



TOWN OF DURHAM
8 NEWMARKET RD
DURHAM, NH 03824-2898
603/868-8064
www.ci.durham.nh.us

Town Planner's Review
Wednesday, July 27, 2022

- X. **19-21 Main Street – Parking Lot.** 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 108, Lots 13, 12, 11, and 10. Church Hill District. ***The Public Hearing is adjourned until August 10. The Planning Board is holding its final deliberations.*** The board postponed the hearing from July 27 to August 10 at the July 13 meeting.
- I recommend that the board continue its final deliberations. Once the deliberations are complete the board can direct staff to prepare a draft notice of decision for approval or denial for a subsequent meeting. If more time is needed, then the board could push back the hearing beyond August 10.

The public hearing is adjourned to August 10 so that the board can hold deliberations. Since the hearing is continued but not closed the board is still accepting written comments now. The purpose for the hearing being reopened is to allow the applicant and the public to comment on any new information and on a draft notice of decision. Note that if the notice is for denial then the board does not need to reopen the public hearing.

The Planning Board has discussed the eight conditional use criteria but has not voted on them. The board discussed whether the project is “surface parking” or “structured parking” but did not vote on the question. The board should review site plan issues at this meeting. NOTE: It makes sense for the board to not vote (other than on the question of surface vs. structured parking) on the conditional uses or site plan regulations until a draft notice is presented and then everything can be voted on together. If there is a clear sense of the board then I will prepare the draft notice following the sense of the board.

The following write up is the same as what I presented for the July 13 meeting but I have updated it to include references to various parties who have submitted comments stating or implying they are doing so primarily in their capacity professional in a relevant field. Changes are noted in italics. See letters from the applicant's attorney and attorneys representing abutters and documents about third party reviews on the Town's website. This is a good faith effort to include pertinent references based on a review of letters on the Town's website, for the Planning Board's information. (There may indeed be numerous other letters from individuals with various related professional backgrounds but who do not present their position primarily in the capacity of that profession.)

CONDITIONAL USE CRITERIA

A parking lot as a principal use (rather than an accessory use serving uses on site) is allowed by conditional use.

175-23. Approval Criteria.

Criteria Required for Consideration of a Conditional Use Permit. A conditional use permit shall be granted only if the Planning Board determines that the proposal conforms to all of the following conditional use permit criteria (except for specific criteria that are deemed by the Planning Board to be not pertinent to the application):

1. **Site suitability:** The site is suitable for the proposed use. This includes:
 - a. Adequate vehicular and pedestrian access for the intended use.
 - A traffic study was prepared by Steve Pernaw, PE, on July 15, 2020 and revised on November 23, 2020
 - b. The availability of adequate public services to serve the intended use including emergency services, pedestrian facilities, schools, and other municipal services.
 - We have not received any significant concerns from the Police or Fire Department about their ability to provide services to the site.
 - c. The absence of environmental constraints (floodplain, steep slope, etc.) or development of a plan to substantially mitigate the impacts of those constraints.
 - The existing slope on the westerly side of the site measured from about where the new parking lot would begin (just behind the outbuilding closer to Main Street) to just beyond the small retaining wall at the bottom averages just under 10% according to the applicant's profile. The existing slope on the easterly side of the site measured from the same coordinates averages just under 7.5%.
 - The project will bring in substantial fill to raise the level of the parking lot. The finish grade for the parking lot will be 5% for the front 250 feet and fairly flat for the bottom 50 feet or so.
 - The applicant's stormwater plan was reviewed by an outside consultant who stated that it conforms with the Town's stormwater regulations. There have been various comments about potential impacts on Chesley Brook from salt and other runoff.
 - d. The availability of appropriate utilities to serve the intended use including water, sewage disposal, stormwater disposal, electricity, and similar utilities.
 - The parking lot will be illuminated but not provided with Town water or sewer. The applicant will maintain the stormwater management system.
2. **External impacts:** The external impacts of the proposed use on abutting properties and the neighborhood shall be no greater than the impacts of adjacent existing uses or other uses

permitted in the zone. This shall include, but not be limited to, traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare. In addition, the location, nature, design, and height of the structure and its appurtenances, its scale with reference to its surroundings, and the nature and intensity of the use, shall not have an adverse effect on the surrounding environment nor discourage the appropriate and orderly development and use of land and buildings in the neighborhood.

