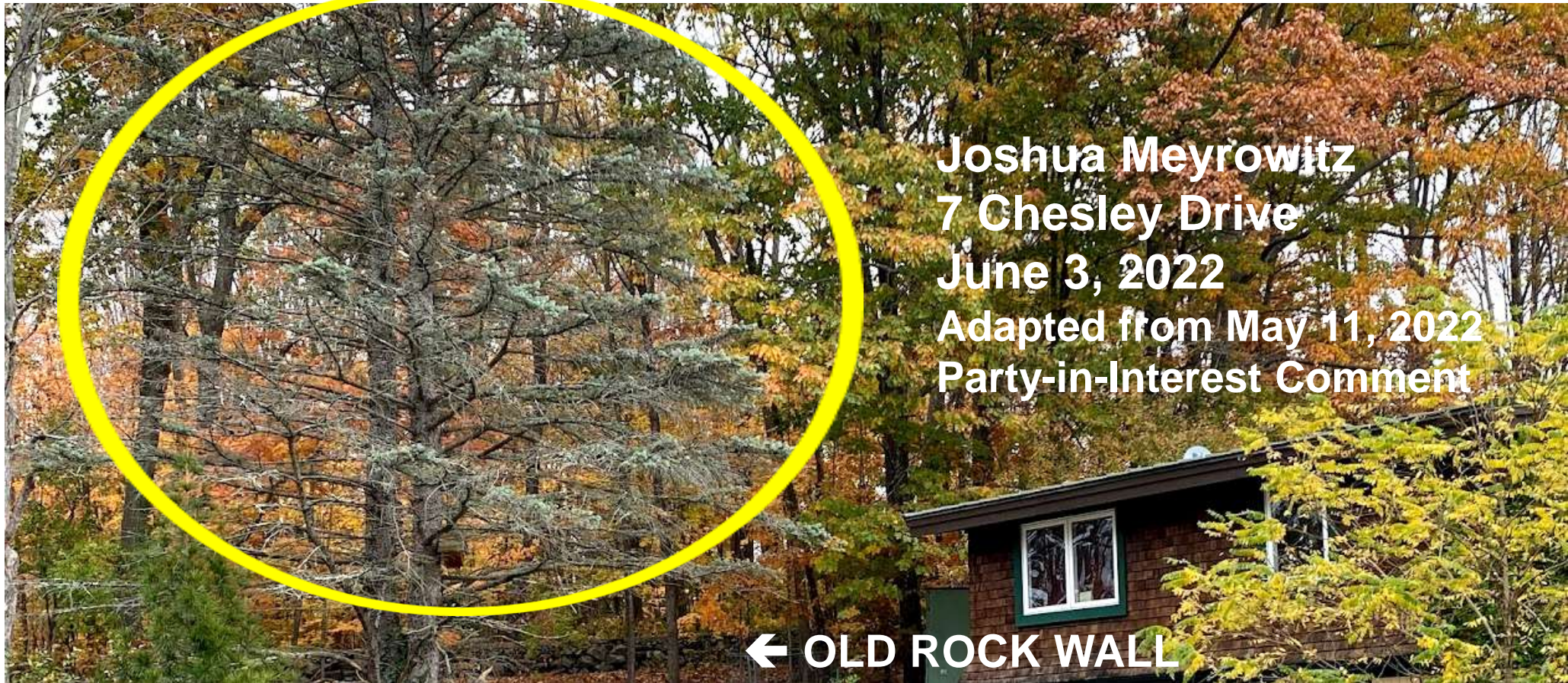


No matter *HOW* one photographs it, Toomerfs' parking edifice would:

**** tower over street level ****

**** face the adjacent Faculty Neighborhood ****

**** create a massive hole in the viewshed for abutters & surroundings ****



Church Hill Woods is a significant buffer from sound, light, heat, & stormwater for Urso, Andersen, Meyrowitz households & adjoining Faculty Neighborhood



Tim Murphy's

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

On March 23, Toomerfs' attorneys used this picture & caption to attack an image of mine and distort my purposes in submitting that image on March 18.



[Presentation by the Applicant 3-23-22](#), p. 34

Yet, this Tim Murphy photo actually illustrates well key points in opposition to the Toomerfs' parking-lot project.

Tim Murphy's

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

*Ironically, this photo illustrates better than my "challenged photo" what the Toomerfs' project would destroy: **the forested viewshed for abutters and the adjoining neighborhood.***



*Even with bare trees in March, one can imagine the hole in the viewshed if the Church Hill Woods trees were to be removed and replaced with **15,925 cubic yards** of fill, stormwater chambers, & pavement, per Sievert [Cover Letter 3-17-22](#)*

Tim Murphy's

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

Toomerfs' initial "after" renderings (e.g., far right) continue to show the forested viewshed that the Toomerfs hope to destroy.



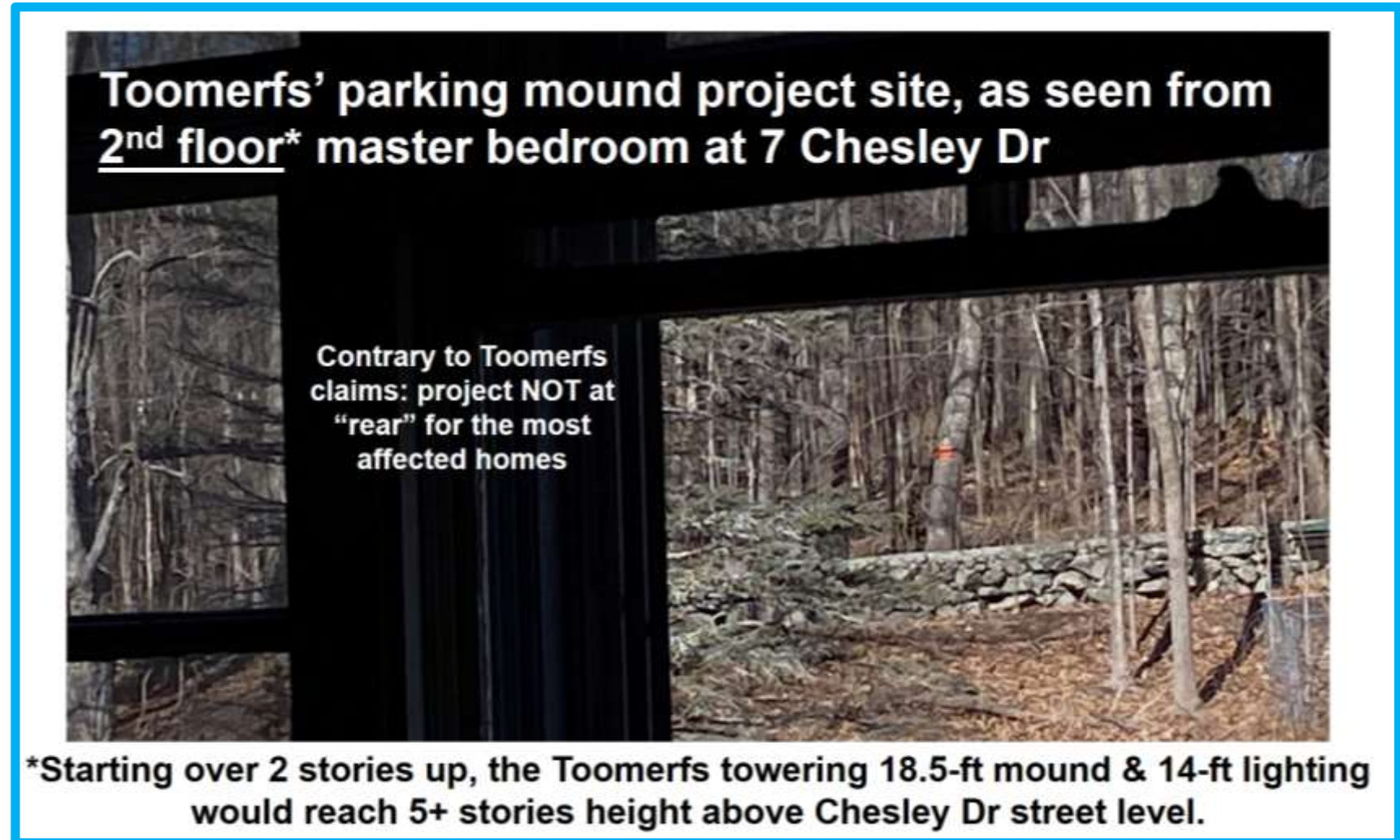
[Presentation by the Applicant 3-23-22, p. 34](#)

Above: Toomerfs' so-called:
[View from Chesley Drive-2](#)

The two points of my image below (as submitted on March 18, 2022):
(1) starting Elevation of Toomerfs' project & (2) what/whom it would Face

To repeat: This 2nd-floor MBR pic, zoomed in on old rock wall, illustrates that Toomerfs' retaining wall & retaining slope structure: (1) would **start more than 2 stories above street level*** & (2) **would be at the "front," not "rear," for the most-affected homes.**

***Per Planner, 2/23/22:
"The southerly end of the parking lot is about 34 feet above Chesley Drive..."**



Above is the exact image & text from [Joshua Meyrowitz 3-18-22 #3](#), slide #26



The wider-shot pictures I've shown also illustrate how distorted Toomerfs' "renderings" are – both old and new. Toomerfs still show the trees to be destroyed in their portrayals of the proposed parking edifice.



**WOODS TO BE
REMOVED**

← OLD ROCK WALL

Note that there are very few trees on the Andersen property between my house and the old rock wall

The tree canopy to be destroyed should not be in Toomerfs' "after" renderings.



