

Detailed Project Narrative

Due to the size of the lot, 119.83 feet on Perley Street plus 108.87 with easement on South Main Street, this corner site cannot accommodate driveways less than 200 feet from the existing street corner. The existing property allows entrance and exit to the site via two +/-30 foot wide, two-way openings on Perley Street and a two-way driveway opening +/- 52 feet wide on South Main Street.

Proposed improvements include a 15 foot wide, one-way entrance driveway from Perley Street and a 14 foot wide, one-way exit onto Perley Street. A single driveway that is 24 feet wide, two-way access is proposed on South Main Street.

Based on the information submitted for the proposed improvements, you will find that:

- A. Due to the size of the lot, the use is specifically authorized in this ordinance as a conditional use under Article 28-7-11(f) Driveway Separation Alternatives in regards to reduction of dimension of driveways from collector and arterial streets.
- B. If completed as proposed, the improved driveways will comply with all requirements for this Article and the specific conditions of standards established in this ordinance. Creating a one way entrance and one way exit on Perley will result in more controlled access making it safer for vehicles as well as pedestrians.
- C. The use will not materially endanger the public health and safety.
- D. The use will be compatible with the neighborhood and with the adjoining or abutting uses in the area.
- E. The use will not have an adverse effect on highway or pedestrian safety.
- F. The use will not have an adverse effect on the natural, environmental and historic resources of the City.
- G. The use will be adequately serviced by necessary public utilities and by community facilities and services of a sufficient capacity to ensure the proper operation of the proposed use and will not necessitate excessive public expenditures to provide facilities and services with the sufficient additional capacity.

Professional Support (Continued)

Name: Richard D. Bartlett & Associates, LLC

Profession: Land Surveyor

Address: 214 North State Street

Concord, New Hampshire 03301

Telephone: 603-225-6770

Email: mcsargent@richardbartlett.com

RECEIVED

JAN 16 2019

Planning Division
Concord, NH

MEMO

TO: Jeremy Greeley, AIA
FROM: Ben Swanson; Erica Wygonik, PE/PhD
DATE: January 14, 2019
SUBJECT: 74 South Main Street Trip Generation Analysis

RSG was asked to conduct a trip generation analysis for the proposed renovation of 74 South Main Street in Concord, New Hampshire. This memorandum summarizes the results of our analysis.

PROJECT OVERVIEW

The subject site at 74 South Main Street in Concord, New Hampshire currently includes a single building with 1,343 square feet of pharmacy space. The existing pharmacy includes a drive-up window. A proposed project would renovate and repurpose the building to operate as a bank and would add a 45 square foot vestibule to the building, for an overall proposed building of 1,388 square feet. The site would continue to include a drive-up window.

Site traffic from the proposed project will continue to access the surrounding road network by way of existing driveways onto Main Street and Perley Street.

TRIP GENERATION CALCULATIONS

Trip generation refers to the number of new vehicle trips originating at or destined for a particular development. NHDOT guidelines¹ specify that a traffic study should be considered if the proposed project will generate 100 or more peak hour trips. The geographic scope of the study should include the immediate access points and those intersections or highway segments receiving 100 or more project-generated peak hour trips.

Trip Generation Rates published by the Institute of Transportation Engineers (ITE)² for the Pharmacy/Drugstore with Drive-Through Window (LU 881) and Drive-in Bank (LU 912) land uses, were used to calculate the projected change in traffic anticipated for the proposed change in land uses at the site. Figure 1 presents the weekday AM, PM, and daily trip generation rates for the existing and proposed land uses.

¹ New Hampshire Department of Transportation, *An Overview of the NHDOT Driveway Permit Process* (June 11, 2011). <https://www.nh.gov/osi/planning/resources/conferences/spring-2011/documents/dot-driveway-permit.pdf>

² Institute of Transportation Engineers, *Trip Generation* 10th Edition (Washington, D.C.: Institute of Transportation Engineers, 2017).

FIGURE 1: TRIP GENERATION RATES BY LAND USE (TRIPS PER 1000 SQ. FT.)

	AM			PM			Daily		
	Rate	Enter	Exit	Rate	Enter	Exit	Rate	Enter	Exit
Pharmacy (881)	3.84	53%	47%	10.29	50%	50%	109.16	50%	50%
Bank (912)	9.50	58%	42%	20.45	50%	50%	100.03	50%	50%

Figure 2 presents the projected trip generation for the existing and proposed site, obtained by applying the above rates to the existing (1,343 square feet) and proposed (1,388 square feet) building sizes. The proposed project is projected to result in an increase of 8 vehicle trips during the weekday AM peak hour, an increase of 15 vehicle trips during the weekday PM peak hour, and a reduction of 8 trips daily. During both the weekday AM and PM peak hours, the total projected peak hour traffic as well as the projected increase in traffic are well below the NHDOT 100 trips per peak hour threshold for requiring a formal traffic impact study.

