

These minutes were approved at the March 21, 2023 meeting.

**ZONING BOARD OF ADJUSTMENT
Tuesday, November 15, 2022 at 7:00 p.m.
Town Council Chambers, Town Hall
8 Newmarket Road, Durham, NH
MINUTES**

MEMBERS PRESENT: Micah Warnock, Chair
Neil Niman, Vice Chair
Mark Morong, Secretary
Chris Sterndale
Neil Niman (arrived late)
Joe Warzin, Alternate

MEMBERS ABSENT: Leslie Schwartz

OTHERS PRESENT: Audrey Cline, Zoning Administrator

I. Call to Order

Chair Micah Warnock called the meeting to order at 7:00 pm.

II. Roll Call

The roll call was taken.

III. Seating of Alternates

Joe Warzin was seated in place of Leslie Schwartz.

IV. Approval of Agenda

There were no changes to the agenda.

V. Public Hearings:

- A. **CONTINUED PUBLIC HEARING** on a petition submitted by Joshua Meyrowitz, Martha Andersen, Michael F. Urso, and Sandra A. Ceponis, Durham, New Hampshire for an **APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION** from a July 13, 2022, decision of the Planning Board, that the Toomerfs principal-use parking-lot site plan of May 4, 2022 for the Church Hill District is surface parking. The property involved is shown on Tax Map 108, Lots 10, 11, 12, 13, is located at 19-21 Main Street, and is in the Church Hill Zoning District.

There was discussion about whether to hold the hearing since Mr. Niman was not in attendance and there was not a full Board. Joshua Meyrowitz, one of the applicants, decided to move forward with the application. Mr. Meyrowitz then presented a PowerPoint summarizing the appeal.

Attorney Nathan Fennessy spoke to the Toomerfs submitted letter of rebuttal. He doesn't believe that the issues listed in the letter are relevant to this Appeal of Administrative Decision.

Mr. Sterndale mentioned that the Zoning Board had previously looked at the issue of surface versus structure parking twice in 2021. The Planning Board had heard the Zoning Board's decision prior to their subsequent 2022 decision.

Attorney Fennessy believes that what was previously decided by the Zoning Board should be considered tonight.

Chair Warnock believes that the cases need to be treated separately since there are engineering changes to the current plan.

Neil Niman arrived at 7:50 p.m.

Chair Warnock opened the public hearing.

Martha Andersen, Chesley Drive, stated that she agrees with Mr. Meyrowitz's presentation.

Michael Behrendt, Town Planner, stated that he is at the meeting speaking on behalf of the Planning Board. The Planning Board decided that the revised plan is surface parking, and he concurred with them. He stated that he would suggest that the Zoning Board look very carefully at the definitions in the Zoning Ordinance of surface parking and structure parking, and contemplate the plan based on those definitions.

Beth Olshansky, Packers Falls Road, stated that four members of the Planning Board did not agree that this was surface parking. She stated that she feels it is a false claim to say that this project must be defined as either structure or surface parking only.

Attorney Monica Keiser spoke on behalf of Toomerfs. She strongly disagrees with Mr. Meyrowitz's presentation. She believes that this is a factually distinct plan from the previous plans that were presented to the Zoning Board. She reviewed the previously appeals brought before the Zoning Board in 2021. She stated that the term "at grade" is not defined in the Ordinance. She stated that following the rules of statutory interpretation, you need to look at what "at grade" means. She doesn't believe that structured parking provides at-grade parking. She also feels that the Appeal of Administrative Decision is untimely.

Attorney Fennessy stated that their position is that the Planning Board got their decision on surface parking wrong the first time, and the Zoning Board corrected that. Attorney Fennessy believes that the Planning Board got it wrong again this time. He also believes that the Planning Board didn't make a decision until July 2022, so the Appeal is not untimely.

Mr. Niman asked Town Planner Behrendt about whether the Planning Board discussed surface and structured parking when the Riverwoods project was before them. Mr. Behrendt stated that it never came up because in the Zone where Riverwoods is located, the parking is an accessory use not a principal use. He stated that both surface parking and structured parking are allowed as accessory uses in that Zone, so it never was an issue.

Mr. Timothy Murphy spoke to the Appeal. He stated that the structured parking definition does not mean there is structure on the parking area but that the parking is a structure.

Chris Sterndale MOVED to close the Public Hearing. Micah Warnock SECONDED the motion and it PASSED 4-1 with Mark Morong voting against closing the public hearing. Mr. Morong felt that the Board needed to give more time for those who wanted to speak.

Mr. Niman stated that the issue is whether any type of retaining wall makes it structured parking, or was the original decision by the Zoning Board more tailored to the original plan? He asked if the first decision by the Zoning Board was universal to all parking with retaining walls.

Mr. Sterndale does not believe that the first decision was universal. He believes every case is different and stands on its own merits. The Board had previously identified the problem with the definitions and made a decision to the best of their ability. He felt that there had been plenty of time for either the Planning Board or the Town Council to revise the definitions on surface and structured parking, and they had not.

Mr. Morong feels that some of the parking spaces are there because of the retaining wall, which is a structure. He stated that he is not comfortable calling this surface parking.

Mr. Niman doesn't feel that the issue before them is whether structured parking is allowed in the Zone, but what the definition of structured parking actually is. There was further discussion on this.

Chris Sterndale made a MOTION that the Zoning Board of Adjustment deny the petition submitted by Joshua Meyrowitz, Martha Andersen, Michael F. Urso, and Sandra A. Ceponis, Durham, New Hampshire, Application for Appeal of Administrative Decision from a July 13, 2022, decision of the Planning Board, that the Toomerfs principal-use parking-lot site plan of May 4, 2022 for the Church Hill District is surface parking. The property involved is shown on Tax Map 108, Lots 10, 11, 12, 13, is located at 19-21 Main Street, and is in the Church Hill Zoning District. Micah Warnock SECONDED the motion and it PASSED 4-1 with Mark Morong voting against the motion.

VI. Other Business: There was no other business.

VII. Approval of Minutes:

September 13, 2022 & October 11, 2022

Micah Warnock made a MOTION that both sets of minutes be approved. Neil Niman SECONDED the motion and it PASSED 5-0.

VIII. Adjournment

Neil Niman MOVED to adjourn the meeting. Joe Warzin SECONDED the motion and it PASSED 5-0.

Adjournment at 8:41 pm
Karen Edwards, Minutes taker