

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

From: Kay Morgan, 16 Valentine Hill Rd.

Date: July 22, 2022

RE: Church Hill Parking Lot Proposal - Environmental impacts

Environmental considerations exist in three of the CUP standards. To wit:

1c: Site Suitability: “The site is suitable” [in] “the absence of environmental constraints (floodplain, steep slope, etc.)” etc.

2: External impacts: “The external impacts of the proposed use on abutting properties SHALL be no greater than the impacts of adjacent existing uses . . . and the nature and intensity of the use, SHALL not have an adverse effect on the surrounding environment . . . “

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. (my emphasis added throughout)

This opens the door to rejection of this proposal on three different standards.

I want to address CU Standard 5 and the word “identified.” First, this property lies in the Church Hill Zone, designated officially and legally by the Town of Durham. As stated in the description of the Zone: The purpose . . . is to preserve and enhance the historic character of this area.” It further goes on to say: “**New development should maintain the character of the area and is subject to the standards of the Historic Overlay District.** The Historic Overlay District **includes** the two lots fronting on Main Street which host one of the most visible historic buildings, the Red Tower. The forested area on the two lots behind this building and others, add to the sense of the rural community that this historic district once was, the character of which shall be preserved, according to CU Standard #5. As lots contiguous with the two in the Historic Overlay District, identified resources SHALL be preserved or not degraded.

Second, is the fact that on July 27, 2011, Governor Lynch designated the Oyster River as a protected river under the NH Rivers Management and Protection Program. I cite this because we have a critical “identified” natural resource in proximity to this property. Here is the language from the Department of Environmental Services recommendation to the General Court (Page 10)

“Recommendation 1:

Designation of the Oyster River under the Rivers Management and Protection Program will express the intent of the General Court regarding the river’s future management and protection, and **will focus attention on the river as a natural resource of both statewide and local significance.** This attention will help to ensure **greater scrutiny of plans or proposals that have the potential to significantly alter or destroy those river values and characteristics that qualify the Oyster River for designation.** “(Emphasis added)

Recommendation 2:

“The towns of Barrington, Lee, Madbury and Durham should continue to work together toward the protection of the Oyster River through the adoption and implementation of a local river corridor management plan. **While legislative designation of the Oyster River will improve the protection and management of the river itself, continuing efforts at the local level will be needed to address the use and conservation of the river corridor (the river and the land area located on each side of the river within a distance of 1,320 feet of the normal high water mark or to the landward extent of the 100 year floodplain).** A growing recognition by local citizens and officials of the Oyster River’s valuable contribution to the overall quality of life in their communities is evidenced by their desire to see it designated into the Rivers Management and Protection Program. **Citizen appreciation and concern for the river should be reflected in the decisions and actions of local officials.** The Department of Environmental Services will provide technical assistance to the local river management advisory committee and to the local officials in the riverfront communities on the development and implementation of a local river corridor management plan.” (Emphasis added)

“In summary, the establishment of a clear policy and specific instream protection measures by the General Court, **and a continuing commitment on the part of local governments and residents to protect and manage the river corridor through sound land use decisions** will ensure that the outstanding resources of the Oyster River will endure to be enjoyed by the people of New Hampshire for many years to come.” (Pages 10 - 11) (Emphasis added)

The Chesley Drive end of Mill Plaza and the entire proposed parking structure lie within the protected corridor of the Oyster River and College Brook, which, as one of its major tributaries, is therefore also protected. The fact that College Brook is already impaired, as is the River, does not alleviate the need to make sure that future development DOES NOT further impair these two “identified” resources.

In theory, the developers should have contacted the Oyster River Local Advisory Committee to notify them of this proposed development within the protected corridor and perhaps they have. That would have prompted ORLAC to offer up their checklist for Project Evaluations. The guidelines I have, dated April 2021 (which were subject to revision, so there may be some differences as of the current date), include the following questions:

1. **Do development designs minimize impervious cover impacts in order to store and treat stormwater runoff by using pervious areas, dry wells, rain gardens, and or gravel wetlands?**
2. **Does the storm water management system provide infiltration?**
6. **Are there provisions to not increase any existing impairments to receiving waters?**
7. **Do projects adequately address runoff from the site in terms of downstream flooding and habitat protection?**

8. Are there temporary erosion controls during development of site?

12. Is there a salt reduction strategy?

13. Have salt resistant and native plantings been considered with regard to revegetation and landscaping?

These and the other questions provided by ORLAC could provide the framework for an informed discussion by the Planning Board about environmental impacts of this project and whether or not the project will degrade the adjacent wetlands.

The time for vague personal opinions is over. The evaluation of this proposal has to be approached from a systems thinking point of view. Will the run-off from this proposed parking lot impair the small pocket wetland on the site, as well as the Chesley Marsh and is it going to infiltrate College Brook and thus, the Oyster River? There is no law that says that can't happen, but isn't that what CU #5 is meant to prevent?

What about CU#2? Will this parking lot have a greater impact on its surroundings than the other parking lots in the area? The answer is yes, because the run-off from this parking lot includes a small wetland and is immediately adjacent to Chesley Marsh and College Brook. Its steep slope means that the intensity and flow of run-off will be much greater across the asphalt surface than it is now across the forest, and it will not have had the cleansing of the trees and the forest floor which is present now. Additionally, it will be laden with salt and other chemicals which are not present currently in the forest.

We should also note that the other parking lots usually referenced, Community Church, Church Hill Apartments and Mill Plaza were all constructed long before the designation of the Oyster River as a Protected River. They were also constructed before we were fully aware of the climate crisis we are now facing. These parking lots were not subject to the Conditional Use Permitting process either.

What about CUP#1 Site Suitability? The steep slope requires an inordinate amount of fill, which is an environmental constraint on what may reasonably be built in the protected river corridor...

If this project goes forward, its damage cannot be undone. The Planning Board must work with the facts and apply the Conditional Use requirements on the basis of the reality of the location of the land and its particular relationship to both the Historic District and the historically, culturally and environmentally significant Oyster River.