

April 10, 2023

Suzanne Brunelle  
T 603.695.8570  
F 603.669.8547  
sbrunelle@devinemillimet.com

Paul Rasmussen, Chair  
Durham Planning Board  
8 Newmarket Road  
Durham, NH 03824-2898

RE: 74 Main Street – Mixed Use Building Site Plan and Conditional Use Applications

Dear Chair Rasmussen and Planning Board Members:

Please be advised that this office continues to represent Town & Campus, Inc. (the “Gangwer Family”), owner of 72 Main Street (Tax Map 2, Lot 14-1) and the direct abutter to 74 Main Street (Tax Map 2, Lot 14-1-1).

We have reviewed the Amendment to Approved Site Plan submitted by the developer and have the following comments and concerns.

**A. Request for information missing from site plan:**

1. Site plan (with colors) fails to indicate the distance of proposed building at 74 Main Street to the paved easement areas. As such, we cannot tell if there is an encroachment into the easement areas. The subdivision plan approved by this Board for the subject properties dated July 11, 2018 and revised September 6, 2018 contains easement notes including “D) Easements are to be recorded herewith to define items including but limited to parking, access, utilities and maintenance” in compliance with the Town of Durham’s Planning Board Procedures. These procedures are still in place and require that the **“Location, widths and purposes of any easements or rights-of-way”** be included on the site plan.

The Notice of Decision for the 2018 subdivision plan required “Easements. Show all easements on the plan to the extent possible and include a notice briefly describing the easement.” The current site plans fail to delineate or even reference the cross/access easements recorded at the Strafford County Registry of Deeds at Book 4612 Page 795 and Book 4612 Page 793 and Utility Easement recorded at Book 4612, Page 797. These easements are nowhere to be found in the current plan despite the site plan requirement and site plan checklist application that the applicant identified, delineated, or otherwise show on the site plan and/or as part of the existing conditions.

2. We are unsure why the plans are still dated 1-21-2022.
3. The plan shows a door swinging out. Need to confirm the open door is flush with the building and not swinging into the easement area.

4. Demolition Plan has some odd lines on it. We need an explanation as to what the bold black lines denote at the Gangwer side of the property.
5. We need to know the impact, if any, to the Gangwer lot with regard to the storm water impact plan.
6. Site plan C102- need to confirm that square in the easement area in a ground grate or something else;
7. One (1) parking space is to be located on 74 Main Street for the use of 72 Main Street per the License Agreement between the parties. The Planning Board's notice of Decision dated October 26, 2022 for the original site plan required Plan Modifications (2) that one parking space be shown on the plan and that the space be identified for use by the adjacent property owner. That space does not appear to be delineated on the plan despite reference to it on Plan Note 12.
8. Need proof that the easement from Pettee Brook which easement is "An Easement to pass and repass for the purposes of restaurant related deliveries and trash removal and for the purpose of ingress and egress for parking spaces at the back of the building ..." is being upheld. Is there sufficient space for delivery trucks and garbage trucks to use the easement area now that the shape and size of the building has changed?
9. Requesting information on the sleeve being installed by the developer for capacity and water line and information on sewer connection, specifically with regard to the size of the sleeve and its ability to provide utilities to the Gangwer Family property. There is a utility easement for the benefit of 72 Main Street.

We note the following Planning Board Procedure requirements that do not appear to have been met by the proposed Amendment to Approved Site Plan:

**B. Planning Board Procedure requirements:**

**676:4 Board's Procedures on Plats.**

I. The procedures to be followed by the planning board when considering or acting upon a plat or application submitted to it for approval under this title shall be as set forth in the board's subdivision regulations, subject to the following requirements:

(a) An application for approval filed with the planning board under this title, other than an application for subdivision approval, shall be subject to the minimum requirements set forth in this section and shall

be governed by the procedures set forth in the subdivision regulations, unless the planning board by regulation specifies other procedures for that type of application.

**(b) The planning board shall specify by regulation what constitutes a completed application sufficient to invoke jurisdiction to obtain approval. A completed application means that sufficient information is included or submitted to allow the board to proceed with consideration and to make an informed decision. A completed application sufficient to invoke jurisdiction of the board shall be submitted to and accepted by the board only at a public meeting of the board,** with notice as provided in subparagraph (d).

