



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

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www.ci.newton.ma.us

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

To: Zoning Board of Appeals Members
From: Adrianna Henriquez, Clerk
Date: 3/12/19
Subject: Materials for **March 27, 2019** Public Hearing

Hello,

Please see the following supplemental materials for the upcoming hearing on **March 27, 2019** Public Meeting & Hearing. The following members are scheduled to sit:
Brooke Lipsitt (Chair), Stuart Snyder, Barbara Huggins Carboni, Michael Rossi, Bill McLaughlin and Lei Reilley (Alternate).

1. Agenda for March 27, 2019
2. Appeal for 24 Moreland Avenue (#02-19)

Thank you,

Adrianna Henriquez

ahenriquez@newtonma.gov | (617) 796 1133



Ruthanne Fuller
Mayor

CITY OF NEWTON, MASSACHUSETTS

City Hall
1000 Commonwealth Avenue, Newton, MA 02459-1449
Telephone: (617) 796-1060 Fax: (617) 796-1086
www.newtonma.gov

ZONING BOARD OF APPEALS

Adrianna Henriquez, Board Clerk

AGENDA

A public hearing of the Newton Zoning Board of Appeals will be held on Wednesday, March 27, 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:

#02-19 Deborah Bing and Jonathan Hurwitz, 60 Crescent Avenue, Newton, Massachusetts, pursuant to M.G.L. c. 40A, § 8, and 15, appealing an interpretation by the Commissioner of Inspectional Services addressing the appellants' intent to construct a front porch located at 24 Moreland Avenue, Newton, Massachusetts. The subject property consists of a 7,092 square foot lot in a Single Residence (SR-2) district.

Newton Tab

**March 13th & March
20th, 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.

FILE COPY

City Clerk Date/Time Stamp

ZB MAR 08 2019

Board Clerk

CITY OF NEWTON
ZONING BOARD OF APPEALS

**CHECKLIST COVER PAGE
FOR ADMINISTRATIVE APPEAL**

To be completed by Staff: Project No.: 19080015 Petition No.: #02-19

PROPERTY LOCATION: 24 Moreland Ave., Newton Center, MA 02459 DATE: March 7, 2019

PETITIONER: Deborah Bing and Jonathan Hurwitz

ADDRESS: 60 Crescent Ave., Newton Center, MA 02459 (we will live at 24 Moreland Ave. after completion)

PHONE: 617-549-3118 EMAIL: jdurwitz@gmail.com

POINT OF CONTACT: Jon Hurwitz (at the phone or email above)

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

DOCUMENTS

ENCLOSED
(checked by Petitioner)

CONFIRMED
(checked by Clerk)

Application for Administrative Review Form (15 copies)

[X]

X

Application Fee

[X]

X

check no. 44

Decision/Order being appealed

[X] Attached at Exhibit D

X

Statement of Reasons

[X] Attached

X

Reference to Zoning Ordinance

[X]

X

Electronic Copy

[X]

X

RECEIVED
Newton City Clerk
2019 MAR - 8 PM 1:14
David A. O'Neil
Newton, MA

CITY OF NEWTON
ZONING BOARD OF APPEALS

APPLICATION FOR ADMINISTRATIVE APPEAL

IMPORTANT: APPLICANTS MUST COMPLETE ALL ITEMS ON THIS FORM

PETITIONER INFORMATION

NAME: Deborah Bing and Jonathan Hurwitz
ADDRESS: 60 Crescent Ave., Newton Center, MA 02459 (we will live at the subject address after completion)
PHONE: 617-549-3118 EMAIL: jdhurwitz@gmail.com

SUBJECT PROPERTY INFORMATION

LOCATION OF PROPERTY: 24 Moreland Ave., Newton Center, MA 02459
ZONING DISTRICT: SR2 PROPERTY SBL NO.: 62003 0005
OWNER OF RECORD: Deborah E. Bing and Jonathan D. Hurwitz
RELATIONSHIP TO SUBJECT PROPERTY (i.e. owner, abutter, etc.):
Owners

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?

We are building a family home at the subject property. We are appealing Commissioner Lojek's decision that our open front porch should be counted as "floor area" under Newton's Zoning Ordinance.

Date of decision: February 27, 2019

(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:

Please see our answer to Question 2 on additional pages, attached.

