

These minutes were approved at the June 8, 2022 meeting.

**TOWN OF DURHAM
DURHAM PLANNING BOARD**

Wednesday May 11, 2022

**Town Council Chambers, Durham Town Hall
7:00 pm**

MEMBERS PRESENT: Paul Rasmussen (Chair-Remote), Lorne Parnell (Vice Chair), Heather Grant, James Bubar, Sally Tobias (Council Rep), Nicholas Germain (Alternate), Barbara Dill (Alternate), Chuck Hotchkiss (Alternate), Emily Friedrichs (Alternate); William McGowan (arrived late)

ALSO PRESENT: Town Planner Michael Berendt (Remote)

I. Call to Order

Chair Paul Rasmussen said his goal is to handle Mill Plaza then turn the meeting over to Vice-Chair Parnell. Vice-Chair Parnell called the meeting to order at 7:00 pm.

II. Roll Call and Seating of Alternates

Vice-Chair Parnell took roll call: Seated Barbara Dill for Bill McGowan; Chair Rasmussen is remote due to isolation.

III. Approval of Agenda

Vice-Chair Parnell MOVED to approve the Agenda with the understanding that item XIII has been postponed to another meeting; SECONDED by Mr. Bubar; Roll Call Vote: Paul Rasmussen-aye, Richard Kelley-aye, Heather Grant-aye, James Bubar-aye, Lorne Parnell-aye, Sally Tobias-aye, Barbara Dill-aye; APPROVED by a vote of 7-0, Motion carries.

IV. Town Planner's Report

Michael Behrendt said Rick Taintor planned to join on Zoom but was unable due to illness; 74 Main Street application postponed to May 25; Planning Board Workshop is May 18 to discuss past projects.

V. Reports from Board Members who serve on Other Committees

Reporting from Housing Task Force Committee: Ms. Grant said the Committee met Monday and had Rich Reine and Todd Selig in to discuss Town infrastructure as it focuses on housing and what our current capacities are and come up with potentials/risks, possibly moving Town infrastructure to other areas; also going through Conservation Subdivision Zoning and looking at adjustments there.

Bill McGowan arrived at 7.05 pm.

Reporting from Town Council: Councilor Tobias said the Council met Monday and held a Public Hearing on Solar Energy Ordinance which they approved moving to Planning Board. Michael Lehrman, Durham Representative to PDA, discussed the newest compatibility study regarding the potential of an air cargo facility opening at Pease, and the Council can put together a letter with concerns.

VI. Public Comments

Robin Mower commented that Bagdad Wood did a nice job of fitting the project into the area which suits the neighborhood and is unobtrusive. She suggested the Planning Board look again at the design standards and remove architectural details into another area.

VII. Review of Minutes: (Old)

VIII. Annual Election of Officers (to be seated at following meeting)

Chair of the Planning Board:

Ms. Grant nominated Paul Rasmussen to be the Chair of the Planning Board; seconded by Mr. Kelley. Paul Rasmussen accepted the nomination.

Vice-Chair Parnell MOVED the Board appoint Paul Rasmussen to continue as Chair of the Planning Board effective the end of this meeting; SECONDED by Mr. Bubar; Roll Call Vote: Richard Kelley-aye, Heather Grant-aye, James Bubar-aye, Lorne Parnell-aye, Sally Tobias-aye, Bill McGowan-aye, Paul Rasmussen-aye; APPROVED 7-0, motion carries.

Vice-Chair of the Planning Board:

Vice-Chair Parnell nominated Heather Grant as Vice-Chair of the Planning Board, which was seconded by Councilor Tobias. Ms. Grant accepted the nomination.

Vice-Chair Parnell MOVED the Board appoint Heather Grant as Vice Chair of the Planning Board effective the end of this meeting; SECONDED by Mr. Bubar; Roll Call Vote: Richard Kelley-aye, Heather Grant-aye, James Bubar-aye, Lorne Parnell-aye, Sally Tobias-aye, Bill McGowan-aye, Paul Rasmussen-aye; APPROVED 7-0, motion carries.