FIGURE 2: PROJECTED TRIP GENERATION

	AM	PM	Daily
Pharmacy (881)	6	14	147
Bank (912)	14	29	139
Net Change	8	15	-8

CONCLUSIONS

The proposed project would renovate and reconfigure space within the existing building at 74 South Main Street in Concord, replacing the current pharmacy with drive-up window with a bank with drive-up window. The project would add an enclosed vestibule for a net increase in building square footage of 45 square feet.

The proposed project is projected to result in an increase of 8 vehicle trips during the weekday AM peak hour, an increase of 15 vehicle trips during the weekday PM peak hour, and a reduction of 8 trips daily. During both the weekday AM and PM peak hours, the total peak hour traffic as well as the projected increase in traffic are well below the NHDOT 100 trips per peak hour threshold for requiring a formal traffic impact study. Based on the proposed change in land use and the anticipated change in traffic, we project the proposed redevelopment will not cause any significant impact to traffic conditions on the adjacent roadway network.

Please feel free to contact us with any questions.



PRIMMER PIPER
EGGLESTON &
CRAMER PC

JOHN F. GRIFFIN, JR.
ADMITTED IN NH AND MA
jgriffin@primmer.com
TEL: 603-626-3300
FAX: 603-626-0997

900 Elm Street, 19th Fl. | P.O. Box 3600 | Manchester, NH 03105-3600

April 2, 2019

Concord Planning Board
Richard S. Woodfin, Chair
c/o Planning Department
41 Green Street
Concord, NH 03301

RE: Ledyard Financial Group – Proposed Minor Site Plan; Access Easement

Dear Chairman Woodfin and Planning Board Members:

This firm represents Ledyard Financial Group (“Ledyard”) in connection with its prospective purchase of the property known as 74 South Main Street, Concord, NH and the related Minor Site Plan adjustment application (the “Application”) currently pending before the Planning Board (the “Board”).

I write in response to the Board’s request at the March 21, 2019 Completeness Review Hearing (the “Hearing”) for Ledyard’s counsel’s formal opinion regarding the existence of a deeded access easement that benefits the 74 South Main Street parcel, Map/Block/Lot 28-2-1 (“74 South Main”). The servient tenement over which the access easement runs is known as 78 South Main Street, Map/Block/Lot 28-2-29 (“78 South Main”) and is currently owned by JARRS, Inc. (“JARRS”). At the Hearing, Robert Kirsch (“Kirsch”), a part-owner of JARRS, raised a number of concerns about the access easement, including the suggestion that it might not be an easement at all. None of Kirsch’s objections have any basis under applicable New Hampshire law, as set forth more fully below.¹

First, Kirsch seemed to insinuate that the right-of-way easement was not, in fact, an access easement at all, but rather merely a “right of passage.”² This elicited a discussion

¹ Kirsch also submitted a letter to the Board (the “Letter”), just a few hours prior to the start of the Hearing. The letter makes clear that the gravamen of Mr. Kirsch’s objection to the Application is that he and JARRS “still hope to pursue a project” on the 74 South Main parcel, despite the fact that it is already subject to a purchase and sale agreement to Ledyard. Clearly, that circumstance is not a proper factor for the Board to consider in reviewing the Application.

² Kirsch uses this phrase in the Letter, but he does not cite any case or statutory law for this characterization, nor does he describe whether, how, or why a “right of passage” would be distinct in any significant way from an access easement. The Letter focuses only on the issue of whether said access right will be overburdened by Ledyard’s proposed use—it does not assert any legal conclusions based on the fact that it is “not an easement.” Kirsch seemed to focus on that distinction only at the Hearing, after the Board asked him whether the right of passage was an easement.

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among the Board members as to whether the dominant tenement's access right was an easement or instead some sort of non-easement right of way. As discussed more fully below, however, it is clear from the chain of title to the subject property that there is a long-standing deeded and unrestricted access easement that benefits the property.

Second, Kirsch argued that an assumed increase of traffic flow over the access easement based on the proposed Ledyard use would overburden the easement (or the "right of passage," in his parlance). As set forth in greater detail below, the determination of an "undue burden" on an access easement is a legal question that is not properly within the purview of the Planning Board. Moreover, even if the Planning Board were to undertake such an analysis, under New Hampshire law there is no basis for finding an undue burden based on a speculative increase in traffic volume.

The Right of Way Access for the 74 South Main St. parcel is a deeded access easement. At the Hearing, Chairman Woodfin asked Kirsch whether the access right for 74 South Main was a "right of way" or an "easement." Respectfully, this is a false dichotomy, one that Kirsch seized on, whether intentionally or not, to create unnecessary confusion and cloud what otherwise would be a very straightforward analysis of a standard access easement. A legal "right of way" can arise under any number of circumstances. When that right of way is conveyed as part of a deed that runs with the land, it is known as an "easement." See Black's Law Dictionary, 9th Edition (a primary recognized type of easement is "a right of way for entry for any purpose relating to the dominant estate . . ."). Despite Kirsch's apparent insinuation that the right of way was not an easement because the deed language did not contain the word "easement," there is no requirement that an easement use that word. Rather, it is enough that the deed convey an access right over one parcel to another to be an easement. See *Doerr v. Tuomala*, No. 2012-0598, 2013 WL 11998256, at *2 (N.H. Dec. 3, 2013) ("We construe the deed to unambiguously extend the right of way easements to the petitioners' parcel" where the deed provided that grantee and successors "shall have . . . unlimited rights of way"); *Ouellette v. Butler*, 125 N.H. 184, 189 (1984) (citing 28 C.J.S. *Easements* § 2 (1941) for the proposition that "If the instrument or agreement in terms grants an interest in or right to use the land, even though it is called a license therein, it will, according to the purpose and terms of the agreement, constitute an easement, and not a license.").