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

- Exhibit A: Original front exterior elevation and first floor plan.
- Exhibit B: Emails of 6/20/18 between Jane Santosuosso and architect Richard Levey.
- Exhibit C: The revised front exterior elevation with pergola, as permitted.
- Exhibit D: Email of 2/27/19 from Commissioner John Lojek to petitioner. This is the ruling being appealed.

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

- Section 1.5.5. Floor Area
- Section 8.3. Defined Terms (specifically "Porch," "Porch, Enclosed," and "Porch, Unenclosed")

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

Our architect, a longtime resident of Newton, designed a home that is architecturally consistent with other homes on the street. Early in the design process, he sought the guidance of Newton's Chief Zoning Official to ensure that his design would meet the lot's FAR requirements. If the Commissioner's subsequent contrary decision is upheld, we would be compelled to choose between (a) the aesthetic and functional compromise of a pergola porch roof, and (b) the considerable cost and delay of modifying the building in other ways.

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


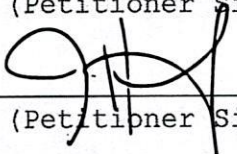
We would like permission to fully cover the roof of our unenclosed front porch, and to not be required to build the "pergola" compromise or otherwise redesign and modify the structure.

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	 _____	March 7, 2019 _____
	(Petitioner Signature)	(Date)
X	 _____	March 7, 2019 _____
	(Petitioner Signature)	(Date)

If Applicable:

Name of Attorney/Agent for Applicant: _____

Address of Attorney/Agent: _____

Phone Number of Attorney/Agent: _____

Email Address of Attorney/Agent: _____

APPLICATION :: APPEAL INFORMATION

QUESTION 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:

In June 2018, before finalizing the design of our family home, our Newton architect, Richard Levey, sent an email to Newton's Chief Zoning Code Official, Jane Santosuosso. He asked for confirmation that the front porch that he designed would not count towards the home's floor area for FAR purposes, and he provided a set of floor plans and elevations for her review. (See Exhibit A.) In his email, Mr. Levey explained as follows:

The design includes a covered entry that is unenclosed and facing the street. In my FAR calculations, I have not included the space as part of the square footage of the house since it unenclosed completely on the street side (not even railings). I wanted to make sure that it would not be interpreted as part of the house square footage for FAR purposes since it is recessed.

Ms. Santosuosso replied: "An open porch is not counted in the FAR. It should be fine." We moved forward with our plans. (See Exhibit B.)

When our builder applied for our building permit in October 2018, Deputy Commissioner/Plans Examiner Anthony Ciccariello said that our unenclosed front porch *would* be counted towards the floor area of our property, which would bring us slightly over the permissible FAR. We believe that this is an incorrect interpretation of the Zoning Ordinance.

After a discussion with our architect, Mr. Ciccariello agreed to exclude the porch from floor area if we replaced a portion of the porch roof with an open pergola. Our plans were approved with that modification in November 2018. (See Exhibit C.) Since then, however, we have grown increasingly uncomfortable with this ungainly compromise.

Whether roofed or not, our porch is not floor area under Newton's Zoning Ordinance. Section 1.5.5 explains that "floor area" is, fundamentally, the area enclosed within the walls of a building. Specifically, floor area is measured inward "from the exterior face of the exterior walls":

1. Residential Districts. The sum of the floor area of all principal and accessory [sic] buildings whether or not habitable shall be taken from the exterior face of the exterior walls of each building without deduction for garage space,

hallways, stairs, closets, thickness of walls, columns, atria, open wells and other vertical open spaces, or other features as defined in this Sec. 1.5.5, as defined below:

- a. Gross floor area shall include:
 - i. First and second stories;
 - ...
 - iv. Enclosed porches;
 - v. Attached garages; . . .
- b. Gross floor area shall not include:
 - i. Unenclosed porches;
 -

Because our porch is outside of the exterior walls, it would only count towards FAR if it is pulled in by some other provision.

I emailed Ms. Santosuosso in January 2019 to seek her guidance. She now explained that the porch does not technically meet the definition of a porch. She is correct. Under Section 8.3 of the Zoning Ordinance, our unenclosed porch is not a porch at all, since it shares "more than two exterior walls with the residential structure":

Porch: A roofed structure with sides not more than 60 percent enclosed by impermeable walls, attached to and accessible from the primary structure, and not heated or air conditioned. A porch may share no more than two exterior walls with the residential structure. Railings or solid walls on the projecting facades of the porch may be no higher than 36 inches as measured from the finished porch floor; the remainder of these facades may be open to the elements or enclosed by mesh, glass, or similar material.