Planning Board Secretary:

Chair Rasmussen said the primary responsibility is to take minutes for the Site Walks. Vice-Chair Parnell nominated James Bubar, seconded by Mr. Kelley. Mr. Bubar accepted the nomination.

Vice-Chair Parnell MOVED the Board appoint James Bubar as Secretary of the Planning Board effective the end of this meeting; SECONDED by Mr. Bubar; Roll Call Vote: Richard Kelley-aye, Heather Grant-aye, James Bubar-aye, Lorne Parnell-aye, Sally Tobias-aye, Bill McGowan-aye, Paul Rasmussen-aye; APPROVED 7-0, motion carries.

IX. Appointment of Board Member to other Committees

Chair Rasmussen asked if there were any swaps or changes people would like to make. The Board discussed committee assignments and the following Committee Appointments were made: AG Commission—Paul Rasmussen, Conservation Commission—James Bubar, Energy Committee—Emily Friedrichs, Historic District Commission—Bill McGowan, Housing Task Force—Heather Grant, Integrated Waste Management Advisory Committee—Barbara Dill, Traffic Safety Committee—Lorne Parnell, TRG—James Bubar.

- X. Mill Plaza Redevelopment.** 7 Mill Road. Application for site plan and conditional use for mixed-use redevelopment project, drive-through facility for bank, and activity within the wetland and shoreland overlay districts. Colonial Durham Associates, property owner. Sean McCauley, agent. Joe Persechino, Tighe & Bond, engineer. Emily Innes and Sharon Ames, Harriman, project designer. Rick Taintor is serving as the Town's Contract Planner. Central Business District. Map 5, Lot 1-1. **The public hearing is closed.**
Recommended action: Finalize review.

Chair Rasmussen said the Board needs to review 3 actions as laid out in Mr. Taintor's plan and he planned to do them in order: (1) Board acts on motions to deny the CU Permit for Mixed-Use Development and Site Plan approval; (2) approve the draft finding included with this report; (3) continue the matter to May 25 meeting for final action.

Mr. Kelley said he would like to make a point of order and asked the Chair if those same members who initially voted on the CU to vote again this evening. Chair Rasmussen said yes, for the purpose of the CU vote *only*, Barbara Dill will be sitting in for Bill McGowan.

Mr. Kelley MOVED the Board deny the Conditional Use (CU) Permit for Mixed-Use with Residential and Parking; SECONDED by Mr. Bubar;

Richard Kelley explained he brought the motion because he found the applicant did not convince him that the intensity of use would not have a negative impact effect on the neighborhood and surrounding area, the number of bedrooms and increased traffic would bring associated noise and nuisance in that area, similar uses on Main Street are not abutting residential neighborhoods, and because of where the site is located. He said he found the size of buildings very much out of character and not compatible with established character of that neighborhood. He said the applicant did not provide a design that was fitting with the neighborhood and the intensity of use was too great and felt he could not support it.

James Bubar said he concurs with Mr. Kelley, but his main objection relates to Section 8.4 in Site Plan Regulations listing resources considered worthy of protection. He said these elements should be preserved where practicable and enhanced where appropriate or special design solutions incorporated to protect against hazard, and the Town should defend and protect its

natural resources. He said he cannot see any way to mitigate destruction of slopes and open exposed ledges, and his major objection is size of the buildings.

Barbara Dill said the major reason she could support the motion to deny has to do with the large amount of noise, lights, and people coming and going at night. She said she was very affected by the videos showing the Plaza very quiet at night versus Main Street and said external impact therefore on south and east neighbors is profound and wrong. She also agreed that the size of the buildings, especially the residential building, is way out of character with surroundings; and all these reasons made it impossible for me to support this motion.

Mr. Kelley said the preservation of natural, cultural, historic and scenic resource was also a compelling reason for him. He said it was hard for him to pass on the stormwater treatment proposed by the applicant, but the encroachment into these zones was a choice and another reason he could not support the CU.

