



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:** August 29, 2019  
**Subject:** Materials for **September 25, 2019** Public Hearing

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Hello,

Please see the following supplemental materials for the upcoming hearing on **September 25, 2019** Public Hearing. The following board members are scheduled to sit: **Brooke Lipsitt (Chair), William McLaughlin, Stuart Snyder, Barbara Huggins Carboni, Treff LaFleche and Lei Reilley (Alternate)**

1. Agenda for September 25, 2019
2. Minutes for March 27, 2019 meeting, May 22, 2019 meeting and June 26, 2019 meeting.
3. Variance Petition for 13 Prospect Street (#06-19) filed on August 14, 2019 –  
*Please note that the previous Variance decision (#04-13) is included within the Zoning Memorandum and that the cover page is the Comprehensive Permit cover page, rather than the Variance cover page but the material provided has everything that is required of a Variance Petition.*

Thank you,

Adrianna Henriquez

**ahenriquez@newtonma.gov | (617) 796 1133**



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## ZONING BOARD OF APPEALS

Adrianna Henriquez, Board Clerk

### AGENDA

**A public hearing of the Newton Zoning Board of Appeals will be held on Wednesday, September 25, 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:**

**1. Review and approval of minutes for March 27, 2019 meeting, May 22, 2019 meeting and June 26, 2019 meeting.**

**2. #06-19** Kathy Jordan Quern and Albert F. Quern of 13 Prospect Street, Newton, Massachusetts request to amend Variance #4-13 relative to the subject property, which is a 6,611 square foot lot in a Multi-Residence 2 (MR-2) zoning district. Petitioners seek to construct a rear addition and request to amend Variance #04-13 to increase lot coverage to 32.3% where 30% is the maximum allowed per Section 3.2.3 of the Newton Zoning Ordinance and to decrease open space to 42.9% where 44.7% is the minimum allowed per Section 3.2.3 of the Newton Zoning Ordinance.

**Boston Globe**

**September 11th &  
September 18th, 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](mailto: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.



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**ZONING BOARD OF APPEALS**  
Adrianna Henriquez, Board Clerk

## **MEETING MINUTES**

**Wednesday, March 27, 2019**

**7:02 p.m.**

**Council Chambers**

**City Hall – 1000 Commonwealth Avenue, Newton**

**Board Members Present:** Brooke Lipsitt (Chair), Barbara Huggins Carboni, Lei Reilley, Michael Rossi and Stuart Snyder,

**Staff Present:** Adrianna Henriquez, Board Clerk; Jaclyn Zawada, Assistant City Solicitor

**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.

### **Documents Submitted:**

The following documents were submitted to the Board and/or entered into the record at the public hearing:

1. Appeal of Decision of the Commissioner with accompanying documents, received March 8, 2019
2. Supplemental documentation from appellant to the Zoning Board of Appeals, received March 19, 2019

### **Deliberation:**

Before addressing the substance of the appeal, Chairman Lipsitt inquired whether the matter was



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properly before the board. Chairman Lipsitt asked why the Board should address the appeal, which was filed more than 30 days after the building permit was issued.

Petitioner Jonathan Hurwitz, 60 Crescent Avenue, explained that the in order to appeal, they would need a decision from Commissioner John Lojek which is what he gave in February would be the appealable one. Brooke Lipsitt asked what the decision that is different from the issuance of the building permit. Mr. Hurwitz explained that he believed that Commissioner Lojek did not consider the specific issues of the porch or the argument that they are making.

Mr. Hurwitz explained that when Deputy Commissioner of the City of Newton's Inspectional Service Department, Anthony Ciccariello made the determination that this project would be considered towards the FAR, they were at the end of 30-day appeal period and didn't have time to formally appeal nor did they want to delay construction any longer while they explored their options. Weren't trying to appeal the building permit. Brooke Lipsitt referred to exhibit D which email February 27, 2019 from Commissioner John Lojek affirming that ISD will count the porch as floor area and that based off the documents, it had previously been determined that this porch would count towards FAR and that is why the project why redesigned to have an open roof. Mr. Hurwitz declared that he believes Commissioner Lojek issued an opinion that reached that conclusion.

Michael Rossi asked the appellant to explain what information he received in February that was different than the information you received in October. Mr. Hurwitz explained that he believes that a final opinion of the Zoning Ordinance from Mr. Lojek. Mr. Hurwitz explained that he thought Mr. Lojek would reconsider his proposal and thought that they did not have a final opinion from the Commissioner. The appellant also noted that if the Board concludes that he should have properly appealed when the building permit was issued, they would like to resubmit their building plans with the covered roof. Chairman Lipsitt explained that the Zoning Board of Appeals does not have the authority to revise the building permit, and that she believes that Mr. Hurwitz has been advised that he can apply for a Special Permit for expanding the FAR of the building but the issue of redesigning and approving a new design is not properly in front of the Zoning Board of Appeals.

Mr. Hurwitz explained that he thought he needed a final decision of the Commissioner in order to appeal and that he didn't think they were appealing the building plans. He explained that he is



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not appealing the issuance of the building permit, they are appealing the subsequent decision of the Commissioner that precluded their change. Mr. Hurwitz explained that if the Newton Zoning Ordinance, they would apply for a modification. It was the decision of commissioner Lojek that supports deputy commissioner said, that's what would be appealed.

Stuart Snyder asked if the plans presented, not including the pergola, were denied. Petitioner Jon Hurwitz explained that he was unaware and that he wasn't personally involved in the conversation that took place. His builder presented the plans to the Inspectional Services Department. When presented, the roof and far was questioned, the architect reached out to the Inspectional Services Department. Mr. Snyder asked if based off the negative reaction to the plans, revisions were made and that's when the building permit was issued was based on? Mr. Hurwitz concluded that that was correct.

Commissioner John Lojek spoke on behalf of the Inspectional Services Department. Mr. Lojek explained that the illusion that his email back to Mr. Hurwitz was a decision of any kind. When emails are received by Commissioner Lojek, he responds. When Anthony Ciccariello asked Mr. Lojek about the project, Commissioner Lojek agreed with his stance for the Department. Commissioner Lojek explained that every decision that comes out of his department isn't his; he authorizes his colleagues to make decisions for the Department. At the end of October, because the applicants wanted their building permit, Anthony explained what they could do but they could not do what they've originally proposed. Mr. Ciccariello informed Commissioner Lojek that the petitioner agreed to pergola but not the roof. Mr. Lojek explained that the decision that was made was based off the plans presented at the time the building permit was issued. The issuance of that permit was based off compliance with both the zoning code and the building code and that they cannot issue a permit unless it complies.

Stuart Snyder asked Commissioner Lojek if the petitioner had not agreed to revise their plans but instead presented the plans they wish to proceed with knowing they don't meet the requirements and they sought a denial of these plans, would that be an appealable decision. Mr. Lojek agreed explaining that most applicants would just revise plans.

Lei Reilley referred to Commissioner Lojek's email dated February 27, 2019 explaining that in that email, Mr. Lojek responded inviting the applicant to file an appeal with the ZBA. Mr. Lojek



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explained that the language in his email was “boiler plate” cut and paste language. Commissioner Lojek explained that there are two means to appeal his decision; to file with the Zoning Board of Appeals or request a Special Permit.

Chairman Lipsitt then reiterated that the question in front of the Board is whether the appeal was filed timely and asked whether there were any comments or motions from the Board.

Mr. Rossi commented that while there was a little bit of ambiguity, he did not see any change in circumstances between October and February. He further stated that the Petitioners were in no different position with respect to the information that the Department was providing in February as compared to November. Mr. Rossi also noted that the Petitioners seemed to agree with that, and the only distinction the Petitioners were making is that the information received in October 2018 came from Deputy Commissioner Ciccariello whereas the information received in February 2019 came from Commissioner Lojek. Mr. Rossi concluded this was not a distinction with a difference and that he was inclined to find that the appeal was untimely.

Barbara Huggins Carboni commented explaining that this appeal is not just a question of untimeliness, whether the board has the authority redesign a project. The applicant received a building permit based off a compromise of what would count and what wouldn't count towards FAR and as they were building the project, they came to the conclusion that they didn't like result and wanted a redesign or another opinion of the building department that would allow them the design they desired. Mrs. Huggins Carboni explained that if what the petitioner wanted was the enclosed porch, and the building department told the applicant that their project exceeds the FAR, they were advised they could go to the City Council to seek a special permit to increase the FAR permitted. Barbara Huggins Carboni noted that not only does she see this as untimely petition, but it is also not up to this board to make that decision, it would be the City Council.

Barbara Huggins Carboni explained her concerns for the building department noting that they must get a lot of calls and emails after a building permit has been issued. Mrs. Huggins Carboni explained that it is not appropriate to consider every phone call or email to be counted as a decision.

Stuart Snyder agreed that each email shouldn't be constituted as a decision. Mr. Snyder reverted to Michael Rossi's point of whether the issuance of BP or the non-issuance of the formally



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requested bp, that was the point in which an appeal would be properly taken. On that basis, Mr. Snyder would be inclined to make a motion to reject the appeal as untimely.

Mr. Hurwitz explained that this process is difficult as a resident of the City. He reiterated that the Petitioners agreed to a change in plans as a result of a quick discussion between their architect Mr. Levey and Deputy Commissioner Ciccariello. The Petitioners accepted that but maintained that they were still able to ask for an actual, formal ruling from the Department. Mr. Hurwitz also noted the Petitioners would not have filed the appeal had Commissioner Lojek not specifically invited them to do so. He also noted it was not right for the Board to avoid the substance of the matter with this question of timeliness.

Chairman Lipsitt explained to the Petitioner that the Zoning Board of Appeals has limits to its authority and discretion. She explained that the City and the Board accept decisions from Commissioner Lojek's office as coming from Commissioner Lojek himself.

*A motion was made by Mr. Snyder to deny the Petitioners' Application for Administrative Appeal of an interpretation by the Commissioner of Inspectional Services addressing the petitioners' intent to construct a front porch on the basis that the appeal was not timely filed with the Board. The motion was duly seconded by Mr. Rossi and passed five in favor, zero opposed.*

### **Findings and Determination:**

1. In October 2018, Deputy Commissioner Ciccariello determined the unenclosed, covered entry in Petitioners' plans would count toward the FAR calculation and Petitioner would be in excess of the permissible FAR. On November 1, 2018, Commissioner Lojek determined that the unenclosed, covered entry was not a "porch" for the purposes of FAR and would count toward the FAR calculation. Petitioners revised their plans and on November 7, 2018, were issued a building permit based upon their revised plans.
2. Petitioners did not file an appeal within the 30-day time period required per G.L. c. 40A §15.
3. Commissioner Lojek's email dated February 27, 2019 is not an "order or decision" for the purposes of filing an appeal pursuant to G.L. c.40A, §8.



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4. Therefore, Petitioners' appeal dated March 8, 2019 was untimely. Accordingly, the Board lacks jurisdiction to entertain Petitioners' March 8, 2019 appeal.

**Meeting Adjourned: 7:37 p.m.**





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## ZONING BOARD OF APPEALS

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### MEETING MINUTES

**Wednesday, May 22, 2019**

**7:04 p.m.**

**Room 211**

**City Hall – 1000 Commonwealth Avenue, Newton**

**Board Members Present:** Brooke Lipsitt (Chair), Barbara Huggins Carboni, Michael Quinn, Michael Rossi and Stuart Snyder

**Staff Present:** Adrianna Henriquez, Board Clerk; Jaclyn Zawada, Assistant City Solicitor

**A public hearing of the Newton Zoning Board of Appeals was held on Wednesday, May 22, 2019 at 7:00 p.m. in Room 211, Newton City Hall, 1000 Commonwealth Avenue, Newton Centre, Massachusetts on the following petition:**

**#03-19** Traolach Cahillane, 35-37 William Street, Newton, Massachusetts, pursuant to G.L. c. 40A, §§ 8 and 15, appealing the March 8, 2019 Notice of Violation issued by the Commissioner of Inspectional Services for violation of Sections 5.3 and 8.3 of the Newton Zoning Ordinance governing stormwater management and usable open space, and for violation of Section R105 of the State Building Code, 780 CMR 51.00, governing building permits. The Appellant contended that the violation order and decision of the Commissioner of Inspectional Services was improperly issued. The subject property consists of a 3,040 square foot lot and is located in a Multi-Residence 2 District.

