

Details on [Successful](#) Andersen/Meyrowitz ZBA Appeal, April 13, 2021

To: Durham Planning Board / From: Joshua Meyrowitz, 7 Chesley Dr / April 5, 2022

Please include in the legal record for the Church Hill Woods (aka 19-21 Main St) site-plan application

Toomerfs' Engineer Mike Sievert: “What you [Attorney Puffer, representing appellants] just said is ‘you can’t build this parking lot without that retaining wall.’ That is incorrect. I could take that retaining wall away and I could narrow this parking lot down into a much narrower, longer parking lot.” (8:14:18pm [video](#))

[ZBA Minutes](#), p. 5: “[ZBA Member] Joan Lawson summarized points from speakers. At grade would be at the bottom of the wall. Finished grade becomes the level of surface parking. This falls under the definition of structured parking because it is a structure (arrangement of parts) that makes parking available.... The wall is a structure and provides part of the parking according to the definition for structured parking.”

PB Chair Rasmussen, April 13, 2021, 10:34pm, email to PB: “Effectively, the ZBA determined that if a retaining wall of any size is used to provide parking, then it is STRUCTURED PARKING.” (see [p. 15](#))

Toomerfs, June 10, 2021 [Superior Court Appeal](#) ([withdrawn](#) Oct 27, 2021): “A majority believed that because the retaining wall was a structure that provided a portion of the parking, the proposal was ‘structured parking’” (p. 6).

Timothy Murphy (of Toomerfs), April 15, 2021 email to Planner Behrendt (after Behrendt announced PB subcommittee to change Zoning definitions for “surface parking” and “structured parking” in light of ZBA ruling): “‘At grad’ (sic) needs some work too--for example, our proposal is ‘at grade’ from the front, but not the back, and any lot with a retaining wall around any of it’s (sic) border potentially could be called not at grade.” (see [p. 19](#))

ZBA Appeal of Administrative Decision for “19-21 Main Street”

[Appeal document with appendices](#) (searchable [main text](#))

Peter Andersen & Martha Andersen

8 Chesley Dr, Durham, NH / Andersen Williams Group, LLC [Map 5 / 7-59]

Joshua Meyrowitz

7 Chesley Dr, Durham, NH / Joshua Meyrowitz Rev Trust [Map 5 / 7-58]

Owner of Property Concerned:

Toomerfs, LLC (c/o Peter Murphy) / 37 Main Street, Unit O, Durham, NH 03824

Location of Property: “19-21 Main St” / Map 5 / Lots 1-10, 1-9, 1-15, 1-16

Presentation by Joshua Meyrowitz

ZBA Hearing, April 13, 2021

(30:46 to 47:20 in [video](#))

Re: Toomerfs proposal for "19-21 Main Street"

March 4, 2021: [Letter from Attorney Mark Puffer](#) to Durham Planning Board

NOT "at-grade," not "Surface Parking," but rather "Structured Parking," per DZO

March 5, 2021: [Planner Michael Behrendt Opinion Letter](#) to Attorney Puffer

What is proposed is simply an at-grade, surface "parking lot"

March 10, 2021: PB Chair asks: Any Board member disagree with staff letter?

No Board member speaks

March 22, 2021: Audrey Cline email: Absence of disagreement = "decision"

***March 24, 2021: We filed an appeal of that "Administrative Decision" –
reached with no public input, no discussion, no debate***

CENTRAL QUESTION:

Is what is proposed by Toomerfs for Church Hill Woods really, per [DZO](#):

“at-grade parking that is not located within a structure”?

“SURFACE PARKING — A parking lot or similar uncovered, single-level parking facility that provides at-grade parking that is not located within a structure.” – DZO, Article II, Definitions, Section 175-7



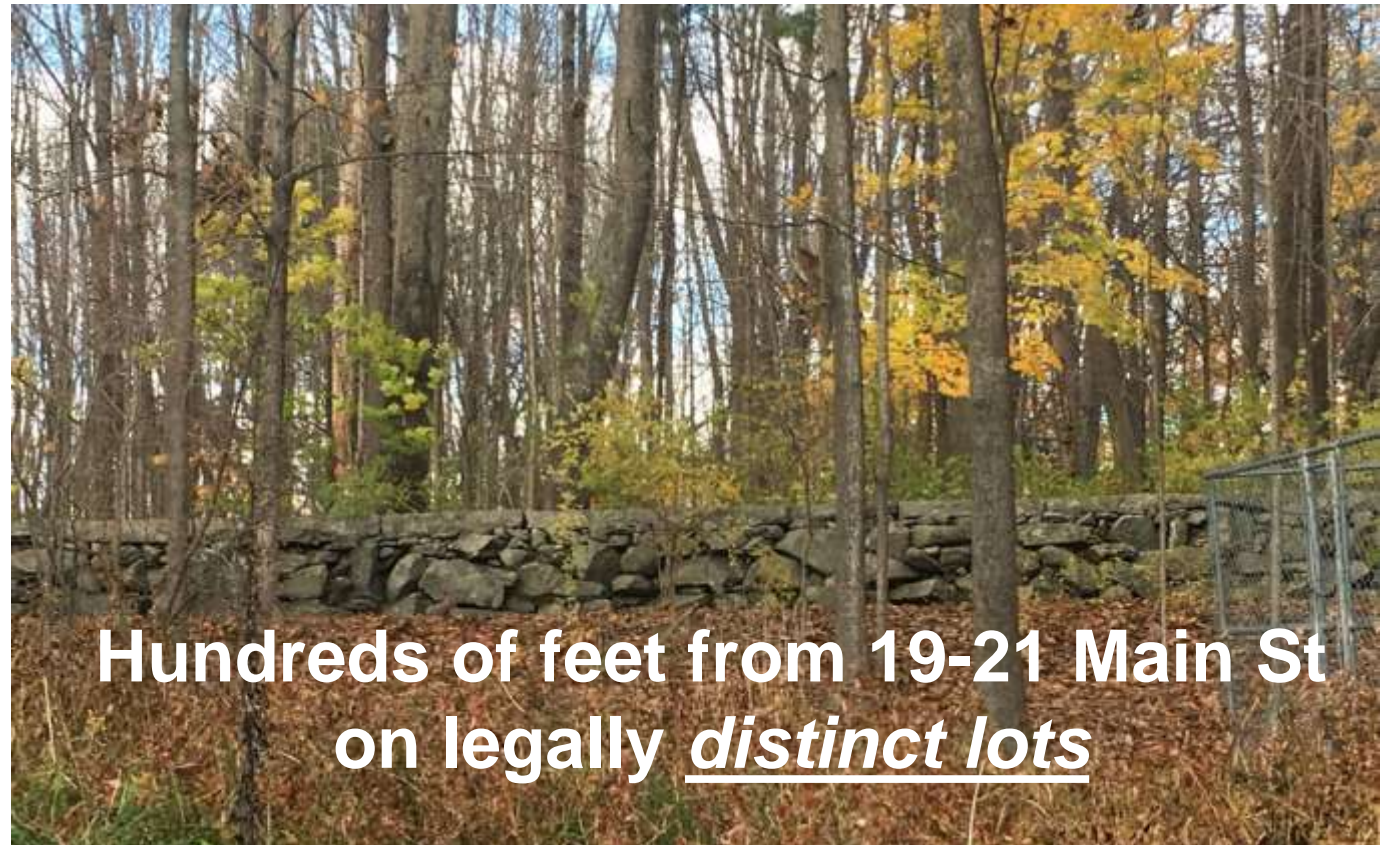
Project Name Has Misled the Planning Board

The proposed project is **NOT** located at “19-21 Main Street”

“19-21 Main” = driveway entrance/exit to Historic District lots. Parking expansion proposed is **on two legally distinct landlocked lots (not in Historic District) with no street addresses**, distant from Main St.