- Numerous images and renderings have been provided in various formats and from various vantage points of the prospective parking lot.
 - There have been statements from residents about potential noise, odors, dust, light and glare impacting abutters.
 - The plans have been modified a number of times showing changes in design, scale, setbacks, screening, and buffering of the parking lot.
 - There are challenges with shielding lights based on the elevation of the parking lot compared to neighboring sites. The applicant has revised the design for the lights several times.
 - The appropriateness of the size, elevation and design (slope vs. retaining wall) of the parking lot has been debated extensively during the review.
 - *Neighborhood* is defined in the Zoning Ordinance as “An area of land local to the use concerned, generally lying within a radius of one thousand (1,000) feet, which has a set of unifying characteristics such as housing style or quality, similar income strata, topographic features, water features, local recreational facilities or convenience shopping. Factors such as a railroad and highway rights-of-way, major streets, rivers, water bodies and severe topographic constraints may form boundaries and serve to separate *neighborhoods*.”
 - Adjacent existing uses include (clockwise) a church and parking lot, three single family houses, wooded areas, a shopping plaza, student housing sites, another church.
 - Uses permitted in the Church Hill zone include (from the top of the Table of Uses, not including accessory uses) agricultural uses, single family houses, senior residential uses, a senior care facility, a nursing home, adult day care, an art center, a government building, a library, a museum, a church, a personal wireless facility, a restaurant, a craft shop, a gallery, a small retail store, an office, and light manufacturing.
 - Other existing uses in the Church Hill zone include a post office, a number of buildings with student housing, a number of parking lots (mainly as accessory uses), and a senior development.
3. Character of the site development: The proposed layout and design of the site shall not be incompatible with the established character of the neighborhood and shall mitigate any external impacts of the use on the neighborhood. This shall include, but not be limited to, the

relationship of the building to the street, the amount, location, and screening of off-street parking, the treatment of yards and setbacks, the buffering of adjacent properties, and provisions for vehicular and pedestrian access to and within the site.

- See criterion 2., above.
 - See definition of *neighborhood* above.
4. Character of the buildings and structures: The design of any new buildings or structures and the modification of existing buildings or structures on the site shall not be incompatible with the established character of the neighborhood. This shall include, but not be limited to, the scale, height, and massing of the building or structure, the roof line, the architectural treatment of the front or street elevation, the location of the principal entrance, and the material and colors proposed to be used.
- No new building is proposed. A parking lot is considered a “structure” (which is different from “structured parking”)
 - See definition of *neighborhood* above.
 - The parking lot would provide significantly more spaces than other parking areas in the Church Hill zone but three other existing parking lots include a fair amount of driveway pavement – the Community Church, Church Hill Apartments, and apartments off Park Court.
 - The current site includes 39+/- parking spaces. The proposed plan includes a total of 150 parking spaces.
5. Preservation of natural, cultural, historic, and scenic resources: The proposed use of the site, including all related development activities, shall preserve identified natural, cultural, historic, and scenic resources on the site and shall not degrade such identified resources on abutting properties. This shall include, but not be limited to, identified wetlands, floodplains, significant wildlife habitat, stonewalls, mature tree lines, cemeteries, graveyards, designated historic buildings or sites, scenic views, and viewsheds.
- There are no resources on the site that are specifically identified as such now. The site is wooded. There has been considerable debate about the character and quality of the wooded area and the necessity and appropriateness of preserving all or part of the area, with contrary opinions expressed by two foresters on behalf of the abutters and a different perspective offered by the landscape architect, *and possibly the forester*, employed by the applicant. (Note that the Town could not legally require that the entirety of the wooded area be preserved as it must allow for reasonable development.)
 - There are some stone walls on the parcel, but they will not be changed.

- *There is a forest assessment by forester Charlie Moreno, hired by the applicant I believe.*
 - *There are forest assessments by foresters John Parry and Richard Hallett on the website*
 - *There is a letter from Wilfred Wollheim, an aquatic ecosystem ecologist at UNH.*
6. Impact on property values: The proposed use will not cause or contribute to a significant decline in property values of adjacent properties.
- *Comments from the Town Assessor are included in the July 13 write up.*
 - *Comments about the impact of the project are included in a letter from Realtor Joan Friel.*
 - *Comments about the impact of the project are included in a letter from appraiser Peter Stanhope (He does not refer to his credentials in the letter, but he is a professional appraiser).*
 - *Adjacent is defined in the American Heritage dictionary both as “close to, lying near” and “next to, adjoining.” There is a range of uses in the vicinity of the project as noted above: single family houses, commercial uses, churches, and student housing.*
 - *The properties potentially most affected are the single-family houses in close proximity to the property - those owned by Bill Hall, the Urso family, the Andersen family, and Josh Meyrowitz (The first three are contiguous). There are eight houses on Chesley Drive (including those owned by the Andersens and Josh Meyrowitz). Residents have asserted that neighboring houses would lose value. Whether that is the case or not would depend in large part on how visible the site is from those houses. The board needs to make its best judgment about that.*
7. Availability of Public Services & Facilities: Adequate and lawful facilities or arrangements for sewage disposal, solid waste disposal, water supply, utilities, drainage, and other necessary public or private services, are approved or assured, to the end that the use will be capable of proper operation. In addition, it must be determined that these services will not cause excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police protection, fire protection, and schools.
- *Again, the only relevant service is really stormwater management. See above.*
8. Fiscal impacts: The proposed use will not have a negative fiscal impact on the Town unless the Planning Board determines that there are other positive community impacts that off-set the negative fiscal aspects of the proposed use. The Planning Board’s decision shall be based upon an analysis of the fiscal impact of the project on the town. The Planning Board may commission, at the applicant's expense, an independent analysis of the fiscal impact of the project on the town.