### Documents Submitted:



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The following documents were submitted to the Board and/or entered into the record at the public hearing:

1. Appeal of Decision of the Commissioner with accompanying documents, received April 3, 2019
2. Supplemental documentation from Appellant to the Zoning Board of Appeals, received April 10, 2019

### **Late Filed Material:**

1. A set of photographs, a Commissioner's bulletin dated May 16, 2011 regarding paving driveways, section 8.3, article 8 & section 5.3, article 5 of the Newton Zoning Ordinance and building jacket information filed night of hearing by Commissioner of Inspectional Services, John Lojek, on May 22, 2019
2. A set of photographs filed night of hearing by Appellant's representative, Tavis Babbitt, on May 22, 2019

### **Deliberation:**

Representing Traolach Cahillane, Mr. Tavis Babbitt of 60 Breed Street, Unit 5, Lynn, gave an overview of the appeal. Mr. Babbitt explained that the entire property was paved and in poor condition with an accompanying tree, which was also in poor condition. Therefore, both the driveway and tree were removed. It was noted that the Appellant installed new pavers and a 250-gallon drywell in the back area of the property. The Appellant's intention was to replace an already impervious area and render the space usable.



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Board member Michael Quinn asked if the Appellant hired a professional engineer or if the grade of the property changed. Mr. Babbitt said no and explained that the Appellant added the drywell with the thought that a lot of water would accumulate.

Commissioner of Inspectional Services Department, John Lojek, explained to the Board that the violation notice and violations are clear. A decrease in open space below 50% would require relief, which was not sought. Alan Gifford, City of Newton Building Inspector, had just closed out the subject property's building permit. Subsequently, when driving down William Street, Mr. Gifford was held up due to a traffic jam caused by paving trucks. The Commissioner explained that if pavers are used for parking, then it counts against open space. Referring to the photos provided, Commissioner Lojek noted that you can see from the Google Maps photos that there was previously grass and a lawn chair in the backyard of the subject property.

Commissioner Lojek further noted that in an owner-occupied home, a tree permit is not necessary. But here where the subject property is not owner-occupied, the Appellant needed to get a tree permit.

Commissioner Lojek also stated that the Appellant put in a drainage system, but it has not been approved, as it has never been inspected. Commissioner Lojek explained that these changes have to be calculated by professional engineers and inspected, but none of this was done.

Karen Waller, owner of approximately 15 years to the abutting property, 31-33 William Street. Ms. Waller explained that she hopes to figure out a course of action for this appeal, as it is holding up renovations she wishes to make on her property.

Brooke Lipsitt noted that the board cannot answer Ms. Waller's question on how to move forward with her renovations but can develop a way forward for the Appellant.



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Michael Rossi asked Ms. Waller if she's ever present at property, as she does not reside at the property and resides in Natick. Ms. Waller explained that she attends to the property every couple week.

Amy Beckler, 48 Jefferson Street explained that there is more water in her basement, and it comes from the runoff of William Street to the side of Jefferson Street.

Beverly Reid, 44 Jefferson Street expressed that she is neither in favor of nor opposed to the appeal, but that she wanted to know more about this issue.

The Appellant's project manager for the project, Bernard Newhouse, 210 Paulfrey Watertown, also spoke. He noted that he worked on project and was there most of the time. The properties asphalt was cracked, the plants were overgrown and the property "was a mess." Mr. Newhouse noted that the owner got the permit, and he did the work for him inside of the house.

*Motion to close the public hearing moved by Michael Quinn. This motion was duly seconded Barbara Huggins Carboni. The motion passed five in favor and none opposed.*

Chairman Brooke Lipsitt noted that as there appeared to be no argument on the Appellant's behalf that he was not obligated to get a permit, she would accept a motion.

*Michael Quinn moved to deny the Appellant's appeal and uphold the Commissioner of Inspectional Services issuance of the violation. This motion was duly seconded by Michael Rossi. The motion passed five in favor and none opposed.*

**Meeting Adjourned:** 8:07 p.m.

**ZBA DECISIONS can be found at:**

<http://www.newtonma.gov/gov/inspsvcs/appeals/current.asp>



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## ZONING BOARD OF APPEALS

Adrianna Henriquez, Board Clerk

### MEETING MINUTES

**Wednesday, June 26, 2019**

**7:12 p.m.**

**Council Chambers**

**City Hall – 1000 Commonwealth Avenue, Newton**

**Board Members Present:** William McLaughlin (Chair), Barbara Huggins Carboni, Michael Quinn, Michael Rossi and Stuart Snyder

**Staff Present:** Adrianna Henriquez, Board Clerk; Jonah Temple, Assistant City Solicitor

**A public hearing of the Newton Zoning Board of Appeals was held on Wednesday, June 26, 2019 at 7:00 p.m. in the Council Chambers, Newton City Hall, 1000 Commonwealth Avenue, Newton Centre, Massachusetts on the following petition:**

**#04-19** Herrick Road Realty Trust, 907 Massachusetts Avenue, Cambridge, Massachusetts, requesting a variance from the front yard setback requirement of the Newton Zoning Ordinance, Section 4.1.3, to construct a three-story, nine-unit residential building at 39 Herrick Road. The subject property is located in the Business 1 zoning district and consists of a 12,979 square foot lot.

### Documents Submitted:

The following documents were submitted to the Board and/or entered into the record at the public hearing:

1. Application for Variance, with accompanying documents, dated June 3, 2019



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### **Deliberation:**

Representing Herrick Road Realty Trust, Attorney Terry Morris of 57 Elm Road Newtonville gave an overview of the Variance petition. Mr. Morris explained that this is the third time in ten years this address has been presented to the Zoning Board of Appeals. The site was granted a variance in 2010 from the front setback requirement from the footpath, allowing the three-story mixed-use structure to be built directly abutting it, but the variance was not exercised. The petitioner then applied for another Variance in 2015. The difference from the requested 2010 variance was to have ground floor office space rather than having ground floor restaurant space. The property has frontage along Herrick Road with access through a City-owned parking lot on Cypress Street. The property is also abutted by a 10-foot wide public foot path, provided by an easement, which is considered frontage for the purposes of zoning. Mr. Morris explained that when going through the special permit process, a 10-foot setback from the lot line was needed, but the lot line was reduced from the public foot path. A special permit was recently granted to allow the three-story, nine-unit residential building for residents fifty-five and over.

Stuart Rothman, Trustee of Herrick Road Realty Trust, explained that he has been one of the owners of the property subsequently before 1998. In 1998, they were given the license to enter through the Cypress lot and 18 parking spaces were allotted for the parcel located at 17-31 Herrick Road. Currently, not all of the parking spaces are rented. The tenants of 17-31 Herrick Road understand that the spots are terminable by either party and this lot is subject to development.

Terry Morris interjected explaining that the Land Use committee had concerns about the effect this project would have on the tenants of 17-31 Herrick Road. Mr. Morris explained that part of the special permit was to apply a Transportation Demand Management Plan which give incentives to the residents including subsidy for a T-Passes for two years.



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*There was no public comment.*

Board member Michael Quinn commented saying that the site is unique, given the location of the MBTA and the site itself in which makes it a “difficult piece of land”. Both Michael Rossi and Stuart Snyder agreed with Mr. Quinn’s comments. Stuart Snyder added that with the removal of the walkway easement, it adds to the site’s hardship. Board member Barbara Huggins Carboni noted that she previously voted for the project, and would be inclined to do so again.

*Motion to close the public hearing made by Michael Rossi. This motion was duly seconded by Stuart Snyder. The motion passed five in favor and none opposed.*

### **Proposed Findings:**

1. The lot is unique due to its irregular, polygonal shape, the existence of the public footpath easement and diminished frontage, which conditions affect only the subject property and not other lots in the area.
2. A hardship exists in that the shape of the lot and steep gradient of the adjacent MBTA land severely complicate the siting and construction of the building, and the variance is the minimum change necessary to allow the reasonable use of the lot.
3. No substantial detriment to the public will occur in that the departure from the Zoning Ordinance requirement would not change the character of the surrounding area.
4. Granting the variance requested would not derogate from the spirit and intent of the Zoning Ordinance since the building has sufficient setback from Herrick Road and the nearest abutting land owned by the MBTA.

### **Proposed Conditions:**



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1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this Variance shall be located and constructed consistent with the plans submitted with Petitioner's application.
2. No building permit shall be issued pursuant to this Variance until the Petitioner has:
  - a. Recorded a certified copy of the Variance with the Registry of Deeds for the Southern District of Middlesex County; and
  - b. Filed a copy of such recorded Variance with the Clerk of the Zoning Board of Appeals, the Department of Inspectional Services, and the Department of Planning and Development.
3. This Variance must be exercised within one year from the date of its filing with the City Clerk or the variance lapses.

*A motion was made by Michael Quinn to move to approve the Variance with no changes to the proposed findings and conditions. This motion was duly seconded by Michael Rossi. The motion passed five in favor and none opposed.*

**Meeting Adjourned: 7:34 p.m.**



BY: [unclear] [unclear]

CITY OF NEWTON  
ZONING BOARD OF APPEALS

**COVER PAGE FOR APPLICATION  
FOR COMPREHENSIVE PERMIT**

To be completed by Staff:      Project No.:      Petition No.:

**APPLICANT INFORMATION**

NAME: Katherine R. Jordan Quern and Albert F. Quern  
ADDRESS: 13 Prospect Street, West Newton, MA 02465  
PHONE: 617-558-7722      EMAIL: pfh@harrintonandmartins.com  
POINT OF CONTACT: Peter F. Harrinton, Es .

**SUBJECT PROPERTY INFORMATION**

LOCATION OF PROPERTY: 13 Prospect Street, West Newton, MA  
ZONING DISTRICT: Multi-Residence - 2 Zone      PROPERTY SBL NO.: Section 33, Block 003, Lot 000  
OWNER OF RECORD: Katherine R. Jordan Quern and Albert F. Quern  
DEED RECORDED AT MIDDLESEX SOUTH REGISTRY OF DEEDS AT:  
BOOK: 59561      PAGE 461      OR CERTIFICATE NO.:  
RELATIONSHIP TO SUBJECT PROPERTY:  
Owner

**APPLICATION REQUIREMENTS**

THIS COVER PAGE MUST BE SUBMITTED ALONG WITH A COMPLETED APPLICATION IN ACCORDANCE WITH ARTICLE VI OF THE BOARD'S RULES AND REGULATIONS. APPLICATIONS MUST INCLUDE THE MATERIAL REQUIRED IN ARTICLE VI, SECTION 2(1) THROUGH (18).

IMPORTANT: APPLICANTS MUST HAVE COMPLETED A DRT MEETING AND REQUESTED AND RECEIVED A COMPLETED ZONING REVIEW MEMORANDUM PRIOR TO FILING AN APPLICATION FOR A COMPREHENSIVE PERMIT.

**CITY OF NEWTON  
NEWTON ZONING BOARD OF APPEALS**

**PETITION FOR A VARIANCE**

**PETITIONERS:** Katherine R. Jordan Quern & Albert F. Quern  
13 Prospect Street, West Newton, MA 02465  
617-558-7722

Attorney: Peter F. Harrington,  
505 Waltham Street, West Newton, MA 02465  
Tel. 617-558-7722      [pfh@harringtonandmartins.com](mailto:pfh@harringtonandmartins.com)

**PROPERTY INFORMATION**

**Location of Property:** 13 Prospect Street, West Newton.

**Zoning District:** Multi-Residence – 2 Zone    Section 33, Block 003, Lot 0009.

**Record Owner:** Katherine R. Jordan Quern & Albert F. Quern

**Deed Recorded**      Book 59561, Page 461. See Exhibit A for evidence of legal interest.

**Relationship to property:** Owner

**Current Use:** Two Family Home with accessory apartment and family Day Care

**Proposed Use:** same as above; Petitioners’ variance request is to enclose an existing patio play area of approximately 313 ± square feet.

**Previous Variance (#4-13)** Granted and filed with the City Clerk May, 2, 2013. A copy is attached to the Zoning Review Memorandum, dated April 23, 2019.

**Other Regulatory Review:** Accessory Apartment review in 2018.

**Existing Conditions:** The property is located in a multi residence 2 zoning district. The area is densely populated.  
14-18 Prospect St. is a three residential unit dwelling on 3,737 square foot lot.  
10-12 Prospect St. is a two residential unit dwelling on 3,587 square foot lot.  
9-11 Prospect St. is a two residential unit dwelling on 5,138 square foot lot.  
The abutter to the South is an eight unit residential development.  
Across Prospect Street is St. Bernard’s Church on land owned by the Roman Catholic Archdiocese of Boston.

9-11 Curve St. is a two residential unit dwelling on 5,168 square foot lot.  
12-20 Curve St. is are 7 residential dwelling units on 16,051 square foot lot.

The Petitioner, Kathy Jordan Quern, conducts a small family day care business at the rear of the first floor.

