

Mr. Behrendt: Please forward this request to Planning Board members for the record.

April, 7, 2022

RE: Formal site plan and conditional use application for parking lot as principal use on four lots and reconfiguration of the entrance. Toomerfs, LLC, Map 5, Lots 1-9, 1-10, 1-15, and 1-16.
Church Hill District

Dear Planning Board Members,

As you and Planner Behrendt begin to establish Findings of Fact and Conditions of Approval for the above application, I respectfully request that you include for deliberation the proposed findings of facts below.

FINDINGS OF FACT;

1. The Applicant proposes to modify the grade and topography of the subject lots by adding an estimated 15,000 cubic yards of fill for the purpose of elevating the natural grade of an extensive area by approximately 18 vertical feet.
2. The Planning Board and the Applicant have access to copies of the Durham Zoning Ordinance and Site Plan Regulations (SPR) which require that
*“Buildings, parking areas, travel ways, and other site elements shall be located and designed in such a manner as to preserve natural resources and maintain natural topography to the extent practicable. **Extensive grading and filling shall be avoided.**”* (SPR, Part III, Art. 8, Section 8.2.1) [emphasis added]
3. The Durham Planning Board, in adhering to Durham’s Site Plan Regulations, in relevant part, Part I, Article 9, understands that
*“In these regulations . . . **the word ‘shall’ is** [means] **mandatory**, and the word ‘may’ is [means] **permissive**. . . .
*“Where terms are not defined in Article 10 or within a given Article, ... [words] **shall have their ordinary accepted meanings or such as the context may imply.**”**
4. The Board finds the proposed plan does not conform to the Durham Site Plan Regulations, Part III, Article 8, Section 8.2.1 because adding an estimated 15,000 cubic yards of fill and raising the grade by approximately 18 vertical feet requires extensive grading and filling which must be avoided.
5. The Board finds the proposed modification of topography and changes to the natural resources is contrary to the spirit and intent of the Regulations.

THEREFORE:

The Application is **DENIED**.

Respectfully,

Malcolm Sandberg,