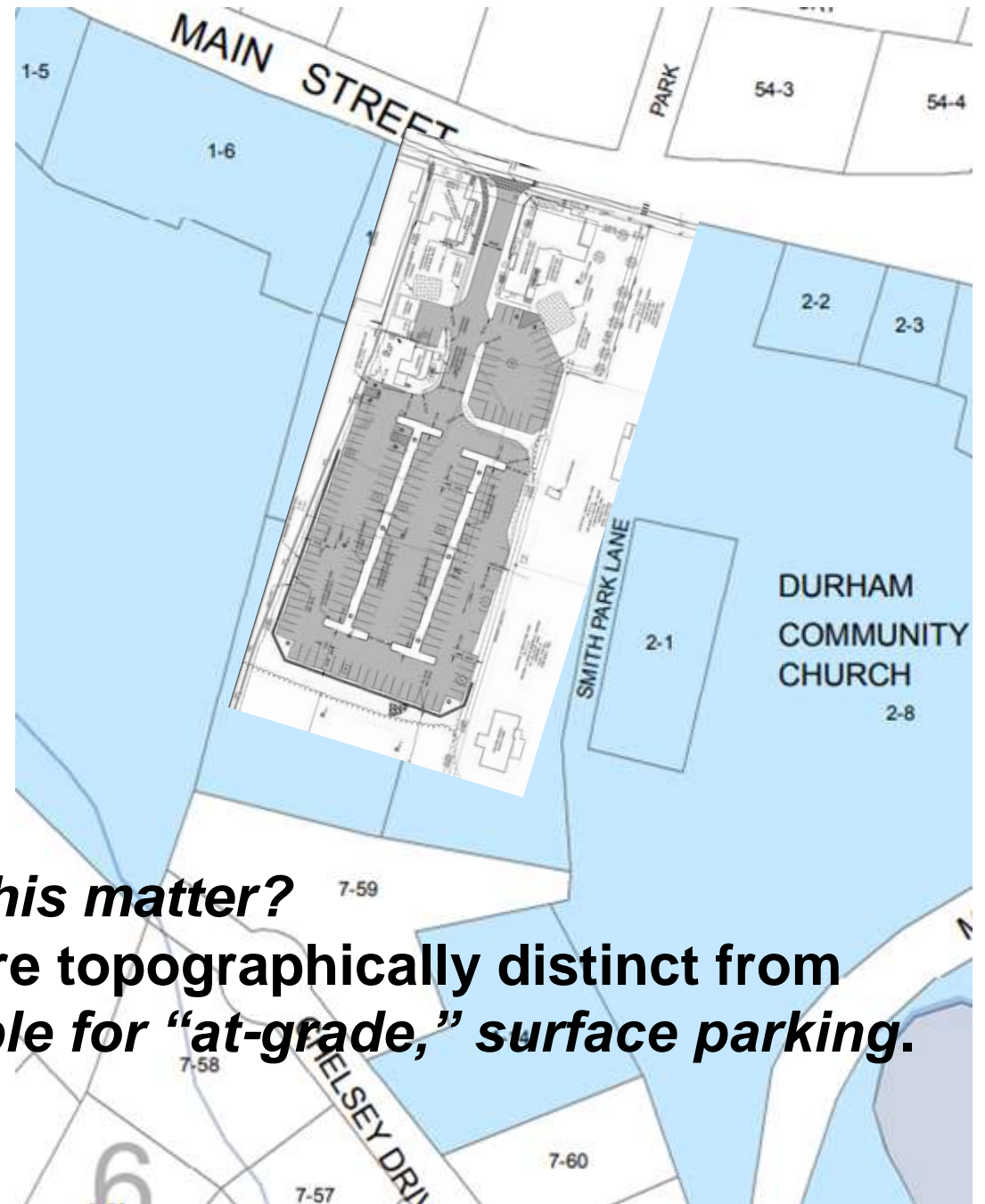
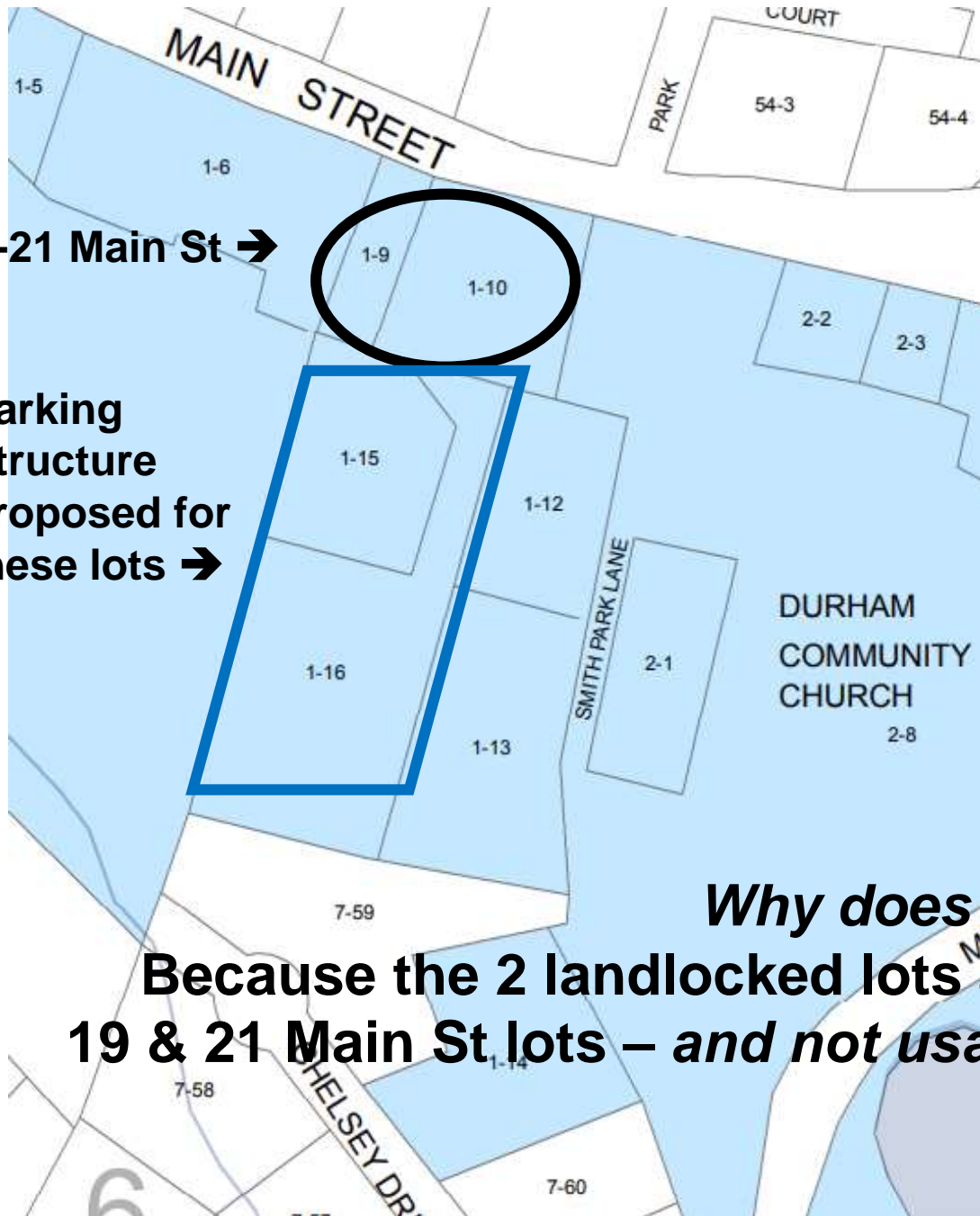


Project location more accurately: “1.3 acres of iconic woods that slope steeply away from Main St & toward Chesley Marsh & College Brook flood zone.” →