Porch, Enclosed: A porch enclosed for any portion of the year by any non-permeable material such as glass or a similar material.

Porch, Unenclosed: A porch that at all times is either enclosed by permeable materials such as mesh or similar material or is unenclosed by any material.

To be clear, if our porch *were* a porch, it would be an unenclosed porch rather than an enclosed porch, since it is not "enclosed for any portion of the year by any non-permeable material." The

result would be the same, since neither an unenclosed porch nor a “non-porch” outside the exterior walls is floor area.

Ms. Santosuosso ultimately deferred the decision to Commissioner Lojek. I emailed him on February 11, 2019, to request a ruling on this issue.

While I awaited Commissioner Lojek's decision, I had an opportunity to discuss the matter with Mr. Ciccariello. He explained that Inspectional Services counts our front porch towards floor area because it is covered by a roof. The Zoning Ordinance, however, defines floor area only with reference to the exterior walls of the structure, with no mention of a “roof.” A roof is not relevant to the the Ordinance's definition of floor area.

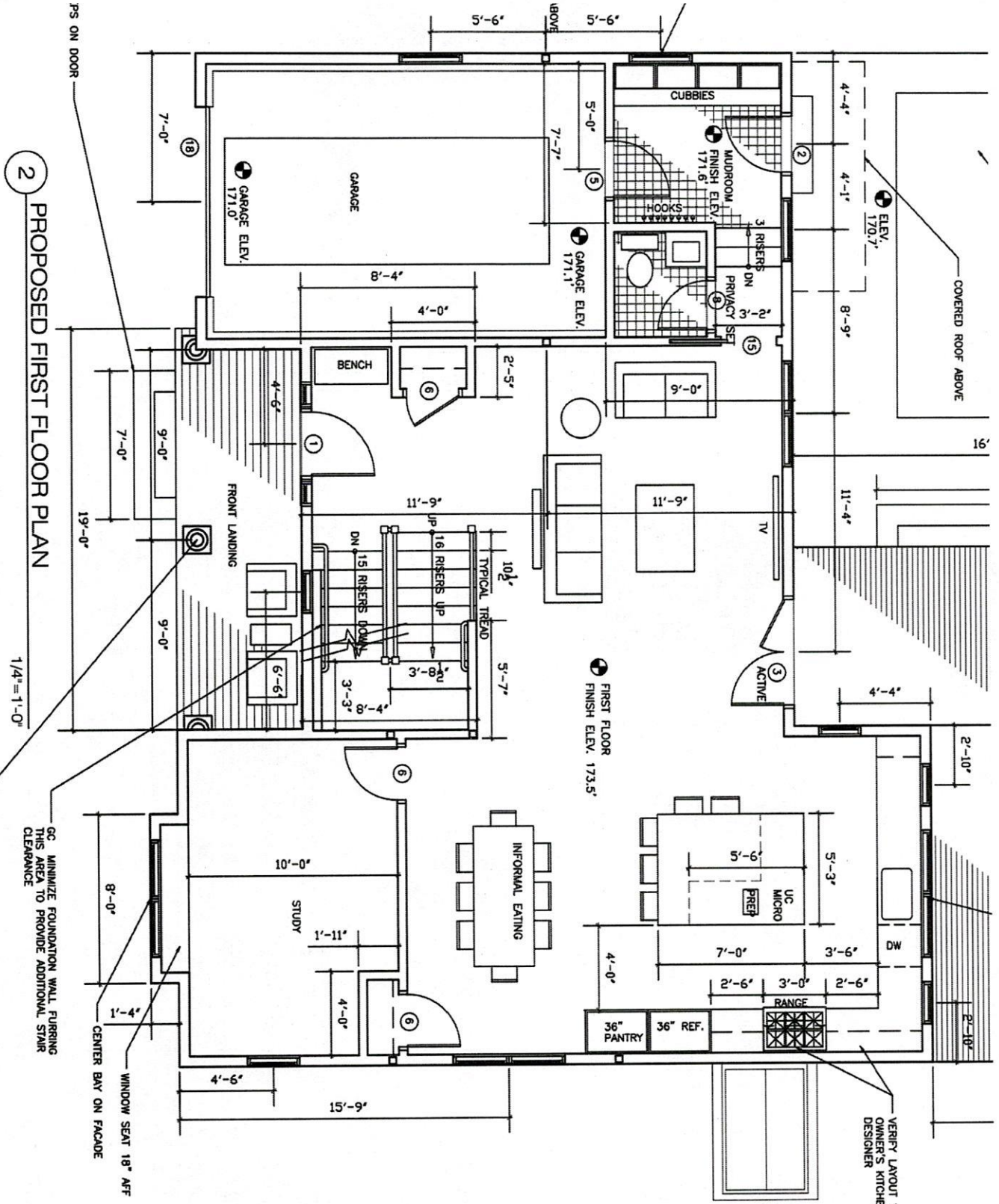
On February 27, 2019, Commissioner Lojek made his decision, and advised us that his department *will* count our porch towards the home's floor area. (See Exhibit D.)

