

RECEIVED  
Town of Durham  
MAR 23 2022  
Planning, Assessing  
and Zoning

19-21 Main Street Parking Lot  
Proposal  
Toomerfs, LLC  
March 23, 2022

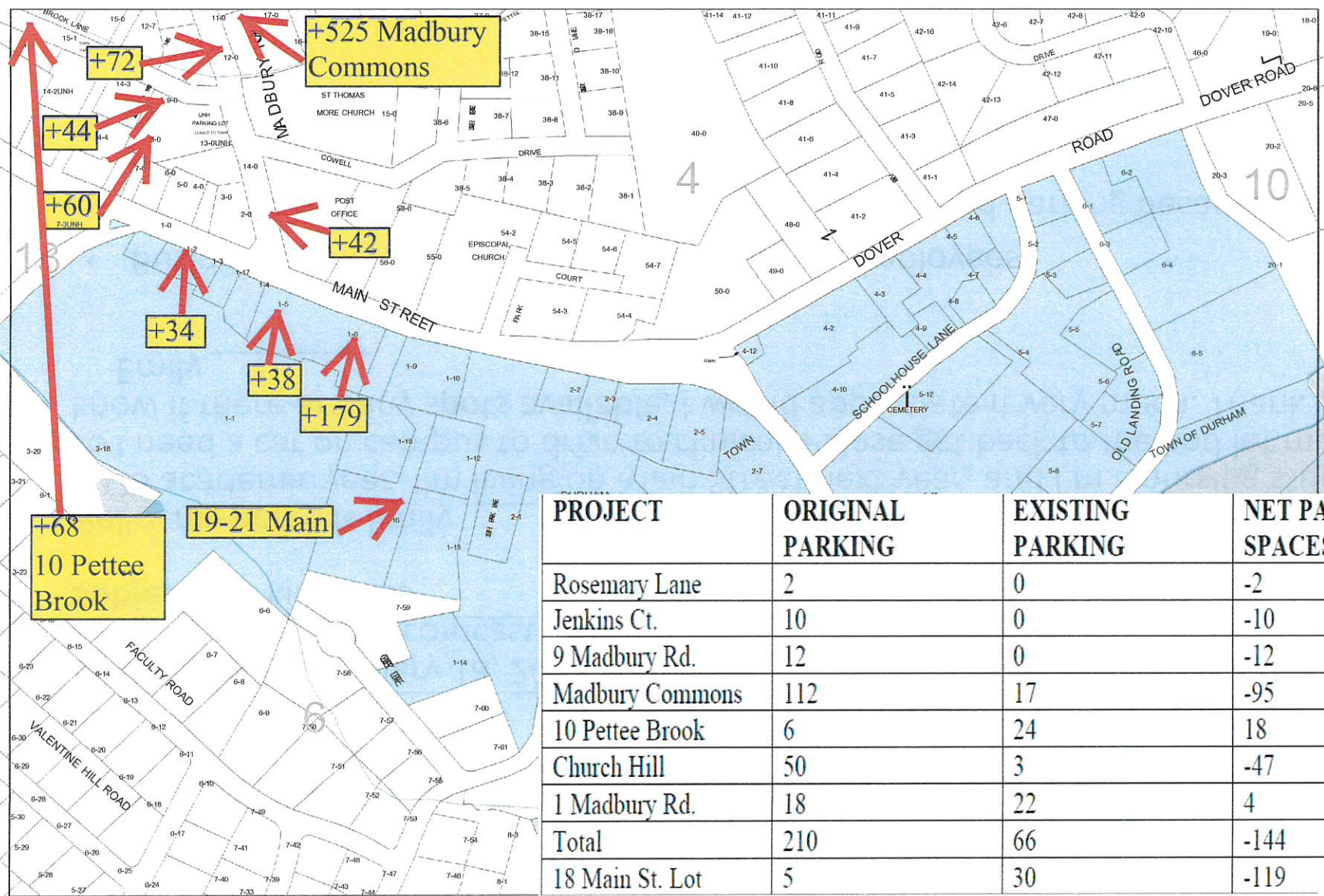
# Demand for Parking

- New development in Durham between 2008 – April 2020 added **2,430** new occupants
  - Source, Durham Planning  
[https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning\\_board/page/15701/student\\_housing - new development since 2008.pdf](https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/15701/student_housing_-_new_development_since_2008.pdf)
- approximately 1200 beds downtown, some with no parking
- Existing parking eliminated
- One new lot, Toomerfs at 18 Main increased parking by 25 spaces
  - 119 fewer parking spaces downtown just since 2015

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# Map 5

PROPERTY MAP  
DURHAM  
NEW HAMPSHIRE



Legend  
 Adjacent Map Sheets

PROJECT	ORIGINAL PARKING	EXISTING PARKING	NET PARKING SPACES
Rosemary Lane	2	0	-2
Jenkins Ct.	10	0	-10
9 Madbury Rd.	12	0	-12
Madbury Commons	112	17	-95
10 Pettee Brook	6	24	18
Church Hill	50	3	-47
1 Madbury Rd.	18	22	4
Total	210	66	-144
18 Main St. Lot	5	30	-119

# Result is a parking problem

**From:** emily <[e\\_\\_\\_\\_\\_@gmail.com](mailto:e_____@gmail.com)>

**Sent:** Tuesday, January 18, 2022 10:40 PM

**To:** [petermurphy6@comcast.net](mailto:petermurphy6@comcast.net)

**Subject:** Parking Pass

Hello, my name is Emily \_\_\_\_\_. I desperately need a parking pass for the 2022-2023 academic year. I'm living on Main Street next year, and I'm a nursing student so I need a car on campus to drive to clinical. Please get back to me and let me know if there are any spots available, I would appreciate it very much. Thank you!

Emily \_\_\_\_\_

- Business owners cannot provide parking for employees
- Residents and other visitors to downtown cannot find parking because students and employees are using metered parking
- Other property owners are impermissibly leasing parking spaces

# Permits required

- Historic District Approval - January 7, 2021
- Conditional Use Permit - applied 10/28/2020
  1. Site Suitability
  2. External Impacts of proposed use
  3. Character of site development
  4. Character of buildings or structures
  5. Preservation of identified resources
  6. Impact on property values
  7. Availability of Public Services/Facilities
  8. Fiscal Impacts
- Site Plan Approval - applied 10/28/2020

# Permits required

- Site Plan Review:
  - Compliance with Development Standards including:
    - General development standards
    - Construction Practices
    - Cultural Resources
    - Landscaping & Screening Standards
    - Lighting
    - Erosion Control
    - Natural Resources
    - Operational Issues Standards
    - Parking & Circulation Standards
    - Pedestrian Standards
    - Stormwater

## Planning Board's Role

- 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).**

# Planning Board Role

Toomerfs is entitled to equal protection under the 14<sup>th</sup> Amendment and NH Constitution Part 1, Article 12.

- Must treat this application the same as others similarly situated.



# Planning Board's Role

- Planning Board cannot use site plan review process to require a landowner to dedicate its own property as open space for public use without proper compensation. Robbins Auto Parts, Inc. v. City of Laconia, 117 N.H. 235, 236-37 (1977).
- Board members may not ignore uncontroverted expert opinion. 15 New Hampshire Practice: Land Use, Planning and Zoning §28.11, Condos East Corp. v. Town of Conway, 132 N.H. 431, 438 (1989).
- Decision may not be based on vague concerns and must be based on more than board members' personal opinions. Derry Senior Dev. v. Town of Derry, 157 N.H. 441, 451 (2008).
- Arbitrary and unreasonable zoning restrictions that substantially deprive an owner of the economically viable use of his land = taking. Burrows v. City of Keene, 121 N.H. 590 598 (1981)

## Evidence in the Record

- Applicant's survey, design & engineering plans
- Expert opinion: Applicant's professional team - surveyor, engineer, forester, traffic engineer
  - Vetted by:
    - Town officials (planning, public works, assessor)
    - Outside consultants commissioned by the town – engineers, traffic engineer

See also file letters submitted by Toomerfs dated 10/28/2020, 3/2/2021, 8/28/2021, and 2/18/2021