There is simply no basis under New Hampshire law upon which it can be credibly asserted that the access right of 74 South Main over 78 South Main is not an access easement. The deed conveying the subject property from Boutwell Garage, Inc. to Ernest A. Boutwell dated June 15, 1928, created the original easement. The deed (Book 496, Page 396) contained the following language, which is quite typical for an access easement:

...together with a right of way over adjoining land of the grantor on the southerly side of the property herein conveyed about eighteen (18) feet in width, and running from said South Main Street along the southerly line of said property herein conveyed to the rear thereof, a distance of about one hundred twenty (120) feet.

Substantially similar language reciting this same access easement has been contained in each conveyance of 74 South Main up through and including the conveyance to the current record owners, Martin S. Donovan and Kimberly M. Donovan, as joint tenants with rights of survivorship. See Merrimack County Registry of Deeds Book 1664, Page 743.

The question of whether Ledyard's proposed use of 74 South Main will "overburden" the easement is not within the purview of the Board, and even if it were, Kirsch has submitted no evidence of the alleged overburdening and the proposed use does not overburden the easement as a matter of law.

The New Hampshire Supreme Court has held that "the interpretation of deeds and analogous instruments is ultimately a matter for this court." *Ouellette*, 125 N.H. at 187. See also *Gill v. Gerrato*, 154 N.H. 36, 39 (2006) ("The interpretation of a deeded right of way is ultimately a question of law for this court to decide.") As such, if Kirsch believes he has any basis for asserting a claim that the deed language creating the access easement will be overburdened by Ledyard's proposed use of the parcel, the proper forum for asserting such a legal claim would be the New Hampshire courts, not a minor site plan review hearing before the Board. Nevertheless, if the Board were to undertake such an analysis, it is clear under New Hampshire case law that speculative "increased traffic flow" would not constitute an undue burden for an unrestricted access easement.

Under New Hampshire case law, if the terms of the deed are "unambiguous, those terms control how we construe to parties' intent" when interpreting an easement. *Id.* Here, as noted above, the deed language defining the access easement is clear and unambiguous, and it does not contain any restrictions based on traffic³.

New Hampshire Courts apply what is called the "rule of reason" to decide whether the use of an easement is "unreasonably burdensome." See generally *Downing House Realty v. Hampe*, 127 N.H. 92, 96 (1982); *Saransky v. Wein*, 86 N.H. 337 (1933). The rule of reason is a two-part analysis, focusing first on the language of the easement, and then on whether a particular use is "unreasonably burdensome." See, generally, *Saransky*. As to the first part of the analysis, "Since *Saransky*, however, [the NH Supreme Court has] held that when the words of the deed are clear and their meaning is unambiguous, there is no need to rely on [Sakansky's] rule of reason in interpreting a deed. . . . [and] . . . "[w]hen the language of the deed is clear and unambiguous; we need not consider extrinsic evidence." *Heartz v. City of Concord*, 148 N.H. 325, 331 (2002). See also *Lussier v. New England Power Co.*, 133 N.H. 753, 757 (1990) ("where the[deed] language clearly expresses the parties' intent, it is unnecessary to utilize the interpretative tool of the "rule of reason" set out in *Sakansky*"). Here, as noted above, the deed language is clear and unambiguous in that it creates an access right for the dominant tenement over the servient

³ It is worth noting that Mr. Kirsch's argument is entirely hypothetical. He acknowledges that he is not a traffic engineer and while he purports to have conducted an informal count of customer cars travelling to the existing business at 74 South Main at what he assumed to be the "busy" times he did not provide any factual basis for his estimates of a substantial increase based on Ledyard's proposed use. Ultimately, it would be Mr. Kirsch's burden to establish that the easement is overburdened, and he would not be able to meet this burden by conjecture alone. See *Heartz v. City of Concord*, 148 N.H. 325 (2002), *infra*.

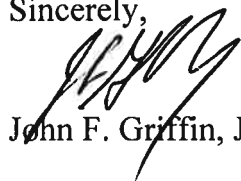
tenement. It does not rely on ambiguous language and does not specify any restrictions on access.