There is no dispute that our porch will be outside the exterior walls of the building. Nor is it disputed that the porch is not actually a "porch" under the Ordinance. To count it towards our home's floor area, therefore, would be to unfairly extend the Ordinance beyond its plain language.

We are not ones to debate the logic or fairness of the FAR concept itself; we accept that the code is the code. But as ardent rule-followers, we strongly feel that the city's residents — and their architects — should be able to rely on and act in accordance with the language of the Zoning Code.

Exhibit A

The original front exterior elevation and first floor plan, which were provided to Jane Santusuosso by architect Rich Levey and later submitted to Inspectional Services for permitting.



2 PROPOSED FIRST FLOOR PLAN
1/4" = 1'-0"

GC MINIMIZE FOUNDATION WALL FURRING THIS AREA TO PROVIDE ADDITIONAL STAIR CLEARANCE
12" DIAMETER PAINTED DORIC TAPERED COMPOSITE COLUMNS.

VERIFY LAYOUT WITH OWNER'S KITCHEN DESIGNER

24 MORELAND AVE
NEWTON, MA

BING / HURWITZ
RESIDENCE



RICHARD B. LEVEY architects

30 Jacobs Terr.
Newton, MA 02459
617.527.5300
www.rblarchitects.com



Exhibit B

**Emails of June 20, 2018, between Jane Santosuosso and
architect Richard Levey, addressing the front entryway / porch
at 24 Moreland Avenue**

wd: 24 Moreland Ave. FAR question

Richard Levey <rblarchitect@gmail.com>

Wed, Jun 20, 2018 at 2:45 PM

Ohan Ozcan <ohan@atlascontractingonline.com>, Jon Hurwitz <jdhurwitz@gmail.com>

----- Forwarded message -----

From: **Jane Santosuosso** <jsantosuosso@newtonma.gov>

Date: Wed, Jun 20, 2018 at 9:26 AM

Subject: RE: 24 Moreland Ave. FAR question

To: Richard Levey <rblarchitect@gmail.com>

Good morning,

An open porch is not counted in the FAR. It should be fine.

Regards,

Jane

From: Richard Levey <rblarchitect@gmail.com>

Sent: Wednesday, June 20, 2018 8:04 AM

To: Jane Santosuosso <jsantosuosso@newtonma.gov>

Subject: 24 Moreland Ave. FAR question

Hi Jane,

Hope you are well.

I'd like to get your thoughts on an FAR question related to a new home at 24 Moreland Ave. I've attached the floor plans and elevations.

The design includes a covered entry that is unenclosed and facing the street. In my FAR calculations, I have not included the space as part of the square footage of the house since it unenclosed completely on the street side (not even railings). I wanted to make sure that it would not be interpreted as part of the house square footage for FAR purposes since it is excessive.

Not that my opinion matters, but I always looked at the enclosed porch definition of the FAR as related to porches that had glazing and felt like part of the house even though they were unheated, not covered open entries.

I appreciate your time and thoughts on this.

