

College Brook as *19-21 Main Street* “Drain”

Stormwater, Traffic, Noise, Lights, Mass/Scale, Ruined Viewsheds on the Hill

*A déjà vu **Conditional-Use** application*

(aka, “poster child for conditional-use mismatch”)

Adapted from Comment at Planning Board Public Hearing
January 27, 2021

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S 02-12-21

“19-21 Main St”: A déjà vu **Conditional-Use** application

This application, in earlier form, underwent a [Preliminary Design Review](#) (Nov 2019-Jan 2020)

Preliminary Design Reviews are intended to give applicants a good sense of their prospects for ultimate project acceptance. **If that review signals little hope of meeting required criteria, applicants are spared time & expense of preparing a formal application.** Also, Board members are spared the uncomfortable, but necessary, experience of rejecting a non-compliant application that has entailed major applicant effort.

Although the initial design was of less massive scale (much shorter retaining wall), the preliminary design was greeted negatively by almost all the members of the participating public, by two internationally recognized experts on urban forests, and, ultimately, by multiple Planning Board members, who signaled that such a project – even in its more modest initial form – had little hope of meeting the required conditional-use criteria.

Yet, the applicants have not heeded the preliminary-review warnings:

**They are putting the public & Planning Board through it all over again –
with a more massive version of the same *non-compliant* plan.**

Misleading Label #1

The proposed project is not really at “19-21 Main Street”

Those house addresses are only for driveway entrance/exit to 4 contiguous lots purchased by Toomerfs. The parking expansion proposed is on lots that have no street address and are distant from Main Street.



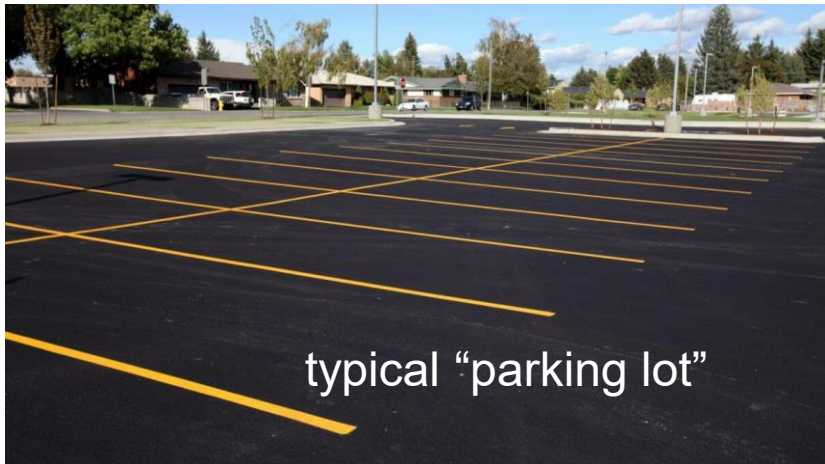
Project location is more accurately:
“1.3 acres of iconic woods that slope steeply toward the Chesley Marsh wetland and the College Brook flood zone.” →



Misleading Label #2

The project does not match the standard definition of a “Parking Lot”

“Parking lot” conveys image of plan to compact, pave, & paint spot stripes on an “at-grade,” relatively level surface. Actual proposal: construction of **massive 17-foot high football-field size mound with 16,000 cubic yards/tons of fill encased in 20-foot tall cinder-block retaining wall, made taller with 30” black aluminum fence atop the wall & all-night-on lighting poles extending 14-18’ above parking surface.**



vs.



The proposed prison-like structure would be built on hillside already, at its lowest point, two+ stories above street level at Chesley Drive, thus impacting adjacent homes & neighboring foot/bike paths in a manner akin to a **looming 5-story tall fortified citadel**. *There is no equivalent parking structure in the area.*

MJS
Engineering's
image of
Church Hill
from footpath
along the
Chesley
Marsh



Stone wall boundary →

Hundreds of feet from 19-21 Main Street

Shown by
Mike Sievert
to PB on
[Dec 16 2020](#),
1:17:53

Applicants' *Photoshop* rendering, proposed structure.

Not shown: 30" black aluminum fence at top, and not shown: 18'-tall lighting poles.