Note that there are very few trees on the Andersen property between my house and the old rock wall

← OLD ROCK WALL

A view through a window showing a residential property. In the foreground, there is a paved driveway with a dark SUV and a silver sedan. A two-story house with a green roof is visible. In the background, a large, low stone wall runs across the property. The area between the viewer's house and the rock wall is mostly cleared of trees, with some small shrubs and a few tall, thin trees. The sky is overcast.

Toomerfs implausibly show the “existing” and “proposed” views from Chesley Drive as essentially the same

EXHIBIT B: Chesley Drive, Existing

Prepared by: Tangram 3DS Date issued: 2022-06-02

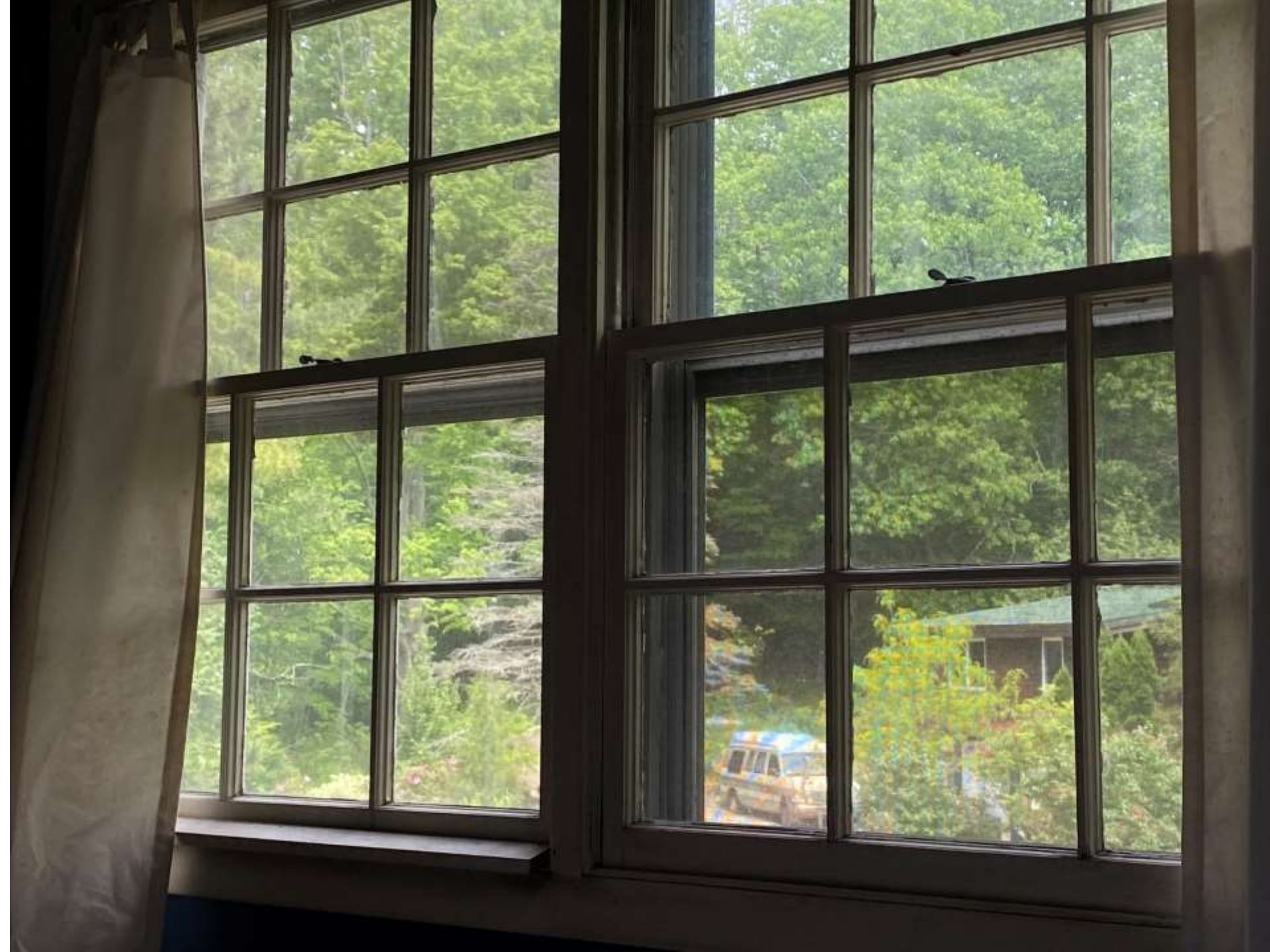


EXHIBIT C: Chesley Drive, Proposed

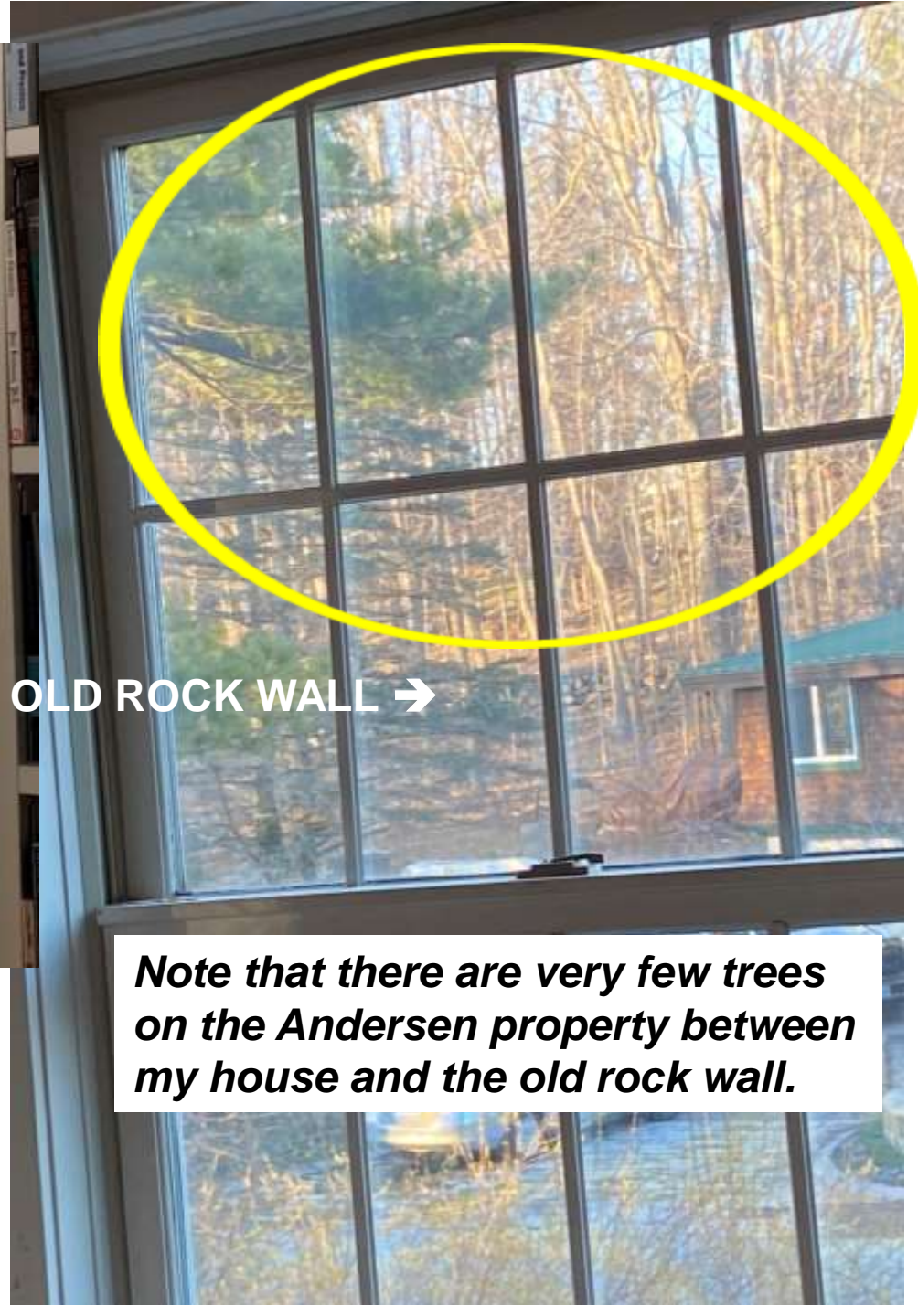
Prepared by: Tangram 3DS Date issued: 2022-06-02



[Additional Information and Color Renderings 6-2-22](#)



Yet, there would be a gaping hole in the viewshed – particularly in the spring, summer, and fall – if the Toomerfs’ parking lot proposal were to be built.



