



TOWN OF RANDOLPH  
INC. 1793

# Town of Randolph

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November 27, 2024

## **BY EMAIL**

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### **RE: Request for Formal Opinion Pursuant to M.G.L. ch. 40A, section 7 Concerning 19 – 141 Memorial Parkway**

Dear Attorney Leon,

I am writing in response to your letter dated November 15, 2024 in which you request a formal opinion pursuant to M.G.L. c. 40A, section 7, as to whether the proposed repair and repaving activity at 19 – 141 Memorial Parkway in Randolph, Massachusetts, requires any zoning approvals under the Town's Zoning Ordinance, and particularly a site plan approval. The proposed work involves crack sealing and repairing the existing asphalt surface in some areas and resurfacing other portions of the lot with new asphalt. The resurfacing appears to cover about 2/3 of the existing lot, and covers several thousand square feet. My understanding is that the work has also involved the repair/modification of a handicapped access ramp at the front of the structures on that lot.

Your question specifically refers to the crack sealing and repairing of the existing asphalt surface and the resurfacing of 2/3 of the parking lot. My opinions in this letter will focus on that work alone.

You have provided a Site Plan by Peter M. Ditto, Registered Land Surveyor, dated October 2, 2006 showing the current conditions at the property. It shows the painted striping plan for the parking lot, which I understand will be repainted after the paving project is complete in the same manner as shown on the Site Plan. It is your contention that the repaving of parts of the parking lot (about 2/3 of the lot) will not change any aspect of the parking area shown on the Site Plan, including the number and location of parking spaces, or the amount and nature of the impervious surfaces.<sup>1</sup>

You have requested an opinion of the Building Commissioner pursuant to M.G.L. ch. 40A, section 7. That section of the state Zoning Act states, in part: "If the officer or board charged with enforcement of zoning ordinances or by-laws is requested in writing to enforce such ordinances or by-laws against any person allegedly in violation of the same and such officer or board declines to act, he shall notify, in writing, the party requesting

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<sup>1</sup> To the extent that there are elements of the existing conditions at this property that do not conform with zoning, my understanding is that it is your position that those are pre-existing, non-conforming conditions and that this work does not alter that status or trigger any review of that status. I offer no opinion on that contention in this letter, as that issue was not addressed in your request for a zoning determination.

such enforcement of any action or refusal to act, and the reasons therefor, within fourteen days of receipt of such request.”

I take your request under M.G.L. ch. 40A, section 7 as a request for me to enforce the Zoning Ordinances, in particular the site plan and design review zoning requirements, against the proposed repair and repaving project at 19 – 141 Memorial Parkway in Randolph. In essence, it is a request to enforce the Zoning Ordinances against your own project. My analysis and determinations in response to this request are provided below.

## **I. Zoning Enforcement Powers In The Town of Randolph.**

I am the Building Commissioner of the Town of Randolph and, in that position, I am charged with being the Zoning Enforcement Officer for the Town.

### **A. No Building Permit is Required for This Project.**

As the Building Commissioner and Zoning Enforcement Officer, I have determined that the proposed work does not trigger the requirement for a Builder Permit. Pursuant to § 200-38(D) of the Town of Randolph Zoning Ordinances, Site Plan and Design Review is conducted as part of a Building Permit process. However, no Building Permit is required here, so Site Plan and Design Review is not triggered in this case through that process.

Section 200-38(D) of the Town of Randolph Zoning Ordinances states, in part:

The Building Commissioner, in conjunction with the Planning Board or its designee(s), shall enforce the site plan and design review process as outlined in this chapter. No building permit shall be issued without prior approval of the site plan and architectural design by both the Building Commissioner and the Planning Board or its designee(s)...

Pursuant to the above section, no Building Permit shall be issued without approval of any site plan and architectural design by both the Building Commissioner and the Planning Board (or its designee). However, in this case, there is nothing about the proposed project that triggers a Building Permit requirement. Therefore, I decline to engage in any zoning enforcement action relating to Building Permits under this section of the Town Zoning Ordinances.

### **B. Site Plan and Design Review May Be Triggered Separately Under Section 200-91 of the Town of Randolph Zoning Ordinances.**

Site Plan and Design Review can be directly triggered under the Site Plan and Design Review provisions of the Town of Randolph Zoning Ordinances, specifically Section 200-91 of those Ordinances. The Site Plan and Design Review provisions are enforced by the Building Commissioner, in conjunction with the Planning Board, pursuant to Section 200-38(D) (see above). The Site Plan and Design Review provisions, and other zoning requirements, are discussed further, below.