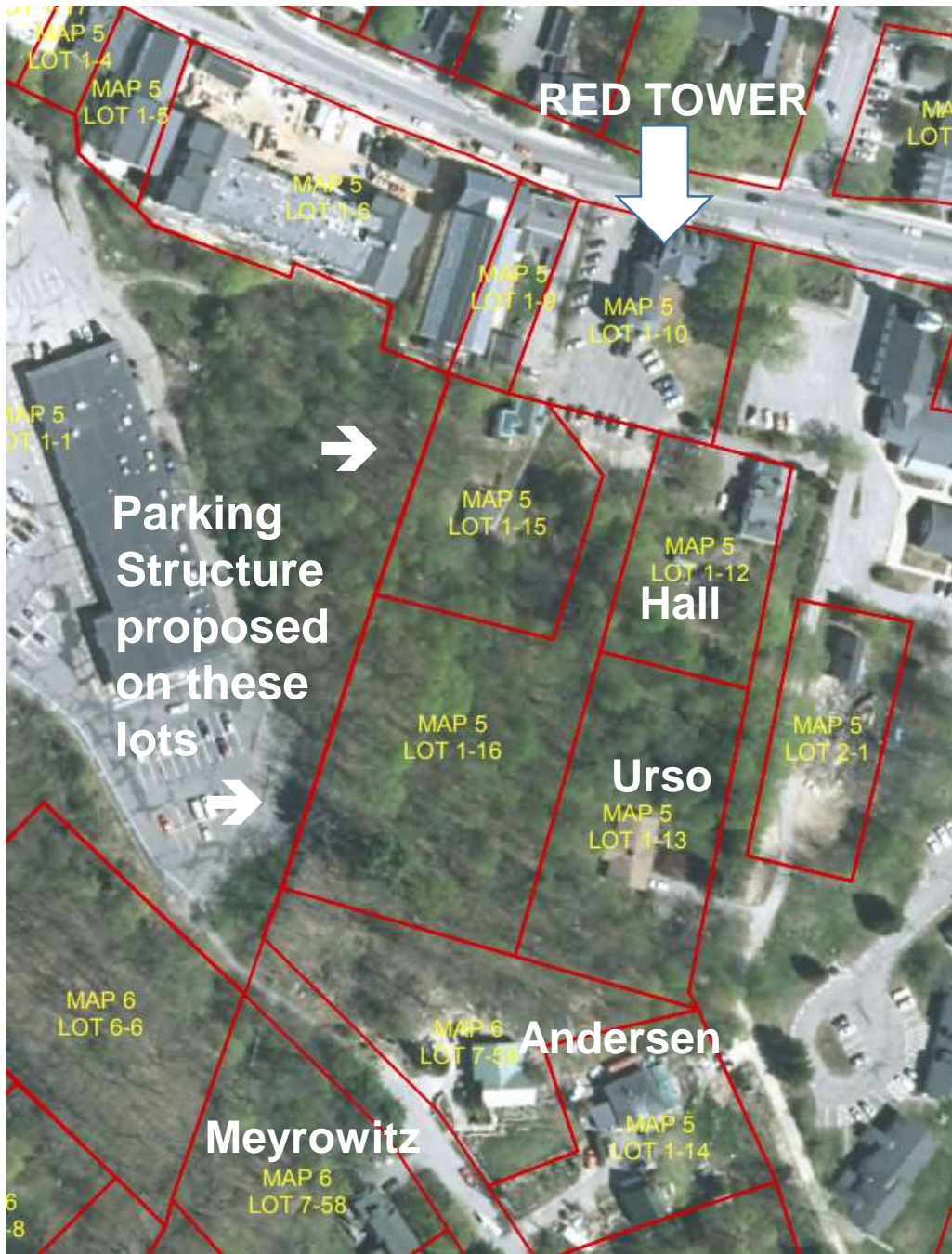
19-21 Main St →

Parking Structure proposed for these lots →

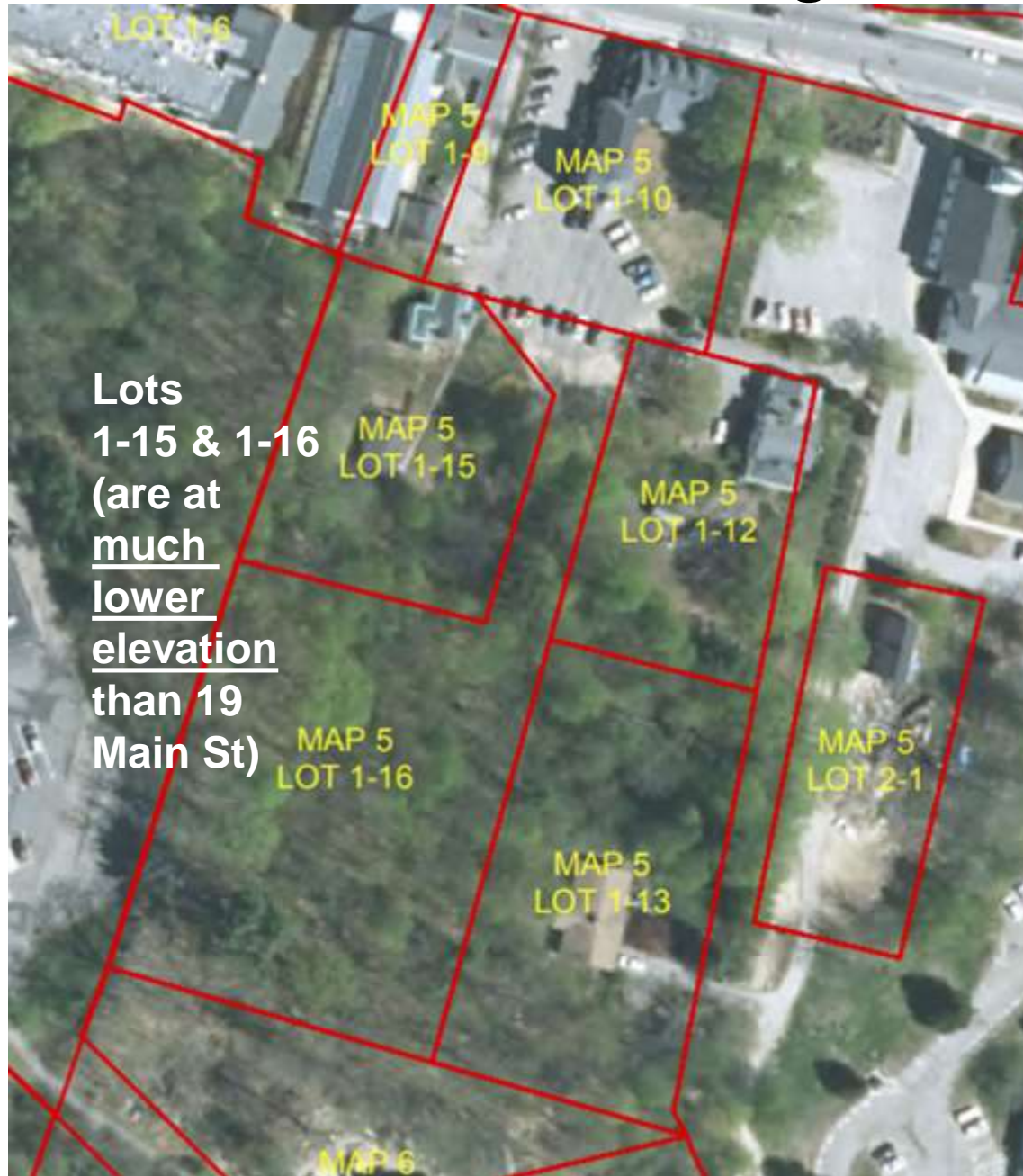


Why does this matter?

Because the 2 landlocked lots are topographically distinct from 19 & 21 Main St lots – and not usable for “at-grade,” surface parking.



Enlarged View of Prior Slide



“SURFACE PARKING – A parking lot...that provides at-grade parking....” – DZO

Surely, the “grade” of parking surface must be assessed based on the natural grade of the specific lots upon which the parking surface would be built.



Looking up to 19 Main (Red Tower)



Looking up toward 5 Smith Park Ln

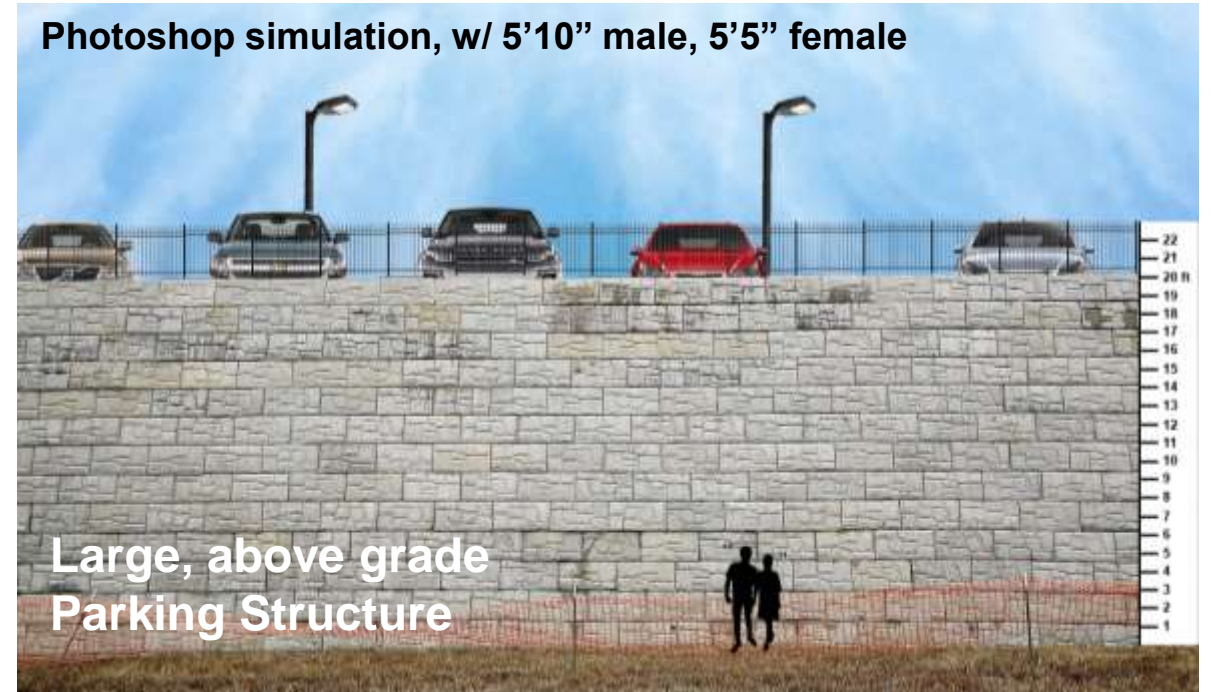
The proposal is for a far-ABOVE-natural-grade parking structure

Misleading Label #2

Project does NOT match DZO definition of a Surface “Parking Lot”



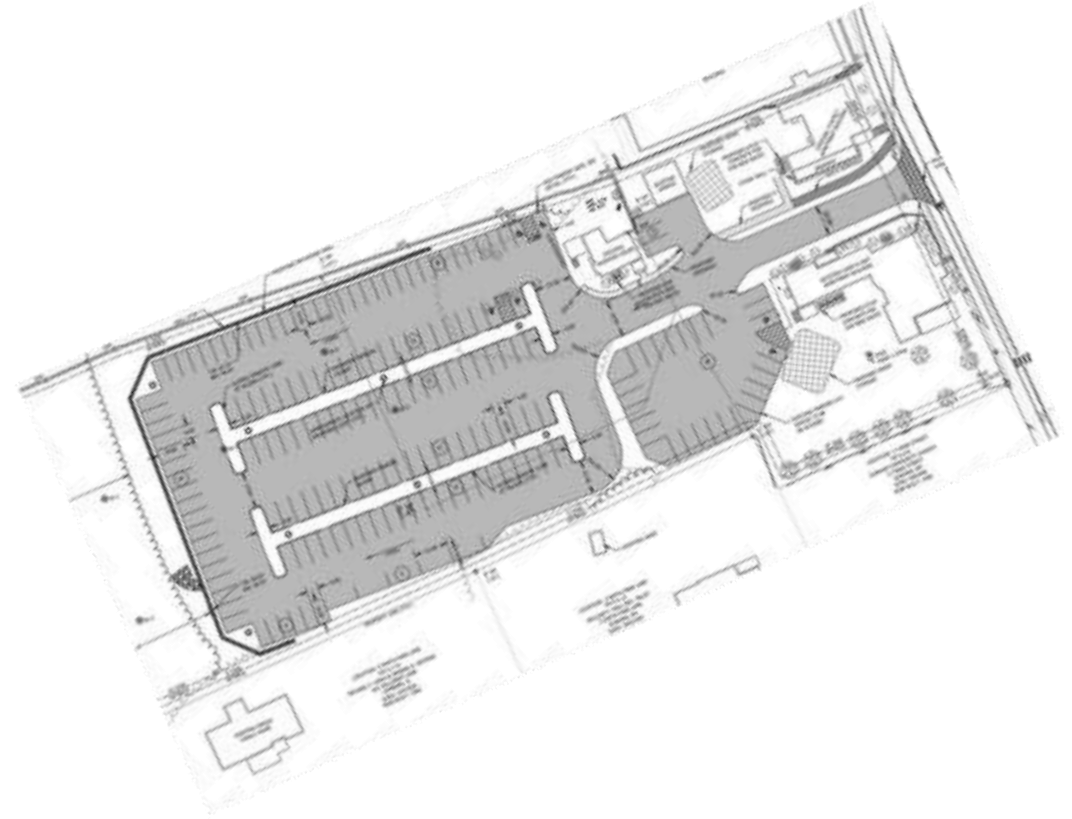
Parking LOT: Compact, pave, paint stripes on relatively level surface “NOT contained within a structure.”



Proposed STRUCTURE: Multi-sided **concrete & steel** retaining walls up to 23’ high (w/ metal fence above), *containing* 17,000 cu yds of fill & asphalt topping – ***up to 17+ ft above natural grade.***

Applicants have obscured how massive a STRUCTURE is proposed

*The Toomerfs have done everything they can do to hide from the Planning Board, other Town Officials, and the Public how much their proposal **differs structurally from an “at-grade,” surface parking lot.***



Applicants have highlighted a FLAT image – w/o even linear measurements of 444-foot long retaining walls (197 ft on Mill Plaza side, 222 ft Chesley Dr side, 25 ft Smith Park Ln side, per *Michael Behrendt’s scaling of diagram*).

Applicant's *ONLY IMAGE* has been misleading Planning Board

The *only* [wall rendering](#) provided by applicant (thus far) makes it appear as if proposed parking surface would *not* be that much taller than the old stone wall 100 ft downhill from it.



A virtually impossible to assess image – shown from a low angle & from 240 feet away!