**Multi-Season Viewshed:
From my 2nd floor study.**

OLD ROCK WALL →

*Note that there are very few trees
on the Andersen property between
my house and the old rock wall.*

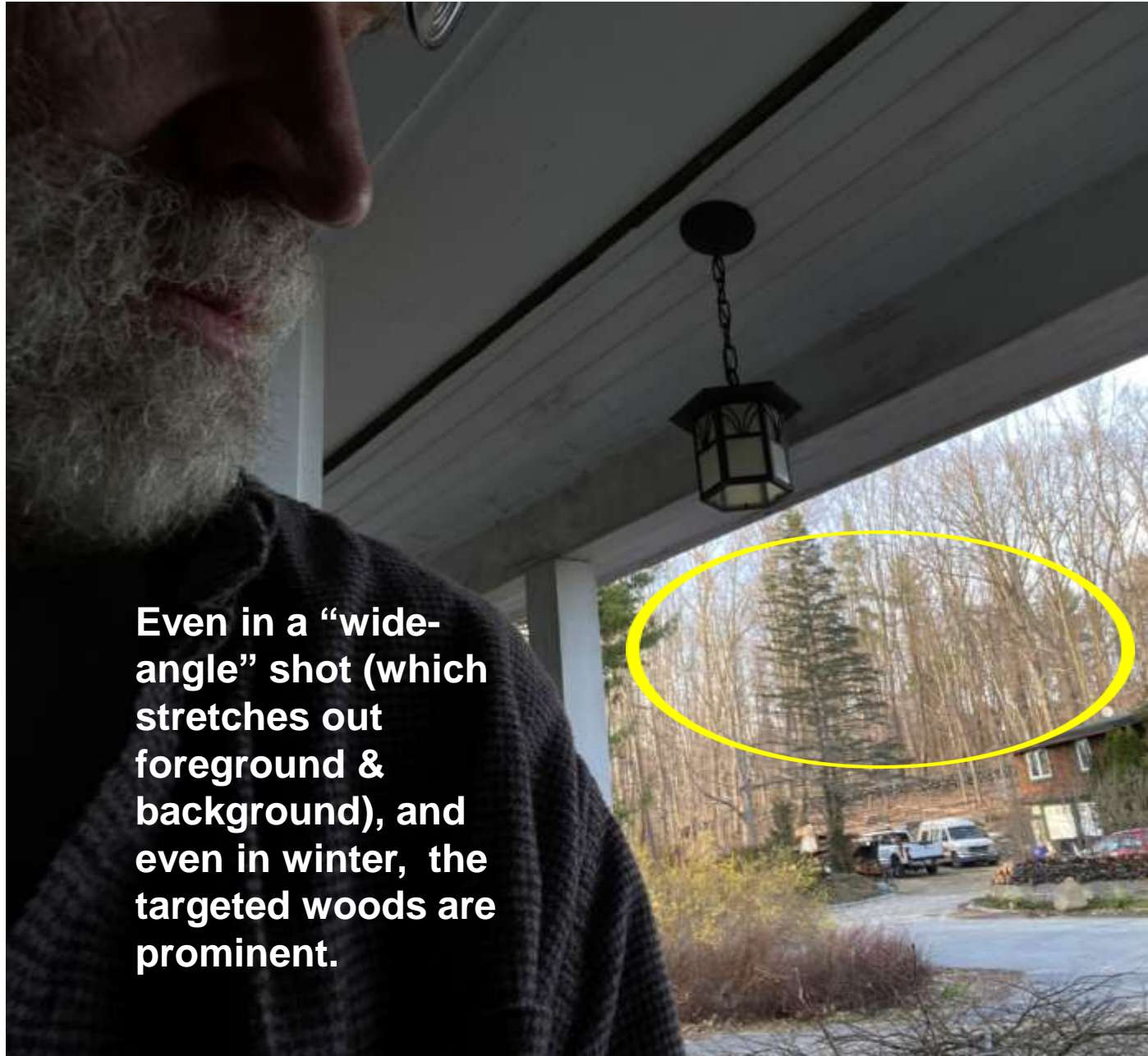


Church Hill Woods, as seen from my driveway.



Even in the winter, the Church Hill Woods trees dominate the viewshed from Chesley Dr & surrounding neighborhood paths.

From my front porch.



Even in a “wide-angle” shot (which stretches out foreground & background), and even in winter, the targeted woods are prominent.



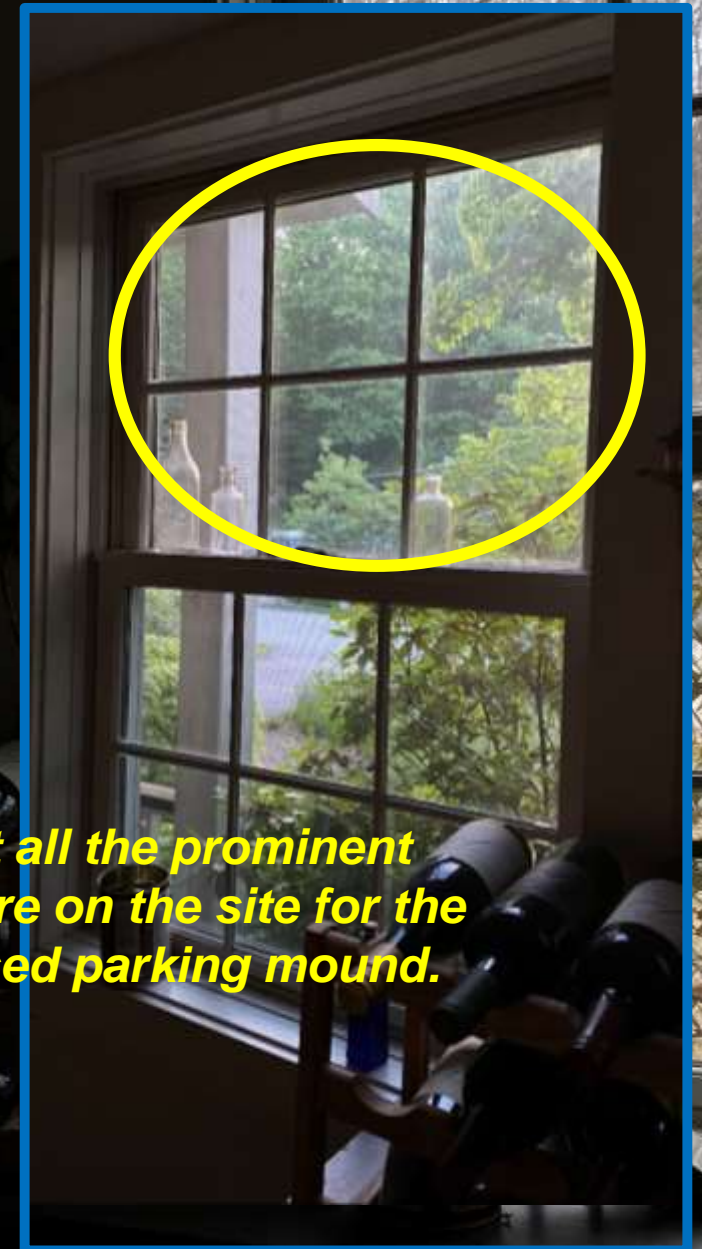
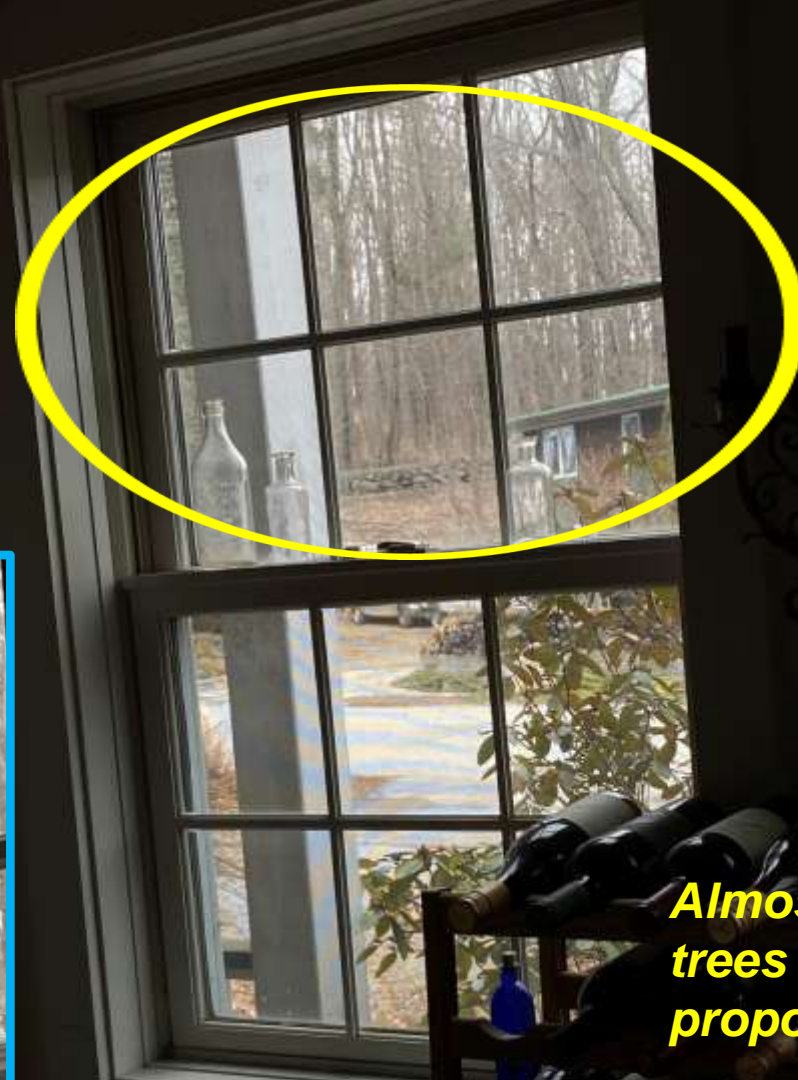
← OLD ROCK WALL



