



Ruthanne Fuller
Mayor

CITY OF NEWTON, MASSACHUSETTS

City Hall
1000 Commonwealth Avenue, Newton, MA 02459-1449
Telephone: (617) 796-1065 TDD/TTY: (617) 796-1089 Fax: (617) 796-1086
www.ci.newton.ma.us

ZONING BOARD OF APPEALS

To: Zoning Board of Appeals Members
From: Adrianna Henriquez, Clerk
Date: 1/9/19
Subject: Materials for **January 23, 2019** Public Hearing

Hello,

Please see the following supplemental materials for the upcoming hearing on **January 23, 2019** Public Meeting & Hearing. The following members are scheduled to sit: **Brooke Lipsitt (Chair), Stuart Snyder, Barbara Huggins Carboni, Michael Rossi, Bill McLaughlin and Vincent Farina (Alternate).**

1. Revised Agenda for January 23, 2019
2. Appeal for 138 Berkeley Street (#11-18)
3. Appeal for 555 Commonwealth Ave (#12-18)
4. Revised #12-18 Planning Memorandum – Dated January 2, 2019
5. #12-18 Letter of Support received January 4, 2019

Thank you,

Adrianna Henriquez

ahenriquez@newtonma.gov | (617) 796 1133



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Mayor

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ZONING BOARD OF APPEALS

Adrianna Henriquez, Board Clerk

AGENDA

Revised 1/7/19

A public meeting of the Newton Zoning Board of Appeals will be held on Wednesday, January 23, 2019 at 6:30 p.m. in Room 205, Newton City Hall, 1000 Commonwealth Avenue, Newton Centre, Massachusetts on the following:

Elections; any necessary briefing from the Law Department about items in litigation; and/or to adopt any changes to the City of Newton Rules of the Zoning Board of Appeals, effective January 01, 2019.

A public hearing of the Newton Zoning Board of Appeals will be held on Wednesday, January 23, 2019 at 7:00 p.m. in the City Council Chambers, Room 207, Newton City Hall, 1000 Commonwealth Avenue, Newton Centre, Massachusetts on the following petitions:

#11-18 Lee Breckenridge and Robert A. Margo, 173 Berkeley Street, Newton, Massachusetts, pursuant to M.G.L. c. 40A, § 8, and 15, appealing a memorandum by the Commissioner of Inspectional Services addressing the appellants' request to revise the fence permit issued on September 4, 2018, for 138 Berkeley Street, Newton, Massachusetts. The appellants contend that the fence permit was improperly issued because: (1) the fence located on the subject property borders a public way; (2) the subject property is a corner lot; and (3) the subject property was built on City land outside the lot line. The subject property consists of a 15,704 foot lot in a Single Residence (SR-1) district.

#12-18 555 Commonwealth Avenue Realty Trust, owner of 555 Commonwealth Avenue, Newton, Massachusetts, requesting to amend a prior use variance (#18-92; #26-75; and #44-73) to allow the property to be used for a general real estate office and to amend conditions relative to the operation of the business and use of the site. The subject property consists of a 6,708 square foot lot in a Multi Residence 1 (MR-1) zoning district.

Newton Tab

**January 16th &
January 23rd, 2019**

**Adrianna
Henriquez**

**Board
Clerk**

The location of this meeting is wheelchair accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the city of Newton's ADA/Sec. 504 Coordinator, Jini Fairley, at least two business days in advance of the meeting: jfairley@newtonma.gov or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089.

For the Telecommunications Relay Service (TRS), please dial 711.

CITY OF NEWTON
ZONING BOARD OF APPEALS

**CHECKLIST COVER PAGE
FOR ADMINISTRATIVE APPEAL**

To be completed by Staff:	Project No.:	Petition No.:
PROPERTY LOCATION:	138 Berkeley St., Newton	DATE: 12/26/2018
PETITIONER:	Lee P. Breckenridge and Robert A. Margo	
ADDRESS:	173 Berkeley St., Newton, MA	
PHONE:	617-527-4904	EMAIL: lee.breckenridge@comcast.net
POINT OF CONTACT:	Lee Breckenridge, lee.breckenridge@comcast.net	

PLEASE CONFIRM THAT YOU HAVE INCLUDED THE FOLLOWING WITH YOUR APPEAL APPLICATION. THIS CHECKLIST MUST BE INCLUDED WITH YOUR APPLICATION AS THE FIRST PAGE.

APPLICATIONS WILL NOT BE ACCEPTED FOR PROCESSING & SCHEDULING UNLESS ALL REQUIRED DOCUMENTS ARE PROVIDED

<u>DOCUMENTS</u>	<u>ENCLOSED</u> <i>(checked by Petitioner)</i>	<u>CONFIRMED</u> <i>(checked by Clerk)</i>
Application for Administrative Review Form (15 copies)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Application Fee	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Decision/Order being appealed	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Statement of Reasons	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Reference to Zoning Ordinance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Electronic Copy	<input checked="" type="checkbox"/>	<input type="checkbox"/>

CITY OF NEWTON
ZONING BOARD OF APPEALS

APPLICATION FOR ADMINISTRATIVE APPEAL

IMPORTANT: APPLICANTS MUST COMPLETE ALL ITEMS ON THIS FORM

PETITIONER INFORMATION

NAME: Lee P. Breckenridge and Robert A. Margo
ADDRESS: 173 Berkeley St., Newton, MA 02465
PHONE: 617-527-4904 EMAIL: lee.breckenridge@comcast.net

SUBJECT PROPERTY INFORMATION

LOCATION OF PROPERTY: 138 Berkeley St., Newton
ZONING DISTRICT: SR1 PROPERTY SBL NO.: 32021 0007
OWNER OF RECORD: 138 Berkeley St. LLC, 28 Brooks St., Brighton MA 02135
RELATIONSHIP TO SUBJECT PROPERTY (i.e. owner, abutter, etc.):
neighbor of subject property on Berkeley St.

APPEAL INFORMATION

1. What decision are you appealing - is it an inability to obtain a building permit, the issuance of a building permit, an order or decision of the Commissioner of Inspectional Services or a zoning violation?

Decision of Commissioner of Inspectional Services

Date of decision: November 27, 2018

(A copy of the decision, order, permit or notice being appealed must be included)

2. State the basis or grounds for contesting the decision, providing any information that you feel will aid the Board in its review of your appeal:

[See below]

[continued from page 1]

2. Basis or grounds (cont.):

The Commissioner erroneously rejected the petitioners' request to revise the fence permit and to enforce the terms of the fence ordinance at 138 Berkeley St. The Commissioner erroneously put a halt to an ongoing proceeding with the Urban Design Commission that could have addressed the configuration of the fence. Specifically:

(a) Fence Bordering a Public Way. The Commissioner's decision erroneously concluded that the fence at 138 Berkeley St. is located on a side lot line and does not need to meet "front lot line" requirements in the fence ordinance for fences bordering a public or private way. The fence is a solid six-foot fence that borders the Pierce School roadway. The roadway is a one-way street connecting Berkeley St. and Ruane. It is paved and open to the public; it has posted street signs (e.g., one-way signs, no parking sign); it is used routinely for through traffic; and it is owned and maintained by the City of Newton. It is marked as a one-way road on the Assessors' base road map, <https://newtonma.mapgeo.io/properties/32021%200007>.

The fence should therefore be required to be no more than four feet tall on the lot line, or it should be set back from the lot line and open at the top, unless the owner successfully obtains a hardship exemption from the Urban Design Commission.

(b) Corner Lot. The Commissioner's decision erroneously concluded that the fence is not located on a corner lot and does not need to meet corner lot requirements. Corner lot requirements state that the fence should be no more than four feet tall along the first 25 feet of the lot line. The lot is a corner lot because it is located at the intersection of Berkeley St. and the Pierce School road. It blocks visibility between the two roads. (The Commissioner incorrectly construed the definition of a "corner lot" in section 1.5.2.F. to apply only to small lots. – The definition applies to the relevant *part* of the lot, which in the current situation is only the first 25 feet of the lot line.) In addition, even if the Peirce School road connecting Berkeley St. and Ruane were not deemed to be a public way, the corner lot requirements would apply, because the lot fronts on an open space dedicated to the public use. While the pavement in the roadway itself is not included in calculations of "open space", the vegetated areas on either side of the road, which extends into the Peirce School fields are indeed "open space," and the reasons for preserving visibility into recreational areas and vegetated publicly-owned space are quite apparent in this location.

(c) Built on City Land Outside the Lot Line

The fence was built along the fence line of a low picket fence that previously existed on the site. As shown in the owner's engineering plans for the building permit, the fence therefore encroaches on the adjoining land owned by the City of Newton. The Commissioner so far has failed to address the encroachment and has failed to require removal of the fence to the extent that it encroaches on city land.

3. Identify and describe all supporting documents being submitted with this appeal:

(a) Decision of Commissioner John Lojek dated 11/27/2018, with attachments (pp. 1-6) together with copy of memo (e-mail) transmitting that decision to Lee Breckenridge (p. 7).

(b) Attachment A: Letter from Lee Breckenridge dated Sept. 9, 2018, appealing to Commissioner John Lojek to revise the fence permit issued on Sept. 4, 2018 and to enforce the requirements of the fence ordinance.

(c) Attachment B: Letter from Patrick McKenna, owner at 138 Berkeley St., dated 9/17/2018, conceding that the fence does not comply with the requirements of the fence ordinance and submitting a request for a hardship exception from the Urban Design Commission in light of the noncompliance.

(d) Attachment C: photos of the fence in question, together with a map showing the lot lines at 138 Berkeley St. and the intersection of the adjoining Peirce School road and Berkeley St.

4. State all sections of the Newton Zoning Ordinance implicated in the appeal:

Sec. 5.4.1, Fences, incorporating by reference the Fence Ordinance, Rev. Ord. ch. 5, Art. III, Fences

Sec. 7.7

Sec. 1.5.2.F., corner lots

Sec. 8.3., definitions

Mass. Gen. Laws ch. 40A secs. 1A, 8, 15.

5. Explain why you are aggrieved by the decision being appealed:

The tall fence as built at 138 Berkeley cuts off the view to and from the park and the Berkeley St. sidewalk. It is both a safety hazard and an ugly barrier in the landscape. It impairs our use and enjoyment of our property at 173 Berkeley St. and of the adjoining public spaces along the Berkeley St. road and sidewalk and in the Pierce School fields immediately across from our house. If the proceedings of the Urban Design Commission, which began in October 2018 had been allowed by the Commissioner to continue to completion, a satisfactory outcome might have resulted. Instead, the Commissioner has not only granted approval of the fence as constructed but determined that the owner is "entitled" to construct an 8 foot fence in that location – an outcome that will further adversely affect the interests described above.

6. What outcome do you request if your appeal is granted?

We are asking the Zoning Board of Appeals to overturn the decision of the Commissioner dated 11/27/2018; to find that the lot line where the fence is located borders a public way and therefore must meet "front lot line" requirements; to find that the lot at 138 Berkeley St. is a corner lot and that the fence must meet corner lot requirements; to find that the owner is not entitled to build an 8 foot fence; to require the Commissioner to revise the fence permit accordingly; and to require the fence to be removed and replaced so as not to encroach on City land and to meet the development standards for fences under the zoning ordinance.

PETITIONER CONSENT, CERTIFICATION & SIGNATURE

(Signatures of Petitioner(s) are required)

I (we) consent and certify as follows:

1. I (we) grant permission for officials and employees of the City of Newton to access my property for the purposes of this application;
2. I (we) certify that I (we) have read the Board's Rules and Procedures before submittal to insure the completeness of my (our) application;
3. I (we) certify that all the statements within this application and attachments are true and accurate to the best of my (our) knowledge and belief.

X Lee Breckenridge 12/26/2018
(Petitioner Signature) (Date)

X [Signature] 12/26/2018
(Petitioner Signature) (Date)

If Applicable:

Name of Attorney/Agent for Applicant: LEE P. BRECKENRIDGE

Address of Attorney/Agent: 173 BERKLEY ST, NEWTON MA 02465

Phone Number of Attorney/Agent: 617-527-4904

Email Address of Attorney/Agent: lee.breckenridge@comcast.net

Inspectional Services Department

City of Newton
Massachusetts

Inter-Office Correspondence

TO: Shubee Sikka, Urban Design Planner and UDC staff
FROM: John D. Lojek, Commissioner of Inspectional Services
DATE: November 27, 2018
RE: 138 Berkeley St. Fence

Summary and conclusion of fence appeal:

- 1) The fence built at 138 Berkeley St. was constructed without the benefit of a permit by evidence of the complaint received on 8/21/18 and the response from Enforcement agent on 8/30/18. The actual fence permit was not issued until 9/4/18. The value of the permit was written as \$5,000 and the permit fee was \$100. The inspector of the district has discretion as to the fine, if any, and he decided at the time not to invoke a fine.
- 2) The lots in question, 138 Berkeley St. (SR1) ("the Property") and the city-owned parcel(s) at 170 Temple St. / 0 Berkeley St. (Public Use) are adjacent lots which abut each other at side lot lines. The argument that has been made is that "the Property" is a corner lot in the definition under 1.5.2.F. Lot corner. (see attached #1) This definition does not hold up under several areas of the Ordinance. This very same section disqualifies "the Property" as a corner lot as this property has an area in excess of 10,000 square feet and the length of the side adjacent to the Public Use property is greater than 150 feet. (see attached #1) Additionally, the School property (Public Use land) is not "open space" as defined by the ordinance (see attached #2) Article 8. Definitions/ Sec. 8.3 Defined terms. More specifically, under **Open Space, Beneficial: ...open space...shall not include:... (ii)surface parking facilities or associated pedestrian circulation,..."** and under **Open Space, Usable:" All the lot area not covered by building and structures, roadways, drives, surface parking area or paved surfaces other than walks."**

The conclusion that must be drawn is that this property is not a corner lot under the definition.