As to the second part of the analysis, “if the complaining party fails to make sufficient factual allegations of unreasonable use or burden, [the court] need only consider the unambiguous language in the deed.” *Heartz*, 148 N.H. at 332. Here, as noted, Kirsch has explicitly acknowledged to the Board that he is not qualified to make traffic volume assessments, and has set forth no evidence other than his anecdotal traffic counts at what he deems to be the “busy times” for the existing business and his conjecture of what Ledyard’s traffic volume will be. These assumptions are, it was clear from staff comments at the Hearing, in contravention of the city traffic engineer’s assumptions based on available data. In *Heartz*, the owner of the servient estate similarly argued that a proposed use of the dominant tenement would “change the historical use of the easement,” and “broaden the types and increase the number of vehicles using the easement” among other alleged harms. *Id.* The court held, however, that the owner had “failed to make sufficient factual allegations of unreasonable use or burden” and thus that the unambiguous language of the deed was controlling. *Id.*

In any event, even if Kirsch could demonstrate increased traffic flow, an easement can only be “unreasonably burdened” if “the alteration [of the easement] is so substantial as to result in the creation and substitution of a different servitude from that which previously existed.” *Crocker v. Canaan College*, 110 N.H. 384, 387(1970). “Increased traffic” does not, as a matter of law, constitute such a “substantial alteration” so as to create a “different servitude from that which previously existed.” *Id.* Indeed, multiple New Hampshire Supreme Court rulings on the unreasonable burden standard have cited increased traffic volume specifically as an example of a circumstance that does *not* meet the unreasonable burden standard. *See, e.g., Bos. & Maine Corp. v. Sprague Energy Corp.*, 151 N.H. 513, 519, 861 A.2d 781, 787 (2004)(“An enlargement of use [of an existing easement] is permissible if ‘the change of a use is a normal development from conditions existing at the time of the grant, **such as an increased volume of traffic.**’”)(citing *Downing House Realty v. Hampe*, 127 N.H. 92, 96 (1985)(emphasis added).

Thus, given that Ledyard’s proposed use is: 1) clearly within the scope of a properly deeded access easement and 2) Kirsch has not submitted evidence of unreasonable burden nor even alleged the presence of a harm that could plausibly constitute such a burden under New Hampshire Law, Ledyard respectfully requests that the Planning Board grant the Application.

Sincerely,



John F. Griffin, Jr., Esq.

cc: Client
Mark C. Sargent
Randall T. Mudge
Robert C. Kirsch
Sam Durfee

200.00

DEED

B1371P634

RECEIVED

JAN 16 2019

Planning Division
Concord, NH

TEXACO Inc., formerly known as The Texas Company, a Delaware Corporation, with offices at 1040 Kings Highway North, Cherry Hill, New Jersey, 08034, for consideration paid, grants to The Philadelphia National Bank, a national banking corporation, with an office in Philadelphia, Pennsylvania, Trustee for Roy Weddleton of 4 Park Street, Concord, New Hampshire, 03301, under Trust Agreement dated *MAY 13, 1980*, with warranty covenants, a certain parcel of land together with the buildings and improvements thereon located at the southwest corner of the intersection of Perley Street and South Main Street, at City of Concord, County of Merrimack, State of New Hampshire, being bounded and described as follows:

Beginning at the northeast corner of the premises conveyed herein; thence southerly ninety-one (91) feet along the west side of South Main Street; thence at an angle of eighty-nine degrees forty-one minutes (89 degrees 41') to the last named course, westerly one hundred twenty (120) feet along a passageway; thence at an angle of ninety degrees twelve minutes (90 degrees 12') to the last named course, northerly ninety-two and eighty-five hundredths (92.85) feet to the south line of said Perley Street; thence at an angle of eighty-eight degrees fifty-five minutes (88 degrees 55') to the last named course easterly one hundred nineteen and eighty-three hundredths (119.83) feet Tank along the south line of said Perley Street to the point of beginning.

Also granting a right of way to the grantee, its successors and assigns, in the passageway on the adjacent land formerly of Boutwell Garage, Inc., about eighteen (18) feet in width, and running westerly one hundred twenty (120) feet from the said South Main Street, along the south side of the property conveyed herein.

Meaning and intending to convey the same premises and rights conveyed and granted by Raymond L. Gagne to TEXACO Inc., then known as The Texas Company, dated January 25, 1956, recorded in the Merrimack County Registry of Deeds, Volume 785, Page 493.

B1371P634



B1371P635

Subject to the following restriction which will be deemed to be a covenant running with the land for the benefit of the party of the first part and which will terminate five (5) years from the date hereof:

The above premises shall not be used for the advertising, storage, sale or dispensing of petroleum, petroleum products, tires, batteries and/or those other accessories usually sold at gasoline service stations.

WITNESS its hand and seal this 13TH day of MAY, 1980.

