

MEMORANDUM

TO: Durham Planning Board
FROM: R. Timothy Phoenix, Esquire
Monica F. Kieser, Esquire
DATE: February 18, 2022
RE: Toomerfs, LLC
Site Plan and Conditional Use Applications
19-21 Main Street
Tax Map 5 Lots 1-9, 1-10, 1-15, and 1-16
Church Hill District

Dear Vice Chair Parnell and Planning Board Members:

On behalf of Toomerfs, LLC (“Toomerfs” or “Applicant”) and with the input of Michael Sievert, P.E. Horizons Engineering and Randolph Tetreault, LLS, Norway Plains Associates, Inc., we respectfully offer the following to address the outstanding issues related to Toomerf’s Applications for Site Plan Approval and Conditional Use Permit for construction of a 150 space parking lot (the “Project”) on the four lots located at 19-21 Main Street (the “Property”).

This Memorandum will address issues raised by members of the public and/or members of the Planning Board as well as address the Conditional Use Permit Criteria pursuant to Durham Zoning Ordinance §175-23. In addition to items previously submitted to the Board, which will be identified by Title and date, we submit the following new documents:

I. EXHIBITS

- A. Letter from Surveyor Randy Tetreault, LLC
- B. Deeds
- C. Durham Community Church Parking Lot
- E. Steep Slope Plan

II. INTRODUCTION

19-21 Main Street includes four parcels shown on Tax Map 5 as Lots 1-9, 1-10, 1-15, and 1-16 totaling 3.2 acres in the Church Hill District (the “Property”). Two parcels, Lots 1-9 and 1-10 are located in the Historic Overlay District. Lots 1-9, 1-10, and 1-15 are developed with a total of four residential structures occupied as student housing and associated parking. Lot 1-16 also has existing parking spaces on the northeasterly corner but is mostly vacant wooded land. The Property has 226.26’ of frontage on Main Street on the north side of the property, is bordered on the south by residential properties on Chesley Drive, on the west by a residential

student rental property and the Durham Market Place, and on the east by the Durham Community Church and two residential properties. Ingress and egress to the Property is via two one-way lanes, one of which is lined with 14 parking spaces.

The Property is served by municipal water and sewer as well as overhead utilities from Main Street. Sewer lines from three of the four residential structures tie into a service line running from the back of the "Red Tower" building south through Lots 1-15 and 1-16 to the municipal sewer system on Chesley Drive. The two residential properties on Smith Park Lane (Hall and Urso properties) tie into sewer line on the Property pursuant to easements that exist for these purposes. In addition, the Hall and Urso properties are benefitted by an access easement from Main Street. All easements are shown or noted on the Existing Features Plan stamped by Randolph Tetreault, LLS. Ingress and egress to the Property is via one-way lanes to/from Main Street, the latter of which is lined with 14 parking spaces. Currently, the Property contains 43 parking spaces in total.

Toomerfs intends to construct a new driveway entrance and a new surface parking lot on Lots 1-15 and 1-16 and remove one of the four residential structures. The Project will greatly improve access to the Property, enhance its esthetics, reconfigure the existing 43 parking spaces, and expand the parking capacity by an additional 107 spaces, yielding a total of 150 parking spaces. It is anticipated that parking spaces will be rented by students living on or off-site, workforce housing occupants and downtown business employees. The Project includes the replacement of the existing sewer lines to each building on the Property as well as the respective sewer lines from the Hall and Urso properties to the east, all at Toomerf's expense. No deeded sewer or access easements will be disturbed by the Project.

This revised Site Plan Set issued by Horizons Engineering on dated February 2, 2022 is the fifth design revision of the proposed site development and incorporates feedback received throughout the process. The proposed design revision reduces the overall lot disturbance and impervious surface, and eliminates 35 parking spaces from the original submission. The proposal still includes the reconstruction of the access driveway with a 24' wide two-way access to provide a safe access to and from the property for the expanded parking lot. This proposed design will also bring the Property more in compliance with the Durham Site Plan and Historic District Regulations by moving the parking spaces along the entrance lane to the rear of the existing buildings, thereby improving the appearance of the Property from Main Street. The

remainder of the existing original parking spaces will remain largely unchanged, relative to their location, but will be restriped. Existing overhead utilities into the site will be reconstructed underground.

The stormwater system is designed under the proposed parking lot and incorporated into the fill area being constructed to raise the parking area. The parking lot is designed with a slope of 5% from north to south, and a 2% slope on the southerly end from south to north, directing all the surface water from the impervious surfaces to the stormwater system. Catch basins are proposed within the center island to collect all the surface water and direct it into the underground treatment, storage and infiltration system. The system is designed using the Contech Stormwater chambers. The drainage system has been designed to meet the Town's stormwater requirements. Lighting and landscaping are proposed as part of the design, and both have been updated for this current layout. Notably, the site plan includes a 50 – 70 ft. woodland buffer to the south (Chesley Drive) lot line and a 30-39 ft. wooded buffer from the east side lot line and a solid 6 ft. cedar fence 10 ft. from the Urso lot line. In addition, 41 new trees are proposed on the Property including elm, maple, and spruce. In summary, this design requires 25% less fill, provides a much greater setback for abutters, provides shade trees along a much wider internal island, and reduces the impervious surface by 10%.

III. PROJECT HISTORY

Toomerfs submitted a Site Plan Preliminary Application on October 23, 2019 and participated in Design Review until its conclusion January, 2020. Toomerfs filed an Application for Certificate of Approval from the Historic District Commission (“HDC”) on November 23, 2020 and received HDC approval on January 7, 2021. Applications for Site Plan Approval and Conditional Use Permit incorporating feedback obtained in the Design review and HDC process were submitted to the Planning Board on October 28, 2020. Since submission to the Planning Board fifteen months ago, there have been nine public Planning Board meetings (seven which were open for public comment), two Technical Review Group (TRG) meetings, and three site walks¹. In addition, abutters appealed a March 10, 2021 Planning Board decision to the ZBA,

¹ TRG 11/10/2020, 11/18/2020, 12/16/2020 (public), 1/13/2021, 1/27/2021, (vote to for PB to obtain peer review of drainage and traffic issues, public hearing) 2/17/2021 (public), 3/10/2021 (public) 5/12/2021 (public), 9/8/2021 (public), TRG 12/8/2021 and 12/15/2021 (public). Site walks were conducted on 12/2/2020, 5/26/2021, and 1/12/2022.

which resulted in a significant redesign submitted to the Planning Board on May 6, 2021. Abutters then appealed a May 12, 2021 Planning Board decision to the ZBA, resulting in the ZBA's determination that the Project proposes "surface" parking which is permitted in the Church Hill District with a Conditional Use Permit.

IV. CONDITIONAL USE PERMIT CRITERIA

175-23. Approval Criteria.

175-23.C

1. Site Suitability: *The site is suitable for the proposed use. This includes:*

RESPONSE:

The Property is suitable for the proposed expansion because it can accommodate a downtown parking lot while meeting all dimensional requirements. This expansion will provide much needed additional parking in a location within walking distance of the downtown district, will improve the functionality of the Property and other rental and commercial properties owned by the developer and others.

(a) *Adequate vehicular and pedestrian access for the intended use.*

RESPONSE:

Vehicular and pedestrian access currently exists to and from the site. The existing accesses to the site are narrow because of parking adjacent to the driveway and a lack of dedicated pedestrian access, but those conditions have been in place for many years without any major traffic issues. The redesign will provide improved vehicle access by combining the two separated lanes into one two lane access and removing vehicles parked along the exit lane. This will not only improve access for existing and proposed use but will also improve the emergency vehicle access to the site. Vehicular access was reviewed by Durham Public Works (3/10/2021 and 4/9/2021). A town sidewalk exists along the front of the property and a new sidewalk will be connected to the Town sidewalk to provide a pedestrian connection into the site.

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

RESPONSE:

The Fire Department (7/12/2021) review concluded that there would be no additional demand on the Department from the Project. Access for emergency vehicles will be improved with the construction of the new access driveway. The site is serviced by municipal water and sewer. Sewer lines for existing buildings on site and two neighboring properties will be upgraded as part of the Project as well as the Town's Sewer line running to Chesley Drive. Schools will not be impacted by this development; there is no solid waste expected to be generated, and no change to solid waste or recycling disposal systems serving the existing residential structures. The Project has been reviewed by the Altus Engineering and VHB on behalf of the town as well as the Durham Department of Public Works, which has provided Memoranda to the Board (2/10/2021 and 4/9/2021). All sewer improvements and stormwater infrastructure will be installed in accordance with Town.

(c) The absence of environmental constraints (floodplains, steep slope, etc.) or development of a plan to substantially mitigate the impacts of those constraints.

