

**From:** [Michael Behrendt](#)  
**To:** [Emily Friedrichs](#)  
**Cc:** [Audrey Cline](#)  
**Subject:** RE: Main Street #19 - retaining wall - Attorney Fennessy  
**Date:** Friday, March 25, 2022 9:54:51 AM

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Hi Emily (cc to Planning Board),

Thank you for your email but this would not be a good use of anybody's time now. It is obvious to Audrey and me, and I think would be obvious to the board that a 6 foot retaining wall does not create structured parking (which really means a parking garage). If they want to appeal this interpretation to the ZBA they are welcome to do that. If so, they can request a formal determination from the Planning Board first.

### **Michael Behrendt**

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**From:** Emily Friedrichs <emilyfriedrichs@gmail.com>  
**Sent:** Thursday, March 24, 2022 8:29 PM  
**To:** Michael Behrendt <mbehrendt@ci.durham.nh.us>  
**Cc:** Audrey Cline <acline@ci.durham.nh.us>  
**Subject:** Re: Main Street #19 - retaining wall - Attorney Fennessy

Hi Michael and Audrey,

Would it be possible to look for other examples of parking lots with retaining walls in Durham? Could we also ask the town attorney for her opinion on this legal argument--that because the ZBA decision did not define a height or mass that makes a retaining wall a structure, and because the applicant (Twomoorfs) dropped their appeal to the court, that there was essentially a legal decision that all retaining walls used to create a parking surface are "structured parking"?

El jue., 24 mar. 2022 18:05, Michael Behrendt <[mbehrendt@ci.durham.nh.us](mailto:mbehrendt@ci.durham.nh.us)> escribió:

Hello Attorney Fennessy (cc to Planning Board),

Thank you for your letter. We have shared this with the Planning Board. I have spoken with Audrey Cline, Code Administrator and staff to the Durham Zoning Board of Adjustment. We disagree with your assertion that the ZBA's finding about the earlier submission regarding the retaining wall applies to the current application. The ZBA's finding that the earlier application constituted structured parking applied specifically to that application. It does not apply to the current application which has a 6 foot retaining wall, about one third the height of the other wall. There are countless retaining walls about that height in Durham for various projects and I believe for numerous parking lots in Durham. Those parking lots are considered surface parking.

You can see the documents related to the ZBA's finding here:

[https://www.ci.durham.nh.us/boc\\_zoning/application-appeal-administrative-decision-19-21-main-street](https://www.ci.durham.nh.us/boc_zoning/application-appeal-administrative-decision-19-21-main-street)

If you wish for the board to make a specific determination that the current application with a 6 foot retaining wall constitutes surface parking then please advise us accordingly.

**Michael Behrendt**

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**From:** Fennessy, Nathan R. <[NFennessy@preti.com](mailto:NFennessy@preti.com)>

**Sent:** Wednesday, March 23, 2022 6:41 PM

**To:** Michael Behrendt <[mbehrendt@ci.durham.nh.us](mailto:mbehrendt@ci.durham.nh.us)>

**Subject:** Response to Toomerfs Attorney Memo

Please circulate this to the members of the Planning Board regarding the Toomerfs site plan and conditional use permit applications. This letter responds to the Memo provided to the Board by Toomerfs' attorneys.

Thanks,  
Nathan

**Nathan R. Fennessy**

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