



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
Subject: Materials for **October 30, 2019** Public Hearing

Hello,

We did not have a quorum for the last hearing that took place on September 25, 2019, therefore, we will be hearing this petition on October 30, 2019 along with voting on the minutes. The materials attached for the upcoming hearing. The following board members are scheduled to sit: **Brooke Lipsitt (Chair), William McLaughlin, Stuart Snyder, Barbara Huggins Carboni, Michael Rossi and Michael Quinn (Alternate)**

1. Agenda for October 30, 2019
2. Minutes for May 22, 2019, June 26, 2019 and September 25, 2019
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. **** If you have this already, you have not received this in your packet *****

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, October 30, 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. **#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.
2. Review and approval of minutes for May 22, 2019, June 26, 2019 and September 25, 2019 meeting.

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.



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ZONING BOARD OF APPEALS

Adrianna Henriquez, Board Clerk

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.



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ZONING BOARD OF APPEALS

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MEETING MINUTES

Wednesday, September 25, 2019

7:27 p.m.

Council Chambers

City Hall – 1000 Commonwealth Avenue, Newton

Board Members Present: Brooke Lipsitt (Chair), Treff LaFleche, Barbara Huggins Carboni

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, September 25, 2019 at 7:00 p.m. in the Council Chambers, Newton City Hall, 1000 Commonwealth Avenue, Newton Centre, Massachusetts on the following petition:

#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.

The meeting was called to order, but there was no quorum. The petitioners agreed to an extension of time for the hearing. This petition will be heard on October 23, 2019.

Meeting Adjourned: 7:32 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

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. Junn 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: 59581 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 21st 1994, and recorded with the Middlesex County (Southern District) Registry of Deeds in Book 24726, Page 372.

Witness my hand and seal this 16th day of July 2012.


Katherine R. Jordan

Commonwealth of: Massachusetts
County of: Suffolk, ss.

On this 16th 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:

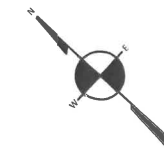
 LISA A. HOOK
Notary Public
Commonwealth of Massachusetts
My Commission Expires
February 2, 2018

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

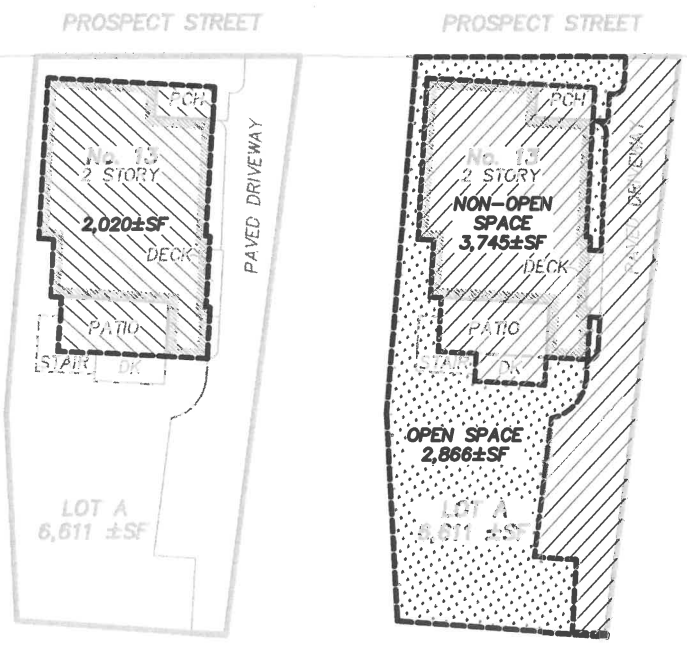
REFERENCES:
 DEED: BK 59561; PG 461
 PLAN: PL BK 290; PL 36
 No. 1345 OF 1988
 No. 777 OF 2009
 BK 4182; PG END

