

— 19 MAIN STREET: “GRADE” REVISITED (AGAIN, AND AGAIN)—

July 22, 2022

Planning Board
8 Newmarket Road
Durham, NH 03824

Dear Members of the Board,

In yet another effort to focus discussion about the meaning of words in our zoning ordinance, I offer the following.

Zoning ordinance: Basic assumptions

- **The ordinance is not a technical reference** and does not rely on professional jargon except in rare cases; this is not one of those cases.
- The **ordinance must be comprehensible by lay persons**, e.g., volunteers on zoning and planning boards, as well as the public—underscoring a reliance on “ordinary accepted meanings or such as the context may imply” when terms are not otherwise defined.
- The integrity of the ordinance, i.e., its **internal consistency or harmony**, may reasonably be assumed when it comes to definitions (and may fund legal opinions in deciding lawsuits). Thus, if there is any doubt about meaning or intent, one may—and should—compare uses within the same ordinance.

Zoning ordinance: What does “grade” mean?

The terms “grade” and “at-grade” lie at the heart of the definitions of “surface parking” and “structured parking.”

- These terms are not defined in the ordinance **except by inference**.
- However, the ordinance *does* define a term that both includes the word “grade” and lends contextual meaning to the word “grade”:

Highest Adjacent Grade - The highest **natural elevation of the ground surface prior to construction next to the proposed walls of a structure.**

Although we may all agree that the relevant definitions should be amended in the near future for clarification, currently, the Board today has no other choice than to rely on existing language in the regulating ordinance.

Reading the ordinance as a whole, one must conclude that the use of the word “grade” in the two types of parking definitions at issue refers to what lay persons—using an “ordinary accepted meaning”—call the “natural grade.”

The argument that construction often requires an adjustment to the natural grade—“to make an omelet, you have to break some eggs”—holds no water.

Wiggle room for “ordinary” construction—smoothing out bumps and hollows? Sure, but not for the scale of “grading” and “filling” proposed in this application.

Regards,

Robin