### PROPOSAL DESCRIPTION:

1. The Petitioner, Kathy Jordan Quern, conducts a small family day care business at the rear of the first floor. The day care area consists of a first floor room, an outside patio play area and a back yard play area. Above the patio play area is an overhanging room and a small deck. She seeks to enclose the area under the overhanging room and deck and use it as an indoor play area for the children.
2. Applicable Section of the Newton Zoning Ordinance, Chapter 30:

Chapter 30 Ordinance	Relief Requested	Action Required
§3.2.2	further reduce open space	Variance per §7.6
§3.2.2	exceed minimum lot coverage	Variance per §7.6
§3.2.2 & 3.2.11	request to exceed FAR	S.P. per §7.3.3
3. Specific Relief Sought
  - a) Reduction of required open space. The conversion will reduce the lot open space from 44.7% to 42.9% (126 sq. ft. or 1.8%).
  - b) Increase in lot coverage. The conversion will increase the lot coverage, now at 30% to 32.3% (161 sq. ft. or 2.3%).
  - c) Correct the allowed FAR allowance. The conversion will add 313 sq. ft. to the building creating 4,189 sq. ft. on a 6,611 sq. ft. lot. That will increase the FAR to .68.
4. Plans
  - a) AS BUILT dated 4/12/2019, marked Exhibit B
  - b) CERTIFIED PLOT PLAN dated 2/12/2019, marked Exhibit C
  - c) FAR Worksheet, marked Exhibit D
  - d) Building Plans (2 pages) by Architect Gregory A. Eldridge, marked Exhibit E
  - e) Assessor's Plan of immediate neighborhood, marked Exhibit F

### SUPPORTING STATEMENT

1. **Special Circumstances** related to the topography and shape of the lot. *In 2013 the Board found (#4-13, page 4, last paragraph) that a hardship existed "...due to the topography and shape of the Petitioner's lot."*  
The physical conditions that existed at that time continue to exist today, as there has been no change in either the topography or the shape of the Petitioner's lot.

2. **Literal enforcement of the Newton Zoning Ordinance** will result in a substantial hardship to the Petitioners, owners of the property. The denial of the Petitioners' request denies the Petitioner the opportunity to put the land to its highest and best use. Further, there is a significant need in Newton, for the Day Care services the Petitioner, Kathy Jordan Quern, provides. It is generally accepted that climate change has changed weather patterns in Newton with a result of more inclement weather that limits and restricts the use of outdoor play areas. The failure to provide an indoor, year-round use play area impacts the quality of the children's day care experience and will make the Petitioner's day care service less desirable, despite her excellent reputation.

3. **The proposed variance is the minimum change necessary.** The Petitioners' request is to enclose 313± square feet. At present, two sides are faced by the existing building and the top of the area is covered, in part by a building overhang and, in part, by a small deck. The remaining two sides have a plastic wrap around covering that is not sufficient to retain heat or keep out the cold in the play area.

The Petitioners' application for variance borders on being de minimis.

4. **The Granting of the variance** will be in harmony with the Zoning Ordinance and will not be detrimental to the neighborhood or the public welfare.

a. The Petitioners have attached a copy of the Newton Assessors plan of the neighborhood identifying the street address of the neighboring properties. The area is zoned MR2. Under current zoning, this is one of the more dense zoning districts. Prospect Street dead ends at two house lots to the north with a large fence blocking the sight and sound of the Massachusetts Turnpike.

14-18 Prospect St. is a three residential unit dwelling on 3,737 square foot lot.

10-12 Prospect St. is a two residential unit dwelling on 3,587 square foot lot.

9-11 Prospect St. is a two residential unit dwelling on 5,138 square foot lot.

The abutter to the South is an eight unit residential development.

Across Prospect St. is land owned by the Roman Catholic Archdiocese of Boston.

9-11 Curve St. is a two residential unit dwelling on 5,168 square foot lot.

12-20 Curve St. is are 7 residential dwelling units on 16,051 square foot lot.

*The granting of the variance will be in harmony with the intent of the Ordinance* in that there is an intense use of the lot, similar to the intensity of use of other neighborhood lots, the use to which the variance will apply is an allowed use in the zoning district and the enclosure of the play area will, to a small degree, reduce the volume of sound in the neighborhood.

b. *The public welfare will be served* by providing an opportunity for a needed family service to continue to operate. The gentrification of Washington Street is reducing the opportunity for small, owner operated day care facilities. There are many who prefer this type of Day Care because of the quality of service provided, the cost, the location, the size or another feature that particularly suits their child.

**PROPERTY OWNER CONSENT, CERTIFICATION & SIGNATURE**

*(Signatures of Petitioner(s) is required)*

I am (we are) the owner(s) of the property subject to this variance petition and 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 petition;
2. I (we) certify that I (we) have read the Board's Rules and Procedures before submittal to ensure the completeness of my (our) petition;
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 Albert F. Juma 8-6-19  
(Petitioner Signature) (Date)

X Kathleen R. Martins 8-6-19  
(Petitioner Signature) (Date)

***If Applicable:***

Name of Attorney/Agent for Applicant: Peter F. Harrington, Esq.

Address of Attorney/Agent: 505 Waltham Street, West Newton, MA 02465

Phone Number of Attorney/Agent: 617-558-7722

Email Address of Attorney/Agent: pfh@harringtonandmartins.com

# **EXHIBIT A**

12

Exhibit A



Bk: 59561 Pg: 461 Doc: DEED  
Page: 1 of 2 07/20/2012 11:19 AM

**QUITCLAIM DEED**

**Katherine R. Jordan Quern, f/k/a Katherine R. Jordan**, a married woman, of 13 Prospect Street, Newton, Middlesex County, Massachusetts,

(hereinafter "Grantor")

for consideration paid of **One and 00/100 Dollar (\$1.00)**

grants to **Albert F. Quern, Jr. and Katherine R. Jordan Quern**, husband and wife, as tenants by the entirety, of 13 Prospect Street, Newton, Middlesex County, Massachusetts,

(hereinafter "Grantees")

with QUITCLAIM COVENANTS,

A certain parcel of land with the buildings thereon known and numbered as 13 Prospect Street, being shown as Lot A on a plan made by Wm. E. Leonard dated August 2, 1920, and recorded with the Middlesex County (Southern District) Registry of Deeds in Plan Book 290 as Plan 36 and bounded and described as follows:

- NORTHEASTERLY by Prospect Street, fifty-six and 53/100 (56.53) feet;
- SOUTHEASTERLY by the center line of a fifteen foot right of way shown on said plan, one hundred twenty-five and 81/100 (125.81) feet;
- SOUTHWESTERLY by Lot B on said plan, forty-four and 80/100 (44.80) feet; and
- NORTHWESTERLY by land now or late of Moore and Harper, as shown on said plan, forty-four and 80/100 (44.80) feet and seventy-seven (77.00) feet, respectively;

Containing, according to said plan, 6,611 square feet.

**RECORD AND RETURN TO  
MURRAY & ASSOCIATES, P.C.  
P.O. BOX 376  
SOUTH BOSTON, MA 02127**

For Grantor's title, see the Quitclaim Deed dated July 21<sup>st</sup> 1994, and recorded with the Middlesex County (Southern District) Registry of Deeds in Book 24726, Page 372.

Witness my hand and seal this 16<sup>th</sup> day of July 2012.

  
Katherine R. Jordan

Commonwealth of: Massachusetts  
County of: Suffolk, ss.

On this 16<sup>th</sup> day of July 2012, before me, the undersigned notary public, personally appeared Katherine R. Jordan, proved to me through satisfactory evidence of identification, which was a Commonwealth of Massachusetts Driver's License, to be the person who signed the preceding or attached document in my presence, and acknowledged to me that she signed it voluntarily for its stated purpose.

  
Notary Public  
My Commission Expires:



LISA A. HOOK  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
February 2, 2018

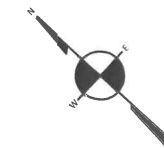


# **EXHIBIT B**

I CERTIFY THAT THIS PLAN WAS MADE FROM AN INSTRUMENT SURVEY ON THE GROUND BETWEEN THE DATES OF JANUARY 25, 2012 - APRIL 5, 2019 AND ALL STRUCTURES ARE LOCATED AS SHOWN HEREON.

ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY (F.E.M.A.) MAPS, THE MAJOR IMPROVEMENTS ON THIS PROPERTY FALL IN AN AREA DESIGNATED AS ZONE: X  
 COMMUNITY PANEL: 25017C00551E  
 EFFECTIVE DATE: 06-04-2010

Segment	Elevation 1	Elevation 2	Average	Length	Average x Length
Segment 1	95.3	96.3	95.8	34.8	3332.3
Segment 2	95.4	96.2	95.8	39.6	3791.9
Segment 3	93.6	93.9	93.7	24.9	2329.4
Segment 4	93.9	95.3	94.6	46.9	4429.7
Sum of all segments =				13883.3	
Perimeter (total length of all segments) =				146.1	
Average grade plane =				95.0	



**PROSPECT STREET**  
 (40.0' ~ WIDE PUBLIC)

**BOSTON SURVEY, INC.**  
 UNIT C-4 SHIPWAY PLACE  
 CHARLESTOWN, MA 02129  
 (617) 242-1313

PREPARED FOR:  
 OWNER OF RECORD:  
 KATHERINE R. JORDAN QUERN  
 ALBERT F. QUERN, JR.  
 13 PROSPECT STREET  
 NEWTON, MA 02465

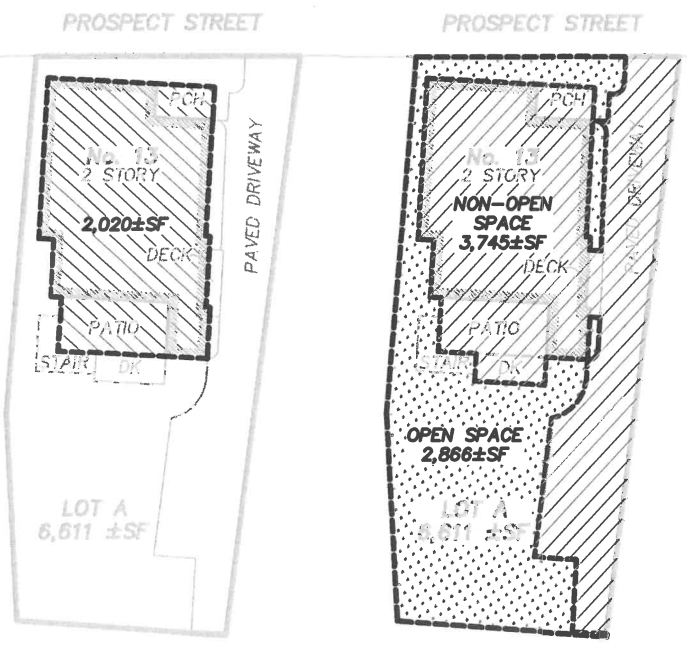
REFERENCES:  
 DEED: BK 59561; PG 461  
 PLAN: PL BK 290; PL 36  
 No. 1345 OF 1988  
 No. 777 OF 2009  
 BK 4182; PG END

NOTES:  
 PROPERTY SBL: 33003-0009  
 ZONING: MR2 (OLD)  
 DATUM: 1ST FL = 100.00 (ASSUMED)