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

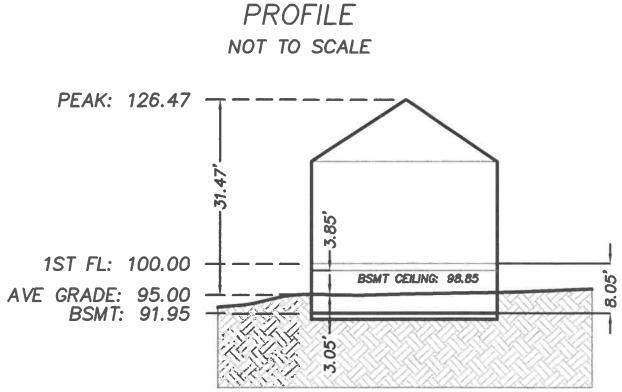
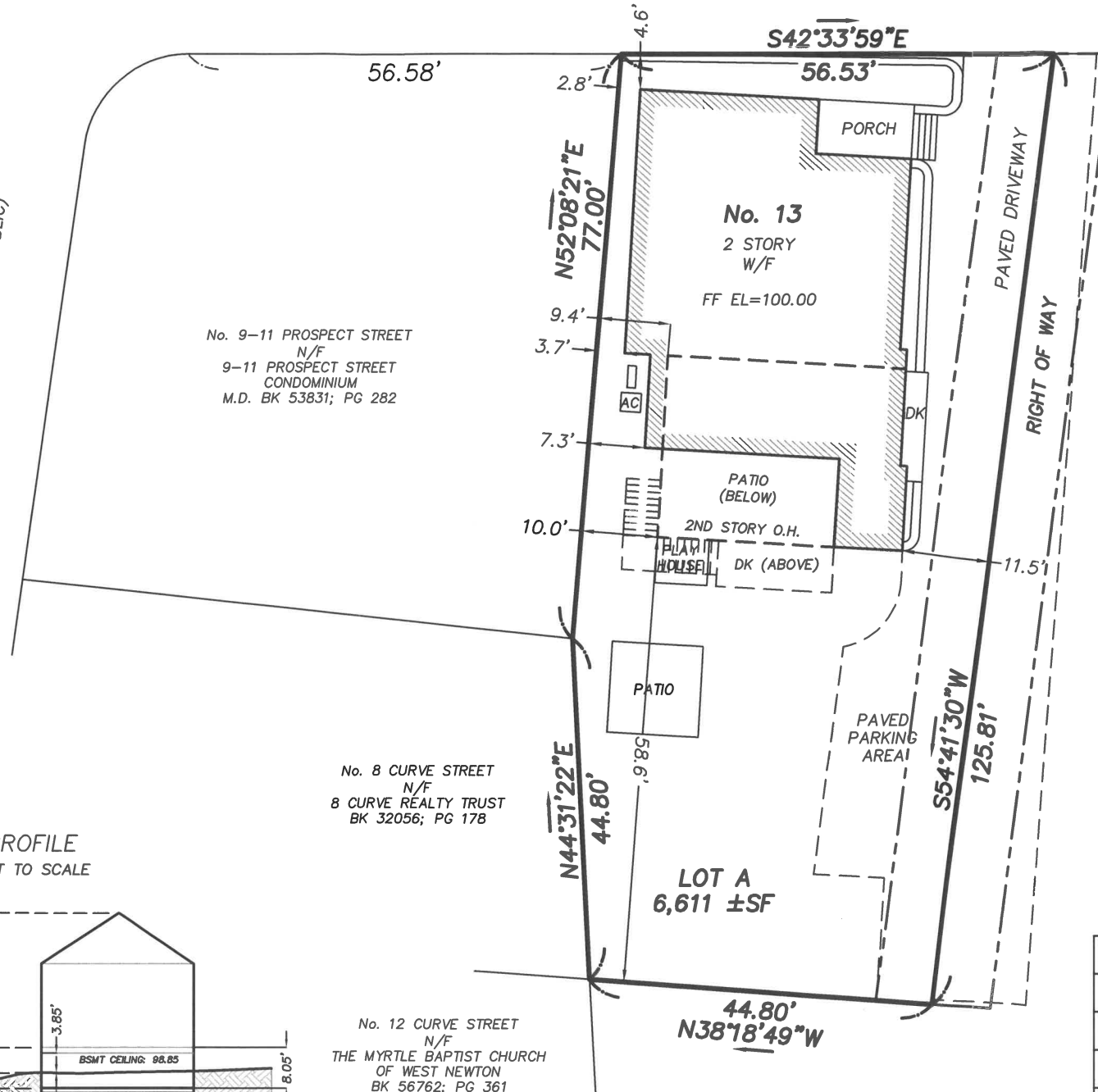
AS-BUILT
 LOT COVERAGE: 30.0%
 OPEN SPACE: 43.4%
 BUILDING: 25.2%
 DECKS: 24.1%
 PAVED AREA: 7.3%

LOT COVERAGE DIAGRAM
 SCALE 1.0" = 40.0'

OPEN SPACE DIAGRAM
 SCALE 1.0" = 40.0'



CURVE STREET
 (30.0' WIDE ~ PUBLIC)

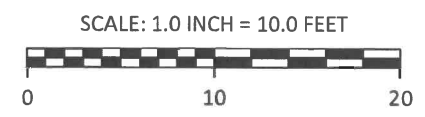


AS-BUILT
 LOCATED AT
13 PROSPECT STREET
 NEWTON, MA

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

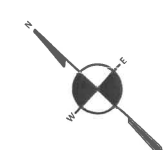
REFERENCES:
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 No. 777 OF 2009
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NOTES:
 PROPERTY SBL: 33003-0009
 ZONING: MR2 (OLD)
 DATUM: 1ST FL = 100.00 (ASSUMED)

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%

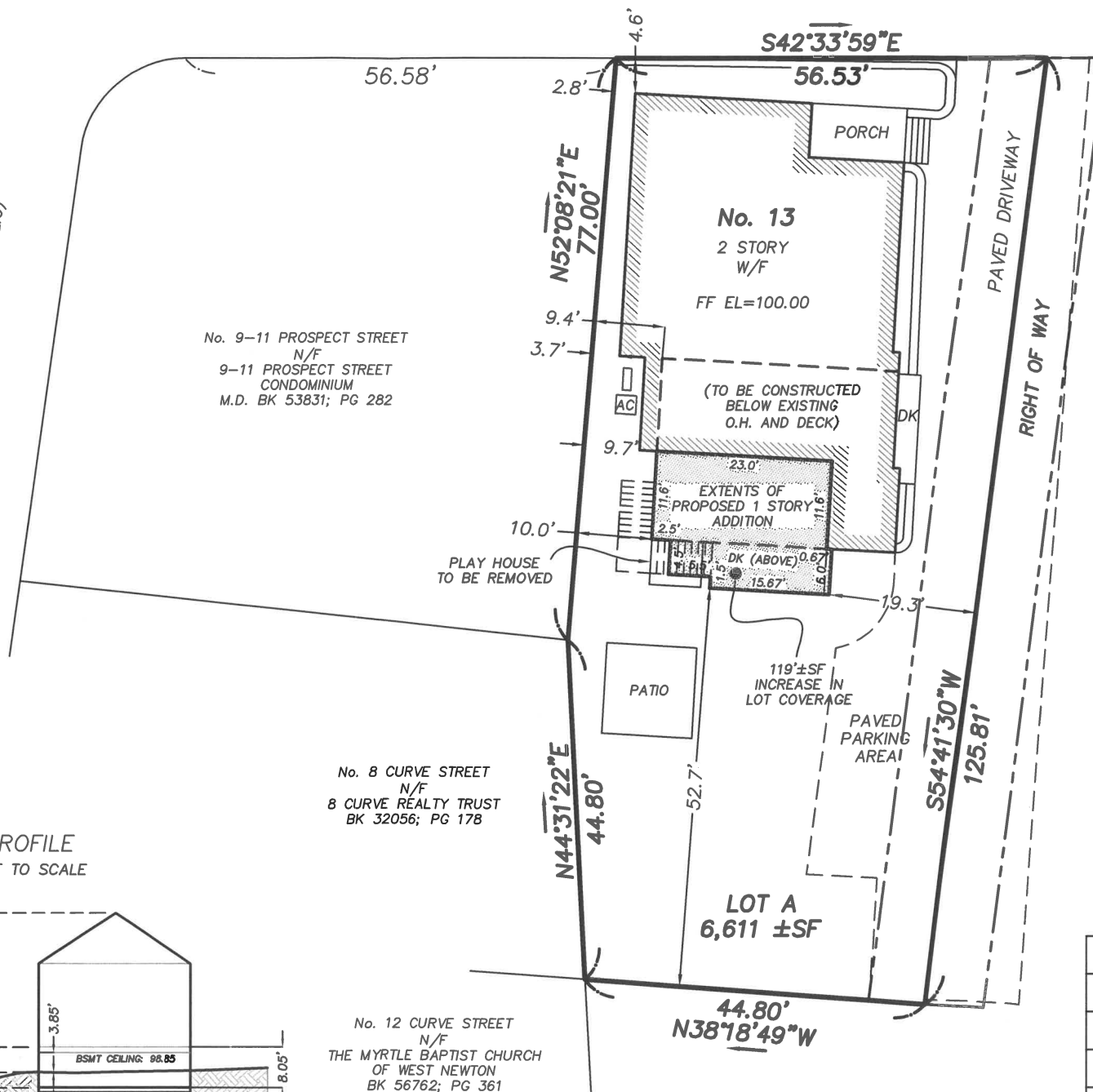
Segment	Elevation 1	Elevation 2	Average	Length	Average x Length
Segment 1	95.3	96.3	95.8	34.8	3332.3
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Sum of all segments =				13883.3	
Perimeter (total length of all segments) =				146.1	
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BOSTON 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)



