

Town of Randolph

Office of

Zoning Board of Appeals

41 South Main Street

Randolph, MA 02368

Ph: 781-961-1519 Fax: 781-961-0937

Arnold Rosenthal

Al Costa

Sean Fontes

Kevin O'Connell

Chris Spears

Clerk

Joe Dunn

Town of Randolph
Zoning Board of Appeals

Findings and Decision

Appeal Decision

File # ZBA 01-2025

Public Hearing February 5, 2025

Applicant Name:

Randolph Planning Board

Applicant Address:

Planning Department 2nd Floor Town Hall Randolph, MA
02368

**Property Owner Name in
Appeal:**

JAMP II REALTY TRUST

**Property Owner Address in
Appeal:**

62 COMMERCIAL WHARF
BOSTON, MA 02110-3878

**Agent (if any) Nutter,
McLellen & Fish, LLP**

Agent Address

115 Seaport Avenue Boston,
MA 02110

Site Address:

19-141 Memorial Parkway
Randolph, MA 02368

**Assessor's Map Location for
the Site: 54-B-001**

Date of Application to ZBA:

December 17th 2024

Publication of Legal

Notice:

Published January 22nd/29th

Date(s) of Public Hearing: February 5th, 2025

Date of Vote: February 5th, 2025

Date of Decision: February 21st, 2025

Date Decision Filed With The Town Clerk: February 21, 2025

I. General Description:

Property Location Map /Parcel 54-B-001 / 19-141 Memorial Parkway Randolph, MA 02368

Subject-ZBA# 01-2025 The Appeal to the Zoning Board of Appeals regarding the Formal Opinion Pursuant to M.G.L. Ch. 40A, section 7 concerning 19-141 Memorial Parkway issued November 27, 2024 by Building Commissioner Ronald Lum

The Planning Board requests the Zoning Board of Appeals: 1. to overturn the decision of the Building Commissioner that Site Plan and Design review is not applicable to the paving work and; 2. to determine that the project is subject to Tier 1 site plan review pursuant to Section 200-21(f) of the Town's Zoning Ordinances.

The Planning Board's appeal states: In or around October 8, 2024, the owner of the property commenced milling some portion of a 200,975sf paved surface. That work began without any permits requested from or granted by the Town. Although the Planning Director objected to the work, asserting that the work required a permit, and that Site Plan and Design Review would need to be conducted prior to issuing any permit, the Building Commissioner disagreed and permitted the work to continue. After a portion of the property had already been repaved, the property owner requested permission to mill and repave an additional section of the property and submitted an online permit request, presumably for a paving permit pursuant to Town Ordinance in § 147-8(A), but did not include any supporting documentation. The Planning Director requested additional information. Ultimately a sketch of existing conditions (with insufficient dimensional details) was provided.

The Planning Director, with consent of the Planning Board chairman, declined the permit request asserting that Site Plan and Design Review was required. An attorney on behalf of the property owner then submitted a request to the Zoning Enforcement Officer (who is also the Building Commissioner), requesting an opinion as to whether the proposed repaving activity at the property required any zoning approvals under the Town's Zoning Ordinances, particularly Site Plan and Design Review.

The Planning Board determined that the project is subject to Site Plan and Design Review pursuant to Zoning Ordinance Section 200-21 Construction Requirements. Subsection F of that section states & quote new and renovated parking areas are to be constructed with the

guidelines in Article XI, Site Plan and Design Review § 200-94B(2)(f) & quote; The Board asserts that milling, grading and repaving that recently took place and is continuing to take place constitutes "e; renovation.& quote; Therefore the work completed by the applicant and the request to continue such work must be subject to Site Plan Design and review in order to ensure that the work complies with the standards set forth in section 200-94B(2)(f).

II ZBA Members Present at the Hearing:

The following ZBA members were present and sitting at the hearing in this matter:

- Acting Chair Alexander Costa
- Kevin O'Connell
- Christopher Spears
- Sean Fontes
- Amanda George

In addition, the following individuals were also present in the audience at the zoom hearing:

ZBA Clerk Joseph Dunn
Planning Director Michelle Tyler
Town Councilor Jim Burgess
Planning Chair Tony Plizga
Building Commissioner
Ron Lum,

On Zoom - Hickey, Hucksam, Kawamoto, Silverstein

All applicable provisions of the Massachusetts Zoning Act were complied with.