RESPONSE:

There are minimal environmental constraints on this property. The Property is not within the floodplain, and has only one small non jurisdictional wetland pocket that is not impacted by the Project. Buffers to off-site wetlands are maintained. The Property has small areas of slopes greater than 15% scattered around the site, as shown on the steep slope plan (**Exhibit D**). The most northerly areas of steep slopes are manmade due to filling or grading for the construction of the existing parking lot, the most southerly building, and a previous tennis court. The remainder of the areas of natural steep slopes are short and discontinuous, and run along the easterly and southerly boundary and the middle of the westerly boundary at the high point on the property. There is also a small section adjacent to the existing sewer trench that was constructed many years ago on the property. The design takes advantage of the topography on this site by mostly filling in the "bowl" shape in the center of the lot. This is an advantage on the site because the topography slopes inward towards the center of the site, and the adjacent parcels slope inward except for the southwesterly corner. This topography provides another advantage because it is easy to control erosion and stormwater from the site during construction.

The fills will be specifically designed to incorporate the stormwater system and will be placed in lifts and properly compacted and stabilized in accordance with standard construction practices and NHDOT standard specifications. This design meets **Article 8 Natural Resources Standards** of the site plan regulations, because the design follows the natural contours of the landscape by sloping the parking lot in the direction of the natural slope. Construction the newly created steep slope at the low end of the parcel will be completed following the above-mentioned standards. By designing the long and narrower parking lot more centered within the lot, it meets the requirements to protect, enhance and preserve the varied natural resources which include, stonewalls, a wetland and steep slopes on the edges of the property adjacent to abutters.

The development proposal incorporates a balanced environmental design approach by filling the area to incorporate the stormwater system into the fill material and take advantage of the treatment and infiltration properties of the fill, and the development is behind the existing structures as required by the regulations. The landscape plan which includes approximately 41 trees, will provide shading and screening along with the buffers of native and planted vegetation.

(d) The availability of appropriate utilities to serve the intended use including water, sewage disposal, stormwater disposal, electricity, and similar utilities.

RESPONSE:

The site is suitable because of the availability of appropriate utilities to serve the existing and intended use. The central location to the downtown and university make this location ideal for the proposed parking use. The stormwater system will meet LID standards and provide collection, filtration, infiltration, and detention meeting local and state regulations as required. The existing sewer collection system, which is antiquated and in poor shape, will be replaced with the construction of this project to serve all existing buildings currently connected to the sewer system. Because the suitability of the site is demonstrated with respect to pedestrian and vehicular access, adequacy of public services, absence of environmental constraints, and availability of appropriate utilities, this factor is satisfied.

2. External Impacts:

The external impacts of the proposed use on the abutting properties and the neighborhood will 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.

RESPONSE:

The proposed parking lot will not cause have any impact to abutting properties greater than any other existing adjacent or than other uses permitted in the zone. The Property is surrounded by a mix of parking lots, student housing, churches, residences and other commercial uses. The proposed parking lot will not produce odors, noise, vibrations, or fumes out of character than the parking lots that currently exist in the neighborhood. The visual effect at the rear of the lot will be similar to the adjacent Durham Community Church Parking Lot which also slopes toward neighboring properties. **(Exhibit C)**. Vehicle traffic exists on the site today and expansion of the parking lot will not significantly increase the traffic because a large percentage of the vehicles are parked for an extended period of time, and the roadway will remain well below capacity as detailed in the parking study (1/14/2021). In addition, the original traffic study proved that there would be no negative impact to the adjacent public way; it follows that the revised design with 35 fewer parking spaces will present no negative traffic impacts. The external impacts of lighting will be no greater than adjacent uses or other permitted uses in the zone because the exterior lighting has been redesigned using, shields to direct light downward, reducing the fixture height and overall light intensity, and there are plantings to the east and 50-70 ft. wooded buffer to the south. The lighting design meets the site plan requirements, and will be dimmed when not in use. Dust will not be an issue because the parking lot will be fully paved, and access will be improved.

Any development would have external impacts greater than those of the current existing condition, an undeveloped lot. However, the Board is required to consider not whether external impacts are greater than existing conditions, but whether the external impacts are greater than adjacent uses or other permitted uses. A surface parking lot, or even a parking garage, is entirely permitted in the Church Hill Zone as an accessory to another permitted use like a senior care facility, nursing home, library, or light manufacturing facility, all permitted on the site. DZO

§175-5.3 Table of Uses. ² It cannot reasonably be argued that the proposed parking lot would have greater external impacts than those other permitted uses in the zone. The proposed parking lot provides a generous buffer to all abutting parcels and presents no external impacts relating to odors, vibrations, dust, fumes, noise or hours of operation. As demonstrated by the previously submitted traffic study, there will be no negative traffic effects. Lastly, the revised lighting plan ensures the proposed parking lot will be safely lit and shields abutting parcels.

The location and scale of the parking lot is equal to or better than similar parking uses of surrounding properties. This parking lot is positioned behind the buildings, centered within the lot well inside the setbacks and properly screened to a much greater extent than other parking lots in the neighborhood. There will be a natural and planted buffer on the south and east sides of the proposed parking lot. The easterly buffer from the property line is 30-39 ft. and the southerly buffer is 50 -70 ft. from the property line. The closest residence on Chesley Dr. to the property line is an additional 75 ft. beyond the southerly buffer, and the closest residence on Faculty Dr. to the property line is approximately 450 ft. In addition, the nature and intensity of the use will be equal to or in some cases less intensive than other parking lots in the neighborhood because the anticipated tenants will be long-term, whereas the adjacent existing use is a short-term parking lot more than three times the size. This design meets appropriate and orderly development because it provides a generous buffer to abutting properties, does not negatively affect traffic flows, and meets the design intent required by the site plan regulations.

3. 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.

RESPONSE:

In the neighborhood, the property is abutted by parking lots on three sides: the Community Church to the east, St. George's Episcopal Church and 18 Main Street across the street, and Mill

² Even a structured parking lot is permitted as an accessory use in the Church Hill Zone.

Plaza to the west, lots with over 550 total parking spaces (Exhibit B). Therefore, the design is not incompatible with the neighborhood. Additional parking satisfies a growing need to accommodate students, local employees and visitors while encouraging them to park and walk to their destination, and accommodates the loss of parking spaces that occurred with other development in the neighborhood. The proposed parking lot is designed to the rear of all the buildings on the site, behind the peak elevation on the lot, and is properly screened to a greater extent than other parking lots on adjacent properties in the neighborhood. The proposed parking lot is equal to or better than other existing parking lots with respect to its relationship to the existing buildings, streets, screening and buffers. As stated above, there are significant natural and planted buffers, and fencing to screen the parking lot. Moreover, if other permitted uses were developed, such as multi-unit buildings for elderly residences, they would also be visible to the same or greater extent, through natural and planted screening, and would be subject to only a 10' setback by right. Moreover, any two story or greater building would be taller than the proposed parking lot. There is currently a well-established pedestrian access in front of the site, and both pedestrian and vehicle access is being improved to connect with the public access ways.

4. Character of the buildings and structures:

The design of any new buildings or structures and the modifications of existing buildings or structures on the site shall not be incompatible with the established character of the neighborhood. This shall include but not be limited to, the scale, height, and massing of the building or structure, the roof line, the architectural treatment of the front or street elevation, the location of the principal entrance, and the material and colors proposed to be used.

RESPONSE:

The Project proposes no buildings, and will remove one of the existing residential structures on the site. The parking lot is within scale of existing adjacent uses, which include over 550 parking spaces. The parking lot is designed to the correct scale with respect to the size of the parcel and the size of other parking lots on various parcels within the neighborhood. This design meets the requirements with the enhanced access design, the location of the parking lot being placed to the rear of the existing buildings, and properly screened from the adjacent neighborhood. Significant natural and planted buffers between the proposed use and adjacent residential uses are greater than those afforded by nearby developments. In addition, structures

in the Faculty neighborhood are another 450' from the southerly property line of the parcel. Comparing this development to other approved uses on the site, the height of the parking lot is much less at a maximum height of 18.5', compared to a building which can be a maximum of 35' in the zone.

5. 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 sires, scenic views, and viewsheds.

RESPONSE:

The proposed parking lot is designed to preserve all of the existing resources that exist to the greatest extent possible. As can be seen from the proposed site plan, the historic buildings on the site are being preserved and enhanced by the reconstruction of the access and removal of parked cars in the front and side yards. The new parking lot will be behind the existing buildings, reducing its visibility from the public way. There is one small wetland pocket on the site and it is not being impacted, and a natural woodland buffer on the south and east; there are no floodplains, significant wildlife, cemeteries or graveyards on the site, therefore this design does not have a negative impact on natural or cultural resources. Secondly, this design protects the stonewalls along the property lines of adjacent properties, including the south and west. The site is wooded, however, the trees are of low value, with the arborist noting that “[o]ver the next 5 years or so, most, if not all, of the property’s white ash are likely to succumb to the Emerald Ash Borer, an exotic insect now present in the area. Since ash constitutes nearly 2/3rds of the stand’s overstory, the result will be a substantial density of standing dead trees, a condition that persists for 5 to 10 years after mortality” (Forest Assessment, Charles Moreno, 01/8/2020). The Project incorporates approximately 41 newly planted trees including elm, spruce and maple.