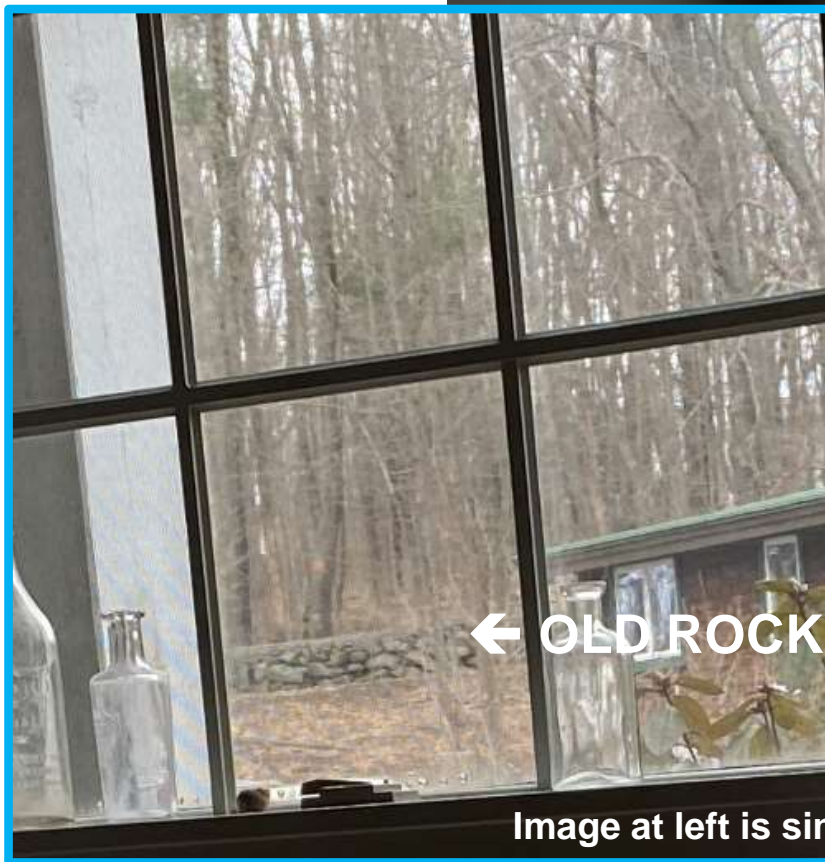
The scale of the threat to the forested viewshed of Church Hill Woods is, of course, most apparent when the leaves are on the trees. *The Church Hill Woods urban forest dominates the viewshed.*

From my front porch.

From my front
entrance
hallway, with
leaves &
without.



*Almost all the prominent
trees are on the site for the
proposed parking mound.*



← OLD ROCK WALL

Image at left is simply an *enlargement* of part of main pic, above, not a “zooming in.”



From my Living Room

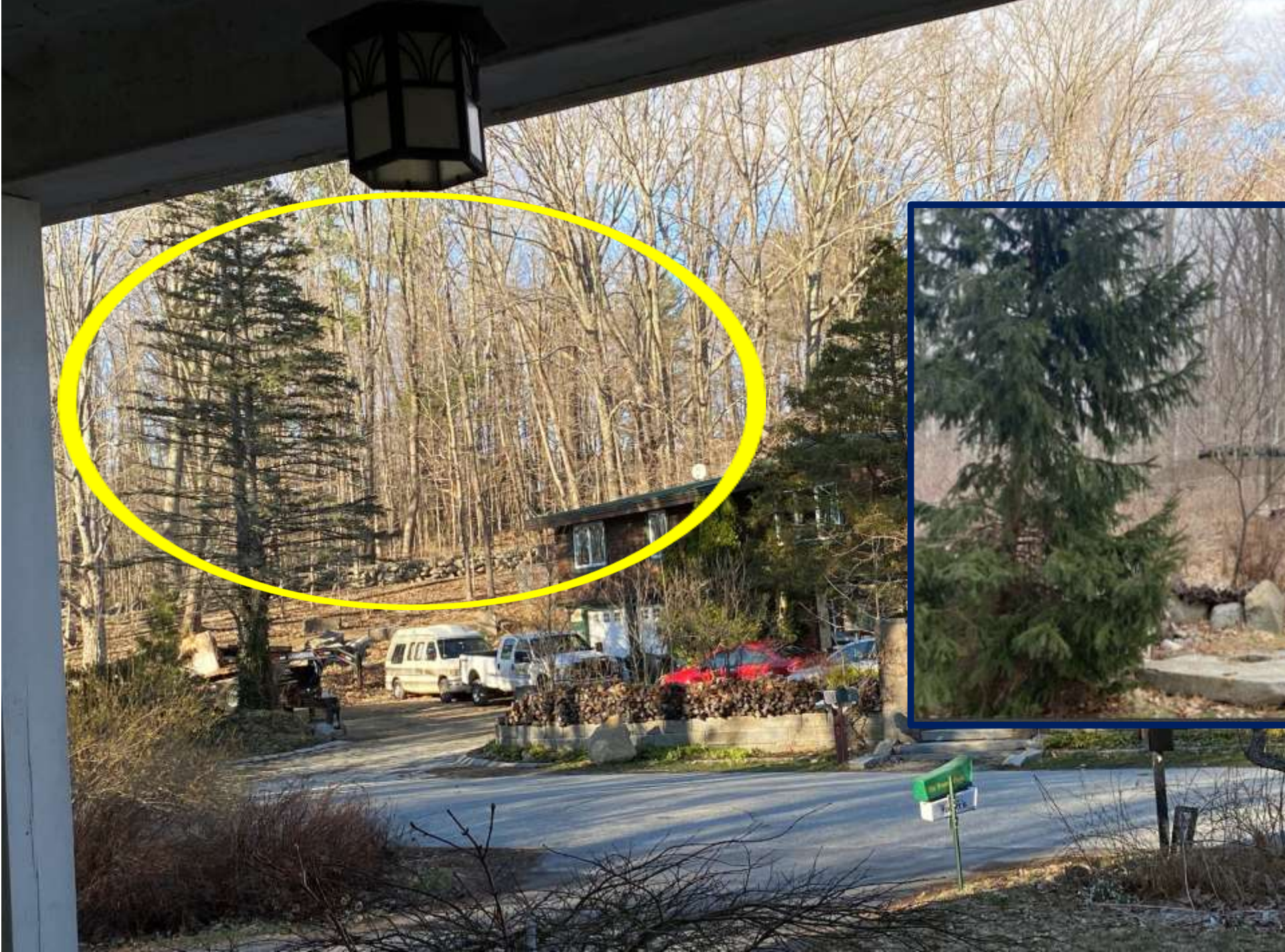


The depth of the forested viewshed depends Church Hill Woods.



Anyone doubting how distorted the Toomerfs' Chesley Drive "after" renderings are (*with the targeted Church Hill Woods still in place*), is welcome to stand in my driveway or knock on my door to see the imposing Church Hill Woods views (year-round!) from my north-facing windows on all levels.

Distorted Toomerfs'
Chesley Dr "after"
rendering



– with targeted
Church Hill Woods
still in place.





“I feel people will be...shocked by what the view would look like if the Mill Plaza and Church Hill proposals are built and most of the woodlots are removed. **It would be helpful if the planning board could require *realistic* conceptual drawings of what completed construction will look like from different viewpoints.**
– USDA Forest Expert, [John Parry 3-21-22](#) (emphasis added)