The failure of the Applicant to delineate and address the easements on the plan constitutes an incomplete application per the Town of Durham's site plan regulations as follows:

2. Section 2.2 of the Durham Planning Board's site plan regulations requires:

2.2 (E)(4). The plan of the site itself shall show:

- a) Surveyed property lines of the parcel showing their bearings;
- b) Names of all abutting property owners;
- c) Location and layout of existing and proposed structures and buildings; and**
- z) Location, widths and purposes of any easements or rights-of-way.**

**There are three (3) easements on this property. They are not shown nor noted on the site plan.**

3. Section 2.2 (E)(5). The following features required on the plan itself, as above, shall be delineated in color on one digital copy and fifteen (15) 11x17 printed copies:

- a) Surveyed property lines of the parcel showing their bearings;
- b) Zoning and special district boundaries;
- c) Access ways, egress ways, parking lots and streets within the site;**
- d) Waterbodies, watercourses, wetlands, railroads, rock outcroppings and stone walls;
- e) Property to be dedicated for public use of common ownership;
- f) Pedestrian walks providing circulation through the site;
- g) Location and widths of any easements or rights-of-way;**
- h) Features unique to the site that should be brought to the attention of the Board; and
- i) Proposed buildings**

4. Per the zoning section 175-576. Special Situations Affecting Dimensions:

- (a) Looking to be sure compliance with:
- (b) **D. Side and rear yards.**

Within business districts. Side and rear yards in the CB District may be omitted where buildings are separated by fire partitions meeting the requirements of the Durham Building Code and/or where the remainder of the yard is occupied by publicly maintained parking, circulation or landscaping.

**C. With regard to the conditional use application, we have the following questions and concerns:**

1. **External impacts:** The external impacts of the proposed use on abutting properties and the neighborhood shall be no greater than the impacts of adjacent existing uses or other uses permitted in the zone. This shall include, but not be limited to, traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare. In addition, the location, nature, design, and height of the structure and its appurtenances, its scale with reference to its surroundings, and the nature and intensity of the use, shall not have an adverse effect on the surrounding environment nor discourage the appropriate and orderly development and use of land and buildings in the neighborhood.

The Applicant states that the building addition will not cause an “adverse impact to abutting properties to a greater extent than any other existing use in the neighborhood.” The increase in the building footprint is to the ground floor (the overall layout) will adversely impact the neighboring property. The expansion illegally builds into the easement area that was required by the 2018 subdivision approval to provide access to the abutting property. The expansion negatively affects the traffic flow as it exists today; thereby, increasing traffic congestion, altering the traffic flow, and impeding the abutting property owner’s easement rights and ability to access its property. The external impact of the proposed use causes irreparable harm to the abutting property and is greater than the impacts of adjacent uses (i.e., bank, small shops, etc.).

The Applicant further states that the location, nature and design and height of the building meets the intent of the re-development regulations the CB district. Section 175-42 of the Zoning Ordinance for the Central Business District provides that the intent and development of the CB district should be done “in a manner that maintains and enhances the *small-town character* of the downtown.” The massiveness of the previously approved building and now the request to expand the footprint of the building is contrary to the intent of the CB district to maintain “small town character.” The building coverage on the lot is already excessive and any expansion is contrary to the intent of section 175-42.

2. **Character of the site development:** The proposed layout and design of the site shall not be incompatible with the established character of the neighborhood and shall mitigate any external impacts of the use on the neighborhood. This shall include, but not be limited to, the relationship of the building to the street, the amount, location, and screening of off-street parking, the treatment of yards and setbacks, the buffering of adjacent properties, and provisions for vehicular and pedestrian access to and within the site.

The Applicant states that the design is not incompatible because of the existing conditions. The existing conditions include a small retail mixed use office house converted to a commercial use abutted by a one-story strip mall. Further the Applicant states the design maintains adequate setbacks with respect to its relationship with and adjacent buildings. The building layout is almost on top of the property lines on all three sides of the building and there is no well-established pedestrian and vehicle access as

previously discussed above. The proposed layout and design of the site is incompatible with the established character of the neighborhood.