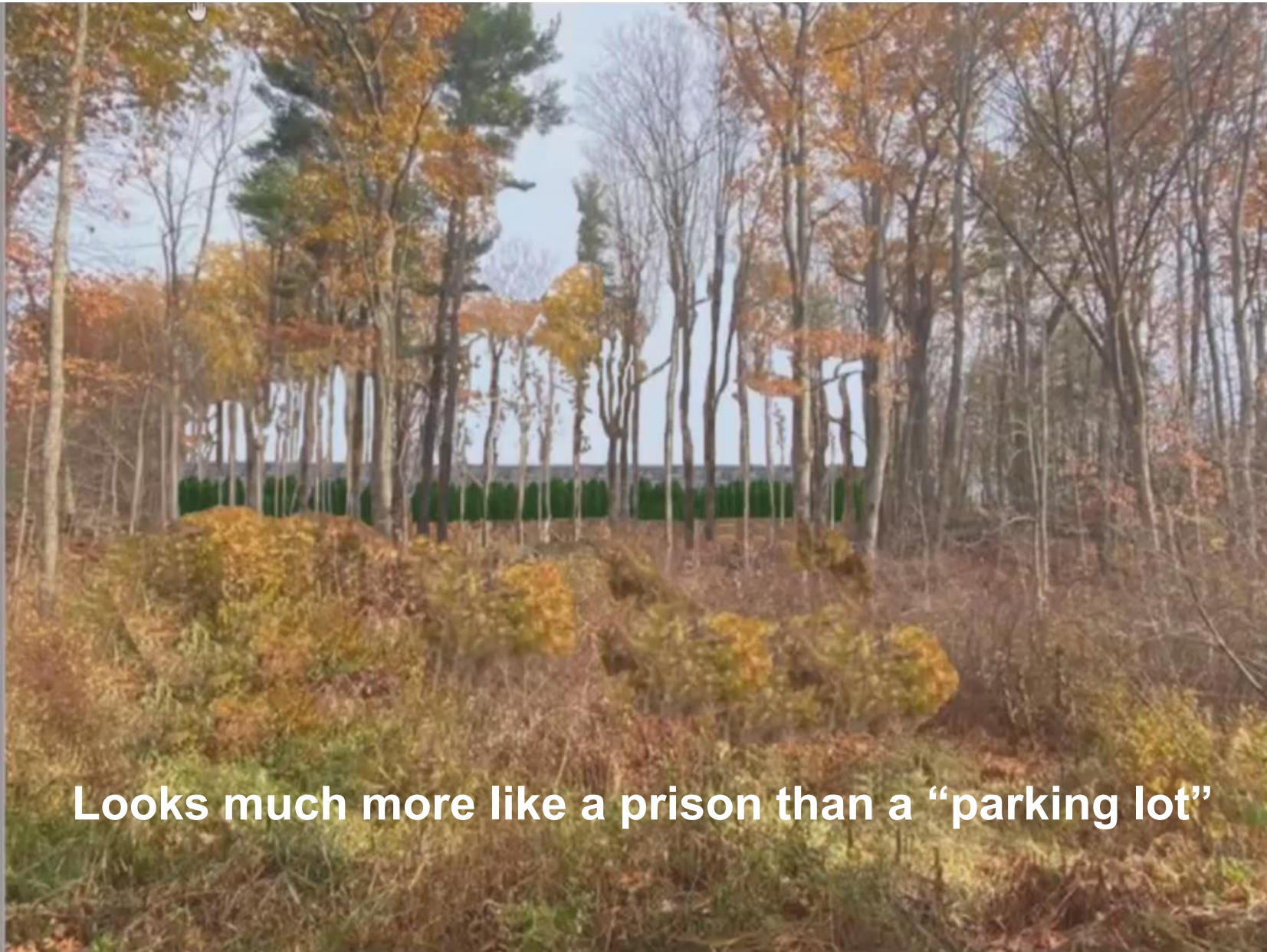


Image displayed by Mike Sievert to PB on [Dec 16 2020](#), 1:18:51

Looks much more like a prison than a “parking lot”

More realistic view of the **relationship of the Hill's stone wall boundary to the Chesley Marsh wetland** (following heavy rain)

1/16/21,
12:14pm



The current wooded Church Hill lot is steeply sloped toward a wetland and the College Book flood zone.

The Chesley Marsh & College Brook would function as the parking structure's stormwater "drains."

A 2-foot in diameter drainage pipe at base of parking mound would send polluted stormwater toward wetland & Brook.



Stone wall lot boundary →

Chesley Marsh

Chesley Dr →

← Mill Plaza

**Culvert into
College Brook**

[Robin Mower 1-8-21](#) describes many problems with the Church Hill plan, including adding to further ***water-quality damage to the College Brook*** (and Great Bay watershed):

“De-icing salt [whether by current/future owners or spot-renters] associated with the proposed use, i.e., a large parking lot, will degrade College Brook, already impaired for chloride, per NHDES. Scientists note that salt cannot be mitigated, as I have previously relayed to the Board, not even by the latest and greatest engineered stormwater system....”

Additionally, the *engineered* stormwater system would have to *attempt* to mitigate chemical fluids (gas, oil, antifreeze, de-icer, etc.) that the current *natural* stormwater site does not have to contend with – *since there are no vehicles in the woods.*



**Church Hill flow into
College Brook Flood Zone
Jan 16 2021, 12:12p (00:24)**

[VIDEO LINK](#)
or [related video](#)

Nancy Lambert, 17 Faculty Rd, Abutter, Dec 10 2020 [email](#) to PB

This parking lot proposal before you, if realized, will replace a forested hillside in the College Brook watershed with impervious asphalt and concrete and the subsequent impact to water quality and quantity will clearly and inevitably be another blow to College Brook. There is not an engineering solution that will be as effective as the trees on this lot in protecting the brook. The impacts will be felt beyond College Brook to the Mill Pond, the Oyster River and Great Bay.

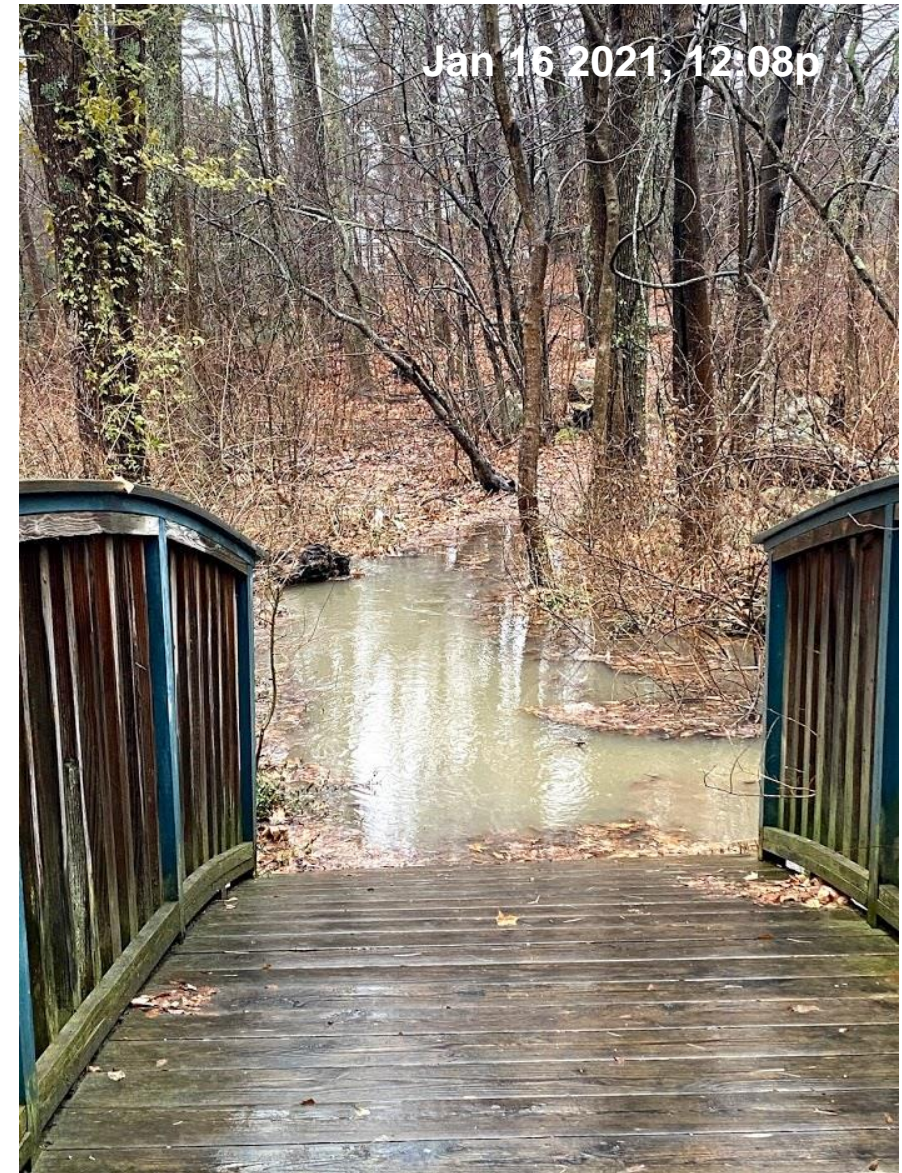
*The **Town's Master Plan** summarizes well the problem before us: "Surface water, stormwater, and wastewater within the Great Bay watershed flow into the bay and thus directly impact the water quality of the estuary and its tributaries. Over the last decades, the increase in impervious surfaces due to development has contributed to water quality degradation in Great Bay. **Both public and private actions are needed to reduce pollution entering the bay and to support the health of valuable aquatic and shoreland wildlife habitat.**"...*