ATTEST

TEXACO Inc. (formerly known as The Texas Company)

By



J. V. LEFRAMANT

B1371P635

RECEIVED

050689

1987 JUL 30 AM 8 42

MERRIMACK COUNTY
REGISTRY OF DEEDS

DEED

805.00
805.00

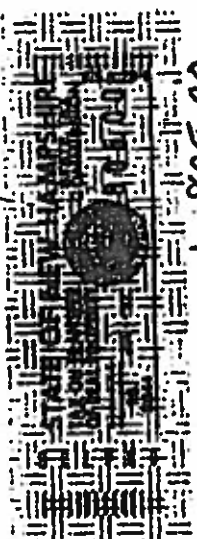
Roy Waddleton and Ann Waddleton of 174 Centre Street, Concord, New Hampshire

in the County of Merrimack, for the sum of two hundred thirty thousand (\$230,000.00) dollars paid, grants to Martin S. Donovan and Kimberly M. Donovan, ^{as JOINT TENANTS with rights of survivorship} of 6 Dogwood

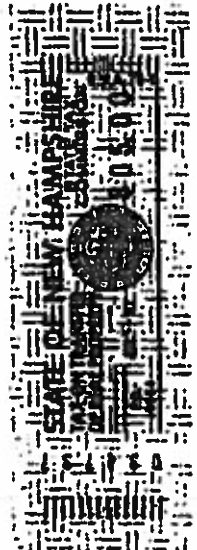
Terrace, Concord, New Hampshire in the County of Merrimack, with warranty covenants, a certain parcel of land together with the buildings and improvements thereon located at the southwest corner of the intersection Parley Street and South Main Street, Concord, New Hampshire, County of Merrimack, State of New Hampshire, being bounded and described as follows:

Beginning at the northeast corner of the premises conveyed herein; thence southerly ninety-one (91) feet along the west side of South Main Street; thence at an angle of eighty-nine degrees forty-one minutes (89 degrees 41') to the last named course, westerly one hundred twenty (120) feet along a passageway; thence at an angle of ninety degrees twelve minutes (90 degrees 12') to the last named course, northerly ninety-two and eighty-five hundredths (92.85) feet to the south line of said Parley Street; thence at an angle of eighty-eight degrees fifty-five minutes (88 degrees 55') to the last named course easterly one hundred nineteen and eighty-three hundredths (119.83) feet along the south line of said Parley Street to the point of beginning.

Also granting a right of way to the grantee, its successors and assigns, in the passageway on the adjacent land formerly of Boutwell Garage, Inc., about eighteen (18) feet in width, and running westerly one hundred twenty (120) feet from the said South Main Street, along the south side of the property conveyed herein.



805.00



805.00

BK1664 PG0743

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CONCORD, NEW HAMPSHIRE
PERLEY AND SOUTH MAIN

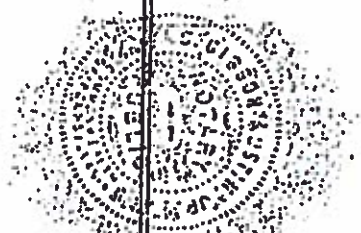
STATE OF *Pennsylvania*
COUNTY OF *Philadelphia*

SS.:

On this the *15th* day of *May*, 19 *80*, before me, the undersigned officer, personally appeared *D. O. MONTGOMERY*, who acknowledged himself to be a **SENIOR CORPORATE** of The Philadelphia National Bank, a banking corporation, and that he, as a **SENIOR CORPORATE**, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself

as **SENIOR CORPORATE**
TRUST OFFICER

In witness whereof I hereunto set my hand and official seal.



G. Gibson Austin, Jr.

Notary Public

G. GIBSON AUSTIN, JR.
NOTARY PUBLIC, PHILA., PHILA. CO.
My Commission Expires Dec. 31, 1989

MERRIMACK COUNTY RECORDS
Recorded May 22, 12-10P.M. 1980

B1371P640

William M. Gray
REGISTER

200.00

DEED

B1371P638

The Philadelphia National Bank, a national banking corporation, with an office in Philadelphia, Pennsylvania, Trustee for Roy Weddleton under Trust Agreement dated *MAY 13, 1980*, by the power conferred by said Trust Agreement dated *MAY 13, 1980* and every other power, for the sum of Eighty Thousand (\$80,000.00) Dollars paid, grants to Roy Weddleton, 4 Park Street, Concord, New Hampshire, 03301, with quitclaim covenants, a certain parcel of land together with the buildings and improvements thereon located at the southwest corner of the intersection of Perley Street and South Main Street, at City of Concord, County of Merrimack, State of New Hampshire, being bounded and described as follows:



Beginning at the northeast corner of the premises conveyed herein; thence southerly ninety-one (91) feet along the west side of South Main Street; thence at an angle of eighty-nine degrees forty-one minutes (89 degrees 41') to the last named course, westerly one hundred twenty (120) feet along a passageway; thence at an angle of ninety degrees twelve minutes (90 degrees 12') to the last named course, northerly ninety-two and eighty-five hundredths (92.85) feet to the south line of said Perley Street; thence at an angle of eighty-eight degrees fifty-five minutes (88 degrees 55') to the last named course easterly one hundred nineteen and eighty-three hundredths (119.83) feet Tank along the south line of said Perley Street to the point of beginning.

Also granting a right of way to the grantee, its successors and assigns, in the passageway on the adjacent land formerly of Boutwell Garage, Inc., about eighteen (18) feet in width, and running westerly one hundred twenty (120) feet from the said South Main Street, along the south side of the property conveyed herein.