3. **Preservation of natural, cultural, historic, and scenic resources:** The proposed use of the site, including all related development activities, shall preserve identified natural, cultural, historic, and scenic resources on the site and shall not degrade such identified resources on abutting properties. This shall include, but not be limited to, identified wetlands, floodplains, significant wildlife habitat, stonewalls, mature tree lines, cemeteries, graveyards, designated historic buildings or sites, scenic views, and viewsheds.

The massiveness of the proposed building denigrates the scenic view and viewshed of the neighborhood and of abutting properties, and degrades identified resources of the abutting property. The existing easements on the abutting property serve as a resource to both properties. The current design and layout of the proposed site encroaches into the easement areas and seeks to violate the terms of the easements and thus the terms of the 2018 subdivision approval.

4. **Impact on property values:** The proposed use will not cause or contribute to a significant decline in property values of adjacent properties.

The proposed use and design will contribute to a significant decline in the property value of 72 Main Street for the following reasons:

- a. the terms of the recorded easements and 2018 subdivision approval are being violated as the proposed plan fails to properly identify delineate the easements.
- b. these violations result in a decline to property value of 74 Main Street as now the intended purposes of the easements to allow for parking, access, utilities, and maintenance are significantly compromised and illegally encroached upon making access almost impossible which in turn affects the overall value, site design and potential redevelopment of 72 Main Street.
- c. The sheer size and massiveness of the proposed building detracts from the scenic and viewscape.
- d. The sheer size and massiveness of the building decreases the value and development/redevelopment potential of 72 Main Street.

5. **Availability of Public Services & Facilities:** Adequate and lawful facilities or arrangements for sewage disposal, solid waste disposal, water supply, utilities, drainage, and other necessary public or private services, are approved or assured, to the end that the use will be capable of proper operation. In addition, it must be determined that these services will not cause excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police protection, fire protection, and schools.

As discussed above, the ability of police and fire personnel to safely and timely provide service and maneuver safely and efficiently between this property and the adjacent property along with the lack of the preservation of the existing easements will result in improper operations.

6. **Fiscal impacts:** The proposed use will not have a negative fiscal impact on the Town unless the Planning Board determines that there are other positive community impacts that offset the negative fiscal aspects of the proposed use. The Planning Board’s decision shall be based upon an analysis of the fiscal impact of the project on the town. The Planning Board may commission, at the applicant's expense, an independent analysis of the fiscal impact of the project on the town.

7. **Site suitability:** The site is suitable for the proposed use.

The Applicant states that the property is suitable for the proposed redevelopment because a “commercial use with surface parking currently exists on the site” – the Applicant does not address the proposed use and lack of parking on the site, which contributes to the lack of site suitability. The current plan calls for 37 and no spaces are provided.

The Board should have concern over the unavailability of parking to accommodate this use. The most recent building renderings show 4568 SF of shared/workspace/event space on the fourth floor and 1303 SF on the basement floor. As the Town’s parking calculations do not specifically provide for event centers, the “Bed and breakfasts or hotels and motels” use was used. The site is not suited to support or otherwise accommodate an event accompanying people in a 5871 SF meeting/event space. Vehicular and pedestrian access would be compromised.

PROJECT WILL INCREASE ON-STREET PARKING BY 2 SPACES.

**ON-SITE PARKING**

EXISTING 15 SPACES  
 PROPOSED 0 SPACES

USE	# SPACES REQUIRED FOR EACH USE	REQUIRED SPACES	PROVIDED SPACES
10 CONDOS	1 SPACE/ 1 SPACE * 12 UNITS = 12	12 SPACES	
COMMERCIAL, 1ST FL. CARRY-OUT REST.	1 SPACE/2 SEATS + 1 PER EMP. 18 SEATS/ 1 SPACE/2SEATS + 3 EMP	11 SPACES	
MEETING SPACE W/ OFFICES BASEMENT & 4TH FLOOR	1 SPACE/400 SF + 1 SPACE/EMP. 400/400 + 4 = 14 (SIMILAR TO HOTEL/MOTEL)	14 SPACES	
		37 SPACES	0 SPACES

THE INTENT OF THIS PLAN IS TO SHOW THE PROPOSED DEVELOPMENT ON LOT 59 AND THE PARKING, ACCESS, AND UTILITY CONNECTIONS FOR LOT 61.