[Church Hill draining into College Brook Flood Zone VIDEO LINK →](#)



Nancy Lambert, 17 Faculty Rd, Abutter, Dec 10 2020 [email](#)

*College Brook...is very flashy. Because so much of its once undeveloped watershed has been replaced by impervious surfaces, the quantity of water entering the Brook during storms is great because there is no forest floor or grassland to absorb it as it crosses asphalt. **High water floods our neighborhood trail [pic right→], that leads to the Mill Plaza erodes the stream banks and impacts shoreland habitat. High water also flushes more pollutants and soil into the Brook.***



[LINK: YouTube Channel: College Brook Flooding](#)

MISLEADING: Sievert has implied that his **stormwater system is robust enough to address a once-in-a-hundred years flood**. Yet, 50 years of reality have changed the flood-level *definitions*.

“100-year” floods will happen every 1 to 30 years, according to new flood maps by Princeton University

[Aug 23, 2019](#) — ‘100-year’ floods will happen every 1 to 30 years, according to new flood maps. A 100-year flood is supposed to be just that: a flood that occurs once every 100 years, or a flood that has a one-percent chance of happening every year.

But Princeton researchers have developed new maps that predict [coastal flooding](#) for every county on the Eastern and Gulf Coasts and find **100-year floods could become annual occurrences in New England**; and happen every one to 30 years along the southeast Atlantic and Gulf of Mexico shorelines.

"The **historical 100-year floods may change to one-year floods in Northern coastal towns in the U.S.**," said Ning Lin, associate professor of civil and environmental engineering at Princeton University.

NOTE: I forwarded this article to the Town Engineer April Talon in early 2020. Much has changed since the US Geological Society (USGS) set the definition of “100-year floods” 60 years ago.



Church Hill Woods are above here →

**SAME DAY: 7 Chesley Dr
Across the street &
Downhill from Church Hill
Jan 16 2021, 12:05 pm (00:13)**

[Video LINK](#)

Rear landscaping at 5 Chesley Dr, *across street* from targeted Church Hill woods.
Sunny Day vs. After Rainstorm



USDA Forest Service Expert Richard Hallett, Research Ecologist

See more here: [Communities & Landscapes of the Urban Northeast](#), 271 Mast Road 603-868-7657

*The trees growing on Church Hill, some of them over 80 years old, don't occupy very much land area, only 1.3 acres. **This is not about land area or numbers of trees. It's about where these trees are, in the center of a growing community, that makes them invaluable and irreplaceable.** It's the benefits these trees provide and will continue to provide for the next 100 years or more. These benefits aren't in the form of the board feet of lumber they can provide.*

*In this particular case, **it is worth elaborating on the ability of trees and greenspace to mitigate stormwater.** Currently cities across the country are spending billions of dollars to install green stormwater infrastructure. **Durham has the gift of a small, forested ecosystem that is currently functioning as green stormwater infrastructure perfectly placed in its center. Its current functionality can't be replicated after the site is altered and paved.** Losing this ability to mitigate and filter runoff has implications for downstream water quality including Great Bay (see AP story on [EPA's effort to clean up Great Bay](#)). **Is this our town's contribution to this effort?...***

*I will leave you with one last question. **Do you think that the additional parking provided by destroying an acre of trees will really solve Durham's parking issues now and into the future?***

—Dec 9 2020 [email to the Planning Board](#) (emphases added)

John Parry, Urban & Community Forestry Expert, US Forest Service

Since the early 1990's all 50 U.S. State Forestry Agencies and the U.S. Forest Service have recognized the value of urban forests and have established Urban Forestry Programs with the intent of better conserving and managing this resource.... There has been much research in recent years to document the value of this tree cover to the community. Trees and wooded areas can:

- ◆ ***Help reduce the volume of storm water & improve water quality.***
- ◆ *Improve air quality, store carbon and combat climate change.*
- ◆ *Conserve energy in buildings – Reduce air conditioning by 56% & heating costs by up to 25%.*
- ◆ ***Increase property values by as much as 10%.****
- ◆ *Provide a buffer to increase privacy and reduce noise.*
- ◆ *Improve wildlife habitat....*

The woodlot has significant value in reducing stormwater volume and in delaying the peak flow.
Trees help reduce storm water flow in 3 ways; 1) water is stored on the leaf and tree surfaces, 2) tree roots help water percolate into the top 2–3 feet of soil and 3) trees have a wicking effect – through transpiration they pull water out of the soil, through the tree and it is evaporated out through the leaves. This keeps the top few feet of soil from becoming saturated and enables it to absorb more rainwater.

– John Parry, 5 Denbow Rd, email to PB [Dec 11 2020](#) (emphases added)

*Thus, destroying the Church Hill urban forest that currently *enhances* property values will significantly *reduce adjacent* property values.

Other negative impacts not permitted by CU Zoning Ordinance:

“The external impacts of the proposed use on **abutting properties** and **the neighborhood** shall be no greater than the impacts of adjacent existing uses or other uses permitted in the zone. **This shall include, but not be limited to, traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare.**”

This uniquely massive football-field size parking mound, bringing 140~ *additional* vehicles to a cleared woods, certainly would add ALL those forbidden impacts on abutting properties, the neighborhood, and the surrounding environment – far beyond anything existing or permitted in the zone.

First, Traffic...

“Too-Friendly” Traffic Analysis

A vocal citizen was rightly criticized on Dec 16 2020 for using an unwise choice of words to make a very *valid* point: the [Traffic Impact Study](#) by Steve Pernaw for the Toomerfs proposed 180~ car parking structure is a very “friendly-to-the applicant” study.

