

To: Members of the Planning Board, Michael Behrendt, Todd Selig

Date: July 21, 2022

RE: 19-21 Main Street

From: Kay Morgan, 16 Valentine Hill Rd.

Does the Toomerfs' proposed parking lot placed in the center of the Church Hill District align with our Zoning and Conditional Use Regulations? I'd like to raise a few points that should be the subject of ongoing discussion before a decision is reached.

Surface or Structured Parking?

From the original letter of intent, (10/23/2020) submitted by MJS Engineering, in the section addressing the various Conditional Use standards, Mr. Sievert wrote under #4. **Character of the buildings and structures:**

“The parking lot defined as a structure, is designed to the correct scale with respect to the size of the parcel and the size of other parking lots on various parcels within the neighborhood. This design meets the requirements including the main entrance, to make it very compatible with the character of the neighborhood, when compared with other similar parking lot uses in the neighborhood.” (my emphasis)

Indeed, the Zoning Board confirmed that the proposal was Structured Parking in April, 2021, (and therefore not a permitted use in the zone) and just because the Planning Board chooses to ignore that ruling, nevertheless, the current proposal requires a retaining wall and a nearly 20 foot sloped berm to support the proposed paved area. It was structured parking in October, 2020, in April, 2021 and it is still structured in July, 2022. That is not a permitted use in the Church Hill District.

If it were SURFACE parking, it would not require 14,000 cubic yards of fill. The developer would be able to simply add paving to a potential area that needed minimal filling and grading to smooth its surface. Despite Ms. Tobias assertion that every proposal requires some filling and some digging, 14,000 cubic yards is not just “some filling.”

Further evidence to support the notion that both the developer and the engineer know that this is not “at grade” parking was revealed in Tim Murphy's email to Michael Behrendt (April, 2021) in which he expresses his wish for the Planning Board to revise their definition of “at grad” (sic) [parking] as soon as they finish revising their definitions of “Structured and Surface Parking.”

The redefinition of terms, promoted by Planning Board Chair Rasmussen, (email 4/13/21) who established a sub-committee to do just that, following the Zoning Board's decision (4/13/21) was

aborted by Town Manager Todd Selig who realized that the appearance of collusion with a developer was a “bad look” for the Planning Board. Indeed, Mr. Rasmussen stated in his email to Michael Behrendt and the Planning Board, “When you are done with definitions, then let’s fix the WCOD/SPOD language.” A move that would have helped both the Mill Plaza proposal and potentially 19 - 21 Main Street.

In FACT, the steep slope and the need for extensive fill has been a concern voiced by Town Planner Michael Behrendt from the very beginning of discussion of this proposal. Because of the steep grade, Mr Behrendt suggested in the initial Tech Review on 11/5/19: **“with the difference in grades we could have separate access to parking at grade and parking in a deck, from Mill Road and Main Street respectively.** You could avoid using a ramp which would save space though the two levels would not be connected.” (my emphasis) This was a meeting to kick around ideas, but **it seems instructive to me that Mr. Behrendt’s perception was that the property would lend itself to a project on two levels, reflecting the unsuitability of the site for a surface parking lot.**

In his Town Planner’s Project Review (11/13/19) he notes **The elevation drops off dramatically from Main Street so the grading plan will be important. Will there be a retaining wall?”** (my emphasis) This FACT is repeated over and over in Planner Reviews, but seems to disappear into the ether. Either the comments are “It’s not too steep,” or “Any other use would also require fill,” or “Why does it matter that it is a steep slope?”

On the Site Walk (11/25/19: Mr. Sievert acknowledged the difference in grade and how the fill would be distributed: **“ At about the middle of the lot, going from front to back, the grade of the parking lot will be about eight feet above the existing grade. The finished grade at the bottom of the lot will be about 12-16 feet above the existing grade.”** (my emphasis) In FACT, very little of this parking lot will be “at grade.” These numbers have changed, but the execution of the project is basically the same: far from “at grade,” and not possible without a significant “structure” including a retaining wall, to hold the required fill.

Why does this matter? It matters because we have regulations (Site, Zoning and Conditional Use) which govern this project, and in this major respect the project is out of compliance, though the Planning Board, has agreed informally that the site is suitable.

I notice that at least two Planning Board members were never present on any of the three Site Walks, and I find it appalling that they would be ruling on this project without seeing and walking the actual site (full disclosure, I have attended 2 of the 3 walks) to actually experience the location and the height to which this natural amphitheater will be filled, as well as its proximity to the Chesley Marsh Wetland and College Brook, not to mention the opportunity to assess the impact on abutters and the neighborhood. How informed is their vote on this proposal?

I strongly urge the Planning Board to look at what the regulations actually say and what most people understand to be the common meaning of these terms, not what they want them to say in order to support this proposal.

1. A parking structure may mean a garage to you, but that is not how it is defined in the regulations.
2. A surface is just that - a surface, not something that has to be built up and shored up by thousands of cubic yards of dirt and a concrete wall (regardless of its height.).
3. If the developer can't come onto a lot and pave it at the grade level of the entrance to that lot, then it is not "at grade." And this one is not even close to "at grade." There is no sense that the regulation means, nor does it say, "at finished grade after you add thousands of tons of dirt."

Walk the site if you haven't walked it already. Read the clear language of Durham's various regulations and please vote NO on this proposal.