the Town Administration in the past two weeks. This is alarming, given that the Chairman's actions were unethical, unlawful, and undermine public confidence that the quasi-judicial proceedings before the Planning Board are being handled fairly. I ask that you consider removal of the Chair given that:

- His recusal has been revealed to be fake, and his urging of the Planning Board to reconsider the definitional issues may have tainted the Toomerfs matter.
- He has violated the Right-to-Know Law. Durham residents who were not born yesterday no longer have faith that his recusal is genuine and not a smokescreen.
- The Chairman's extraordinary interest in the ZBA ruling, uncharacteristic sense of urgency, and actions (Toomerfs) cast doubt as to whether the closely-related Mill Plaza application is being handled lawfully. Many in town believe that the Chairman's intense interest in the ZBA ruling on Toomerfs, a matter from which he was recused, was motivated by its negative implications for the larger, *related* project at Mill Plaza.

Whether this perception is accurate we don't know, but it does bring us full circle to the importance of adhering to conflict of interest and recusal policies, which are designed to avoid even the *appearance* of impropriety.

Thank you for considering these points.

Kind regards,

Matt Komonchak

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