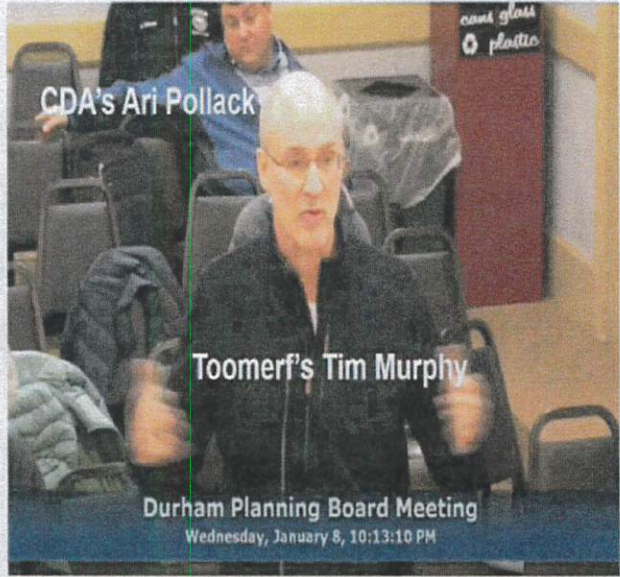
# No contrary evidence

- Not wanting the Mill Plaza development ≠ evidence
  - Two Mill Plaza activists cite trees, environment, slopes, etc., but privately approached Toomerfs to build something else that would be more impactful on neighborhood.
- Leave as woods ≠ evidence and is unconstitutional
- Preserve for wildlife ≠ evidence and is unconstitutional as applied to an otherwise buildable lot
- Subjective, lay opinion ≠ evidence

# Opposition

- Uses preservation of trees as justification to prevent parking lot when owner cannot be compelled to retain forest.
- Claims steep slopes prevent development.
- Undermined by Meyrowitz and Meadows continued efforts to convince Toomerfs to develop with elderly housing and parking lot.
- Requiring same clearing, grading and fill.
- **Opposition is not about parking lot.** It's about Mill Plaza as evidenced by the efforts to get Toomerfs to build something else.

**Jan 8, 2020–PB Design Review for Toomerfs Parking Plan**



Citizens who try to speak to PB about **connections** between Plaza & Church Hill plans are told they are out of order.

Which leads citizens to consult with Attorney Mark Puffer. <sup>(4)</sup>

See [Letter from Attorney Mark Puffer 2-5-20](#)

**Both CDA & Hannaford representatives sit in!**

Joshua Meyrowitz's screen

Meyrowitz Slide 3.21.2022

# Parking demand exists independent of Mill Plaza.

- This parking lot offers benefits to any existing or proposed nearby development, but stands independent from any other development including Mill Plaza.
  - The demand exists today as evidenced by the hundreds of requests fielded by Peter Murphy as well as requests sent to Chief Rene Kelley re: the Depot Lot and requests sent to Carol Troy, Administrative Coordinator of Housing.
- Durham Town Counsel has advised the Projects need not be considered together.

# Public Comments

- DZO 175-22.B.4
  - Any written comment **shall be specific** when maintaining that the granting of the conditional use permit would adversely or injuriously affect **the writer's personal and legal interests**.
    - No objection from three out of five abutting owners.
    - One of two closest abutters strongly supports
    - Almost all opposition from group that don't live near the site, and who are also actively opposing Mill Plaza Development
      - Only two live within 300 ft. of the Project

## Durham Zoning Ordinance, Section 175-21.A

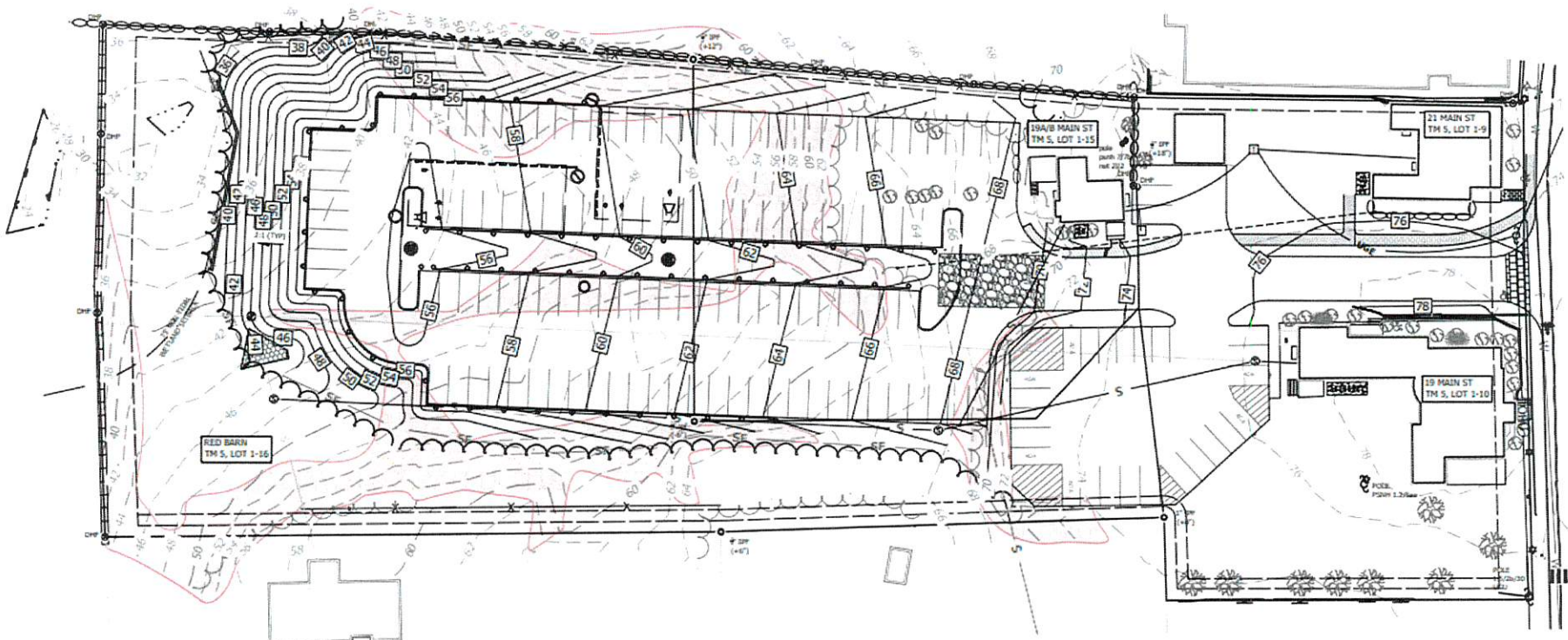
- *Conditional Use is **a permitted use** if conditions in the Zoning Ordinance are met.*
  - **NOT** a variance
- *“A Conditional Use **shall** be approved if the application is found to be in compliance with the approval criteria in Section 175-23.”*
- *“The Planning Board shall make findings of fact, based on the **evidence** presented by the applicant, Town staff, and the public, respecting whether the Conditional Use is or is not in compliance with the approval criteria of Section 175-23.”*

# Site Suitability

## DZO 175.23.C.1

- Vehicular & pedestrian access – improved by redesign (DPW letters 3/10/2021 & 4/9/2021)
- Adequate public services including emergency services, schools, and other municipal services – none needed to serve parking lot. See DPW letters above and letter from DFD 7/12/2021.
- Absence of environmental constraints or a plan to mitigate – Considers existing features:
  - not in floodplain
  - no jurisdictional wetlands on property, buffer maintained to offsite wetlands.
  - Some steep slopes: man-made or short/discontinuous “bowl” topography as illustrated:





SCALE: 1" = 50'

**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

## Site Suitability (Continued)

- Planning Board must act reasonably in applying statutory and municipal regulations. Batakis v. Town of Belmont, 135 N.H. 595 (1992)
  - The fact that steep slopes exist on the site does not prohibit development.
  - Design works with the existing topography
  - Steep slopes that exist on the south/west side close to abutting properties are less impacted by current design.
- Town Engineer review of grading and drainage and its compliance with applicable Town and State Regulations and standard engineering practices: “Design approach reasonable and consistent with what we would expect for this site.” Ltr. Dated 2/22/21 and 2/18/2022
  - Uncontroverted expert evidence