Roll Call Vote: Richard Kelley-aye, Heather Grant-nay, James Bubar-aye, Lorne Parnell-nay, Sally Tobias-nay, Barbara Dill-aye, Paul Rasmussen-nay; the vote is 3-4, the motion fails.

Chair Rasmussen asked that Barbara Dill sit back now and Bill McGowan sit forward.

Chair Rasmussen said the Board now needs to vote to deny the Site Plan approval based on the fact that it violates the Site Regulations because it is not a primary use. He said Mr. Taintor wants the Board to comment on the drafts which he will finalize at the next meeting, and the Board will make its final action vote. He said administratively the Board had to vote to deny because the approval did not pass; the Board will then review the 4 different CU drafts so Mr. Taintor can use that information to prepare the Notice of Decision for our next meeting.

Chair Rasmussen MOVED the Board deny the Site Plan Application due to fact that Mixed-Use with Residential and Parking is not a principal use; SECONDED by Mr. Bubar;

Chair Rasmussen said the application now fails table of uses so we are denying it. Councilor Tobias said failure to obtain the CU for Mixed-Use with Residential makes it unable to build as a Site Plan, and Mr. Kelley stated that the CU allowing that Site Plan to exist did not pass.

Roll Call Vote: Paul Rasmussen-aye, Richard Kelley-aye, Heather Grant-aye, James Bubar-aye, Lorne Parnell-aye, Sally Tobias-aye, Bill McGowan-aye; APPROVED 7-0, motion carries.

Chair Rasmussen asked if there was anything in the 4 drafts the Board believes to be incorrect as to reasons why for the various CUs here. Mr. Bubar said they should be looked at in light of the comments made this evening as part of the motion. Chair Rasmussen asked if there was anything specific that does not fit with standard reasons.

The Board discussed the driveway entrance and the condition of approval that the Board refer the proposed redevelopment project to the Traffic Safety Committee for possible safety improvements and discussed the sight lines at the entrance. Mx. Friedrichs suggested that “sight lines” be removed to better align the language with Conditions of Approval. The Board agreed that sight lines run both ways and felt it should be kept in. Mr. Bubar said his condition for preservation of natural resources was left out, and Chair Rasmussen said that it should definitely be added.

Chair Rasmussen asked the Board if they were done with reviewing the Draft Findings or wanted to continue the matter to the next meeting. Councilor Tobias said she would not be at the meeting on the May 25, and Chair Rasmussen said your alternate can handle that. He said that action is now finished, and based on the difficulty he is having running the meeting, he will pass the gavel to Vice-Chair Parnell and continue as a regular member.

XI. 190 Piscataqua Road – Installation of Wells. Permitted Use B application for installation of a drinking well and eight geothermal wells within the Wetland Conservation Overlay District. Tom and Erin Daly, property owner. Eric Buck, Terrain Planning & Design. Map 12, Lot 7. Residence Coastal District. Recommended action: Final action.

Mr. Bubar said as part of this procedure this is not a Public Hearing as we do not need one.

Eric Buck, Landscape Architect with Terrain Planning & Design, said he is representing Tom and Erin Daly, and said we were here about 1 year ago for CU Permit for construction of a new residential structure in WCOD and SPOD, and are now here for Permitted Use B for installation of a potable drinking water well and 8 geothermal wells within the WCOD.

Mr. Buck said the Site Plan shows the location of the existing drinking water well north of the existing structure which sits directly inside a wetland pocket, mapped and delineated and not used for a number of years with yield and quality of water unknown. He said the Dalys would like to drill a new water well closer to their new home so as not to disturb the wetlands and have a better predictability of water quality.

Mr. Buck said the property has a wetland area to the north and is surrounded on 2 sides by Little Bay, with overlap of WCOD and SPOD. He said the proposed drinking water well is to go north of the property in the wetland buffer with restoration and planting and all native plant material in that zone; existing driveway and lawn area will be removed; installation of 8 geothermal wells for use in heating/cooling of new home partially located in restoration area and partially under the proposed driveway; area of disruption already approved with WCOD Permit.