ALL ELECTRICAL, GAS, COMMUNICATIONS, WATER, SEWER, AND DRAIN SERVICES ARE SHOWN IN SCHEMATIC FASHION, THEIR LOCATIONS ARE NOT PRECISE OR NECESSARILY ACCURATE. NO WORK WHATSOEVER SHALL BE UNDERTAKEN ON THIS SITE USING THIS PLAN TO LOCATE THE ABOVE SERVICES. CONSULT WITH THE PROPER AUTHORITIES CONCERNED WITH THE SUBJECT SERVICE LOCATIONS FOR INFORMATION REGARDING SUCH, CALL DIG-SAFE AT 1-888-DIG-SAFE.

9. BOTH PARCELS ARE SERVICED BY MUNICIPAL WATER AND SEWER.

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**SITE PLAN**  
 PREPARED FOR  
**CLARK PROPERTIES LLC**  
 74 MAIN STREET  
 TAX MAP 106, LOT 59  
 DURHAM, NEW HAMPSHIRE

NO.	DATE	REVISION DESCRIPTION	ENG	DWG
08	2023-03-02	REV. BUILDING AND DRAINAGE	MCS	MCS
07	2022-10-19	REV. FOR DURHAM PB 2022-10-26	MCS	MCS
06	2022-07-26	REVISED SITE PLAN	MJS	MCS
05	2022-06-16	REVISED SITE PLAN	MCS	MCS

The criteria for site suitability also includes:

- a. Adequate vehicular and pedestrian access for the intended use.

The original 2018 subdivision approval as part of the conditions of approval required that an easement be executed "to include easements/cross easements for the rear portion of the two lots for access, parking, utilities, trash and maintenance..." Further, the subdivision plan contains at Note D "Easements are to be recorded herewith to define items including but not limited to parking, access, utilities, and maintenance." It is further understood that the rear parking of 74 Main Street was to be part of the easements to be recorded as referenced in Note C on the plan, which excluded the parking spaces to the front of the property and the spaces in the Town's property near Main Street. The proposed site does not suitably provide for adequate vehicular and pedestrian access as it is clearly contrary to the required terms of the easements, which were part of the 2018 subdivision approval. The failure to adhere to the terms of the easements results in inadequate vehicular and pedestrian access.

The Applicant states that "current access to and from the site will remain the same." This is not true as it is proposed that the northerly portion access will be eliminated, there will be a reconstruction of the sidewalk on Main Street and elimination of the existing pavement, which affects the overall access to and from the site and other adjacent properties. This will alter the traffic flow and increase traffic congestion. The creation of additional green space removes the existing parking and through way which currently exists. The proposed use calls for significantly more traffic. There is not adequate vehicular and pedestrian access for the intended use and size of the building.

- b. The availability of adequate public services to serve the intended use including emergency services, pedestrian facilities, schools, and other municipal services.

The Applicant states that "adequate emergency services are currently provided, and access will remain unchanged." The proposed use and site plan significantly alters the access for public and emergency vehicles and services to the site and the adjacent property. The enlargement of the green space in the front of the building and removal of the existing pavement and access way significantly alters and changes the method and manner to which emergency vehicles can service and access the property and the adjacent property. The size of the building also contributes to the inability of fire and police to adequately provide safe and timely service and maneuver their equipment around the site and the adjacent building.

- c. The absence of environmental constraints (floodplain, steep slope, etc.) or development of a plan to substantially mitigate the impacts of those constraints.
- d. The availability of appropriate utilities to serve the intended use including water, sewage disposal, stormwater disposal, electricity, and similar utilities.

Paul Rasmussen, Chair  
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Thank you for your time and attention to this matter and ask that you find the proposed amended site plan incomplete and deny the conditional use permit as it does not meet a majority of the criteria and is contrary to the vision, spirit and intent of the town's Master Plan.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "S. Brunelle".

Suzanne Brunelle, Esquire