**But even at most solid parts,
old wall only about 3 ft high.**



**And land rises sharply behind
old wall, which would make 23 ft
(proposed wall/fence) fully visible.**

**In other sections, old wall
barely rises above ground.**



Given elevation of land 100 ft upland of existing stone wall, *full* 23 ft of proposed wall/fence would be visible – at 7-8 *times height of old stone wall*.



Applicant has misled Planning Board by portraying the *only* obstructed view

Toomerfs distorted image of proposed retaining wall is shown from ONLY perspective with any natural features (Chesley Marsh) that would diminish or distract from prominence of the structure.



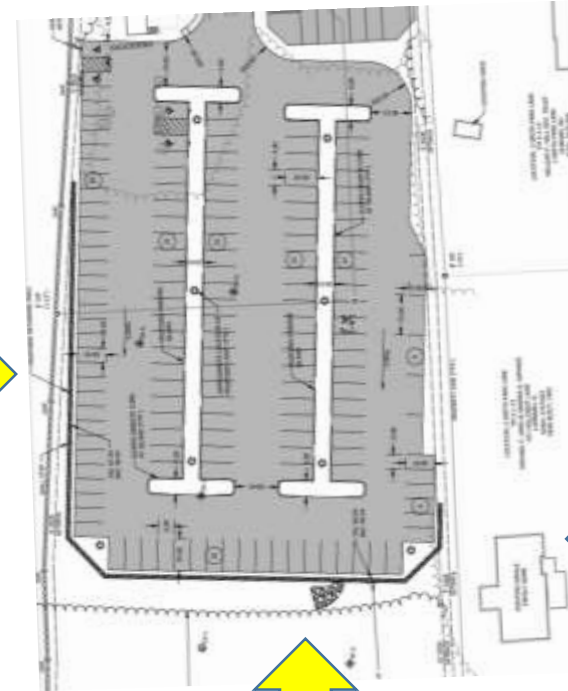
ONLY wall view shown by Applicant,
from low elevation — & 240 ft distance.

Missing Visual & *Measurement* Information for Planning Board to assess whether it's really “surface parking”

Per [Planner's Review for 4-14-21](#), Toomerfs have yet to provide basic information to Planning Board and public:

- “profile (elevation) drawings of the **proposed retaining wall on its three sides.** This is indispensable information.”
- “longitudinal profile from Main Street to Chesley Drive, or preferably Faculty Road, ***showing the continuous final ground elevation.*** This would help clarify how visible the vehicles and lights would be from nearby properties.”

MISSING
view from
Mill Plaza



MISSING
view from
Smith Pk Ln

MISSING view from
Chesley Drive

**Applicant has NOT provided parking-structure renderings
from abutting Mill Plaza...**



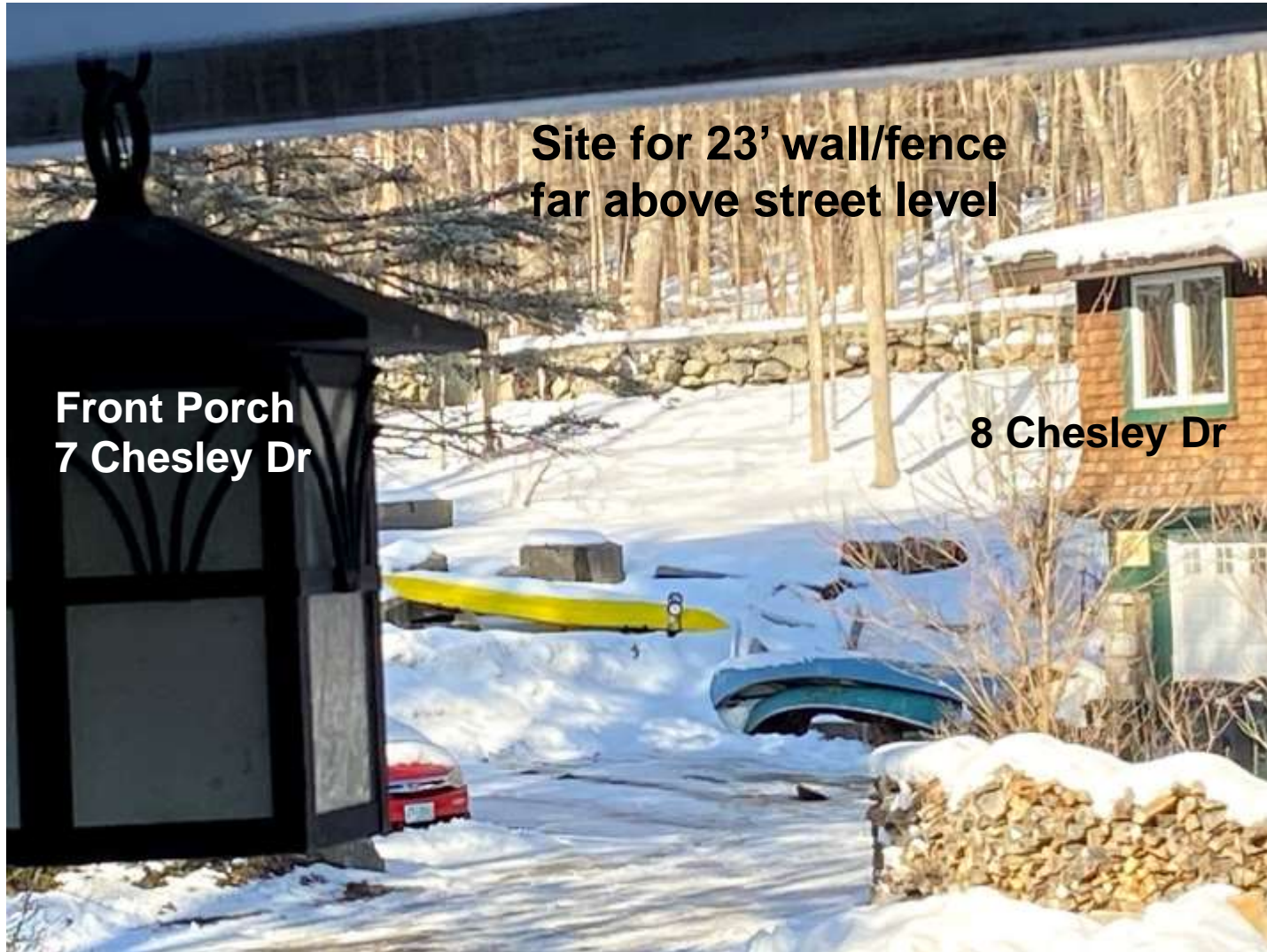
**where the wall would be at
ground level and with only a
proposed *FIVE FOOT* setback!**

Toomerfs have NOT provided parking-structure renderings from abutting 5 Smith Park Lane home.



Retaining wall would be aimed directly at center of house, with football-field size mound of fill/asphalt replacing the steeply sloped woods.

Applicant has NOT provided parking-structure renderings for Chesley Drive abutters



