

— **COMMENTS ON THE JUNE 22, 2022 CUP DELIBERATIONS** —  
**INCLUDES A PARTIAL TRANSCRIPT**

July 8, 2022

Planning Board  
8 Newmarket Road  
Durham, NH 03824

*RE: 19-21 Main Street – Parking Lot. Formal application for site plan and conditional use for parking lot on four lots and reconfiguration of the entrance. Toomerfs, LLC c/o Pete Murphy and Tim Murphy, property owners....Map 5, Lots 1-9, 1-10, 1-15, and 1-16. Church Hill District.*

Dear Members of the Board,

The June 22 deliberations on the Conditional Use Criteria prompt me to offer comments.

First, as Board member Richard Kelley noted, extended discussions help tease out what each member thinks. Some past CUP deliberations have been cursory, so I appreciate your taking your time. However, I would again urge that you all pay close attention to the precise criteria, language, and definitions in our land use regulations.

**Deleterious impacts were not addressed (“external impacts”)**

Remarkably, on June 22 the Board neglected to weigh ANY of the enumerated examples of deleterious impacts (noise, glare, fumes, et al.), let alone additional (“not limited to”) deleterious impacts (e.g., air and water pollution, increased electrical use for air conditioning due to the heat island effect of a large parking lot). Historically, the “meat” of the criterion, that omission is particularly notable—and concerning.

**Scale is outsized (“external impacts” “character of the buildings and structures”)**

As documented by Board member Emily Friedrichs, the scale of the proposed development exceeds—considerably—that of the surroundings, i.e., other existing development in the small Church Hill district, even that of the next-largest parcel, the Three Chimneys Inn.

**It is highly likely that that no drafter of our regulations ever envisioned a principal parking lot that would cover virtually the entire stretch of land from Main Street to Chesley Drive.**

It is also unlikely that anyone ever imagined a shopping plaza in the center of town (proof that envisioning the future is difficult, even for planners). A shopping plaza in the center of our small downtown would not be permitted under today’s regulations. Unfortunately, we seem to be stuck with what many would consider an atypical and questionable use in the heart of our small commercial zone. Yet parking even at Mill Plaza was always intended to support the businesses located at the Plaza, an accessory use.

Board member Lorne Parnell said that he has “a problem” with the scale of the proposed Church Hill parking lot. (“ It really stands out to me that this is a very, very large parking lot...it’s too big horizontally, it’s too big vertically...”) See the applicant’s [aerial view of the area](#), on which the proposal is superimposed. It helps one visualize that the proposed parking lot would be equivalent to approximately one-half the size of the Mill Plaza.

“Scale” is so relevant when considering a use permitted only by Conditional Use that it is mentioned in **two separate Conditional Use Permit criteria**:

[#2 *External impacts*] ...In addition, the location, nature, design, and height of the structure and its appurtenances, **its scale with reference to its surroundings**, and the nature and intensity of the use, shall not have an adverse effect on the surrounding environment...

and:

[4. *Character of the buildings and structures*] ...The design of any new buildings or structures and the modification of existing buildings or structures on the site shall not be incompatible with the established character of the neighborhood. This shall include, but not be limited to, the **scale, height, and massing of the building or structure...**

Finally, the stated argument that any permitted use for the Church Hill zone might require as extensive an accessory parking lot as Toomerfs proposes might be termed fanciful.

### **Appropriate and orderly development questionable (“external impacts”)**

Board member Councilor Chuck Hotchkiss underscored a critical phrase in the second CUP approval criterion:

...nor discourage the **appropriate and orderly development** and use of land and buildings in the neighborhood.

The Board discusses this point per the below transcript. [DCAT marker about 1:57:00]

#### **Chuck Hotchkiss:**

...order, to me—it says “orderly development”—order implies logic, and I don’t see the logic of this parking lot in this location. So, let’s go back to what you were raising earlier, about who was this designed for. The traffic study was done on the assumption that it was designed for students who wouldn’t be taking their cars in and out very often.