The property owner has the right to construct a fence, per the zoning ordinance, as a side lot line fence which can be up to 6' in height and may exercise his/her rights under **Article III. Fences Sec. 5-30. Regulation of Perimeter Fences. (d) (6) "Fences bordering side or rear lot lines where the entire length of said side or rear lot lines immediately abut nonresidential or public use districts may be increased to a maximum of eight (8) feet in height."**

Building Permit Information

SBL: 32021 0007

Address: 138 BERKELEY ST

Zoning (Preliminary): Single Residence 1

Year Built 2017

Area (Assessed): 15704 Square Feet

Frontage (Assessor): 100 Feet

Historic Status: None

Historic Significance: None

Building Inspector: Buddy Lamplough

Plumbing/Gas Inspector: James Lally

Electrical Inspector: Dave Cerone

Construction Inspector:

Map Sheet: 54 SW

NEWTON GIS DATA



The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user is responsible for determining the data's suitability for its intended purpose.

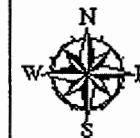
- Legend**
- + Sewer Septic System Location
 - Curbed Vandal Pools
 - Severe Roads
 - ▭ Flood Plains
 - ▨ Wetlands with 100 foot Buffer Zone
 - ▧ Wetland Buffers

Property Location:

138 BERKELEY ST

Property ID:

32021 0007



33
FORMATION SHOWN ON THIS PLAN IS THE RESULT OF A SURVEY PERFORMED BY PETER NOLAN & ASSOCIATES LLC ON 09-18-17.
SEE REFERENCE BOOK 67718 PAGE 209.
LESLIE SOUTH DISTRICT RECORDS OF DEEDS.
THIS PLAN IS NOT INTENDED TO BE RECORDED.

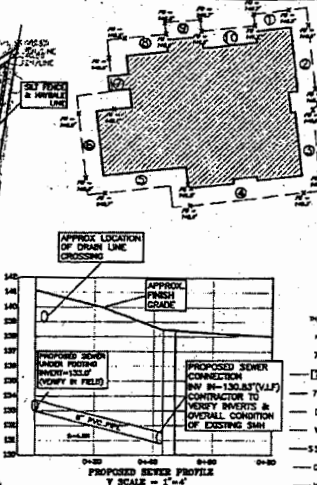
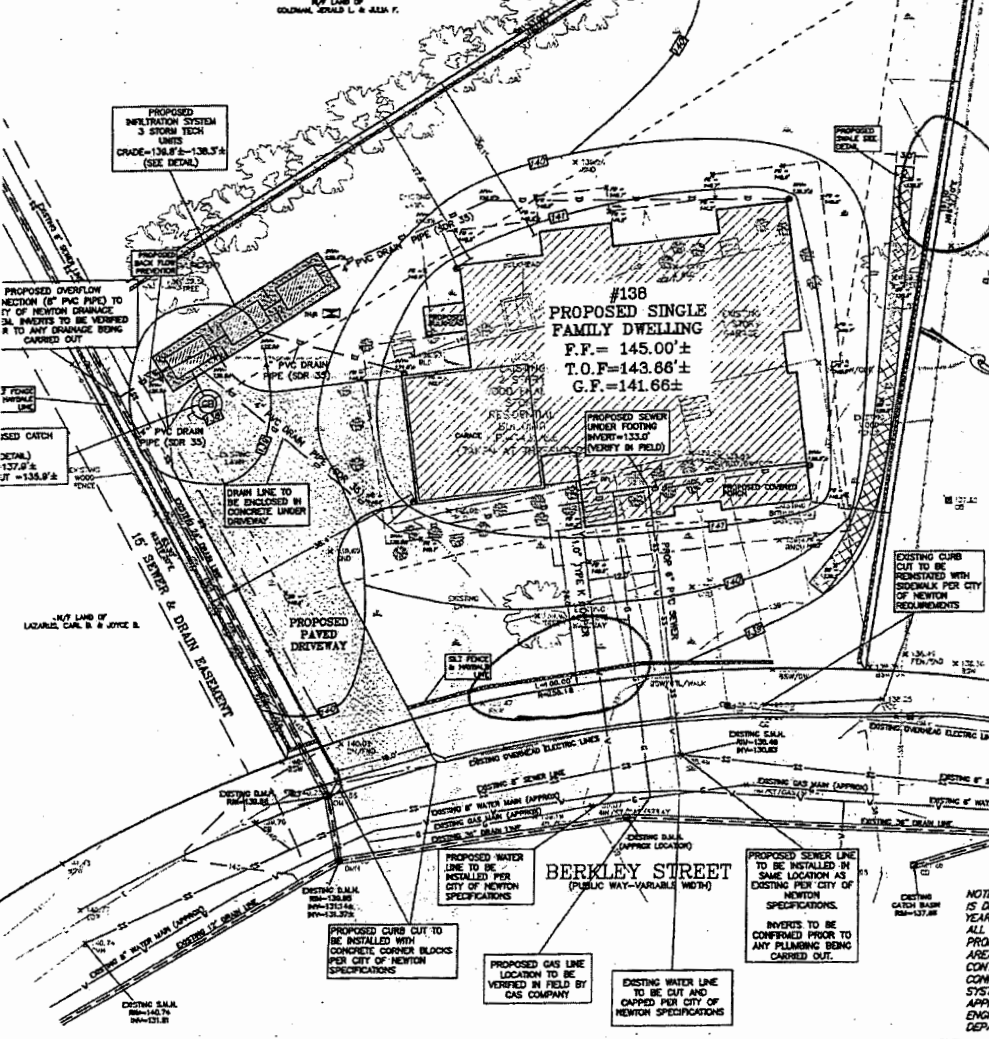
ZONING LEGEND

ZONING DISTRICT: SINGLE RESIDENCE 1 (LOT CREATED BEFORE 12/07/1953)

	REQUIRED	PROPOSED
MIN. AREA	15,000 S.F.	15,223± S.F.
MIN. YARD FRONT	25'	26.0'
SIDE	12.5'	13.5'
REAR	25'	27.8'
MAX. LOT COVERAGE	20%	18.4%
MIN. OPEN SPACE	55%	70.0%
MIN. FRONTAGE	100'	100.0'
MAX. BLDG. HEIGHT	36'	31.87±

CERTIFY THAT THE DWELLING SHOWN IS NOT LOCATED IN A SPECIAL FLOOD HAZARD ZONE. IT IS LOCATED IN ZONE IN FLOOD HAZARD BOUNDARY MAP NUMBER 2501702052R. ZONE NUMBER 02036, COMMUNITY NUMBER 202056, DATED 2.4.2010.
THIS PLAN DOES NOT SHOW ANY UNRECORDED OR UNWRITTEN DEEDS WHICH MAY EXIST. A REASONABLE AND DILIGENT SEARCH HAS BEEN MADE TO OBSERVE ANY APPARENT LIENS OF LAND. HOWEVER THIS DOES NOT CONSTITUTE A GUARANTEE THAT SUCH EASEMENTS EXIST.
FIRST FLOOR ELEVATIONS ARE TAKEN AT THRESHOLD.
RESPONSIBILITY IS TAKEN FOR ZONING TABLE AS PETER NOLAN & ASSOCIATES LLC ARE NOT ZONING EXPERTS. TABLE IS TAKEN FROM TABLE PROVIDED BY LOCAL ZONING ORDINANCE. LISTED ARCHITECT TO VERIFY THE ACCURACY OF ZONING LEGEND.

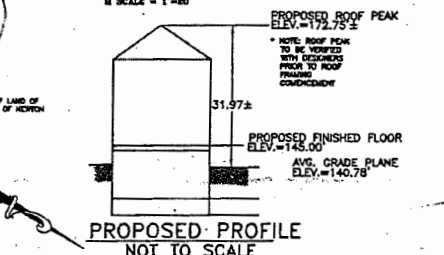
N/W CORNER OF COLMAN, JEROME L. & JULIA F.



LEGEND

- UTILITY POLE
- WATER GATE
- HYDRANT
- GAS CAISE
- SEWER MANHOLE
- DRAIN MANHOLE
- CATCH BASIN
- TREE
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- SPOT ELEVATION
- PROPOSED CONTOUR
- EXISTING CONTOUR
- DRAIN LINE
- WATER LINE
- SEWER LINE
- GAS LINE
- FENCE

- ### NOTES
- ELEVATIONS REFER TO CITY OF NEWTON BENCH.
 - THE LOCATION AND ELEVATIONS OF ALL CONDUITS SHALL BE DETERMINED AND MAINTAINED BY THE CONTRACTOR PRIOR TO ANY CONSTRUCTION. THE CONTRACTOR SHALL NOTIFY THE LOCATION OF ANY CONDUITS TO BE MAINTAINED, AND OBTAIN WRITTEN APPROVAL FROM THE CITY ENGINEER'S OFFICE.
 - ALL UTILITIES SHALL BE MAINTAINED AND PROTECTED AT ALL TIMES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING THE CITY ENGINEER'S OFFICE APPROVAL FOR ANY UTILITIES TO BE MAINTAINED. A WRITTEN PERMIT MUST BE OBTAINED FROM THE CITY ENGINEER'S OFFICE PRIOR TO ANY UTILITIES MAINTENANCE.
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AVERAGE GRADE PLANE (ALL UNITS IN FEET)

SEGMENT	LENGTH	POINT 1	POINT 2	MEAN 1 & 2	MEAN ± LENGTH
1	12.00	143.70	140.50	142.10	1,687.20
2	22.00	143.60	140.70	142.15	3,094.30
3	21.80	143.90	142.30	143.10	3,025.08
4	28.50	143.30	140.60	141.95	4,027.35
5	28.00	143.30	140.70	142.00	3,948.00
6	22.00	140.60	140.80	140.70	3,095.40
7	17.40	142.30	140.90	141.50	2,452.10
8	14.00	140.50	140.90	140.70	1,969.80
9	12.00	140.50	140.70	140.60	1,687.20
10	18.00	141.20	141.20	141.20	2,541.60
SUM	205.70				28,958.01
SUM OF MEAN x LENGTH / SUM OF LENGTHS = AVERAGE GRADE PLANE =					140.78

APPROVED
City of Newton
Engineering Div.
M. Blawie
Date: Aug 9, 2017
Please see approval from
for conditions.

NOTE: SURFACE WATER TO BE DIVERTED FROM ALL SIDES OF FOUNDATION WALL.
NOTE: ANY TREE BEING REMOVED SHALL COMPLY WITH CITY OF NEWTON TREE ORDINANCE.
NOTE: CONTRACTOR TO ENSURE SEWER LINE IS RITCHED AT AN EQUAL SLOPE OF BETWEEN 2% AND 1% FROM HOUSE TO MAIN CONNECTION.
NOTE: PETER NOLAN & ASSOCIATES LLC ACCEPT NO LIABILITY FOR GROUND WATER OR OTHER SURFACE WATER IN BASEMENT.
NOTE: CONTRACTOR TO ENSURE ALL RAIN WATER FROM SPLASH BOWLS (IF ANY) IS DIVERTED AWAY FROM BUILDING FOUNDATION AND DIVERTED AWAY FROM NEIGHBORING PROPERTIES.
NOTE: DRAINAGE SYSTEM IS DESIGNED FOR 100 YEAR STORM EVENT FOR ALL RAINFALL FROM PROPOSED IMPERVIOUS AREAS SHOWN. CONTRACTOR SHALL NOT CONNECT SUMP PUMP TO SYSTEM WITHOUT APPROVAL FROM ENGINEERING DEPARTMENT.
NOTE: SEWER AND RAIN MAIN LINE LOCATION TO BE CONFIRMED BY CONTRACTOR.
NOTE: CONTRACTOR TO ENSURE THAT THE EXISTING FOUNDATION IS REPRESENTED ON THIS PLAN AS THE SAME AS THE ORIGINAL ARCHITECTURAL / STRUCTURAL PLANS AND INCORPORATED ALL REVISIONS FROM PERMITS AND ANY COMPONENT THAT IS SUBJECT TO ZONING RESTRICTIONS. IF THIS IS FOUND NOT TO BE THE CASE THE CONTRACTOR MUST CONTACT THE ENGINEER IMMEDIATELY AND REQUEST A REVISED PLAN WHICH MUST BE SUBMITTED TO L.S.D. CITY OF NEWTON.

GRAPHIC SCALE
1" = 20'

138 BERKELEY STREET
NEWTON
MASSACHUSETTS

CIVIL PLAN

SCALE	1"=20'
DATE	8/9/17
REV	1
BY	AC/AG
DATE	8/9/17
REV	1
BY	AC/AG

CITY OF NEWTON

PETER NOLAN & ASSOCIATES LLC
LAND SURVEYORS/CIVIL ENGINEERING CONSULTANTS
617 CONCORD STREET, SUITE 108 NEWTON MA 02459
PHONE: 857 851 7478 / 617 792 1533 FAX: 617 202 5891
EMAIL: pnolan@pnasurveyors.com

NOTES:

1. INFORMATION SHOWN ON THIS PLAN IS THE RESULT OF A FIELD SURVEY PERFORMED BY PETER NOLAN & ASSOCIATES LLC AS OF 08-19-17.
2. DEED REFERENCE BOOK 87718 PAGE 204, MIDDLESEX SOUTH DISTRICT RECORDS OF DEEDS.
3. THIS PLAN IS NOT INTENDED TO BE RECORDED.
4. I CERTIFY THAT THE DWELLING SHOWN IS NOT LOCATED WITHIN A SPECIAL FLOOD HAZARD ZONE. IT IS LOCATED IN ZONE X. ON FLOOD HAZARD BOUNDARY MAP NUMBER 220170353E, PANEL NUMBER 0533E, COMMUNITY NUMBER: 22020K, DATED: JUNE 4, 2010.
5. THIS PLAN DOES NOT SHOW ANY UNRECORDED OR UNWRITTEN EASEMENTS WHICH MAY EXIST. A REASONABLE AND DILIGENT ATTEMPT HAS BEEN MADE TO OBSERVE ANY APPLICABLE USES OF THE LAND, HOWEVER THIS NOT CONSTITUTE A GUARANTEE THAT NO SUCH EASEMENTS EXIST.
6. FIRST FLOOR ELEVATIONS ARE TAKEN AT THRESHOLD.
7. AND RESPONSIBILITY IS TAKEN FOR ZONING TABLE AS PETER NOLAN & ASSOCIATES LLC ARE NOT ZONING EXPERTS. TABLE IS TAKEN FROM TABLE PROVIDED BY LOCAL ZONING ORDINANCE. CLIENT AND/OR ARCHITECT TO VERIFY THE ACCURACY OF ZONING ANALYSIS.