Mr. Buck said points of criteria for permitted use B include: (1) appropriate erosion control measures will be used for CU permit; use permits will require following NHDES erosion control, using responsible construction methods for duration of project; (2) any disturbed area will be

restored, and buffer rejuvenated; (3) activity will be conducted in manner minimizing impact on the wetlands; no proposed impact to wetlands, all in wetland buffer.

Mr. Buck said erosion control is in place, there were delays getting final permits for driveway and shoreland, and they are ready to start in the next week or so. Mr. Kelley asked if the truck drill rig would be able to access the drinking water well location with erosion control already in place. Mr. Buck said the erosion control around the house will be opened out and removed from the site so as not to go into wetlands. Mr. Kelley pointed out that the Board had no plan of that, and erosion control on the ground would need to be modified to access the point needed to advance the well.

Vice-Chair Parnell asked what was involved with installation of geothermal wells. Mr. Buck said essentially the same drilling rig is used, wells are about 500 ft deep with pipes that make a loop underground and go into a manifold that goes into the house, using the ground temperature to heat and cool. Vice-Chair Parnell asked the depth of the drinking water well. Tom Daly said they typically drill to 300-400 ft and stop if they get a suitable yield of water, otherwise they keep going.

Mx. Friedrichs asked what would be in the wells, and Mr. Daly said that they are using a closed loop geothermal system with a poly pipe down into the well which makes a loop and comes back up. He said inside the pipe is a mix of water and glycol to prevent freezing, using bettonite grout to keep the pipe from rising up. He said the system is completely sealed and never comes in direct contact with ground water.

Mx. Friedrichs asked about maintenance to make sure there is no leaking into Great Bay. Mr. Daly said they monitor pressures in the loop, and wells are being individually manifolded back into the house giving control over each well and glycol is completely inert. Mx. Friedrichs recommended they look at Durham's ground water modeling map as they might anticipate ground water rise or sea level change on this site.

Vice-Chair Parnell asked Mr. Kelley if his point about erosion control is something that needs to be included and Mr. Kelley felt it should. Mr. Buck said he believes their DES erosion control submitted has our erosion control immediately on the wetland buffer, and drilling rigs would be on the uphill side of that slope. Vice-Chair Parnell asked Mr. Behrendt that the Board state a condition expecting erosion control to continue all along this wetland boundary.

Mr. Daly said the erosion control was already in with a silt fence, filter sock, and beyond that a debris fence on the Little Bay side to prevent anything getting into the Bay. Mr. Kelly asked whose responsibility it was to do the inspection and Mr. Buck said he would be doing it. Mr. Kelley suggested that the application should read: *appropriate erosion control measures, in accordance with applicable DES Shoreland Permit, will be used, inspected, and maintained.*

Mr. Kelley MOVED the Board approve a Permitted Use B Application for the installation of both drinking water and 8 geothermal wells within the WCOD, property shown as Map 12, Lot 7 in Resident Coastal District; SECONDED by Mr. Bubar; Roll Call Vote: Paul Rasmussen-aye, Richard Kelley-aye, Heather Grant-aye, James Bubar-aye, Lorne Parnell-aye, Sally Tobias-aye, Bill McGowan-aye; APPROVED 7-0, motion carries.

XII. Public Hearing - 19-21 Main Street – Parking Lot. Formal site plan and conditional use application for parking lot as principal use on four lots and reconfiguration of the entrance. Toomerfs, LLC c/o Pete Murphy and Tim Murphy, owners. Mike Sievert, engineer. Robbi Woodburn, Landscape Architect. Map 5, Lots 1-9, 1-10, 1-15, and 1-16. Church Hill District. Recommended action: Review and continue to another meeting.

Vice-Chair Parnell said Chair Rasmussen has recused himself and seated Barbara Dill to fill in for him.