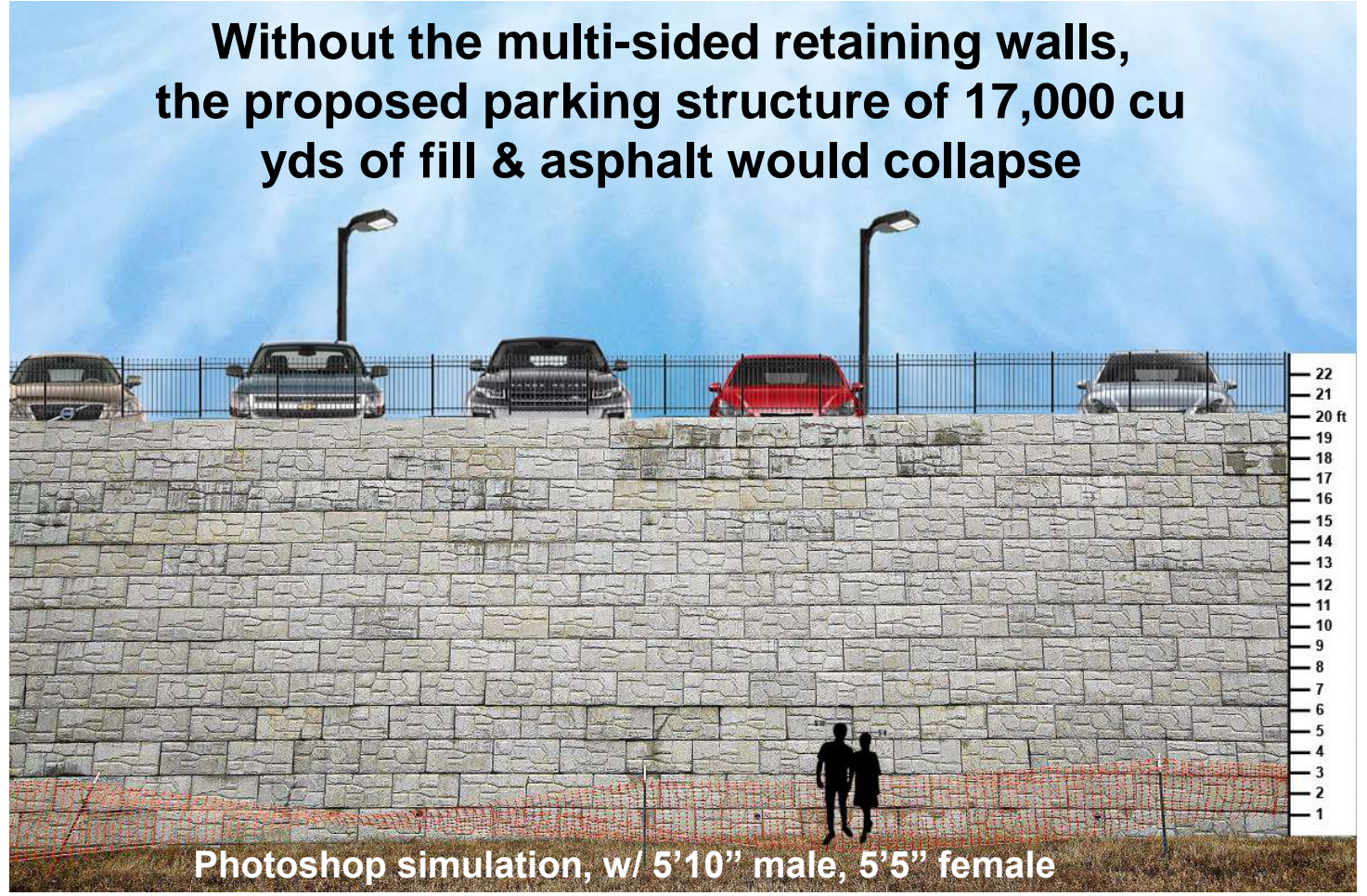
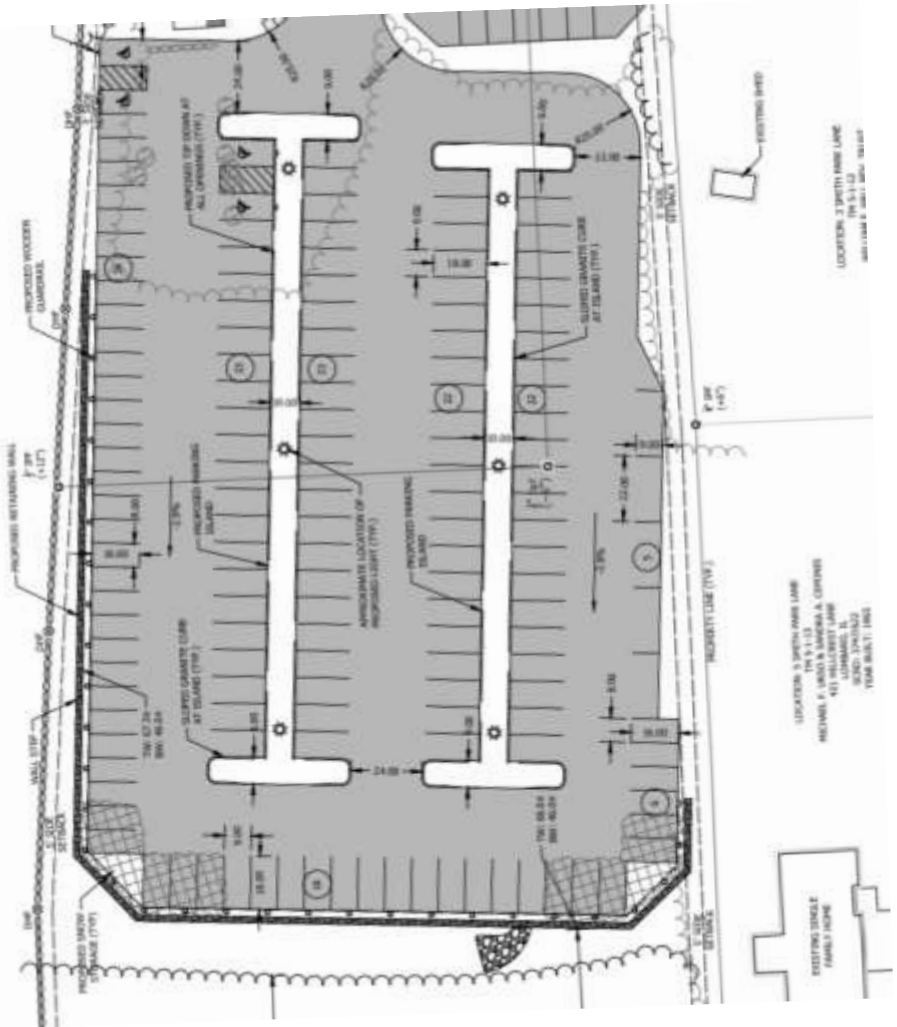
Site for 23' wall/fence far above street level

**Front Porch
7 Chesley Dr**

8 Chesley Dr

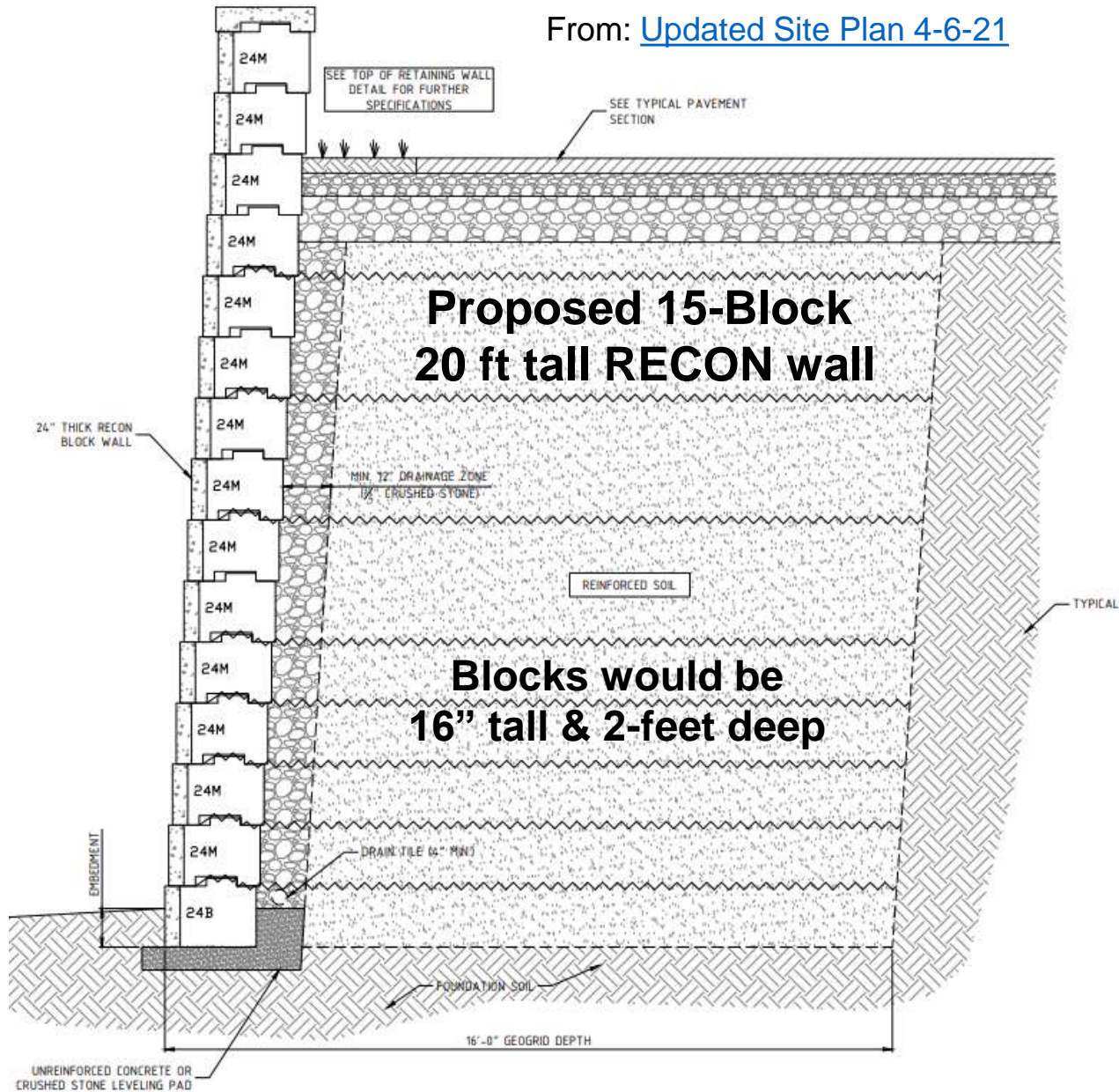


The parking structure mass, rising above old stone wall, would be prominently visible – *in full* – from Chesley Drive.

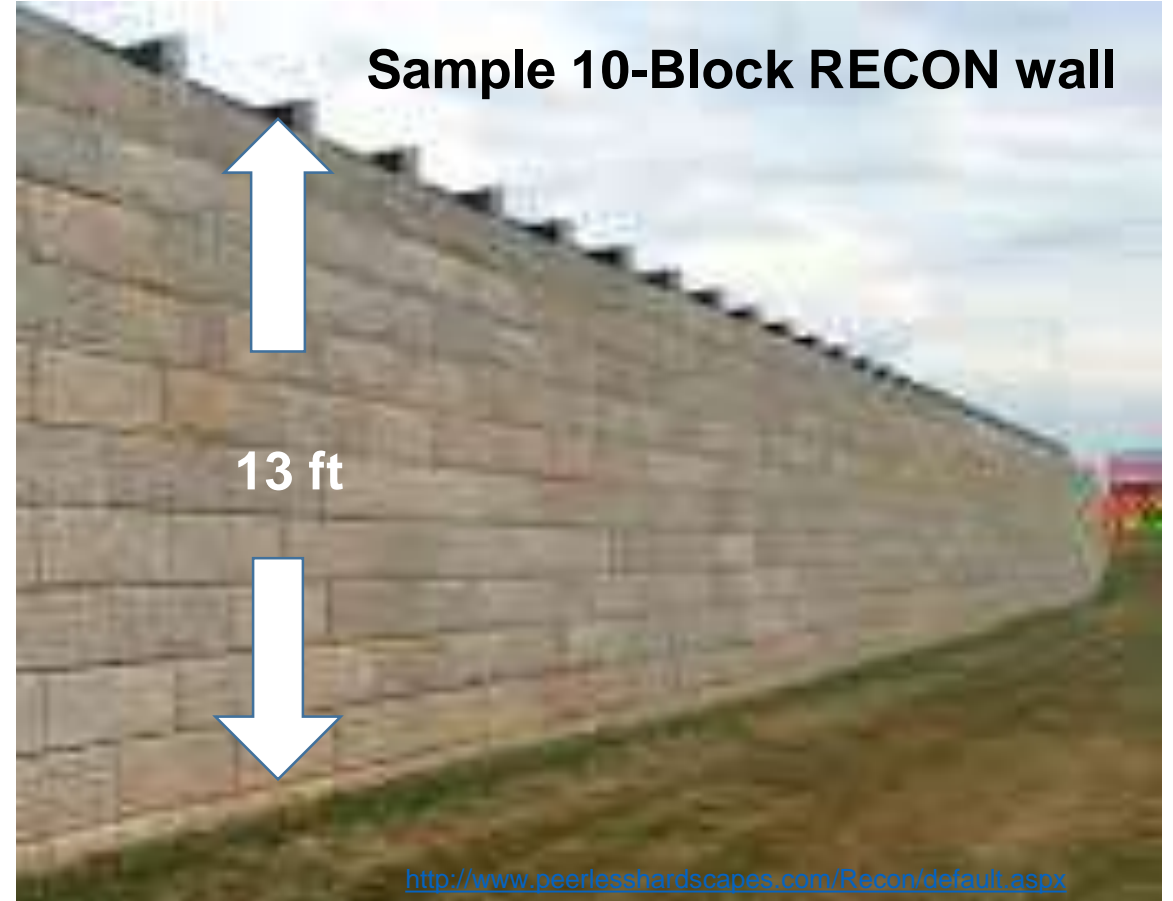


Thus, the massive retaining wall system would, indeed, “contain” the parking and “provide” for parking – per DZO definition of “Structured Parking.”

