

Timothy Murphy
Toomerfs, LLC
37 Main Street
Durham, NH 03824

Mr. Michael Behrendt
Town Planner
Durham Town Hall
8 Newmarket Rd.
Durham, NH 03824

April 13, 2021

Dear Mr. Behrendt,

As you know, Toomerfs, LLC is the real party-in-interest in the appeal filed to the Zoning Board of Adjustment by Meyrovitz et al., due for a hearing April 13, 2021. Will you please forward this letter to the Zoning Board?

We believe the appeal is frivolous. Let's start with the definitions in the DZO, §175-7:

SURFACE PARKING – A parking lot or similar uncovered, single-level parking facility that provides at-grade parking that is not located within a structure.

STRUCTURED PARKING – A structure or portion of a structure that provides parking. The parking may be above or below grade, may be covered or uncovered, and may be on multiple levels. See "Surface Parking"

STRUCTURE (See additional definitions immediately below)--That which is built or constructed with a fixed location on the ground or attached to something having a fixed location on the ground. Structure includes but is not limited to a building, swimming pool, mobile home, billboard, pier, wharf, septic system, parking space/parking lot and deck.

Mr. Meyrovitz says our parking lot is not "at-grade", because it provides parking, "far above the existing surface and far above the natural grade" (p. 2, para. 5). The definition of Surface Parking doesn't say anything about a so-called "natural grade", or an "existing surface". "At-grade" is not defined in the ordinance, but is commonly used in the construction field in the context of "above grade", and "below grade", i.e., above ground and below ground, respectively. (The definition of "at-grade" is "on the same level" (Webster's New World College Dictionary)). Our parking lot is not above or below ground, therefore it is at-grade, as that term is commonly used. Saying our lot is "above grade" is the same as saying it is on an upper level, such as a second floor.

The definition of "Structure" appears in the DZO but was only partially included in the Meyrovitz appeal. Considering it in full is important because it specifically mentions parking lots, saying that a "structure" includes a "parking space/lot and deck". In this use, the meaning of "and" is conjunctive, i.e., both together--a parking space/lot *that is also a deck* is structured parking. If parking lot and deck were intended to each be a Structure separately, the disjunctive "or" would have been used. Further, if "and" was not intended to be conjunctive, it would mean *every* parking lot is considered a Structure, and therefore *every* Surface Parking lot would also be a Structured Parking lot, and every Surface Parking lot in the Church Hill Zone would be both permitted under CUP and not permitted at the same time, an absurd result (see the table on page 81 of the ordinance). Therefore, in addition to not being above-grade, our parking lot does not meet the definition of "Structured Parking" because it doesn't meet the definition of "Structure".

Finally, arguing that our lot does not meet the definition of "Surface Parking", Atty. Puffer states on page 3 of his March 4th letter that at our lot, "...the proposed facility would in fact be "located within a structure"". However, the DZO definition of "Surface Parking" isn't a "proposed facility not located within a structure", it is a facility

where the parking itself is not located within a structure. The common definition of "within" is "in or into the interior" (Merriam-Webster). In order to not meet the definition of "Surface Parking", our parking spaces would have to be located *inside* of a structure, i.e., in this case, in the ground. Obviously, we have no plans for subterranean parking spaces.

For all these reasons, we respectfully move for rejection of the appeal. Thank you.

Sincerely,

Timothy Murphy and Peter Murphy
Members