That friendliness was confirmed by Mr. Pernaw himself on [Jan 13 2021](#) (4:07:00), when he acknowledged using car-moving data limited only to *specific* potential renters (students) – **per *Applicants’ specs!***

In fact, Peter Murphy has said he would rent to anyone, not just students. The PB needs that “anyone” data for full good-faith review. What would happen to Durham traffic patterns if, in the short- or long-term future, business owners and employees outbid students for the spaces?

“Friendliness” of the Traffic Study was further confirmed by the internationally famous policy analyst [Dennis Meadows](#) (12-20-20): *Mr. Pernaw is an experienced traffic analyst. He has provided a competent answer to the question, “**How long will an average student user of the parking lot have to wait to exit onto Main Street?**” The Planning Board needs the answer to a different question. “How much more will the average Durham driver be delayed while in driving in Durham, if the parking lot is permitted?”*

Will Parking Students really be “idlers” – or Pete Murphy’s “doers”?

Even if the spot renters were to be all students, there is little evidence to support the Pernaw traffic report that students would simply leave their cars in their expensive parking spots most of the time without moving them.

Per Murphy, renters = “doers”: Peter Murphy shared a recent [letter from nursing student spot-seeker](#) confirming his earlier comments ([01/08/20](#), 10:08p): students hungry for spots are “doers,” balancing complex schedules (school, work, internships), thus driving in & out quite a bit, not just “storing” their cars. Even *student* renters, then, would add significant traffic to Church Hill and beyond – in violation of Conditional Use.

T&B admitted that *their* traffic model underestimates UNH student driving: Student cars “moving more than expected” is also reinforced by Tighe & Bond’s traffic-impact analyst, Christopher Granatini, who admitted on October 14, 2020, that the traffic model T&B employs would have significantly underestimated the *actual* current traffic at Mill Plaza because the 100~ student parking-spot renters move their cars more than the traffic model would have predicted. (See 9:57:27p+ in [video](#).) Moreover, the Church Hill parking structure would have significantly more drivers renting spaces than the Plaza has.

Landlord [Richard Gsottschneider](#) further undermined the “won’t move much” claim on Dec 2 2020: *“Many student with cars have internships, or off-campus jobs, so they come and go a lot. They also have boyfriends or girlfriends off campus. They also have friends drive them to get their cars, so one potential trip actually involves two cars/two trips.”*

Traffic jams already occur on Church Hill, without the added 140 cars

Beginning at about 4:00 p.m., a line of cars from the red light at the junction of Main Street and Rte. 108 often stretches back to the center of Town. Anyone trying to exit the Community Church parking lot at that time of day may sit for many minutes waiting for someone to allow them to enter. Pedestrians using the crosswalk at that point are also at the mercy of the traffic coming from both directions. The current congestion around the downtown loop in Durham itself renders it almost impossible for emergency equipment to get through. – Katherine Morgan, 16 Valentine Hill Rd, [Dec 10 2020](#)

Additionally, the increase in traffic alone could make traveling on Main St a nightmare. There is a long line of cars trying to turn left at the traffic light on 108 to avoid the downtown. The majority of those cars cut through the Faculty Neighborhood. I live closer to UNH than Church Hill, yet I see and hear the constant movement of student cars around the Faculty Neighborhood. It isn't minimal, and it isn't only on the weekend. These are all clear examples of why the Board needs to reject this destructive plan. It violates Conditional Use in multiple ways, and runs counter to Durham's claimed goals of environmental sustainability and a walking downtown. – Diane Chen, 12 Oyster River Rd, [Dec 11 2020](#)

Bringing more student cars into downtown can only make our Town noisier and more crowded. If the foot and vehicle traffic increase any further, I think the business district will become a ghost town. – Susan Deese & Louis Piestrak, 35 Garden Lane, [Jan 21 2021](#)

I applaud the Board for addressing the need for a more realistic traffic study. But I hope that an independent traffic study indeed takes a realistically *broad and long-term view*.

Plaza doubts: What if Mill Plaza proposal, as it currently stands, is rejected by the Planning Board, vetoed by Hannaford, and/or withdrawn/not built by the applicant? If the Plaza is indeed a separate proposal, then review of 19-21 Main proposal has to be conducted in terms of *all possible renters*, apart from any assumptions about Mill Plaza & parking needs of proposed Plaza tenants. Also, what are [full traffic implications](#) (pp. 15-18) of *accepted* Mill Plaza plan (increased pedestrian, bicycle, Uber/Lyft traffic, friend pickup/drop-off at Post Office lot, Faculty Rd at Thompson, Chesley Dr)? **Durham has only so many streets – for all projects combined.**

Adding traffic in the neighborhood: Mike Sievert conceded at [Nov 10 2020](#) Technical Review Group (11:18:20a) that the difficulty of exiting left from the lot would obviously **send cars through the Faculty Neighborhood**, significantly adding traffic – as forbidden by Conditional Use.

Soon?: How would the uses of this proposed parking lot change in 5-20 years, when enrollment at UNH is expected to [drop by thousands of students](#), with significant decline in college-age youth in Northeast (from sharp decline in birthrates since 2007, the freshmen of 2025), as well as from many unique challenges UNH faces in capturing/maintaining Durham-based students?

