

From: [Eric Lund](#)
To: [Karen Edwards](#); [Michael Behrendt](#)
Subject: 19-21 Main Street
Date: Monday, March 21, 2022 2:30:31 PM

Dear members of the Planning Board:

I am writing to express some additional thoughts on the proposed parking lot at 19-21 Main Street, above and beyond the comment I submitted last week.

1. Peer review response

In other applications I am familiar with, when engineering plans have been submitted to a third party for peer review, the engineer provides a written response to the peer review comments and an updated set of plans that reflect the changes made in response to the peer review. This process is analogous to the process that manuscripts I submit for journal publication undergo, with the important difference that for Planning Board applications this process is public. Altus Engineering submitted peer review comments to the present application on 18 February 2022. As of this writing, neither Mr. Sievert's response to this peer review nor the complete updated set of plans has been posted on the town website. For this reason alone, it would be premature to close the public hearing for this application at the Planning Board meeting on 23 March.

2. Why we have conditional use

The Durham zoning ordinance recognizes that certain uses beyond what is allowed by right may be appropriate in a given zone, but these uses are more likely than by-right uses to have detrimental effects on surrounding properties. The purpose of conditional use is to provide a mechanism by which such proposed uses can be approved provided they meet certain criteria that demonstrate that they will not cause undue harm to abutters and to other properties in the neighborhood. Some of the criteria, such as the external impacts criterion, explicitly reference by-right development as a standard to which the proposed use should be compared. Other criteria, including the effect on neighboring property values and the requirement to preserve certain natural, scenic, historical, and cultural resources, do not refer to by-right uses. The implication is that conditional use applications are held to a higher standard than by-right development proposals on these criteria. This difference is proper, since (1) a conditional use is identified as more likely to be harmful to abutters and the neighborhood, and therefore an application for such use must demonstrate that the tradeoff is appropriate, and (2) all conditional use applications are, at least in principle, held to the same higher standard. The protection of resources above and beyond state and federal law, for example, does not prevent the development of a parcel, because it does not apply (beyond applicable state and federal law) to by-right development.

3. Impacts on the Urso property

In considering external impacts of the proposed parking lot, it must be emphasized that the Urso house at 5 Smith Park Lane is not currently adjacent to any parking lot. Wooded areas buffer this house from the impacts of the existing parking lot on the applicants' property as well as the Community Church and Mill Road Plaza parking lots. Parking lots on the opposite side of Main Street are adequately buffered, from the point of view of the Urso house, by buildings on both sides of Main Street. The proposed parking lot would be located directly next to the Urso house, as well as obliterating much of the wooded buffer between this house and the Mill Road Plaza. The letter by applicants' attorney Monica Kieser does not acknowledge that the Ursos do not currently abut a parking lot and therefore does not demonstrate that the construction of a parking lot directly next to the Urso property would not contribute to a decrease in the value of the Urso property. Therefore, merely considering the relationship of the proposed parking lot to the Urso house leads to the conclusion that the proposed use fails at least two of the conditional use criteria and is therefore sufficient reason, independent of the project's many other shortcomings, to reject this proposal.

Thank you for your consideration.

Eric Lund
31 Faculty Rd.

Opinions are my own and not necessarily shared by others on Town Council