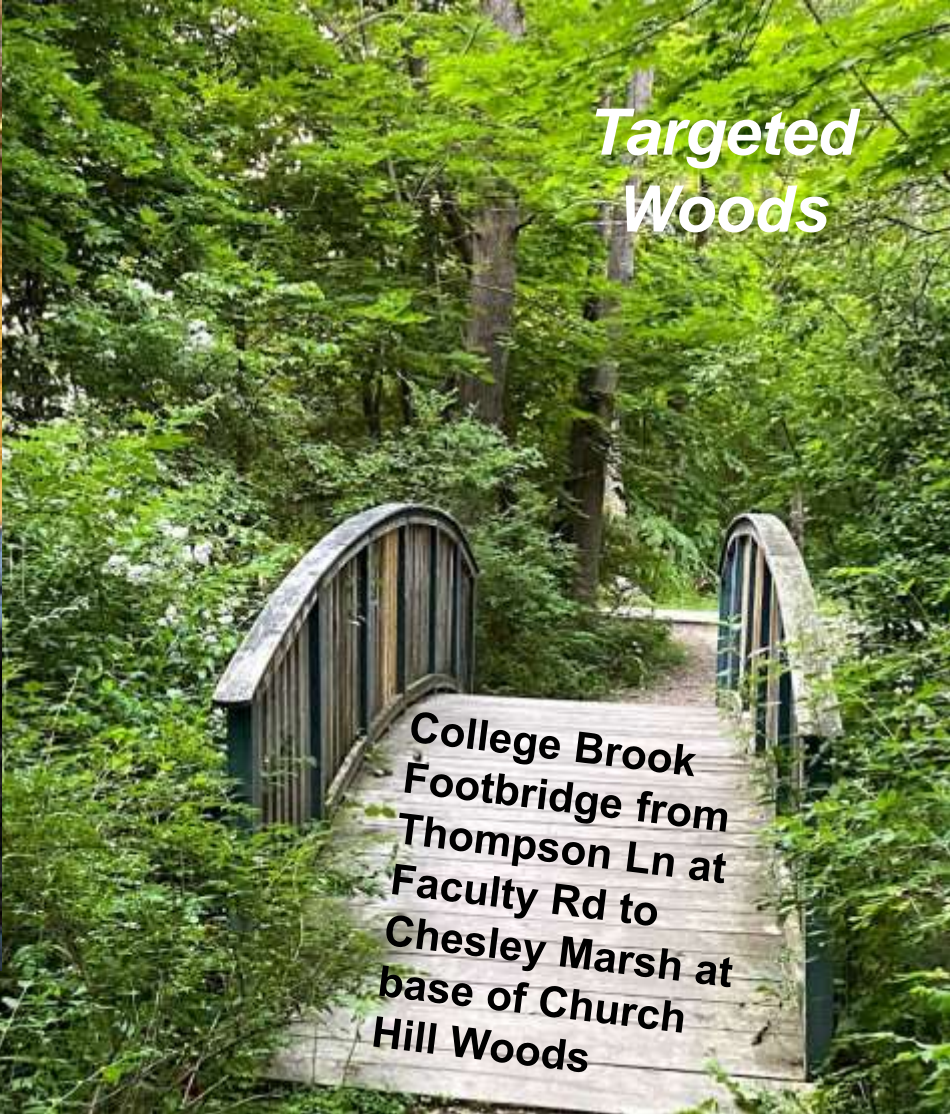


Site for 20-ft tall parking mound

Old stone wall at Church Hill Woods →

College Brook Footbridge

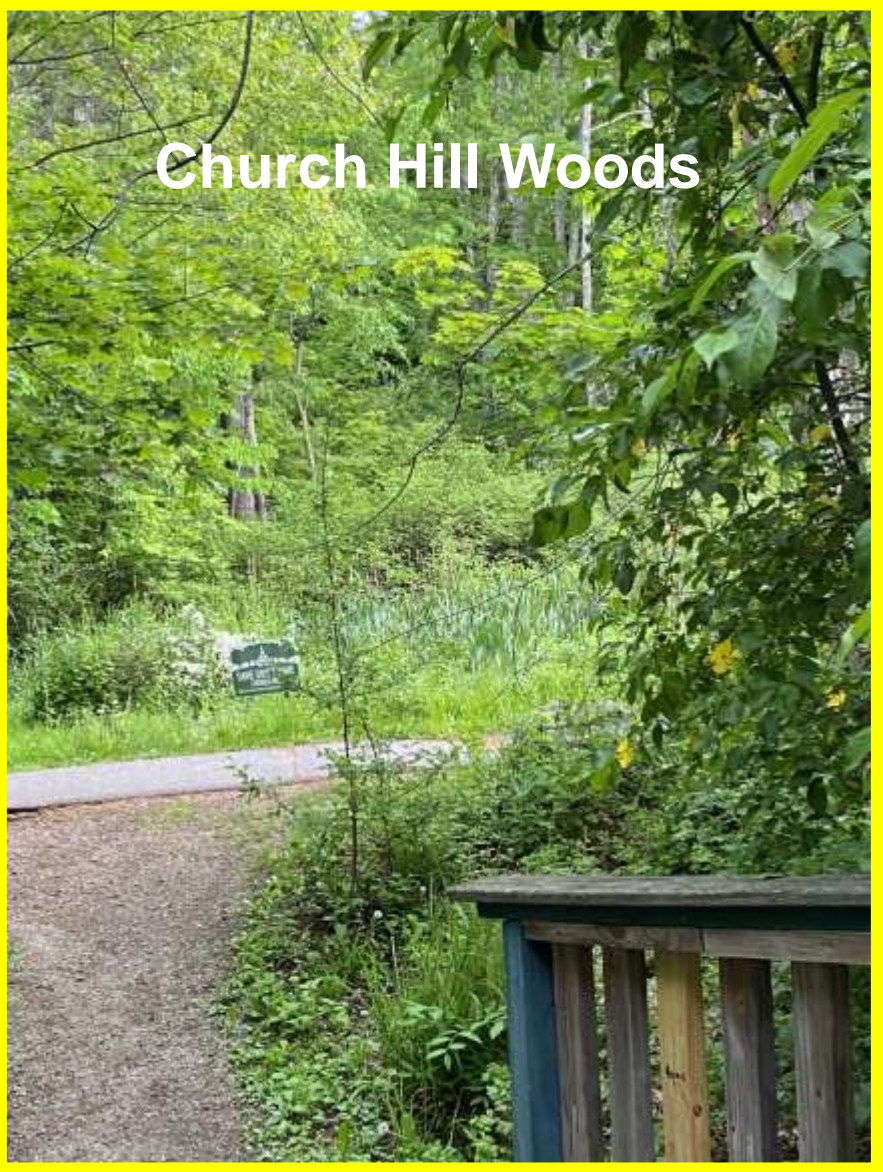
Contrary to Toomerfs' claims: their project is NOT at the "rear" for the most-affected citizens



Targeted Woods

College Brook Footbridge from Thompson Ln at Faculty Rd to Chesley Marsh at base of Church Hill Woods

Whether from Near or Far, from Wide-Angle or “Normal” or Zoom, in any season, Church Hill Woods dominate the viewshed for the Faculty Neighborhood.



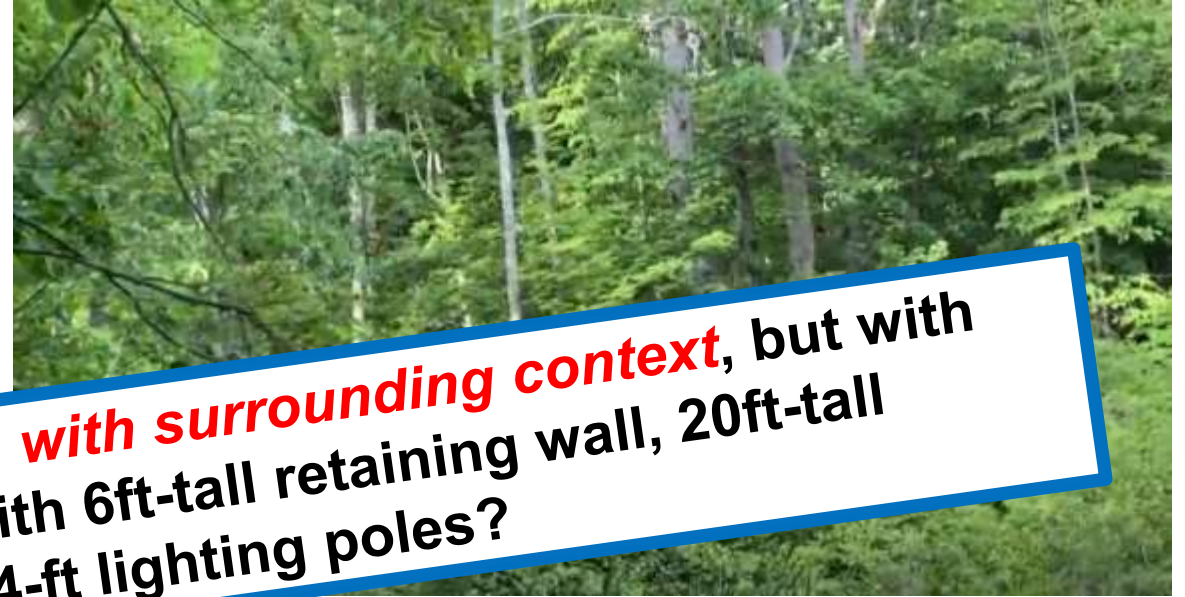
Views of Church Hill Woods Across Chesley Marsh

as seen from the Chesley Foot/Bike Path (bottom left) & College Brook Footbridge (bottom right)