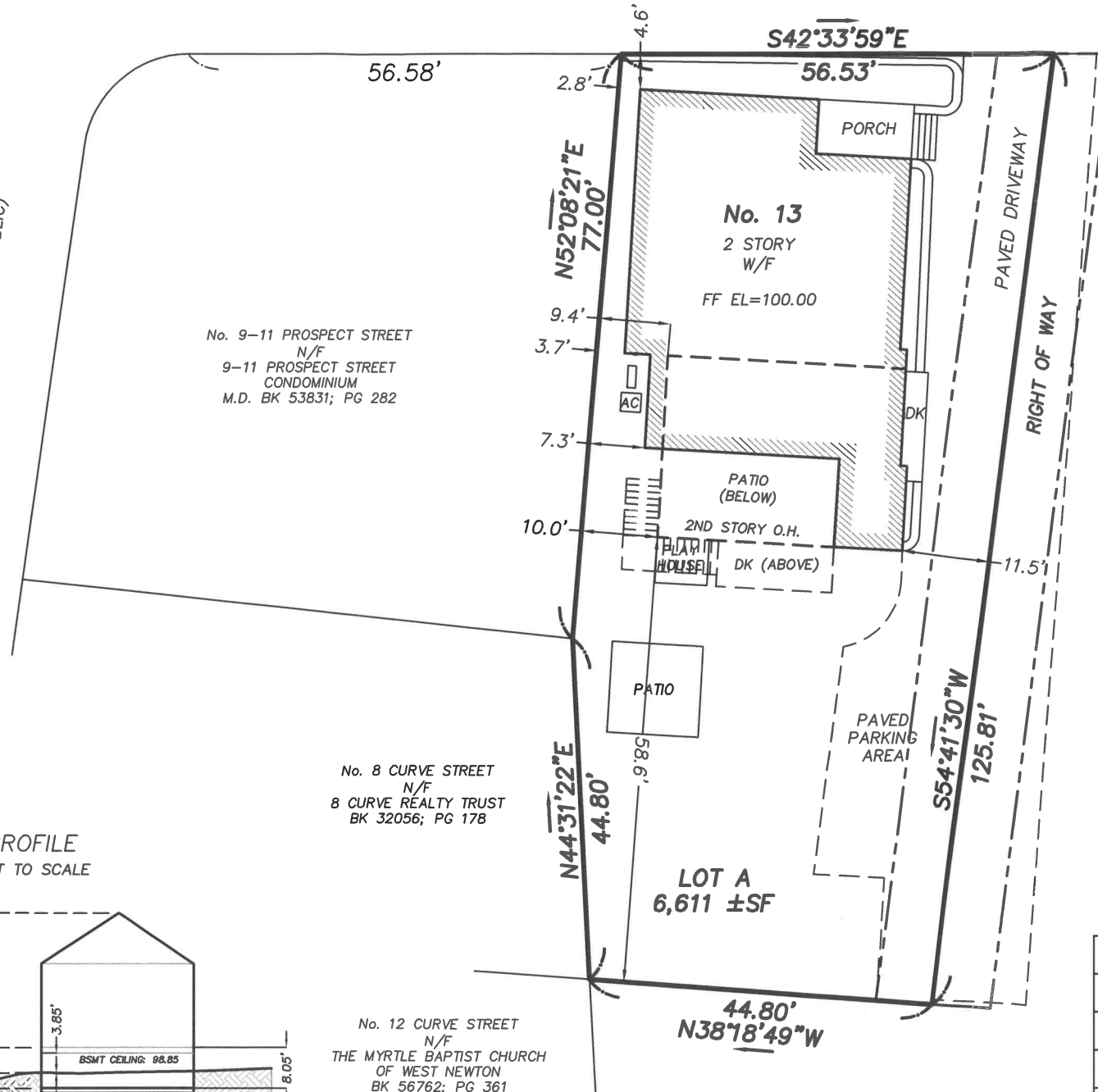
AS-BUILT  
 LOT COVERAGE: 30.0%  
 OPEN SPACE: 43.4%  
 BUILDING: 25.2%  
 DECKS: 24.1%  
 PAVED AREA: 7.3%

**LOT COVERAGE DIAGRAM**  
 SCALE 1.0" = 40.0'

**OPEN SPACE DIAGRAM**  
 SCALE 1.0" = 40.0'



**CURVE STREET**  
 (30.0' WIDE ~ PUBLIC)

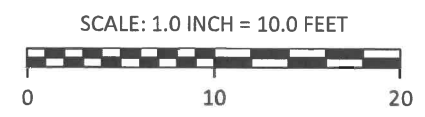
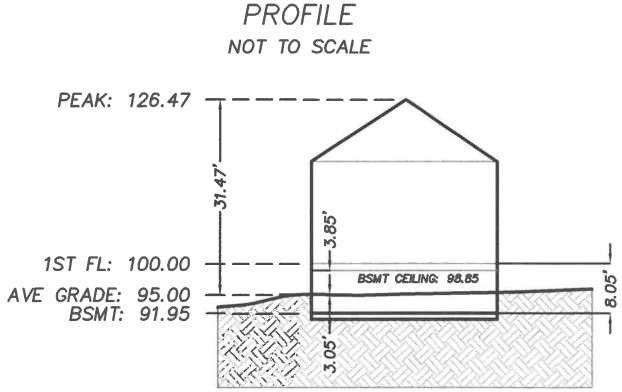


**AS-BUILT**  
 LOCATED AT  
**13 PROSPECT STREET**  
 NEWTON, MA

No. 9-11 PROSPECT STREET  
 N/F  
 9-11 PROSPECT STREET CONDOMINIUM  
 M.D. BK 53831; PG 282

No. 8 CURVE STREET  
 N/F  
 8 CURVE REALTY TRUST  
 BK 32056; PG 178

No. 12 CURVE STREET  
 N/F  
 THE MYRTLE BAPTIST CHURCH  
 OF WEST NEWTON  
 BK 56762; PG 361



FIELD:	MO
DRAFT:	GCC/RAP
CHECK:	GCC
DATE:	04/12/2019
JOB #	12-00132

COMMONWEALTH OF MASSACHUSETTS  
 GEORGE C. COLLINS  
 No. 41784  
 PROFESSIONAL LAND SURVEYOR

# **EXHIBIT C**

I CERTIFY THAT THIS PLAN WAS MADE FROM AN INSTRUMENT SURVEY ON THE GROUND BETWEEN THE DATES OF JANUARY 25, 2012 - APRIL 5, 2019 AND ALL STRUCTURES ARE LOCATED AS SHOWN HEREON.

ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY (F.E.M.A.) MAPS, THE MAJOR IMPROVEMENTS ON THIS PROPERTY FALL IN AN AREA DESIGNATED AS

ZONE: X  
 COMMUNITY PANEL: 25017C00551E  
 EFFECTIVE DATE: 06-04-2010

PREPARED FOR:  
 OWNER OF RECORD:  
 KATHERINE R. JORDAN QUERN  
 ALBERT F. QUERN, JR.  
 13 PROSPECT STREET  
 NEWTON, MA 02465

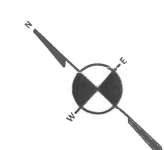
REFERENCES:  
 DEED: BK 59561; PG 461  
 PLAN: PL BK 290; PL 36  
 No. 1345 OF 1988  
 No. 777 OF 2009  
 BK 4182; PG END

NOTES:  
 PROPERTY SBL: 33003-0009  
 ZONING: MR2 (OLD)  
 DATUM: 1ST FL = 100.00 (ASSUMED)

AS-BUILT	EXISTING	PROPOSED
LOT COVERAGE:	30.0%	32.3%
OPEN SPACE:	43.4%	42.9%
BUILDING:	25.2%	32.9%
DECKS:	7.3%	0.1%
PAVED AREA:	24.1%	24.1%

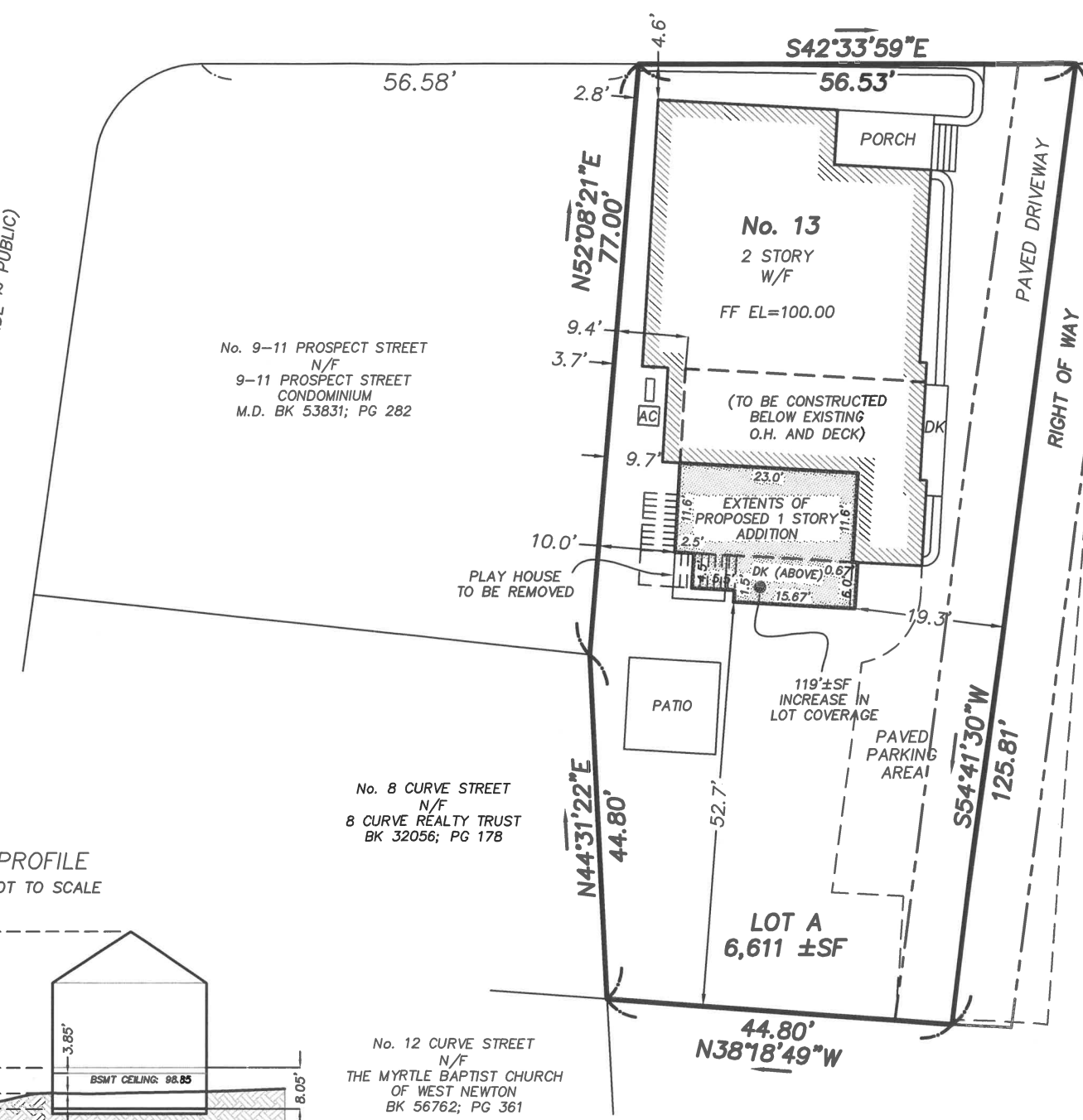
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Segment 2	95.4	96.2	95.8	39.6	3791.9
Segment 3	93.6	93.9	93.7	24.9	2329.4
Segment 4	93.9	95.3	94.6	46.9	4429.7
Sum of all segments =			13883.3		
Perimeter (total length of all segments) =			146.1		
Average grade plane =			95.0		

**BOSTON SURVEY, INC.**  
 UNIT C-4 SHIPWAY PLACE  
 CHARLESTOWN, MA 02129  
 (617) 242-1313



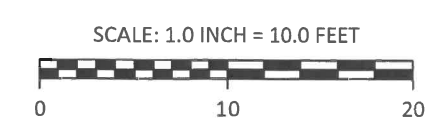
**PROSPECT STREET**  
 (40.0' ~ WIDE PUBLIC)

**CURVE STREET**  
 (30.0' WIDE ~ PUBLIC)



**CERTIFIED PLOT PLAN**  
 LOCATED AT  
**13 PROSPECT STREET**  
 NEWTON, MA

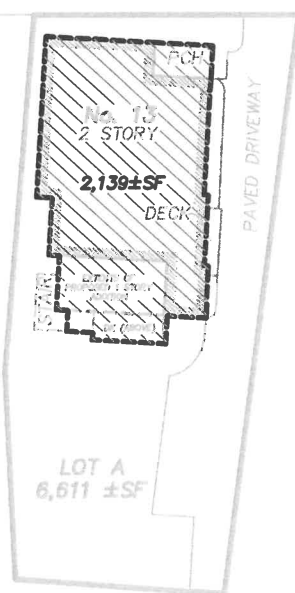
No. 15-29 PROSPECT STREET  
 N/F  
 BELMAT CONDOMINIUMS  
 M.D. BK 20592; PG 546



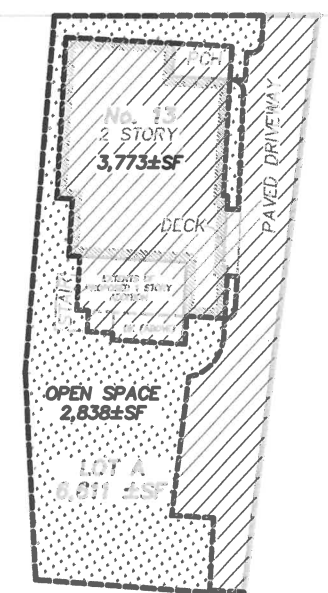
FIELD:	MO
DRAFT:	GCC/RAP
CHECK:	GCC
DATE:	04/12/2019
JOB #	12-00132