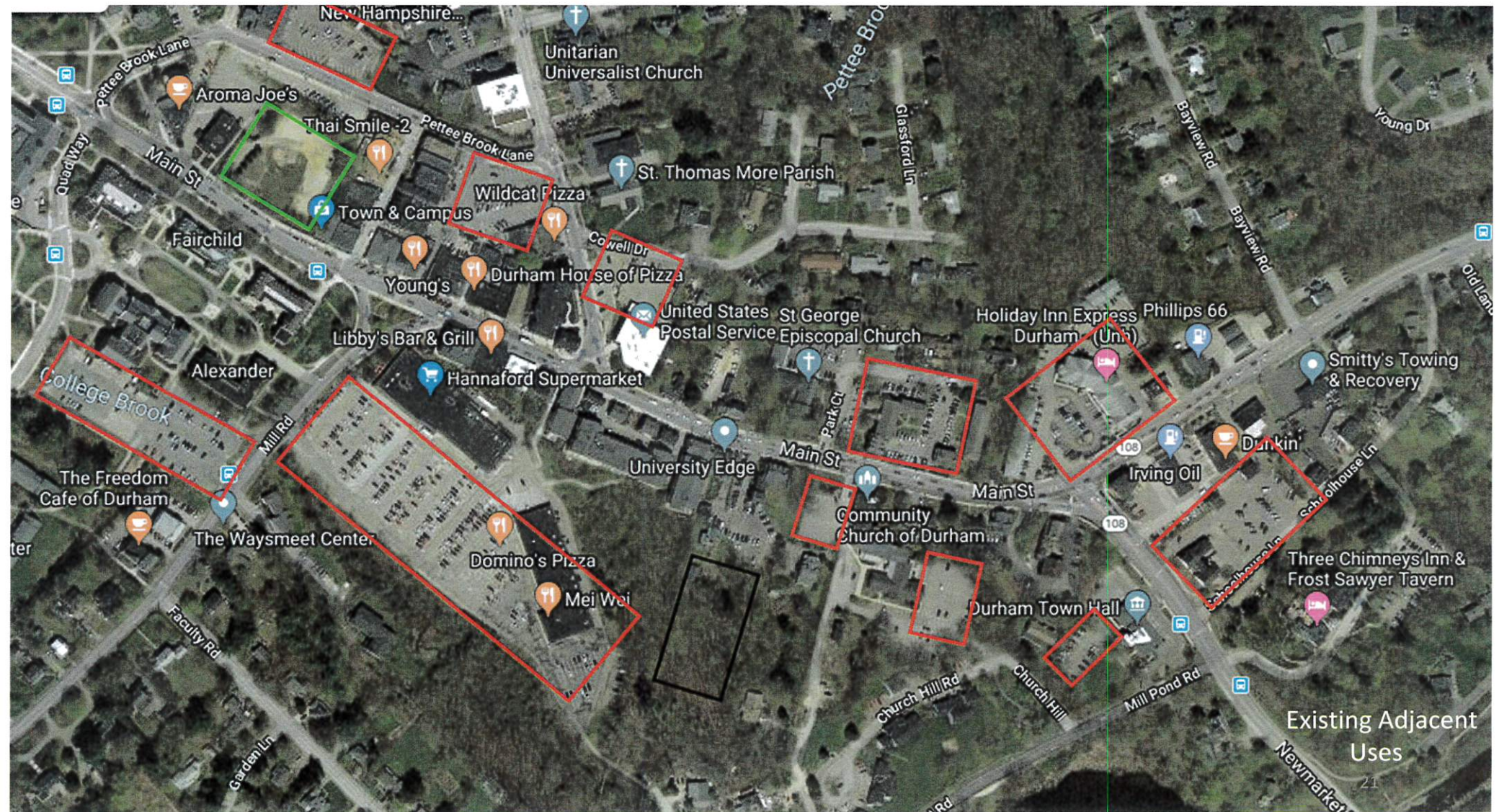
## Site Suitability (continued)

- Availability of appropriate utilities to serve the use
  - Ideal location for parking
  - Utilities onsite
    - Power lines will be buried
    - Deteriorating sewer lines serving buildings will be replaced
    - Stormwater system will meet Low Intensity Development (LID) standards, state and local requirements

# External Impacts of Proposed Use

DZO 175.23.C.2

- No greater than the impacts of adjacent existing uses (not existing conditions on the undeveloped lot)
  - Mill Plaza with large parking lot
  - Durham Community Church & St. George's with parking lots
  - University Edge/Orion (with no parking)
  - Commercial Uses
- or other permitted uses in the zone
  - Senior care facility (and related parking)
  - Light manufacturing (and related parking)
    - Anything constructed will require
      - Clearing the land
      - Grading/Fill/Excavation
      - Parking
      - Lighting

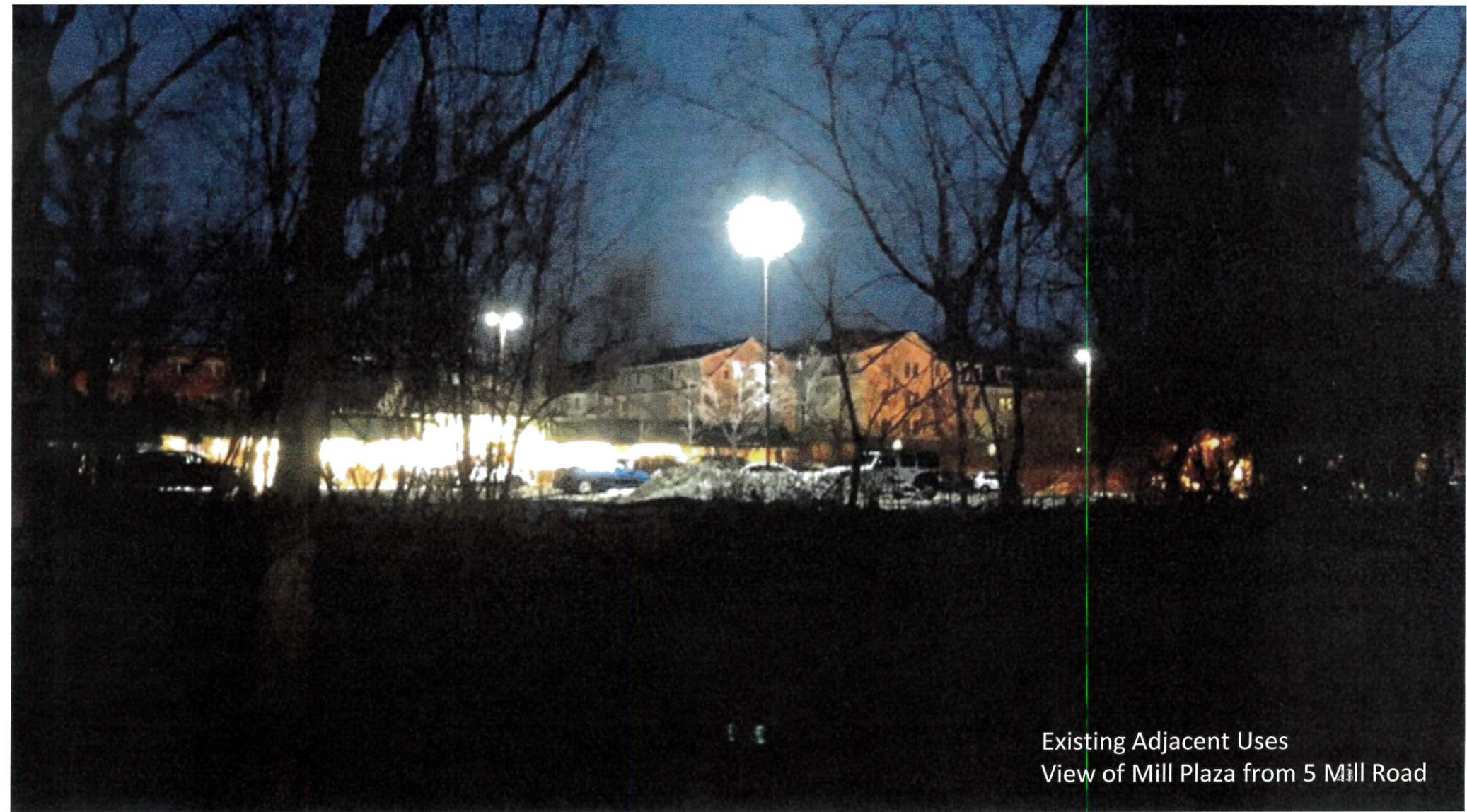


Existing Adjacent  
Uses

Lighting—Existing Adjacent Use



Existing Adjacent Uses Mill Plaza from Chesley Drive, Josh Meyrowitz, DCAT 2/9/22<sup>22</sup>, 1:54:43