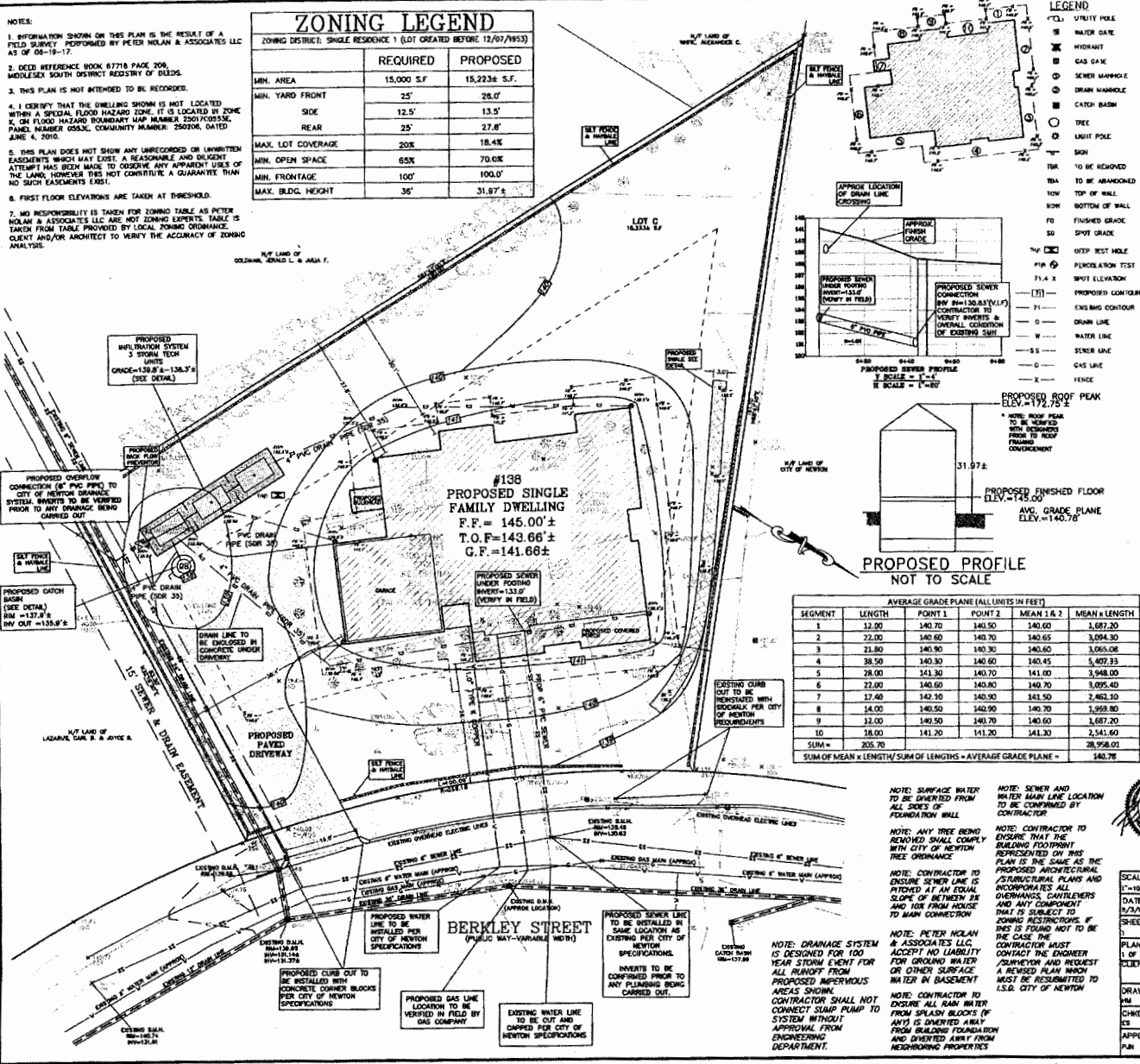
ZONING LEGEND		
ZONING DISTRICT: SINGLE RESIDENCE 1 (LOT CREATED BEFORE 12/07/1953)	REQUIRED	PROPOSED
MIN. AREA	15,000 S.F.	15,223± S.F.
MIN. YARD FRONT	25'	28.0'
MIN. YARD SIDE	15.5'	13.5'
MIN. YARD REAR	25'	27.8'
MAX. LOT COVERAGE	20%	18.4%
MIN. OPEN SPACE	85%	70.0%
MIN. FRONTAGE	100'	100.0'
MAX. BLDG. HEIGHT	35'	31.97±

LEGEND

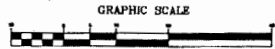
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- TO BE REMOVED
- TO BE ABANDONED
- TOP OF WALL
- BOTTOM OF WALL
- FINISHED GRADE
- SPOT GRADE
- UTILITY TEST HOLE
- PERCOLATION TEST
- 71A X
- 71B X
- PROPOSED CONTOUR
- EXISTING CONTOUR
- DRAIN LINE
- WATER LINE
- SEWER LINE
- GAS LINE
- FENCE LINE

NOTES

1. ELEVATIONS REFER TO CITY OF NEWTON GRADE.
2. THE LOCATION AND DEPTH OF ALL UTILITY LINES SHALL BE CONFIRMED APPROXIMATE AND MUST BE VERIFIED BY THE CONTRACTOR PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL VERIFY THE LOCATION OF ANY EXISTING UTILITIES AND CONSTRUCTION REQUIREMENTS SHALL BE OBTAINED FROM THE CITY OF NEWTON DEPARTMENT OF PUBLIC WORKS. THE CONTRACTOR SHALL VERIFY THE LOCATION OF ANY EXISTING UTILITIES AND CONSTRUCTION REQUIREMENTS SHALL BE OBTAINED FROM THE CITY OF NEWTON DEPARTMENT OF PUBLIC WORKS.
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AVERAGE GRADE PLANE (ALL UNITS IN FEET)						
SEGMENT	LENGTH	POINT 1	POINT 2	MEAN H.G.	MEAN L.G.	MEAN X LENGTH
1	12.00	140.20	140.50	140.35	140.60	1,682.20
2	22.00	140.60	140.70	140.65	140.65	3,094.30
3	21.80	140.90	140.30	140.60	140.60	3,065.08
4	38.50	140.30	140.60	140.45	140.45	5,407.33
5	28.00	141.30	140.70	141.00	141.00	3,948.00
6	22.00	140.60	140.80	140.70	140.70	3,095.40
7	12.40	142.30	140.50	141.50	141.50	2,462.20
8	14.00	140.50	142.90	141.70	141.70	1,983.80
9	12.00	140.50	140.70	140.60	140.60	1,682.20
10	18.00	141.20	141.20	141.20	141.20	2,541.60
SUM	205.70					28,958.01
SUM OF MEAN X LENGTH / SUM OF LENGTHS = AVERAGE GRADE PLANE =				140.78		



NOTE: SURFACE WATER TO BE DIVERSED FROM ALL SIDES OF FOUNDATION WALL.

NOTE: SEWER AND WATER MAIN LINE LOCATION TO BE CONFIRMED BY CONTRACTOR.

NOTE: ANY TREE BEING REMOVED SHALL COMPLY WITH CITY OF NEWTON TREE ORDINANCE.

NOTE: CONTRACTOR TO ENSURE THAT THE BUILDING FOOTPRINT REPRESENTED ON THIS PLAN IS THE SAME AS THE PROPOSED ARCHITECTURAL/STRUCTURAL PLANS AND INCORPORATES ALL OVERHANGS, CANTILEVERS AND ANY COMPONENT THAT IS SUBJECT TO ZONING RESTRICTIONS. IF THIS IS FOUND NOT TO BE THE CASE THE CONTRACTOR MUST CONTACT THE ENGINEER/ARCHITECT AND REQUEST A REVISION PLAN WHICH MUST BE SUBMITTED TO I.S.D. CITY OF NEWTON.

NOTE: CONTRACTOR TO ENSURE SEWER LINE IS INSTALLED AT AN EQUAL SLOPE OF BETWEEN 2% AND 10% FROM HOUSE TO MAIN CONNECTION.

NOTE: PETER NOLAN & ASSOCIATES LLC ACCEPT NO LIABILITY FOR GROUND WATER OR OTHER SURFACE WATER IN BASEMENT AREAS SHOWN.

NOTE: DRAINAGE SYSTEM IS DESIGNED FOR 100 YEAR STORM EVENT FOR ALL RAINFALL FROM PROPOSED IMPERVIOUS AREAS SHOWN.

NOTE: CONTRACTOR TO ENSURE ALL RAIN WATER FROM SPILLAGE BUCKETS (IF ANY) IS DIVERSED AWAY FROM BUILDING FOUNDATION AND DIVERSED AWAY FROM NEIGHBORING PROPERTIES.

NOTE: CONTRACTOR TO ENSURE SEWER LINE TO BE INSTALLED IN SAME LOCATION AS EXISTING PER CITY OF NEWTON SPECIFICATIONS.

NOTE: CONTRACTOR TO ENSURE GAS LINE LOCATION TO BE VERIFIED IN FIELD BY GAS COMPANY.

NOTE: PROPOSED CURB OUT TO BE INSTALLED WITH CONCRETE CORNER BLOCKS PER CITY OF NEWTON SPECIFICATIONS.

NOTE: EXISTING WATER LINE TO BE VERIFIED IN FIELD BY CITY OF NEWTON SPECIFICATIONS.

NOTE: EXISTING OVERHEAD ELECTRIC LINES.

NOTE: EXISTING UNDERGROUND ELECTRIC LINES.

NOTE: EXISTING WATER MAIN (APPROX).

NOTE: EXISTING SEWER MAIN (APPROX).

NOTE: EXISTING GAS MAIN (APPROX).

NOTE: EXISTING WATER MAIN (APPROX).

NOTE: EXISTING SEWER MAIN (APPROX).

NOTE: EXISTING GAS MAIN (APPROX).



ISD - ENGINEERING PLAN REVIEW
APPROVED: 8/2/17
DATE: 8/2/17

SCALE: 1" = 10'

DATE: 8/3/17	REVISED BY CITY OF NEWTON COMMENTS:	HM
DATE: 8/3/17	REVISION:	BY:

SHEET NO. 1

138 BERKELEY STREET
NEWTON
MASSACHUSETTS

CIVIL PLAN

PETER NOLAN & ASSOCIATES LLC
LAND SURVEYORS/CIVIL ENGINEERING CONSULTANTS
80 CANTON STREET, SUITE 105 NEWTON MA 02459
PHONE: 617 747/817 32 1533 FAX: 617 302 5881
EMAIL: pnolan@pnasurveyors.com

APPROVED
City of Newton
Engineering Director
Noted: 8/2/17
Please see approval memo
for conditions.

Shubee Sikka <ssikka@newtonma.gov>

11/27/2018 12:33 PM

138 Berkeley Street Fence Appeal

To lee.breckenridge@comcast.net <lee.breckenridge@comcast.net> Copy
Heather Zaring <hzaring@newtonma.gov>

Good afternoon Lee,

Attached please find a determination letter from Commissioner of Inspectional Services, John D. Lojek regarding the fence appeal at 138 Berkeley Street with the conclusion that the property owner has the right to construct a fence, as per the Zoning Ordinance, as a side lot line fence which can be up to 6' in height.

Regarding the fence being on city land, Inspectional Services Department will make a determination after receiving the as-built plans from the home owner.

Please note that this matter will not be returning to Urban Design Commission.

Regards,
Shubee

Shubee Sikka
Urban Designer
Planning and Development Department
City of Newton, Massachusetts
ssikka@newtonma.gov | 617.796.1139

When responding, please be aware that the Massachusetts Secretary of State has determined that most email is public record and therefore cannot be kept confidential.

- 138 Berkeley Street - Determination Letter from ISD.pdf (7 MB)

Sept. 9, 2018

Commissioner John Lojek
Newton City Hall, Room 202
1000 Commonwealth Ave.
Newton, MA 02459

Re: Fence at 138 Berkeley St.

Dear Commissioner Lojek,

I am writing to ask you to revise the fence permit for the new perimeter fence at 138 Berkeley Street and to enforce the requirements of the fence ordinance. The fence was built without a fence permit, but a permit was issued on Sept. 4.

I have discussed this fence with the district inspector Buddy Lamplough. Here are the issues:

(1) Fence Bordering a Public Way. The fence as built is a solid six-foot fence that borders the Pierce School roadway. The roadway is a one-way street connecting Berkeley St. and Ruane. It is paved and open to the public; it has posted street signs (one-way signs, stop sign, no parking sign); it is used routinely for through traffic; and it is owned and maintained by the City of Newton. It is marked as a one-way road on the Assessors' base road map, <https://newtonma.mapgeo.io/properties/32021%200007>.

The fence should meet front lot line requirements because it borders a "public or private way" within the meaning of the fence ordinance. The fence should be no more than four feet tall on the lot line, or it should be set back from the lot line and open at the top.

(2) Corner Lot. The fence is on a corner lot. It should be no more than four feet tall along the first 25 feet of the lot line. This requirement applies without regard to whether the roadway connecting Berkeley and Ruane is a public way – See section 1.5.2.F. of the zoning ordinance defining a corner lot: "...The provisions of this paragraph shall apply to a lot fronting on an open space dedicated to the public use in the same manner as to a lot fronting on a street."

From my standpoint as a neighbor, the corner lot requirements are especially important. The tall fence as built in the front yard of the house at 138 Berkeley cuts off the view to and from the park and the Berkeley St. sidewalk. It is both a safety hazard and an ugly barrier in the landscape.

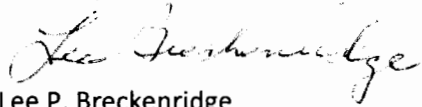
You should also consider what sort of precedent is being set for fences in similar corner lot locations – such as the other end of the Pierce School roadway at the intersection with Ruane.

(3) Built on City Land Outside the Lot Line. The fence has been constructed outside the lot line for 138 Berkeley, encroaching on the land owned by the City of Newton. You can see the extent of the encroachment by comparing the lot lines on the approved engineering plan to the location of the actual

fence, for example, by considering the fence position relative to the catch basins in the Pierce School roadway and Berkeley St.

I hope that you and the builder can arrive at a satisfactory resolution of these issues.

Sincerely,

A handwritten signature in cursive script that reads "Lee P. Breckenridge".