6. Impact on property values:

The proposed development will not cause or contribute to a significant decline in property values of adjacent properties.

RESPONSE:

The property value of the subject property was not diminished by the fact that there are several other parking lots of various sizes in and adjacent to this parcel. This design provides a significant natural buffer on the south and east where adjacent residential uses exist, it meets or exceeds all dimensional requirements, the parking lot has a low trip use on a daily basis, (Traffic Study, Stephen Pernaw, 2021) it has properly designed screening, the lighting is shielded, and is appropriate for the use. In addition to these design measures, the sewer service is being updated at no cost to the abutting properties is services. All of these conditions will not cause or contribute to a significant decline in property values of adjacent properties as demonstrated by Town Assessor Jim Rice on February 24, 2021.

7. Availability of Public Services and 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.

RESPONSE:

The only public services required for this parking lot project are drainage and electric utilities. Although not expected to generate solid waste, waste disposal is available on the lot at 21 Main Street provided by a private contractor paid by the owner, and recycling is provided by the town. The design incorporates a new Low Impact Development (LID) stormwater practice and electrical utilities are available and will be reconstructed underground. This parking lot will not increase demand on any municipal services as the owner is responsible for the operation and maintenance.

8. 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 off-set 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.

RESPONSE:

The parking lot is privately owned; therefore, the construction and maintenance will be borne by the owner. There are no negative fiscal impacts to the town because there are no costs to the schools, or the town. Positive fiscal impacts will result from the increase in the tax base as a result of the development, and private parking lots will serve and facilitate development in the downtown core, thereby supporting overall economic activity in the town. Furthermore, the town sewer line that crosses the property is deteriorated clay pipe, and the cost of its upgrade will be borne by the owner.

V. OUTSTANDING ISSUES**A. Hall and Urso Easements/Rights-of-Way.**

At the December 15, 2021 Public Hearing, Michael Urso addressed the Planning Board and claimed that any proposal presented by Toomerfs violates two easements granted to Urso's Predecessor-in-Title (McIntire) by Toomerf's Predecessor-in-Title (Quinby). Mr. Urso's efforts to research and present to the Planning Board on these complicated issues is laudable, but his assertions are procedurally and substantively incorrect. The Board is not obligated to consider the effect of private land use restrictions in the permitting process and to the extent that sewer easement and rights-of-way exist, they are not negatively affected by the Project.

The fact that a parcel is burdened by an easement generally does not factor into a land use board's analysis relating to a variance, special exception, or even a building permit. Loughlin, P, 15 New Hampshire Practice: Land Use and Planning Ch. 37 Private Restrictions on Land Use: Effect of Private Controls on Public Land Use Review. §37.09; See also Chasse v. Candia, 132 N.H. 574 (1989)(private restrictions do not override zoning ordinance). "Planning boards need to be mindful of the fact that, as a general rule, these private disputes should not enter into the local review process...If an abutter has legitimate rights under a private restriction, it is up to that abutter to enforce those rights by private action." Id. See also Price v. Planning Board, 120 N.H. 481 (1980). (Plaintiff's right-of-way conferred standing for plaintiff to appeal but did not provide Planning Board grounds for denial).

Although the existence of easements should not factor into the permitting process, Toomerfs has requested that its surveyor confirm the various easements and their respective locations. (**Exhibit A**). All easements with identified locations are shown on the Plan based on

Surveyor Randy Tetreault's research into the relevant deeds. **(Exhibit B)**. The Urso property is benefitted by a 15 ft. sewer easement granted to their Predecessor McIntire. That sewer easement is supported by a metes and bounds description specifying its location, although the subsequent construction of the sewer pipe located it outside of the metes and bounds of the easement. The Urso sewer line (and one from the Hall parcel) connect to a longer sewer line running through the Red Tower property toward Chesley Drive. As all of these sewer pipes are likely in poor condition, the Project will remove and relocate the line running through Toomerf's property closer to the east side of Toomerf's Property and will reconstruct the Hall and Urso sewer lines and connect them in two respective locations just east of the paved portion of the parking lot. Because the Project improves upon existing conditions and does not impair the sewer easement granted to Urso's Predecessor, and there does not appear to be any sewer line within that easement, the Project does not violate Toomerf's obligations regarding the sewer easement.

Hall's family was granted a 16 ft. wide access easement over Toomerf's property ("Hall easement") **(Exhibit B)** which is shown as a curved shaded path from Main Street to the Hall parcel, the existence and location of which is documented in earlier reference plans. Urso's deed provides access over Smith Park Lane:

Together with the right to use in common with others the roadway leading from the main road in Durham Village just north of the Durham Community Church for purposes of entering the property from the easterly boundary of said property...

Urso's Predecessor-in-Title was also granted use of the Hall easement:

...together with the free and unobstructed use of a 16 ft. right-of-way across land herein described to Main Street; being the same right of way granted to Harry W. Hall and Mary Jane Hall... .

Toomerf's deed also references an extension of this 16 ft. right-of-way for the benefit of the Urso's Predecessor McIntire; however, no deed ever provided a metes and bounds description of the location or other reference to the location of that extension and no reference plan ever depicted the location of the 16 ft. access path beyond where it connected with the Hall property as shown in the Existing Features Plan. Although such right-of-way's location is undetermined and, upon information and belief, neither Urso's Predecessors in-Title nor Urso have used this right-of-way, the logical location of the extension of the Hall right of way is along the

Toomerfs/Hall boundary line and terminates at the Urso property. Therefore, this right of way is not affected by Toomerf's proposal as a 30-39 ft. wooded buffer is retained between the Urso lot line and the proposed parking lot. The placement of the cedar fence proposed for the benefit of Urso can easily be made 16 ft. shorter. Accordingly, Urso's right-of-way, to the extent it still exists, is not obstructed by the Project.

B. Planning Board's Role

The Durham Zoning Ordinance ("DZO" or the "Ordinance") provides for both surface and structured parking in the Church Hill District, as accessory uses to an allowed principal use like a multi-unit senior housing, senior care facility, nursing home, adult day care, arts center, museum, library, church, offices, or light manufacturing facility, DZO §175-5.3 Table of Uses, many if not all of which would have greater external impacts to neighbors than the proposed parking lot. Surface parking lots *as a principal use* on a Church Hill lot are permitted with a Conditional Use Permit (CUP) from the Planning Board. As a threshold issue, we note that this Board has already determined that the Project is a "surface" parking lot within the meaning of the Durham Zoning Ordinance, a decision that was upheld by the Durham Zoning Board of Adjustment ("ZBA"). While the purposes of the Durham Site Plan Regulations guides Planning Board evaluation of the Project's compliance with its regulations, including conformance with Conditional Use Permit criteria, the Planning Board review is subject to the Ordinance and previous decision of the ZBA which together dictate the various uses that are permitted by right or by Conditional Use Permit, as well as the appropriate dimensional requirements. See Loughlin 15 New Hampshire Practice Ch. 30 Site Plan Approval §30.09. (Planning Board may not use the site plan approval process to deny a use it deems inappropriate as this would undermine zoning and deny landowner protection.). A permitted use cannot be barred by site review absent unusual public health, safety or welfare concerns, which here clearly do not exist. Derry Senior Dev., LLC v. Town of Derry, 132 N.H. 431, 451-52 (2008).

The Planning Board's Site Plan Review as authorized pursuant to RSA 674:43 is limited to an analysis of discrete elements of the design

This is accomplished by reviewing site plans to determine if they properly address such issues as surface and sanitary drainage, the effect on groundwater, and the creation of pollution sources. The planning board also determines whether proper provisions are made for public safety, traffic circulation, and open spaces.

Loughlin, P, 15 New Hampshire Practice: Land Use and Planning Ch. 30: Site Plan Approval §30.02. During this process, the Planning Board has an obligation to work with the Applicant.

NH Const. Pt. 1, Art. 1:

Planning boards nonetheless have an obligation under the New Hampshire Constitution to provide assistance to all citizens. The subdivision/site plan process is not a completely adversary process. The planning board has a duty to advise applicants and otherwise work with them as they attempt to negotiate the permit process.

Planning boards must act reasonably in applying the statutory and municipal regulations to each application.

Loughlin, P, 15 New Hampshire Practice: Land Use and Planning Ch. 32: Planning Board Procedures on Plat §32.17 (other citations omitted). Similarly, the Conditional Use Permit “shall be approved if the application is found to be in compliance with the approval criteria in Section 175-23.” DZO, Art. VII, §175-21.