Why, in a place where the Master Plan calls for this to be a pedestrian-oriented downtown—and Church Hill is part of that—we would take a piece of property in the center of that and use it to put cars in long-term storage seems to me to, you know, run counter to what we’re saying we want everywhere else. So I don’t under..., to me, this proposal runs into problems right here, and, frankly, that’s regardless of whether it’s a steep slope or not, that, if, you know, this concern—if it were perfectly flat, I’d still have reservations about putting a long-term parking lot in the middle of this particular location.

#### **Emily Friedrichs:**

Right. There is very limited commercial property in Durham. It’s a very small downtown, and that has tax implications, and that’s been a problem for us in the past, and so I do also think of, you know, does dedicating that large of a parcel to a long-term parking

lot: Is that going to impact the town's ability to develop its commercial sector fully, given that it's such a large parcel is dedicated to parking.

**James Bubar:**

This is not really developing the commercial sector if it's for long-term student parking.

**Friedrichs:**

That's my point, is that...

**Bubar:**

Granted, sure, it's going to increase property taxes [sic; presumably means the tax base], I mean, that's different, but in terms of commercial activity...

**Friedrichs:**

But in the long run, is it helping to build a commercial core?

**Councilor Sally Tobias:**

[argues the need for downtown residential parking and that this is a parking lot with a residential purpose]

/.../

**Hotchkiss** [marker circa 9:07:26]:

I'd be more sympathetic to your argument, Sally, if there were parking that were clearly related to some adjoining activity. Mr. Sievert, during the deliberations, opined that this lot is no different from any of these other lots nearby [gesturing], and that's not the case, in the sense that every one of those other lots is related in an easy-to-understand way to some adjoining use. There's a church parking lot for the church, there's a shopping parking lot for Mill Plaza. Here we're talking about something different. We're talking about something that doesn't relate in a direct way to any adjoining use.

*My "limited tax-benefit" note:* According to Business Manager Gail Jablonski (in a 2021 communication), the tax benefit to an "average household" of this parking lot development would probably be a reduction of less than \$20—to many residents likely to be so little as to be meaningless as an offset to the numerous negative impacts predicted in their comments to the Board during the public hearing.

### **Purpose statement of the zoning ordinance: Think "big picture"**

The "appropriate and orderly development" phrase in the CUP criterion reflects the overarching Purpose statement of the zoning ordinance. Indeed, it may be the only place in the ordinance that **compels the Board to think "big picture,"** i.e., to actually consider future land use and impacts beyond the boundaries of the subject site. Section 175-3:

...This chapter is adopted in accordance with and in order to implement the Master Plan and other policies designed to promote the orderly growth of the Town of Durham. Among other purposes, this chapter is specifically adopted to...ensure that development is commensurate with the character and physical limitations of the land. Further, this chapter is designed to ensure that the timing, location and nature of new development takes into account the immediate and long-range financial impacts of proposed uses and enhances the achievement of the town's economic development goals.

With reference to the ordinance's above overarching Purpose language, **this application fails the “appropriate and orderly development” test of the second CUP criterion.**

### **Master Plan: Limited commercially developable land is an ongoing concern**

The Economic Development Chapter of the Master Plan adopted in 2015 notes:

- **Issue: Land suitable for future development efforts is limited.**
  - Goal: Leverage development, redevelopment, or repurposing of student housing to obtain space for other residential and non-residential uses.

Were the proposed parking to be constrained in some way to support downtown businesses, one might reasonably argue that it would contribute toward an economic goal of the Town, rather than of the applicant. However, that is not the proposal before you.

### **This proposal will not support commercial development and is not intended to do so.**

Given the assumptions on which the traffic study rests—as well as statements submitted by the applicant, such as pleadings from students seeking parking spaces—it would instead simply encourage the entrenchment of student housing in our downtown by making it more attractive to student car-owners to live downtown rather than either on campus or at westerly-located student housing, where parking is already available. The proposal would not help build a commercial core, nor promote demographic age-diversity, nor pedestrian friendliness.