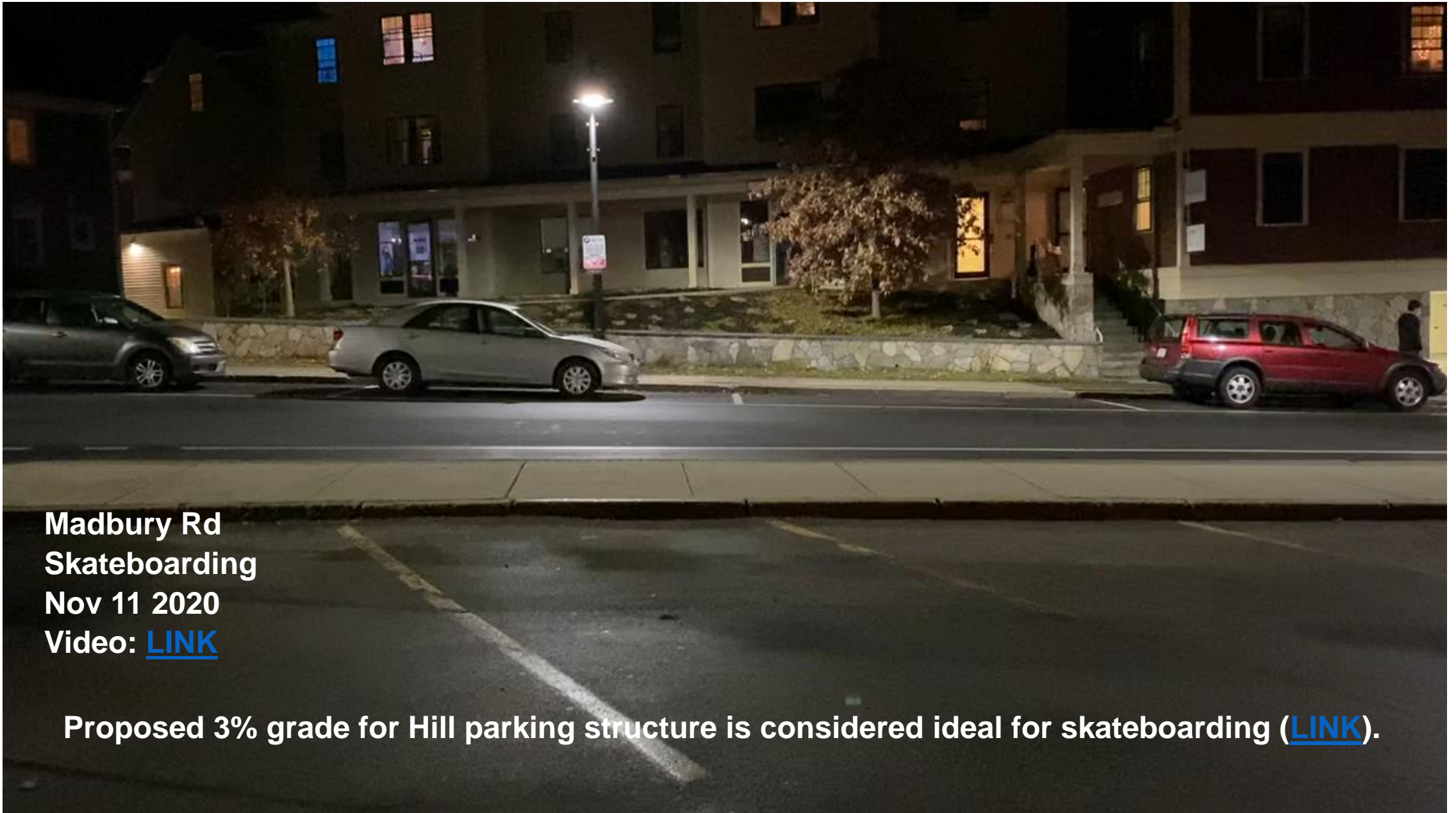


No sound baffling is planned, per Mike Sievert, Dec 2 2020 site walk. See p. 2: [here](#).

Added NOISE!

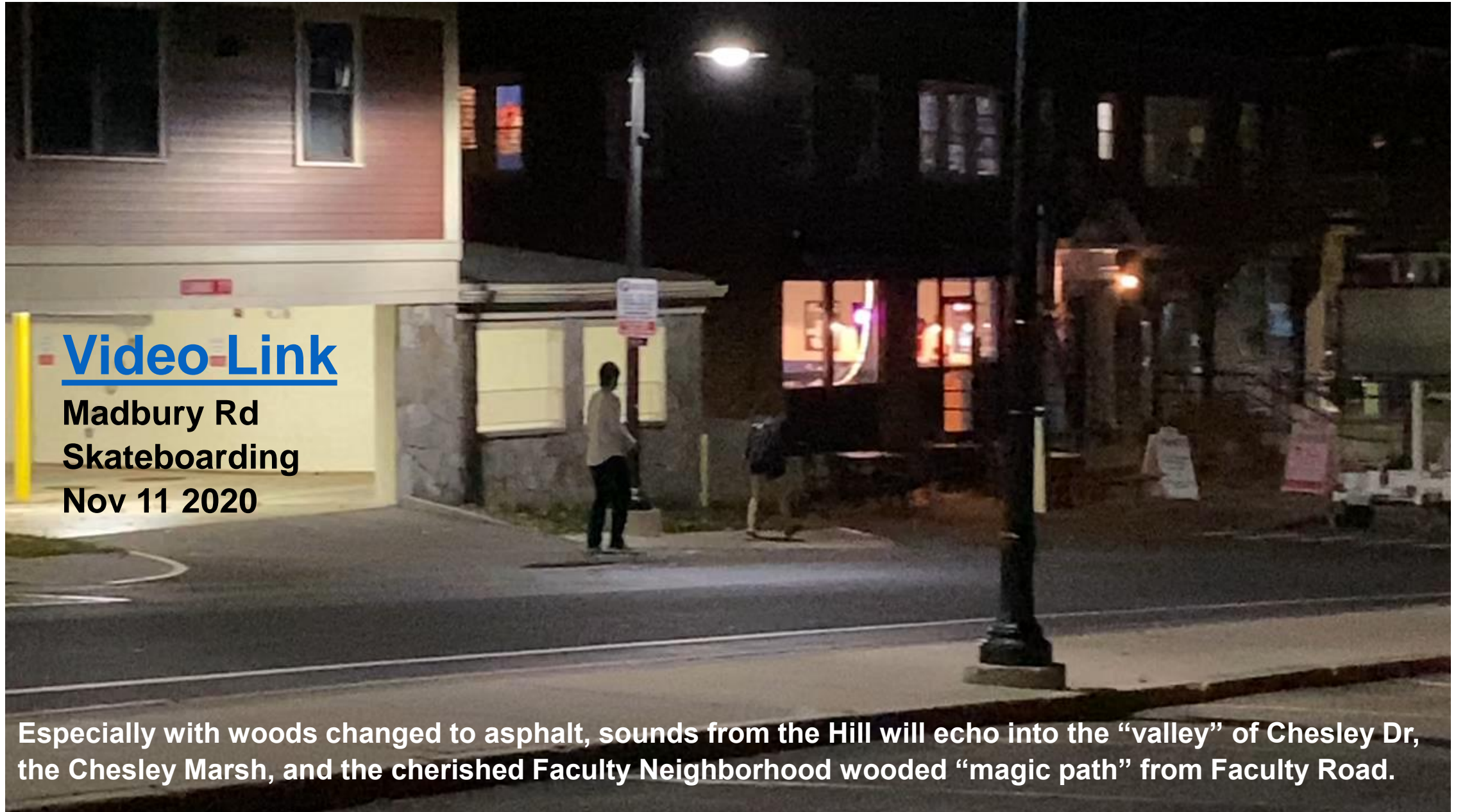
NO Sound Baffling for

vehicle **engines**, car & truck **horns**, vehicle **alarms**, **music** from vehicle stereos, car & truck **doors slamming**, noise from **snow plows**, **backup beepers**, (+ **fender benders & police response**) as well as from people **talking & arguing** with each other or on their **phones** when walking to/from their cars – *and* for a popular parking-lot sport: **see next slide.**



**Madbury Rd
Skateboarding
Nov 11 2020
Video: [LINK](#)**

Proposed 3% grade for Hill parking structure is considered ideal for skateboarding ([LINK](#)).

