

Middlesex South Registry of Deeds Electronically Recorded Document

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**Middlesex South Registry of Deeds
Eugene C. Brune, Register
208 Cambridge Street
Cambridge, Massachusetts 02141
617/679-6310**



David B. Cohen
Mayor

CITY OF NEWTON, MASSACHUSETTS

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ZONING BOARD OF APPEALS
Sherri A. Lougee, Board Secretary

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CITY CLERK
NEWTON, MA, 02159

#15-09

Detailed Record of Proceeding and Decision

*The Reference: Book 9309, Page 286
Owner: Estate of Rosalie Avila, Probate # 03P3968
Executrix: Emily M. Avila*

Petition #15-09 of Parkview Homes, LLC, 165 Chestnut Hill Ave, Unit #2, Brighton, MA 02135, requesting a Comprehensive Permit in accordance with Chapter 774 of the Acts of 1969 (M.G.L., Chapter 40B, Sections 20-23) in order to construct a 10-unit development at 192 Lexington Street, Newton, of which six units will be affordable to households earning up to 80% of area median income and four units will be affordable to households earning up to 100% of area median income. The property is located in a Single Residence 3 district.

The Zoning Board of Appeals for the City of Newton held a public hearing on the above entitled proceeding on November 24, 2009 at 7:00 p.m. in the Aldermanic Chamber, at City Hall, Newton, Massachusetts.

The following members of the Board were present:

- Harvey A. Creem, Chairman
- Brooke K. Lipsitt
- William M. McLaughlin
- James H. Mitchell
- Thomas J. Phillips

The petition was filed on October 30, 2009.

Due notice of the hearing was given by mail, postage prepaid, to all persons deemed to be affected thereby as shown on the most recent tax list and by publication in the Newton TAB, a newspaper of general circulation in Newton, Massachusetts, on November 4th and 11th, 2009.

Accompanying the petition were plans entitled:

- "Parkview Homes Floor Plans and Elevations 192 Lexington Street" Sheet A-1 dated October 29, 2009, prepared by Winslow Architects, 89 Massachusetts Avenue, Arlington, MA, not stamped or signed.
- Site Plans consisting of 6 sheets all dated October 19, 2009, prepared by Hayes Engineering, Inc., 603 Salem Street, Wakefield, MA, not stamped or signed.
 - "Site Plan - Existing Condition" Sheet C1;
 - "Site Plan - Grading & Drainage" Sheet C2;

Attest:

City Clerk of Newton, Mass.

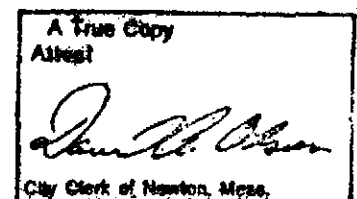
- "Site Plan – Utility" Sheet C3;
 - "Site Plan – Layout" Sheet C4;
 - "Optional Site Plan – Layout" Sheet C4, Revised 11/18/09;
 - "Site Plan – Site Detail" Sheet C5; and
 - "Site Plan – Site Detail" Sheet C6.
- "Landscape Plan, #192 Lexington Street, Chapter 40B Comprehensive Permit, Newton, MA," Sheet L-1, dated November 23, 2009 and prepared by Hammer Design, Landscape Architecture, 300 A Street, Boston, MA, not stamped or signed.

FACTS:

The applicant was represented by Attorney Alan Schlesinger, of Schlesinger and Buchbinder LLP, 1200 Walnut Street, Newton, MA, and Developers Robert and Geoff Engler of Parkview Homes, LLC, 165 Chestnut Hill Ave, #2 Brighton, MA. Civil Engineer William Bergeron, of Hayes Engineering, Inc., 603 Salem Street, Wakefield, MA, and Geotechnical Engineer Jonathan Walter Patch, of McPhail Associates, Inc., 2269 Massachusetts Ave, Cambridge, MA, also spoke on elements of the project.