Existing Adjacent Uses  
View of Mill Plaza from 5 Mill Road

# External Impacts

Durham Community Church

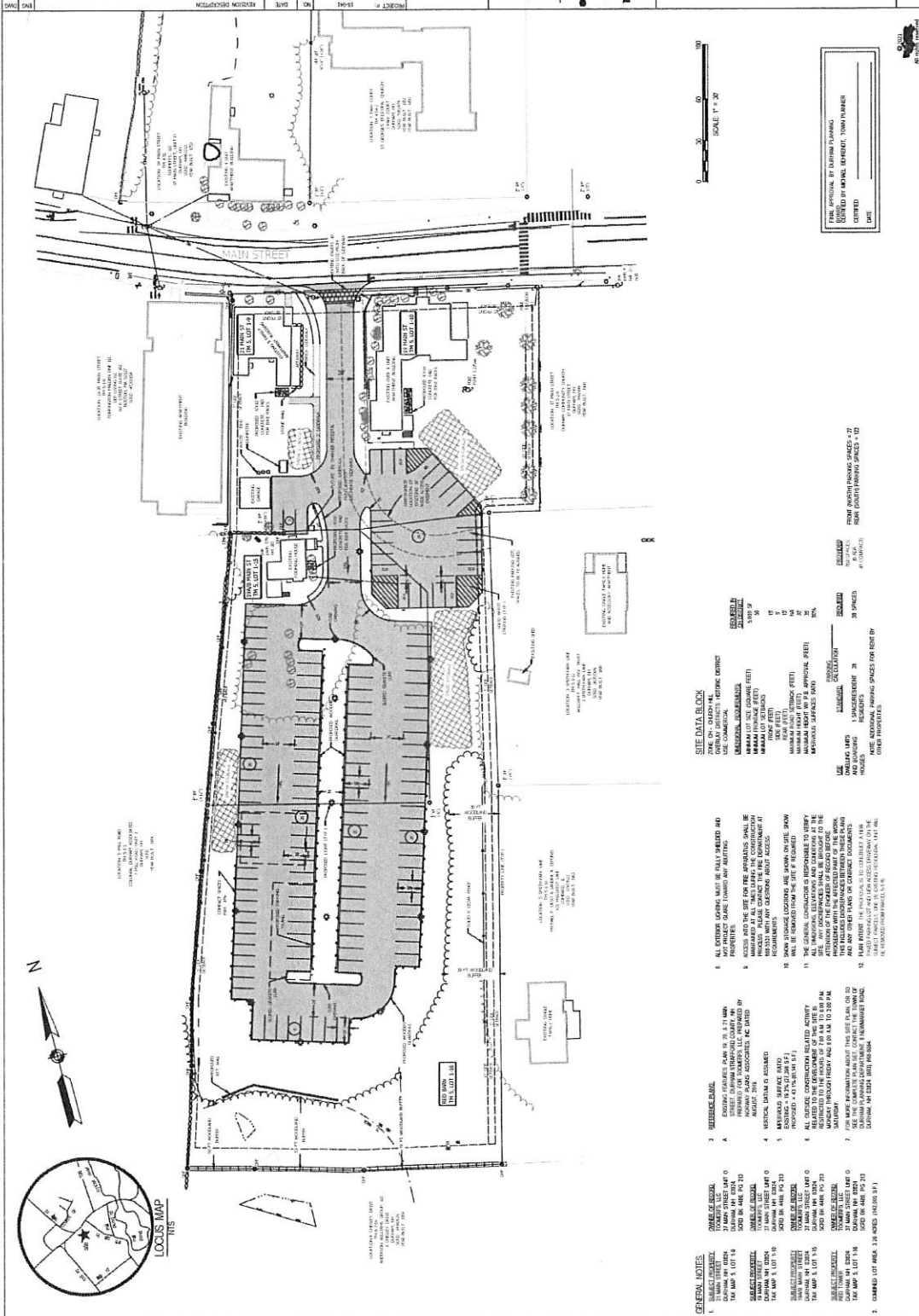




# External Impacts of Proposed Use

DZO 175.23.C.2

- 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.
  - No building
  - Long-term parking, no “rush hour”
  - Complies with setbacks
  - Lighting plan well under limits (2.9 footcandles vs. 8) and adjacent uses
  - Not required to be invisible



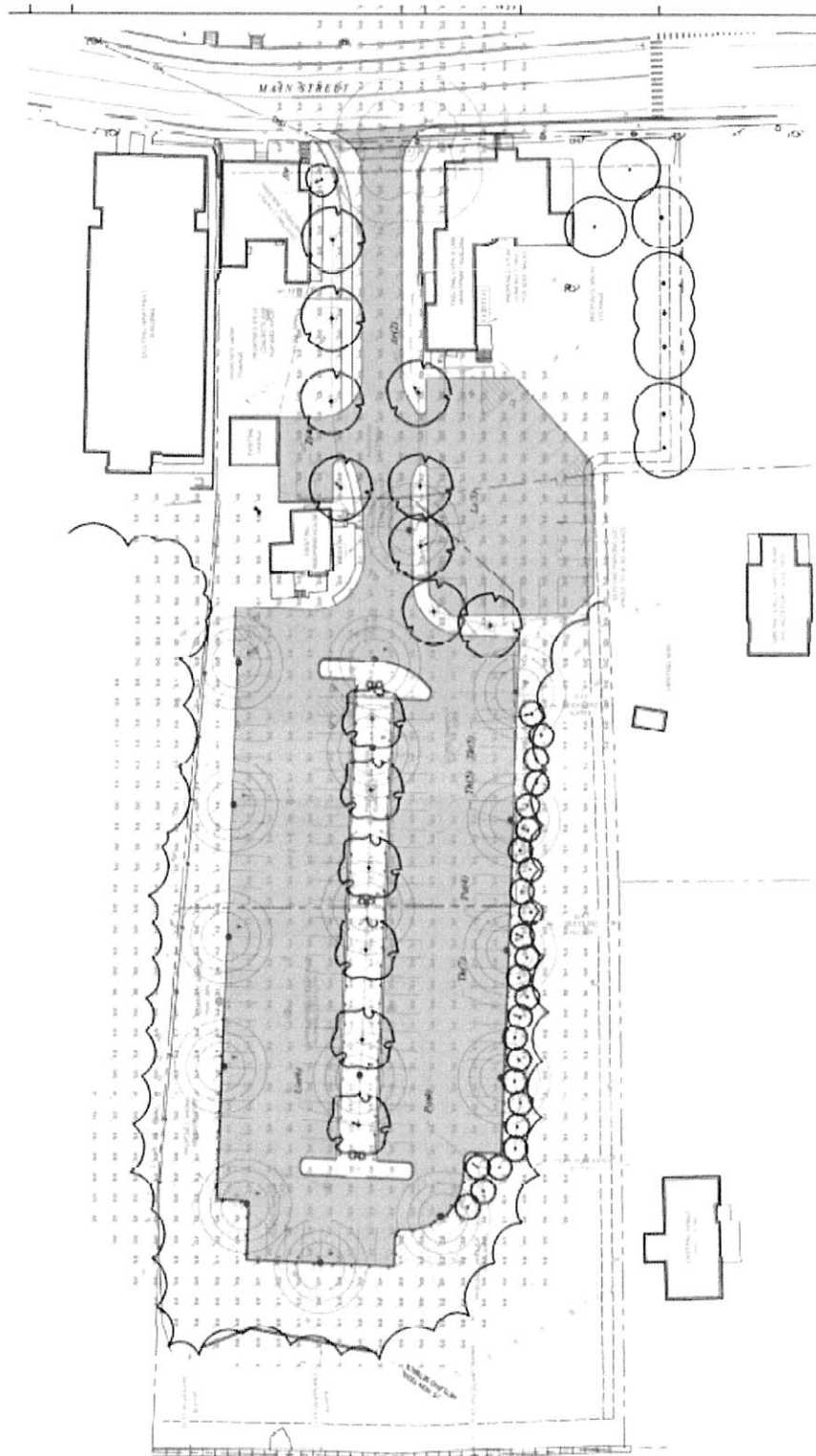
NO.	DATE	REVISION DESCRIPTION
1	10/20/21	ISSUE FOR PERMITTING
2	10/20/21	REVISED PERMITTING REQUIREMENTS
3	10/20/21	REVISED PERMITTING REQUIREMENTS
4	10/20/21	REVISED PERMITTING REQUIREMENTS
5	10/20/21	REVISED PERMITTING REQUIREMENTS
6	10/20/21	REVISED PERMITTING REQUIREMENTS
7	10/20/21	REVISED PERMITTING REQUIREMENTS
8	10/20/21	REVISED PERMITTING REQUIREMENTS
9	10/20/21	REVISED PERMITTING REQUIREMENTS
10	10/20/21	REVISED PERMITTING REQUIREMENTS
11	10/20/21	REVISED PERMITTING REQUIREMENTS
12	10/20/21	REVISED PERMITTING REQUIREMENTS
13	10/20/21	REVISED PERMITTING REQUIREMENTS
14	10/20/21	REVISED PERMITTING REQUIREMENTS
15	10/20/21	REVISED PERMITTING REQUIREMENTS
16	10/20/21	REVISED PERMITTING REQUIREMENTS
17	10/20/21	REVISED PERMITTING REQUIREMENTS
18	10/20/21	REVISED PERMITTING REQUIREMENTS
19	10/20/21	REVISED PERMITTING REQUIREMENTS
20	10/20/21	REVISED PERMITTING REQUIREMENTS

