

From: [Michael Behrendt](#)
To: [Karen Edwards](#)
Cc: [Audrey Cline](#); [Todd Selig](#)
Subject: Main Street #19 - clarification about appeal from Town Planner
Date: Thursday, March 25, 2021 12:41:25 PM
Attachments: [image007.png](#)
[image008.png](#)
[image009.png](#)

To the ZBA (Karen please forward to the ZBA when you send the other pertinent materials),

I just want to offer two clarifications about procedure discussed in the letter of appeal from Josh Meyrowitz about the Planning Board's decision about 19 Main Street regarding structured vs. surface parking.

1) Mr. Meyrowitz is correct that I did not forward the letter from Mr. Puffer to the Planning Board until a day after I received it (See the excerpt from his appeal below). I received the letter on Thursday, *March 4 at 2:27 pm* and then forwarded it to the board (with the posting on the website occurring shortly after that) on Friday, *March 5 at 2:13 p.m.* I generally forward comments immediately by email to the Planning Board but it is not unusual for a day or so to go by before I do. Sometimes, I don't get to reading the letter until a day or so later and I prefer to read the correspondence prior to sending it. In this case, I also wanted to check in with staff and the Town Attorney first.

I sent another email to the Planning Board 3 hours later on *March 5 at 5:39 pm* with my response to Mr. Puffer's letter.

Excerpt from appeal:

Procedural Impropriety: We also wish to register an objection to the fact that although Attorney Puffer addressed his March 4, 2021, letter to the Planning Board, c/o Mr. Behrendt, that Mr.

Behrendt deviated from typical Planning Department practice and delayed the posting and forwarding of Mr. Puffer's letter to the Board until Mr. Behrendt had a day to consult with other Town staff and write a rebuttal to Mr. Puffer's letter. Then, both letters were sent to the Board on the same day, March 5, 2021, thereby diminishing the opportunity for the Board Members to assess the merits of Mr. Puffer's letter before receiving the "right answer" from Town staff.

2) Mr. Meyrowitz says below that I informed Mr. Puffer that he would be able to speak to the issue prior to the board discussing it. Rather, I informed Mr. Puffer by my email (See the email chain below, highlight added) that he would have an opportunity to speak to the issue during the public hearing.

Further, although Mr. Behrendt informed Mr. Puffer that he would have an opportunity to make the case for his position during the March 10, 2021, Public Hearing *prior* to the Board discussing and evaluating the issues, the Board raised and dismissed (via 6 seconds of silence) Mr. Puffer's letter, about 75 minutes before the Public Hearing was opened. (*See enclosed transcript.*)

Michael Behrendt

Durham Town Planner
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(603) 868-8064
www.ci.durham.nh.us

From: Michael Behrendt
Sent: Wednesday, March 10, 2021 6:27 PM
To: 'Puffer, Mark H.'
Subject: RE: Main Street #19 - response to Attorney Puffer letter

Hi Mark,
I will forward your email to the board. You could certainly speak to this issue during the public hearing.

Michael Behrendt

Durham Town Planner
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8 Newmarket Road
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From: Puffer, Mark H. [mailto:MPuffer@preti.com]
Sent: Wednesday, March 10, 2021 6:14 PM
To: Michael Behrendt
Subject: RE: Main Street #19 - response to Attorney Puffer letter

Michael,

I did not make it clear in my earlier email, but I would like to speak when and if the Board takes up the issue whether the proposal is a use allowed by Conditional Use. (structured versus surface parking).

Thank you,

Mark H. Puffer, Esq.
603.410.1500 Tel
mpuffer@preti.com
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PretiFlaherty

Mailing Address:

P.O. Box 1318

Concord, NH 03302-1318

From: Michael Behrendt <mbehrendt@ci.durham.nh.us>**Sent:** Wednesday, March 10, 2021 11:38 AM**To:** Puffer, Mark H. <MPuffer@preti.com>**Subject:** RE: Main Street #19 - response to Attorney Puffer letter

Note: * This email originated from outside of Preti. Please do not click on any links or open attachments unless you can verify the sender and content.*****

Hello Mr. Puffer,

I will share your email with the board. Best regards.

Michael Behrendt

Durham Town Planner

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From: Puffer, Mark H. [<mailto:MPuffer@preti.com>]**Sent:** Wednesday, March 10, 2021 11:33 AM**To:** Michael Behrendt**Subject:** RE: Main Street #19 - response to Attorney Puffer letter

Mr. Behrendt:

Thanks for your response. On behalf of my clients, I respectfully request that tonight the Board take up the issue whether the proposed use is even allowed, before it addresses the CU criteria (which are of course not applicable if the use is not allowed by CU).

Thank you,

Mark H. Puffer, Esq.

603.410.1500 Tel

mpuffer@preti.com[Bio](#) | [Twitter](#) | preti.com**PretiFlaherty**

Mailing Address:

P.O. Box 1318
Concord, NH 03302-1318

From: Michael Behrendt <mbehrendt@ci.durham.nh.us>

Sent: Friday, March 5, 2021 5:39 PM

To: Puffer, Mark H. <MPuffer@preti.com>

Subject: Main Street #19 - response to Attorney Puffer letter

Note: * This email originated from outside of Preti. Please do not click on any links or open attachments unless you can verify the sender and content.*****

Hello Mr. Puffer,

Please see my attached response to your letter from yesterday. I am copying this to the Planning Board, Town Administrator, Town Attorney, and Zoning Administrator.

Michael Behrendt

Durham Town Planner

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