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

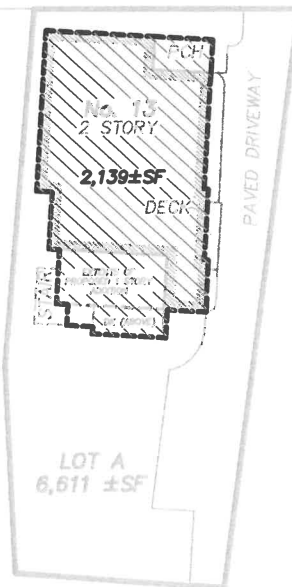
SCALE: 1.0 INCH = 10.0 FEET



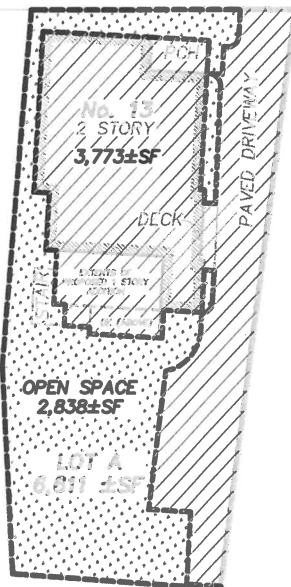
FIELD:	MO
DRAFT:	GCC/RAP
CHECK:	GCC
DATE:	04/12/2019
JOB #	12-00132

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

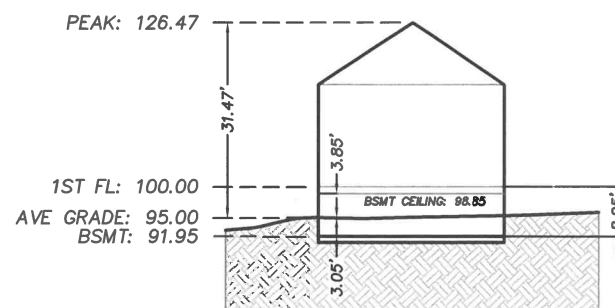


EXHIBIT D



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

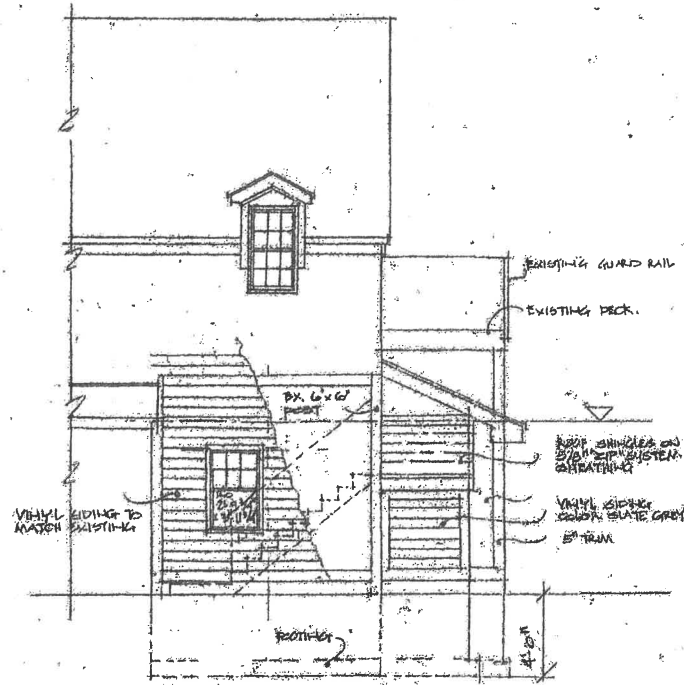
FLOOR AREA RATIO WORKSHEET

For Residential Single and Two Family Structures

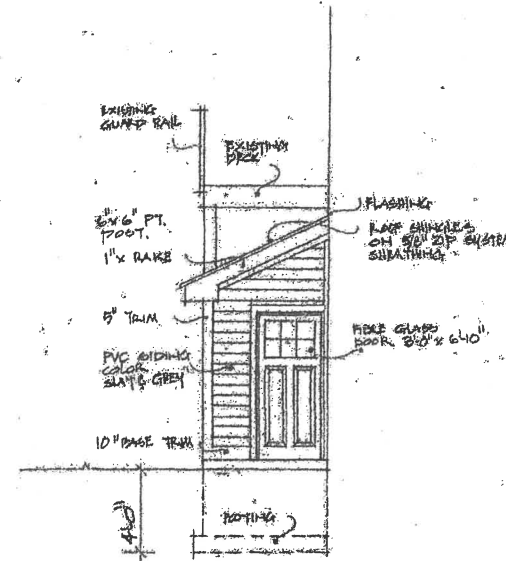
Property address: 13 PROSPECT STREET, W. NEWTON, MA 02465