Lee P. Breckenridge
173 Berkeley St., Newton, MA 02465
617-527-4904

Copies sent by e-mail:

jlojek@newtonma.gov

clamplough@newtonma.gov

Attention: City of Newton Urban Design Commission

Date: 9/17/18

Reference: 138 Berkeley Street Newton Fence

The property at 138 Berkeley street is within a single residence district. I received an approved fence permit to replace an existing fence which has been completed along the side lot line with property SBL 32021 00006 and at the rear property line abutting 61 and 69 Ruane Road which are 6 feet in height.

The fence along the property lines are not consistent with the fence criteria outline in section 5-30 (d) (1), "Fences bordering a front lot line: No fence or portion of a fence bordering or parallel to a front lot line shall exceed four (4) feet in height unless such fence is setback from the front lot line one (1) foot for each foot or part thereof such fence exceeds four (4) feet in height, up to a maximum of six (6) feet in height, and further, that any section of a perimeter fences greater than four (4) ft in height must be open if it is parallel to a front lot line."

As specified under section 5-30 (c) and (h), the UDC may grant an exception to the provisions of the City's fence ordinance. The proposed fence, however must be found to comply with the "requirements of this ordinance, or if owing to conditions especially affecting a particular lot, but not affecting the area generally, compliance with the provisions of this ordinance would involve substantial hardship, financial or otherwise." The UDC must also determine whether the "desired relief may be granted without substantially nullifying or substantially derogating from the intent and purposes of this ordinance or the public good."

As proposed, I am seeking an exception to allow 6 feet tall fence at the side property line along the school one-way street, where the ordinance would permit such a fence to be 4 feet tall along this property line. Contractors have already installed a 6 feet fence under approved fence permit 18090025 and it would be a financial hardship to take down portions of the fence to accommodate fence ordinance 30-1. In addition, having a fence provide security that future families kids can freely play in their yard and like wise school kids on the other side.

In winter months, when kids will be dropped off both in the morning and evening, vehicles headlamps will be shining into my property with a 4-foot fence. The current fence would prevent this onto the property. The fence would both protect and keep private the property from people using the lot as there will be numerous people using it daily when school is in session. The fence would have the same symmetry as my neighbor at 69 Ruane Road.

As the municipal lot next door is a one-way street coming in from Berkeley. With this, a driver's vision will not be impaired with the fence the way it is.

Patrick Mc Kenna

Owner

138 Berkeley Street

Newton MA 02465



Photo 1: Looking northwest on Berkeley St., Oct. 3, 2018



Photo 2: Looking southeast on Berkeley St., Oct. 3, 2018

Map navigation controls including zoom in (+), zoom out (-), full screen, and other utility icons.

Map interaction toolbar with buttons for Search, Selection, Themes, Markup, and Abutters.



G. MICHAEL PEIRCE, ESQ.

ATTORNEY AT LAW

December 27, 2018

IN HAND DELIVERY

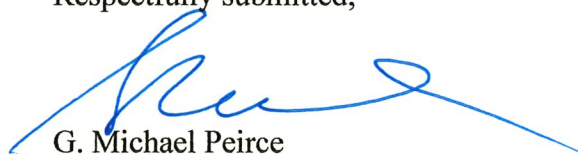
Brooke Lipsett, Chair
Newton Zoning Board of Appeals
Newton City Hall
1000 Commonwealth Avenue
Newton Centre, MA 02459

Re: Application for variance at 555 Commonwealth Avenue, Newton, MA

Dear Ms. Lipsett and Members of the Zoning Board of Appeals:

On behalf of 555 Commonwealth Avenue Realty Trust, the owner of the property at 555 Commonwealth Avenue, Newton, MA (the "Property"), I hereby file an Application for Variance with supporting materials. As detailed in the filing, we are simply requesting that certain conditions of the 1992 amendment to the 1075 amendment to the original m1973 use variance for this property to allow it now to be used for a general real estate office. The filing includes. Inter alia, an existing conditions site plan (as NO CHANGES to the existing site are proposed), the General Permit Application, signed by the owner, the three (3) prior variances and written support from the immediate abutters.

Respectfully submitted,



G. Michael Peirce

cc: Clerk, Zoning Board of Appeals
David Olson, City Clerk

Newton Wellesley Executive Office Park
60 Walnut Street, 4th Floor ▪ Wellesley, Massachusetts 02481
Tel: 781-239-0400 Fax: 877-243-0405
mpeirce@gmpeircelaw.com



City of Newton, Massachusetts
 Department of Planning and Development
 1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone
 (617) 796-1120
 Telefax
 (617) 796-1086
 www.newtonma.gov

Ruthanne Fuller
 Mayor

Adrianna Henriquez
 Board Clerk

ZONING BOARD OF APPEALS APPLICATION FOR VARIANCE

TO BE COMPLETED BY STAFF:

PROJECT #: _____ ZONING DISTRICT: _____ DATE RECEIVED: _____

TO BE COMPLETED BY APPLICANT:

PROJECT ADDRESS: 555 COMMONWEALTH AVENUE

PROJECT INFORMATION

APPLICABLE ORDINANCE PROVISIONS:

CURRENT Use(s): medical offices

PROPOSED Use(s): real estate office

PROJECT DESCRIPTION (BRIEFLY DESCRIBE THE REQUESTED RELIEF BELOW OR ATTACH A SEPARATE NARRATIVE):

See attached supplement

#44-73 3-15-74
 #26-75 10-17-75
 # 18-92 10-28-92

PREVIOUS VARIANCE APPLICATIONS? (CIRCLE ONE) YES NO IF YES, DECISION NUMBER & DATE: _____

REVIEWS BY OTHER REGULATORY AUTHORITIES? (CIRCLE ONE) YES NO IF YES, DESCRIBE STATUS BELOW:

SITE INFORMATION

FACTS AND CIRCUMSTANCES DESCRIBING THE SUBSTANTIAL HARDSHIP (RELATING TO SOIL CONDITIONS, SHAPE OR TOPOGRAPHY OF LAND OR STRUCTURES, ESPECIALLY AFFECTING THE SUBJECT PROPERTY):

See attached supplement

PLEASE DESCRIBE HOW THE RELIEF WILL NOT CREATE SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD?

See attached supplement

PLEASE DESCRIBE HOW THE RELIEF WILL NOT NULLIFY OR DEROGATE FROM THE INTENT OR PURPOSE OF THE ZONING ORDINANCE?

See attached supplement

TO THE EXTENT THE FOLLOWING ITEMS MATERIALLY AFFECT THE RELIEF BEING REQUESTED, PLEASE DESCRIBE AND ATTACH:

- IS THE REQUEST RELATED TO EXISTING VIOLATION(S)? IF YES, PROVIDE FACTS AND CIRCUMSTANCES.
- HAVE ACQUISITION DISCUSSIONS BEEN HAD WITH ABUTTING PROPERTIES?
- WHAT IS THE CHARACTER OF THE SURROUNDING NEIGHBORHOOD?
- HISTORIC DOCUMENTATION PURPORTING THAT THE PROPERTY IS AN "OLD" PRE-1953 LOT.

NOTICE: This application MUST be accompanied by a General Permit Application Form. This form is available online.

CITY OF NEWTON

ZONING BOARD OF APPEALS

SUPPLEMENT TO APPLICATION of 555 COMMONWEALTH AVENUE REALTY
TRUST

PROJECT DESCRIPTION

The petitioner is seeking certain amendments to ZBA Decision #18-92, filed October 28, 1992. That decision was itself an amendment of Decision #26-75, which in turn was an amendment of the original use variance, Decision #44-73. All decisions attached to the Application. As indicated in the supporting materials, and as referenced in the prior ZBA decisions, the property, located in an MR-1 zoning district, has been a commercial use since the building was originally constructed in the early 1920's; it was not constructed as, nor has ever been used as a residential structure. After decades of use as a real estate and insurance office the 1973 variance was granted to formalize and legalize that use. The 1992 variance allowed for use of the property for the offices of a chiropractor and acupuncture. The present application seeks to amend that 1992 decision as indicated hereinafter: Condition 1-to allow for the use of the site property as a general real estate office, with no proposed limit of specific number of persons and staff; Condition 3, to reflect that the parking facility would accessory to a general real estate office and Condition 4, to allow for the building to be open for public business 7 days per week, for regular business hours associated with a general real estate business, which may include evening hours. Jack Foster, who operates Centre Realty Group in Newton Center, would purchase the property and relocate that branch of his real estate company

to this location. Minor additional amendments to certain conditions in the 1992 variance would allow the on-site parking lot to be used for the real estate business, not the chiropractic/acupuncture business, and we would be seeking to have the building open to the public 7 days per week, at hours in keeping with a general real estate business.

FACT AND CIRCUMSTANCES DESCRIBING THE SUBSTANTIAL HARDSHIP

As laid out in detail in the supporting materials, especially the chronology prepared by then aldermen Bullwinkle for then Building Commissioner Taglienti (memo dated 1-1-73), and as repeatedly found by prior Zoning Boards, including the 1992 Board, “[t]he site is unique due to its small size and existing structure. It was built as a commercial building. A hardship exists in that the lot is too small for the residential district and the structure was built as a commercial building and does not lend itself to residential conversion.” These elements are described in detail in the prior decisions and will be summarized for the Board at the public hearing.

THE REQUESTED RELIEF WILL NOT CREATE A SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD

There will be no detriment to the public good, let alone any substantial detriment, in that the requested relief proposes the substitution of one use, general real estate office (a use, as noted above, to which the property was put, in whole or in part, from the early 1930’s until the grant of the 1975 variance amendment) for the chiropractic and acupuncture uses. The site will continue to function in a manner essentially identical to the present use-no changes to the site are proposed. The existing conditions site plan filed with the application would become the control plan. While we would anticipate that

there will be times when there will be more than four (4) real estate brokers/agents and staff using the site, the property and on-site parking facility and Commonwealth Avenue and the carriage road can accommodate the parking that would be associated with a real estate office. The owner has discussed this proposal with a number of owners of properties in the area and has receive no negative responses. The owners of the two (2) condominiums immediately abutting on Irving Street and the owners of the immediately abutting properties to the west on Commonwealth Avenue are on record as being in support of the proposal to amend the present variance (attached).

REQUESTED RELIEF WILL **NOT** NULLIFY OR DEROGATE FROM THE INTENT OR PURPOSE OF THE ZONING ORDINANCE.

As has repeatedly been found by the Board, the continued use of a building and site that has been designed and used for commercial uses for approaching 100 years, and where the building and site will remain unchanged, establishes that the requested amendments will not alter or derogate from the intent or purpose of the current Zoning Ordinance. Not only has the site been used commercially for decades, but it is located in a small but well established neighborhood of legal nonconforming commercial uses. On the odd side of Commonwealth Avenue to the east there is a Mediterranean restaurant, a bakery and an office for bookkeeping. There multiple commercial uses across the street, as well as the long-established Newton Squash and Tennis Club.

RIGHT TO TAKE VIEW:

The Board is has been granted the right by the owner, to enter upon the property for the purpose of viewing its present layout, topography and condition-see General Permit Application attached, signed by owner.



Property Information

Property ID 73048 0010
 Location 555 COMMONWEALTH AVE
 Owner DOYLE JAMES P TR

 SR-2

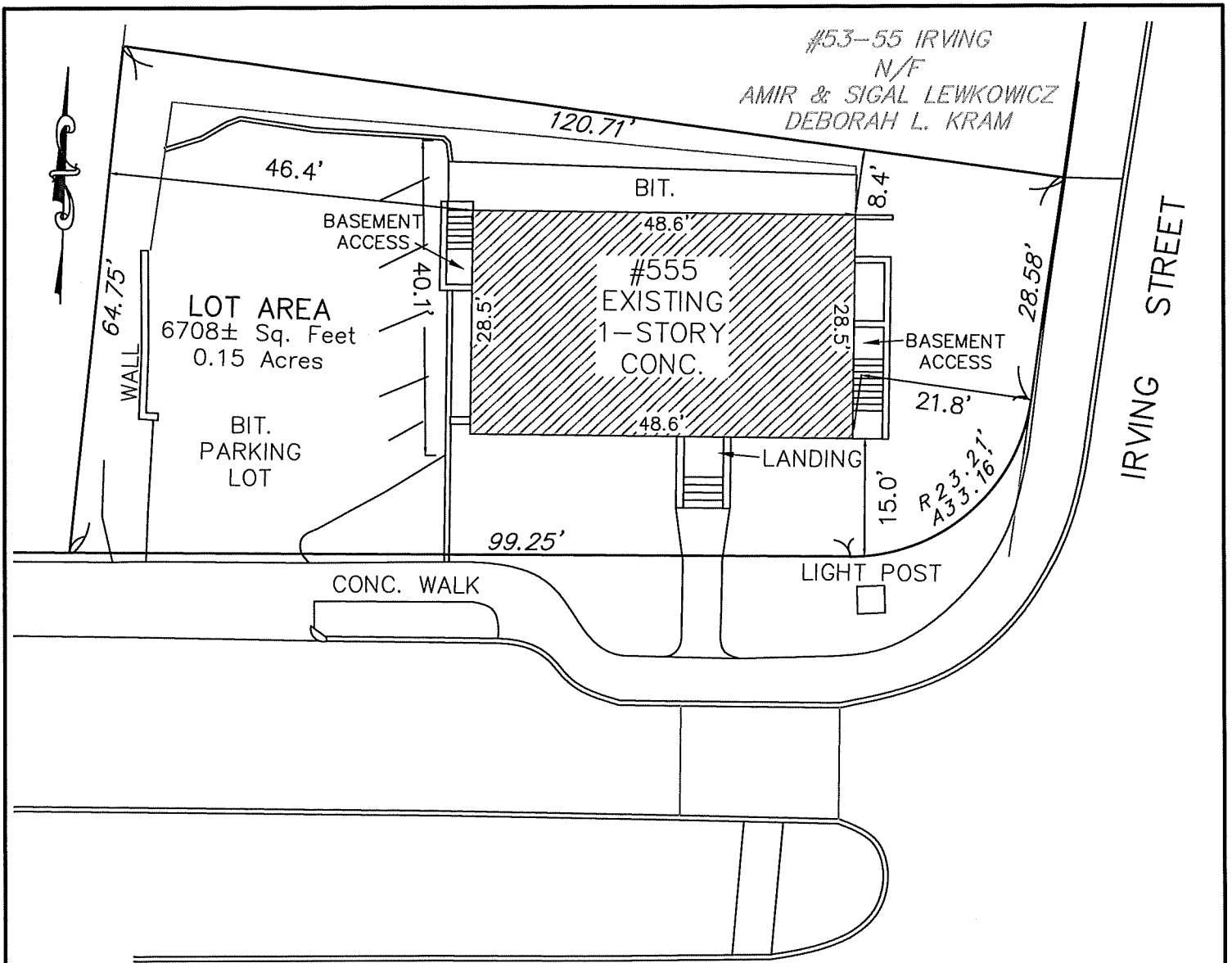
 SR-1



MAP FOR REFERENCE ONLY
 NOT A LEGAL DOCUMENT

City of Newton, MA makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Parcels updated 08/22/2018
 Properties updated 08/29/2018



#53-55 IRVING
N/F
AMIR & SIGAL LEWKOWICZ
DEBORAH L. KRAM

LOT AREA
6708± Sq. Feet
0.15 Acres

BIT.
48.6'
#555
EXISTING
1-STORY
CONC.
48.6'

BIT.
PARKING
LOT

BASEMENT
ACCESS

LANDING

LIGHT POST

CONC. WALK

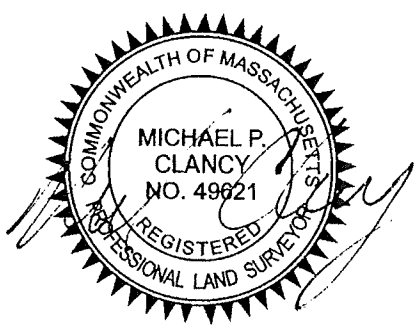
IRVING STREET

COMMONWEALTH AVENUE

PLOT PLAN

PREPARED FOR:
JACK FOSTER
1280 CENTRE STREET
NEWTON MA. 02459

FOR
555 COMMONWEALTH AVENUE
IN
NEWTON, MA.