COMMONWEALTH OF MASSACHUSETTS  
 GEORGE C. COLLINS  
 No. 41784  
 PROFESSIONAL LAND SURVEYOR

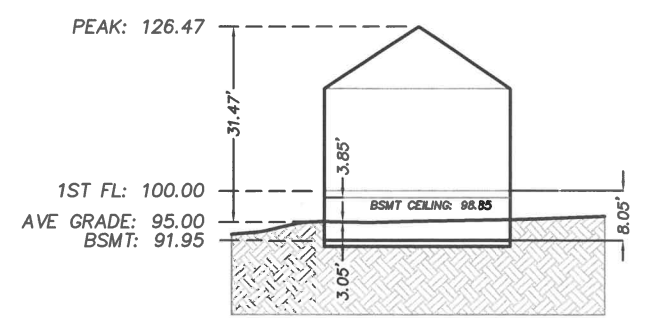
**PROPOSED LOT COVERAGE DIAGRAM**  
 SCALE 1.0" = 40.0'



**PROPOSED OPEN SPACE DIAGRAM**  
 SCALE 1.0" = 40.0'



**PROFILE**  
 NOT TO SCALE



# **EXHIBIT D**



Ruthanne Fuller  
Mayor

**City of Newton, Massachusetts**  
Department of Inspectional Services  
1000 Commonwealth Avenue Newton, Massachusetts 02459

*Exhibit D*  
Telephone  
(617) 796-1060  
Telefax  
(617) 796-1086  
TDD/TTY  
(617) 796-1089  
www.newtonma.gov

John Lojek  
Commissioner

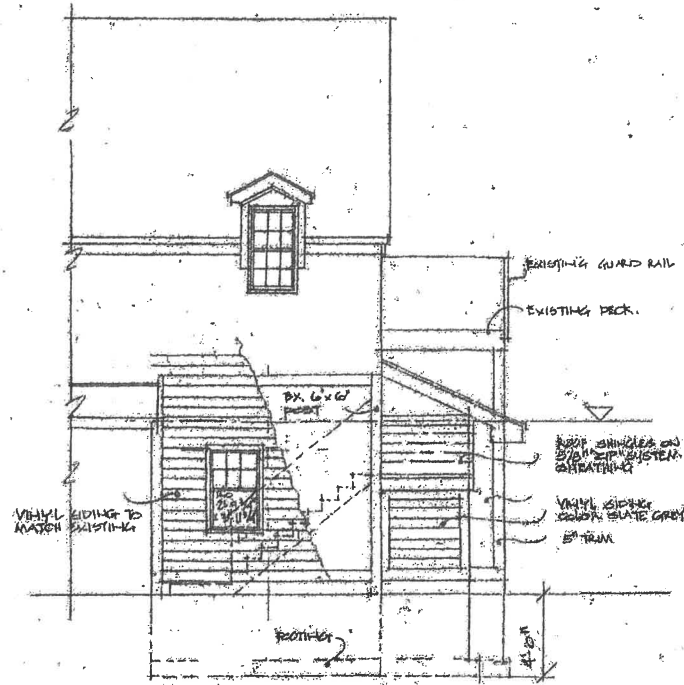
**FLOOR AREA RATIO WORKSHEET**

*For Residential Single and Two Family Structures*

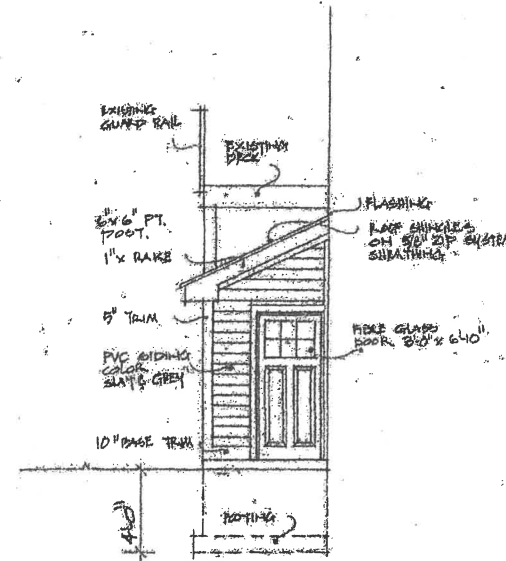
Property address: 13 PROSPECT STREET, W. NEWTON, MA 02465

FAR Calculations for Regulations Effective As Of October 15, 2011		
Inputs (square feet)		
	EXISTING	PROPOSED
1. First story	1353.75	312.75
2. Attached garage	—	
3. Second story	1605.25	
4. Atria, open wells, and other vertical spaces (if not counted in first/second story)	—	
5. Certain floor area above the second story <sup>1b</sup>	—	
6. Enclosed porches <sup>2b</sup>	221	
7. Mass below first story <sup>3b</sup>	696	
8. Detached garage	—	
9. Area above detached garages with a ceiling height of 7' or greater	—	
10. Other detached accessory buildings (one detached building up to 120 sq. ft. is exempt)	—	
FAR of Proposed Structure(s)		
A Total gross floor area (sum of rows 1-9 above)	4188.75	
B Lot size	6611	
C FAR = A/B	$\frac{4188.75}{6611} = .63$	.68
Allowed FAR		
Allowable FAR	.55	
Bonus of .02 if eligible <sup>4b</sup>		
TOTAL Allowed FAR		

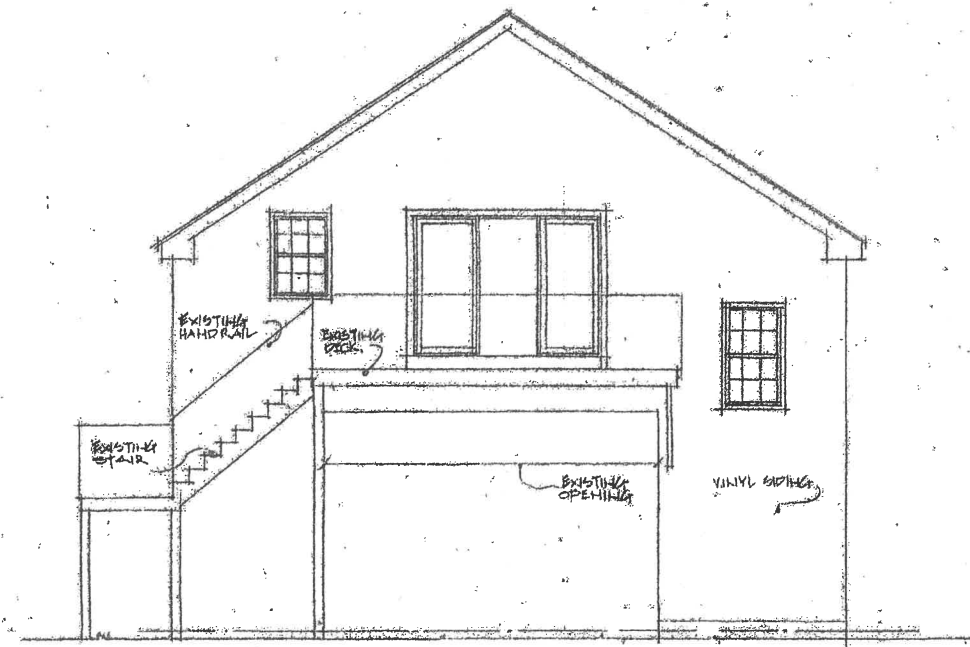
**EXHIBIT E**  
**(2 PAGES)**



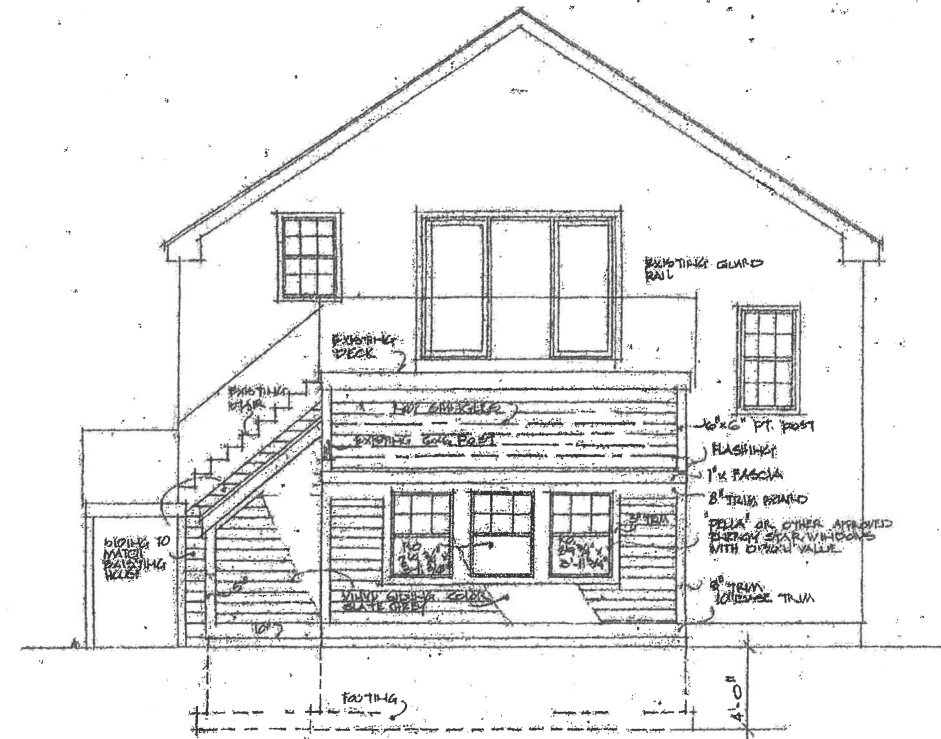
3 Proposed Side Elevation 1  
1/4" = 1'-0"



4 Proposed Side Elevation 2  
1/4" = 1'-0"



1 Existing Elevation  
1/4" = 1'-0"



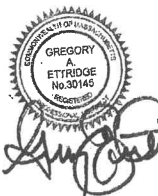
2 Proposed Front Elevation  
1/4" = 1'-0"