From: [Updated Site Plan 4-6-21](#)



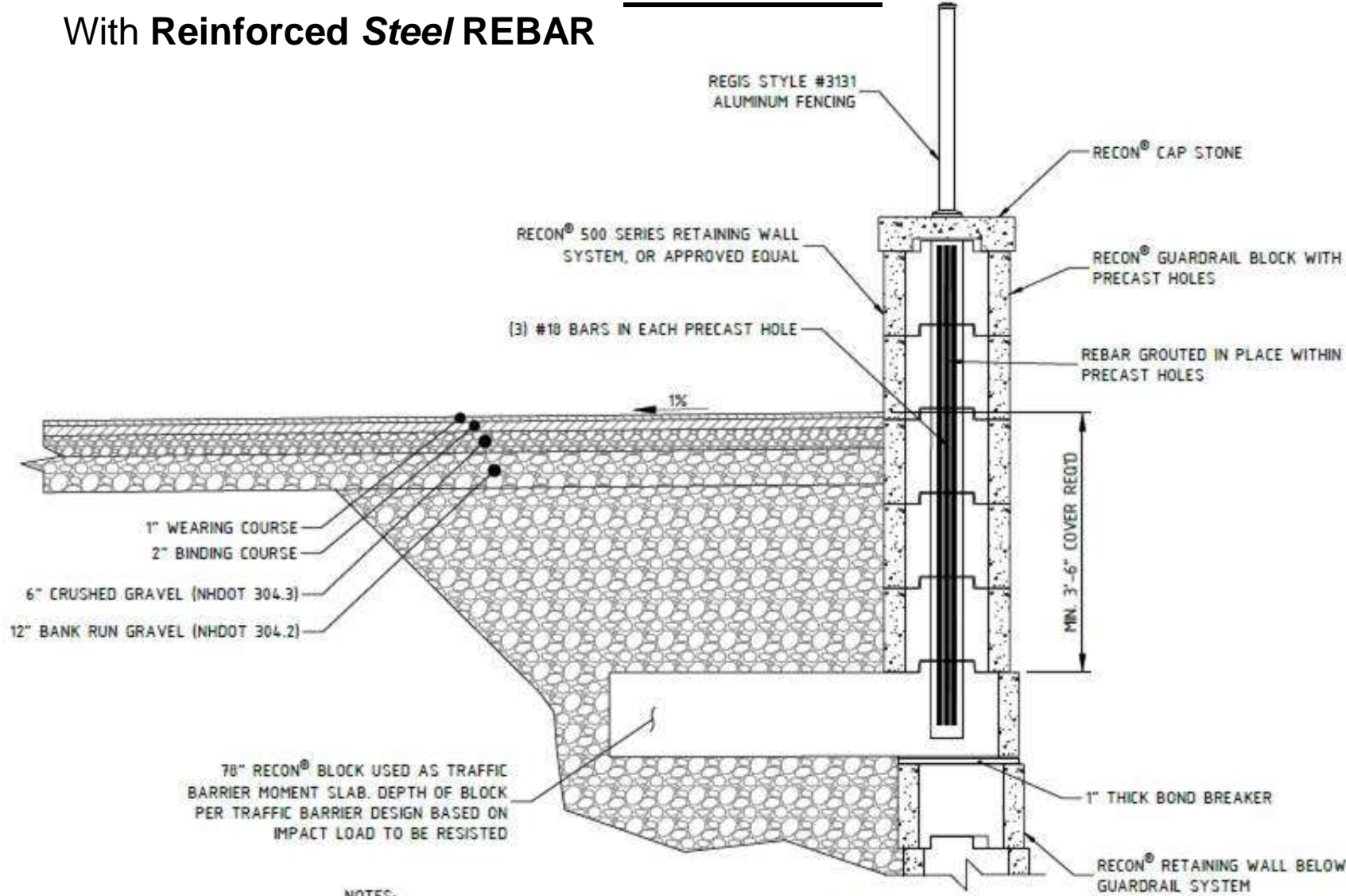
RECON BLOCK WALL DETAIL
SCALE: 1"=2'



Toomerfs wall would be 50% TALLER

CONCRETE RETAINING WALL STRUCTURAL DETAIL

With Reinforced Steel/REBAR

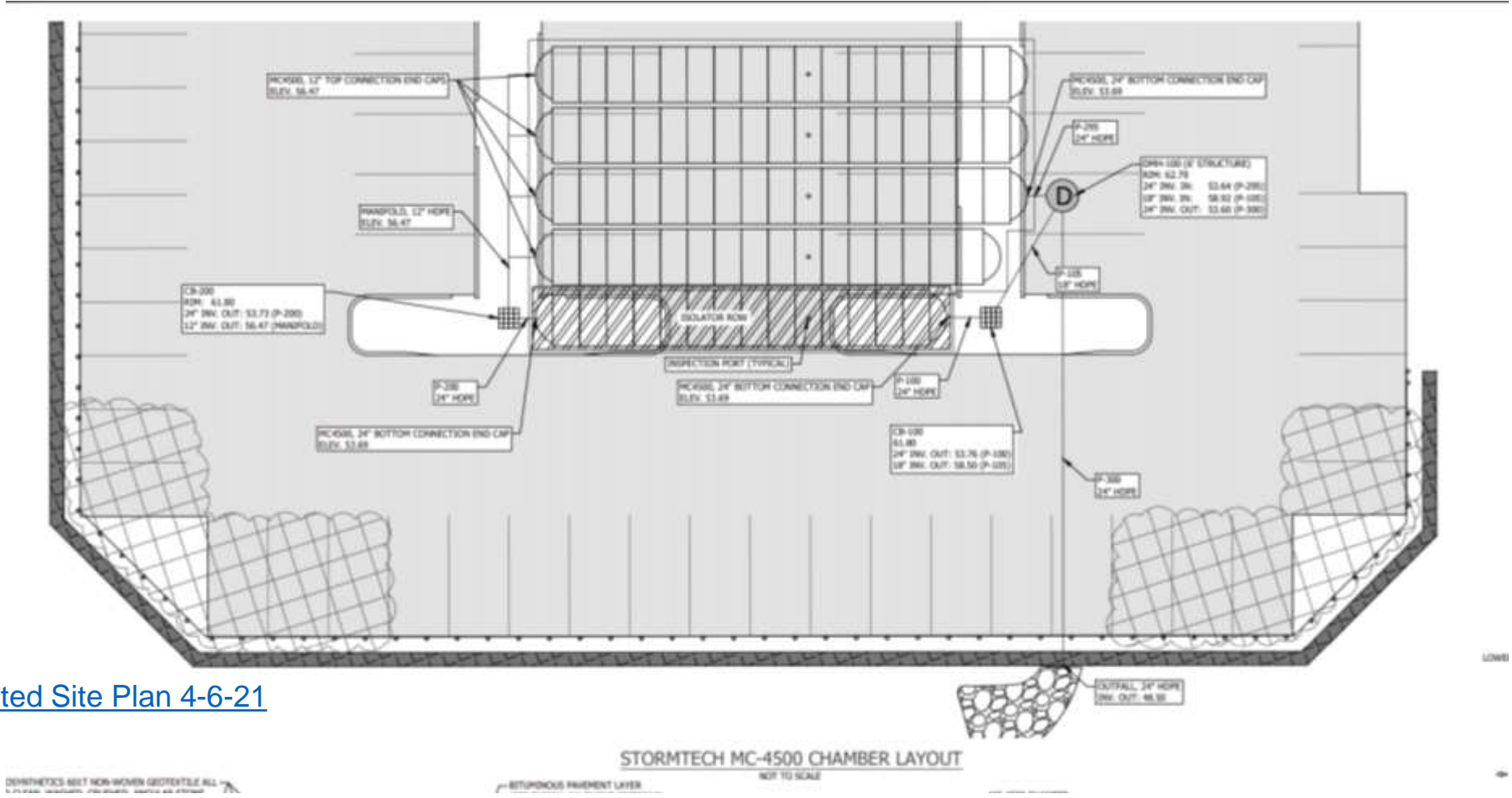


- NOTES:
1. DELETERIOUS MATERIALS ENCOUNTERED BELOW PARKING AREA SHALL BE COMPLETELY REMOVED.
 2. COMPACT SUBGRADE TO 95% OF STANDARD PROCTOR.



30" Regis #3131 Black Aluminum Fence for top of 20 ft tall wall

Massive proposed STRUCTURE includes a complex stormwater “Stormtech” Chamber System. That’s a good thing in a Parking Structure this large, yet unlikely in an at-grade, surface parking lot.



From: [Updated Site Plan 4-6-21](#)

Planner Behrendt's *personal* definition

“Structured parking refers to parking situated inside or on top of a building, or what is commonly referred to, in non-planner parlance, as a parking garage. Parking garages are buildings that are typically constructed of concrete and/or steel.”

The DZO could be amended in the future to meet Mr. Behrendt's preferred definitions, but current applications must be judged on the basis of current DZO.

DZO has NO mention of: inside/top of building, garage, concrete, or steel.