Vice-Chair Parnell said he would first like to hear from the applicant if there is anything new being presented, then re-open the Public Hearing and see where to go after that.

Attorney Tim Phoenix of Hoefle Phoenix Gormley & Roberts said he is representing Toomerfs and is accompanied by Attorney Monica Kieser and Engineer Mike Sievert to explain plan changes. Mr. Sievert said he submitted some additional plans and engineering changes, and said he decided to make the changes recommended in review from Altus Engineering now rather than have them included in Conditions of Approval.

Mr. Sievert said he only added site specific soil notes on the Soil Plan showing different soil types; for Site Plan wanted a structural engineer to design the retaining wall, relocated the cedar fence to right below the guardrail and down the easterly side, makes a 90-degree to back of lot and runs along the back to block all vehicle headlights. He did a small change in plans that may require a waiver, changing all spaces along west side of parking lot to compact spaces and reduced width of the aisle to 22 ft; left 24 ft full on the other side, with no change in total spaces (150).

Mr. Sievert said a lot of these changes are underground; changed a headwall with a pipe to a flared end section; corrected all discrepancies in numbers and pipe sizes; sewer line moved to right along the edge and straightened out; no more curbing along middle island; drain basin levels all labeled with 6-inch pipe with small discrepancies on inverts with outlet control structures on outlet ends of stormwater drainage system; drainage system blown up and all numbers matched.

Mr. Kelley asked about the removal of a detail on Sheet 503, and Mr. Sievert said there used to be a spreader there which was taken off. He said all of these changes were from the Altus Peer Review and said the stormwater system meets or exceeds the requirements and decreases stormwater runoff on the site and reduces volume significantly because of fill.

Vice-Chair Parnell said at one time the slope at the south end and on the Landscape Plan was discussed and now there is nothing there. Mr. Sievert said Landscape Architect Robbi Woodburn does not think plantings will work, and a jute matting will be used for slope stability and seed underneath the loam grows up through it, and coir netting decays leaving a grass slope. Mx. Friedrichs asked if native plants were considered and said grass does nothing for nutrient retention, wildlife, or pollinators, and low-lying shrubs or other ground cover is more in tune with adjacent woodland environment.

Ms. Dill asked if the grassy mix was meant to get things started and stabilize the slope with natural plants coming through over time, and said grass is not a good erosion-control planting on its own; Mr. Sievert said that is the ideal situation. Mr. Bubar asked if trees grew naturally on the slope would they be taken out. Mr. Sievert said they would not take them out and said he would bring Robbi Woodburn back in to speak to the Board. Vice-Chair Parnell said DOT has very successfully put wildflowers in a situation like this.

Ms. Dill said it is hard to look down on this plan and understand it and asked the relative levels between the Urso's property and the built parking lot. Mr. Sievert said you would not see the lot because of the 6-ft fence. Mx. Friedrichs asked if an 8-ft fence was considered to address concerns with sight lines from the Urso property. Mr. Sievert said instead of a tall fence they felt plantings would buffer that as well as taller trees and an existing wood line of 36-39 ft.

Mr. Kelley asked about the 36-ft woodland buffer and the side setback for this district. Mr. Sievert said the side setback is 10 ft and 5 ft on the other side for pavement. Attorney Phoenix said there has been a lot of talk about fill for this project, which is required, and asked Mr. Sievert to confirm that fill is also an integral part of stormwater treatment that Altus and DPW says works well, and Mr. Sievert said both approved the stormwater recommendations.

Attorney Phoenix reminded the Board that Altus finds the design approaches reasonable and consistent with what would be expected for this site. He said the 6-ft fence was originally by the Ursos, but they felt it was too close and it was moved to the top of the slope; DPW has approved it and a rendering would show trees on one side with the fence behind; on Chesley Drive the site would show just the fence and no cars and headlights spilling over the edge of the lot.