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 ^{1b}	—	
6. Enclosed porches ^{2b}	221	
7. Mass below first story ^{3b}	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 ^{4b}		
TOTAL Allowed FAR		

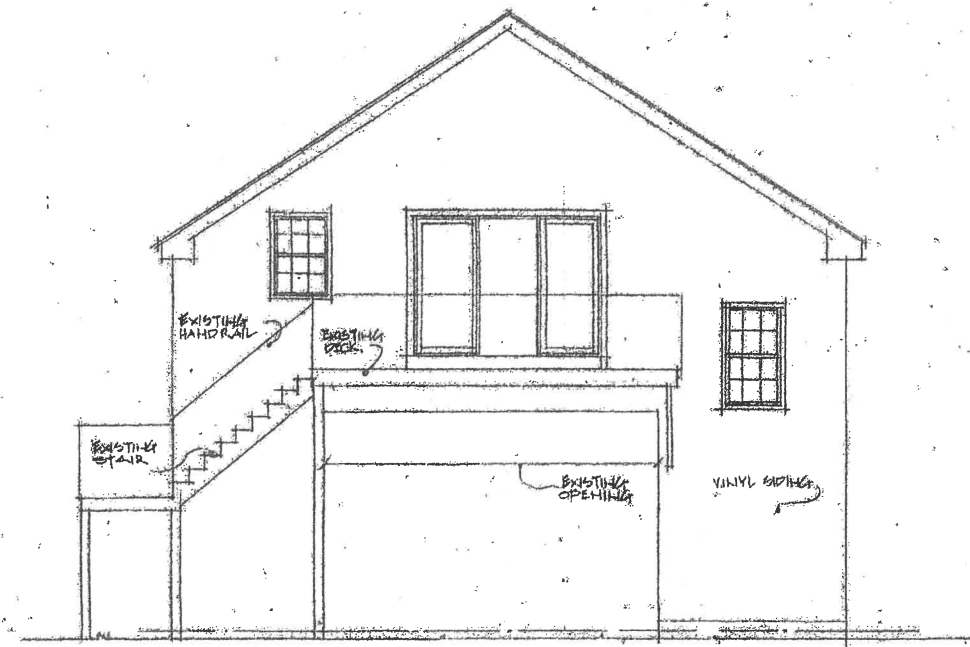
EXHIBIT E
(2 PAGES)



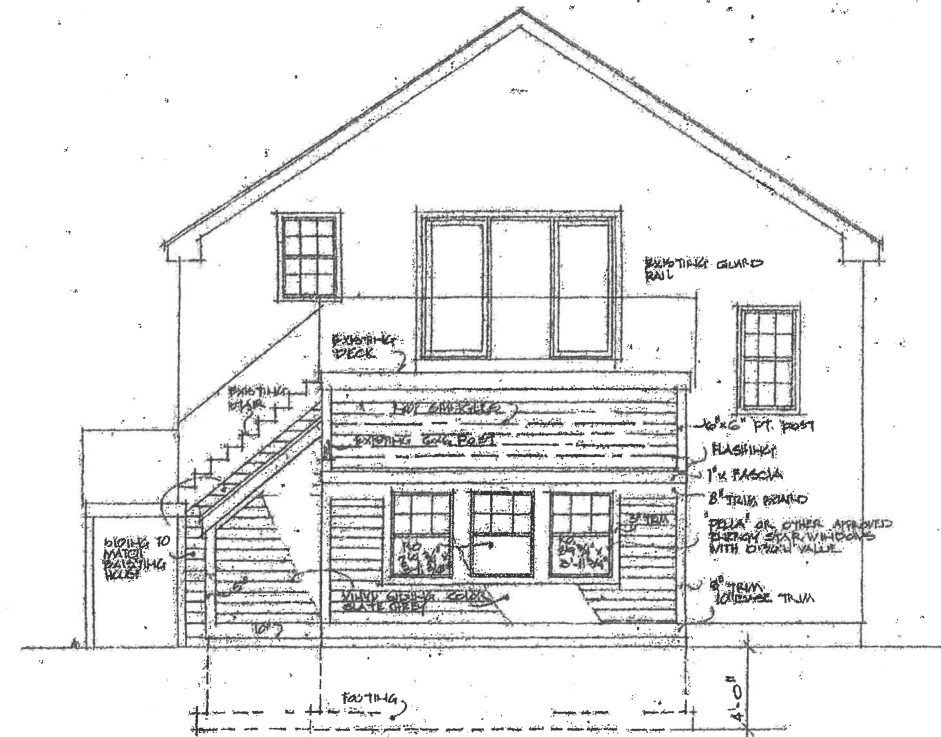
3 Proposed Side Elevation 1
1/4" = 1'-0"



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



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



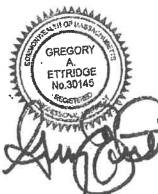
2 Proposed Front Elevation
1/4" = 1'-0"