Today's urban planners across the country are moving their communities toward less parking (for example, maximum rather than minimum parking requirements) in recognition of many factors that have changed in our society. Durham's planning should move the community into the future, not simply echo the past. One constant goal of all our Master Plans is a walkable downtown—not just a passing desire but a vision now acknowledged at the heart of community and a feature that drives housing and business demand.

“Appropriate and orderly development”: How much of our extremely limited commercially zoned downtown land should be devoted to parking? The opportunity cost is higher than we should be willing to pay.

### **Reference to 66 Main Street is questionable**

Another argument raised at the June 22 meeting relies on speculation about the redevelopment of 66 Main Street.

Any parking associated with the redevelopment of that site will most likely be intended to support the use of that development, i.e., to be one of the “IX. Uses accessory to any allowed use,” in the Table of Land Uses—whether for commercial or residential uses.

The Toomerfs proposal is not residential parking, that is: It is not the type of parking that Councilor Tobias claims is needed to encourage a non-student downtown residential

demographic. If it were, wouldn't it instead support parking for residential units on or very near to the site?

(Does anyone believe that a resident of 66 Main Street will be happy to park a car at a lot behind 19 Main Street, particularly during the winter? For example, we have heard that Durham's downtown business employees are unwilling to walk even short distances from employer-paid-for parking spaces to work.)

I repeat: The proposal before you is not intended to support downtown businesses or demographic diversity. It is intended as a purely commercial principal use.

The challenges of redeveloping 66 Main Street should have no bearing on this application.

### **Wishful thinking is not planning**

For years, participants in community planning exercises hoped that the fraternities and sororities that line Madbury Road would move to the west of the UNH campus. Hence our zoning for Professional Office uses and Master Plans that envisioned a transformation. But student housing of all kinds is now dominant in our downtown.

Ask yourselves:

- Do you really believe that providing long-term parking (i.e., per the traffic study, for students) at this location will persuade non-students to move into downtown Durham?
- ...or that any adult much older than student age would choose to live in the midst of the well-documented hubbub that is downtown Thursday through Saturday nights? (Some Board members will recall former Town Councilor Jay Gooze stating the same caveat regarding any potential redevelopment of 66 Main Street.)
- ...or that the owner of said parking lot will ever be willing to settle for a lower per-parking space fee than what the market bears for student parking?

Board members have made comments such as, "If we are ever to entice adults to live downtown we need to provide residential parking..."

Who should provide it, and where? Why not require developers of commercial residential properties to provide that parking? It can be done. The 10 Pettee Brook Lane Apartments and Mark Henderson's 1 Madbury Road beautifully landscaped complex—both multi-use with residential projects—are built over resident-supportive parking garages. Even so, it is likely that tenants are primarily, if not entirely, UNH students.

But what comes first in urban revitalization—as the history of cities across the country show us—is making sure that there is something of interest to people to want to move there, not because there is residential parking. Artists first move into a "crummy" area for the low rents, then restaurants, which attract visitors, then those who want to live in a walkable, interesting location are drawn in.

What will attract non-students to downtown Durham living?

Durham's Master Plans over the decades have emphasized a pedestrian-friendly downtown. How can we ever reach the goals of the Master Plan—the community's vision for our future—if we make decisions that ignore, even contradict, them? The community has struggled over the decades to strengthen the fabric of our downtown. We need your support.

If the Board truly wished to “entice” non-student residents to make our downtown more vibrant, then it should craft regulations that would make downtown attractive to non-student residents to actually spend time downtown.

Examples? Eliminate the minimum parking requirements. Favor pedestrian and bicyclist amenities such as an attractive network of pathways, including between Main Street and Pettee Brook Lane. Explore requiring residential development parking options that do not subsidize parking by non-car-owners. Reconsider traffic patterns and parking locations.

In the interim, deny non-compliant applications that do not align with our long-term goals.

Regards,

*Robin*