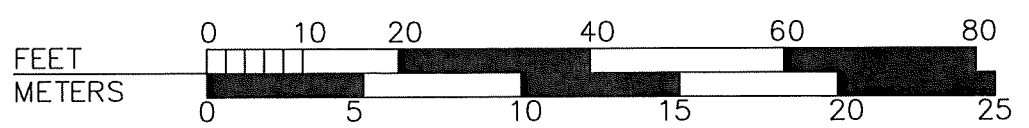


SCALE: 1"=20' OCTOBER 1, 2018

C & G SURVEY COMPANY
37 JACKSON ROAD
SCITUATE, MA. 02066
1-877-302-8440

NOTES:

1. ZONING CLASSIFICATION - MR1
2. LOCUS DEED:
MIDDLESEX REGISTRY OF DEEDS BOOK 22659 PAGE 550
3. PLAN REFERENCES:
MIDDLESEX REGISTRY OF DEEDS END OF BOOK 2862
4. PROPERTY SBL: 73048 0010





City of Newton, Massachusetts
 Department of Planning and Development
 1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone
 (617) 796-1120
 Telefax
 (617) 796-1086
 www.newtonma.gov

Ruthanne Fuller
 Mayor

Barney Heath
 Director

GENERAL PERMIT APPLICATION

PROJECT #: _____ ZONING DISTRICT: MR-1 DATE RECEIVED: _____

PROJECT DESCRIPTION:

Amend variance #18-92 to allow for use of the property for office use (real estate) and to amend certain operational conditions contained therein.

PROPERTY LOCATION INFORMATION

STREET ADDRESS: 555 Commonwealth Avenue CITY/ZIP: Newton/02459

LEGAL DESCRIPTION (SECTION, BLOCK, LOT): 73 048 0010

PROPERTY OWNER INFORMATION

NAME: 555 Commonwealth Avenue Realty Tr PHONE: _____ ALT. PHONE: _____

MAILING ADDRESS: 555 Commonwealth Ave, Newton E-MAIL ADDRESS: hudsondoyle@gmail.com

PROPERTY OWNER CONSENT

I am (we are) the owner(s) of the property subject to this application and I (we) consent as follows:

1. This application for a land use permit or administrative approval for development on my (our) property is made with my permission.
2. I (we) grant permission for officials and employees of the City of Newton to access my property for the purposes of this application.

X [Signature] 11/06/18
 (Property Owner Signature) (Date)

X [Signature] 11/06/18
 (Property Owner Signature) (Date)

NOTICE: The City of Newton staff may need access to the subject property during regular business hours and will attempt to contact the applicant/agent prior to any visit. Further, members of a regulatory authority of the city may visit the property as well.

APPLICANT / AGENT INFORMATION

NAME: G Michael Peirce, Esq. PHONE: 781 239 0400 ALT. PHONE: _____

MAILING ADDRESS: 80 Walnut Street Wellesley 02481 E-MAIL ADDRESS: mpeirce@gmpeircelaw.com

X [Signature] 11/6/18
 (Applicant/Agent Signature) (Date)

NOTICE: The applicant/agent is the primary contact and may be any individual representing the establishment or property owner. The applicant/agent must also be legally authorized to make decisions on behalf of the Property Owner(s) in regards to the application.

OFFICE USE ONLY BELOW THIS LINE

CHECK APPROPRIATE PERMIT OR REVIEW PROCESS (CHECK ALL BEING SUBMITTED)	
<input type="checkbox"/> Zoning Review Application	<input type="checkbox"/> Comprehensive Permit
<input type="checkbox"/> Administrative Site Plan Review	<input type="checkbox"/> Variance Application
<input type="checkbox"/> Sign Permit	<input type="checkbox"/> Historic Preservation Review
<input type="checkbox"/> Special Permit/Site Plan Approval	<input type="checkbox"/> Conservation Commission Review
<input type="checkbox"/> Fence Appeal	<input type="checkbox"/> Other, describe _____

Comments: _____

PERMIT INTAKE INITIALS AND DATE STAMP

NOTE: This form MUST accompany all other Department of Planning and Development applications.

To Be Completed By Applicant



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: December 24, 2018

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Jennifer Caira, Chief Planner for Current Planning

Cc: G. Michael Peirce, Attorney
Barney S. Heath, Director of Planning and Development
John Lojek, Commissioner of Inspectional Services
Jonah Temple, Associate City Solicitor

RE: **Request to amend Variance #18-92 to allow for an office use and to amend certain operational conditions**

Applicant: James Doyle	
Site: 555 Commonwealth Avenue	SBL: 73048 0010
Zoning: MR1	Lot Area: 6,708 square feet
Current use: Medical office	Proposed use: Real estate office

BACKGROUND:

The property at 555 Commonwealth Avenue consists of a 6,708 square foot lot improved with a single-story building constructed in 1914 in the MR1 district. Originally constructed for use as a milk testing laboratory, the property received a variance in 1973 to allow for its use as a business office. An amendment was granted in 1992 to relax some of the conditions placed on the site, allowing the current acupuncture and chiropractic office to operate. The petitioner now seeks to amend the variance again to allow for the property to be used as a real estate office, and to amend certain conditions relative to the operation of the business and use of the site.

The following review is based on plans and materials submitted to date as noted below.

- Zoning Review Application, prepared G. Michael Peirce, attorney, dated 11/6/2018
- Plot Plan, prepared by C&G Survey Company, surveyors, dated 10/1/2018
- Floor Plan, submitted 11/6/2018

- Variance #18-92, dated 8/14/1992
- Variance #26-75, dated 5/15/1975
- Variance #44-73, dated 12/26/1973

ADMINISTRATIVE DETERMINATIONS:

1. The subject property is located in the MR1 zoning district, which prohibits commercial uses per section 3.4.1. The property received a variance in 1973 to allow for the conversion of one commercial use (a milk testing lab) to a business office use. The variance was subsequently amended on two occasions to change to other commercial uses, most recently for a chiropractic and acupuncture office use. The petitioner now seeks to amend the variance again to allow for a real estate office.
2. There are several conditions that have carried over with each amendment made to the original variance. Condition 1 limits the use of the site to three professionals (acupuncture and related chiropractic services) and one receptionist. The petitioner seeks an amendment to this condition to eliminate the limitation on the number of employees that may be on site at one time.
3. Conditions 1 and 3 reference the use of the site for acupuncture and chiropractic services. The petitioner seeks to eliminate all references to the acupuncture and chiropractic office use to instead allow for a real estate office.
4. Condition 4 of the most recent variance #18-92 limits the hours of operation allowed for the on-site business during the week and on Saturday, and prohibits operation on Sundays. The petitioner seeks to amend the variance to allow operation during regular business hours, seven days a week.

1. See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.4.1 §7.6	Amend Variance #18-92 to allow for a real estate office	Variance per §7.6

CITY OF NEWTON
MASSACHUSETTS

INTER-OFFICE CORRESPONDENCE

Alderman Richard J. Bullwinkle

January 1, 1973

TO: Mr. Victor J. Taglienti
Assistant to Buildings Commissioner

DATE: 555 Commonwealth Avenue
SUBJECT: Non Conforming Building

My investigation of the departmental records of the property located and numbered as 555 Commonwealth Avenue, Newton Centre, are as follows:

June 12, 1914, Permit No. 98	- Vitalait Laboratory, Inc.	Terra-Cotta	\$10,000.00
June 12, 1914, Permit No. 762	- " " "	Wd. Garage	200.00
July 6, 1914, Permit No. 1467	- " " "	Plumbing	0.00
Sept. 2, 1927, Permit No. 1588	- " " "	Alterations	500.00
Feb. 8, 1940, Permit No. 177	- Arthur W. Melvin	Offices-Alteration	150.00
Sept. 4, 1940, Permit No. 319	- " " "	Office-Plumbing	75.00
July 16, 1965, Permit No. 1049	- Roblin Ins. Agency	Office plumbing	

Information following is taken from City of Newton Street Directories for occupancies of this building from 1923 to present:

1923 Vitalait Laboratory of New England, Inc.
(Fermented Milk)

1929 Vitalait Laboratory, Inc.
Chris Crowell - Architect
James W. Gibson - Real Estate
Rodney Turner - Physician

1931 Vitalait-Chemistry
Bond Landscape Engineer
Harry Richal - Building Contractor
Rodney D. Turner - Physician
James W. Gibson - Real Estate

1938 Howe Associates - Real Estate and Insurance
Savage - Real Estate
Employment Agency
Hurtubis - Lawyer

1943 Howe Real Estate and Insurance

1949 Howe Associates - Real Estate and Insurance
Nutting, Merrill, C. & E. William, Real Estate and Insurance

1961 Howe Associates - Real Estate and Insurance
Clevens, Mary - Antiques

1969 Roblin Insurance Agency, Inc.

On November 28, 1972, Mr. Foley and myself made an on site inspection of this property and found Roblin Insurance and Real Estate occupy the entire building, first floor and basement.

On April 4, 1962 application was made for extension of a Non - Conforming use by Norman Uminsky, 75 Valentine Street, West Newton to be used for Retail Flower Shop with Antique China and Jewelry, Gifts with customary indoor and outdoor display, install picture window in front exterior wall, remodel garage for greenhouse use. Petition No. 499-62.

CITY OF NEWTON
MASSACHUSETTS

INTER-OFFICE CORRESPONDENCE

TO:

DATE:

FROM:

SUBJECT:

On July 5, 1962, Arthur W. Melvin withdrew his petition that was filed with the hearing scheduled for July 9, 1962.

On July 5, 1962, Charles E. Downe, Planning Director, quote "recommended denial of this petition due to change in use to retail purposes which is a somewhat different use than the present real estate operations. It is more intensive and will create traffic and consequent parking over a period of time. In ordinarily residentially zoned neighborhood and without adequate off street parking, it is difficult to justify any increase in a Non - Conforming use at this corner."

On July 16, 1962, Claims and Rules Committee voted to deny this petition.

On January 4, 1963, Petition No. 75-63 application was made for extension of Non - Conforming use for Medical, Dental and Allied Science Building by Mrs. Betty Levin, for this location, this was denied by the Claims and Rules Committee on February 18, 1963.

Howe Associates - Real Estate occupied this building since 1938 for Real Estate and Insurance, to 1965.

Some time in 1965 Roblin Insurance Agency Inc. occupied this building as there was a plumbing permit taken out for office plumbing.

Roblin Insurance Agency - Real Estate - Roblin Carton Agency - Life Insurance, Mutual Funds and Pension Consultants occupy the building as a whole, basement and first floor.

Some time between 1965 and 1972 the frame garage was taken down with no permit or record in this department or Assessors, to make room for exterior parking.

No other permits, building, plumbing or wiring were taken out with this department other than those listed above.

As to the Non - Conforming use of this building it is my opinion that it is not a more intensive use than the previous owners or occupiers of this building.