III. Specific Appeal Decision Sought:

The Planning Board determined that the project is subject to Site Plan and Design Review pursuant to Zoning Ordinance Section 200-21 Construction Requirements. Subsection F of that section states "e; new and renovated parking areas are to be constructed with the guidelines in Article XI, Site Plan and Design

Review § 200-94B(2)(f).& quote; The Board asserts that milling, grading and repaving that recently took place and is continuing to take place constitutes "e; renovation.& quote; Therefore the work completed by the applicant and the request to continue such work must be subject to Site Plan Design and review in order to ensure that the work complies with the standards set forth in section 200-94B(2)(f).

The Building Commissioner determined “that no Site Plan and Design review is required for this project”. It is that decision that the **Planning Board is appealing**.

IV ZBA Deliberations and Findings.

1. The distinction between renovation and repair was a concern to the Board .
2. The State law protections for pre-existing structures were discussed.
3. The Randolph Zoning Board of Appeals (ZBA) Agreed with the Building Commissioner determination that the repaving does not constitute a renovation requiring site plan review, as it maintains the existing conditions without adding new features or changing the layout.
4. The ZBA agreed to uphold the Building Commissioner's decision dated November 27, 2024, confirming that site 1 review plan is not applicable for the current paving project
5. The Randolph Zoning Board of Appeals (ZBA) denied the Planning Board's request to overturn the Building Commissioner's decision regarding site plan and design review for the paving work at 19 to 141 Memorial Parkway. By a vote of 4-1.

On denial the roll call vote was:

Chair Alexander Costa Y

Kevin O'Connell N

Barry Reckley Y

Sean Fontes Y

Amanda George Y

APPEALS:

Appeals of this Decision, if any, shall be made pursuant to M.G.L. ch.40A, §17 and shall be made within twenty (20) days after the date of filing of this written decision in the office of the Town Clerk.

Note: The Appeal Process and requirements were explained to the General Public by the ZBA Acting Chairman, Mr. Alexander Costa, at the end of the ZBA meeting on September 26, 2022.

X. RECORDING OF DECISION; LAPSE OF PERMIT:

Pursuant to M.G.L. ch. 40A, §11:

No variance, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the city or town clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, or that if it is a variance which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the petition for the variance accompanied by the certification of the city or town clerk stating the fact that the permit granting authority failed to act within the time prescribed, and no appeal has been filed, and that the grant of the petition resulting from such failure to act has become final, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

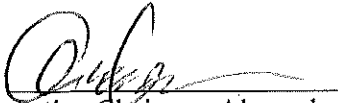
A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

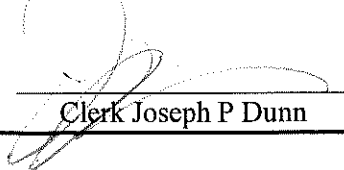
If the rights authorized in this Decision are not exercised within the applicable time limits under M.G.L. ch. 40A, those rights may lapse.

XI. CERTIFICATION OF FILING:

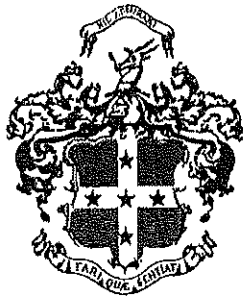
It is hereby certified that that ZBA has complied with all statutory requirements for the issuance of any relief, variances or special permits contained in this Decision and that copies of the Decision and all plans referred to in the Decision have been filed with the Planning Board, Building Department and Town Clerk of the Town of Randolph.

ATTEST: TOWN OF RANDOLPH ZONING BOARD OF APPEALS, ACTING AS THE SPECIAL PERMIT GRANTING AND VARIANCE GRANTING AUTHORITY PURSUANT M.G.L. CHAPTER 40A AND BY AND UNDER THE APPLICABLE ZONING ORDINANCE FOR THE TOWN OF RANDOLPH:


Acting Chairman Alexander Costa


Clerk Joseph P Dunn

Date Filed with Town Clerk: 02/21/2025



TOWN OF RANDOLPH
INC. 1793
December 13, 2024

Town of Randolph

OFFICE OF PLANNING BOARD

TOWN HALL
RANDOLPH, MASS. 02368

2024 DEC 13 P 2:39

RANDOLPH
TOWN CLERK'S OFFICE

To the Zoning Board of Appeals for the Town of Randolph:

The Randolph Planning Board herewith submits an appeal to the Zoning Board of Appeals regarding the **Formal Opinion Pursuant to M.G.L. Ch. 40A, section 7 concerning 19-141 Memorial Parkway** issued November 27, 2024 by Building Commissioner Ronald Lum. Specifically, the Planning Board appeals the Building Commissioner's determination that the paving activity is not subject to Site Plan and Design Review. It is the Planning Board's position that this project is subject Tier 1 Site Plan and Design Review pursuant to Section 200-21(f) of the Town's Zoning Ordinances.