PROPOSED ADDITION  
13 PROSPECT STREET, NEWTON, MA

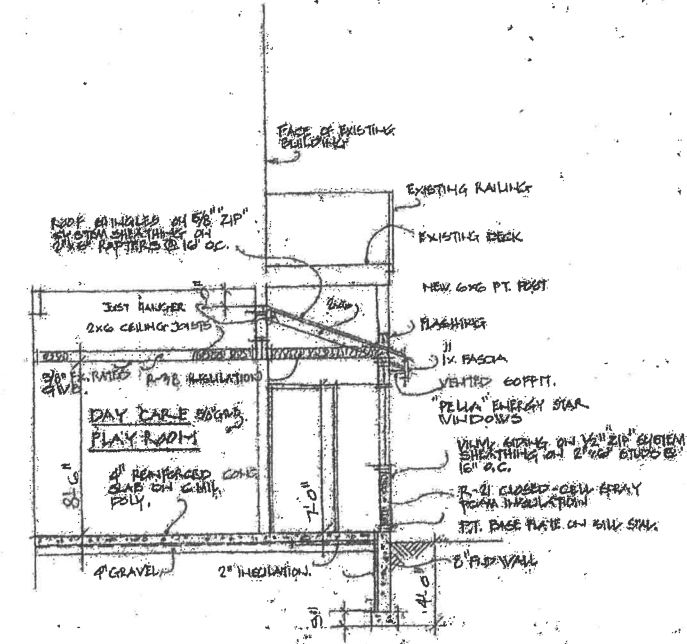
ELEVATIONS

Date: 10/03/17

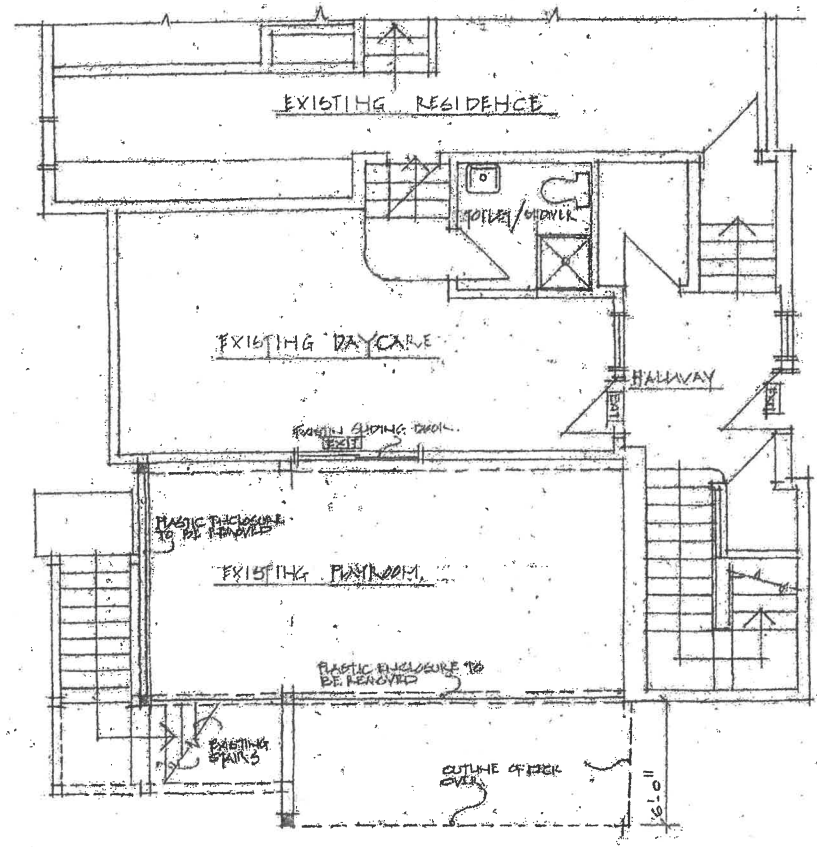
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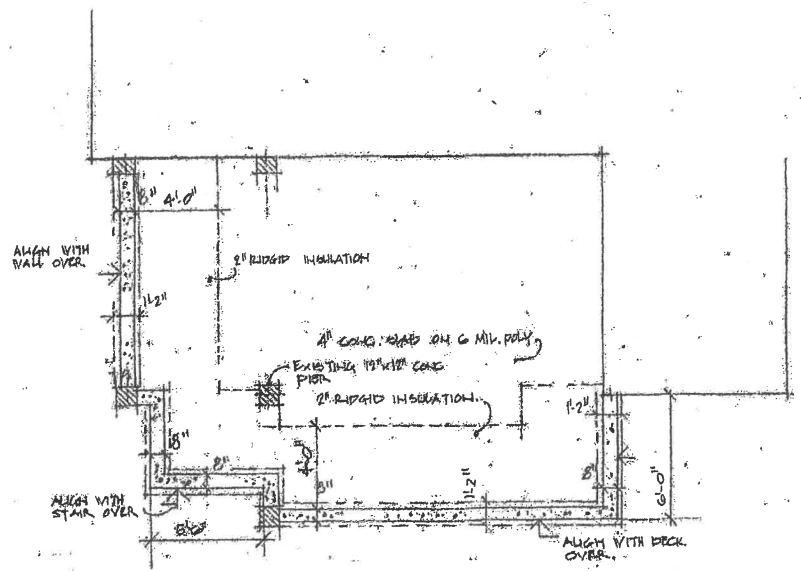




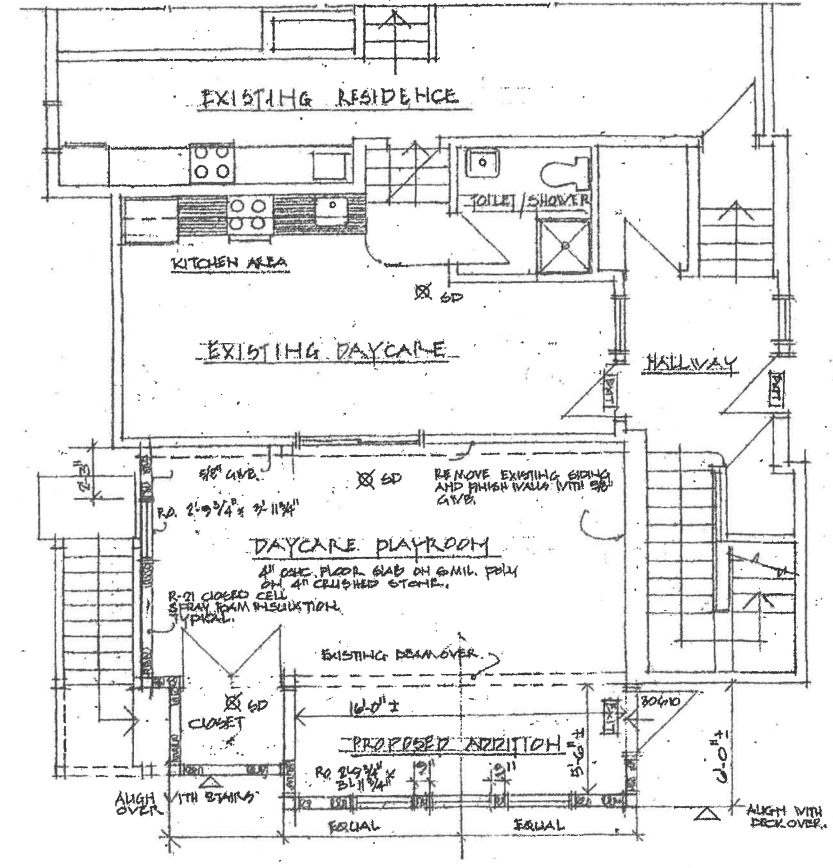
4 Proposed Section  
1/4" = 1'-0"



1 Existing Floor Plan  
1/4" = 1'-0"



2 Proposed Foundation Plan  
1/4" = 1'-0"



3 Proposed Floor Plan  
1/4" = 1'-0"

PROPOSED ADDITION  
13 PROSPECT STREET, NEWTON, MA

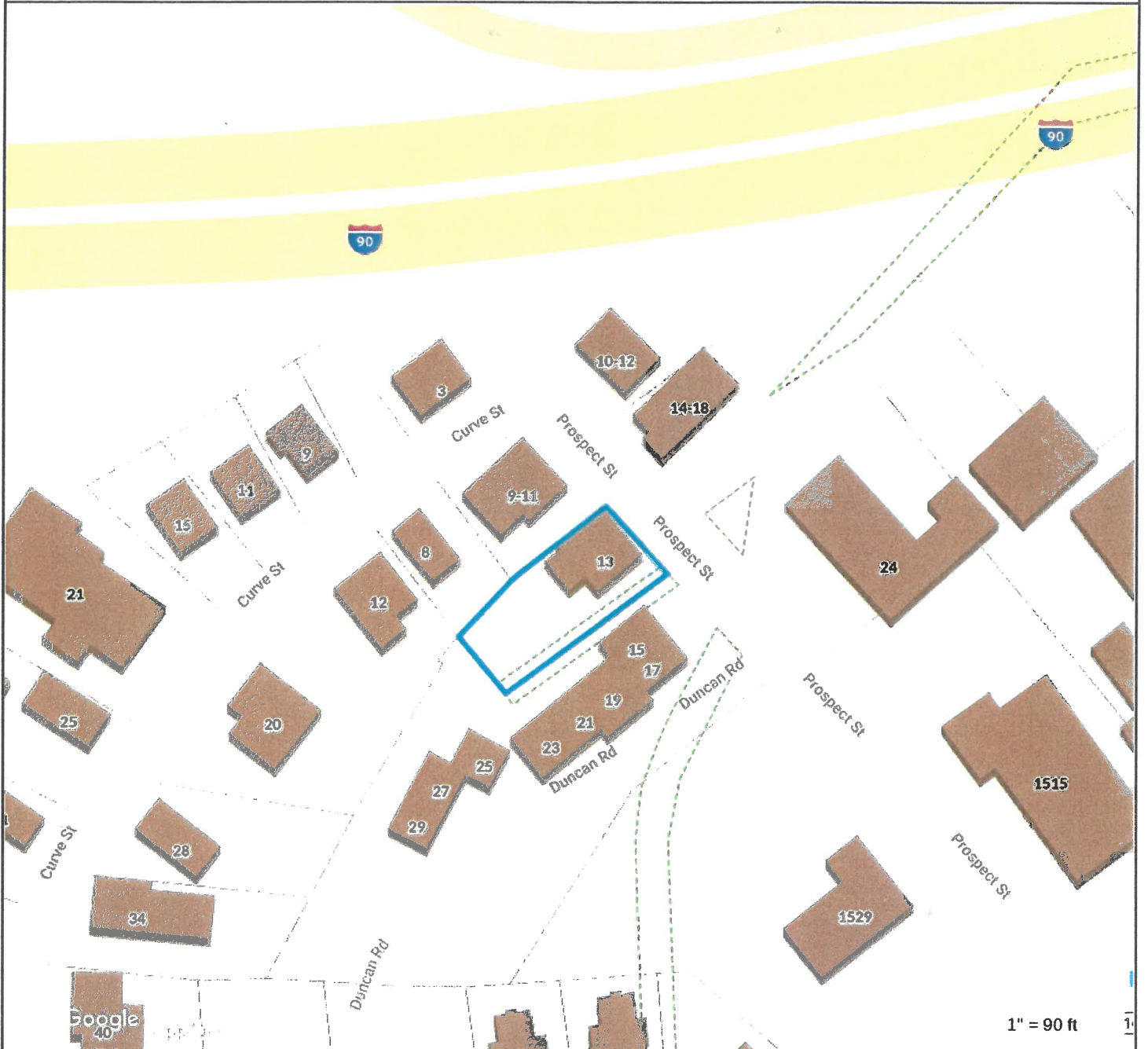
FLOOR PLANS & SECTION

Date: 10/3/2017  
Scale: 1/4" = 1'-0"



# **EXHIBIT F**

Exhibit F



Property Information

**Property ID** 33003 0009  
**Location** 13 PROSPECT ST  
**Owner** QUERN ALBERT F JR



**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.

Geometry updated 11/09/2018  
 Data updated 11/14/2018



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: April 23, 2019

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Kathy Jordan Quern  
Barney S. Heath, Director of Planning and Development  
Alissa Giuliani, City Solicitor

RE: Request to amend Variance #4-13 to increase lot coverage and decrease open space, and a special permit to exceed FAR

Applicant: Kathy Jordan Quern	
Site: 13 Prospect Street.	SBL: 33003 0009
Zoning: MR2	Lot Area: 6,611 square feet
Current use: Two-family dwelling with an accessory apartment and family day care	Proposed use: No change

### BACKGROUND:

The property at 13 Prospect Street consists of a 6,611 square foot lot improved with a two-family dwelling with an accessory apartment constructed circa 1920 in the MR2 zoning district. The property received Variance #4-13 in 2013 allowing for the conversion of the existing single-family dwelling into a two-family dwelling, as the property lacked sufficient lot area per unit and a proposed addition that would reduce the minimum open space below the requirement. A legal accessory apartment was created on the property in 2018. The petitioner now seeks a special permit and to amend the existing variance to construct a rear addition.

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

- As-Built, signed and stamped by George C. Collins, surveyor, dated 1/14/2013, revised 4/12/2019
- Certified Plot Plan, signed and stamped by George C. Collins, surveyor, dated 10/4/2018, revised 4/12/2019
- FAR worksheet, submitted 10/15/2018
- Variance #4-13

<b>MR2 Zone</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>
Lot Size	7,000 square feet	6,611 square feet	No change
Frontage	70 feet	<b>56.5 feet</b>	<b>No change</b>
Setbacks			
• Front	25 feet	<b>4.6 feet</b>	<b>No change</b>
• Side (right)	7.5 feet	<b>2.8 feet</b>	<b>No change</b>
• Side (left)	7.5 feet	11.5 feet	No change
• Rear	15 feet	58.6 feet	52.7 feet
FAR	.54	<b>.63</b>	<b>.68</b>
Maximum Lot Coverage	30%	30%	<b>32.3%</b>
Minimum Open Space	44.7%*	<b>43.4%</b>	<b>42.9%</b>

\*Allowed by Variance #4-13

See "Zoning Relief Summary" below:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>		<i>Action Required</i>
	Request to amend Variance #4-13	
§3.2.3	Request to further reduce minimum open space	Variance per §7.6
§3.2.3	Request to exceed maximum lot coverage	Variance per §7.6
§3.2.3	Request to exceed FAR	S.P. per §7.3.3
§3.2.11		

I CERTIFY THAT THIS PLAN WAS MADE FROM AN INSTRUMENT SURVEY ON THE GROUND BETWEEN THE DATES OF JANUARY 25, 2012 - APRIL 5, 2019 AND ALL STRUCTURES ARE LOCATED AS SHOWN HEREON.

ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY (F.E.M.A.) MAPS, THE MAJOR IMPROVEMENTS ON THIS PROPERTY FALL IN AN AREA DESIGNATED AS ZONE: X  
 COMMUNITY PANEL: 25017C00551E  
 EFFECTIVE DATE: 06-04-2010

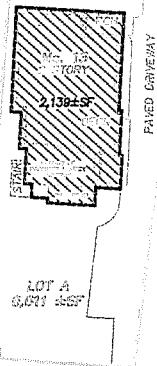
PREPARED FOR:  
 OWNER OF RECORD:  
 KATHERINE R. JORDAN QUERN  
 ALBERT F. QUERN, JR.  
 13 PROSPECT STREET  
 NEWTON, MA 02465

REFERENCES:  
 DEED: BK 59561; PG 461  
 PLAN: PL BK 290; PL 36  
 No. 1345 OF 1988  
 No. 777 OF 2009  
 BK 4182; PG END

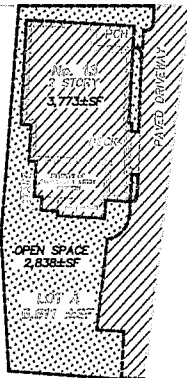
NOTES:  
 PROPERTY SBL: 33003-0009  
 ZONING: MR2 (OLD)  
 DATUM: 1ST FL = 100.00 (ASSUMED)

AS-BUILT	EXISTING	PROPOSED
LOT COVERAGE:	30.0%	32.3%
OPEN SPACE:	43.4%	42.9%
BUILDING:	25.2%	32.9%
DECKS:	7.3%	0.1%
PAVED AREA:	24.1%	24.1%

PROPOSED LOT COVERAGE DIAGRAM  
 SCALE 1.0" = 40.0'



PROPOSED OPEN SPACE DIAGRAM  
 SCALE 1.0" = 40.0'



Segment	Elevation 1	Elevation 2	Average	Length	Average x Length
Segment 1	95.3	96.3	95.8	34.8	3332.3
Segment 2	95.4	96.2	95.8	39.6	3791.9
Segment 3	93.6	93.9	93.7	24.9	2329.4
Segment 4	93.9	95.3	94.6	46.9	4429.7
Sum of all segments =				13883.3	
Perimeter (total length of all segments) =				146.1	
Average grade plane =				95.0	

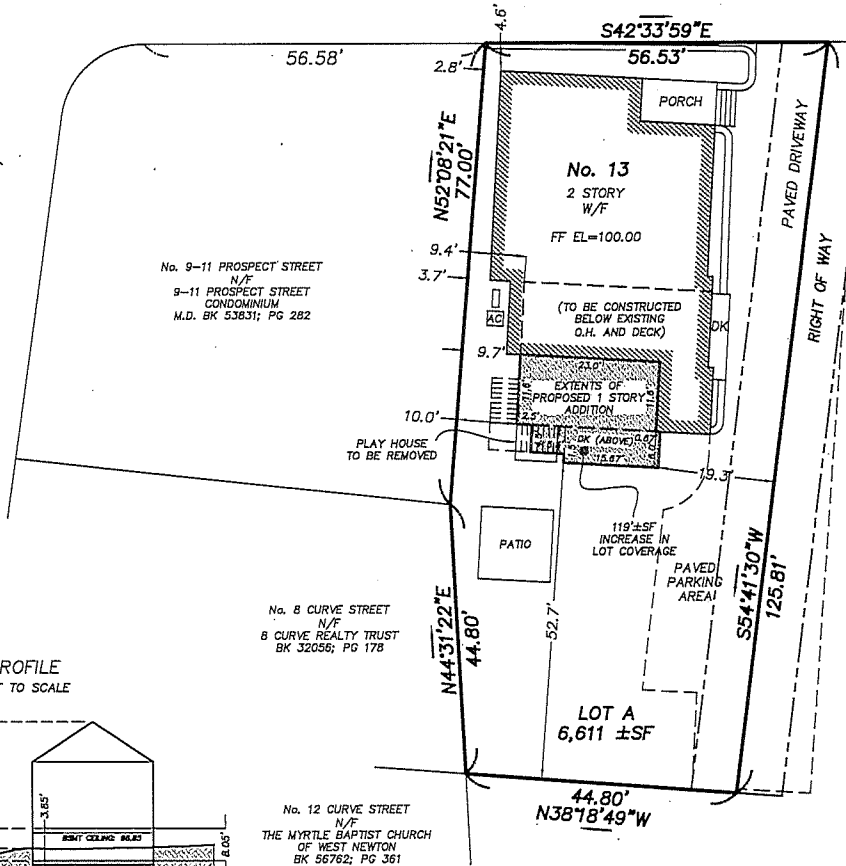


PROSPECT STREET  
 (40.0' ~ WIDE PUBLIC)



BOSTON  
 SURVEY, INC.  
 UNIT C-4 SHIPWAY PLACE  
 CHARLESTOWN, MA 02129  
 (617) 242-1313

CURVE STREET  
 (30.0' WIDE ~ PUBLIC)

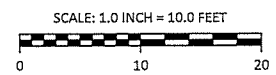


CERTIFIED PLOT PLAN  
 LOCATED AT  
 13 PROSPECT STREET  
 NEWTON, MA

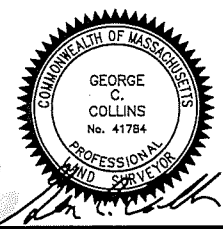
No. 15-29 PROSPECT STREET  
 N/F  
 BELMAT CONDOMINIUMS  
 M.D. BK 20592; PG 546

No. 8 CURVE STREET  
 N/F  
 8 CURVE REALTY TRUST  
 BK 32056; PG 178

No. 12 CURVE STREET  
 N/F  
 THE MYRTLE BAPTIST CHURCH  
 OF WEST NEWTON  
 BK 56762; PG 361



FIELD:	MO
DRAFT:	GCC/RAP
CHECK:	GCC
DATE:	04/12/2019
JOB #	12-00132



4/12/2019

I CERTIFY THAT THIS PLAN WAS MADE FROM AN INSTRUMENT SURVEY ON THE GROUND BETWEEN THE DATES OF JANUARY 25, 2012 - APRIL 5, 2019 AND ALL STRUCTURES ARE LOCATED AS SHOWN HEREON.

ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY (F.E.M.A.) MAPS, THE MAJOR IMPROVEMENTS ON THIS PROPERTY FALL IN AN AREA DESIGNATED AS ZONE: X  
 COMMUNITY PANEL: 25017C00551E  
 EFFECTIVE DATE: 06-04-2010

PREPARED FOR:  
 OWNER OF RECORD:  
 KATHERINE R. JORDAN QUERN  
 ALBERT F. QUERN, JR.  
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 NEWTON, MA 02465

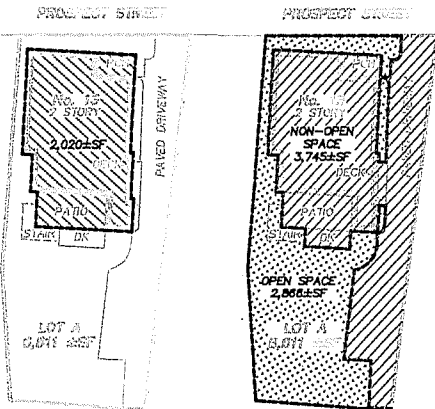
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 No. 1345 OF 1988  
 No. 777 OF 2009  
 BK 4182; PG END

NOTES:  
 PROPERTY SBL: 33003-0009  
 ZONING: MRZ (OLD)  
 DATUM: 1ST FL = 100.00 (ASSUMED)

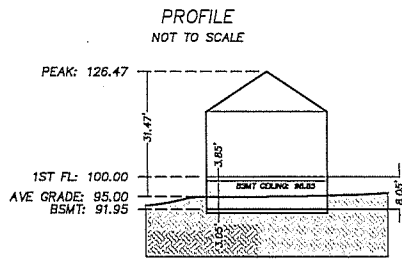
AS-BUILT  
 LOT COVERAGE: 30.0%  
 OPEN SPACE: 43.4%  
 BUILDING: 25.2%  
 DECKS: 24.1%  
 PAVED AREA: 7.3%

LOT COVERAGE  
 DIAGRAM  
 SCALE 1.0" = 40.0"

OPEN SPACE  
 DIAGRAM  
 SCALE 1.0" = 40.0"



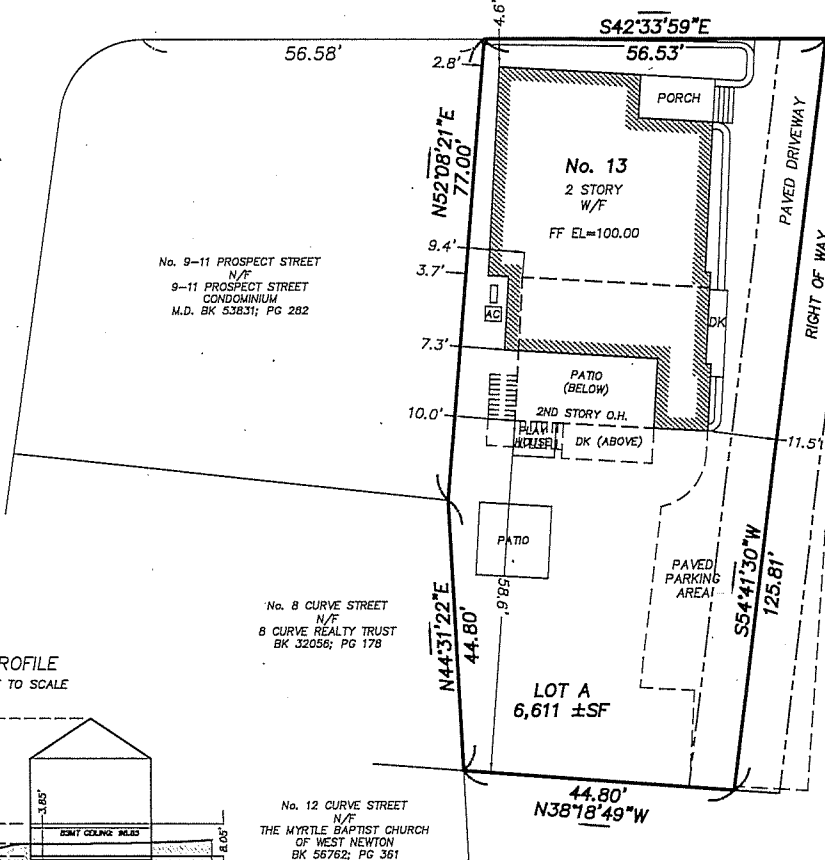
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**BOSTON SURVEY, INC.**  
 UNIT C-4 SHIPWAY PLACE  
 CHARLESTOWN, MA 02129  
 (617) 242-1313

PROSPECT STREET  
 (40.0' ~ WIDE PUBLIC)

CURVE STREET  
 (30.0' WIDE ~ PUBLIC)

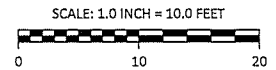


AS-BUILT  
 LOCATED AT  
 13 PROSPECT STREET  
 NEWTON, MA

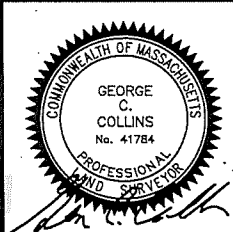
No. 15-29 PROSPECT STREET  
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No. 12 CURVE STREET  
 N/F  
 THE MYRTLE BAPTIST CHURCH  
 OF WEST NEWTON  
 BK 56762; PG 361



FIELD:	MO
DRAFT:	GCC/RAP
CHECK:	GCC
DATE:	04/12/2019
JOB #	12-00132



4/12/2019



Ruthanne Fuller  
Mayor

City of Newton, Massachusetts  
Department of Inspectional Services  
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone  
(617) 796-1060  
Telefax  
(617) 796-1086  
TDD/TTY  
(617) 796-1089  
www.newtonma.gov

John Lojek  
Commissioner

2632.5 permitted  
.398  
.40

### FLOOR AREA RATIO WORKSHEET

For Residential Single and Two Family Structures

Property address: 13 PROSPECT STREET NEWTON MA 02465

10/15

FAR Calculations for Regulations Effective As Of October 15, 2011		
Inputs (square feet)		
	EXISTING	PROPOSED
1. First story	1353.75	312.75
2. Attached garage	—	
3. Second story	1605.25	
4. Atria, open wells, and other vertical spaces (if not counted in first/second story)	—	
5. Certain floor area above the second story <sup>1b</sup>	—	
6. Enclosed porches <sup>2b</sup>	221	
7. Mass below first story <sup>3b</sup>	696	
8. Detached garage	—	
9. Area above detached garages with a ceiling height of 7' or greater	—	
10. Other detached accessory buildings (one detached building up to 120 sq. ft. is exempt)	—	
FAR of Proposed Structure(s)		
A Total gross floor area (sum of rows 1-9 above)	4188.75	
B Lot size	6,611	
C FAR = A/B	$\frac{4188.75}{6,611} = .63$	.68
Allowed FAR		
Allowable FAR	.55 64	
Bonus of .02 if eligible <sup>4b</sup>		
TOTAL Allowed FAR		

77.00'

77.00'





# CITY OF NEWTON, MASSACHUSETTS

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

Setti D. Warren  
Mayor

ZONING BOARD OF APPEALS  
Sherri A. Lougee, Board Clerk

RECEIVED  
Newton City Clerk  
2013 MAY -2 PM 2:24  
David A. Olson, CMC  
Newton, MA 02459  
#4-13

## Detailed Record of Proceeding and Decision

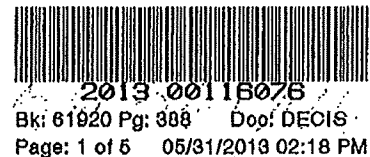
Petition of Katherine R. Jordan Quern and Albert F. Quern, Jr., 13 Prospect Street, West Newton, MA 02465.