The applicant requested that a Comprehensive Permit be granted in lieu of the following local permits which otherwise would be required:

- A. Use: The Applicant seeks a comprehensive permit in lieu of use variances, special permits and approvals to allow the Property to be used for the Project including without limitation:
1. Variance from the provisions of § 30-8(a) to permit the Property to be used for a total of 10 dwellings for 10 families, (2 detached single-family homes and 4 duplex homes). The Property is currently zoned *Single Residence 3*.
- B. Density and Dimensional Controls: The Applicant seeks a comprehensive permit in lieu of such variances or special permits as may be required from or under §30-15 for construction of the Project including without limitation:
1. Variances from the dimensional requirements of § 30-15 as follows:
Front Yard Setback: Allowed: 30ft. Provided: 16.3ft
- C. Parking Requirements: The Applicant seeks a comprehensive permit in lieu of a special permit pursuant to §30-19(m)
1. Application for parking and loading facility permit under §30-19(e).
 2. Under §30-19(h) 1 to permit outdoor parking spaces to be located less than 5 feet from a building or structure containing dwelling units. The two driveways between building #1 and building #2 are four (4) feet from the residential structure.
 3. Under §30-19(h) 2: Design of Parking Facilities
Stall Depth Allowed: 19ft. Provided: 18ft



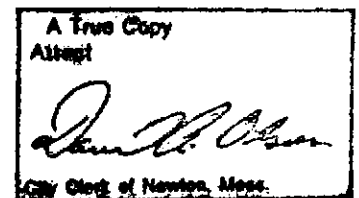
4. Under §30-19 (h)4(b): Entrance and exit driveways
Maximum width of entrance and exit driveways is permitted to be twenty-five (25) feet. The applicant proposes twenty-seven (27) feet.
 5. Under 30-19 (h) 5 (a) which requires parking facilities be designed so that each motor vehicle may proceed to and from the parking space provided for it without requiring the moving of any other vehicle. The Applicant has proposed two driveways between building #1 and building #2 that feature tandem parking spaces.
 6. Under 30-19 (h) 4 (a) which requires the back exit drive to be twenty feet wide. The Applicant does not believe this provision applies to this development as the back driveway is an exit for emergency vehicles only and will be locked by a Knox box. It will not serve, or be allowed to serve as an entrance or exit to residents and/or any other neighboring residents. Moreover, it will likely be only 1 way in or out, depending on the preference of the Newton Fire Department, which has signed off on the plan as provided.
 7. Under §30-19(i)(2) as to interior landscaping requirements for outdoor parking facilities of 20 stalls or more under, (if necessary).
 8. Under §30-19(j)(2) as the City Engineer will review the Applicant's plans in connection with the Application
 9. Waiver of the bicycle location provisions of §30-19(k)(2)
 10. Any other relief which may be necessary or appropriate and may be granted by the Board of Aldermen under §30-19 (m)
- D. Signage: The Applicant seeks a comprehensive permit in lieu of a special permit under §§30-20 (l) to permit for a freestanding sign. The Applicant also seeks a waiver of sign permit procedures under §30-20(c)(1) and insofar as applicable any hearing or procedure before the Urban Design and Beautification Commission.
- E. Site Plan Approval: The Applicant requests a comprehensive permit in lieu of site plan approval required under §30-23 in connection with special permits granted under §30-24.

NON-ZONING ORDINANCES

Tree Ordinance - Revised Ordinances §20-31 et seq.

Revised Ordinances §20-31 et seq. provide a requirement for a permit and the payment of fees for removal of trees from the property under certain circumstances. To the extent that any permit or fee payment would otherwise be required under Revised Ordinances §20-31 et seq., the Applicant requests a comprehensive permit in lieu of a waiver of such permit and fees.

Demolition Delay - Revised Ordinances §22-44



Revised Ordinances §22-44 provides for a review by the Newton Historic Commission and the possible imposition of a demolition delay for demolition of historically significant buildings. To the extent the existing house or other elements of the Property may be deemed to fall within the jurisdiction of the Newton Historic Commission under Revised Ordinances §22-44, a comprehensive permit is sought in lieu of a determination of the Newton Historic Commission that such structures or features are not preferably preserved.

Light Ordinance

Revised Ordinances §§20-23 - 20-28 provided limitations on installation of light sources which do not conform to the criteria stated. §20-26 provides for waivers to be granted by the Planning and Development Board. To the extent that any light source may not conform to the requirements of §20-24 or that the requirements of that section may be inconsistent with § 30-19 the Applicant seeks a comprehensive permit in lieu of any waiver requested under §30-26.