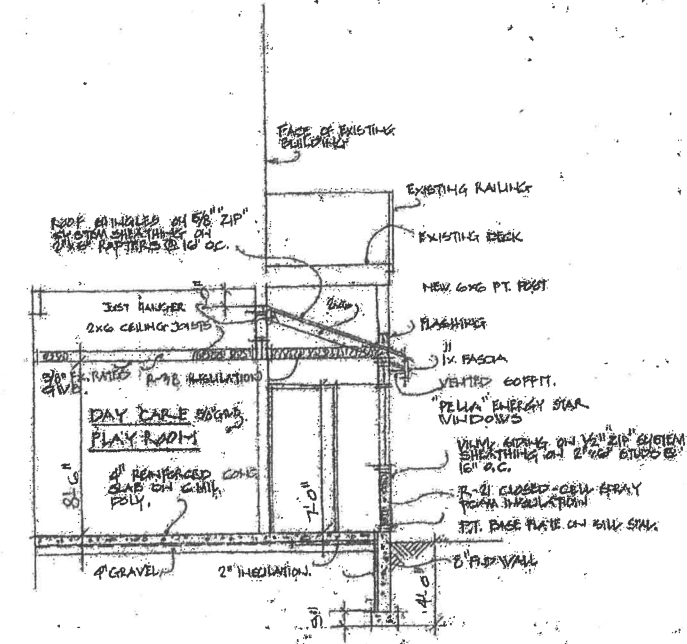
PROPOSED ADDITION
13 PROSPECT STREET, NEWTON, MA