Attorney Phoenix said everything has been covered for this Board in previous presentations. He said his clients have pointed out that there have been over 150 written submissions by opponents to this project not including the most recent and asked how the Board wished to proceed. He said we would like to know the questions, issues, and concerns of Board members to be able to address them before the Public Hearing is closed and the Board is deliberating. He said applicants are willing to commit to only student parking long term and suggested 30-day minimum leases.

Mr. Germain asked about the commitment to limit parking only to students. Attorney Phoenix said a concern was expressed about the nature of the traffic report, and the applicant is willing to commit to student parking only. Mx. Friedrichs asked about limiting to only residents of

Durham to serve people living in the area; she said students are considered residents. Attorney Phoenix said we are open to that but wanted to be consistent with the expert information.

Mr. Bubar said he is hung up on Site Plan regulations requiring easements, and asked that a clear, unobstructed 16-ft path be shown from the Ursos to Main Street. Attorney Phoenix said one does not exist and said the deed for the Ursos does not show a 16-ft easement on the ground. He said a letter was provided from a surveyor saying he/she cannot put a location of an easement on a plan when its location is undetermined on documents I can review.

Attorney Monica Kieser said the easement for the Hall property is clearly shown on the deed and is included on the plan. She said it is clear some sort of 16-ft right-of-way exists beyond that point but there is no plan and no deed description that tells us where, but they have retained that area open, and the easement is called out as existing. Ms. Grant said they have increased the buffer to 36 ft on one side and 39 ft on the other.

Mr. Behrendt said one easement is shown on the plan and the other cannot be shown as it is not designated and felt the Site Plan requirements are met on this. He said the Town Attorney has advised the Board that they cannot, as part of the Site Plan Review, require the applicant to reconfigure the front lot to accommodate a clear access path to either property. If the Ursos lost the right to use Smith Park Lane something would have to be built to make sure they have access. The board further discussed "student-only" parking.

Pete Murphy said the applicants do not care who they rent parking spaces to, but 95% would be students and they feel they are being pushed into committing to student-only parking. Attorney Kieser said also the previous traffic study was based on students. Attorney Phoenix said if the Board wants more on the traffic study that can be done.

Vice-Chair Parnell said his plan this evening was to hear new information, re-open the Public Hearing, and start deliberations, but he is now aware that Mr. Behrendt has concerns to go through and discuss. He said he did not believe all the points made to the Planning Board need rebuttal, but the applicant can rebut at the end of the Public Hearing. He said this Public Hearing has been open for a long time and asked people speaking this evening to think about what they are saying and present views the Board has not heard before.

Vice-Chair Parnell re-opened the Public Hearing at 9:14 pm.

Martha Andersen of 8 Chesley Drive said our house is located adjacent to and downslope from the massive, proposed parking structure, and felt she needed to find the voice of her late husband to express the outrage of the Andersens about the proposal to destroy the peaceful enjoyment of our home, irreparably damage our lifestyle, and lower the property value significantly. She said the proposal is not a simple permit or right but Conditional Use; it does not meet a single one of the CU criteria and must be rejected.

Ms. Andersen said in her opinion the proposal is environmentally catastrophic and fails on almost every negative external impact of my abutting home and adjacent neighborhood. The proposal would destroy most of the trees, build a retaining wall, and a ghastly urban mound 50 feet from my property, with 24-hour illumination and noise, and pollution of the Chesley Marsh. She said she has not seen a rendering of the gaping hole in the tree line and stated that there is no simple right to build this parking lot. She said the Planning Board must reject this non-compliant project and not allow this to ruin her family's life further.

Patty Andersen said that was her mom and she would like to speak about her home, family, and the surrounding environment. She said she lived at 8 Chesley Drive her whole life and her father and her family took meticulous care of their property and surrounding Town property. She said her dad always came to speak to the Planning Board and she is here tonight because she knows this is wrong. She thanked the Board for dedicating their time to make Durham a better place and said she hoped that is what they were actually here to do.