- *Comments from the Town Assessor are included in the July 13 write up.*
- If the board believes there is likely a negative fiscal impact it could consider if there are other positive impacts for the community.

SITE PLAN REGULATIONS

Here are some pertinent provisions from Part III. Development Standards.

General Standards

1.2.2 The Town of Durham Master Plan and Capital Improvement Program (CIP) are policy rather than regulatory documents, but the Planning Board may consult these documents as guides in reviewing proposed development or redevelopment.

Landscaping and Screening

Section 5.1. The purpose of landscaping and screening standards is to:

- 1) Help integrate the built environment with the natural environment;
- 2) Enhance the quality and appearance of development;
- 3) Preserve open space and natural habitats;
- 4) Control excessive stormwater runoff;
- 5) Prevent soil erosion and pollution of water bodies;
- 6) Reduce noise, wind, glare and dust;
- 7) Provide shade and windbreaks to increase energy conservation in buildings;
- 8) Establish an attractive streetscape adjacent to roadways;
- 9) Screen vehicular headlights in parking areas;
- 10) Promote public safety by guiding vehicles and pedestrians within a site;
- 11) Provide areas for snow storage;
- 12) Enhance privacy;
- 13) Enhance the health and survivability of selected landscaping materials
- 14) Protect the value of surrounding property; and
- 15) Protect and enhance the natural beauty, environment, and green space within the Town of Durham.
- 16) Increase property values

- 5.9.1 Where nonresidential uses and/or off-street parking facilities abut a vacant lot in a residential zone or an existing residential use, the perimeter shall be screened to provide physical and visual separation from the residential zone or use.
- 5.9.2 Screening measures composed of trees, shrubs, berms, walls, and/or fences shall be installed to a height of 6 feet, or higher, when appropriate, as specified by the Planning Board. A wall or fence shall be placed on the exterior side of any landscaping unless otherwise approved by the Planning Board. The more attractive finished side of the fence shall face abutters, unless otherwise approved by the Planning Board.
- 5.9.3 When natural vegetation is used, it shall consist of evergreen shrubs and/or trees planted in a line to form a continuous screen that will grow to a minimum height of 6 feet within 3 years. Additional evergreen shrubs/trees may be planted in a second, staggered line to form a screen together with the first line.
- 5.9.4 All sites shall incorporate screening measures to prevent the headlights of vehicles from shining on adjoining residential areas.
- 5.9.6 The Planning Board may stipulate additional buffers due to unusual impacts generated, including odor, noise, glare, dirt, dust, vibration, etc.

Lighting

- 6.3.2 Glare. All exterior lights shall be designed, located, installed, and directed in such a manner as to not cause glare and objectionable light trespass onto neighboring roads and properties.
- 6.3.3 Shielding. All lights, including those placed on building walls (e.g., wall-packs), shall be fully shielded such that the light source cannot be seen directly from any point on the same horizontal plane as the light source (i.e., a “full cut-off” fixtures). No more than 10% of the total light output (as measured in lumens) from any fixture may be directed above the cone of illumination and none of the total output may be directed above the horizontal plane that is at the same height as the fixture. At its reasonable discretion, the Planning Board may require additional shielding for lights, beyond what is described herein, to protect neighboring residential properties.

Natural Resources

- 8.2.1 Buildings, parking areas, travel ways, and other site elements shall be located and designed in such a manner as to preserve natural resources and maintain natural topography to the extent practicable. Extensive grading and filling shall be avoided.
- 8.2.2 Development shall be directed away from valuable and fragile resources to the extent practicable.
- 8.2.3 Development shall follow the natural contours of the landscape to the extent practicable to minimize grading.

8.2.7 Natural features and systems shall be preserved in their natural condition, wherever practicable. Such areas include watercourses, waterbodies, floodplains, wetland areas, steep slopes, aquifer recharge areas, wildlife habitats, large or unique trees, and scenic views.

Snow Storage

9.3.2 Snow storage areas shall be located such that no direct discharges to receiving waters are possible from the storage site. Runoff from snow storage areas shall enter treatment areas to remove suspended solids and other contaminants before being discharged to receiving waters or preferably be allowed to infiltrate into the groundwater.

Stormwater

15.5.2 (f) The use of sodium chloride-based materials for winter road maintenance shall be the minimum necessary for roadway safety. If the development calls for the use of porous asphalt, sand shall not be used in those areas. However, sand may be used in other areas not using porous asphalt to cut down on the amount of sodium chloride based materials used.

(q) Whenever practicable, native site vegetation shall be retained, protected, or supplemented. Any stripping of vegetation shall be done in a manner that minimizes soil erosion.

Traffic and Access Management

16.1.2 A proposed project shall not be approved if the neighboring streets and intersections cannot safely and reasonably accommodate anticipated traffic volumes generated by the proposed development.