“STRUCTURED PARKING — A structure or portion of a structure that provides parking. The parking may be above or below grade, may be covered or uncovered, and may be on multiple levels.” – DZO, Article II, Section 175-7

- Multi-sided retaining wall would **hold together 17,000 yards of fill & asphalt, would thereby “provide parking” for *added* 137 spots on sloped site otherwise unusable for parking;**
- “Structured parking” by our DZO definition, **“may be above or below grade”** (in the Toomerfs proposal, it would be **very much above the current natural grade**);
- May **“be covered or uncovered”** (the proposal is for uncovered);
- **“*May* be on multiple levels”** – thus *may be* on a single level, as proposed by Toomerfs.
- **Toomerfs plan matches DZO’s “Structured Parking” – prohibited use on Church Hill.**

Engineer Mike Sievert concedes that what he is designing is “defined as a structure.”



[YouTube LINK](#)

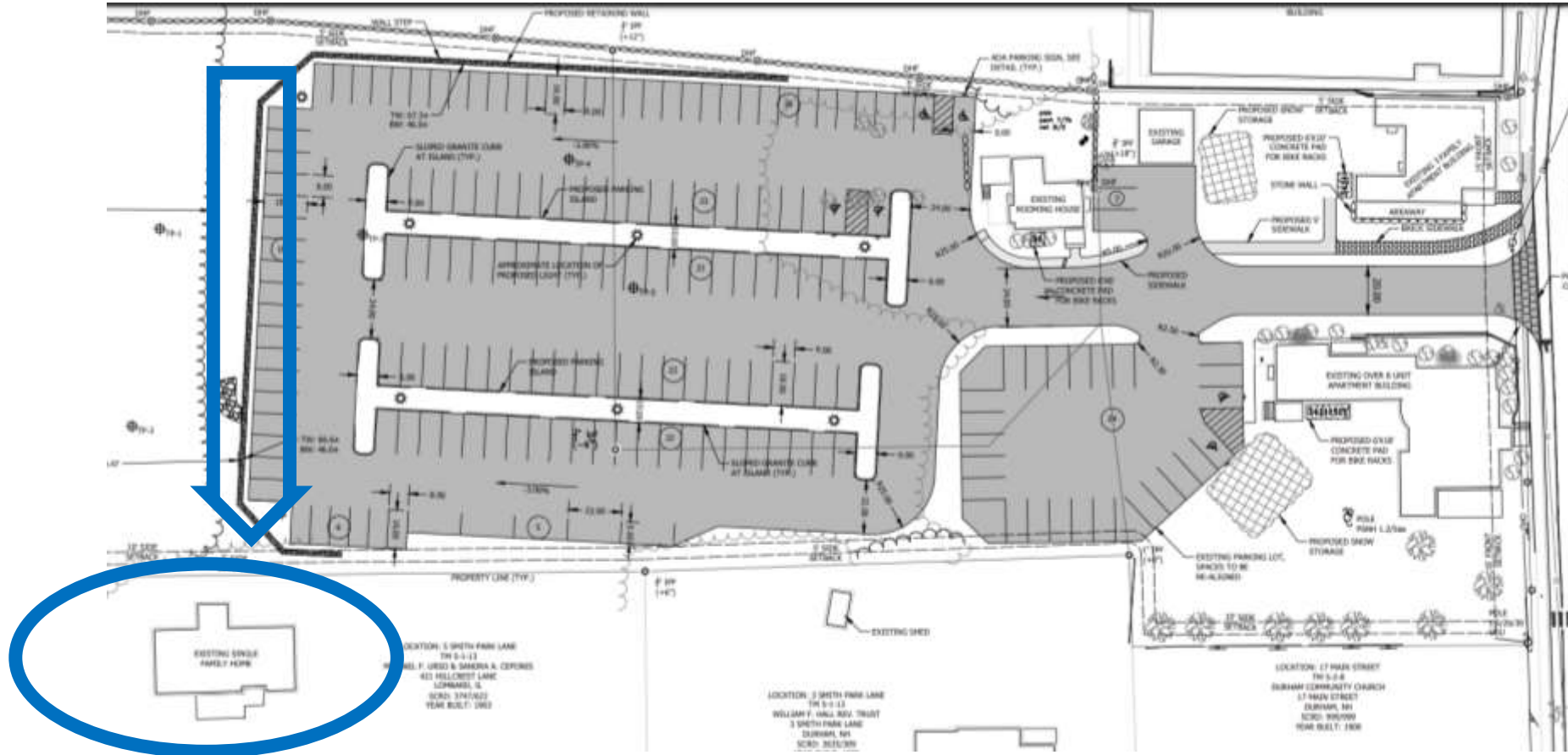
Mike Sievert: “We are putting a retaining wall in there. That is a structure; it’s defined as a structure. And we believe that scale is respectful of what is out there because it’s set back onto our property, and it follows the contours, and it comes up the side of the property as the property is rising, so we don’t believe that the retaining wall is outside of the character of the neighborhood. It’s certainly isn’t taller than any buildings out there.” (DCAT [video](#), 7:35 pm, 39 secs)