John Mince of 22 Faculty Road said he had not seen a single image standing from the edge of Chesley looking up the slope to the parking lot and asked if the 16,000-cu ft of fill is considered reasonable. He said the impact will be on Faculty Road, especially the Urso, Andersen, and Meyrowitz properties. He said the community often prides itself on its sensitivity, intelligence, and being ecologically ahead, and asked the Planning Board to reconsider from the point of view of someone looking to that slope from Chesley, with no trees, and without having seen a single picture of genuine impact on neighbors.

William Hall said he has a 16-ft right-of-way around Red Tower for his property to get to Main Street and nobody has a right-of-way between Red Tower and Smith Park Lane, which is entirely on his property going south. He said though there is nothing in his deed, he readily accepts and will grant for no compensation whatsoever, to anyone below his property on Smith Park Lane absolutely as a right to come up to his property.

Gail Kelley of 11 Gerrish Drive said she would speak specifically to the wording in the Site Plan Regulations, and said environmental protection supersedes tax revenue considerations. She said the word "shall" is not open to interpretation and is mandatory. She said on the basis of Section 8.2.1 in the Site Plan Regulations alone, the Toomerfs' CU Permit application for a Church Hill parking lot must be denied. She said extensive grading and fill are to be avoided, and to construe dumping of 15,000 cu yds of fill on the last vestige of an urban woodland in Durham is excessive, along with the irreparable environmental consequences resulting.

Ms. Kelley said when Durham residents have concerns about environmental impact, the Planning Board and Town Planner have brushed these concerns aside placing higher priority on tax revenue generated by development of the project. She said the value and function of Church Hill Forest would be irreplaceable once eliminated and cause permanent harm.

Joshua Meyrowitz of Chesley Drive said he spent 5 days exposing some truths about a recent letter to the Planning Board from Toomerfs' attorneys and said the proposed project would create a massive hole in the viewshed for abutters. He said Church Hill Woods is a significant buffer from sound, light, heat and stormwater for the Urso, Anderson, and Meyrowitz households and adjoining neighborhood. He said the Toomerfs' site plan violates the goals of the Durham Master Plan to reduce continuous loss of forestland, and the southerly end of the parking lot is about 34 ft above Chesley Drive and not "at grade" in the back. There will be a grassy slope and a guardrail, but no true image has been shown with the tree canopy removed.

Mr. Meyrowitz said this proposal is a model of what is forbidden under CU and said other parking lots are not close to family homes and are at ground level. He said it is out of scale and overly intense use with reference to the surrounding neighborhood. He said no matter how you photograph it a giant edifice would tower over street level, face the neighborhood, and create a massive hole in the viewshed of abutters and the neighborhood.

Nathan Fennessey of Preti Flaherty noted that the site plan keeps changing and the issue of the retaining wall is back in the plans. He said in 2021 the retaining wall was 20 ft, and an appeal was taken to the Zoning Board and a decision was made that the proposed wall constituted structured parking. The retaining wall is now back in the Site Plan and ZBA previously determined that the existence of a retaining wall supporting a parking lot means it is structured parking and not permitted under the Ordinance and the Planning Board needs to make that determination.

Attorney Fennessey addressed new information provided and said there will not be any trees on the slope, and it will be a massive grassy knoll, though trees are still shown in images; traffic study only involved student parking with other impact not determined. He said applicants argue the parking lot will address the need for parking and argue that the proposal would not have greater external impact than other permitted uses. He submitted that a large commercial parking lot would have a significantly greater impact than other permitted uses in the Church Hill District and the applicant has the burden to provide evidence.

Attorney Fennessey said there is a slope out there right now which maintains the natural topography as recommended by CU Permit, but here they ignore regulations to do a project that is aesthetically and environmentally appropriate. He said the biggest thing is to get a rendering that shows what this project is going to look like from the surrounding area.

William Hall said eliminating the only non-historical house in the area and building a parking lot is a plus for him. He said there will be better access between Red Tower and 21 Main Street and make Fire access easier.

