

- MEETING ON MARCH 23, 2022

Dear Mr. Chairman and Planning Board Members:

- My name is Suzanne Brunelle I am attorney with Devine Millimet & Branch
- I appear before you today on behalf of Town & Campus, Inc., the record owner of 72 Main Street
- My client's property abuts 74 Main Street, owed by Clark Properties and the two properties share a common boundary line
- As it is currently submitted to the Town, my client opposes Clark Properties' current Site Construction plans, and its conditional use application for the development of 74 Main Street due to a number of property right infringements and safety issues
- My client and I have attempted to address these issues with Clark Properties in various emails, phone calls and face to face to meetings to no avail.
- I have also set forth my client's objections in letters to this Board on August 17 and November 16 and our presentation in December of 2021
- At this time, we are all familiar with the Easements Deeds to pass and repass on the paved driveway currently existing between 72 and 74 Main Street which the developer is planning on actually placing a building in the easement area which now appears to include a door way which opens up to the easement area and is an obvious safety issue
- The Easement located at the back of the property to pass and repass for the purposes of restaurant related deliveries and trash removal and for the purpose of ingress and egress for the parking spaces located at the back of 72 Main Street
- The Utilities Easement which allows my client to maintain a permanent easement over 74 Main Street for utility, telephone, electric and sewer lines, with reasonable access to and ingress and egress to the 74 Main Street property for carrying out the utility easement-about which the current site plan is silent on how the proposed development will address the Ganger's utilities.
- As you are aware, each easement runs with the land, in perpetuity, and cannot be unilaterally infringed upon by Clark to the detriment of my client

Our current list of issues include:

1. Lack of measurements and details on the site plan including all items as required by the town's Site Plan Regulations;
2. Failure to address utilities for 72 Main Street
3. Reduction of parking spaces;
4. The addition of the door in the easement area, which is a safety issue;
5. Additional transmission pad on latest plan near access, thereby reducing access from Pettee Brook Lane;
6. Location of the support pole and archway for the proposed building located in the back of property;
7. Building in the easement areas;
8. Inability to access the property from the back for deliveries;
9. Inability to access dumpster;
10. Safety issues with regard access for emergency vehicles access;
11. Snow removal;
12. Lack of identification of staging areas for construction-missing updated construction site plan; and
13. Lack of location of easements and rights of ways to be shown the on the plan.

The Town of Durham's Site Plan Regulations under Article 3 Purposes – indicates that the purposes of the Regulations are to and I quote “Protect abutters against hazards, unsightliness, and nuisances detrimental to property values”.

You can certainly see the reducing parking, reducing and eliminating access to the Gangwers' business tenants, the inability to have garbage removed and building within the easement areas will be detrimental to the Gangwers' property values.

We have safety issues with emergency vehicles access due to the large size of the proposed building, the proposed door in the easement area where cars go by, limited areas for business deliveries again which again will be detrimental to the Gangwers.

Additionally, the approval of this site plan may be opening up the Gangwers to potential litigation from the tenants by reducing the footprint of my client's property and altering rights given to the Gangwers' tenants under their existing leases. These are businesses being run on the Gangwers' property that this development as proposed will certainly have a negative impact.

A private right of way is “property” subject to the Takings Clause under the Fifth Amendment to the United States Constitution and the current law of the land as decided by the United States Supreme Court in United States v. Virginia Electric & Power Co., 365 U.S. 624, (1961).

Here in NH the case Town of Seabrook v. Vachon Management, Inc. 144 N.H. 660 (2000), it was held that site plan approval is designed to assure that sites will be development in a safe and attractive manner and in a way that will not involve danger or injury to the **health, safety, and prosperity of abutting property owners and the general public.**

These cases together with the Town of Durham's own site plan regulations provide your board with the justification to deny the currently proposed site plan as the proposed plan amounts to a taking of a property right of the Gangwers', contains many safety issues which need to be addressed and will negatively impact the prosperity of the Gangwers' and their tenants.

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We thank you for your time and consideration with regard to these serious issues and ask that you find the proposed plan incomplete as it amounts to a taking of private property by Clark of the Gangwer Family's property and is therefore illegal and unworkable.

Sincerely yours,

Suzanne Brunelle, Esq.