ELEVATIONS

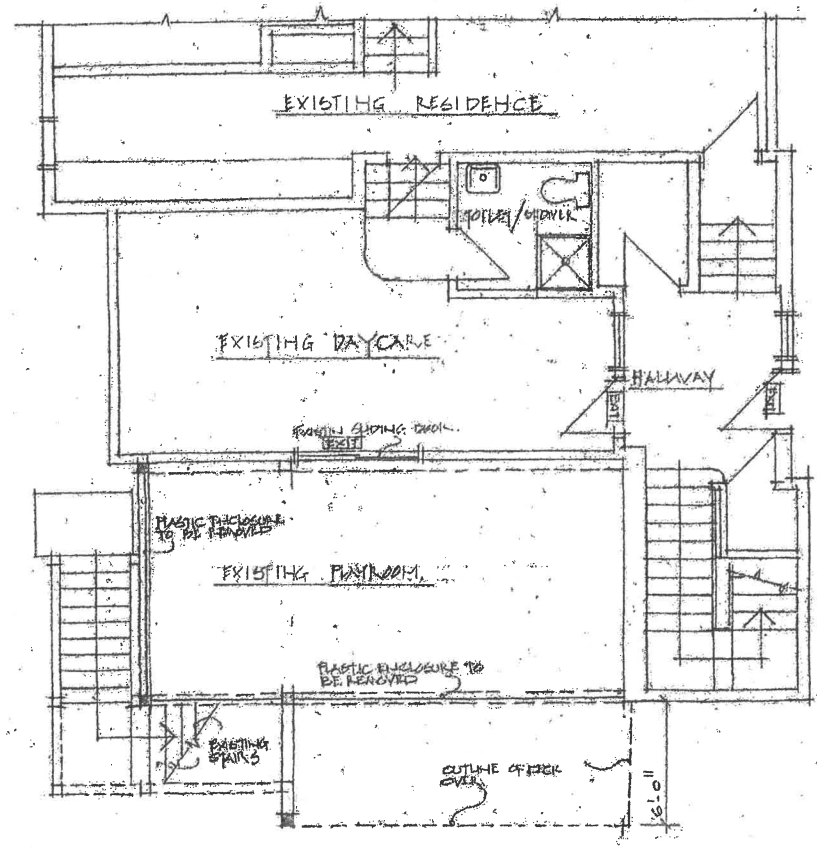
Date: 10/03/17

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

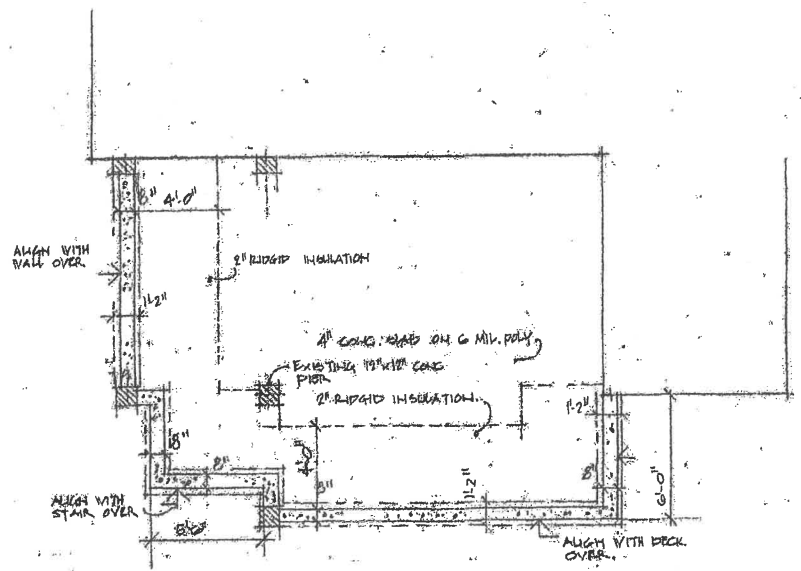




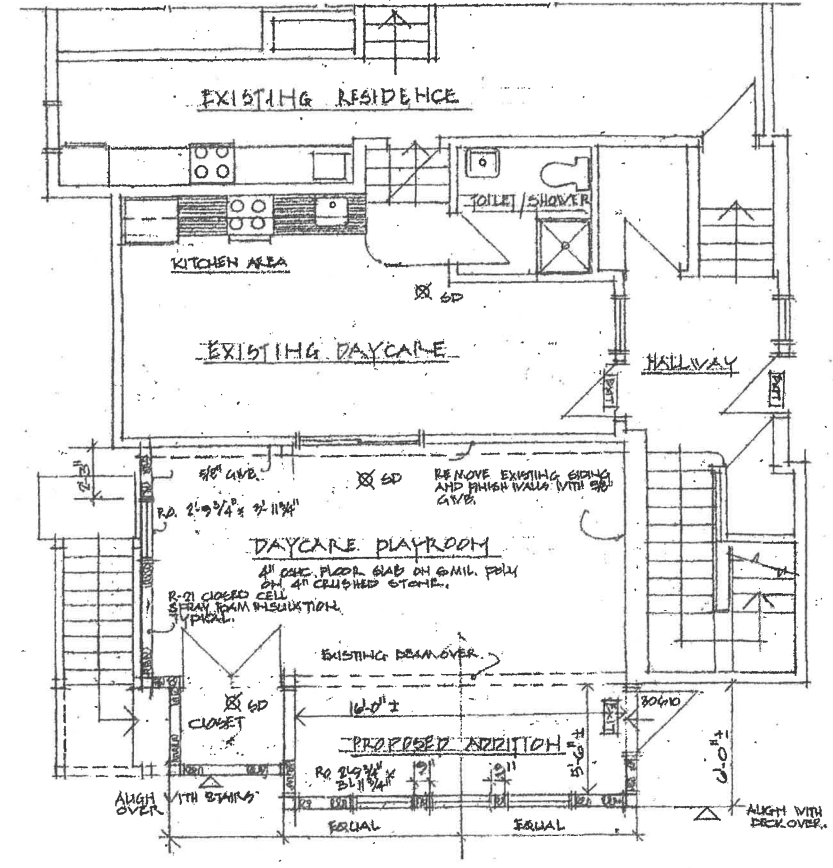
4 Proposed Section
1/4" = 1'-0"



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

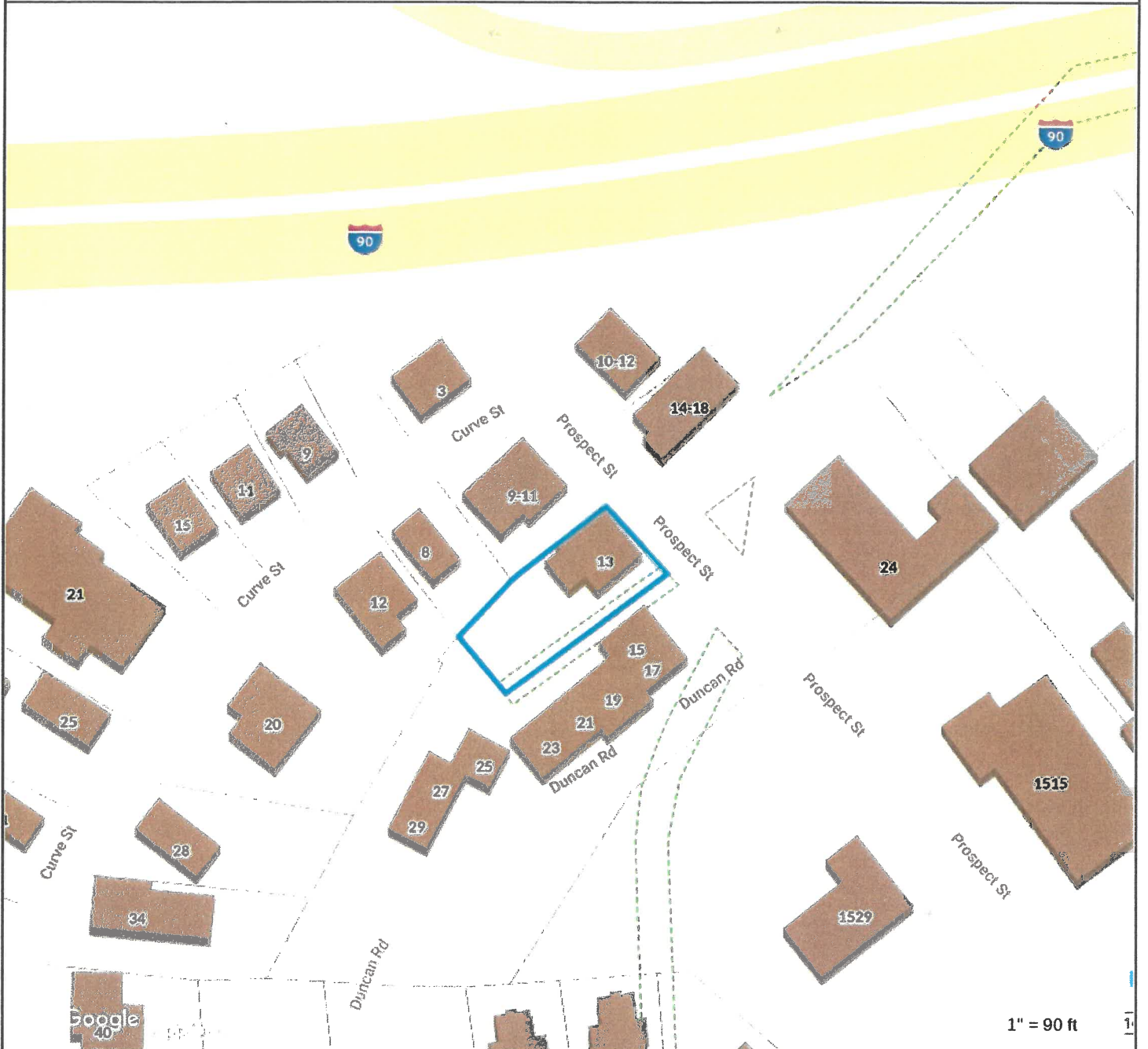
FLOOR PLANS & SECTION

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

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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

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

*Allowed by Variance #4-13

See "Zoning Relief Summary" below:

Zoning Relief Required		
<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

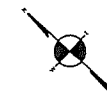
REFERENCES:
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 PLAN: PL BK 290; PL 36
 No. 1345 OF 1988
 No. 777 OF 2009
 BK 4182; PG END