## **II. Zoning Matters.**

### **A. Site Plan and Design Review Requirements.**

Pursuant to Section 200-91 of the Town of Randolph Zoning Ordinances, Site Plan and Design Review can be triggered by a variety of activities, including the following:

§ 200-91(A)(2) Additional parking and parking lot design.

§ 200-91(A)(3) Modifications to the exterior of a nonresidential building, mixed-use structure or multifamily dwelling, including:

- (a) Changes to color...
- (d) Alterations, demolitions, removal or construction affecting the architectural appearance of the structure(s), signs or the site.
- (e) Changes to existing sign types and faces.

Although it is possible to interpret the Town of Randolph Zoning Ordinances as requiring Site Plan and Design Review under these provisions when there is significant paving and repair to an existing commercial parking lot, I do not believe that the project, as proposed, rises to that level. I do not believe that the project, as proposed, constitutes the creation of “additional parking” or a change in “parking lot design.” I also do not believe that the project, as proposed, constitutes a change in color. I do not believe that the project, as proposed, constitutes an alteration, a demolition, a removal or construction affecting the architectural appearance of the site. I do not believe that the project, as proposed, constitutes a change to existing sign types and faces.

As a result, I do not believe that Site Plan and Design Review is triggered by this project and I decline to enforce the Site Plan and Design Review provisions of the Zoning Ordinance with regard to this project.

### **B. Other Zoning Requirements.**

As you indicated in your letter, there are a variety of Town of Randolph Zoning Ordinance requirements that apply to this proposed project. The main issue in contention is the project’s compliance with Site Plan and Design Review requirements, which is discussed above. It is my understanding that the project, as proposed, is in compliance with, or is in the process of coming into compliance with, the other applicable Town Zoning Ordinance provisions, including Stormwater related requirements. I decline to take any enforcement action concerning Stormwater, Building Permit requirements or other Town Zoning requirements at the project at this time. I note that the required Stormwater Assessment is in process and that the project is expected to come into compliance with all applicable Stormwater requirements within a reasonable period of time.

## **III. Matters Governed By The Town’s General Ordinances.**

This letter concerns enforcement under the Zoning Ordinances. However, in order to provide a complete picture of the Site Plan and Design Review requirements, I must also address certain provisions of the General Ordinances of the Town of Randolph. These are permitting requirements that are required under local law. However, they are general regulatory requirements, they are not zoning requirements.

### **A. Paving Permit.**

A paving permit is required for this project pursuant to § 147-8(A) of the Town of Randolph General Ordinances, which states:

No person shall allow any pavement to be placed on any property within the Town of Randolph without first obtaining a permit.

It is the practice of the Town of Randolph to require sign-off from both the Planning Board and the Building Commissioner before the issuance of a paving permit, to ensure that all applicable requirements for the project have been met, including all applicable Site Plan and Design Review requirements. Note that, under the Town Ordinances, the Building Commissioner and the Planning Board have coordinated authority over Site Plan and Design Review.

In this case, the Planning Board has denied the request for sign-off on the Paving Permit because the Planning Board or its designee have determined that Site Plan and Design Review are required for this project pursuant to Section 200-91 of the Town of Randolph Zoning Ordinances. The paving permit applicant has refused to participate in Site Plan and Design Review. The applicant's view is that Site Plan and Design Review is not required under Section 200-91. The paving permit therefore has not been approved by the Planning Board, has not issued, and will be considered denied without the Planning Board's approval.

A paving permit is required for this project and sign-off from both the Planning Board (or designee) and the Building Commissioner is required for the paving permit to issue.

Although other fines and fees may apply if work is commenced without a paving permit, because the requirement for a paving permit is included in the General Ordinances, not in the Zoning Ordinances, I do not have the authority to engage in zoning enforcement with regard to the need for a paving permit and the discussion of the paving permit contained in this section should not be considered a zoning enforcement determination pursuant to M.G.L. ch. 40A, section 7.

#### **B. Excavation Permit.**

I also note that, pursuant to § 83-3 of the Town of Randolph General Ordinances, this project triggers the requirement for an excavation permit. I do not offer any analysis of that permit as that permit is not a zoning permit and that permit has been obtained without any controversy.

#### **Conclusion:**

In summary, I decline to take the zoning enforcement actions described in your November 15, 2024 letter regarding the proposed repair and repaving activity at 19 – 141 Memorial Parkway in Randolph, Massachusetts.

Sincerely,



Ronald Lum

Randolph Building Commissioner

cc: Brian Howard, Town Manager  
Christine Griffin, Town Attorney  
Michelle Tyler, Town Planner  
Joseph Dunn, ZBA Clerk and Conservation Agent  
Neil McCole, DPW Commissioner