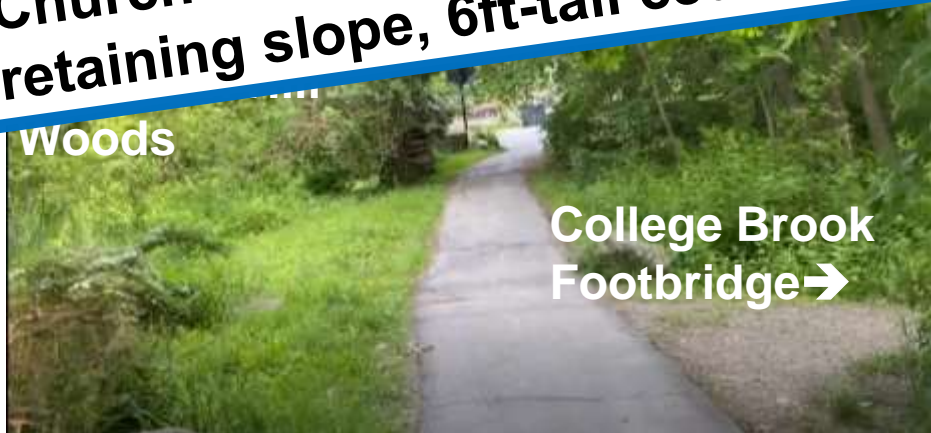


Views of Church Hill Woods Across Chesley Marsh

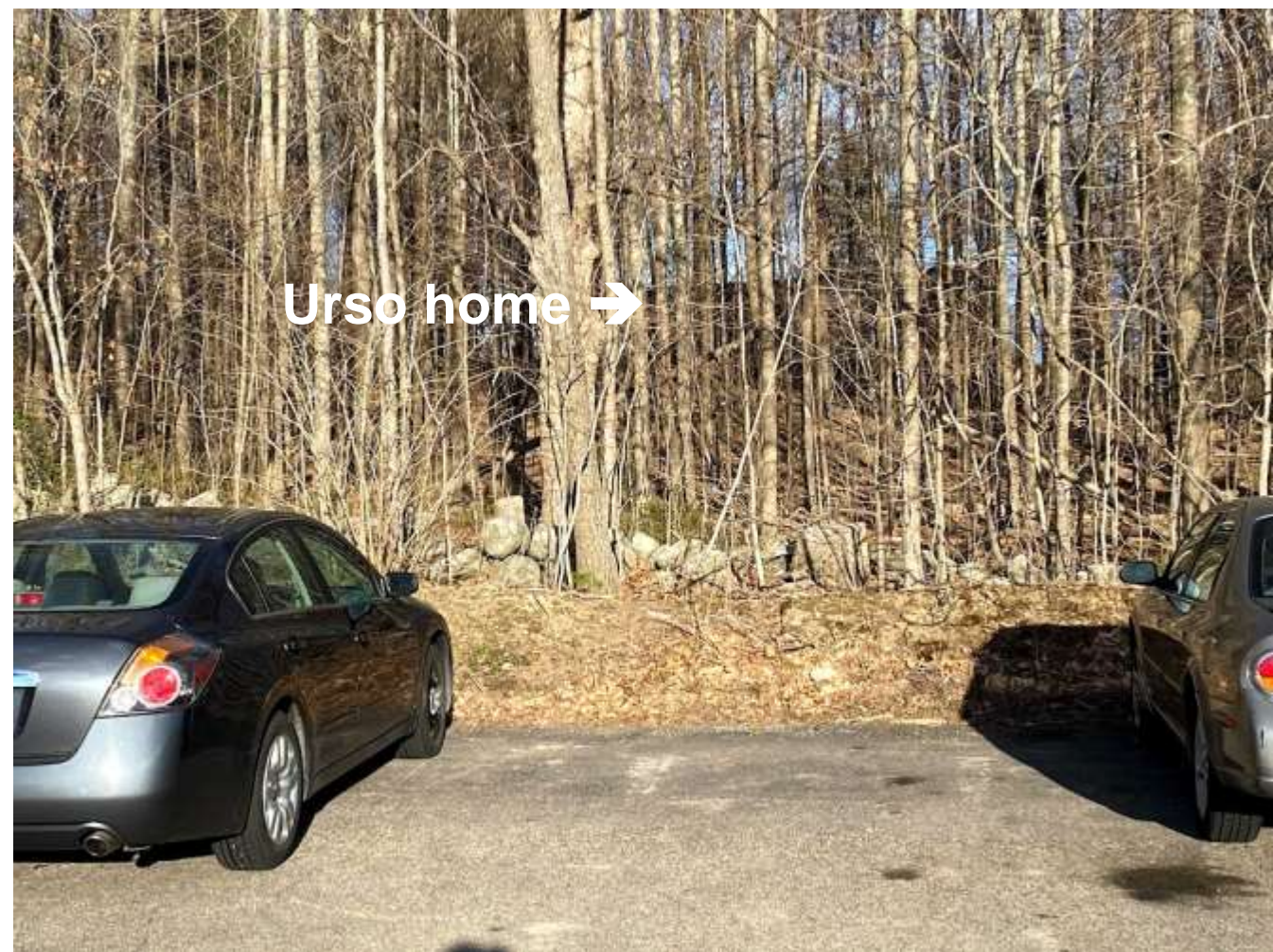
as seen from the Chesley Foot/Bike Path (bottom left) & College Brook Footbridge (bottom right)



When will we see a realistic “after view,” **with surrounding context**, but with Church Hill trees removed & replaced with 6ft-tall retaining wall, 20ft-tall retaining slope, 6ft-tall cedar fence, & 14-ft lighting poles?



Looking into CHURCH HILL WOODS from Mill Plaza





← *Grade to be elevated by 18-20 ft*

← **Urso home**

Can anyone believe that Toomerfs' Parking Edifice would look like this from Mill Plaza?
after taking out trees, raising the grade (with paving) up to 20ft, adding vehicles, & 14-ft lighting poles



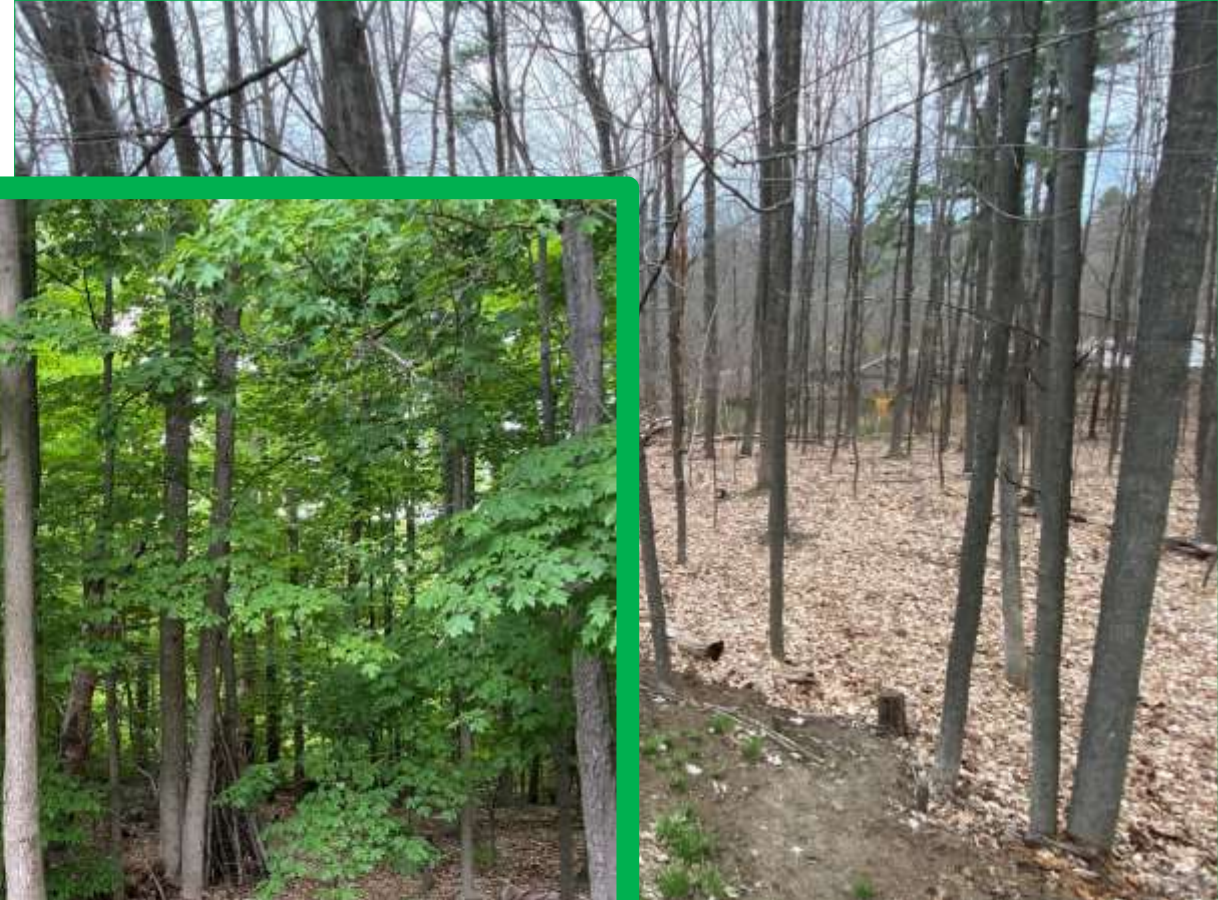
Toomerfs' [3-D Rendering of Plan 12-15-21](#)

Despite multiple requests, Toomerfs have NOT yet provided **realistic parking-structure renderings** from abutting 5 Smith Park Ln Urso home



Retaining-slope crest line would be *aimed directly at the Urso house*, with large mound of fill/asphalt & 24-hr lighting replacing steeply sloped woods.

Despite multiple requests, Toomerfs have NOT yet provided **realistic parking-structure renderings** from abutting 5 Smith Park Ln Urso home



Urso backyard, May 31, 2022

**Janice Aviza's label for the Toomerfs' parking fortress
– "Durham's Masada" – seems to be supported by this June 2022 rendering**



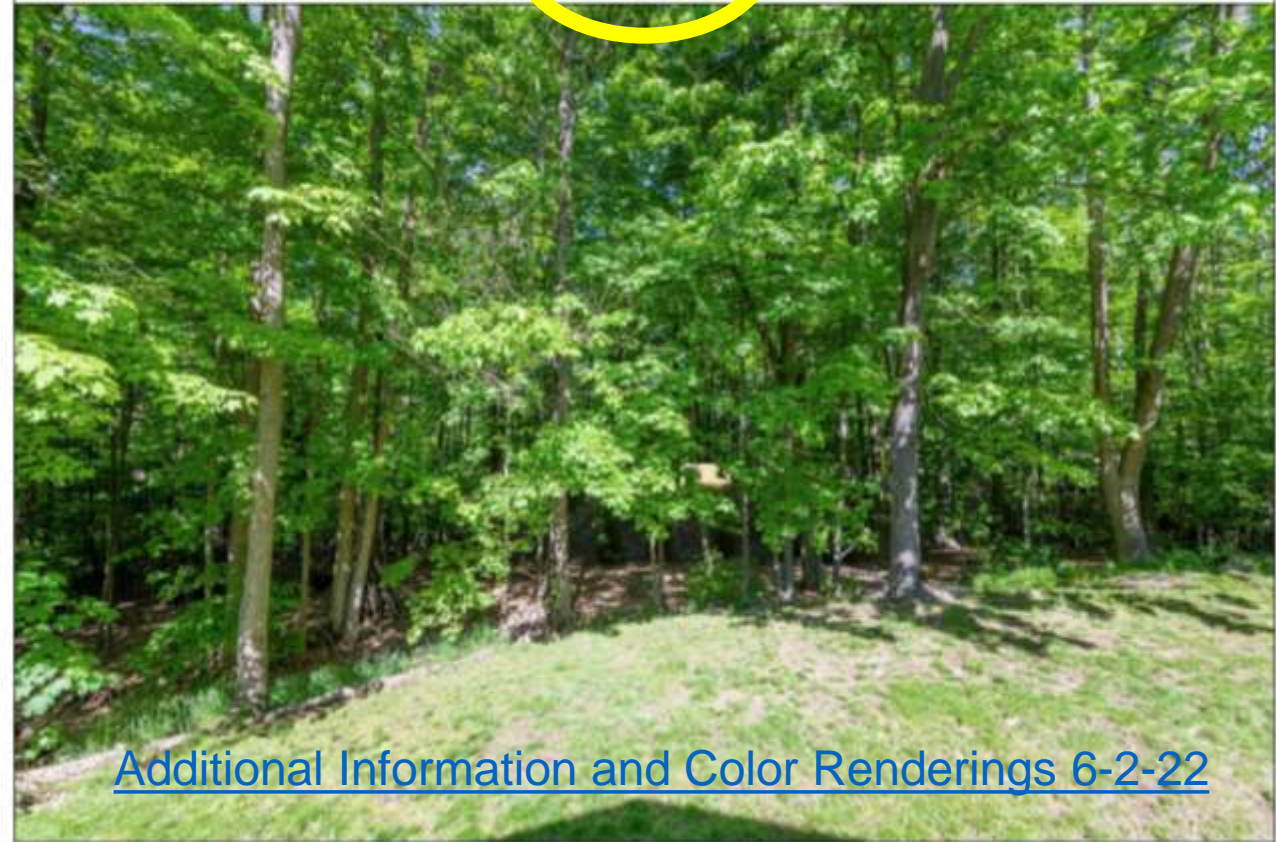
[Masada](#)