Meaning and intending to convey the same premises and rights conveyed and granted by Raymond L. Gagne to TEXACO Inc., then known as The Texas Company, dated January 25, 1956, recorded in the Merrimack County Registry of Deeds, Volume 785, Page 493.

B1371P638

B1371P639

Subject to the following restriction which will be deemed to be a covenant running with the land for the benefit of the party of the first part and which will terminate five (5) years from the date hereof:

The above premises shall not be used for the advertising, storage, sale or dispensing of petroleum, petroleum products, tires, batteries and/or those other accessories usually sold at gasoline service stations.

WITNESS its hand and seal this 15TH day of May, 1980.

ATTEST

The Philadelphia National Bank, a national banking corporation

By 



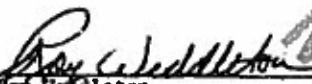
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Meaning and intending to convey the same premises and rights conveyed and granted by Texaco, Inc., to Roy Weddleton under a trust agreement dated May 13, 1980, recorded in the Merrimack County Registry of Deeds, Volume 1371, Page 634 and Volume 1371, Page 638.

WITNESS its hand and seal this 30th day of July, 1987.


Ann M. Weddleton


Witness


Roy Weddleton


Witness

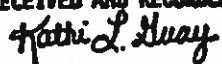
ATTEST

State of New Hampshire
Merrimack, SS

On the 30th day of July, 1987, before me, the undersigned officer, personally appeared Roy Weddleton and Ann M. Weddleton, known to me (or satisfactorily proven) to be the person whose name as subscribed to the within instrument and acknowledge that he and she executed the same for the purposes therein contained.


Notary/Justice of the Peace

BK1664 P80744

MERRIMACK COUNTY RECORDS
RECEIVED AND RECORDED

REGISTER

February 18, 2019

Concord Planning Board
c/o Concord Planning Department
41 Green Street, 3rd floor
Concord NH 03301

Re: Matter on Planning Board agenda for February 20, 2019

File # 18-911 - Greg Steverson, on behalf of Ledyard Financial Group, requesting Minor Site Plan approval for a change of use, associated building renovations and site improvements at 74 South Main Street in the Urban Commercial (UC) District.

Dear Members of the Planning Board:

I am the co-owner of property that abuts 74 South Main Street on two sides. My co-owner, Rob Kirsch, and I own One Perley Street (Lot 28/2/29) and 78 South Main Street (Lot 28/2/2). These properties wrap around the pharmacy lot on the corner.

I have concerns about the above proposal. I was out of the country before receiving notice that this matter would be on the agenda this coming Wednesday and, unfortunately, am not back in the country until February 27th. Rob Kirsch asked the Bank to reschedule to allow us to participate, but the Bank declined.

I respectfully request that the Planning Board reschedule this matter for a time when we can attend the meeting.

If the Planning Board does go forward with this matter on Wednesday, February 20, 2019, please accept these written comments in my absence. Rob Kirsch is also filing a letter with the Planning Board. I concur with the additional points he raises.

My fundamental concern is with the proposed site plan. From my review of what the Bank has submitted, its traffic plan depends on making modifications to our property. I assume the Bank relies upon the old deeded right of passage to do so. The Bank proposes to remove a foundation wall and planting bed from our property, then repave and narrow the curb cut, also on our property.

We have not agreed to the modifications requested by the Bank.

First, we are concerned that the Bank's intended use of the historical right of passage will significantly exceed past use, potentially resulting in an unlawful overburden of the existing easement. The fact that the Bank wants to remove a long-standing foundation wall in order to widen the driveway is evidence of its intended expansion of the existing right of passage.

Concord Planning Board
Re: File #18-911
February 18, 2019
Page 2

Second, although we are reluctant to be uncooperative neighbors, we have long-term plans to develop the adjacent lots. It was always our hope and our intention to purchase the corner pharmacy lot when Marty Donovan was ready to sell. Our vision is to create something beneficial and beautiful at the southern end of Concord. That is still our vision, with or without the corner lot that our properties wrap around. As best as we can determine, the proposed traffic plan, even if better for the currently proposed use of the corner lot, will be detrimental to our ability to develop our adjacent properties.

Thank you very much for your consideration.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Anne Renner", with a stylized, flowing script.

Anne Renner
42 Algonquin Trail
Sandy Hook CT 06482

Cc: John F. Griffin, Jr., Esq. for Ledyard Bank
Robert C. Kirsch, Esq.
Kim Rosenfield, Esq.

Kim Rosenfield
378 Route 103A
New London, N.H. 03257

Richard S. Woodfin, Chair
Concord Planning Board
41 Green St.
Concord, NH 03301
February 19, 2019

RE: Proposal by Ledyard Bank - 74 South Main Street
File 18-911

Dear Mr. Woodfin,

I write on behalf of my mother, Barbara Rosenfield, who is the Trustee of the Barbara Rosenfield Revocable Trust and the Rosenfield Family Irrevocable Trust, owners of 82 and 84 South Main Street (the former Concord Cleaners). We also have rights to the adjacent property at 80 South Main St, which abuts land owned by Anne Renner and Rob Kirsch, through JARRS, LLC. The JARRS land, in turn, abuts the property that is referenced above.