In addition, the applicant requested that should the City accept the 2,574 sq. ft. triangular parcel the applicant is proposing to offer the City as shown on plans titled "Optional Site Plan – Layout" Sheet C4, prepared by Hayes Engineering, Inc., dated October 19, 2009 and Revised 11/18/09, not stamped or signed, and that the applicant be allowed to substitute Site Plan Sheet C4 with a new plan reflecting such change in ownership without the need for additional variances.

TESTIMONY

The applicant, Parkview Homes, LLC requested a Comprehensive Permit to allow for the construction of ten (10) units for-sale including two single-family detached units and four two-family townhouse-style units to be called "Parkview Homes," on land located at 192 Lexington Street in Auburndale. The 49,960 sq. ft. site is zoned Single Residence 3. The proposed site plan includes 21 parking stalls associated with the ten units. Nine of the ten units are proposed to have three bedrooms and 2 ½ baths in 1,450 sq. ft. As shown on the revised C-4 plan dated 11/18/09, the applicant stated that one of the ten units, single-family Building #2, will be designed and constructed to be fully accessible for individuals with mobility impairments. The accessible unit, which would be approximately 1,100 sq. ft. will have two bedrooms and at least one bathroom and possibly an additional half bathroom. Building #2 is proposed as 1-story while the other buildings are proposed to be 2-story structures.

The applicant is proposing that six of the ten units have sales prices set to be affordable for households at 75% of area median income and restricted to households earning up to 80% of area median income. The other four units are proposed to have sales prices set at 95% of area median income and are restricted to households earning up to 100% of area median income.

Bill Bergeron of Hayes Engineering, Inc., discussed the civil engineering details of the project noting that the driveway widens from 20 ft. in width at Lexington Street to 24 ft. where there is

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parking on both sides of the maneuvering aisle and then narrows to 16 ft. closer to Albert Rd, to which only emergency vehicles will have access via a Knox box. A turning template was submitted to the Engineering Department and the Fire Department has approved the site plan for accessibility and water. The project will connect to existing water and sewer lines and should improve water quality and pressure on Albert Road. The project will also be adding one fire hydrant to service the site. The duplexes will be sprinkled but the two single-family residences will not be sprinkled. The topography of the site is fairly level and a stormwater analysis was submitted with this application.

Jonathan Patch of McPhail Associates, Inc. spoke next. He stated that his firm completed an environmental site assessment and found that the four duplex units will require some soil improvements to support the foundations of the new duplex units.

Geoff Engler of the development team then spoke stating that the developer worked with the Planning Department to design the accessible unit (Building #2) and will conduct a lottery so that an appropriate owner is selected. He also noted that the 1,450 sq. ft. units will have full basements for storage and utilities and are consistent with other houses in the neighborhood. He noted the green/environmental features of the project including HardiPlank siding, bamboo flooring, low VOC paints and finishes, triple tab roofing, rigid insulation on exterior walls, Energy Star appliances and low flow toilets and plumbing fixtures.

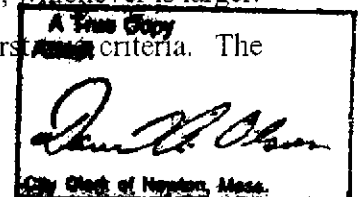
Alan Schlesinger then spoke noting that the site plan has been updated and includes an area to be conveyed to the City for a walkway from Albert Road through to the City-owned school property. He explained that in 1969 the City and property owners agreed to swap the two parcels as shown on submitted plans. A Board Order was drafted but the deed was never recorded although the walkway has been used as though the City owned it. The applicant is now proposing to offer to give this triangular piece of land to the City so the walkway is on City-owned land. The applicant is requesting the right for plan C4 to be substituted with a new plan reflecting the change in ownership of the triangle piece should the City choose to accept this land.

The proposed project will be developed pursuant to the Massachusetts Department of Housing and Community Developments Local Initiative Program (LIP) and restrictive covenants will be adjusted to retain the affordable nature of the project in perpetuity.