For the following variances: (i) a variance of 389 square feet from the lot area requirements; (ii) a 194.5 square foot variance from the lot area per unit requirement; (iii) a 13.47 foot variance from the frontage requirements; and (iv) a 5.30% variance from the open space requirements in order to build a rear addition and convert an existing single family house to a two family house.

The Zoning Board of Appeals for the City of Newton held a public hearing on the above entitled proceeding on Tuesday, March 5, 2013 at 7:00 p.m. in the Aldermanic Chambers at City Hall, Newton, Massachusetts.

The following members of the Board were present:

Harvey A. Creem  
Brooke K. Lipsitt  
Barbara Huggins  
Peter Kilborn  
William McLaughlin



The petition was filed on January 23, 2013.

Due notice of the hearing was given by mail, postage prepaid, to all persons deemed to be affected thereby as shown on the most recent tax list and by publication in the Newton Tab, a newspaper of general circulation in Newton, Massachusetts, on February 6 and 13, 2013.

Accompanying the petition and incorporated into the record are the following documents:

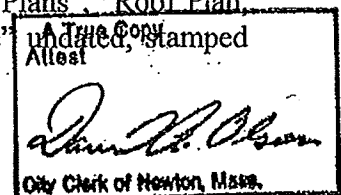
Copy of FAR calculation for 13 Prospect Street, Newton, MA, undated;

Copy of partial deed dated July 11, 1933;

"Certified Plot Plan located at 13 Prospect Street, Newton, MA" dated January 18, 2013, prepared and stamped by George C. Collins, Boston Survey, Inc., Charlestown, MA;

Five (5) pages of architectural plans including "First and Second Floor Plans", "Roof Plan, Existing Elevations", "Proposed Elevations", "Framing" and "Sections" undated, stamped by John C. Staniunas of John C. Staniunas Associates, Wellesley, MA;

59561-461





CITY OF NEWTON, MASSACHUSETTS

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

RECEIVED
Newton City Clerk

Setti D. Warren
Mayor

ZONING BOARD OF APPEALS
Sherri A. Lougee, Board Clerk

2013 MAY -2 PM 2: 24

David A. Olson, CMC
Newton, MA 02459
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Detailed Record of Proceeding and Decision

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Undated Copy Stamped
Attest
[Signature]
City Clerk of Newton, Mass.

Copy picture of the driveway of 13 Prospect Street;

Copy of "Building Permit Refusal Form" from the City of Newton Inspectional Services Department, dated August 24, 2012 and signed by Commissioner John D. Lojek;

Copy of "Building Permit" from the City of Newton Inspectional Services Department, dated May 17, 1999 and signed by Mark Gilroy;

Eight (8) pages of "Drywell Design Calculations, dated September 17, 1999, stamped by John J. Russell, Civil Engineer;

Copy of "Quitclaim Deed" for 13 Prospect Street, dated July 16, 2012;

Copy of "Deed" for 13 Prospect Street, dated July 21, 1994;

Copy of "Deed" for 13 Prospect Street, dated July 25, 1958;

Copy of City of Newton GIS map of 13 Prospect Street and surrounding lots;

Copy of petition in reference to the addition at 13 Prospect Street, signed by 11 abutters;

Copy of "Record of Action" from the City of Newton Planning and Development Department, Newton Historical Commission, dated September 27, 2012 and signed by Brian Lever, Commission Staff;

Letter of support from Anthony J. Salvucci, Alderman – Ward 3 of 23 Eddy Street, Newton, MA dated March 1, 2013; and

Letter of support from Rodney M. Barker, Former Alderman-at-Large, Ward 6 of 49 Woodcliff Road, Newton, MA dated March 5, 2013.

The Petitioners were represented by Attorney Peter F. Harrington, Harrington & Harrington, 505 Waltham Street, Newton, MA, 02465.

FACTS:

The Subject Property is located at 13 Prospect Street, Newton, MA, Section 33, Block 3, Lot 9 containing approximately 6,611 square feet in a Multi Residence 2 (MR-2) District.

The Petitioners' seek the aforementioned variances in order to remodel their existing house to create a two family dwelling. The Petitioners' house has been deemed Preferably Preserved by the Newton Historic Committee and their plans to remodel the existing building and create a two family dwelling were approved by the Newton Historical Commission on September 27, 2012.

According to the Petitioners, a hardship exists due to the topography of their lot, which slopes upward and away from Prospect Street resulting in a positive drain of storm water from the Petitioners' lot onto Prospect Street. Under Newton ordinances, and Engineering Division Requirements [See Newton Zoning Ordinance, Section 30-5 and Department of Public Works,

Walter Olson  
City Clerk of Newton, Mass.

Engineering Division, Requirements for On-Site Drainage (Stormwater Management)], in the event of development, the Petitioners are required to install drainage structures to capture storm water runoff and prevent it from flowing into the municipal storm drain system and/or neighbors property. The Petitioners are also required to realign the topography of their land to establish a surface water drain system to accommodate the use of the drainage structures. In order to make the property conform to stormwater management requirements, the Petitioners will suffer a financial burden that is unreasonable under existing conditions, they claim.

The shape of the Petitioners' lot was established by a Plan dated August 2, 1920 and recorded in the Middlesex South District Registry of Deeds in Plan Book 290, Plan 36. The Zoning District in which the land lies was adopted to create land intended for high density residential use. The shape of the lot is such that the land is confined to 6,611 square feet and as such, is insufficient to meet the requirements of the Newton Ordinance.

On October 26, 1999, Building Permit No. 714-99 was issued to the Petitioners for an addition for a two-family dwelling on the Petitioners' property. The Petitioner did not proceed, however, due to the cost of installation of drainage structures required by the ordinance and Engineering Division requirements.

According to Petitioners, while the costs of the improvement have increased since 1999, reduced mortgage interest rates and the potential to divide that cost between two units, will allow the Petitioners to proceed with the improvements required if their petition is granted.

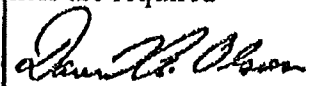
According to the Petitioners, the improvement of the property to conform to municipal stormwater management requirements will be a benefit to the immediate and nearby abutters by reducing existing storm water discharge onto Prospect Street, into the municipal storm water drain system and excess discharge onto the property of the Massachusetts Turnpike, that is approximately 200 feet from the Petitioners' property.

Attorney Harrington stated that the submitted plan shows a change in elevation and a distinct drop in elevation of the land. He stated that the Petitioners' project would not pose a detriment to the neighborhood, as the neighborhood is one of a few residential MR2 Zones in the City, and that the Petitioners' home is abutted by an eight-unit condominium complex, a two-family house on a substandard lot to the left, and across the street, also on a substandard lot a three-family home. Attorney Harrington cited the institutional use across the street and stated that this project will not have any negative impact on the Zoning district or the neighborhood. He also stated that the neighborhood is densely used and zoned, and a two-family use would not be inappropriate.

No one spoke in opposition to the petition.

#### FINDINGS AND DETERMINATION:

1. A hardship is present due to the topography and shape of the Petitioners' lot. With respect to the topography, the Petitioners' lot slopes upward and away from Prospect Street which results in a positive drain of storm water from the Petitioners' lot onto Prospect Street. Under Newton ordinances and Engineering Division Requirements [See Newton Zoning Ordinance, Section 30-5 and Department of Public Works, Engineering Division, Requirements for On-Site Drainage (Stormwater Management)], in the event of development, the Petitioners are required

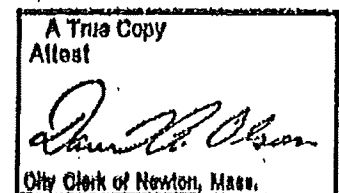
Alfred  
  
City Clerk of Newton, Mass.

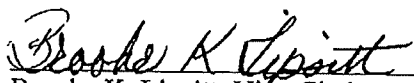
to install drainage structures to capture storm water runoff and prevent it from flowing into the municipal storm drain system and/or neighbors property. The Petitioners are also required to realign the topography of their land to establish a surface water drain system to accommodate the use of the drainage structures. In order to make the property conform to storm water discharge requirements, the Petitioners will suffer a financial hardship related to the topographical conditions of the land.

2. A hardship also exists with respect to the shape of the Petitioners' lot, because the lot was established, prior to the enactment of Zoning Laws and Regulations in Massachusetts, by a Plan dated August 2, 1920 and recorded in the Middlesex South District Registry of Deeds in Plan Book 290, Plan 36. The shape of the lot is such that the land area is confined to 6,611 square feet and as such, creates a hardship for the Petitioners.
3. The granting of the Petitioners' request will not result in a substantial detriment to the public good because:
  - a. the Petitioners' house has been deemed Preferably Preserved by the Newton Historical Commission. The Petitioners' plans to remodel the existing building and create a two family dwelling were approved by the Newton Historical Commission on September 27, 2012.
  - b. the improvement of the property to conform to municipal stormwater management requirements will be a benefit to the immediate and nearby abutters by reducing existing storm water discharge onto Prospect Street, into the municipal storm water drain system.
4. Granting the variances requested would not derogate from the spirit and intent of the Zoning Ordinance in that the departure from the Zoning Ordinance requirement would not change the character of the surrounding area.

Accordingly, a motion was made by Brooke Lipsitt and duly seconded by William McLaughlin to grant all the variances, which motion passed, five in favor and none opposed. Therefore, (i) a variance of 389 square feet from the lot area requirements; (ii) a 194.5 square foot variance from the lot area per unit requirement; (iii) a 13.47 foot variance from the frontage requirements; and (iv) a 5.30% variance from the open space requirements in order to build a rear addition and convert an existing single family house to a two family house of the Newton Revised Zoning Ordinance, Section 30-15, Table One is granted subject to the following conditions:

1. The variance is conditioned upon relief required by the Board of Aldermen.
2. That this variance must be recorded with the Middlesex Registry of Deeds within one year from the date of its filing with the City Clerk or the variance lapses.
3. That this variance must be exercised within one year from the date of its filing with the City Clerk or the variance lapses.



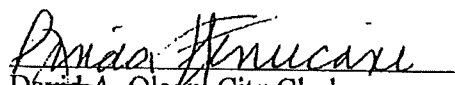
  
Brooke K. Lipsitt, Vice Chairman

AYES: Harvey A. Creem  
Barbara Huggins  
Peter Kilborn  
Brooke K. Lipsitt  
William McLaughlin

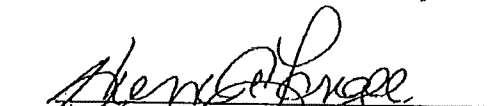
Copies of this decision and all plans referred to in this decision have been filed with the Planning and Development Board and the City Clerk.

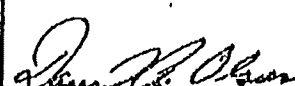
This decision was filed with the City Clerk on: *May 2, 2013*

The City Clerk certified that all statutory requirements have been complied with and that 20 days have elapsed since the date of filing of this decision and no appeal, pursuant to Section 17 of Chapter 40A has been filed.

  
David A. Olson, City Clerk

I, Sherri A. Lougee, am the Clerk of the Zoning Board of Appeals and the keeper of its records. This is a true copy of its decision.

  
Sherri A. Lougee

A True Copy  
Attest  
  
City Clerk of Newton, Mass.