

May 4, 2022

Re: 19-21 Main Street

Dear Members of the Durham Planning Board,

As I read through our regulations yet one more time, I continue to wonder how the proposed parking lot on the Church Hill Woods (aka "19-21 Main Street") can possibly be seen as meeting our ZO and Site Plan Regulations.

Structured Parking

First of all, now that the proposed parking lot once again has a concrete retaining wall, I agree with Attorney Nathan Fennessy's March 23, 2022 letter that the ZBA decision remains relevant, that is, that **the latest proposal does NOT meet the definition of surface parking because it has a retaining wall, and therefore, is not allowed in the Church Hill District.**

That Tim Murphy admitted to this in an April 15, 2021 email to Michael Behrendt only affirms that this proposal falls under the definition of STRUCTURED PARKING and is therefore not permitted in the Church Hill District.

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 (emphasis added).

Please note that under the definition of STRUCTURE in our ZO, even an underground septic system, which contains concrete walls, is considered a structure. While a fence 6-feet tall or less is exempt, a wall is not a fence and a concrete wall is not exempt. In any case, the ZBA very explicitly declined to state a size or height of a forbidden retaining wall, therefore their decision, never challenged in court, stands.

Conditional Use

Under our CUP Criteria, it is difficult to imagine that the plan meets the following criteria: **Site suitability:** The site is suitable for the proposed use. This includes: **The absence of environmental constraints (floodplain, steep slope, etc.)** or development of a plan to substantially mitigate the impacts of those constraints (emphasis added). Indeed, the entire site for the parking structure is a steep slope.

Mike Sievert has already acknowledged that a portion of the lot does include steep slopes. Note the criteria above says "absence of..." as in "no or none." Thus, the plan does not meet this criterion. Additionally, if the site is already suitable, why the need to bring in 14,000 or 15,000 cu. yds. of fill? This very requirement would seem to confirm that the site is unsuitable. Moreover, our Site-Plan Regulations forbid extensive fill and grading.

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** (emphasis added).

How can anyone possibly argue (and it is the burden of the applicants to do so) that the Andersens, as but one example, would not be profoundly negatively impacted by the proposed massive parking structure – with just about *every* negative impact listed and imagined, when they are currently shielded from such impacts from other more distant parking lots in the district?

With this particular plan “Character of the site development” and “Character of the buildings and structures” are similar since the parking lot is a structure pertaining to the site development.

1. “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.”
2. “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...**” (emphasis added).

Clearly the proposed plan is incompatible with the established character of the neighborhood, The purpose of the Church Hill Zone is stated as follows: “The purpose of the Church Hill District is to **preserve and enhance the historic character** of this area by allowing for multiple land uses including professional offices, limited retail uses, and senior housing... **New development should maintain the character of the area and is subject to the standards of the Historic Overlay District**” (emphasis added).

Pertaining to scale, height, and massing, clearly not only is the size of the enormous flat parking lot out of character of Church **Hill** (emphasis added) and the adjacent neighborhood, but also the required amount of fill--**15,000 or 13,702 cubic yards** (it keeps changing) – demonstrates the huge mass of this structure. Picture 25 or 28 Town Council Chambers’ worth of mass completely filled with dirt. That is huge, not only in its horizontal dimensional, but also in its towering height above Chesley Drive and the walking path below. With the asphalt surface added, Michael Behrendt Planner’s Review estimates the parking lot would tower 34 feet about Chesley Drive. This massive project is completely out of scale with established character of the neighborhood.

In looking at the Purpose statement for Church Hill, one has to wonder: does this student parking lot “preserve and enhance the historic character” of Church Hill? Clearly not. Whether defined as structured parking or not, the massive nature of this parking lot, engineered to be flat along the side of a steep hill and requiring a massive amount of fill, makes it clear the site is unsuitable and filling it will forever change the character of the neighborhood.

Additionally, **“Impact on property values:** The proposed use will not cause or contribute to a significant decline in property values of adjacent properties.”

It is hard to imagine that a large student parking lot, with its light glare, 24/7 hours of operation and tall fencing only feet away from the Urso property will not reduce the attractiveness of the Urso property and thus their property values. Additionally, the disregard of the deeded easement (which I gather the Town Attorney advised the PB to ignore) will also impact the value of the property.

Similarly, as noted above, the Andersen’s home will be negatively impacted. The fact that Durham houses sell at a premium today is not sufficient data for a market-value impact analysis. As Attorney Puffer and Matthew Meskill asserted in their letters regarding Mill Plaza, the industry-standard requires “paired sales” of properties. The value of these homes, once buffered by substantial woods, must be compared to the value of similar homes which now sit, with greatly reduced buffers, adjacent to commercial student parking lots. Again, the burden of proof falls to the applicant. Commonsense tells us that the property values of these properties, once buffered by dense woods, would be far less attractive to potential buyers and thus negatively impacted.

Site Plan Regulations

As Durham site-plan regulations (8.2.1) indicate **“Extensive grading and filling shall be avoided.”** (emphasis added) This regulation is straight forward and undeniable clear. Please note the word “shall” which means “must.”

There are many uses which would be compatible with the neighborhood and meet our ZO and Site Plan regulations and that are PERMITTED USES in Church Hill. This is not one of them. Please deny this application.

Respectfully Submitted,

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