Assessors file records show Section 73 Block 48 lot 10 :
Robert Goldberg 6790 Sq. ft. \$10,450.00
Alvin Joseph Block 7,500.00
Garage 150.00


\$18,100.00


555 Commonwealth Avenue
Newton Centre.




Property Information

Property ID 73048 0010
 Location 555 COMMONWEALTH AVE
 Owner DOYLE JAMES P TR

 SR-2

 SR-1

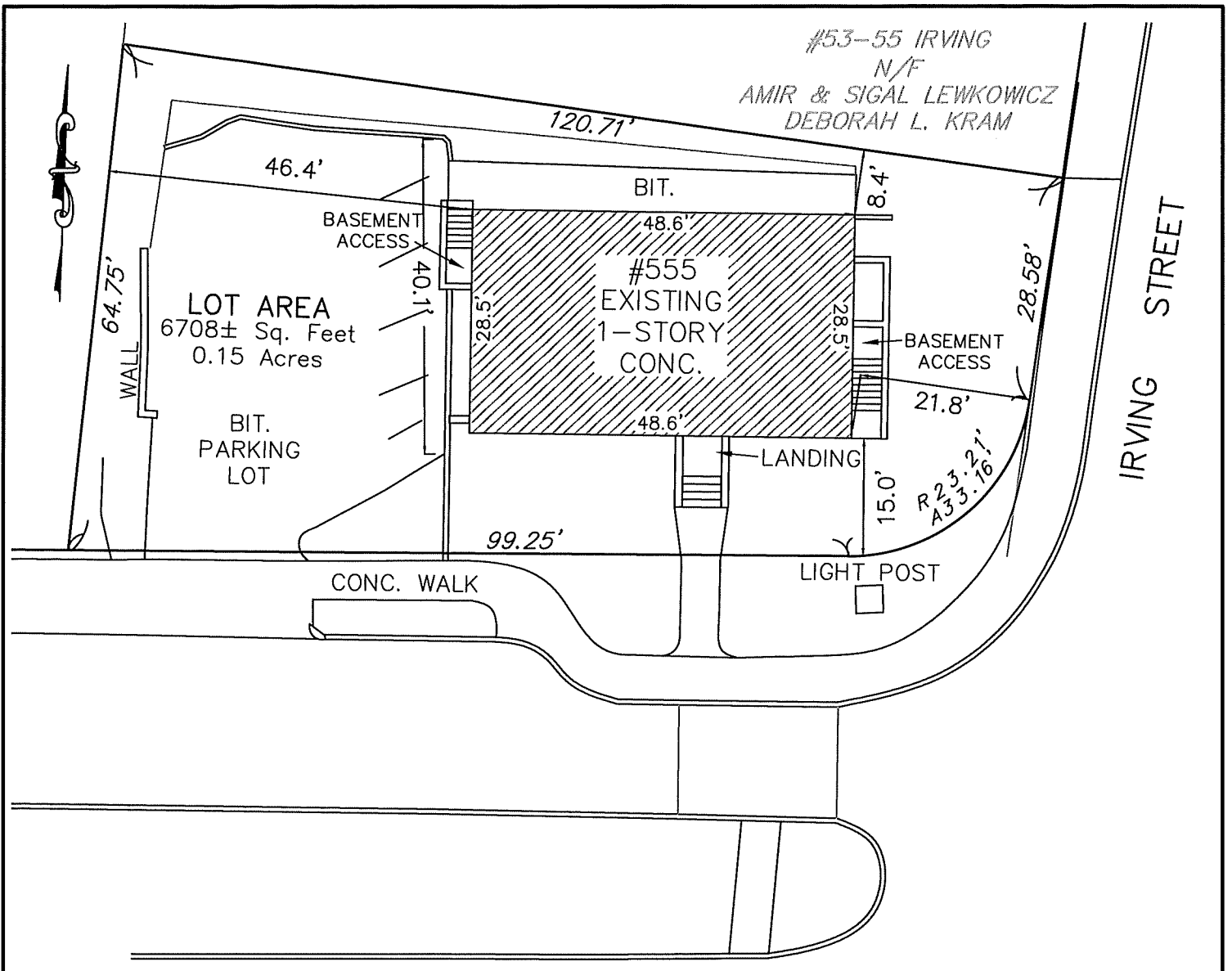


**MAP FOR REFERENCE ONLY
 NOT A LEGAL DOCUMENT**

City of Newton, MA makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Parcels updated 08/22/2018
 Properties updated 08/29/2018

1" = 90 ft
 Report a map error



#53-55 IRVING
N/F
AMIR & SIGAL LEWKOWICZ
DEBORAH L. KRAM

COMMONWEALTH AVENUE

PLOT PLAN

PREPARED FOR:
JACK FOSTER
1280 CENTRE STREET
NEWTON MA. 02459

FOR
555 COMMONWEALTH AVENUE
IN
NEWTON, MA.

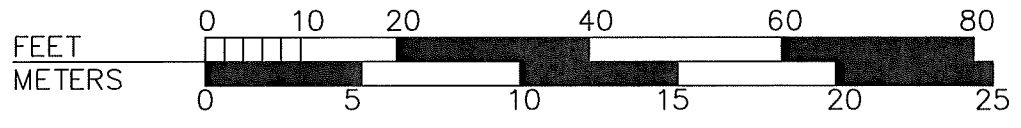


SCALE: 1"=20' OCTOBER 1, 2018

C & G SURVEY COMPANY
37 JACKSON ROAD
SCITUATE, MA. 02066
1-877-302-8440

NOTES:

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MIDDLESEX REGISTRY OF DEEDS BOOK 22659 PAGE 550
3. PLAN REFERENCES:
MIDDLESEX REGISTRY OF DEEDS END OF BOOK 2862
4. PROPERTY SBL: 73048 0010



#454.92

5

O.L.



City of Newton, Massachusetts

Incorporated 1630 Incorporated a City 1872

City Hall

1000 Commonwealth Avenue, Newton Centre 50

ZONING BOARD OF APPEALS

1992 OCT 28 PM 11:22
#18-92

Detailed Record of Proceeding and Decision

Petition of David Hanson and William Teuber, Jr. (Trustees of Ocean Point Realty Trust), 100 Westgate Road, Wellesley and James Doyle of 86 Summit Avenue, Brookline, MA.

For a modification of an existing variance granted October 17, 1975 for an accounting business at 555 Commonwealth Avenue, Newton Centre, MA.

The Zoning Board of Appeals for the City of Newton held a public hearing on the above entitled proceeding on September 22, 1992 at 6:30 p.m. in the Aldermanic Chamber at City Hall, Newton, Massachusetts.

The following members of the Board were present:

- Harold Meizler, Chairman
- Anthony Summers, Acting Chairman
- John Kaitz
- Edna Travis

The petition was filed on August 14, 1992.

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 News Tribune a newspaper of general circulation in Newton, Massachusetts.

Accompanying the petition were plans entitled "Plan of Land to Accompany the Petition of David Hansen and William Tember, Jr., Trustees of Ocean Point Realty Trust and James Doyle" dated August 13, 1992 by John J. Regan, Land Surveyor.

MSD 11/25/92 02:32:24 1119 11.00

BK/6297-88

A True Copy
Attest.
Edward J. Dupont
City Clerk of Newton, Mass.

FACTS:

The petitioners were represented by Attorney Michael Peirce of Mofenson and Nicoletti, One Wells Avenue, Newton, MA.

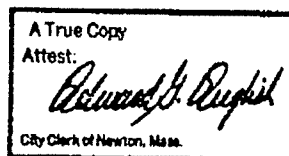
The subject site is located at 555 Commonwealth Avenue, Newton, MA. Ward 7, Section 73, Block 48, Lot 10 containing approximately 6,721 square feet in a Multi-Residence 1 District. The existing one-story building contains approximately 2,800 square feet of floor area on a first floor and basement (1,400 sq. ft./floor) and 4 parking stalls.

The petitioners are proposing to amend Zoning Board of Appeals Decision #26-75 which allowed a Use Variance for a Public Accounting Office with 15 conditions to allow the structure to be used for the practice of acupuncture with one staff support and two chiropractors.

The petitioner provided a brief history of the site and previous variance. The one story structure was built in 1914 which was constructed for use as a milk testing laboratory. When zoning was first established in Newton in 1922 the property was placed in a residential zone and thus the pre-existing use was rendered legally non-conforming. Office use was introduced in the late 1920's and since the late 1930's the property has been used exclusively for offices for many professions. The property has always had a non-residential use and is unique in the neighborhood in that respect.

The petitioner stated that the property has for sixty years been used for office purposes. In variance #26-75 the use was specifically limited for use by the original petitioner to run an accounting business. The petitioners operated an accounting office at the property until approximately August, 1988. The property was then leased to an accounting office until May, 1991 when the tenant vacated. The property has been on the market since May, 1991 and, despite extensive and expensive marketing efforts, the petitioners have been unable to reach a resolution on any sale or lease of the property due to the severe limitations imposed by the existing variance conditions.

The petitioner stated that it would be and continues to be a substantial financial hardship to require the variance as presently exists to remain unmodified. The petitioners have attempted for over a year to market this property and have either received no offers for periods stretching into many months or the offers that they have received were dramatically below assessed value. In fact, since these petitioners were last before the Board in June, 1992, they have lost two additional offers due to prospective buyer's inability or unwillingness to await the variance process. Further, given the substantial number of restrictions contained in the existing variance, the property is not even available for reasonable lease for office use. The effect of the combined restrictions is to render the property essentially unusable even in the face of its present arrangement and design for office use.



Attorney Allen Goodman spoke for Mr. Doyle, the proposed owner and acupuncturist, ho presented a Purchase and Sale Agreement and defined the hours of operation.

Mr. Doyle spoke to the type of practice he has had for 17 years and that he would have 400 sq. ft. less space in this building than he has at present.

Margaret Hanson as part-owner spoke in favor and pointed out that the existing variance with its specific conditions have added to the hardship. Gordon Megrian, 563 Commonwealth Avenue spoke in favor of the petition and outlined neighborhood concerns. Mr. Megrian requested the office hours be 8 a.m. to 6 p.m. and that the lights be turned out from 11 p.m. to 7 a.m. Traffic was also a concern of the neighborhood.

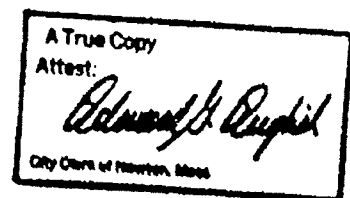
Mr. Zack of 53 Irving Street stated that lighting and traffic is a major problem for him as an abutter.

FINDINGS AND DETERMINATION

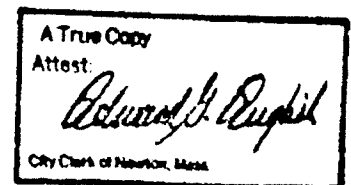
1. The site is unique due to its small lot size and existing structure . It was built as a commercial building.
2. A hardship exists in that the lot is to small for the residential district and the structure was built as a commercial building and does not lend itself to residential conversion.
3. No substantial detriment to the public would occur since the commercial use of the property will be the same or less intense than the existing accounting office.
4. Granting the variance would not derogate from the spirit and intent of the Zoning Ordinance as no physical alterations would occur now.

Accordingly, a motion was made by Mr. Kaitz and duly seconded by Ms. Travis to grant the amendment to Zoning Board of Appeals Decision #26-75 which motion passed four in favor and none opposed. Therefore, the use variance is granted which shall supersede the previous conditions of ZBA Decision #26-75 subject to the following conditions:

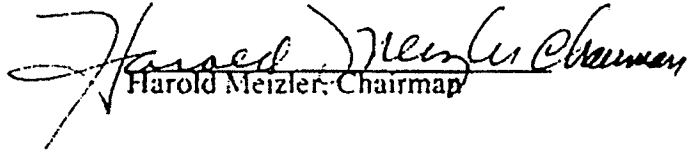
1. That the use of the site be limited to three professionals (acupuncture and related chiropractic services) and one receptionist.
2. That the basement area be used only for storage and bathroom facilities.



3. That the parking area shall not be used for any purpose other than accessory to acupuncture and related chiropractic services, clients and employees. Parking for no more than six (6) vehicles will be allowed on the enclosed paved area. No vehicles shall be parked in the parking area overnight between the hours of 10:00 p.m. and 7:00 a.m. The parking area shall be locked overnight with a chain or other similar device. Parking spaces shall be appropriately marked on the paved area.
4. The building shall be open to the public for business only from 8:00 a.m. to 7:00 p.m. on Monday and Friday; from 8:00 a.m. to 7:45 p.m. on Tuesday, Wednesday and Thursday and Saturday from 8:00 a.m. to 2:00 p.m.
5. No accessory signs or other advertising devices shall be placed or utilized on the property or within the building so as to be visible to the public outside the building, except for a single non-illuminated wall sign with the dimensions of 2 feet by 2 feet.
6. No security light of any kind shall shine directly or indirectly on abutters or the public way, and there shall be no internal lights illuminated from 10:00 p.m. to 7:00 a.m. The rear facing windows will be provided with blackout shades.
7. The fence alongside the rear and side portions of the property shall be restored and maintained.
8. The petitioner shall landscape the property in accordance with a landscape plan approved by the Planning Director. Said landscape shall provide a buffer to adjoining residential dwellings and minimize the departure of the use of the site from a residential appearance.
9. Landscaping, lawns and the exterior of the building shall be well maintained.
10. Air conditioners, fans, and any other mechanical and electrical devices producing noise external to the building shall have noise levels customarily accompanying a residential use on the site. All such devices, except heating during the cold weather, shall be shut off from 10:00 p.m. to 7:00 a.m.
11. That the variances must be exercised within twelve months from the date of its filing with the City Clerk or the variance lapses.



- 12. That the variances must be recorded with th Middlesex Registry of Deeds within six months from the date of its filing with the City Clerk or the variance lapses.


 Harold Meizler, Chairman

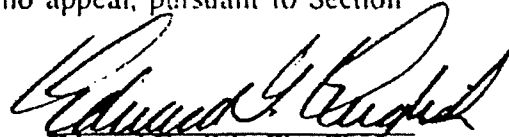
AYES:

Harold Meizler, Chairman
 John Kaitz
 Anthony Summers
 Edna Travis


Copies of this decision and all plans referred to 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 10-28-92

The City Clerk certified that all statutory requirements for the issuance of this VARIANCE 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 has been filed.


 Edward English, City Clerk

I, Pam Hough, am the Clerk of the Zoning Board of Appeals and the Keeper of its records. This is a true copy of its decision.


 Pam Hough



ZONING BOARD OF APPEALS

City of Newton, Massachusetts

Founded 1630 Incorporated a City 1873

City Hall

1000 Commonwealth Avenue, Newton Centre 59

RECEIVED

OCT 17 9 50 AM '75

NEWTON, MA 02159

PETITION # 26-75

(NOTICE @ 12886/460)

Detailed Record of Proceedings and Decision

Petition of Morris Likker, 19 Ransom Rd, Newton as agent, under a purchase and sale agreement, for Marvin Glick, Trustee.

For a variance to use a building and land for a public accounting office at 555 Commonwealth Avenue in a private residence zone.

- The Zoning Board of Appeals for the City of Newton held a public hearing on the above entitled proceeding on September 23, 1975 (Tuesday) at 7:45 p.m. in the Aldermanic Chamber at City Hall, Newton, Massachusetts.

The following members of the board were present:

Harold Meizler, Acting Chairman
David Cooper
Robert Corbett
Maurice A. Reidy, Jr.

(Present but not voting was new Associate Member, John Kaitz)

The petition was filed with the board on August 15, 1975 (originally filed as 18-75 on May 15, 1975 which was denied without prejudice)

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 Villager a newspaper of general circulation in Newton, Massachusetts.

