

**From:** [Eric Lund](#)  
**To:** [Karen Edwards](#); [Michael Behrendt](#)  
**Subject:** Comments on Attorney Kieser's letter re: 19-21 Main Street  
**Date:** Tuesday, February 22, 2022 4:20:51 PM

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Dear members of the Planning Board:

I am writing to respond to some of the points raised by the applicants' attorney, Monica Kieser, in her letter of 18 February 2022 regarding the proposed parking lot at 19-21 Main Street. This letter states the applicants' view regarding how the project satisfies the conditional use (CU) criteria. There are, however, some questionable assumptions in Ms. Kieser's letter, and this comment is a response to some of those assumptions.

In this comment I will be quoting elevations as provided by Google Earth for the subject property and several other nearby locations. Google Earth provides elevation data to a precision of 1 m (1 ft. = 0.3048 m), and sea level is not necessarily defined the same way as in the site plans that the applicants have provided. However, the sea level offset should be the same for all locations in this vicinity, so the comparison of elevations between the site and these other locations should be valid.

#### 1. Definition of neighborhood

One of the major issues with Ms. Kieser's letter is that her opinions of the character of the neighborhood rely on defining the neighborhood as the Church Hill segment of Main Street. This definition is both overly narrow and ahistorical. Neighborhoods have traditionally been defined in terms of walking distance, meaning the distance that a typical able-bodied adult can be expected to cover in a walk of 10 to 15 minutes. Much of the Faculty neighborhood would be included under this definition: my house is about a 10 minute walk from the site. In this specific case, there is also the history of land ownership. The four lots that are the subject of this application once belonged to Hamilton Smith, whose property extended southward to the Oyster River. In fact, the portion of the Faculty neighborhood east of Thompson Lane is known as the Red Tower district, and is identified as such in neighborhood covenants on file with the Strafford County land registry. The name Red Tower originates from the house at 19 Main St., in which Hamilton Smith lived. These definitions of neighborhood, rather than the narrow definition that Ms. Kieser uses, should apply to the second, third, and fourth CU criteria, which explicitly refer to "the neighborhood".

#### 2. Elevations at the site and other nearby locations

- Entrance to the site from Main St.: 24 m.
- The grassy area at the southwest corner of the existing parking lot is at 23 m. This is the approximate location of the northern end of the proposed parking lot, which is intended to have a 5% slope over a distance of approximately 200 feet, implying that the southern end should be about 10 ft. or 3 m lower, for an elevation of 20 m.
- Community Church parking lot: 16 m. The range is from 18 m at the point where the driveway from Main St. opens into the parking lot to 15 m at the extreme eastern end of the lot.
- Mill Road Plaza lot: 13 m. The range is from 14 m in the vicinity of Rite Aid to 11 m at the pedestrian entrance from the Chesley path.
- Chesley Drive at the other end of the Chesley path: 9 m.
- Faculty Road between Thompson Lane and Mill Pond Road: 11 m.

In areas that are covered by buildings or forests, Google Earth reports the elevation of the rooftop or tree tops, so it does not provide reliable estimates of ground elevation in these areas. Notably, in the currently forested area where the proposed parking lot is to be constructed, the elevations reported range from 30 to 45 m. The tree heights implied by these numbers are consistent with mature tree lines, which are explicitly called out in the fifth CU

criterion as a natural and/or scenic resource which must be preserved.

### 3. Neighborhood impacts: Why elevation matters

In evaluating impacts of the proposed parking lot on properties south of Main Street, it is entirely reasonable to ignore the impact of parking lots north of Main Street. Similarly, it is reasonable to neglect the impacts of the proposed parking lot on properties north of Main Street. The reason is because of the zoning requirement in the Church Hill district that parking be located behind buildings, which can be expected to provide adequate buffering from the direction of Main Street.

That this parking lot would be at an elevation several meters higher than the existing parking lots on the south side of Main Street, identified in Ms. Kieser's letter, is a key reason why the neighborhood impacts of the proposed lot can be expected to be substantially greater. At lower elevations, trees and topography have a better ability to buffer any undesirable effects of a parking lot from the neighborhood. For example, the site of the proposed parking lot is easily visible from my kitchen window at this time of year, so I would definitely be able to see this parking lot if it is built. I am not able to see either the Community Church parking lot or the Mill Road Plaza parking lot, because these parking lots are at lower elevations and are therefore buffered by topography and/or vegetation.

As a side note, the Planning Board should recall that most of the parking area at the Mill Road Plaza between the current Building 2 and the Chesley path is the result of the illegal bulldozing of a hillside that previously existed in that location. Obviously, Colonial Durham Associates rather than Toomerfs bear responsibility for this condition, but this situation should be noted for the record.

### 4. Steep slopes

That the subject property includes steep slopes should not be controversial. The elevation difference of 14 m between the grassy area where the proposed parking lot would begin and the end of Chesley Drive occurs over a distance of 170 m, for an average slope of 8.2%. As the Planning Board will recall from various site walks as well as the existing conditions plan presented by the applicants, this slope is not uniform, so some portions of the slope are substantially greater than 8.2%. The first CU criterion includes steep slopes in its non-exhaustive list of environmental constraints that must be either absent or mitigated against. The applicants do in fact have a plan to mitigate this steep slope by bringing in more than one thousand dump truck loads of fill (at various stages of the application, project engineer Michael Sievert has provided estimates ranging from 1100 to 1700 truckloads). However, the problem remains that the project must comply with site plan regulations, which prohibit excessive amounts of fill. It is possible for the applicants to satisfy either the CU criterion or the site plan regulations, but not both.

Thank you for your consideration.

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