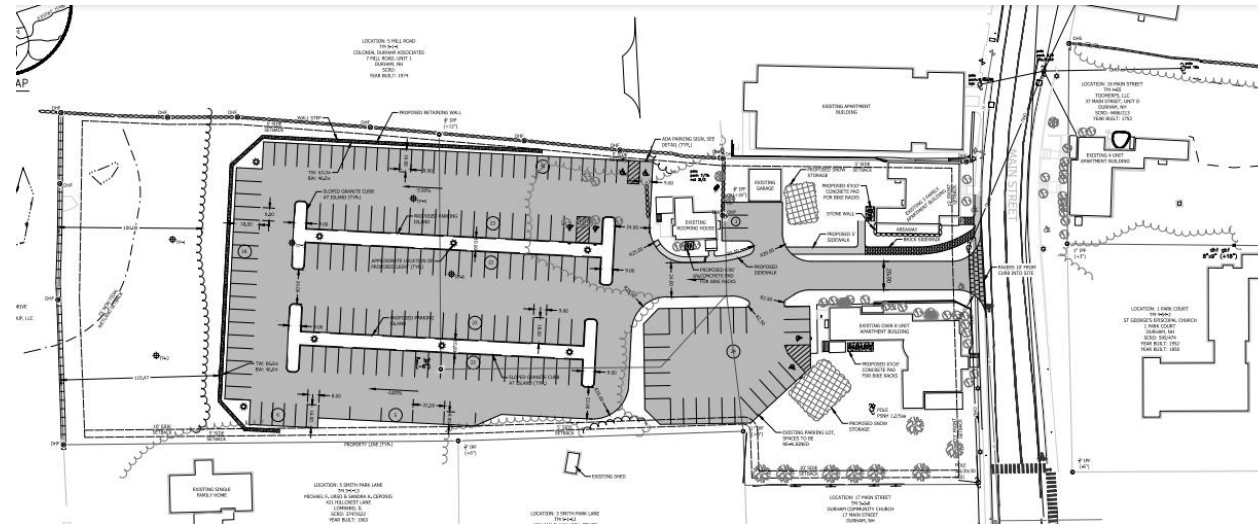


[Video Link](#)

**Madbury Rd
Skateboarding
Nov 11 2020**

Especially with woods changed to asphalt, sounds from the Hill will echo into the “valley” of Chesley Dr, the Chesley Marsh, and the cherished Faculty Neighborhood wooded “magic path” from Faculty Road.

Adding 140~ vehicles (cars, trucks, snow plows, towing vehicles, snow-melting machine) to what is **now quiet woods**, *(with no other existing lots towering over adjacent homes)* would obviously bring the **not-allowed vast increase** in “**odors, vibrations, dust, fumes, and hours of operation.**”





NOT SHOWN:
30" wall-topping
black aluminum
fence, and

Not Shown:
Supposedly
glare-free
18' Lighting
Poles – *to*
be on ALL
night.



At the Dec 2 2020 [site walk](#), Mike Sievert promised the same type of “glare-free lighting” as he installed at GREAT BAY Kennel & Animal Hospital.

Great Bay Kennel: Glare-Free lighting?





← **Glare-Free
lighting?**



**Dark & glare-free
Church Hill woods now
Abutting 8 Chesley Dr
(Feb 11 2021, 6:13pm)**



[Google Earth Image](#)

Indeed, this proposal is a model for what is forbidden under Conditional Use:

Yes, there are existing *normal* parking lots on Church Hill, but

- The normal lots are **further from family homes** & from the Faculty Neighborhood
- **The other lots are at ground level, not atop towering, citadel-like structures**
- The major area lots are for senior housing, houses of worship, & shopping center
- The other Church Hill Zone parking lots have NO lighting poles
- No other parking lot in the area has the potential for as many cars moving 24 hrs/day

Out of scale & overly intense use: **“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....”**

What is proposed is precisely what is forbidden by these Conditional-Use clauses!

Out of scale & overly intense use:

“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....”