FACTS:

The petitioner submitted a purchase and sale agreement verifying an interest in the land and building in question as, in effect, agent for the owner. Also accompanying the petition were several plans entitled: "Plan of Land in Newton Mass. to Accompany the Petition of Morris Likker . . ." dated May 13, 1975 and prepared by Apex Assoc., said plan being an area plan; and "Basement and First Floor Plans at 555 Commonwealth

Page 21

Avenue; Newton . . ." dated May 13, 1975 and prepared by Apex Assoc. The petitioner was represented by Harry M. Shuman, Esq., 89 State Street, Boston.

(a) Description of the Site:

The property is located at 555 Commonwealth Avenue, Newton Mass., and is situated at the corner of Irving Street and Commonwealth Avenue on the northerly side of Commonwealth Avenue. The parcel contains 6,721 square feet and a one-story stucco wood frame building. The land is zoned Private Residence regulated by section 24-6 of the Newton Zoning Ordinance.

The building is one-story and of stucco and wood frame construction. Its dimensions are forty-eight feet, eleven inches (48'11") wide; by twenty-eight feet, six inches (28'6") deep. The building contains a basement which has a floor area conforming to the dimensions of the first floor. The building is in good condition.

The site also contains a parking lot adjacent to the western side of the building.

(b) Character of the Neighborhood:

The neighborhood consists of a mixture of two-family homes and nonconforming buildings, within which buildings there are valid nonconforming business uses. These uses are predominantly retail sales of products, generally grocery and food. Both sides of Commonwealth Avenue, a heavily travelled public street contain the nonconforming uses and two-family dwellings.

The site is abutted on the west by a passageway beyond which are two-family residences. Abutting the site to the north is a two-family residence with the numbers 53-55 Irving Street. Across Irving Street, which runs north-south and forms the eastern boundary of the parcel, a valid nonconforming commercial building, numbered 543-551 Commonwealth Ave., houses a bakery, a delicatessen, a meat market, and a grocery store or supermarket. To the east of this nonconforming building is a vacant lot followed by two-family residences.

Directly across Commonwealth Avenue to the south of the parcel is another valid nonconforming commercial building numbered 552-564 Commonwealth Ave., containing various retail sales and business uses. To the east of this building there are more two-family residences. Across Chestnut Terrace, which runs south and forms the westerly boundary of this commercial building 552-564 Commonwealth is land and a building being used as a private squash and tennis club. This club was formerly a nonconforming use and is now regulated by section 24-5(b)(4) allowing and regulating a club or clubhouse in a single residence district. Except for the zoning classification of the land used by the squash and tennis club, the zoning classification for the rest of the neighborhood involved in this petition is "private residence".

Another valid nonconforming building containing a variety of nonconforming retail sales and business office uses is located approximately 1/4 mile to the west of the site. The nonconforming building is located at Commonwealth Ave., and Center Street.

Appearing in favor of the petition was Burton Winnick Esq., for the present owner M. Glick. In opposition were Sydney Zacks, 53 Irving St.; Julius Freedman, 49 Irving St.; and Hyman Rines, 550 Commonwealth. Opposition was based upon alleged lack of jurisdiction, parking and traffic problems of the area and need to preserve the residential area.

(c) History of Use of Building and Land:

The building was constructed for business use prior to the enactment of zoning in Newton.. The original use was as a milk testing laboratory, named Vitalait Laboratory of New England, Inc., and this use occupied and characterized the premises when the zoning ordinance became effective in 1922. In 1922, the land was zoned for residential use only and the building and land became a valid nonconforming use.

Until 1939, the zoning ordinances for the City of Newton provided that a nonconforming use could be changed as-of-right to another nonconforming use which is "not substantially different from the existing use." After 1939 and continuing to the present, the zoning ordinances have allowed such a change only with the permission of the Board of Aldermen through a special permit.

Many subsequent uses occupied the premises after the original use as a milk testing laboratory. These uses included offices for architects, engineers, contractors, doctors, lawyers and real estate agencies, as well as an antique shop. Since the late 1930's, real estate and real estate/insurance office uses have predominated.

The last occupant, Roblin Insurance Agency, occupied the premises since about 1965. That company used the entire building, i.e., first floor and basement, for offices in connection with a real estate and insurance business.

Because a real estate/insurance business is substantially different from the character and quality of the original nonconforming use, the Law Department has ruled that the Board of Aldermen do not have permissive use jurisdiction to grant the petitioner's application to utilize and legalize the building's use as a nonconforming use. Moreover, under the original zoning ordinance, the change from the milk testing laboratory to a substantially different use in the 1920's and later in the 1930's was illegal and constituted an abandonment of the nonconforming exemption. The building and land at 555 Commonwealth Avenue can be used only for those as-of-right uses listed under section 24-6, for those listed as special exceptions with Board of Aldermen approval under 24-6(b), and for those uses which a variance might allow.

In decision 44-73, the Newton Zoning Board of Appeals granted a variance with conditions to allow the building and land to be utilized for a real estate office. An appeal was filed in superior court (Middlesex). On June 19, 1975, a motion to dismiss the case and vacate the variance was granted. This was based upon the surrendering of any interest in the land and building by the then-petitioner, Winn-Gilbert Realty Co., which company allowed the purchase-and-sale agreement to become void.

In decision 18-75, the Zoning Board of Appeals denied without prejudice the present petitioner's request for this variance to use the land and building for a public accounting office. One of the members felt jurisdiction rested with the Board of Aldermen, and the denial without prejudice under Art. IV, Sec. 3(b) of the Zoning Board's Rules and Regulations was to allow the petitioner to repetition as soon as possible to the Zoning Board so that the petition could be acted upon in terms of the substantive issues set forth in M.G.L. ch. 40A, §14.

RULINGS AND FINDINGS OF THE BOARD

(a) Jurisdiction of the Board of Appeals

On the basis of the opinion of the City Solicitor, this Board of Appeals has and retains jurisdiction to hear this petition.

(b) The Following is the Disposition of the Petition on the Merits

(1) A hardship to the land and building, and hence to the owner, will occur unless the variance is granted. The building was designed inside and outside as a commercial building and it is unrealistic to consider that it could be used for either a single or multiple residence. To raze the building and build a dwelling on the land would require a financial expenditure beyond what would be marketable at that locus. The existing nonconforming commercial uses and the heavy traffic within the immediate area would significantly depress the price which such new dwellings could obtain on the market, as well. To convert the existing building to a dwelling would also require a financial expenditure beyond the marketable price for such a building. Thus, the extent of costs required to provide a conforming residential use for the building and land, or for the land with a new building, and the unmarketable character of the land and a new or renovated building at such a cost level precludes a conforming residential use as the only reasonable use of the land. The proposed use for which the variance is being sought would provide such a reasonable use of the realty.

Furthermore, the land itself obtains a hardship because it is substandard under the existing zoning dimensional requirements. Absent a variance for such dimensional and area inadequacies, the land would not even be usable as land for dwelling purposes, assuming the land were appropriate for such use. Construction of a dwelling suitable for habitation would be both illegal and unmarketable at such a location with such construction or renovation costs as would apply for land containing only 6,721 square feet and substandard lot coverage. It is doubtful that a dwelling could be constructed which would also meet setback, sideyard and rear yard distances, and maximum lot coverage mandated by sections 24-13(a), -14, and -16, respectively.

(2) The land and building are unique when compared with the general area. The land is substandard for a residence; the building is designed for non-residential use and is unsuitable for conversion to a residence. Finally, the parcel is located on a major public way surrounded on two sides by nonconforming commercial buildings.

(3) Granting the variance will not impose a substantial detriment upon the public. The effect of the variance will be to reduce the intensity of use, as compared with both the prior illegal uses and the original nonconforming use, i.e., a commercial testing laboratory. The overall intensity of use may well be even less than if the property were used as a residence (or as two residences). The location of the parcel on a major public way and the controls imposed in this decision (see infra) will eliminate any adverse effects. The vacancy of the building for over one year has not resulted in any diminution of the traffic problems in this area which are due to the commercial nonconforming uses and the tennis and squash club which are nearby. The use of the building and land for an accounting office will not intensify the traffic such that a safety hazard would thereby result.

(4) Granting the variance will not derogate from the spirit and intent of the zoning ordinance. First, although M.G.L. chapter 40A, section 5, and section 24-26 of the Newton Zoning Ordinance contemplate the ultimate extinction of nonconforming uses, zoning

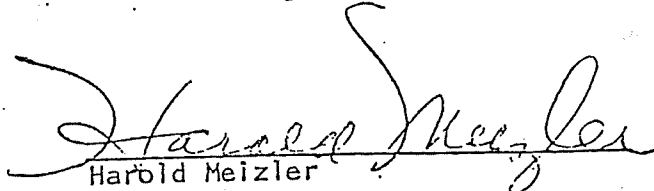
does not destroy the use of the land (and building) for some reasonable purpose. That purpose does not have to be the most profitable use, i.e., the highest and best marketable use. We have determined, based upon the facts, that the land itself, as well as the land with the existing building is neither suitable nor legally capable of being used for a conforming purpose, i.e., a dwelling house. Second, because the immediate area consists of both residences and nonconforming business uses together with a private club, this variance with the restrictive conditions allowing a business use, which use is less intensive than the original nonconforming and subsequent illegal uses, will not detract from the integrity of the adjacent residential uses, for which the zone was established.

BASED UPON THE AFOREMENTIONED FACTS AND RULINGS, a motion was seconded and unanimously passed to grant the variance with the following conditions:

1. The existing free-standing sign and lights are to be removed.
2. This variance runs only to the petitioner for an accounting business which is to be owned and operated by him.
3. The basement area is to be used only for storage and bathroom facilities. All partitions are to be removed in the basement except those enclosing the boiler, bathroom, and stairway. The stairway is to be partitioned to the satisfaction of the building commissioner for fire protection purposes.
4. The parking area shall not be used for any purpose other than/ ^{accessory to an} accounting business.
5. The building shall be open to the public for business only from 9:00a.m. to 5:00p.m. Monday through Saturday.
6. No accessory signs or other advertising devices shall be placed or utilized on the property or within the building so as to be visible to the public outside the building, except for a single non-illuminated wall sign with the dimensions of 2 feet by 2 feet.
7. Parking on the property shall be limited only to employees and customers of the public accounting business. Parking for no more than six (6) vehicles shall be allowed on the enclosed paved area. No vehicles shall be parked in the parking area overnight between the hours of 11:00p.m. and 7:00a.m. The parking area shall be locked overnight with a chain or other similar device. Parking spaces shall be appropriately marked on the paved area.
8. No security light of any kind shall shine directly or indirectly on abutters or the public ways.
9. There shall be no internal lights illuminated from 11:00p.m. to 7:00a.m.
10. The fence alongside the rear and side portions of the property shall be restored.
11. The petitioner shall landscape the property in accordance with a landscape plan approved by the planning director. Said landscape shall provide a buffer to adjoining residential dwellings and minimize the departure of the use of the site from residential appearances.
12. Landscaping, lawns and the exterior of the building shall be ^{well} maintained

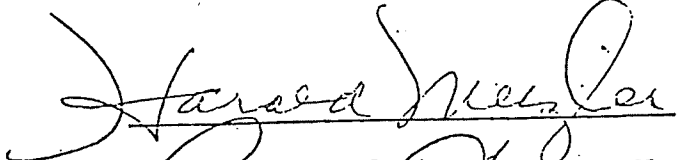
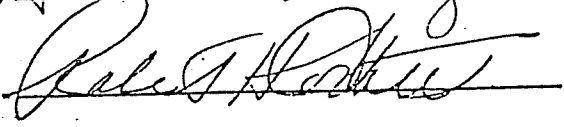
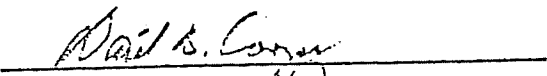
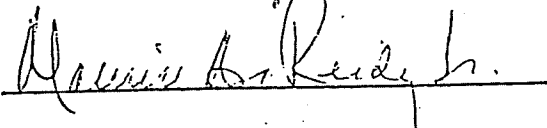
at all times.

13. Air conditioners, fans, and any other mechanical and electrical devices producing noise external to the building shall have noise levels customarily accompanying a residential use on the site. All such devices, except heating during cold weather, shall be shut off from 11:00 p.m. to 7:00 a.m.
14. Within six months from the date of filing this decision with the City Clerk, this variance must be recorded at the Registry of Deeds for Middlesex (South District) County or the variance lapses.
15. Within six months from the date of filing this decision with the City Clerk, the property in question must be conveyed to Morris Likker, or the variance lapses.


Harold Meizler
Acting Chairman

We vote to approve the variance with conditions in accordance with the above decision:

AYES:

Filed with the City Clerk on OCT 17 1975

536-
1464



City of Newton, Massachusetts

Founded 1630 Incorporated a City 1873

City Hall

1000 Commonwealth Avenue, Newton Centre 59

Petition No. 44-73

ZONING BOARD OF APPEALS

Detailed Record of Proceedings and Decision

Petition of Winn-Gilbert Realty Trust

For a variance from sections 25-6 and 25-23 to allow a business use in a building and on land in a residential zone.

The Zoning Board of Appeals for the City of Newton held a public hearing on the above entitled proceeding on Tuesday, December 26, 1973 at 8:00 P.M. in the Aldermanic Chamber at City Hall, Newton, Massachusetts.

The following members of the board were present:

Champe A. Fisher, Chairman
David Cooper
Robert Corbett
Casper Ferguson

The petition was filed with the board on November 16, 1973 together with two plans, i.e. a floor plan and a plan of land. 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 Villager, a newspaper of general circulation in Newton, Massachusetts.

DESCRIPTION OF SITE

The property is located at 555 Commonwealth Avenue, Newton, Mass., and is situated at the corner of Irving Street and Commonwealth Ave. on the northerly side of Commonwealth. The parcel contains 6,721 square feet and a one story stucco wood frame building. The land is zoned Private Residence which is regulated by section 25-6 of the Newton Zoning Ordinance.

The building is one-story and of stucco and wood frame construction. Its dimensions are forty-eight feet eleven inches (48 ft. 11 inches) in width, twenty-eight feet six inches (28 ft. 6 inches) in depth. The building contains a basement conforming to the dimensions of the first floor. The building is in good condition.