Consider Trustees of Dartmouth College v. Town of Hanover, 171 N.H. 497 (2018) where the New Hampshire Supreme Court reviewed Hanover’s denial of site plan approval for Dartmouth’s indoor practice facility and observed:

Our review of the record of the board's deliberative session supports Dartmouth's contention that the board unreasonably relied upon personal feelings and ad hoc decision-making in denying the college's application. This record reveals that the board was more concerned with the IPF's scale and height, characteristics governed by specific zoning ordinances, than the building's aesthetics or its allegedly negative impacts on the environs.

Although the Superior Court had upheld the Planning Board denial, the Supreme Court reversed finding that Hanover’s Planning Board engaged in ad hoc reasoning characterized by conclusory statements and personal feelings unsupported by the evidence or the applicable regulations.

As evidenced by multiple meetings regarding this Project and the reams of submitted Public Comment, members of the public have strong views about the Project, particularly given its proximity to the Mill Plaza parcel. The Planning Board must focus on this Project in isolation from others, and make its decision based only upon the application of Conditional Use Permit Criteria and Site Plan Regulations, rather than act on public opinion urging the Planning Board to substitute its judgement for that of the Ordinance and the ZBA regarding whether the Project is a surface parking lot permitted by CUP. Over the last year and a half, Toomerfs has engaged in

good faith by continually revising the Project in response to feedback from the Board, its Peer Reviewers, and the public. As refined, reduced, and improved, the Project complies in all respects with the dimensional requirements of the Church Hill Zone, meets the Conditional Use Permit Criteria and complies with Site Plan Regulations and therefore must be approved.

C. Development Rights

As is often the case with a vacant undeveloped lot, opposition focuses on conservation minded considerations, or the desire to retain long-standing public use of a parcel. As noted by Alternate Elie Lonske:

It's the whole project which has the advantage from the owner's point of view of making money...and it has the advantage of for students who want to have their cake and eat it too. They want to be able to be close to campus but also have the car. But I don't understand why the Planning Board of the Town should vote for something that is a convenience for the students and something that would be a profit making venture for you.

December 15, 2021 DCAT beginning at 8:12 p.m. Aside from demonstrating impermissible bias instead of an open mind, Ms. Lonske failed to consider the Planning Board's discrete role and its obligation to work with applicants. The answer to Alternate Lonske's question is that Toomerfs has constitutional rights to develop and use the Property as it sees fit. "The right to use and enjoy one's property is a fundamental right protected by both the State and Federal Constitutions." N.H. CONST. pt. I, arts. 2, 12; U.S. CONST. amends. V, XIV; Town of Chesterfield v. Brooks, 126 N.H. 64 (1985) at 68. Part I, Article 12 of the New Hampshire Constitution provides in part that "no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people." Thus, our State Constitutional protections limit the police power of the State and its municipalities in their regulation of the use of property. L. Grossman & Sons, Inc. v. Town of Gilford, 118 N.H. 480, 482 (1978). "Property" in the constitutional sense has been interpreted to mean not the tangible property itself, *but rather the right to possess, use, enjoy and dispose of it.* Burrows v. City of Keene, 121 N.H. 590, 597 (1981). (emphasis added). This does not mean there are no constraints upon Toomerf's use of the Property, but given that the Project is permitted by Conditional Use Permit as determined by the ZBA, meets the CUP Criteria and satisfies the Site Plan Regulations, the Planning Board is obligated to issue the CUP and grant Site Plan Approval regardless of the views of any member of the public or individual board member.

D. Compliance with The Durham Master Plan

Alternate Elie Lonske also questions why the Planning Board would approve a proposal that, in her opinion, does not conform to Durham's Master Plan or to the University of New Hampshire's ("UNH") parking policy. The Project meets the goals of the Master Plan, which includes strategies to increase parking and promote a "park and walk" culture in Durham's downtown. Regardless, it is important for the Board to understand the role of the Master Plan, and how its function differs from that of the Ordinance or Site Plan Regulations because "[i]t is common place at public hearings on subdivision and site plan applications for proponents and opponents to cite some passage from the master plan as the reason why the planning board should act in some way or another." Loughlin, P, 15 New Hampshire Practice: Land Use and Planning Ch. 32: Planning Board Procedures on Plat §32.06.

A review of the plain language of the statute authorizing master plans makes clear its function is merely as a guidance document. RSA 674:2, I states:

The purpose of the master plan is to set down as clearly and practically as possible the best and most appropriate future development of the area under the jurisdiction of the planning board, to aid the board *in designing ordinances* that result in preserving and enhancing the unique quality of life and culture of New Hampshire, and to guide the board in the performance of its other duties in a manner that achieves the principles of smart growth, sound planning, and wise resource protection.

(Emphasis added). RSA 674:2, II continues:

The master plan shall be a set of *statements and land use and development principles* for the municipality with such accompanying maps, diagrams, charts and descriptions as to give legal standing *to the implementation ordinances* and other measures of the planning board. Each section of the master plan shall be consistent with the others in its implementation of the vision section. The master plan shall be a public record subject to the provisions of RSA 91-A.

The plain language of RSA 672 does not describe a regulatory document with precise provisions, but rather a necessary tool in development of a municipality's ordinances and regulations. In addition, unlike Zoning Ordinances and Site Plan or Subdivision Regulations, the Master Plan is not put forth at Town Meeting and enacted by the voters. RSA 674:4. It is merely for guidance and it is subject to existing provisions of the Durham Zoning Ordinance, Site Plan and

Subdivision Regulations approved by the legislative body. If an issue exists, the remedy is to revise the Ordinances or Regulations, not to use the Master Plan as a basis to deny an application.

Beyond the statutory language identifying the purpose of a master plan and the fact that it is not adopted by voters, the New Hampshire Supreme Court has confirmed that a master plan may *not* be a basis to deny subdivision or site plan approval. Rancourt v. Town of Barnstead, 129 N.H. 45 (1986); Loughlin, P. 15 New Hampshire Practice: Land Use and Planning Ch. 32: Planning Board Procedures on Plat §32.06. In Rancourt, the Planning Board developed and adopted a master plan with specific targets for growth, but the municipality had not enacted a growth ordinance that would provide the necessary guidance to a developer or applicant. The Planning Board denied Rancourt's subdivision application because of the impact on the town's growth rate, school population and natural resources. The Superior Court upheld the denial, but the New Hampshire Supreme Court reversed, holding that the Planning Board could not use the master plan to deny a proposal, because to do so would provide more weight to the master plan than the legislature intended. Id. at 48.

In the Rancourt decision, the Supreme Court distinguished between the content of and method of adoption for a master plan and the concrete guidance ordinances or regulations enacted by the legislative body provide before holding that the master plan should be used only as a guide. Id. at 49; Loughlin, P. 15 New Hampshire Practice: Land Use and Planning Ch. 32: Planning Board Procedures on Plat §32.06. This same guidance is found in the 2020 Planning Board Handbook developed by NH Office of Strategic Initiatives:

The master plan is an advisory document and the decision of the planning board must focus on uses permitted by the zoning ordinance and address the requirements contained in the subdivision, or site plan review regulations.

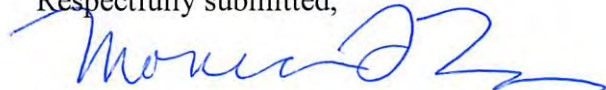
Accordingly, the regulatory framework applied is the DZO, which provides that surface parking as a principal use is permitted with a Conditional Use Permit and directs the Planning Board to grant a CUP if the application complies with §175-23 and specific Site Plan Regulations to guide the Board's evaluation of drainage, vehicular circulation, and the like. Moreover, an impartial interpretation of the Master Plan shows support for the development of the proposed parking lot:

“Parking has long been and will continue to be a challenge for Durham. Parking can be a contentious issue, and the consensus among the community is that there is not enough downtown parking. The Town will continue to evaluate and monitor parking supply and demand as the character of the downtown and commercial core changes. Data indicate that, overall, there is an adequate parking supply in downtown [in 2015]....It is anticipated that student housing/commercial development and redevelopment efforts in the downtown area will impact the availability of parking for students and business patrons, placing strain on supply.” (Durham Master Plan, DCC-12).

There has been considerable development in the downtown core since that section was included in the Master Plan in 2015, including the addition of more than 1,000 beds and elimination of over 150 parking spaces.

In summary, the Project meets the parking needs identified in the Master Plan in a manner that uses less fill, provides a much greater setback for abutters, provides 41 trees including elm, maple, and spruce, and reduces the impervious surface by 10% over earlier proposals. For all the reasons stated herein and in previous submissions, we respectfully request the Planning Board grant Site Plan Approval and the Conditional Use Permit.

Respectfully submitted,



R. Timothy Phoenix
Monica F. Kieser

NORWAY PLAINS ASSOCIATES, INC.