**Really in “scale” of, and in line with,
“character” of neighborhood, per Sievert claim?**

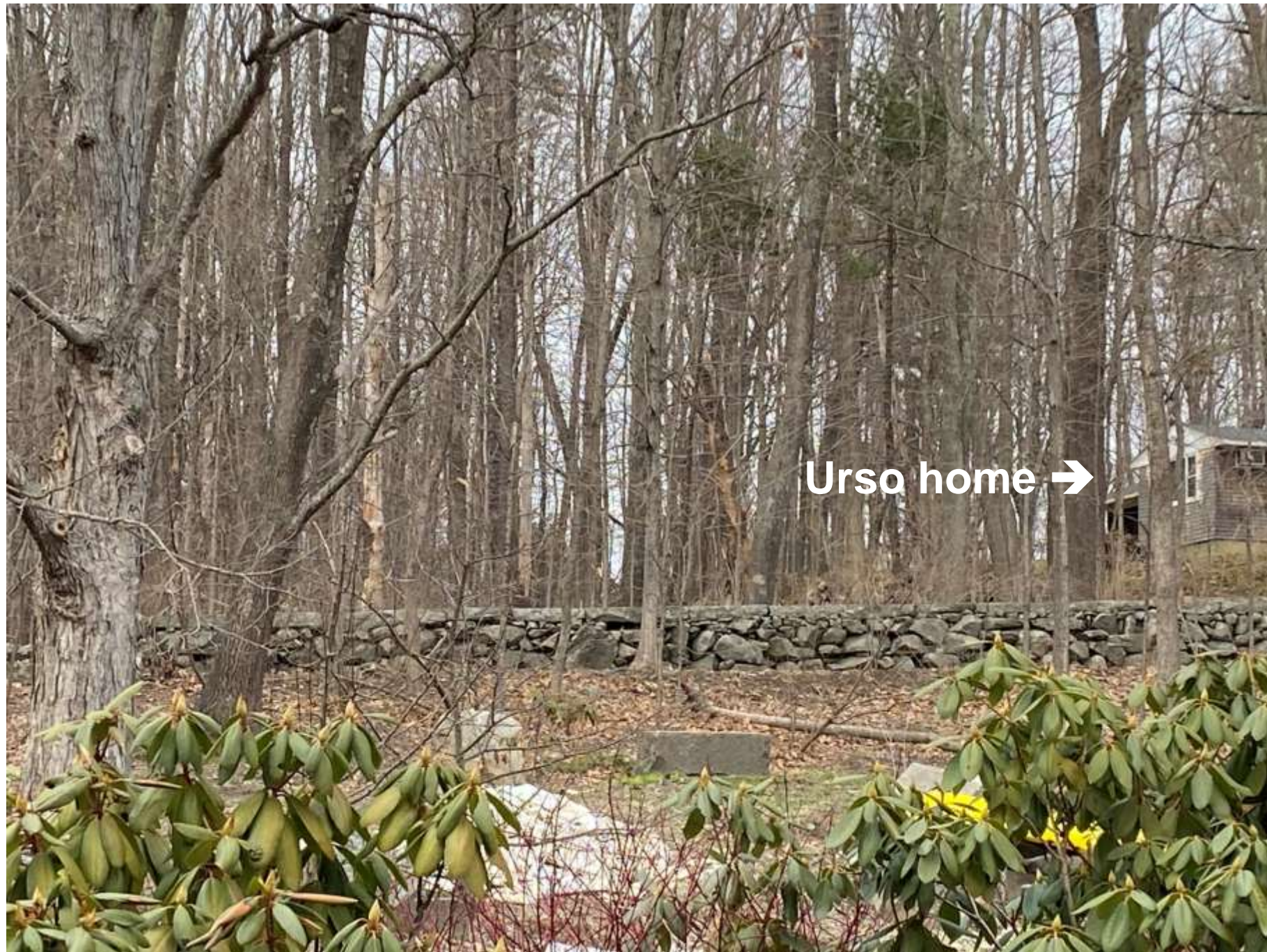


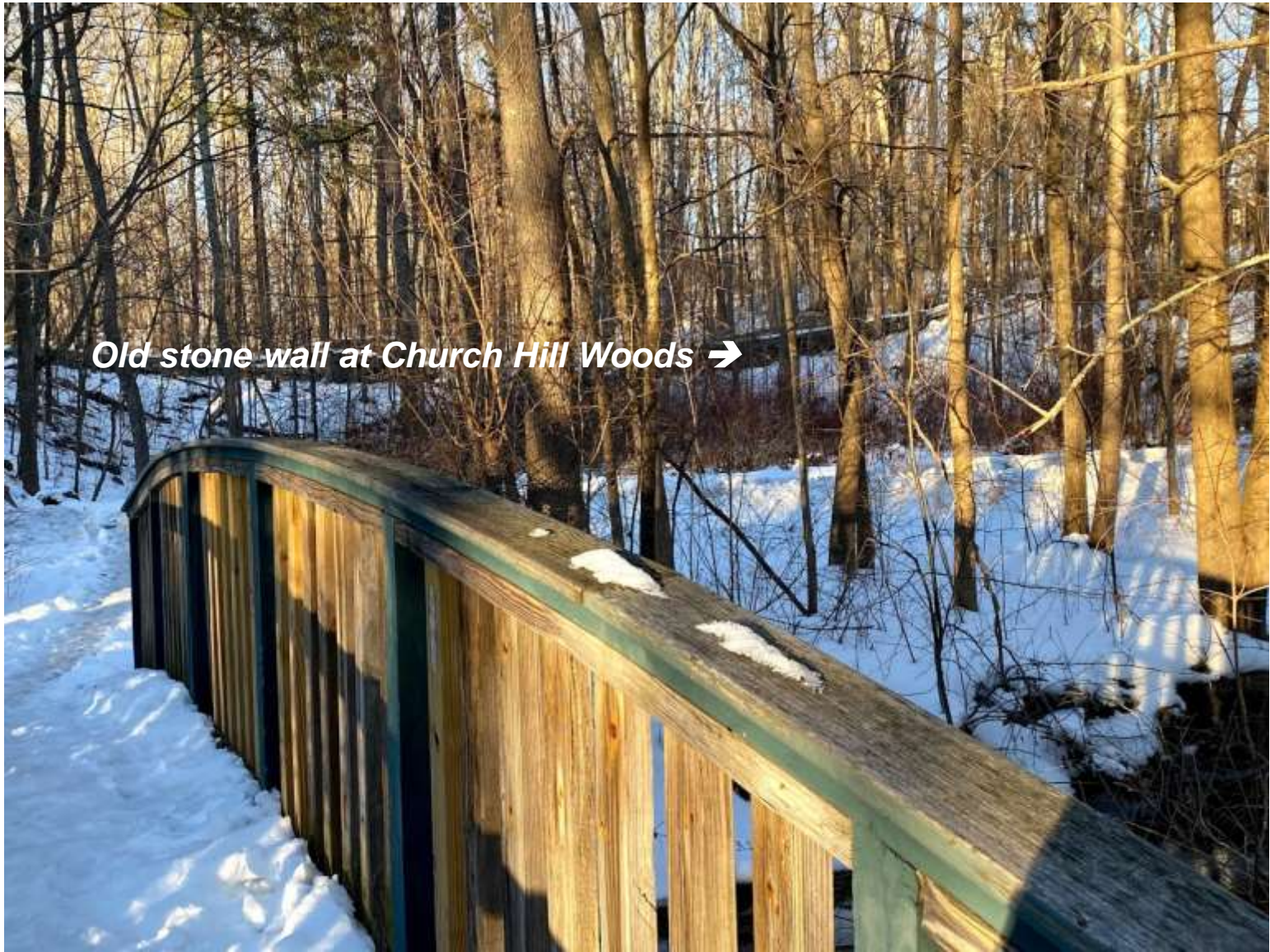
Photoshop simulation, w/ 5'10" male, 5'5" female

Massive southern retaining wall points like arrow to center of abutting Urso Family home at 5 Smith Park Ln



Mike Sievert: "scale is respectful of what is out there"





Old stone wall at Church Hill Woods →

*Mike Sievert: “scale is respectful of what is out there because it’s **set back onto our property....**”*

What engineer Mike Sievert refers to as the “back” of the property is **FRONT** of property to **Faculty Neighborhood**, Durham’s largest family neighborhood (about 300 households).

College Brook Footbridge on the Faculty Neighborhood’s cherished “magic path” extending Thompson Lane through woods to the Chesley Marsh.

“Behrendt’s Definitions” break down in attempts to apply them

- ❑ *IF* steel girders ran from wall to footings where land drops away from Main St. lots, AND
- ❑ *IF* reinforced concrete, instead of asphalt, was the parking surface...
- ✓ **Would meet Mr. Behrendt’s “steel & concrete” definition of “Structured Parking”**
- ✓ **Would be well above grade**, given drop in ground-level elevation toward Chesley Drive.

But OOPS!

That “structured parking” surface = **exactly same grade as current proposal**

That “structured parking” would **NOT** be “inside or on top of a building”

Clearly, there is no governing consistency in Mr. Behrendt’s definitions

We hope that the ZBA will follow the DZO definitions. The DZO’s definitions should set the rules, not what the Town Planner and other “Town staff” *wish* the written definitions were.

**Mr. Behrendt argues for “parking garage”
as *intent* of DZO “Structured Parking” definition.**

Yet, looking at “intent” would bring us to the apparent intent of prohibiting Structured Parking to maintain Church Hill’s wooded & topographical beauty, interwoven with the Historic District.



**Prohibition of
“Structured Parking”
obviously maintains
Church Hill as a *hill*.**

Toomerfs plan is certainly the sort of **massive visual desecration of Church Hill** and **change in topography** – *from steeply sloped wooded hill to barren paved mesa* – that the Table of Uses seems designed to prohibit.



Further indications of likely INTENT of Prohibiting Structured Parking on Church Hill

Town of Durham ARCHITECTURAL DESIGN STANDARDS

Appendix to the Durham Site Plan Regulations

Part III – Development Standards, Article 2 - Architectural Design Standards

(This revision was adopted September 9, 2015)

2) Church Hill Zoning District.

- a) **General character.** **Among the five zones in the Core Commercial area, Church Hill has the most distinct character and is thus most sensitive to inappropriate development.** The district is composed primarily of relatively large Georgian/Colonial Revival style residential structures sided in wood clapboard, some dating from the early periods of Durham's settlement. The rural past is evident in the number of barns and outbuildings that survive.... The landscaped lawns and shade trees are an important feature of this district.... The residential structures are generally 2-1/2 stories high with the gable roofs turned perpendicular to the street. Most have highly regular fenestration and are symmetrical with five bays (often with outer windows placed closer together) and a center entrance, along with a porch or portico.

“Church Hill has the most distinct character and is thus most sensitive to inappropriate development.” – Architectural Standards

Essentially, the plan is to assemble an out-of-character for the district structure – with visual & functional equivalent of “ROOF-TOP PARKING.”



***Further indications of likely INTENT of Prohibiting Structured Parking
in a district noted for its steep slopes***

TOWN OF DURHAM, NEW HAMPSHIRE / SITE PLAN REGULATIONS

Most Recently Amended: April 24, 2019

Section 8.2 General Provisions

8.2.1 Buildings, parking areas, travel ways, and other site elements shall be located and designed in such a manner as to preserve natural resources and **maintain natural topography** to the extent practicable. Extensive grading and filling shall be avoided.

**8.2.3 Development shall follow the natural contours of the landscape
to the extent practicable to minimize grading....**

8.2.5 The Planning Board may request guidance from the Conservation Commission or other knowledgeable parties in its consideration of natural resources....

8.2.7 Natural features and systems shall be preserved in their natural condition, wherever practicable. Such areas include watercourses, waterbodies, floodplains, wetland areas, **steep slopes**, aquifer recharge areas, wildlife habitats, large or unique trees, and scenic views.

**Proposal is to truck onto Church Hill 1700 times more fill
than shown below**



<https://www.homedepot.com/p/6-cu-yd-Bulk-Topsoil-SLTS6/205459977>

Proposal: 1,100 ten-wheeler dump truck runs



- If* a surface that requires 17,000 cubic yards of fill is “at grade,” then almost *anything* constructed could be defined as “at grade” – *if* one conveniently starts to measure grade *after* finishing the major *changes* in grade.



“8.2.3 Development *shall* follow the natural contours of the landscape to the extent practicable to *minimize grading....*” – Site Plan Regs

***Further indications of intent of prohibiting Structured Parking
to preserve character of Church Hill***

ARTICLE XII BASE ZONING DISTRICTS

175-44. Church Hill District (CH) / Purpose of the Church Hill District

The purpose of the Church Hill District is to **preserve and enhance the historic character of this area.... New development should maintain the character of the area...**



CATEGORY OF USES	RESIDENTIAL ZONES				COMMERCIAL CORE ZONES				RESEARCH-INDUSTRY ZONES				
	Rural (R)	Residence A (RA)	Residence B (RB)	Residence C (RC)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe's Corner (CC)	Office Research - Route 108 (OR)	Mixed Use and Office Research (MUDOR)	Office Research Light Industry (ORLI)	Durham Business Park (DBP)
V. RECREATIONAL USES													
Principal Uses													
Golf course	CU	X	X	CU	X	X	X	X	X	X	X	X	X
Recreational facility, indoor	X	X	X	X	X	X	X	X	X	P	P	P	P
Recreational facility, outdoor	CU	X	X	CU	X	X	X	X	CU	CU	CU	CU	CU
Recreational playing fields, outdoor	P	P	P	P	X	X	X	X	CU	P	P	P	CU
VI. UTILITY & TRANSPORTATION USES													
Principal Uses													
Structured parking	X	X	X	X	CU	X	X	CU	CU	X	X	X	X
Surface parking	X	X	X	X	CU	X	CU	CU	X	X	X	X	X
Public utility facility	CU	X	X	CU	X	X	X	X	X	P	P	P	P
Personal Wireless Service Facility (See Article XVIII)	P	P	P	P	P	P	P	P	P	P	P	P	P

Structured Parking is PROHIBITED on Church Hill

ALL “Structured Parking” is PROHIBITED on Church Hill

There is no language in DZO definitions that suggests that it’s okay to use some material for a large parking structure (e.g., Toomerfs multi-sided concrete, steel, & aluminum retaining wall/fence containing 17,000 cu yds of fill & asphalt) while it’s only other specific materials that are prohibited (e.g., steel & concrete for “garage” or rooftop parking).



ZBA Appeal of Administrative Decision for “19-21 Main Street”

[Appeal document with appendices](#) (searchable [main text](#))

Peter Andersen & Martha Andersen

8 Chesley Dr, Durham, NH / Andersen Williams Group, LLC [Map 5 / 7-59]

Joshua Meyrowitz

7 Chesley Dr, Durham, NH / Joshua Meyrowitz Rev Trust [Map 5 / 7-58]

Owner of Property Concerned:

Toomerfs, LLC (c/o Peter Murphy) / 37 Main Street, Unit O, Durham, NH 03824

Location of Property: “19-21 Main St” / Map 5 / Lots 1-10, 1-9, 1-15, 1-16

Presentation by Joshua Meyrowitz

ZBA Hearing, April 13, 2021

(30:46 to 47:20 in [video](#))