When the Concord Cleaners business was sold to Cleary Cleaners, the property at 82 and 84 South Main Street was not sold. We have made significant progress in addressing environmental issues that are a legacy of the dry cleaning formerly done on the site, and now that Cleary Cleaners has moved out, we expect to make even more progress.

We have talked with Anne and Rob about our shared vision of developing a project that would improve the southern end of Main Street, which we see as a gateway to the city of Concord. The area, the site of the original Concord Coach factory, has deep historical and cultural significance. We always have felt that it should be developed in a way that would benefit the Concord community.

Thank you for your consideration,

Sincerely,

Kim Rosenfield,
On behalf of Barbara Rosenfield, Trustee

Robert Kirsch
110 Runnells Rd.
Concord, NH 03303

Rec'd
3/20/19
C Meeting

Richard S. Woodfin, Chair
Concord Planning Board
C/O Planning Department
41 Green St.
Concord, NH 03301

March 20, 2019

BY EMAIL and HAND DELIVERY

RE: Proposal by Ledyard Bank - 74 South Main Street
File 18-911
Summary of Objections

Dear Mr. Woodfin and Board Members,

Anne Renner and I, through JARRS, LLC, own the property which abuts the land that is the subject of your review in the proceeding noted above. Anne sent a letter to the Planning Board (Board) in connection with its February meeting, and I join in the objections and requests she made there. For the reasons described below, I respectfully request that the Board deny the approval requested.

Background

I have lived in Concord since 1988; our children were born and raised here. Anne and I purchased the land now held by JARRS more than ten years ago to help develop a then proposed expansion for the Concord Food Coop. When the Co-op decided to stay in its original building, we put development plans for the South Main St./Perley St. property on hold. Thereafter we purchased apartment buildings in the South End, and during years we owned those properties, leased them at below market rates to refugee families getting started in our community. One such family resides today at the Perley St. property we still own. Our development intent for the South Main St./Perley St. property, however, remained the same: to create a project that would benefit the Concord community, and which would befit a visible property at the southern gateway to the Main Street business district. Over the years, we have rejected several good offers by developers to purchase our property, in order to pursue that vision. We hoped to include the subject property in any such project. Anne spoke with Mr. Donovan years ago about purchasing his property, and we have raised the possibility again with the Ledyard Bank. (Bank).

Our property abuts the subject property on the West and South. We still hope to pursue a project with a community benefit. In the past year, we have discussed the possibility of such a development with the Rosenfield family, which owns or has rights to property abutting ours to the South. Our concept was well received by the Rosenfields, whom we understand also to be interested in a community focused development. Solely to provide a rough estimate of scale,

our land, if combined with the subject property, would provide an opportunity for a development of approximately one acre. Combined with the Rosenfield related properties – there would be an opportunity to develop slightly more than two acres. The proposal advanced by the Bank likely will add complexity, challenge and cost to the type of project we envision, and its proposal would eliminate the possibility of a single, cohesive project for the community.

Procedural History - Schedule

We tried, without success, to avoid involving the Board in whether the February date for this proceeding should be rescheduled. I was out of the country when I received the notice of the February 20 Board proceeding on the Bank proposal. Anne was also out of the country. Neither of us could have been back by February 20. Upon receiving notice of this proceeding, we immediately informed the Bank of those facts and asked that the hearing be rescheduled. The Bank refused. The Bank also rejected my request that it reconsider its initial insistence to press its proposal on the 20th so that we might have time to meet. It was not until the morning of the February hearing, after I had prepared a draft of these comments and after Anne had submitted her February letter to the Board, that the Bank agreed to put off the hearing date. It struck us as an unfortunate way for a proposed new business to treat a potential neighbor.

Objections

This supplements the Letter Anne delivered to you in February and is consistent with statements I expect to deliver in person to the Board today. Among our concerns are the following.

- The Bank's proposal reflects a proposed use that may unduly burden a "right of passage" over a strip of our property. We ask that the Board not take any action that reasonably might be perceived as condoning or supporting the proposal to impose an illegal burden on our property.
- The Bank proposal now indicates that it will re-pave its site up to the boundary with our property. [The plan on file previously suggested the bank intended to pave a portion of our property, though no proposal ever was made.] An abrupt change in elevations across a paved surface resulting from the Bank's site work could create a danger to pedestrians and drivers. We have not received any written proposal from the Bank that would provide a commercially reasonable means of mitigating those added risks. The limited burden imposed on our land is one that allows the subject property to use an approximately 18-foot strip of our property solely for passage. It would not give the Bank a right to modify the surface in a way that added risk to our property and to visitors to both properties. I ask that the Board not take any action that reasonably could be interpreted to suggest the Board condones or approves such actions implicating our property.
- The Bank will bring much more regular traffic to this property than has the small specialty pharmacy located there now. I recently observed traffic in the pharmacy lot during portions of three days. I am not a traffic engineer; I selected two "busy" periods that

overlapped with the lunch hour, when many working people make pharmacy runs. The pharmacy does not open until 10 AM and closes at 6 PM weekdays. The use was consistent and low.