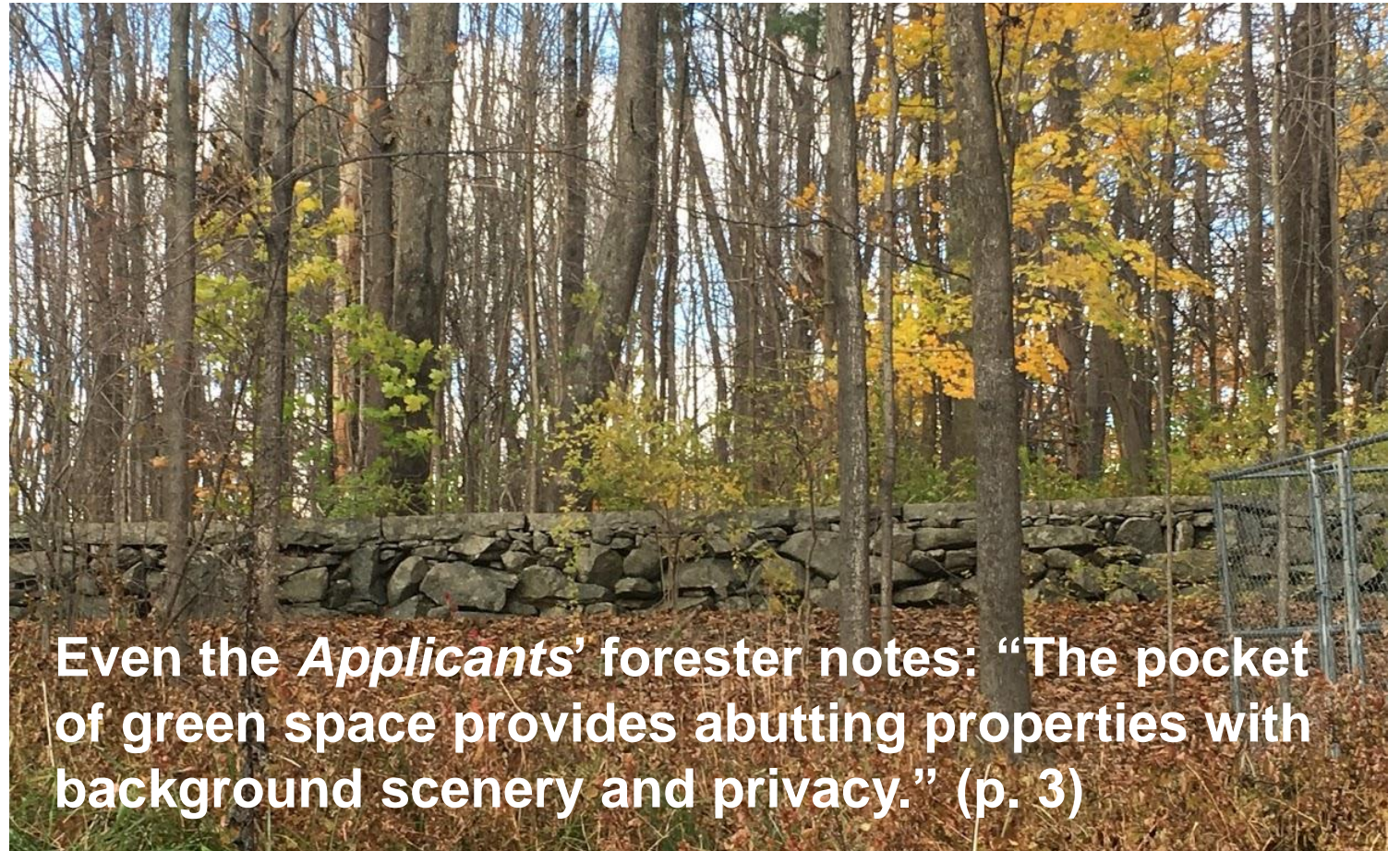


The proposed project is a fortress-like parking mound, wildly out of scale with the surroundings (wetland, footpaths, single-family homes) with extreme new negative impacts beyond any existing or permitted uses in the zone – a clear *Conditional Use mis-match!*

Destroys natural & scenic resources: To meet CU criteria, projects must “**preserve identified natural...and scenic resources on the site and shall not degrade such identified resources on abutting properties**” including “**significant wildlife habitat...mature tree lines...scenic views, and viewsheds.**”

*The proposed parking plan would have precisely those forbidden destructive effects on the Church Hill wooded site – one of mature trees, a wildlife habitat, and an iconic scenic Viewshed: **Yet another clear failure to meet the required Zoning.***

[Charles Moreno](#) quote→



Even the *Applicants'* forester notes: “The pocket of green space provides abutting properties with background scenery and privacy.” (p. 3)

Conditional Use projects must “preserve...scenic views, and viewsheds.”

*This parcel is on a significant slope and will require huge amounts of earth moving and landscaping for construction. It is hard to know all the impacts that could have. One I am concerned about is **the effect on the viewshed**. I recall when the Lodges were built 5 or so years ago, people were disturbed at how this changed the view of the landscape, driving into Town from the southwest. I feel people may be similarly shocked by what this view looks like if the Mill Plaza and Churchill proposals are built and most of this woodlot is removed. – John Parry, Urban Forest Expert, 5 Denbow Rd, [Dec 11 2020](#)*

*For those of us who live adjacent to the commercial district, small patches of urban forests are critical to buffering our neighborhood from the noise, light pollution and view of the commercial area and to preserving our quality of life. Our forested buffer preserves our sense of living in a New England town, despite having the expansive parking lot and ugly buildings of the Mill Plaza as our neighbor. **When I look out our back windows, I see the forested hillside that this proposal will turn into a huge concrete and asphalt parking lot with an enormous retaining wall hovering over our neighborhood....** As our planet faces existential threats because of so many human decisions both big and small, it is hard to imagine that converting one of the remaining patches of forest downtown into a parking lot will make this a better community. It seems like the kind of decision we made before we knew better, but now we know better. – Nancy Lambert, 17 Faculty Rd, [Dec 10 2020](#)*

CONT'D: Conditional Use projects must “preserve...scenic views, and viewsheds.”

It saddens me that a parking lot on Church Hill is being seriously considered. I feel so fortunate that a walk from our house into town includes going “over the river and through the woods.” It’s like a mini vacation. Seeing a parking lot or tall retaining wall (even behind a row of trees) when I’m still in the woods, as opposed to after I’ve emerged and turned the corner on the path to the plaza, would really damage how I feel about living near town. – Maura Slavin, Burnham Ave, [Dec 10 2020](#)

[P]edestrians who traverse [the Kenny Rotner] bridge will probably walk down Thompson Lane, cross Faculty Road, and walk through the cherished wooded pathway, as they head toward the plaza and downtown. What will greet them as they emerge from the path? Durham’s own Masada. – Janice Aviza, 2 Garden Lane, [Jan 25 2021](#)

*It is with real sorrow that we learn about the return of a terrible plan for the iconic Church Hill woods property.... just about the last area in downtown Durham that still has trees. We residents of the Faculty Neighborhood appreciate living close to the university and the Central Business District. But we also cherish whatever buffers exist...to keep our neighborhood a defined and bounded neighborhood. **Any proposal for weakening and destroying natural buffers the neighborhood has long had from student life (and the light, noise, traffic, fumes of cars) goes against decades of Durham’s stated long-terms goals.** It also goes against the clear criteria for Conditional Use zoning. Therefore, this plan should be rejected out of hand. – Susan Deese & Louis Piestrak, 35 Garden Lane, [Jan 21 2021](#)*

The Applicants Were Already Warned of the Plan's CU Failings

Preliminary Design review “is intended to assure that the essential characteristics of the site and specific requirements of local regulations are thoroughly reviewed and understood **before the final design is prepared.**” ([Planning Board Handbook](#), p. 50)

During *Preliminary Design Review* in late 2019 early 2020, the public, experts, and the Planning Board sent a strong message to Toomerfs that such a proposal (then with “only” a 14-16’ retaining wall) could *not* pass Conditional Use criteria.

From Board members, the applicants heard that the project would **conflict with “dark-sky” principles**, that **technical stormwater systems could never match trees and soil for natural stormwater management**, and that the project would have a very difficult time passing the “high bar” of Conditional Use criteria in general, as documented in the meeting video and minutes (next page).