Exhibit G: Urso Residence, Proposed moonscape, 2022-06-02
[Additional Information and Color Renderings 6-2-22](#)



Since Mill Plaza is visible in the distance from the Urso home *in all seasons*, how could a massive parking fortress (as in prior slide) essentially disappear, per June 2022 “Proposed” image below?

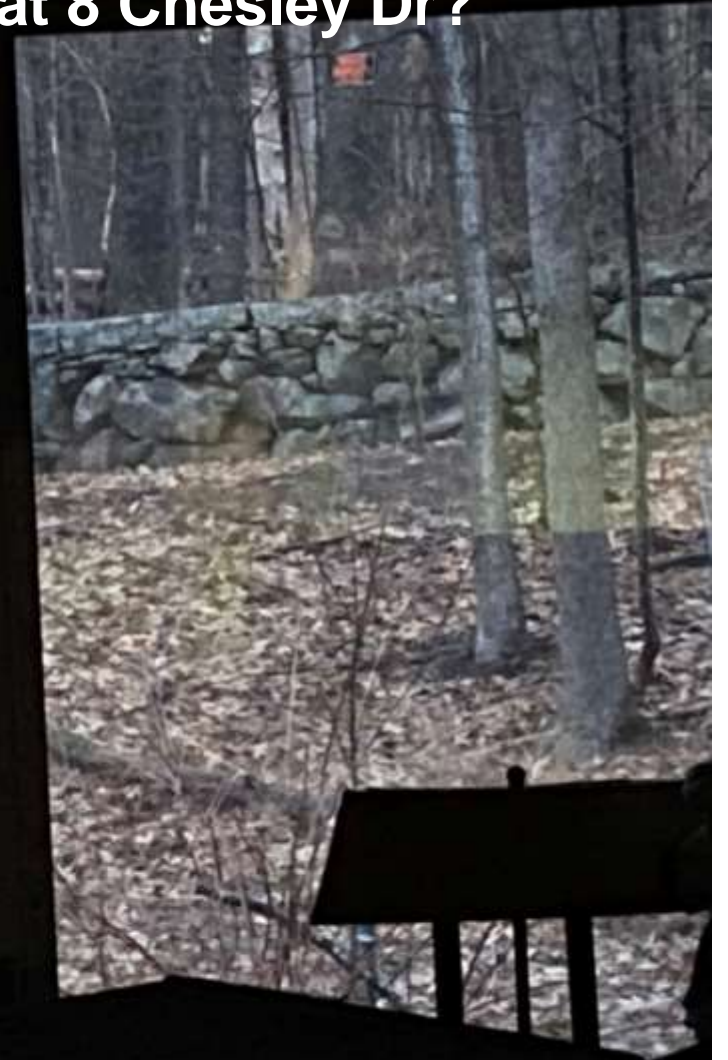
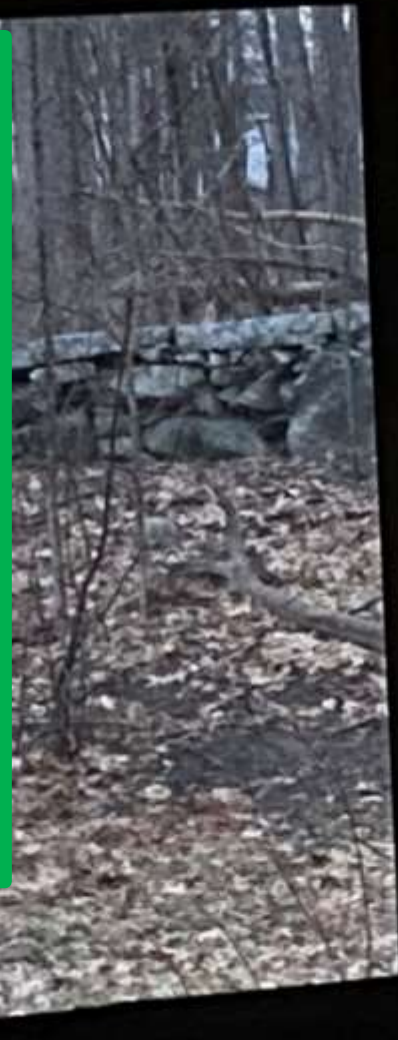
EXHIBIT F: Urso Residence, Proposed
Prepared by: Tangram 3DS Date issued: 2022-06-02



[Additional Information and Color Renderings 6-2-22](#)



**Why have we waited for months for accurate renderings
from abutting Andersen home at 8 Chesley Dr?**



**Contrary to Toomerfs' claims: the project is NOT at "rear"
for the most affected homes**

When we will finally see the **close-up details** of the edifice that is being proposed for a short distance upland of this wall (visible from the Andersen home's windows)?

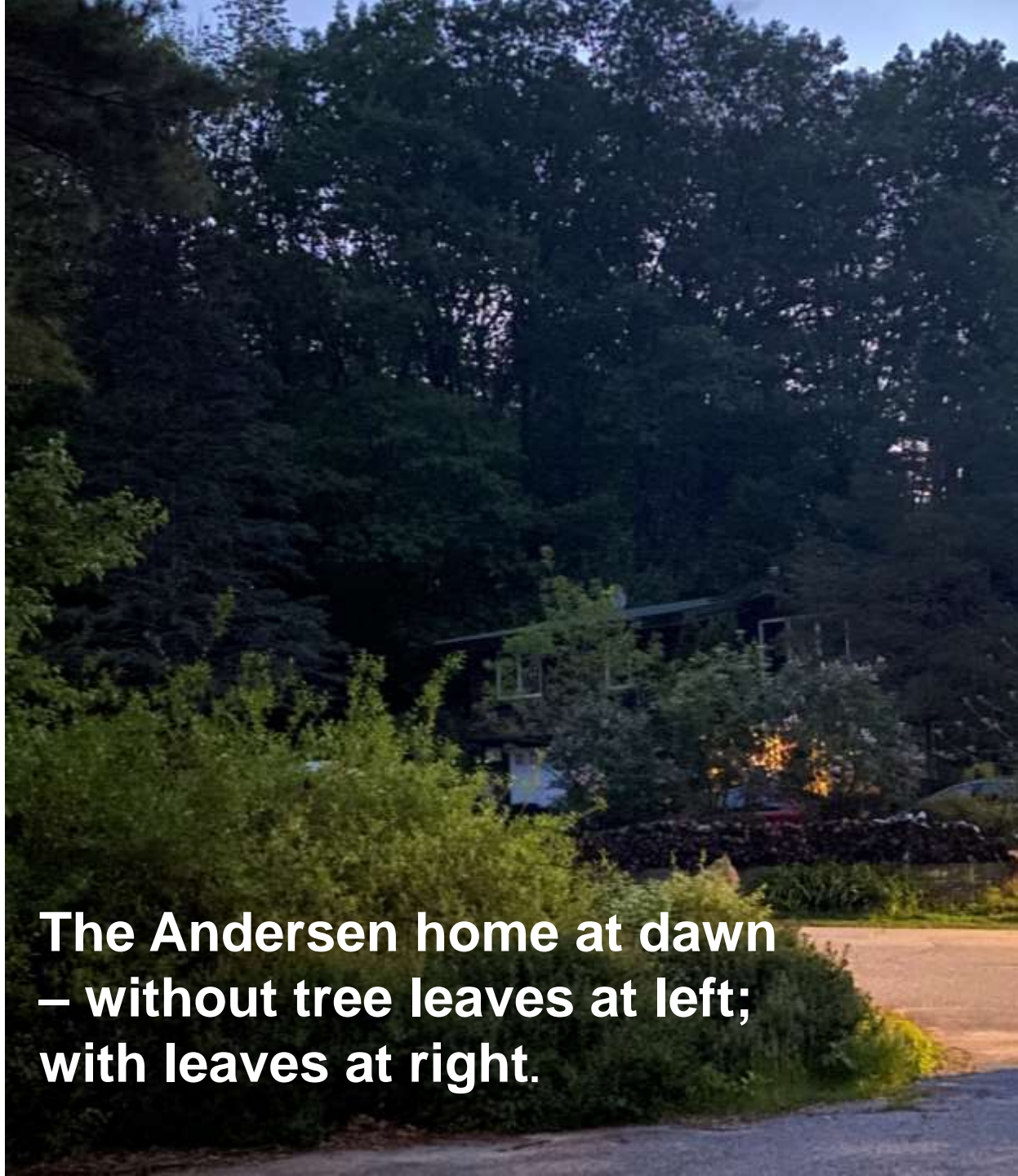
Church Hill Woods



Exhibit D: Chesley Drive, Proposed moonscape, 2022-06-02



[Additional Information and Color Renderings 6-2-22](#)



**The Andersen home at dawn
– without tree leaves at left;
with leaves at right.**

We need to see accurate renderings! *With the targeted trees gone.*



“Mr. Behrendt mentioned that he had spoken with the Town Attorney about the conditional use criteria regarding tree preservation. If there is a wooded area on a vacant lot, one cannot legally require someone to preserve the wooded area. A 100-foot buffer could legally meet the criteria (sic) of a ‘mature tree line.’” [Minutes](#), Feb 17, 2021, p. 3 **There is no longer a 100-ft mature tree line buffer (only 50ft!)**

“I understand that the Board was given advice from the Town Attorney in February 2021 suggesting that the natural resources criterion in the Conditional Use article referred only to such specially designated areas, such as those under Conservation Easements.

