

— **EXTENSIVE GRADING AND FILLING: SITE PLAN REGULATIONS** —

September 7, 2021

Planning Board
8 Newmarket Road
Durham, NH 03824

RE: 19-21 Main Street – Parking Lot. Formal application for site plan and conditional use for parking lot on four lots and reconfiguration of the entrance. Toomerfs, LLC c/o Pete Murphy and Tim Murphy, property owners. Mike Sievert, engineer. Robbi Woodburn, Landscape Architect. Map 5, Lots 1-9, 1-10, 1-15, and 1-16. Church Hill District.

Dear Members of the Board,

It's time to focus on the site plan regulations. The applicant Toomerfs' appeal of Durham's Zoning Board of Adjustment ruling of May 13, 2021 includes the following paragraph:

12. The topography of Lots 1-15 and 1-16 results in a steep sloping grade ranging from elevation 74 at the northern most portions of Lot 1-15 and 1-16 to elevation 32 at the southern most portion of Lot 1-16. Accordingly, Petitioner's proposal included **significant fill** and a retaining wall to support the surface parking.

How can this proposed project—in *either* scenario, i.e., with or without a retaining wall—possibly meet the below subsection of our Site Plan Regulations, a nontrivial requirement?

- 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.**

The use of the word “shall,” rather than “should,” in the above regulation is deliberate. Our land use regulations include instances of both “shall” and “should.” As long-time Board members know, at times the word choice has been intensely debated, but the Board approved this specific language.

Furthermore, the Board must not even consider granting a waiver: **The very foundation of the Toomerfs application runs counter to the regulation's intent.**

- Nearly three-quarters (3/4) of the site will be extensively graded and/or filled.
- Why have the regulation if it is not to be followed?
- If not applied to this project, when? What, exactly, would be the “tipping point?”

In no way can this proposal be seen to honor the intent of our land use regulations.

Regards,

Robin