Per Jan 8 2020 Planning Board [minutes](#) (p. 12):

Mr. Kelley said he thought there was a high bar to be raised because this was a conditional use that was proposed. He said a strong case had been made in the comments this evening in regard to this.

Chair Rasmussen said he concurred, and said traffic was a major concern for him so a traffic study would be critical. He said there were permitted uses that would fit the property better, but noted that the owners were free to pursue what they wished.

Councilor Welsh said he concurred, and said it would be pretty tough to address all of the conditional use criteria, especially 1 [Site Suitability], 2 [External Impacts], 3 [Character of the Development] and 5 [Preservation of natural, cultural, historic, and scenic resources]. He said it would be hard to engineer around all of the issues.

The applicants, arrogantly disregarding Preliminary Review signals & warnings, have been putting the public, DPW, Planning Board Members through it all again, in extended form, with an even more massive proposal. The failures to meet CU criteria in the preliminary design essentially remain unchanged, and the site-altering retaining wall is now significantly taller!

*For the forested slope on Church Hill this proposal **eliminates 1.3 acres of mature forest that acts as a visual, aural, and aesthetic buffer and as green stormwater infrastructure protecting College Brook from flooding and from harmful water runoff to the Great Bay, in order to impose a football-sized, asphalt parking lot for 183 cars.** It replaces that natural functioning environment with more than a thousand 10-wheeler truckloads of fill buttressed by a 25 ft. cement block wall dependent on plastic underground tanks to filter, hopefully?, hazardous runoff. The alteration of terrain that this project requires combined with the alteration of terrain for Mill Plaza has the potential to destroy Durham's natural landscape and therefore poses an unacceptable risks to our environment. This project needs to be rejected for all of the above reasons and for its violation of Conditional Use Zoning #2 and #5. We must maintain the forested slopes of Church Hill that is so important as a buffer and natural filter of stormwater. – Nancy Sandberg, 15 Langley Rd, [Jan 27 2021](#)*

Per Town Attorney, [Laura Spector-Morgan](#), a Conditional-Use (CU) project must meet each & every Conditional Use criterion.

Moreover, she notes, the cited *examples* (noise, traffic, light/glare, hrs of activity, etc.) are not an inclusive list; *any* additional negative impact, listed or not, is not permitted.

She adds: No “trading,” no “overall balance.”

This parking mound fails on almost every CU criterion.

Why is this “*poster-child for Conditional-Use mismatch*” once again consuming so much Planning Board & Public time?

This Application Also Runs Counter to Prime Master Plan Goal

For over 40 years Durham has been designated as a “[Tree City, USA](#).” Even in bare winter months, the targeted-for-destruction Church Hill trees comprise an important part of greenway buffer for entire Faculty Neighborhood. Indeed, that buffer helps to *create* a bounded Faculty Neighborhood, separate from hubbub of the Central Business District & already very dense traffic on Main Street at Church Hill.

The Faculty Neighborhood’s downtown greenway may not be much compared to what people on more distant, larger parcels have, but it’s crucial to us because of compactness of our lots (many only about ¼ acre in size). This proposal would be very destructive to that bit of valued neighborhood-defining greenway. Small animals & birds, including rare species, also enjoy the area. **Per Master Plan (LU-16):**

“Reduce the trend of continued loss of forestland and other natural areas, and increase the quantity and quality of existing forest cover in developed areas.”

Please follow the Master Plan goals & Conditional-Use Zoning, and reject this plan!

As the Planning Board chair concluded at the close of **Preliminary Design Review**, there are more appropriate uses for this property that would not violate Conditional Use Zoning: *“permitted uses that would fit the property better,”* uses that would **not ruin the nature and slope and natural stormwater system** of this wooded lot with 16,000 yards/tons of fill in 1,200~ runs of 10-wheeler dump trucks.



Applicants Bear the Burden of Persuasion of Compliance with Conditional Use

On January 27, 2021 ([9:10:08 pm](#)), applicant Timothy Murphy claimed that no one had presented any evidence or indication of the proposed project *not* meeting Conditional Use (CU) criteria. That is clearly false. As documented here with respect to Planning Board statements during Preliminary Design review as well as in the multitude of resident and urban forestry experts letters and oral comments and visual evidence, the proposed project falls far short of meeting almost all the CU criteria.

Beyond that, however, is an even more compelling point: the [Conditional Use Ordinance](#) (p. 3) clearly notes that the *burden of persuasion* is *not* on the public or the Planning Board, but on the applicant:

175-23. Approval Criteria....

B. *Burden on applicant.* The applicant shall bear the burden of persuasion, through the introduction of sufficient evidence, through testimony, or otherwise, that the development, if completed as proposed, will comply with this Article and will satisfy the specific requirements for the use contained in the ordinance.

The Planning Board also has a very high bar to meet when approving a Conditional Use Application

175-23. Approval Criteria.

A. Planning Board Decision Based on Findings. Every decision of the Planning Board pertaining to the granting, denial or amendment of a request for a conditional use permit shall be based upon findings of fact and conditions of approval.... **A mere finding or recitation of the enumerated conditions unaccompanied by findings of specific fact shall be deemed not to be in compliance with these regulations.**

Conditional Use restrictions apply to negative impacts on:
“ABUTTING PROPERTIES,” “THE NEIGHBORHOOD,” “SURROUNDING ENVIRONMENT”



**My front door
looking up to
Church Hill**

Stone wall boundary →



**My house seen from BOTTOM of
Church Hill Woods**

***Rights of “parties in
interest” at a public
hearing: [NHMA](#)***



**Church Hill from
my second-floor**

***Opponents “shall be
allowed to speak”
before deliberations
at Public Hearings.
[NHOSI](#), pp. 109-110***

College Brook as *19-21 Main Street* “Drain”

Stormwater, Traffic, Noise, Lights, Mass/Scale, Ruined Viewsheds on the Hill

A déjà vu Conditional Use application

Just looking, Michael and Pete, at Conditional-Use criteria. I think it's going to be pretty tough to address every one. I mean you have “site suitability,” a lot of potential issues there. “External impact,” “character of the development,” and the “preservation of resources,” in particular 1, 2, 3, and 5. It's going to be hard to engineer around.

—Planning Board member, Preliminary Design Review, January 8, 2020 ([video](#)), 10pm

Adapted from Comment at Planning Board Public Hearing
January 27, 2021

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