# Recent Feedback on revised plan

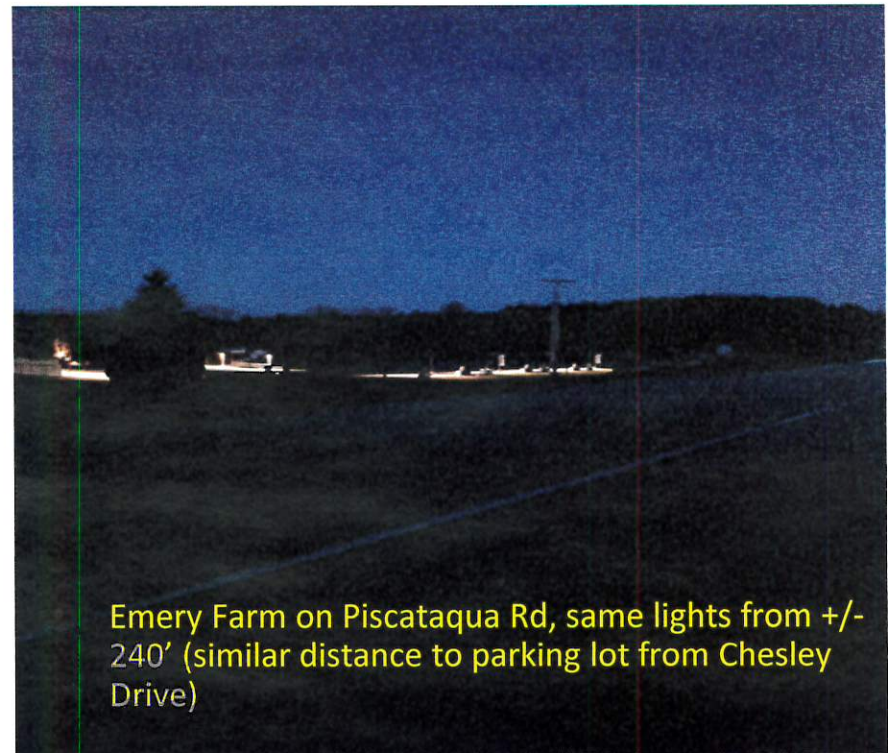
- Planner's review
  - Add fence to shield headlights on the southerly/Chesley Drive side
- Sandy Urso
  - Toomerfs will move fence back to run along easterly portion of parking lot.
  - Will continue to allow Urso use of land 20 ft. in from boundary line.
  - Possible to level that existing area with additional fill so it is more useful to Urso.

# External Impacts of Proposed Use

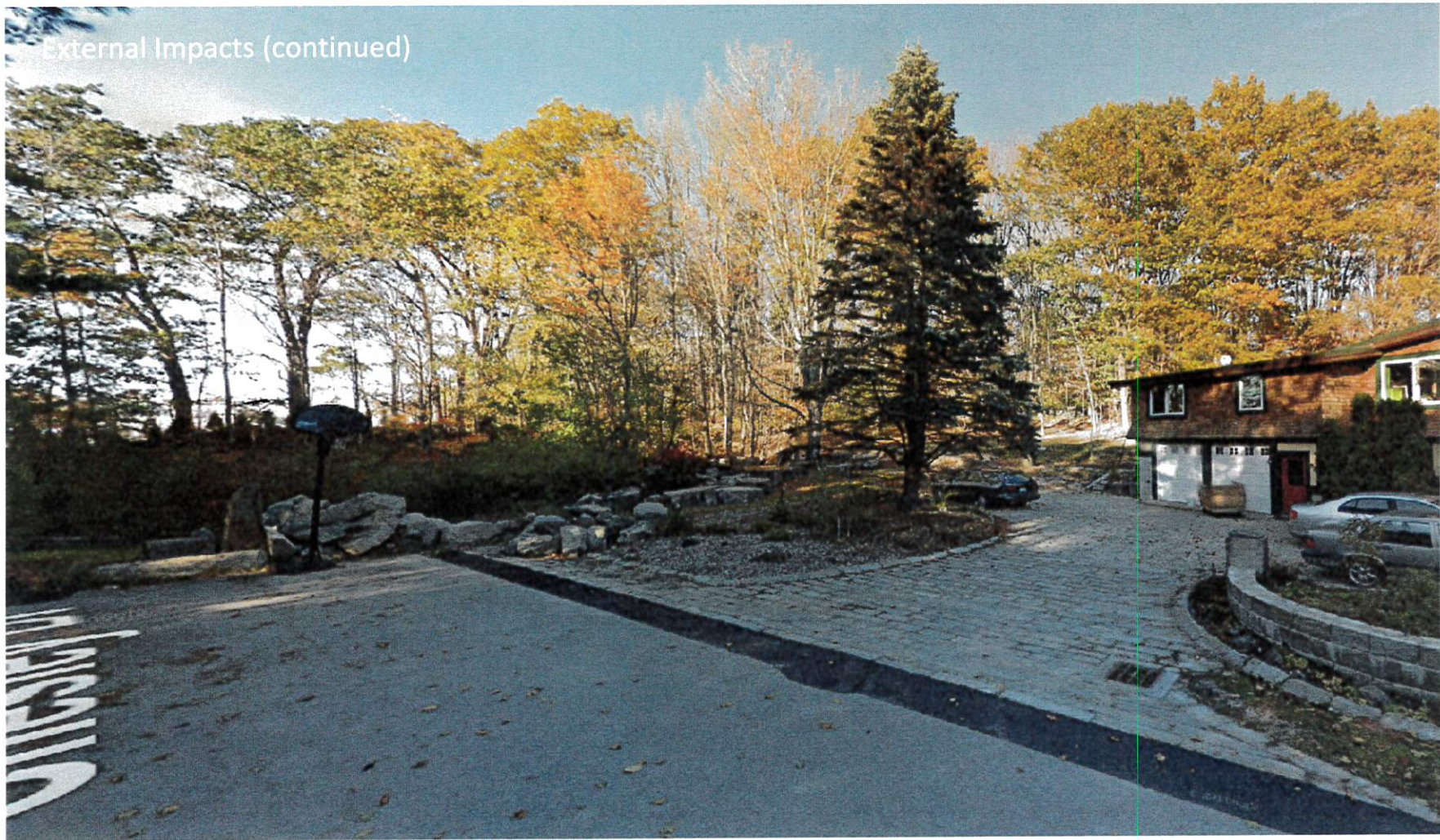
- Traffic – See Pernaw report 11/23/2020, et al.; VHB third party review, 3/4/2021 and Pernaw Response dated 3/19/2021.
- Noise – Not greater than existing adjacent uses
  - W. Hall, abutter at 3 Smith Lane, “I’ve got 22 cars right here in the church parking lot. That church parking lot...those cars change all day long...and slam doors. The students are no problem at all. They may or may not use their car on a particular day. They may slam a door. But they don’t have parties out here...” (Planning Board December 11, 2020, DCAT, 9:13:31 P.M.).
- Vibration, Dust, Fumes – None associated with use
- Hours of operation – similar to other long-term parking lots
- Exterior lighting and glare – revised to be well below minimum required/existing adjacent uses



## External impacts - Lighting



External Impacts (continued)