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

AS-BUILT	EXISTING	PROPOSED
LOT COVERAGE:	30.0%	32.3%
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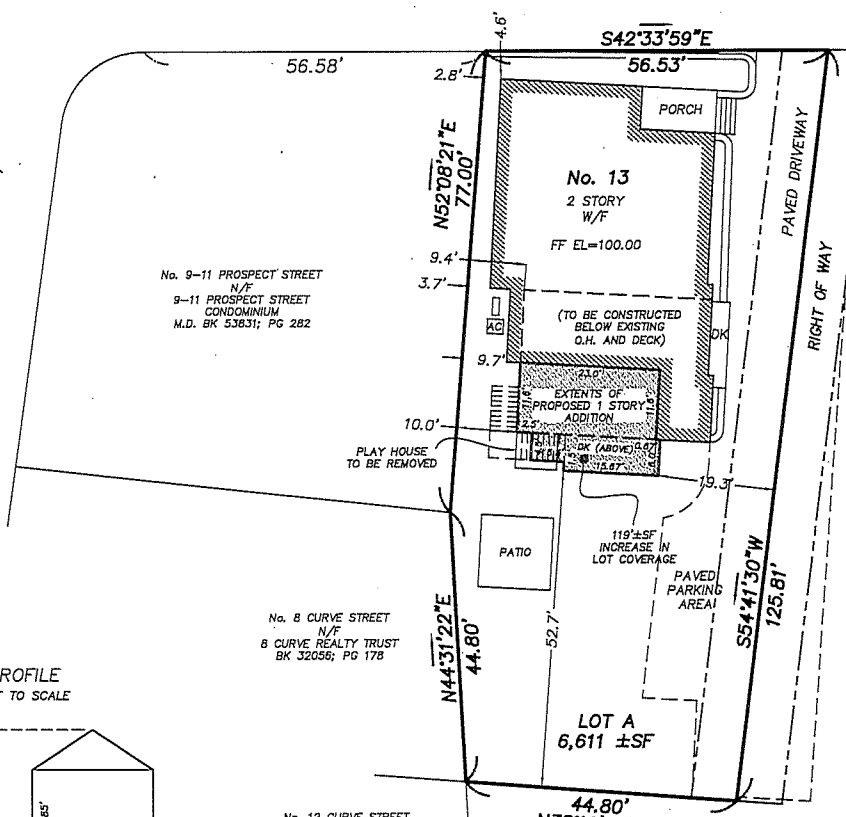
Segment	Elevation 1	Elevation 2	Average	Length	Average x Length
Segment 1	95.3	96.3	95.8	34.8	3332.3
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Sum of all segments =				13883.3	
Perimeter (total length of all segments) =				146.1	
Average grade plane =				95.0	

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



CURVE STREET
(30.0' WIDE ~ PUBLIC)

PROSPECT STREET
(40.0' ~ WIDE PUBLIC)



CERTIFIED PLOT PLAN
 LOCATED AT
 13 PROSPECT STREET
 NEWTON, MA

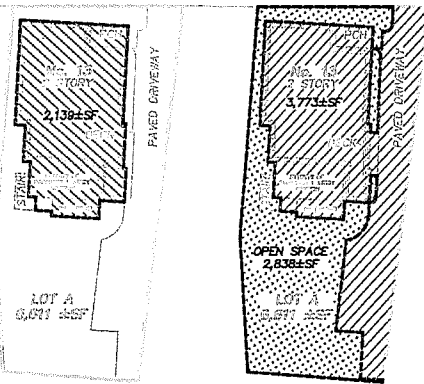
No. 15-29 PROSPECT STREET
 N/F
 BELMAT CONDOMINIUMS
 M.D. BK 20592; PG 546

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

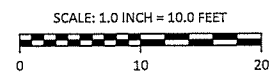
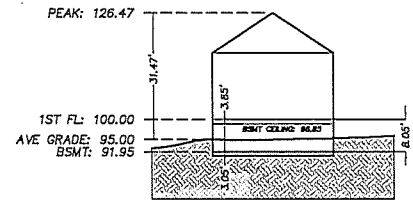
No. 12 CURVE STREET
 N/F
 THE MYRTLE BAPTIST CHURCH
 OF WEST NEWTON
 BK 56762; PG 361

PROPOSED LOT COVERAGE DIAGRAM
 SCALE 1.0" = 40.0'

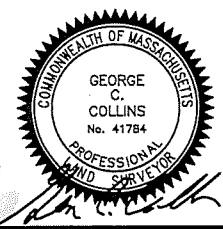
PROPOSED OPEN SPACE DIAGRAM
 SCALE 1.0" = 40.0'



PROFILE
 NOT TO SCALE



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



4/12/2019

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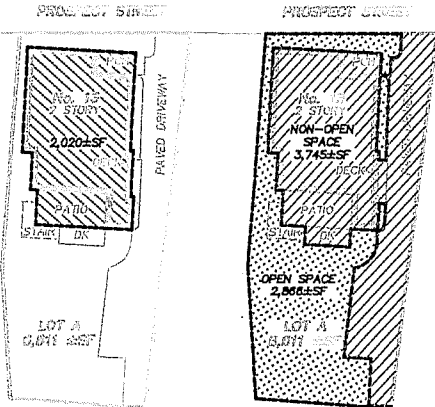
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LOT COVERAGE
 DIAGRAM
 SCALE 1.0" = 40.0"