The applicant asserted in the petition and by testimony and the Zoning Board of Appeals specifically found as fact that the proposed housing is consistent with local needs for low- and moderate-income housing as defined in M.G.L. C.40B, Section 20 based upon the following facts which were also established by the Newton Department of Planning and Development:

Chapter 774 establishes three criteria by which the need for low- and moderate-income housing in a particular community is measured. These three criteria include: 1) In excess of 10% of housing units in a community are utilized for low- or moderate-income housing; 2) 1.5% or more of the land area zoned for residential, commercial or industrial use (excluding publicly owned land) contains subsidized housing; and 3) the land area developed for low- or moderate-income housing in any one calendar year does not exceed 3/10 of one percent of total City land or 10 acres, whichever is larger.

The amount of subsidized housing in the City does not meet either of the first two criteria. The



current number of subsidized units in the City is 2,444, or 7.7% of the City's total number of housing units (31,857 units according to the 2000 U.S. Census). The land area used for subsidized housing (109 acres) represents less than 1 percent of the City's total land area (11,731 acres).

Finally, the proposed development would not result in development of housing on sites which constitute more than 3/10 of one percent of the total land area in one year (21.68 acres). No new subsidized housing units were constructed in 2009 and approval of this Comprehensive Permit would not make Newton exceed the State minimum criteria.

This project would increase the supply of affordable multi-family housing in Newton by ten additional units, although only six of the units will be eligible to be included in the State Subsidized Housing Inventory. The Newton Housing Partnership, which met with the developer on five separate occasions, reviewed the proposed plan, and submitted a letter in support of the project.

Planning Director Michael Kruse stated that the Department of Housing and Community Development submitted a letter stating that the application for site eligibility has been approved based on a plan for the development of 10 homeownership units. He noted that the letter also makes findings that should be referenced as a condition of approval. He noted that he agrees with the letter and supports the project. He reiterated that the City is making progress but is not at its 10% affordable housing goal. He noted that a number of City departments were involved in reviewing this project and that the applicant also worked with the Housing Partnership. Finally, he noted that he has made some changes to recommended conditions in order to address concerns of the Chair of the Housing Partnership.

The following people spoke in favor of the project:

Nancy Grissom of 7 Orris Street, Chairman, Community Preservation Committee

Liz Heyer of 25 Freeman Street, who also submitted a petition signed by 30 neighbors/parents of Burr Elementary School children in favor of the project

Lynne Sweet, 416 Grove Street, Newton Housing Partnership

Josephine McNeil, Newton Housing Partnership

Anatol Zukerman, Newton Architect and resident

Letters in favor were submitted by:

Anatol Zukerman, Newton Architect and resident

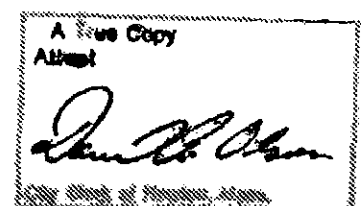
The following people spoke in opposition:

John V. Avila of 192 Lexington Street, believes 6 units is correct number

Alderman Jay Harney, would prefer 8 units and more open space

Letters in opposition were submitted by:

Thomas McBride and Margaret Braccio, 41 Albert Road



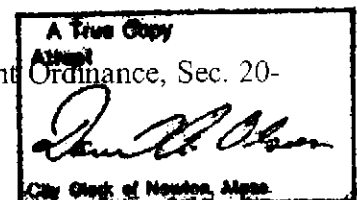
Various City departments also submitted reports:
 Planning and Development Department,
 Fire Department
 Engineering Division of the Department of Public Works.

FINDINGS AND DETERMINATION:

After a discussion of the merits and facts of the petition, the Board of Appeals determined that the proposed development would be consistent with local needs for low- and moderate-income housing as defined by Chapter 774 of the Acts of 1969, and that the applicant had satisfied the jurisdictional requirements for the Zoning Board to approve the Comprehensive Permit as submitted in the document entitled "Parkview Homes, Newton, MA Comprehensive Permit Application" dated October, 2009.