## External Impacts of Proposed Use

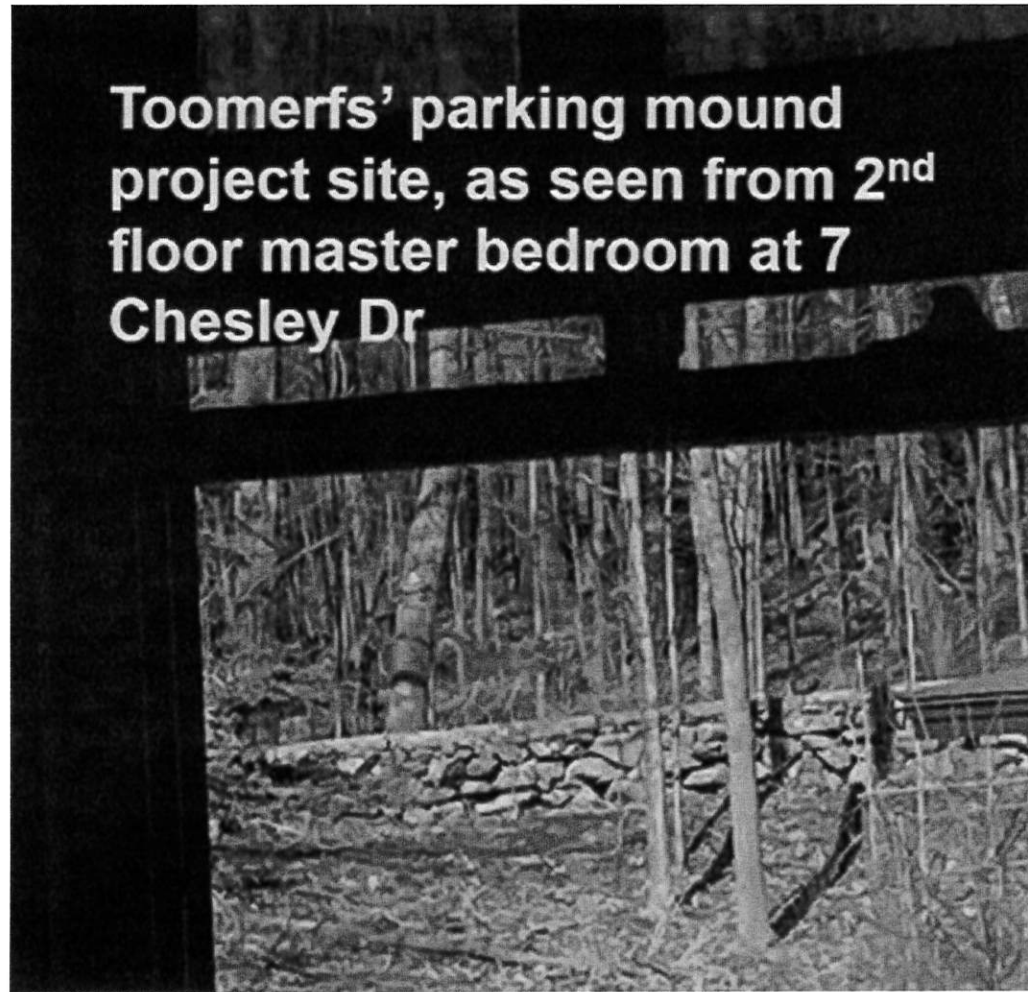
- Fence planned to block view of cars
- “Leaf-off” conditions
- Stone wall preserved
- 53-70 ft. wooded buffer to property line  
(200+ft to street)
- Slope with parked cars at the top





Presented by J. Meyrowitz, Planning Board 2/23/2022; DCAT 2:33:03, and 3/18/22 #3

**Toomerfs' parking mound  
project site, as seen from 2<sup>nd</sup>  
floor master bedroom at 7  
Chesley Dr**



Unmodified image taken from Chesley Drive in front of J. Meyrowitz' house, 3/23/2022

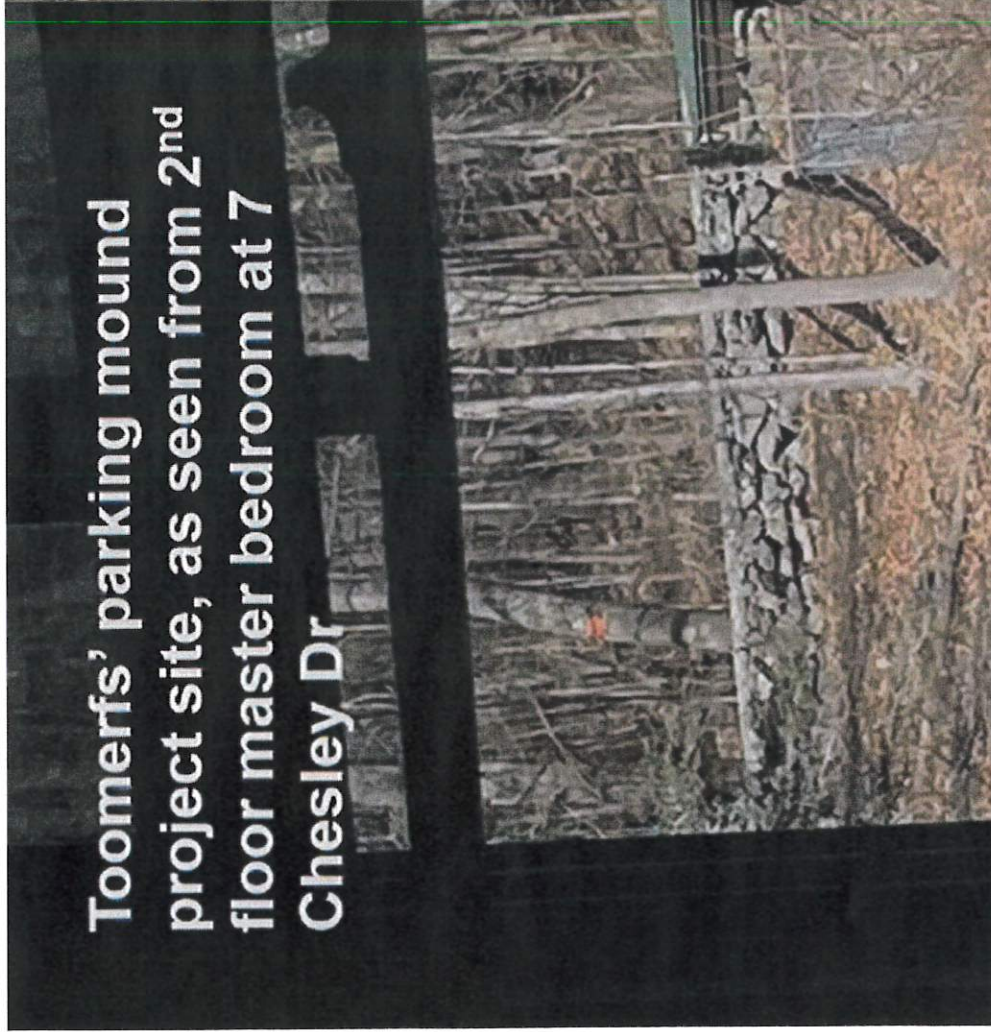




**4X ZOOM  
IMAGE!!**

**\*MAXIMUM  
ZOOM\***

**Toomerfs' parking mound  
project site, as seen from 2<sup>nd</sup>  
floor master bedroom at 7  
Chesley Dr**



# External Impacts (compare to Church lot)

**Leaf off conditions**  
**Snow storage, sloping grade**

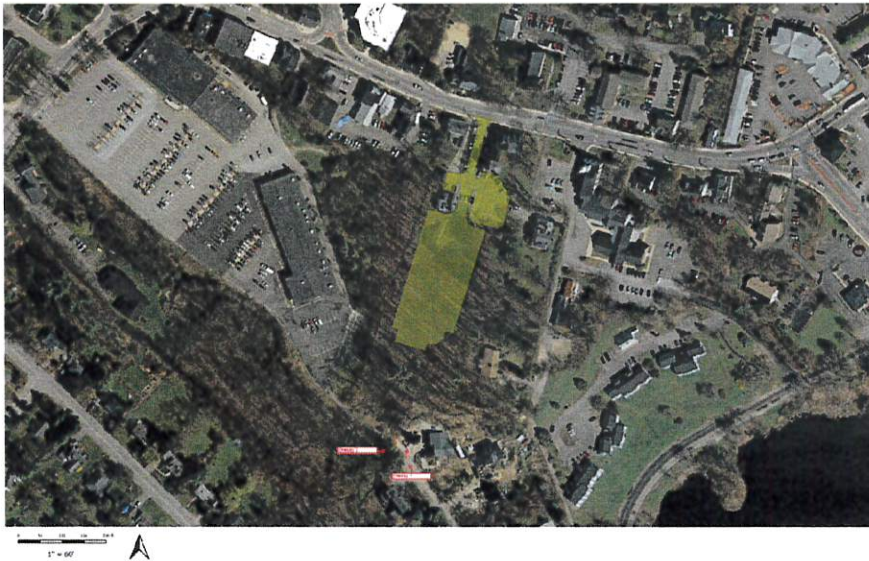


**Church parking above, sloping to**  
**Condo parking below**



# Character of Site Development

DZO 175-23.