The site contains six parking spaces located on the western side of the building.

CHARACTER OF THE NEIGHBORHOOD

The neighborhood consists of a mixture of two-family homes and non-conforming buildings, within which buildings there are valid nonconforming business uses. Both sides of Commonwealth Avenue, a heavily traveled public street, contain the nonconforming uses and two-family dwellings. The site is abutted on the west by a passageway beyond which are two-family residences. Abutting the site to the north is a two-family residence, numbers 53 and 55 Irving Street. Across Irving Street, which runs north-south and forms the eastern boundary of the parcel, a valid nonconforming commercial building, 543-551 Commonwealth Avenue, houses a bakery, a delicatessen, a meat market, and a grocery store or super-market. To the east of this nonconforming building is a vacant lot followed by two-family residences.

Directly across Commonwealth Avenue to the south of the parcel is another valid nonconforming commercial building, 552-564 Commonwealth Ave., containing various retail sales and business uses. To the east of this commercial building, there are more two-family residences. Across Chestnut terrace, which runs south and forms a westerly boundary of this commercial building a private squash and tennis club exists which was formerly a nonconforming use and subsequently became regulated by section 25-5(b)(4) allowing and regulating a club or clubhouse in a single residence district. Except for the zoning classification of the land used by the squash and tennis club, the zoning classification for the rest of the neighborhood involved in this petition is "private residence".

Another valid nonconforming building containing a variety of nonconforming retail sales and business office uses is located approximately 1/4 mile to the west of the site and is located at Commonwealth Avenue and Centre Sts.

HISTORY OF USE OF THE BUILDING AND LAND:

The building was constructed for business use prior to the enactment of zoning in Newton. The original use was as a milk testing laboratory, named Vitalait Laboratory of New England, Inc., and this use occupied and characterized the premises when the zoning ordinance became effective in 1922, and the land was zoned only for residential use.

Many subsequent uses occupied the premises and included offices for architects, engineers, contractors, doctors, lawyers, and real estate agencies, as well as an antique shop. Since the late 1930's real estate-insurance offices have predominated. There is no record of any application for and grant of permissive use for any of these changes from the original nonconforming use.

The prior occupant, Roblin Insurance Agency, occupied the premises since about 1965. That company used the entire building, i.e. first floor and basement, for offices in connection with a real estate-insurance business.

Because a real estate-insurance business is substantially different from the character and quality of the original nonconforming use, the Law Department has ruled that the Board of Aldermen do not have permissive use jurisdiction to grant the petitioner's application to utilize and legalize the building's use for a real estate insurance business. Instead, the Law Department has determined that jurisdiction rests with this Board of Appeal under M.G.L. chapter 40A section 14 and section 25-27 of the Zoning Ordinance as to the granting of a variance.

TESTIMONY AT THE HEARINGS

Mr. Burton Winnick, Esquire, appeared representing petitioner and orally reiterated the substance of the written petition.

Alderman Alan Barkin, Esquire, appeared and argued in favor of the petition. He asserted that this was one of the few real instances of hardship and uniqueness contemplated within the variance procedure.

State Representative Peter Harrington, Esquire, appeared in opposition, and argued that the Board of Appeals had no jurisdiction to entertain a variance for a use which has substantially departed from the character of a prior nonconforming use. He also urged the view that no hardship was shown.

Julius Freedman, who resides at 49 Irving Street which is a two-family housing abutting the land and residence immediately to the rear of the parcel, appeared in opposition. He stated that the Board of Appeals had no jurisdiction to hear this petition; that the Board of Aldermen had denied similar petitions in the 1960's; that the neighbors were sick of having to continually fight against illegal uses; that there should be no business conducted on Sundays; and that substantial sums spent to modernize the building for business use could have been spent for residential conversion.

Sydney Zacks, who resides at 53 Irving St., is the direct abutter to the rear of the parcel. He opposed the petition because restrictions in a variance would not prevent adverse effects of the business use on the neighborhood; because a variance would only perpetuate illegal business in the residential area; and because the parking area on the parcel has been rented in the past to allow trucks and other vehicles to park during non-business hours.

Hyman M. Rines of 550 Commonwealth Ave. opposed the petition and expressed doubt that the Board of Appeal had proper jurisdiction.

RULINGS AND FINDINGS

1. On the basis of the opinion of the City Solicitor, this Board of Appeal has and retains jurisdiction to hear this petition.
2. The following is the unanimous decision of the Board of Appeals.

We Find and Rule:

(a) An hardship to the land and building will occur unless the variance is granted. The lot is legally inadequate in area for the construction of a residential dwelling, even under the "old" lot classification which established 7000 square foot minimums. See section 25-13(a) of the Zoning Ordinance. Construction of a dwelling house suitable for habitation and marketable would be illegal because of the setback, side-lot and rear-lot distances and maximum lot coverage mandated by sections 25-13(a), -14, and -16, respectively.

A hardship to the building exists. It presently is used for, and has all the interior features of a business office, after having been designed and constructed originally for a commercial laboratory.

The building is unsuitable for dwelling purposes and would have to be either razed, or renovated to such an extent that the costs would destroy any marketable use of the land.

Neither the land nor the building is suitable for conversion to a conforming use because of the aforesaid reasons and because the parcel is located in an area consisting, in part, of multiple nonconforming business uses and a private club. These nonconforming uses, surrounding the parcel on all but two sides (the rear lot line, and the westerly side lot line), preclude the conversion of the land to residential purposes.

(b) The land and building clearly are unique. The land is substandard for a residence; the building is designed for non-residential use and is unsuitable for conversion. Finally, the parcel is located on a major public way in the middle of nonconforming business uses, and a private club!

(c) Granting the variance will not impose a substantial detriment upon the public. Because of the location of the parcel on a major public way and because of the controls imposed by the grant of variance, no adverse impact upon the public will result. In addition, the effect of the variance will be to reduce the intensity of use, as compared with both the prior illegal uses and the original nonconforming use, i.e. a commercial testing laboratory.

The absence of any substantial detriment to the public is also due to the presence in the immediate area of non-conforming business uses.

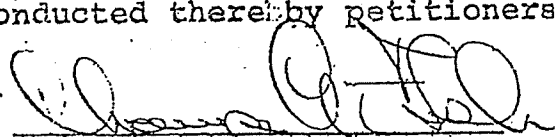
Finally, the kind of effect, as to generating traffic is substantially less than the surrounding nonconforming uses, i. e. retail sales, and the private club.

(d) Granting the variance will not derogate from the spirit and intent of the zoning ordinance. First, although MGL chapter 40A section 5 and section 25-23 of the Newton Zoning Ordinance contemplate the ultimate extinction of nonconforming uses, zoning does not destroy the use of the land (and building) for some purpose. That purpose does not have to be the most profitable, i.e. the highest and best use. We have determined, based upon the facts, that the land itself, as well as the land with the existing building, is neither suitable nor legally capable of being used for a conforming purpose, i.e. a dwelling house.

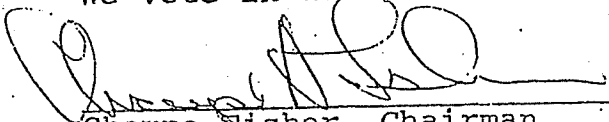
Because the immediate area consists of both residences and nonconforming business uses together with a private club, this variance with restrictive conditions allowing a business use which is less intensive than the original nonconforming use will not derogate from the spirit and intent of the Zoning Ordinance.

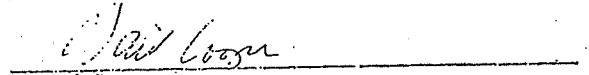
Based upon the aforementioned facts and rulings a motion was seconded and unanimously passed to grant the variance with the following conditions:

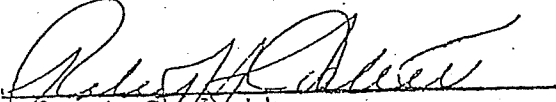
1. The basement area shall be only used for storage and bathroom facilities.
2. The parking area and the building shall not be used for any purpose other than for the conducting of a real estate and insurance business; said business shall be conducted by the petitioner.
3. The building shall be open to the public for business only between the hours of 9:00 A.M. and 5:00 P.M. Monday through Saturday. The building shall not be open to the public for business on Sunday.
4. No accessory signs or other advertising devices shall be placed or utilized on the property so as to be visible to the public outside the building except for a single nonilluminated wall sign with the dimensions of two feet by two feet.
5. Parking on the property shall be limited only to employees and customers who come on the premises as part of the real estate and insurance business to be conducted there by petitioners.

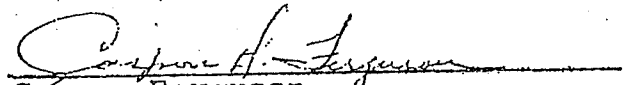

Champe Fisher, Chairman

We vote in accordance with the above to grant the petition.


Champe Fisher, Chairman


David Cooper


Robert Corbett


Casper Ferguson

MAR 15 1974

Filed with the City Clerk on _____

October 1, 2018

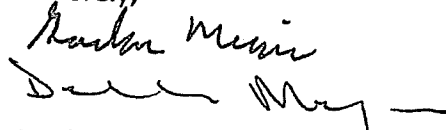
To Whom It May Concern:

It has been a pleasure to have Dr. Doyle as our neighbor for many years. He has always been considerate and thoughtful and we have never felt that his office operations infringed in any way upon our home.

We understand that the use of this residentially zoned building may change from Dr.'s office to one used by a realty company. We are hoping to continue a positive relationship with the new owners of 555 Commonwealth Avenue. We would have no objection to this change as long as the impact on the neighborhood will not be substantially greater than present.

We wish the Doyle family all the best.

Sincerely,

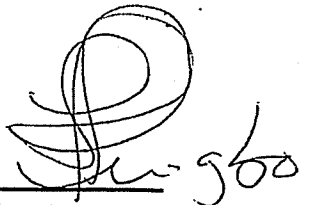
Handwritten signatures of Gordon and Debbie Megrian. The first signature is "Gordon Megrian" and the second is "Debbie Megrian".

Gordon and Debbie Megrian
Abutters/Property Owners
563,565 & 567 Commonwealth Avenue
Newton Centre, MA 02459


9/29/18

Dear City of Newton,

We, the undersigned abutters of 555 Commonwealth Avenue, Newton, MA 02459, have had no issues with the current owners and we have no objection to a real estate office purchasing and using the building.

Andres J Puzos 53 Irving St Newton 

Name Address Signature

Deborah Kram 55 Irving St Newton 

Name Address Signature

Name Address Signature

Name Address Signature



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: January 2, 2019

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Jennifer Caira, Chief Planner for Current Planning

Cc: G. Michael Peirce, Attorney
Barney S. Heath, Director of Planning and Development
John Lojek, Commissioner of Inspectional Services
Jonah Temple, Associate City Solicitor

RE: Request to amend Variance #18-92 to allow for an office use and to amend certain operational conditions

Applicant: James Doyle	
Site: 555 Commonwealth Avenue	SBL: 73048 0010
Zoning: MR1	Lot Area: 6,708 square feet
Current use: Medical office	Proposed use: Real estate office

BACKGROUND:

The property at 555 Commonwealth Avenue consists of a 6,708 square foot lot improved with a single-story building constructed in 1914 in the MR1 district. Originally constructed for use as a milk testing laboratory, the property received a variance in 1973 to allow for its use as a business office. An amendment was granted in 1992 to relax some of the conditions placed on the site, allowing the current acupuncture and chiropractic office to operate. The petitioner now seeks to amend the variance again to allow for the property to be used as a real estate office, and to amend certain conditions relative to the operation of the business and use of the site.

The following review is based on plans and materials submitted to date as noted below.

- Zoning Review Application, prepared G. Michael Peirce, attorney, dated 11/6/2018
- Plot Plan, prepared by C&G Survey Company, surveyors, dated 10/1/2018
- Floor Plan, submitted 11/6/2018

- Variance #18-92, dated 8/14/1992
- Variance #26-75, dated 5/15/1975
- Variance #44-73, dated 12/26/1973

ADMINISTRATIVE DETERMINATIONS:

1. The subject property is located in the MR1 zoning district, which prohibits commercial uses per section 3.4.1. The property received a variance in 1973 to allow for the conversion of one commercial use (a milk testing lab) to a business office use. The variance was subsequently amended on two occasions to change to other commercial uses, most recently for a chiropractic and acupuncture office use. The petitioner now seeks to amend the variance again to allow for a real estate office.
2. There are several conditions that have carried over with each amendment made to the original variance. Condition 1 limits the use of the site to three professionals (acupuncture and related chiropractic services) and one receptionist. The petitioner seeks an amendment to this condition to eliminate the limitation on the number of employees that may be on site at one time.
3. Conditions 1 and 3 reference the use of the site for acupuncture and chiropractic services. The petitioner seeks to eliminate all references to the acupuncture and chiropractic office use to instead allow for a real estate office.
4. Condition 4 of the most recent variance #18-92 limits the hours of operation allowed for the on-site business during the week and on Saturday, and prohibits operation on Sundays. The petitioner seeks to amend the variance to allow operation for extended business hours typical to a real estate business, seven days a week.

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.4.1 §7.6	Amend Variance #18-92 to allow for a real estate office	Variance per §7.6

RECEIVED
City of Newton
Zoning Board of Appeals

JAN 04 2019

Board Clerk

Terry Bromfield
557 California St.
Newton, MA 02460

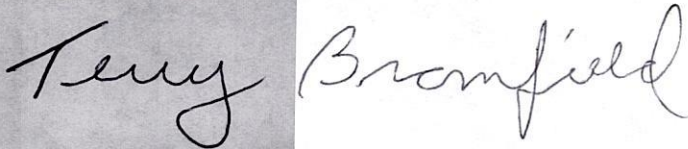
Board of Zoning Appeals, City of Newton Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue
Newton, Massachusetts 02459

Members of the Board,

My property at 557 California St. (lot 34) abuts that of the petitioner, Peter Hess, at 82 Wyoming Rd.

Mr. Hess has explained his plans to me to extend his existing sun-porch 12" foot beyond its current footprint, and not towards my driveway. I have no objection to his going ahead with these plans.

Thank you,

A handwritten signature in cursive script that reads "Terry Bromfield". The signature is written in dark ink on a white background.

Terry Bromfield