Best Regards,

Rich

Richard Levey
RBL Architects
80 Jacobs Terr., Newton MA 02459
617-527-5300
www.rblarchitects.com

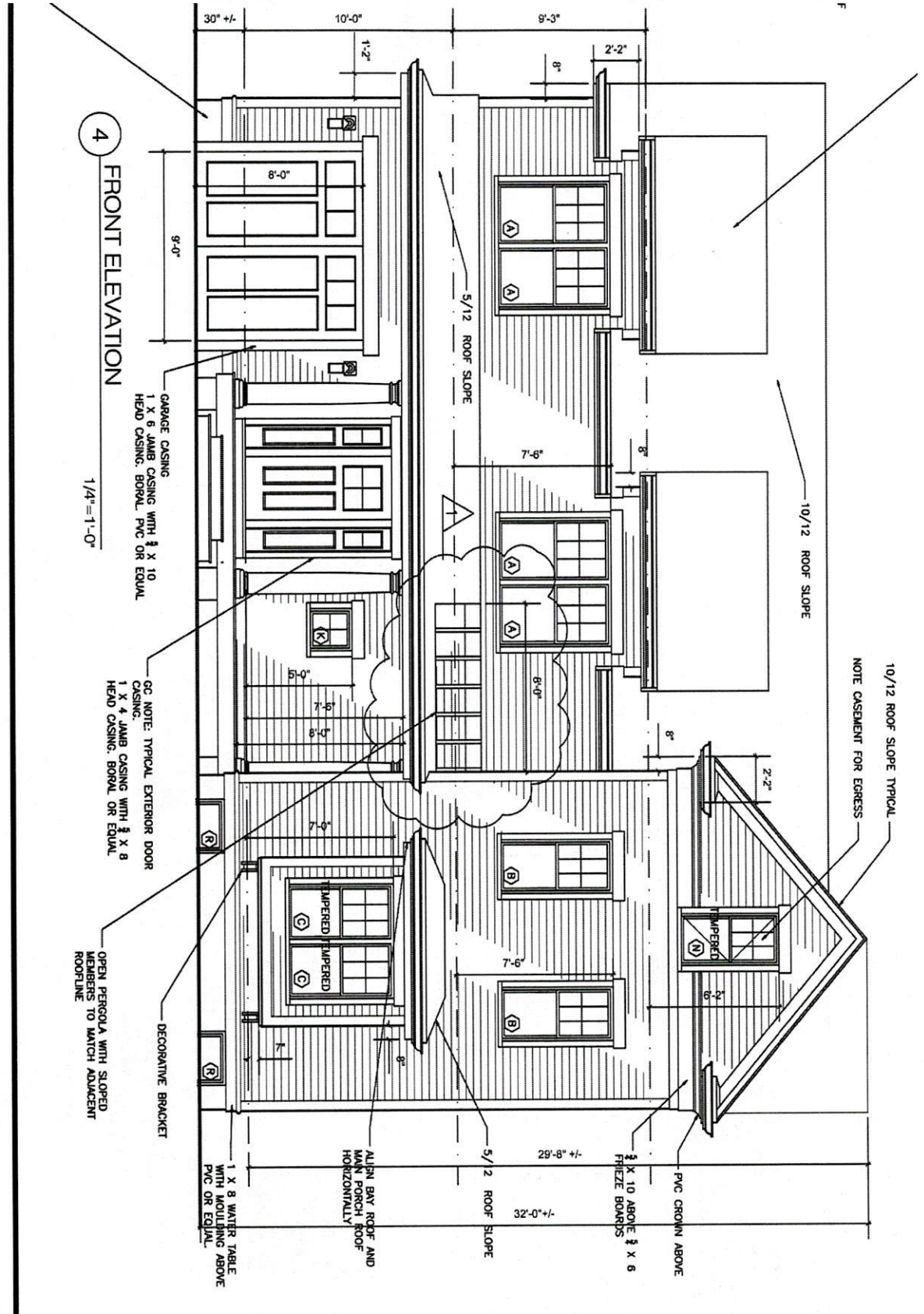
rlblarchitect@gmail.com

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.

Richard Levey
RBL Architects
80 Jacobs Terr., Newton MA 02459
617-527-5300
www.rblarchitects.com
rlblarchitect@gmail.com

Exhibit C

The revised front exterior elevation with pergola,
as approved for construction by Inspectional Services.