LAND SURVEYORS • SEPTIC SYSTEM DESIGNERS • CIVIL ENGINEERS

P.O. Box 249
2 Continental Blvd.
Rochester, NH 03866-0249
603-335-3948
www.norwayplains.com



P.O. Box 268
31 Mooney Street
Alton, NH 03809-0268
603-875-3948



February 14, 2022

Michael J. Sievert, PE
VP Structural Engineering
Horizons Engineering, Inc.
5 Railroad St., Newmarket, NH 03857

**Re: Existing Features Plan – Toomerfs, LLC – Main Street – Durham, New Hampshire
Town Tax Map 5, Lots 1-9, 1-10, 1-15, & 1-16 - #19, 20 & 21 Main Street**

Dear Mr. Sievert,

Per your request, please have this letter serve as an explanation of the right of way question and or concerns as they appear on the above referenced plan. This retracement survey was conducted by our office in 2018 and recently finalized in its present form.

The 16' right of way or right to pass and repass location over property designated as TM 5 lots 1-10, 1-15 & 1-16 to the "Hall" property TM 5 lot 1-12 is as shown on my existing features survey plan in the hatched area extending south-southwesterly from Main Street to the westerly boundary of said lot 1-12. This location was taken from information as shown on Reference Plan #3. That plan indicated that it was the "right of way as now traveled". The plan was prepared in 1980 and revised April 23, 1982 By Bruce L Pohopek, LLS #538. It is on file with the Town of Durham.

The right of way location over TM 5 lots 1-10, 1-15 & 1-16 to the "Urso" property TM 5 lot 1-13 could not be determined. Although written evidence outlined in SCR 779/245 *Loveren* (Toomerf's predecessor in title) to *McIntire* (Urso's predecessor in title) indicates an extension of Hall's 16' right of way, its precise location was not described sufficiently enough in the deed description to allow us to depict it and or determine an actual location properly. In these cases my obligation as surveyor is simply to note that one exists.

The 1940 Potential or *Proposed Development Sketch* of the "Red Tower Estate" (submitted to the Planning Board by Mr. Meadows does appear to show a passway (in dashed lines) heading toward the Hall lot. This location appears to be in the same location as the "right of way now travelled" shown on Reference Plan #3 and our Existing Conditions Plan. The solid lines that are indicated as a roadway on this potential subdivision sketch over and around lots 1-10, 1-15 & 1-16 is not the *right of way* over these lots. To my knowledge this proposed road was never constructed on the four parcel subject premises (Toomerfs, LLC) and the four subject parcels were not conveyed out according to the 1940 sketch. It does not appear that adjoining lots 5-1-12 & and 5-1-13 were either.

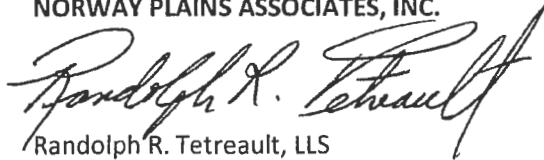
Reference Plan #1 (1944) depicts the original subject property and surrounding properties and does not show any interior lots or roadways. It also does not show the right of way to the "Hall" property as it was prepared just before that original conveyance.

The proposed sewer service easement location was determined by deed language and called for measurements. It appears that the actual or practicable location of the service line ended up being installed in a slightly different location.

I trust this letter will be sufficient in addressing your questions and or concerns.

Respectfully yours,

NORWAY PLAINS ASSOCIATES, INC.

A handwritten signature in black ink, reading "Randolph R. Tetreault". The signature is written in a cursive style with a large, stylized initial "R".

Randolph R. Tetreault, LLS

Return to:

Timothy L. Cripe, Dawn E. Cripe, Michael F. Urso and Sandra A. Ceponis
5 Smith Park Lane
Durham, NH 03824

Handwritten initials: TJC

Handwritten: URSO



WARRANTY DEED

STATE OF NEW HAMPSHIRE

DEPARTMENT OF REVENUE ADMINISTRATION

REAL ESTATE TRANSFER TAX

**** THOUSAND 0 HUNDRED AND 30 DOLLARS

MO	DAY	YR	AMOUNT
01	12	2007	\$ 4050.00

VOID IF ALTERED

John Barbour, married, of 5 Smith Park Lane, Durham, NH, for consideration paid grant to Timothy L. Cripe and Dawn E. Cripe, husband and wife, of 34 Batchelder Road, Raymond, NH and Michael F. Urso and Sandra A. Ceponis, husband and wife, of 421 Hillcrest Lane, Lombard, IL as joint tenants with rights of survivorship, with warranty covenants;

A certain parcel of land with the buildings thereon situated in the Town of Durham, bounded and described as follows:

Beginning at an iron pipe driven in the ground at the Southeast corner of the premises conveyed then running N 83° 53' W, a distance of One Hundred and Fifty-one and Five Tenths (151.5) feet by land of Forrest Smart to an iron pipe driven in the ground;

1. Northerly on a curve to the right with a radius of sixty five and two tenths (65.2) feet, a distance of Forty and One Tenth (40.1) feet to an iron pipe driven in the ground;
2. N 31° 19' E, a distance of Three Hundred and Twenty on (321) feet to an iron pipe driven in the ground;
3. Turning an angle of 90° and running S 58° 41' E, a distance of One Hundred Thirty three and Four tenths (133.4) feet by land of Harry H. Hall and Mary Jane Hall to an iron pipe at the base of the stone wall;
4. S 30° 00' W, a distance of One Hundred Fifty (150) feet to a right of way hereinafter described to an iron pipe driven in the ground;
5. S 27° 33' W, a distance of One Hundred and Seventeen and three tenths (117.3) feet by said right of way to an iron pipe driven in the ground;
6. S 21° 38' W, a distance of Twenty-seven and Four tenths (27.4) feet to the point of beginning.

Together with the right to use in common with others the roadway leading from the main road in Durham Village just north of the Durham Community Church for purposes of entering said property from the easterly boundary of said property together with the free

BK 3482PG0182



and unobstructed use of a sixteen (16) foot right of way across land herein described to Main Street; being the same right of way granted to Harry W. Hall and Mary Jane Hall and Clarence F. Hamilton.

Together with a fifteen (15) foot right of way for the purpose of a sewer line contained in a deed from Harold W. Loveren to Robert W. McIntire dated June 8, 1955 and recorded at the Strafford County Registry of Deeds at Book 684, Page 409

Meaning and intending to describe and convey the same premises as conveyed to the within Grantor by Deed of Beatrice R. Bamford a/k/a Beatrice E. Bamford, dated August 24, 1984 and recorded in Book 1142, Page 732 of the Strafford County Registry of Deeds.

Valerie, B. Barbour, spouse of John Barbour, hereby releases and all homestead rights/interest in the described property.

5 Smith Park Lane, Durham, NH 03824

Executed this January 10, 2007.

John L Barbour
John Barbour

Valerie B Barbour
Valerie B. Barbour

STATE OF NEW HAMPSHIRE

Rockingham SS

The foregoing was acknowledged before me this January 10, 2007 by John Barbour and Valerie B. Barbour.



Kelley A Shea
Notary Public/Justice of the Peace
My commission expires:

JK
VB MFUBYSAC POA SAC
Buyer Initials

BK 3482PG0183

Hall

Doc # 0029893 Apr 16, 2008 3:16 PM
Book 3635 Page 0306 Page 1 of 3
Register of Deeds, Strafford County

Return to:
Laboe Associates, P.L.L.C. ^{ADD}
6 Loudon Road, Suite 307
Concord, NH 03301

2

FIDUCIARY DEED

KNOW ALL MEN BY THESE PRESENTS that Charter Trust Company, Trustee of the Mary Jane Hall Trust, of 90 N. Main Street, Concord, Merrimack County, New Hampshire 03301, by the power conferred by the terms of the Mary Jane Hall Trust and every other power, for the love and affection of a mother for her son, grants to William F. Hall, single, of 3 Smith Park Lane, Durham, Strafford County, New Hampshire 03824, a certain tract of land, together with any building(s) or other improvement(s) thereon, situated in Durham, Strafford County, New Hampshire, bounded and described as follows:

Beginning at land now or formerly of Harold W. Loveren and Madeline L. Home (hereinafter "Loveren and Home") at an iron pipe driven in the ground bearing N 59° 30' W and being 37.8 feet from the northwesterly corner of land now or formerly of the Congregational Society; thence
Running S 59° 40' E by said land now or formerly of Loveren and Home and now or formerly of the Congregational Society 150 feet, more or less, to a corner at an iron pipe driven in the ground; thence
Turning and running S 30° 20' W by said land now or formerly of the Congregational Society and land now or formerly of one Ellison in a straight line 200 feet, more or less, to an iron pipe driven in the ground; thence
Turning and running N 59° 40' W 150 feet, more or less, to an iron pipe driven in the ground; thence
Turning and running N 30° 20' E 200 feet, more or less, to the point of beginning.