Mr. Behrendt said the Board should take up grading tonight or at next meeting and take up development of regional impact tonight which would require notification to other municipalities. He said the Board could ask for other views of the site, spot elevations, information on plantings for the slope and type of fill, an image of the proposed retaining wall, and then decide if additional

changes are wanted in terms of buffers and scale of project and talk about the process from there. Mr. Kelley stated that he did not think this was a project of regional impact.

Vice-Chair Parnell asked the Board to identify things that have not been provided for this project. Ms. Dill said the Board needs a realistic illustration of what this project will look like from Chesley Drive and something from the Ursos. The Board discussed the issues and Mr. Sievert answered questions and made some clarifications: trees on the Anderson property will remain; retaining wall at toe of the slope is 6 ft high; mature trees planted will be 6-8 ft tall. He addressed questions regarding lighting and glare and said the Board should decide on motion sensors.

Vice-Chair Parnell said since the Board has some requests for more information the Public Hearing will not be closed this evening, and proposed Attorney Phoenix give his dissertation at the next meeting. Attorney Phoenix asked for a final decision on regional impact.

John Hart addressed the steep slope and felt erosion was highly likely even with the erosion control blanket. He said he appreciated Planning Board comments regarding natural plantings, but felt the slope was just too steep. He said landscaping seems really minimal with respect to what is being removed, and if the project goes forward, he would request the developer increase the proposed plantings considerably.

Kyle Urso said at no point did the Ursos mention abandonment of the easement. He said the applicant keeps talking about time but has repeatedly requested delays over the two years. He provided a sketch showing the 60-ft elevation with the fence 2 ft below and said from their house they are not going to just see the fence but the parked cars which will affect the property value. He said as far as the easement, it does say a 16-ft unencumbered right-of-way, and the Smith Park Lane right-of-way is also in the deeds and in their deed as well.

Vice-Chair Parnell asked that the Board delay the discussion on regional impact to the next meeting and suggested continuing this Public Hearing to May 25. Mr. Behrendt said there are 3 other things scheduled for that date. He said it would be beneficial to not limit the parking to students and asked the Board if they would like an update on traffic. The Board agreed that more traffic information was not needed.

Mr. Sievert said the Board is requesting a view from Chesley Drive and from the Urso property; Vice-Chair Parnell asked that they be as realistic as possible. Attorney Phoenix suggested having a dedicated meeting to get through this. Mr. Sievert recommended moving the next meeting to June 8 and the Board agreed. Mx. Friedrichs said ze would like to see more detailed information on landscaping options and Mr. Sievert said he will have Robbi Woodburn come back.

Vice-Chair Parnell continued the Public Hearing on 19-21 Main Street to June 8, 2022.

XIII. *Public Hearing - 74 Main Street – Mixed-Use Building.* Formal site plan and conditional use application for demolition of current wood frame building and construction of a 4-story

mixed-use building with nonresidential uses, 12 residential units, and 5 parking spaces. Minor site changes are also proposed for the adjacent lot at 72 Main Street. Doug Clark, applicant. Jerry Pucillo, consultant with Centergreen, representing Foundation for Civic Leadership/Democracy House, a potential partner in project. Mike Sievert, Horizons Engineering. Zach Smith, Bergmeyer Architects. Map 2, Lot 14-1-1. Central Business Zone. Recommended action: Discuss and continue review to a May meeting.

***POSTPONED AT THE APPLICANT'S REQUEST TO MAY 25**

XIV. Other Business

XV. Review of Minutes (new): April 20, 2022, April 16, 2022 Site Walk Minutes

Vice-Chair Parnell proposed leaving the minutes until the next meeting due to the time. He seated Nicholas Germain for Richard Kelley and Emily Friedrichs for Bill McGowan who left the meeting at 10:00 pm.

XVI. Adjournment

Councilor Tobias MOVED to adjourn the meeting; SECONDED by Ms. Grant; APPROVED 7-0, motion carries.

Vice-Chair Parnell adjourned the meeting at 10:37 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker
Durham Planning Board

James Bubar, Secretary