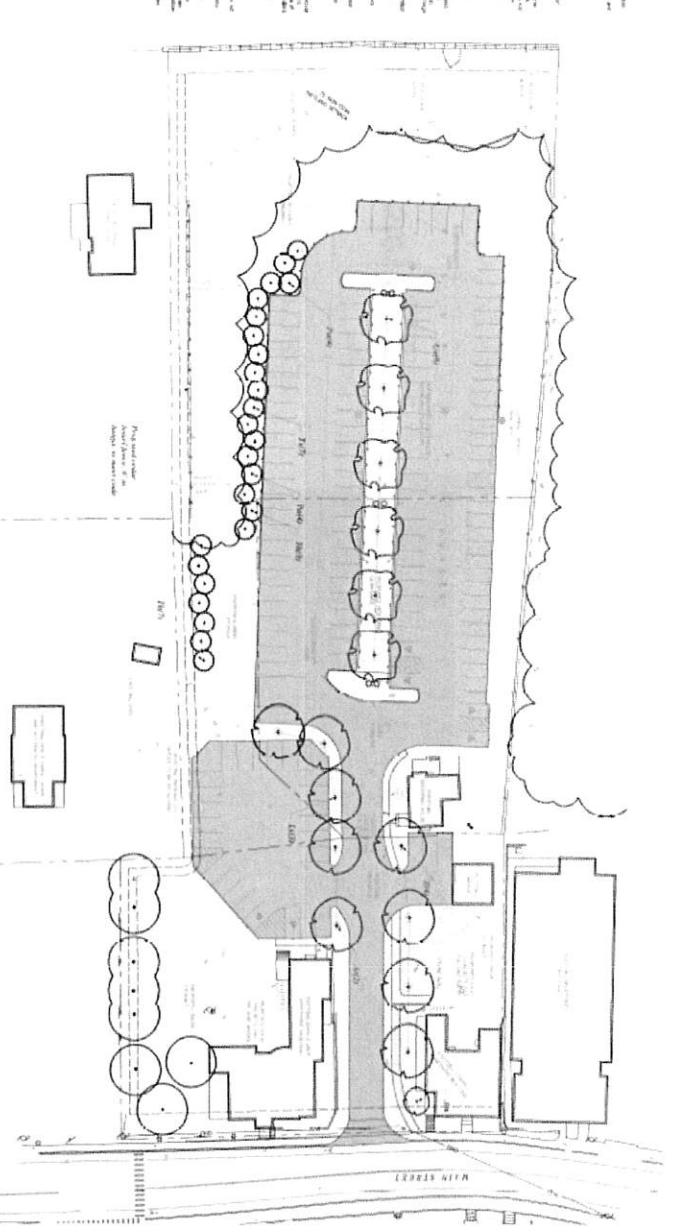
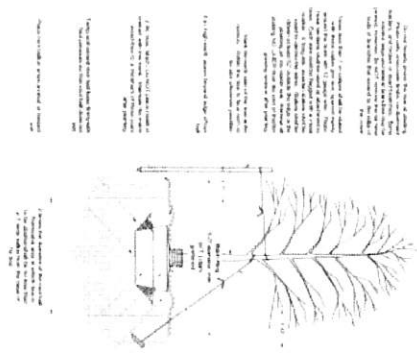


- Not incompatible w/ neighborhood
- Mitigate any external impacts
  - Relationship of building to street
  - Amount, location, and screening of parking
  - Yards/setbacks
  - Buffering
  - Provisions for vehicular/pedestrian access
- 53-70 ft. buffer, added screening
- Exceeds setbacks compared to others
- Landscape plan includes +/- 40 trees
- Fence

# LANDSCAPE NOTES:

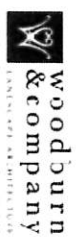
1. All trees to be planted shall be of the species and size indicated on the drawings.
2. All trees shall be planted in accordance with the American Nursery and Landscape Association (ANLA) standards.
3. All trees shall be planted in accordance with the International Society of Arboriculture (ISA) standards.
4. All trees shall be planted in accordance with the National Arbor Day Foundation (NAF) standards.
5. All trees shall be planted in accordance with the National Tree Care Association (NTCA) standards.
6. All trees shall be planted in accordance with the National Association of Professional Arborists (NAIPA) standards.
7. All trees shall be planted in accordance with the National Society of Landscape Architects (NSLA) standards.
8. All trees shall be planted in accordance with the National Society of Professional Gardeners (NSPG) standards.
9. All trees shall be planted in accordance with the National Society of Professional Horticulturists (NSPH) standards.
10. All trees shall be planted in accordance with the National Society of Professional Landscapers (NSPL) standards.
11. All trees shall be planted in accordance with the National Society of Professional Planters (NSPP) standards.
12. All trees shall be planted in accordance with the National Society of Professional Nurserymen (NSPN) standards.
13. All trees shall be planted in accordance with the National Society of Professional Tree Care Technicians (NSTCT) standards.
14. All trees shall be planted in accordance with the National Society of Professional Tree Inspectors (NSTI) standards.
15. All trees shall be planted in accordance with the National Society of Professional Tree Surgeons (NSTS) standards.
16. All trees shall be planted in accordance with the National Society of Professional Tree Trainers (NSTT) standards.
17. All trees shall be planted in accordance with the National Society of Professional Tree Transplanters (NSTT) standards.
18. All trees shall be planted in accordance with the National Society of Professional Tree Trimmers (NSTT) standards.
19. All trees shall be planted in accordance with the National Society of Professional Tree Trainers (NSTT) standards.
20. All trees shall be planted in accordance with the National Society of Professional Tree Trainers (NSTT) standards.

# TREE PLANTING DETAIL



## Plant List

PLANT CODE	PLANT NAME	SIZE	QUANTITY	REMARKS
1	PLANT CODE	SIZE	QUANTITY	REMARKS
2	PLANT CODE	SIZE	QUANTITY	REMARKS
3	PLANT CODE	SIZE	QUANTITY	REMARKS
4	PLANT CODE	SIZE	QUANTITY	REMARKS
5	PLANT CODE	SIZE	QUANTITY	REMARKS
6	PLANT CODE	SIZE	QUANTITY	REMARKS
7	PLANT CODE	SIZE	QUANTITY	REMARKS
8	PLANT CODE	SIZE	QUANTITY	REMARKS
9	PLANT CODE	SIZE	QUANTITY	REMARKS
10	PLANT CODE	SIZE	QUANTITY	REMARKS



<b>LANDSCAPE PLAN</b> PREPARED FOR <b>TOOMERFS, LLC</b> TAX MAP 5, LOTS 1 9 AND 1 10 19 MAIN ST AND 21 MAIN ST, DURHAM, NH 03824		PROJECT # 18-061 DATE 10/20/2018 REVISION DESCRIPTION 1. SHEET REVIEW TO ALLOW FOR SETBACK CHANGE 2. PLANTING ADDED AT EASTERN PL 3. PLANTING ADDED AT EASTERN PL 4. PLANTING ADDED AT EASTERN PL	ENG: DMC CHK: JLN APP: JLN DES: JLN
		SHEET L-100	SHEET L-100

# Character of Buildings or Structures

DZO 175-23.C.4

- Not incompatible
  - scale, height and massing of building or structure, architectural features
    - Parking lot with generous setbacks
    - Smaller than others nearby
    - Grading & drainage reviewed by Town Engineers “Design approach reasonable”.
    - Fence for Urso and Chesley side





# Preservation of Resources DZO 175-23.C.5

## Identified resources

- Natural – no wetland, habitat or floodplain impacts, trees may be cut on private property; +/-40 added.
- Cultural – Buildings and stone walls preserved
- Historical – Main Street Buildings are historical and untouched; HDC approved, **streetscape improved**
- Scenic – none; private property shielded from street

“Many if not most Durham residents were unaware until now of a two acre area of forest hidden in the midst of the downtown Durham business district, land currently owned by respected Durham developer Peter Murphy.” --John Carroll, November 20, 2019

# Preservation of Resources

## DZO 175-23.C.5

- *"Very frankly, I was concerned about I mean if this is were to be interpreted as where you have an existing wooded area on a lot, that one cannot make significant removal of that wooded area, frankly I was concerned about the legality of that. And I checked with the town attorney and I shared this with the Planning Board...and the town attorney's feeling confirmed my concern that if you have an existing wooded area on a private lot this criterion cannot legally be interpreted to say that you must preserve a substantial amount of that wooded area. That could be seen as an illegal taking."* Michael Behrendt, Durham Town Planner, Planning Board Feb. 17, 2021, 7:36 p.m.