A. The Project Background

19-141 Memorial Parkway is a large commercial property at which a number of businesses, including a Shaw's grocery store operate. The current site plan consists of parking spaces which cover approximately 200,975 square feet of paved surface.

In or around October 8, 2024, the owner of the property commenced milling some portion of a 200,975sf paved surface. That work began without any permits requested from or granted by the Town. Although the Planning Director objected to the work, asserting that the work required a permit, and that Site Plan and Design Review would need to be conducted prior to issuing any permit, the Building Commissioner disagreed and permitted the work to continue.

After a portion of the property had already been repaved, the property owner requested permission to mill and repave an additional section of the property and submitted an online permit request, presumably for a paving permit pursuant to Town Ordinance in § 147-8(A), but did not include any supporting documentation. The Planning Director requested additional information. Ultimately a sketch of existing conditions (with insufficient dimensional details) was provided. The Planning Director, with consent of the Planning Board chairman, declined the permit request asserting that Site Plan and Design Review was required.

An attorney on behalf of the property owner then submitted a request to the Zoning Enforcement Officer (who is also the Building Commissioner), requesting an opinion as to whether the proposed repaving activity at the property required any zoning approvals under the Town's Zoning Ordinances, particularly Site Plan and Design Review. The Building Commissioner determined that no Site Plan and Design review is required for this project. It is that decision that the Planning Board is appealing. A copy of the Building Commissioner's determination is

attached hereto as **Exhibit A**.

B. Planning Board Review of Zoning Ordinance

On December 10, 2024 during a regularly scheduled meeting, the Planning Board determined that the project is subject to Site Plan and Design Review pursuant to Zoning Ordinance Section 200-21 Construction Requirements. Subsection F of that section states *"...new and renovated parking areas are to be constructed with the guidelines in Article XI, Site Plan and Design Review § 200-94B(2)(f)."* The Board asserts that milling, grading and repaving that recently took place and is continuing to take place constitutes "renovation." Therefore the work completed by the applicant and the request to continue such work must be subject to Site Plan Design and review in order to ensure that the work complies with the standards set forth in section 200-94B(2)(f).

C. Article XI, Site Plan and Design Review

The Board asserts that the work is subject to a Tier 1 review as stipulated in the ordinance. Such review would be conducted by the Board's designee, the Planning Director, or, at the request of the Board or the Applicant, conducted by the full Planning Board at a regularly scheduled meeting.

As set forth above, the Planning Board appeals the November 27, 2024 determination of the Building Commissioner that Site Plan and Design review is not applicable to the paving work at 19-141 Memorial Parkway and asserts that the project is subject to Tier 1 site plan review pursuant to Section 200-21(f) of the Town's Zoning Ordinances.

Respectfully submitted on behalf of the Randolph Planning Board,



Michelle R. Tyler
Director of Planning

Cc: Brian Howard, Town Manager
Neil McCole, DPW Commissioner
Noemi Kawamoto, Esq., Brooks & DeRensis



TOWN OF RANDOLPH
INC. 1793

Town of Randolph

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Randolph, Massachusetts 02368
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November 27, 2024

BY EMAIL

Michael A. Leon, Esq.
Nutter McClennen & Fish LLP
155 Seaport Blvd
Boston, MA 02210
mleon@nutter.com

**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.¹

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

¹ 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.

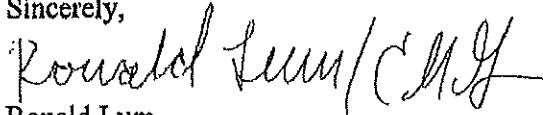
B. Excavation Permit.

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,

A handwritten signature in black ink, appearing to read "Ronald Lum" followed by a stylized monogram or initials.

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