4 FRONT ELEVATION

1/4" = 1'-0"

GARAGE CASING
1 X 6 JAMB CASING WITH 3/4 X 10
HEAD CASING. BORAL, PVC OR EQUAL

GC NOTE: TYPICAL EXTERIOR DOOR
CASING:
1 X 4 JAMB CASING WITH 3/4 X 8
HEAD CASING. BORAL OR EQUAL

OPEN PERGOLA WITH SLOPED
MEMBERS TO MATCH ADJACENT
ROOFLINE

DECORATIVE BRACKET

1 X 8 WATER TABLE
WITH MOLDING ABOVE
PVC OR EQUAL

ALLEN BAY ROOF AND
MAIN PORCH ROOF
HORIZONTALLY

5/12 ROOF SLOPE

3/4 X 10 ABOVE 3/4 X 8
FRIEZE BOARDS

PVC CROWN ABOVE

10/12 ROOF SLOPE TYPICAL
NOTE CASEMENT FOR EGRESS



RICHARD B. LEVEY architects

30 Jacobs Terr.
Newton, MA 02459
617.527.5300
www.rblarchitects.com

BING / HURWITZ
RESIDENCE

24 MORELAND AVE
NEWTON, MA

PROPOSED
EXTERIOR
ELEVATIONS

DATE: 6/6/18

SCALE: 1/4" = 1'-0"

DRAWN: RBL

A4

Exhibit D

Email of February 27, 2019, from Commissioner John Lojek to petitioner, affirming that Inspectional Services will count the porch as floor area.

This is the ruling being appealed.



Jon Hurwitz <jdhurwitz@gmail.com>

4 Moreland Ave. (New Residential Construction)

John Lojek <jlojek@newtonma.gov>

Wed, Feb 27, 2019 at 4:18 PM

: Jon Hurwitz <jdhurwitz@gmail.com>

: Debra Finamore <dfinamore@newtonma.gov>, Debbie Bing <dbing@cfar.com>, Anthony Ciccariello
ciccariello@newtonma.gov>

Mr. Hurwitz,

I have read your request and must respectfully disagree with your interpretation of section 1.5.5. For purposes of FAR, we have counted areas such as the area in question when it meets the parameters of the "porch" definition for that which is more than 60 percent enclosed by impermeable walls, attached to and accessible from the primary structure, and not heated or air conditioned."

If you want to appeal that decision you may do so by filing for an Appeal of the interpretation of the Commissioner to the Zoning Board of Appeals. You may also apply for a Special Permit for relief of FAR.

John D. Lojek

[Quoted text hidden]

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.

4 Moreland Ave. (New Residential Construction)

messages

Jon Hurwitz <jdhurwitz@gmail.com>
John Lojek <jlojek@newtonma.gov>
Debbie Bing <dbing@cfar.com>

Mon, Feb 11, 2019 at 5:05 PM

NOTE: This is the email thread leading up to and including Commissioner Lojek's decision.

Hi, John.

I am following up on the voicemail that I left you this afternoon, to provide a bit more context about the zoning issue at 24 Moreland Avenue. I'm sure you are terribly busy, but we would greatly appreciate a quick decision, as it will impact our construction within the next week.

Here's where we are...

Last summer, before finalizing the design of our family home, architect Rich Levey emailed Jane Santosuosso to confirm that the front porch that he designed would not count towards FAR. He provided a set of floor plans and elevations. Jane replied: "An open porch is not counted in the FAR. It should be fine." We moved forward with our plans.

When we applied for the building permit a few months later, Anthony Ciccariello said that our unenclosed front porch should be counted towards the Floor Area of our property, which would bring us over the permissible FAR. Anthony agreed to exclude the porch from FAR if we replaced a portion of the porch roof with an open pergola. Although this is what our plan currently provides, we would like to avoid this somewhat ungainly solution.

I emailed Jane two weeks ago to get her input. She explained that the porch does not technically meet the definition of an unenclosed porch." Because the porch shares three walls with the structure, I have to agree with her: Common sense aside, our unenclosed porch is not an "unenclosed porch" under the zoning code. In fact, as the ordinance is written, it is technically not a "porch" at all, since it shares "more than two exterior walls with the residential structure."

But because this determination relies on a technical reading of the code, it seems clear that the porch absolutely does not constitute Floor Area, either. It is plainly not within the exterior walls of the home, which is the definition of "Floor Area" under Zoning Ordinance section 1.5.5(B)(1): "The sum of the floor area ... shall be taken from the exterior face of the exterior walls of each building...." The porch is outside the building envelope, that is, it is outside the exterior face of the exterior walls.