Also conveyed is the free and unobstructed use of a sixteen (16) foot wide right of way from the property herein described across other land now or formerly of Loveren and Home, to Main Street, reserving to Loveren and Home, their heirs and assigns, the right to pass over, inspect, maintain and repair sewers, water pipe lines, water tower and appurtenances (if they still exist - See deed recorded in Strafford County Registry of Deeds in Book 541, Page 345, regarding removal of the water tower.) within the bounds of the above described property.

Also conveyed is the right to use in common with others the roadway leading from the Main Road in Durham Village just north of the now or former Congregational

Church for the purpose of entering the above described property over the easterly boundary of said property.

This conveyance is together with the benefits of and subject to all the conditions and easements as set forth in the deed of Harold W. Loveren and Madeline L. Horne to Mary Jane Hall and Harry Hepburn Hall dated December 30, 1944, recorded in Strafford County Registry of Deeds in Book 541, Page 345.

(This deed corrects certain references to "grantors" in the deed from Mary Jane Hall to Fleet Bank - NH of Portsmouth as Trustee of the Mary Jane Hall Trust dated July 31, 1990, recorded in Strafford County Registry of Deeds in Book 1652, Page 768, by inserting the correct references to Loveren and Horne. See deeds recorded in Strafford County Registry of Deeds in Book 541, Page 345, and in Book 520, Page 470, and Plan # 4-3-7.)

Meaning and intending to describe and convey the same premises Mary Jane Hall conveyed to Fleet Bank - NH of Portsmouth as Trustee of the Mary Jane Hall Trust dated July 31, 1990, by deed dated July 31, 1990, recorded in Strafford County Registry of Deeds in Book 1652, Page 768.

Subject to the rights and easements granted to the New England Telephone and Telegraph Company and to Public Service Company of New Hampshire by the document dated July 19, 1994, recorded in Strafford County Registry of Deeds in Book 1760, Page 0379, and the corrective deed of near or even date to be recorded.

The Mary Jane Hall Trust is an irrevocable trust. Mary Jane Hall, the Grantor in the Mary Jane Hall Trust, died on or about January 21, 1995, in Exeter, New Hampshire. This conveyance memorializes the transfer to the beneficiary under the terms of that Trust which was created and funded for estate planning purposes as a testamentary substitute.

The undersigned trustee as Trustee under the Mary Jane Hall Trust created by Mary Jane Hall as grantor under trust agreement dated July 31, 1990, and thereto has full and absolute power in said trust agreement to convey any interest in real estate and improvements thereon held in said trust; and no purchaser or third party shall be bound to inquire whether the trustee has said power or is properly exercising said power or to see to the application of any trust asset paid to the trustee for a conveyance thereof.

Executed this 24th day of August, 2007.

Charter Trust Company,
Trustee of the Mary Jane Hall Trust

By: DJ DeStefano
Diane J. DeStefano
Its: Vice President
Duly Authorized
(Sign in Blue Ink.)

STATE OF NEW HAMPSHIRE
MERRIMACK COUNTY

Diane J. DeStefano, duly authorized Vice President of Charter Trust Company, acknowledged the forgoing instrument on behalf of Charter Trust Company in its capacity as Trustee of the Mary Jane Hall Trust before me, the undersigned, this 24th day of August, 2007.

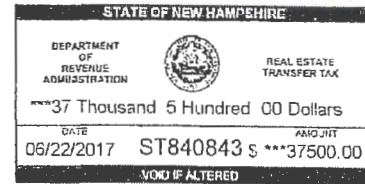


Leo P. Graciano
Notary Public/ Justice of the Peace
(Sign in Blue Ink.)

LEO P. GRACIANO
Print clearly name of NP/JP
My commission expires: 9-13-11
AFFIX SEAL/ STAMP



TOOMERFS



WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS THAT KYREAGES, INC.,
a New Hampshire corporation, whose mailing address is PO Box 174, Eliot, Maine,
03903,

For consideration paid, grants to **TOOMERFS, LLC**, a New Hampshire limited
liability company, whose address is 37 Main Street, Unit O, Durham, New Hampshire,
03824,

With Warranty covenants the following described premises situate in Durham,
Strafford County, New Hampshire:

Parcel 1: 21 Main Street, Durham, NH:

A certain parcel of land with the buildings thereon, situate in Durham, County of
Strafford and State of New Hampshire. on the southerly side of Main Street, bounded and
described as follows:

Beginning at a stone wall on the southerly side of said Main Street at the northwesterly
corner of land formerly owned by Harold W. Loveren; thence running S 31° 13' W by
land of said Loveren a distance of One Hundred Seventy-four and four-tenths (174.4)
feet; thence turning and running N 58° 39' W by land formerly of John J. McCann a
distance of twenty-three and seven-tenths (23.7) feet; thence turning and running S 31°
21' W by land of said McCann one and four-tenths (1.4) feet; thence turning and running
N 58° 39' W by land of said McCann and land now believed to be of one Tamposi and
others to land formerly of Runlett and now of Cutter; thence turning and running N 31°
44' E by land of Cutter a distance of One Hundred Seventy-six and one-tenth (176.1)
feet, more or less, to Main Street; thence turning and running S 58° 19' E by and along
said Main Street to the point of beginning.

Being the same premises described in Warranty Deed of George Findell, Jr., to the within
Grantor dated March 1, 1978, recorded in Strafford County Registry of Deeds, Book
1011, Page 339.

Parcel 2: 12 Cowell Drive, Durham, NH:

A certain lot of land with the building thereon, situate in Durham and bounded and
described as follows:

BEGINNING at an iron pin driven in the ground at the Northeasterly corner of the land described herein, being Lot Number 5, said corner being the intersection of the Southerly sideline of Cowell Drive, so-called, and the Westerly boundary of land now or formerly of E. G. and V. M. Day (Lot Number Four) as shown on a "Plan of Land of Russell S. and Mildred W. Harmon, Durham, N.H., dated May 9, 1950," which plan is recorded in Drawer 6LL (now re-indexed as Plan #4, Pocket 4, Number 3) in the Strafford County Registry of Deeds; thence running South $74^{\circ} 52'$ W by the Southerly sideline of Cowell Drive, so-called, a distance of One Hundred Thirty-five and Ninety-eight Hundredths (135.98) feet to an iron pin driven in the ground; thence turning and running South $35^{\circ} 46'$ W a distance of Fifty-one and Thirty-eight Hundredths (51.38) feet to a point in a stone wall; thence turning and running Southeasterly along a stone wall, which is the Northerly boundary of land now or formerly of C. S. Parker, a distance of One Hundred Sixteen and Five Tenths (116.5) feet; thence turning and running Northeasterly along a stone wall a distance of Four (4) feet by land now or formerly of Harold W. Loveren; thence turning and running Southeasterly along a stone wall by land now or formerly of Harold W. Loveren a distance of Nine (9) feet, more or less; thence turning and running Northeasterly along a stone wall by land now or formerly of Harold W. Loveren a distance of Sixty (60) feet, more or less thence turning and running Northeasterly along the Westerly boundary of land now or formerly of E. G. Day and V. M. Day a distance of Ninety-three and Three Tenths (93.3) feet to the point of beginning.

The above described premises are conveyed with the right to use the roads, streets and passageways as shown on said plan for all purposes for which private ways and streets are commonly used in said Durham, and also subject to zoning laws and building restrictions of the Town of Durham.

Being the same premises described in Warranty Deed of Howard Vallance Jones, Jr. to the within Grantor dated June 15, 1983, recorded in Strafford County Registry of Deeds, Book 1102, Page 797.

Parcel 3: 18 Main Street, Durham, NH:

A certain parcel of land with the buildings thereon situate on the Northerly side of Main Street in the Town of Durham, County of Strafford and State of New Hampshire, known as #18 Main Street, bounded and described as follows:

Beginning at a point on the Northerly side of Main Street at the Southeasterly corner of land formerly of Powell and now of one Cutter; thence running in a Northeasterly direction by and along said land of Cutter a distance of One Hundred Fifty-Three (153) feet, more or less, to the Northeasterly corner of said Cutter land and land of New England Telephone and Telegraph Company; thence continuing in a Northeasterly direction by and along said land of New England Telephone and Telegraph Company; thence continuing in a Northeasterly direction by and along said land of New England Telephone and Telegraph Company, a distance of One Hundred Twelve (112) feet, more or less to the Southwesterly corner of land now or formerly of Jones; said land of Jones a distance of One Hundred Twenty-Five (125) feet, more or less; thence turning and running in a Southeasterly direction a distance of Two Hundred Sixty-Five (265) feet,

more or less to Main Street; thence turning and running in a Northwesterly direction by and along said Main Street a distance of One Hundred Forty-Five (145) feet, more or less, to the point of beginning.