**Goal: Encourage new development that creates a more attractive transition into the Church Hill District and Historic District.**

Key Conclusions References: #8, 9



DCC-28 | Town of Durham Master Plan



# Impact on Property Values

DZO 175-23.C.6

- Not cause or contribute to a significant decline in adjacent property values
  - Abutting residential properties always abutted commercial land
    - Consideration of other permitted uses, not undeveloped land
  - Need not be invisible
  - Parking lot is a passive use
  - Complies with setbacks to Urso and Hall and provides buffering/fence
  - 53-70 ft. buffer to Chesley Drive abutters smaller than before to accommodate increased buffer to Urso
  - Landscape plan adds trees
  - Lighting more than meets the requirements
  - Low trip use per Pernaw Report
  - Adjacent properties will have sewer lines replaced

Whether this project would cause a diminution of value to these properties would be pure speculation at this point. The true litmus test would be to analyze properties that sold within this neighborhood (Chesley Drive) before and after the construction of this parking lot to ascertain market value changes. However, I can tell you that the property located at 5 Chesley Drive recently sold on January 27<sup>th</sup>, 2021. It was on the market for 2 days, had nine (9) offers with an asking price of \$390,000 and sold for \$436,000 cash sale. When I contacted the real estate agent who sold the property, she indicated that the buyers were informed of the proposed renovations to the Mill Plaza and this parking lot and it did not make a difference. They (buyers) were just glad that this property was within walking distance to downtown, Mill Plaza and the University campus. Therefore, no chilling effect. I do not believe an outside consultant is required to investigate this question any further.

Jim Rice, Durham Town Assessor, email February 24, 2021

*“The Planning Board shall make findings of fact, based on the evidence presented by the applicant, **Town staff**, and the public, respecting whether the Conditional Use is or is not in compliance with the approval criteria of Section 175-23.”*

# Availability of Public Services/Facilities

DZO 175-23.C.7

- Adequate and lawful facilities required with no excessive demand on municipal services
  - Only needs drainage and electric
  - Electric will be buried
  - Will not generate solid waste
  - DPW and DFD approve
  - Utilizes Low Impact Development (LID) stormwater practices
    - Drainage reviewed by Town Engineers “design reasonable”

# Fiscal Impacts

DZO 175-23.C.8

- Will not have a negative effect on the town unless PB determines other positive impacts offset negative aspects.
  - Deteriorating sewer line replaced
  - Town Assessor consulted a commercial appraiser regarding the earlier proposal

Based on the information presented to me regarding this project and consulting with H. Charles Kurfels, MAI a commercial real estate appraiser, it is estimated that the additional 140 parking spaces could contribute approximately \$1.4 - \$1.7 million in assessed value.

If you have any questions, please don't hesitate to contact me.

Jim Rice, CNHA  
Assessor  
8 Newmarket Road  
Durham, NH 03824  
(603) 868-8064  
[jrice@ci.durham.nh.us](mailto:jrice@ci.durham.nh.us)



# Natural Resource Standards

## Site Plan Regulations, Article 8

- Purpose is to protect, preserve and enhance natural resources while accommodating appropriate growth and development by encouraging applicant and PB to consider natural resources
  - Article 8 does not *prohibit* development and is not intended to *prohibit* it.
  - 8.2.1 “Shall” be located and designed...to the extent practicable
    - “Extensive” grading and filling shall be avoided
      - Development methods are driven by features of the existing site
      - Extensive on one site is entirely appropriate on another
      - No concerns raised re: fill at either Technical Review Group Meeting
      - Town Engineers: Design approach re: grading and drainage “reasonable and consistent with what we would expect for a site of this type.” Expert evidence that neither filling nor grading is “extensive”.

**Comparison of cull/fill for currently proposed- and previously proposed development plans**

Proj. number: 18-041

Created by: M. Schrader

Date issued: 2022-03-17

Checked by: M. Sievert

Site location: 19-21 Main Street, Durham NH

	2020-10-28 plan	2022-03-17 plan	
Area of pavement	50394 ft2	37533 ft2	
Depth of wearing course	1 in	1 in	
Depth of binding course	2 in	2 in	
Depth of crushed gravel (NHDOT 304.3)	6 in	6 in	
Depth of bank run gravel (NHDOT 304.2)	12 in	12 in	
Volume asphalt	12599 ft3	9384 ft3	
Volume crushed gravel (NHDOT 304.3)	25197 ft3	18767 ft3	
Volum bank run gravel (NHDOT 304.2)	50394 ft3	37533 ft3	
Volume asphalt	467 CY	348 CY	
Volume crushed gravel (NHDOT 304.3)	934 CY	696 CY	
Volum bank run gravel (NHDOT 304.2)	1867 CY	1391 CY	
Soil stripping (assume 6")	1115 CY	1027 CY	
<b>Overall net fill</b>	<b>21392 CY</b>	<b>15925 CY</b>	25.6%
Pavement and select materials	1867 CY	1391 CY	reduction
MC-3500 chambers	1000 CY	279 CY	
MC-3500 chamber stone		553 CY	
<b>Net fill - chambers and pavement mat.</b>	<b>18525 CY</b>	<b>13702 CY</b>	26.0%
*did not remove volume for pipes/drainage structures			reduction
Truck trips required	1158 trucks	857 trucks	
*Assume 16 CY/trip trucks			

 Approximate value

## Section 8.4 Specific Features – Steep Slopes

- Resources worthy of protection or special care; or features which, if disturbed, could cause hazards to the environment, health, safety, or property.
  - These elements shall be preserved, **if practicable**, and **enhanced, where appropriate**, or special design solutions shall be incorporated to avoid, minimize, or mitigate impacts or protect against hazard.
    - “Bowl” shape is filled; other slopes left
    - New steep slope created
      - Objectors are simultaneously arguing that the “steep slopes” must be preserved while lamenting creation of a “towering 18.5-ft mound” (Meyrowitz, 3/18/22)
    - No hazards created
    - Town Engineers: Design approach re: grading and drainage “reasonable and consistent with what we would expect for a site of this type.”

*Because the purpose of the regulations is both to encourage preservation but also to accommodate development, consideration of what is practicable is paramount in the law.*

# Natural Resource Standards

## Site Plan Regulations, Article 8

- 8.2.2 directed away from valuable and fragile resources **to the extent practicable**
- 8.2.3 shall follow the natural contours of the landscape **to the extent practicable** to minimize grading.
- 8.2.4 applicant is **encouraged** to make special efforts to protect elements considered **to have significant value**, which in many cases involves creating a buffer around them.

Applying the equal protection analysis, there is no rational basis to classify this project differently from others which have presented similar disturbance of steep slope or introduced significant fill.



**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

PROJECT #:	18041
ENGINEER BY:	Nail
DRAWN BY:	MCS

**EXHIBIT E**  
**RIVERWOOD STEEP SLOPE PLAN**  
 TOOMERFS, LLC  
 TAX MAP 5, LOTS 1-9, 1-10, 1-15, 1-16  
 40. MARSH CREEK ROAD, WYOMING, WY 83001

**horizons**  
*Engineering*  
 Civil and Structural Engineering  
 Land Surveying and Environmental Consulting



SCALE: 1" = 150'



# Effect of Durham Master Plan

- “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.” RSA 674:2
- \*\*\*Master Plan cannot be used to regulate development unless an ordinance is passed to implement it. Rancourt v. Barnstead, 129 N.H. 45 (1986).





# Property owners' Constitutional Rights

- “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, 68 (1985).
- Part I, Article 12 “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).
- If the regulation is not rationally related to Town’s legitimate goals, it is unconstitutional. Boulders at Strafford, LLC v. Town of Strafford, 153 NH 633 (2006)

