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VIA EMAIL

Mark Puffer, Esquire

Preti Flaherty

P. O. Box 1318

Concord, NH 03302-1318

Re: Your letter of March 4 regarding the Site Plan Application at 19-21 Main Street

Dear Mr. Puffer,

This correspondence is in response to your letter to me from yesterday regarding the site plan application at 19-21 Main Street for Toomerfs, LLC. I am responding to two interpretations that you offer of the Durham Zoning Ordinance as applicable to the project. As you know, the application is still active and no final determination has been made by the Planning Board. I am not taking any position at this time regarding the application itself but only responding to these two points.

Please note that Town Administrator Todd Selig, Zoning Administrator Audrey Cline, Town Attorney Laura Spector, and I have all conferred and we are in agreement in this response.

Parking Structure

You assert that the proposed parking facility is not *surface parking* which is allowed by conditional use in the Church Hill zoning district but rather *structured parking* which is not allowed in the Church Hill zoning district. Your position appears to be based upon there being a tall retaining wall at the lower side of the parking lot. I certainly disagree with this interpretation.

Here are the definitions for both uses in the Durham Zoning Ordinance:

STRUCTURED PARKING – A structure or portion of a structure that provides parking. The parking may be above or below grade, may be covered or uncovered, and may be on multiple levels. (See definition for Surface Parking below).

SURFACE PARKING – A parking lot or similar uncovered, single-level parking facility that provides at-grade parking that is not located within a structure.

The proposed parking lot is just that: a parking lot. As such it falls under the definition of surface parking. Based upon your argument, any significant regrading of land or use of a retaining wall to accommodate conversion of raw land to development, as is commonly used in many site designs, would render the parking lot structured parking (unless there is some particular height of the wall at

which point surface parking becomes structured parking). This is clearly not what the definition states nor what is intended by structured parking.

The wall itself is a structure but the parking lot is not. It is on the finished grade, and extends continuously from the front of the lot. Land that is regraded and supported at one end by a retaining wall is not a structure, neither in the Town's definition nor in common understanding and use of the term. If this use were to be classified as structured parking then one would have to wonder what would constitute surface parking.

Structured parking refers to parking situated *inside or on top of a building*, or what is commonly referred to, in non-planner parlance, as a *parking garage*. Parking garages are buildings that are typically constructed of concrete and/or steel.

Extension of Central Business District Use

You assert that this plan is an improper extension of the Mill Plaza project situated on a nearby lot in the Central Business District. That project is also being reviewed now by the Planning Board.

The parking lot application at 19-21 Main Street is independent of the Mill Plaza project. It was submitted as a separate application and is being reviewed as such. It is owned by a different party from Mill Plaza. The applicant has stated explicitly that they are open to considering a leasing arrangement with Colonial Durham Associates for rental to potential future occupants of Mill Plaza but that they are proceeding with this application on their own and it is not dependent on any arrangement with Mill Plaza. The applicant stated they believe there is a strong market for rental of these parking spaces whether or not the Mill Plaza project proceeds.

Your argument appears to be that a parking lot may not serve residents of a mixed-use project (located in a different zone) because a mixed-use project is not allowed in the Church Hill zone. The proposal is for surface parking as a principal use, meaning that it can serve any parties coming from off site (except as may be specifically restricted for good cause because it is a conditional use). However, the plan is for a parking lot, not for a mixed-use project.

Whether the lot ultimately serves residents of Mill Plaza and/or residents of other properties it will serve people who live somewhere. To assert that a parking lot is not permitted in the zone because it is serving residents of a mixed-use building and mixed-use buildings are not allowed in the zone would be akin to arguing that a retail store is not allowed in a retail commercial zoning district if that district does not also allow apartments (since many of the customers of the store live in apartments).

My best regards to you.

Sincerely,



Michael Behrendt
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