On January 29, 2019 between 12:10 PM and 2:10 PM, 7 cars briefly parked in the pharmacy lot. One FedEx and one UPS truck also stopped.

On February 4, 2019 between 11:50 AM and 2:00 PM, 11 cars briefly parked in the pharmacy lot, and two more used the drive-thru window.

On March 1, 2019 between 11:59 AM and 2:20 PM, 10 cars briefly parked in the pharmacy lot and one car used the drive-thru window. One UPS and one FedEx vehicle also stopped in the lot.

The Bank proposal, if allowed, likely would result in far more traffic through that corner lot, than does the pharmacy. I request that the Board ask the Bank to come forward with at least a minimum of true traffic data – including its projections - before formally entertaining the Bank's proposed request. Any planning should consider the actual very low volume of traffic that visits the pharmacy. It would be neither prudent nor reasonable to rely solely on statistical data tied to "an average" pharmacy in this context. The Donovans have run a specialized business that has succeeded despite a very low traffic flow. The Bank is proposing a new use that will attract significantly more traffic for traditional banking, a drive-up teller and ATM use. Any meaningful review by the Board should include actual data that account for the change that is expected to occur if the Bank proceeds with its proposal. In approving the investment in the proposed development, the Bank's management or board likely received an estimate of the amount of business this location would generate, and the Bank likely knows how much use an ATM would receive, with or without a bank. All of that information may be translated into anticipated traffic counts. The Board and the public should have the benefit of the traffic counts associated with or calculated from those estimates when they review the Bank's proposal.

- The Bank proposes to direct its increased traffic across our property; we object. That would reflect an undue burden on our property in excess of that granted in the right of passage. I ask that the Board not act on the Bank's proposal until it has received data supporting actual expected traffic changes across our property and through all relevant access and egress points related to the proposed Bank development.
- While the Bank may be proposing only modest changes to the existing structure, its new proposed use likely will result in a traffic increase that is far from modest. The Board should exercise its authority to request and review traffic data to a degree that reflects that likelihood. The additional traffic has implications for the safety of vehicles and pedestrians on or beside Perley Street and for the intersection of Perley and South State Streets and the value of nearby properties. Traffic regularly backs up on Perley street to well beyond the

Bank's proposed exit. The Bank proposes to permit traffic to exit onto Perley St. extremely close to the intersection with South State Street. Allowing vastly increased traffic flow there, including some which will cross to the left turn lane – requiring drivers to execute a diagonal cross-traffic maneuver at the western edge of the intersection – raises safety concerns that the Board should consider. I request that the Board not entertain the Bank's proposal before it receives and has a meaningful opportunity to review actual data, collected and or provided by an appropriately licensed engineer, showing how the additional bank traffic and proposed flow will influence public safety on Perley Street and at the South State Street intersection, and how that might influence nearby property values.

- Several plans accompanying the Bank's proposal, including the Proposed Site Plan and Elevations, the Grading and Drainage Plan and the Proposed Landscape Plan, each contains inaccurate information relating to our property. I am not qualified to comment on the accuracy of technical information presented in other elements of the Bank's proposals. However, in light of the fact that a lay person immediately was able to spot an inaccuracy that was repeated on all of the plans presented in support of the Bank Proposal, I ask that the Board direct the Bank to produce plans with accurate information and to certify that its engineers and other experts have verified the accuracy of the information that the Bank is asking the Board to rely on, before the Board conducts any proceeding relating to the Bank's proposal.

- To the extent that the proposal advanced by the Bank would or proposes to direct surface water flow from the subject property onto our property, I object. Grading will be exacerbated by any differential in pavement height. Further, the increased traffic likely will result in the unintended deposit or release of additional salt, dirt and other contaminants commonly associated with vehicles onto the surface of the subject property. Those contaminants could be transported onto our property by any directed surface runoff. I ask that the Board direct the Bank to specifically address these issues and to require grading so that any development would, to the greatest extent possible, not direct any surface flow onto our property.

- I did not see any indication of or accommodation for snow storage on the plans so far submitted by the Bank's consultants. Given the location of the property at a major intersection and the requirements of the applicable regulations, the Board should not take up this project until it and the public have had an opportunity to review plans that address snow storage.

The above reflects the issues I have been able to identify, but it may not be exhaustive.

Please enter this letter and that from Anne Renner into the record of this proceeding.

March 20, 2019

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Thank you for accepting this letter. I am available to answer any questions any member of the Board or the City staff may have.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'R. Kirsch', with a long horizontal flourish extending to the right.

Robert C. Kirsch

cc: Greg Steverson [Ledyard]
John Griffin, Esq. [Ledyard]
Anne Renner – Email Only
Kim Rosenfield, Esq. – Email Only