Being the same premises described in Warranty Deed of Paul A. Dubois and Patricia D. Dubois to the within Grantor dated July 24, 1981, recorded in Strafford County Registry of Deeds, Book 1068, Page 186.

Parcel 4: 19 Main Street, Durham, NH:

A certain tract or parcel of land with the buildings thereon, situate in Durham, County of Strafford and State of New Hampshire, bounded and described as follows, to wit:-

TRACT I: A certain tract of land, with the buildings thereon, situate on the southerly side of Main Street in the Town of Durham, County of Strafford and State of New Hampshire, bounded and described as follows, to wit:

Beginning at a fence at the junction of the southerly line of Main Street and the westerly line of property belonging to the Congregational Church Society; thence running South $31^{\circ} 13'$ West along said fence and Congregational Church Society land a distance of one hundred sixty-five and seven tenths (165.7) feet, more or less; thence running North $59^{\circ} 40'$ West, a distance of thirty-seven and eight tenths (37.8) feet, more or. Less, to an 'iron pipe driven in the ground; thence running North 65° West ,a distance of ninety-six (96) feet, more or less, to an iron pipe driven, in the ground; thence ,running North $58^{\circ} 38'$ west a distance of thirty-two (32) feet, more or less, to an iron pipe driven in the ground at the southeast corner of land known as the Wright property; thence running North $31^{\circ} 13'$ East a distance of one hundred seventy-four and two tenths (174.2) feet, more or less, to Main Street; thence running South $60^{\circ} 22'$ East, a distance of one hundred sixty-four and six tenths (164.6) feet, more or less, along Main Street to the point of beginning.

A This tract is subject to a right of way sixteen (16) feet wide extending through the property herein described to Main Street, said right of way to be used by the grantee in common with others.

TRACT II: A certain tract of land situate off the southerly side of said Main Street, in said Durham, bounded and described as follows, to wit:

Beginning at an iron pipe set in the ground at the easterly side of land now of one McCann, formerly of Hamilton; thence running in a northeasterly direction seventy-two (72) feet, more or less, to an iron pipe at land of one Hall; thence turning and running South $31^{\circ} 19'$ West two hundred (200) feet, more or less, by land of said Hall to an iron pipe at land of Bradford McIntire; thence continuing on the same course by land of said McIntire a distance of two hundred seventy-five (275) feet, more or less, to a stone wall; thence turning and running North $60^{\circ} 00'$ West and North $57^{\circ} 22'$ West by said stone wall a total distance of two hundred thirty-two and five tenths (232.5) feet, more or less, to an iron pipe at the intersection with another stone wall at land of Osgood; thence turning and

running North 35° 15' East by said other stone wall along land of said Osgood two hundred sixty-five and three tenths (265.3) feet, more or less, to an iron pipe at land now of McCann, formerly of Hamilton; thence turning and running South 58° 32' East by said McCann land one hundred sixty-four and four tenths (164.4) feet, more or less, to an iron pipe; thence turning and running in a northerly direction along said McCann land one hundred fifty-five (155) feet, more or less, to an iron pipe, the point of beginning.

This tract is subject to an extension of the sixteen (16) foot right of way as set forth in Tract I above for the benefit of the Hall property, said right of way having been granted by deed dated December 30, 1944, and recorded in Strafford County Registry of Deeds, Book 541, Page 34, and a further extension of said sixteen (16) foot right of way for the benefit of the McIntire property, said right of way having been granted by deed dated July 14, 1950, and recorded in Strafford County Registry of Deeds, Book 582. Page 433.

This deed is given subject to any and all existing rights of any party or parties to maintain water and/or sewer lines across the property herein described and to enter upon said property and repair said lines as the need should arise.

Being the same premises described in Warranty Deed of Nicholas Gegas and Beatrice Gegas to the within Grantor dated March 1, 1977, recorded in Strafford County Registry of Deeds, Book 993, Page 713.

Parcel 5: 19A & 19B Main Street, Durham, NH:

A certain tract or parcel of land, with the buildings thereon, situate in Durham, County of Strafford and State of New Hampshire, bounded and described as follows:

Beginning at a corner of the stone wall at land of one Alice Onderdock, Quinby; thence running S 58° 39' East along said wall thirty-nine and eight tenths (39.8) feet; thence turning a right angle and running one and four tenths (1.4) feet; thence running S 58° 39' E fifty-five and seven tenths (55.7) feet to an iron pipe driven in the ground; said pipe being located a distance of fifteen (15) feet from a weeping willow tree and twenty-seven and seven tenths (27.7) feet from a large apple tree; thence running S 15° 45' E sixty-eight and twenty-five hundredths (68.25) feet, more or less, to an iron pipe driven in the ground; thence running S 30° 20' W one hundred fifty-five (155) feet, more or less, to an iron pipe driven in the ground; thence running N 58° 39' W one hundred sixty-five (165) feet, more or less, to an iron pipe driven in the ground at a stone wall; thence northeasterly along said wall two hundred (200) feet, more or less, to the point of beginning.

Reserving to Harold W. Loveren and Madeline L. Horne, their heirs and assigns, now Kyreages, Inc., the right to pass over, inspect, maintain and repair sewers, water pipe lines and appurtenances as now exist within the bounds of the described property.

Granting to the Grantee, its successors and assigns, the free and unobstructed use of a sixteen foot wide right of way from the property herein described across land of said

Harold W. Loveren and Madeline L. Horne, now owned by the said Kyreages, Inc., to Main Street.

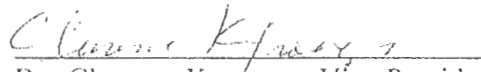
Subject to Sewer Easement granted to Selectmen of Durham, NH, by John J. McCann, Jr., and Kathleen McCann, dated December 15, 1955, recorded at Book 655, Page 189.

Being the same premises described in Warranty Deed of John J. McCann, Jr. to the within Grantor dated July 25, 1977, recorded in Book 1000, Page 674.

These parcels are not homestead property.

Signed this 22nd day of June, 2017.

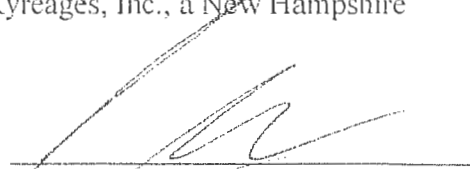
Kyreages, Inc.


By: Clarence Kyreages, Vice President

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

The foregoing instrument was acknowledged before me this 22nd day of June, 2017, by Clarence Kyreages, as Vice President of Kyreages, Inc., a New Hampshire corporation, on behalf of the corporation.

Before me,


Notary Public
My commission expires





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EXHIBIT C

COMMUNITY CHURCH PHOTO KEY

TOOMERFS, LLC
TAX MAP 5, LOTS 1-9, 1-10, 1-15, 1-16
19 MAIN ST AND 21 MAIN ST
DURHAM, NH 03824

PROJECT #:
18041

CREATED BY:
MJS

DATE:
2022-02-17

SHEET:
0/6



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EXHIBIT C
COMMUNITY CHURCH PHOTO #1
TOOMERFS, LLC
TAX MAP 5, LOTS 1-9, 1-10, 1-15, 1-16
19 MAIN ST AND 21 MAIN ST
DURHAM, NH 03824

PROJECT #: 18041
CREATED BY: MJS
DATE: 2022-02-17
SHEET: 1/6



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EXHIBIT C
COMMUNITY CHURCH PHOTO #2
TOOMERFS, LLC
TAX MAP 5, LOTS 1-9, 1-10, 1-15, 1-16
19 MAIN ST AND 21 MAIN ST
DURHAM, NH 03824

PROJECT #: 18041
CREATED BY: MJS
DATE: 2022-02-17
SHEET: 2/6



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EXHIBIT C
COMMUNITY CHURCH PHOTO #3
TOOMERFS, LLC
TAX MAP 5, LOTS 1-9, 1-10, 1-15, 1-16
19 MAIN ST AND 21 MAIN ST
DURHAM, NH 03824

PROJECT #: 18041
CREATED BY: MJS
DATE: 2022-02-17
SHEET: 3/6



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EXHIBIT C
COMMUNITY CHURCH PHOTO #4
TOOMERFS, LLC
TAX MAP 5, LOTS 1-9, 1-10, 1-15, 1-16
19 MAIN ST AND 21 MAIN ST
DURHAM, NH 03824

PROJECT #: 18041
CREATED BY: MJS
DATE: 2022-02-17
SHEET: 4/6



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EXHIBIT C
COMMUNITY CHURCH PHOTO #5
TOOMERFS, LLC
TAX MAP 5, LOTS 1-9, 1-10, 1-15, 1-16
19 MAIN ST AND 21 MAIN ST
DURHAM, NH 03824