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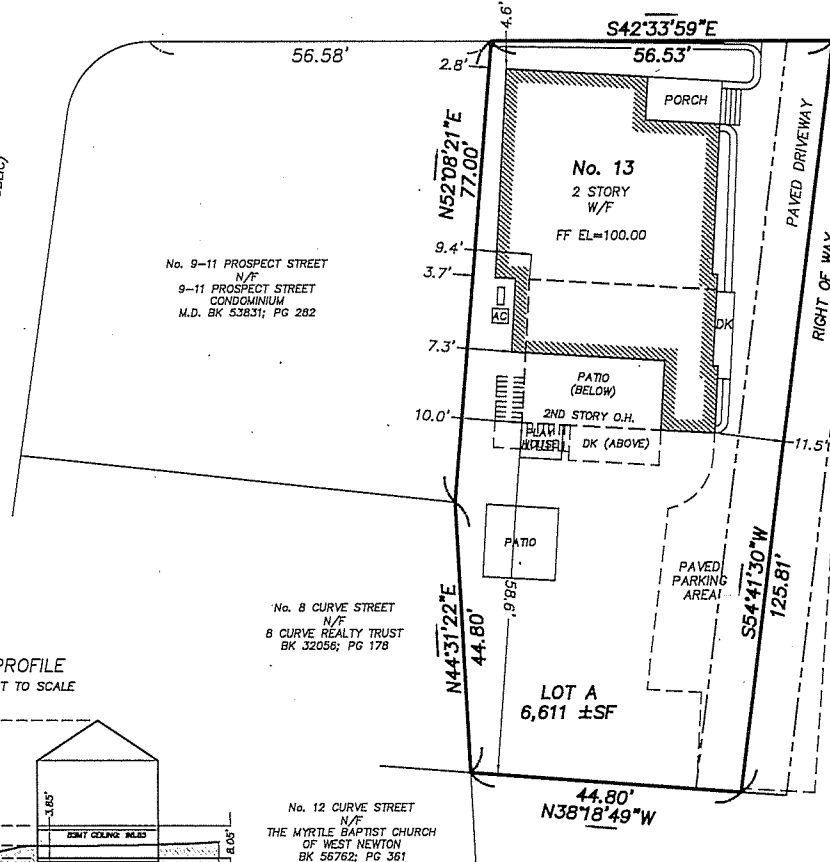


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Segment 2	95.4	96.2	95.8	39.6	3791.9
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PROSPECT STREET
 (40.0' ~ WIDE PUBLIC)

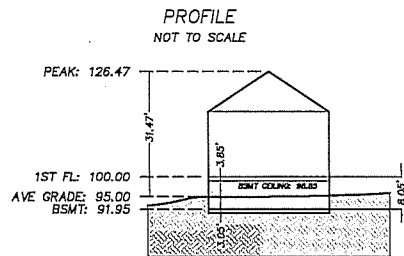
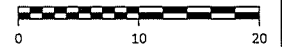
CURVE STREET
 (30.0' WIDE ~ PUBLIC)



AS-BUILT
 LOCATED AT
13 PROSPECT STREET
 NEWTON, MA

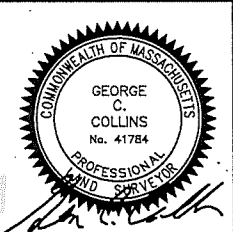
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 THE MYRTLE BAPTIST CHURCH
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FIELD:	MO
DRAFT:	GCC/RAP
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DATE:	04/12/2019
JOB #	12-00132



4/12/2019



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
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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)	—	
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7. Mass below first story ^{3b}	696	
8. Detached garage	—	
9. Area above detached garages with a ceiling height of 7' or greater	—	
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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 ^{4b}		
TOTAL Allowed FAR		

77.00'

77.00'



Setti D. Warren
Mayor

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

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Newton City Clerk

2013 MAY -2 PM 2:24

ZONING BOARD OF APPEALS Sherri A. Lougee, Board Clerk

David A. Olson, CMC
Newton, MA 02459
#4-13

Detailed Record of Proceeding and Decision

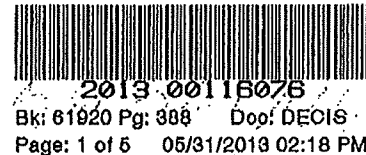
Petition of Katherine R. Jordan Quern and Albert F. Quern, Jr., 13 Prospect Street, West Newton, MA 02465.

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:

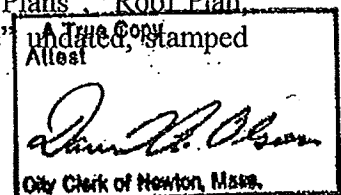
Copy of FAR calculation for 13 Prospect Street, Newton, MA, undated;

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;

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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

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David A. Olson, CMC
Newton, MA 02459
#4-13

Detailed Record of Proceeding and Decision

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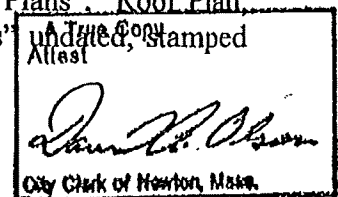
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Copy picture of the driveway of 13 Prospect Street;

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.

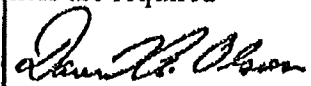
According to the Petitioners, the improvement of the property to conform to municipal stormwater management requirements will be a benefit to the immediate and nearby abutters by reducing existing storm water discharge onto Prospect Street, into the municipal storm water drain system and excess discharge 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

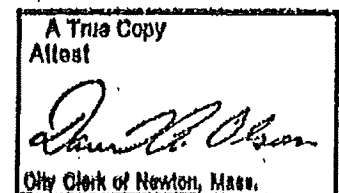
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City Clerk of Newton, Mass.

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.



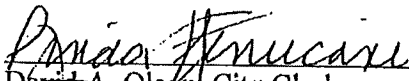

Brooke K. Lipsitt, Vice Chairman

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

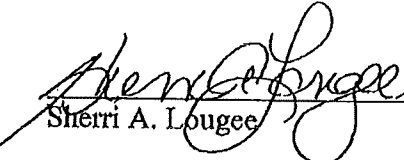
Copies of this decision and all plans referred to in this decision have been filed with the Planning and Development Board and the City Clerk.

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