Accordingly, a motion was made by Ms. Lipsitt, and seconded by Mr. McLaughlin, to grant the comprehensive permit subject to the following conditions:

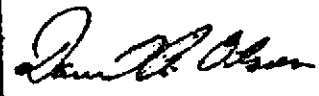
1. The applicant shall comply with the thirteen conditions set forth on page 13 of the Planning Department memorandum, a revised version of which page was printed on blue paper and distributed to the members at the hearing.
2. The height of any perimeter fencing shall be limited to 4.5 feet.
3. The applicant shall satisfy all issues raised by the Associate City Engineer in his memorandum dated November 20, 2009.
4. The applicant shall formally tender an offer to convey to the City the 2,574 sq. ft. triangle of land in the southeastern portion of the site as shown on plan C4 dated October 19, 2009 and revised 11/18/09. If the City accepts such land, then a variance of 2.9 feet from the rear yard setback requirement shall be considered granted without the need for any additional filing before this Board. If the City should refuse to accept such land, Applicant shall take no action to obstruct the pathway for pedestrians or otherwise restrict access to the path during its ownership of such land. In either case, Parkview Homes LLC shall be required to resurface the walkway and to replace the fencing on the north side of the walkway prior to the issuance of the first certificate of occupancy for the project.
5. Any site signage shall be reviewed and approved by the Director of Planning and Development.
6. All waivers requested by the applicant as set forth herein are granted, with the exception of the following:
 - a. The applicant shall provide a bike rack on-site in accordance with Sec. 30-19(k).
 - b. The applicant shall be responsible for all applicable permit fees including but not limited to sewer connection fees and building permit fees.
 - c. The applicant shall comply with the requirements of the Tree Ordinance, Sec. 30-21 et seq.
 - d. The applicant shall comply with the requirements of the Light Ordinance, Sec. 20-



23 et seq.

The vote was called and the motion passed five in favor and none opposed. Therefore, the petition for a Comprehensive Permit is granted, subject to the following conditions (compiled and reproduced below for ease of reference):

1. The marketing and resident selection process is to be consistent with the "Guidelines for Uniform Local Resident Preferences in Affordable Housing" in the *Fair Housing Action Plan*, prepared by the City's Fair Housing Task Force (November 2008). That process is consistent with the provisions of Newton Zoning Section 30-24(f), and is intended as a standard provision for all Newton housing programs.
2. Deed Restrictions shall be placed on all units providing for affordability in perpetuity. Prior to the issuance of any certificates of occupancy, the applicant shall submit the language for the proposed deed restrictions to the Law Department for review, and shall record the approved restrictions with the Middlesex County Registry of Deeds.
3. An emergency ingress/egress leading from and to Albert Road with Knox lock shall be provided and the gate shall be kept free of cars, snow, and debris at all times. Access shall be signed "No parking, emergency vehicles only."
4. The applicant shall provide a bike rack on site.
5. The driveway, parking facilities, and adjacent sidewalks shall be constructed with granite curbing consistent with plans on file with the Clerk of the Zoning Board of Appeals.
6. The applicant shall make every effort to utilize building materials and systems that comply with the NStar "Energy Star" standards, but at a minimum, all new appliances installed shall meet the NStar "Energy Star" standards program.
7. All utilities shall be placed underground from the street.
8. The landscaping shown on the approved plan shall be maintained in good condition. The plantings shall be inspected annually, and any plant material that has become diseased or dies shall be replaced in a timely manner with similar material.
9. No outside light shall spillover onto abutting properties, and all lighting fixtures shall be shielded and Metal Halide, LED lighting, or equivalent shall be used. Some light spillover onto the public pathway shall be allowed for public safety.
10. Prior to the issuance of any building permits, the applicant shall submit to the Fire Department for review and approval final site and building plans, which shall include all required information on proposed sprinkler and alarm systems.
11. Prior to the issuance of any building permits, the applicant shall submit to the City Engineer for review and approval final engineering plans and details, and shall satisfy all issues raised by the Associate City Engineer in his memorandum dated November 20, 2009.
12. Prior to the issuance of building permits, plans for the handicap-accessible shall be submitted for review and approval by the Department of Inspectional Services for compliance


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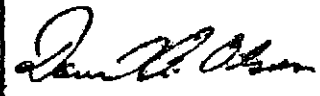
with Architectural Access Board standards, 521 CMR and all other applicable local, state and federal regulations governing accessibility, and the Director of the Planning and Development Department.