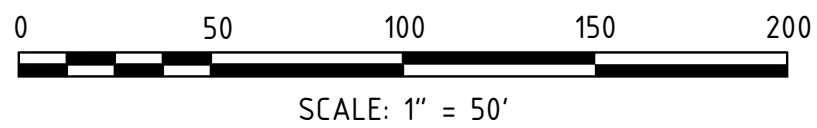
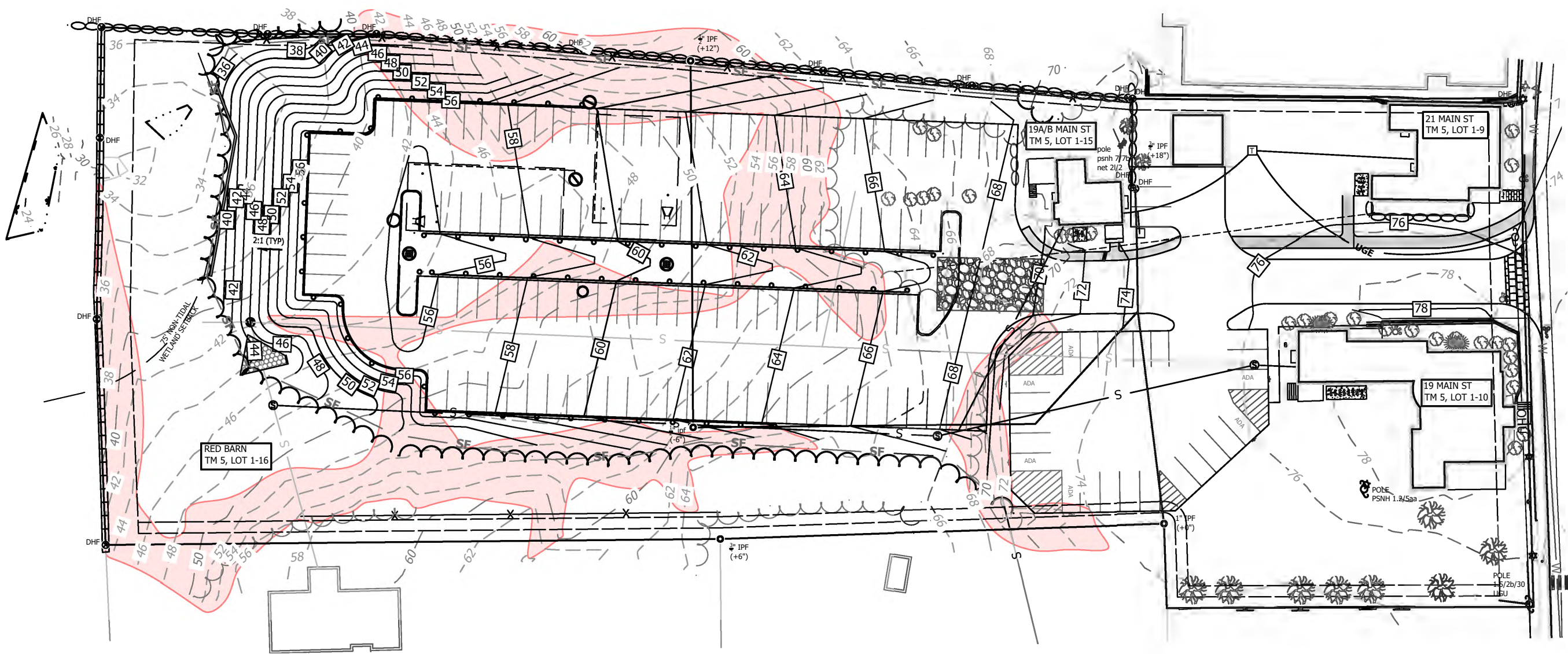
PROJECT #: 18041
CREATED BY: MJS
DATE: 2022-02-17
SHEET: 5/6



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EXHIBIT C
COMMUNITY CHURCH PHOTO #6
TOOMERFS, LLC
TAX MAP 5, LOTS 1-9, 1-10, 1-15, 1-16
19 MAIN ST AND 21 MAIN ST
DURHAM, NH 03824

PROJECT #: 18041
CREATED BY: MJS
DATE: 2022-02-17
SHEET: 6/6

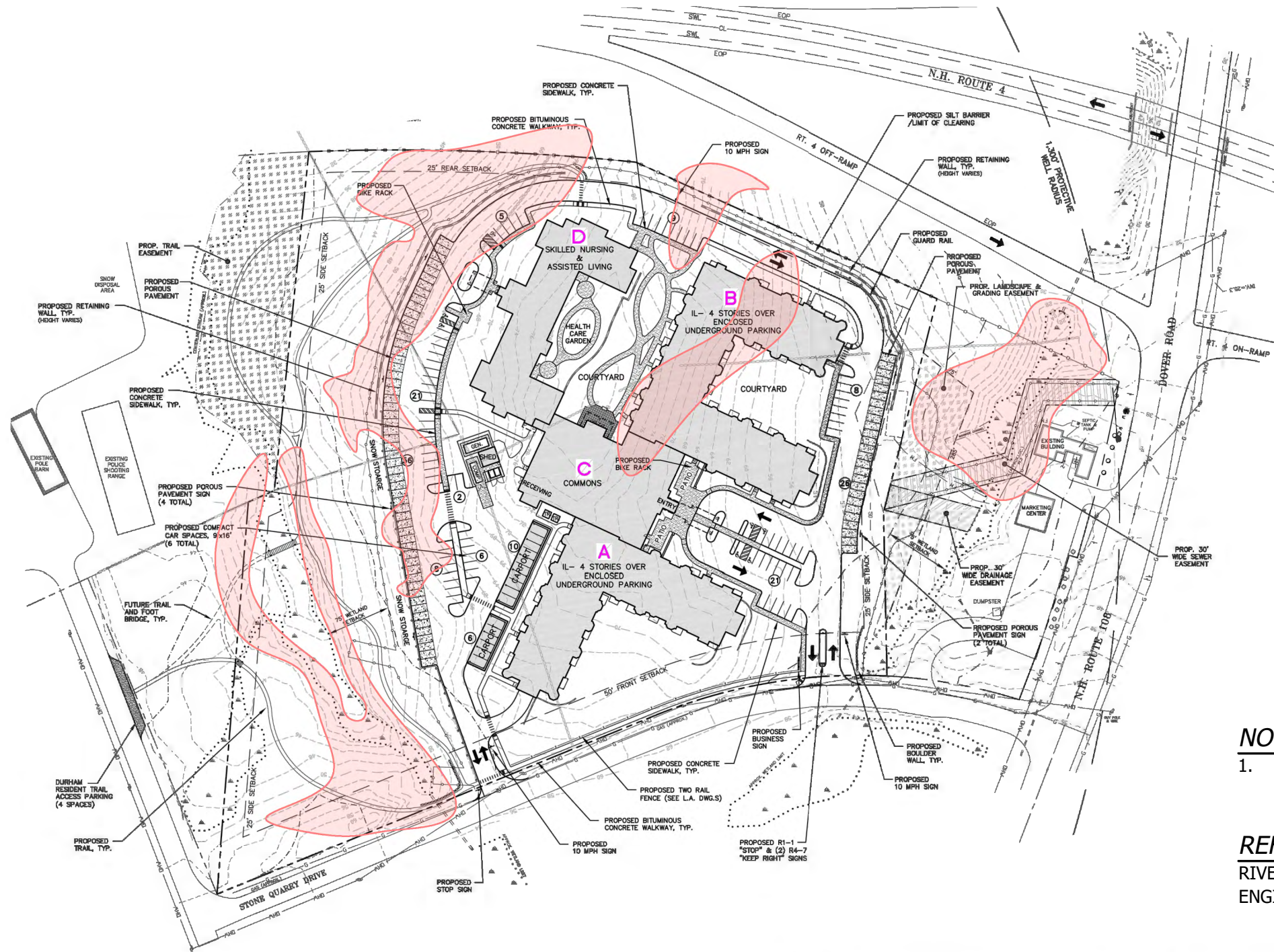


NOTES

1. AREAS WHERE SLOPE EXCEEDS 15% HAVE BEEN HATCHED WITH COLOR.

REFERENCE PLANS

19-21 MAIN STREET SITE PLAN PREPARED FOR TOOMURFS LLC, PREPARED BY HORIZONS ENGINEERING, DATED 15 FEBRUARY 2022

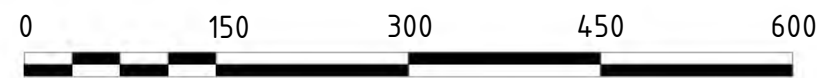


NOTES

1. AREAS WHERE SLOPE EXCEEDS 15% HAVE BEEN HATCHED WITH COLOR.

REFERENCE PLANS

RIVERWOODS DURHAM SITE PLAN, PREPARED BY ALTUS ENGINEERING, DATED 22 DECEMBER 2017



SCALE: 1" = 150'