“That interpretation, however, is not consistent with the text of the zoning ordinance. **Identified and designated are NOT defined, and, in any case, not all the nouns in that passage are modified by ‘identified’ and ‘designated.’**

“In short, I would argue that **the Planning Board and public can and must draw on common meanings of the terms in Conditional Use criterion #5, particularly as regard to such features as stonewalls, cemeteries, and for the Church Hill Woods site, mature tree lines, wildlife habitat, scenic views, and viewsheds.**” — [Letter from Attorney N. R. Fennessy 5-11-22](#) (emphasis added)

May 11, 2022

VIA EMAIL

Durham Planning Board
c/o Michael Behrendt
Town Planner
Town of Durham
8 Newmarket Road
Durham, NH 03824

RE: Outstanding Issues with the Toomerfs, LLC's Site Plan and Conditional Use Permit Applications

Dear Mr. Behrendt and Members of the Planning Board:

I represent the Ursos on Smith Park Lane, and the Andersen and Meyrowitz households on Chesley Drive, as well as residents on every street of the adjacent Faculty Neighborhood and many residents in other parts of Durham. This letter follows up on my letter from May 10, 2022, which focused on the retaining wall and April 2021 ZBA Decision. This letter focuses on a few of the other outstanding issues, some of which were recently addressed by Toomerfs' attorneys, Monica Kieser and R. Timothy Phoenix, in their May 6, 2022 letter.

1. A conditional-use application is, by definition, not a by-right application.

The recent letter from Toomerfs' attorneys continues to conflate the idea of what *may* be allowed, but only by conditional use, with what is permitted by right in a particular zoning district. The Planning Board has no obligation to allow a property owner to "use" his property in a manner that is not permitted by right in the relevant zoning district unless the property owner meets all of the necessary criteria for a conditional use permit. A Planning Board denial of a non-compliant plan is not an illegal "taking."

2. The applicant has the burden of proving that it meets the requisite elements for a conditional use permit. And Toomerfs has failed to meet its burden.

Toomerfs continues to suggest that the abutters and other opponents of its site plan have some burden to establish – through expert testimony or otherwise – that it should *not* receive the requested conditional use permit. But the unambiguous terms of Durham Zoning Ordinance ("DZO") § 175.23 place the burden on the applicant to demonstrate that it meets the relevant criteria:

Church Hill Woods

When we will finally **see** the **close-up** details of the edifice that is being proposed for this site?





I have no Photoshopping skills, but the proposed structure with a 6-ft tall retaining wall about a 20ft tall retaining slope, topped by asphalt, 6-ft cedar fence, vehicles of all sizes, and 14-ft tall lighting poles would look a lot more like the image at left than Toomerfs' "renderings," such as BELOW.





When will Toomerfs show close-up images of what they propose?

In the meantime, would not the view at left more accurately show what the Andersens would see from their windows than anything Toomerfs have yet provided?



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



Joshua Meyrowitz's
Unmodified image taken from Chesley Drive in
front of J. Meyrowitz' house, 5/29/2022



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



Joshua Meyrowitz's
Unmodified image taken from Chesley Drive in
front of J. Meyrowitz' house, 5/29/2022



The Toomerfs' proposal's profoundly negative impact on the sound, light, stormwater, heat shield buffer is most obvious in the spring, summer, and fall.

Toomerfs' Site Plan Violates the Goals of
Durham's Master Plan

“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.” (2015, [LU-16](#))

The Conditional Use Zoning [Article](#): “approvals shall be subject to appropriate conditions where such conditions are shown to be necessary to further the objectives of this ordinance and **the Master Plan....”**

The PB should confront Toomerfs' admission of NON-PERMITTED USE
Toomerfs' proposals are not – by current Zoning definitions – “at-grade” parking

On April 15, 2021, Toomerfs' Timothy Murphy suggested a zoning revision that would (*if it had been made*) help the Toomerfs override the negative [April 13 ZBA decision](#). (Details [here](#).)

From: Timothy Murphy [<mailto:timpatmurphy@yahoo.com>]
Sent: Thursday, April 15, 2021 4:34 PM
To: Michael Behrendt
Subject: Re: Planning Board recap and preliminary agendas ***

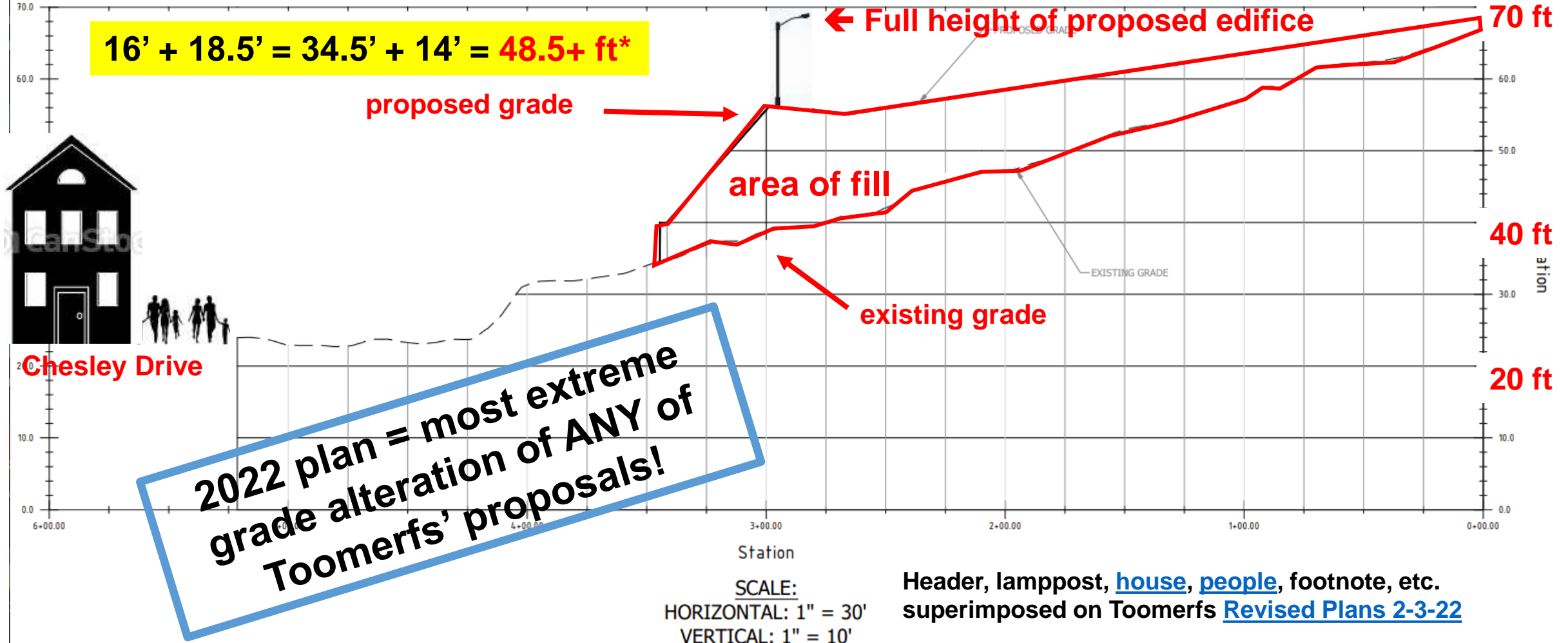
Email acquired via RTK request; typos original

“At grad” 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 border potentially could be called not at grade.

Admitted! None of Toomerfs' parking plans is permitted in the Church Hill District. Only “at-grade” Surface Parking is allowed for principal-use lots (and only by Conditional Use).

After deforesting Church Hill Woods: Up to 18.5 ft of vertical fill + asphalt topping + 14-ft lighting poles would sit atop a hillside whose lowest spot is 16~ ft above Chesley Dr street level

Profile View: Overall site to Chesley Dr



*Since the retaining wall & retaining slope would start somewhat uphill from the lowest spot, the overall height of the resulting edifice would be somewhat taller.

To repeat, Toomerfs' 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, fortress-like slopes**
- The major area lots are for senior housing, houses of worship, a 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....”**

Toomerfs' proposal is precisely for what is forbidden by these Conditional-Use clauses!

No matter *HOW* one photographs it, Toomerfs' parking edifice would:

**** tower over street level ****

**** face the adjacent Faculty Neighborhood ****

**** create a massive hole in the viewshed for abutters & surroundings ****