Because our porch is outside of the exterior walls, it could only count towards FAR if it is explicitly pulled in by another provision. Importantly, it does not meet the ordinance's definition of an "enclosed porch," since it is not "enclosed for any portion of the year by any non-permeable material." (And again, it's not technically even a porch.) There is no other provision that pulls the porch into the floor area.

Jane ultimately deferred the decision to you.

I am not one to debate the logic or fairness of the FAR concept itself; I accept that the code is the code. But I do feel that the City's residents should be able to rely on the FAR language as it is written, as well as on the guidance of the city's Chief Zoning Code Official. The ordinance's application should not be extended beyond what the words provide. As a former litigator who has spent the last thirteen years avoiding conflict, I am confident that a legal determination would favor our interpretation — but I truly do not want this to escalate further.

I have attached our approved architectural plans for your reference. The original roof design can be seen on the front elevation on page 1, on the Fire Department-stamped copy. The pergola modification can be seen on page 5.

Please feel free to let me know if you would like to discuss this, either at your office or by phone. Otherwise, we look forward to your determination.

Thank you.

Kind regards,

Jon Hurwitz and Debbie Bing

617-549-3118

 Arch Plans.pdf
7189K

Jon Hurwitz <jdhurwitz@gmail.com>
<John Lojek <jlojek@newtonma.gov>
<dfinamore@newtonma.gov, Debbie Bing <dbing@cfar.com>

Mon, Feb 25, 2019 at 1:21 PM

Hi, John.

I'm sorry to pester you, but I'm following up on my voicemails regarding the issue below. We are anxious to receive your determination so that we can proceed accordingly. It seems a relatively trivial matter, but it is impacting our current construction. Please let me know, of course, if there is someone else that we should direct our inquiry to.

Thank you again for your consideration.

Regards,

Jon
617-549-3118

[Quoted text hidden]

Jon Hurwitz <jdhurwitz@gmail.com>
<John Lojek <jlojek@newtonma.gov>
<dfinamore@newtonma.gov, Debbie Bing <dbing@cfar.com>

Wed, Feb 27, 2019 at 12:06 PM

Hi, John.

I met with and discussed this issue with Anthony Ciccariello this morning. He explained that Inspectional Services considers our front porch to count towards Floor Area because it is covered by a roof. I pointed out that the Zoning Ordinance defines Floor Area only with reference to the exterior walls of the structure, with no mention of a "roof": "The sum of the floor area ... shall be taken from the exterior face of the exterior walls of each building..." A roof is not relevant to the the Ordinance's definition of floor area.

We all agree that our porch is outside the exterior walls of the building, and we all agree with the conclusion that it is not a "porch" under the Ordinance. To count it towards our home's floor area would be to extend the Ordinance beyond its plain language. Our architect designed our house in complete compliance with the Ordinance, and in consultation with the city's Chief Zoning Code Official. We would really appreciate your approval of that original design.

Whatever your decision, please provide it as soon as you are able, so that we can proceed accordingly.

Thank you,

Jon
617-549-3118

[Quoted text hidden]

John Lojek <jlojek@newtonma.gov>
Jon Hurwitz <jdhurwitz@gmail.com>
<Debra Finamore <dfinamore@newtonma.gov>, Debbie Bing <dbing@cfar.com>, Anthony Ciccariello
<ccicariello@newtonma.gov>

Wed, Feb 27, 2019 at 4:18 PM

Mr. Hurwitz,

We have read your request and must respectfully disagree with your interpretation of section 1.5.5. For purposes of FAR, we have counted areas such as the area in question when it meets the parameters of the "porch" definition for that which is

more than 60 percent enclosed by impermeable walls, attached to and accessible from the primary structure, and not heated or air conditioned.”

If you want to appeal that decision you may do so by filing for an Appeal of the interpretation of the Commissioner to the Zoning Board of Appeals. You may also apply for a Special Permit for relief of FAR.

John D. Lojek

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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.

John Hurwitz <jdhurwitz@gmail.com>

Fri, Mar 1, 2019 at 2:43 PM

John Lojek <jlojek@newtonma.gov>

Debra Finamore <dfinamore@newtonma.gov>, Debbie Bing <dbing@cfar.com>, Anthony Ciccariello
ciccariello@newtonma.gov>

Thank you for your reply — I know you've got a lot going on.

Have a nice weekend.

John

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