13. Prior to the issuance of a building permit the applicant should submit to the Director of Planning and Development for review and approval:

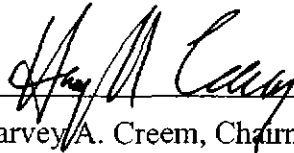
- a. a revised site plan addressing all accessibility concerns;
- b. a photometric plan with specifications of the lighting fixtures and lamps;
- c. a revised landscape plan;
- d. any fencing details, including screening of the dumpster;
- e. all final elevations, proposed façade materials and colors, and proposed roof materials and colors;
- f. all proposed signage;
- g. a memo from the City Engineer approving final engineering plans and details as consistent with all of the conditions outlined in Engineering memorandum dated November 20, 2009;
- h. a construction management plan;
- i. evidence of compliance with all conditions listed in the DHCD letter of Determination of Site Eligibility dated June 23, 2009;
- j. evidence of recordation of a certified copy of this Decision with the Registry of Deeds for the Southern District of Middlesex County.
- k. Evidence of filing of a copy of such recorded Decision with the City Clerk, the Clerk of the Zoning Board of Appeals, and the Department of Planning and Development.

14. That no building or structure, or portion thereof subject to this Comprehensive Permit shall be occupied nor shall any Certificate of Occupancy issue until:

- a. The applicant shall formally tender an offer to convey to the City the 2,574 sq. ft. triangle of land in the southeastern portion of the site as shown on plan C4 dated October 19, 2009 and revised 11/18/09. Applicant shall be required to resurface the walkway and to replace the fencing on the north side of the walkway.
- b. The applicant shall have filed with the Director of Planning and Development evidence of compliance with all conditions listed in the McPhail Associated, Inc. report dated October 8, 2009;
- c. The applicant shall have filed with the City Clerk, the Department of Inspectional Services and the Department of Planning and Development a statement by a registered architect and engineer certifying that the site and buildings have been constructed consistent with plans submitted to the Board and on file with the Clerk of the Zoning Board of Appeals.


City Clerk of Newton, Mass.

- d. There shall have been filed with the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that all engineering details have been constructed to standards of the City of Newton Public Works Department.
- e. There shall have been provided evidence that the approved deed restrictions have been recorded with the Middlesex County Registry of Deeds.
- f. The Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy of all or portions of the buildings prior to installation of final landscaping provided that the Applicant shall first have filed with the Director of Planning and Development a letter of credit or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the remaining landscaping to secure installation of such landscaping.



Harvey A. Creem, Chairman

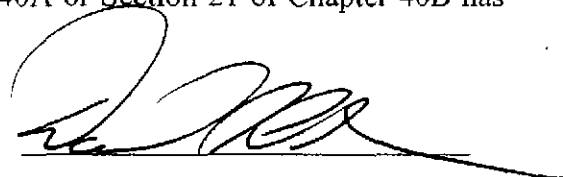
AYES: Harvey A. Creem, Chairman
 Brooke K. Lipsitt
 William M. McLaughlin
 James H. Mitchell
 Thomas J. Phillips

NAYS: None

Copies of this decision and all plans referenced in this decision have been filed with the Planning and Development Board and the City Clerk.

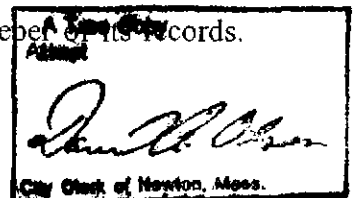
The decision was filed with the City Clerk on *December 29, 2009.*

The City Clerk certified that all statutory requirements for the issuance of a COMPREHENSIVE PERMIT have been complied with and that 20 days have lapsed since the date of filing of this decision and no appeal, pursuant to Section 17, Chapter 40A or Section 21 of Chapter 40B has been filed.



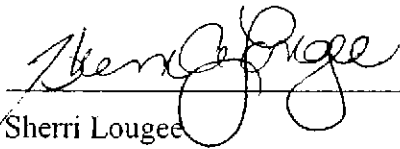
David A. Olson, City Clerk

I, Sherri Lougee, am the Clerk of the Zoning Board of Appeals and the Keeper of its Records.



A rectangular notary seal containing the name Sherri Lougee and the title City Clerk of Newton, Mass. The seal also includes a signature and the word 'Notary'.

This is a true copy of its decision.



Sherri Lougee

