



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue

Newton, Massachusetts 02159

Telephone: (617) 552-7135 Telecopier: (617) 965-6620

DEPARTMENT OF PLANNING AND DEVELOPMENT

Eugene A. Bober, Director

Public Hearing Date:	January 9, 1990
Land Use Action Date:	March 13, 1990
Board of Aldermen Action Date:	March 20, 1990
90-Day Expiration Date:	April 9, 1990

TO: Mayor Theodore D. Mann
Board of Aldermen
Planning and Development Board

FROM: Eugene A. Bober
Director of Planning and Development

SUBJECT: Petition #609-89 (544-86(3)) of CHAUNCY PERRY, requesting a SPECIAL PERMIT/SITE PLAN APPROVAL to provide for a three (3) family dwelling unit at 432 NEWTONVILLE AVENUE, Newtonville Ward 2, Section 22, Block 5, lot 24 containing approximately 16,623 sq. ft. located in a Multi-Residence 1 Zoning District.

Recommendation: Approval, subject to conditions.

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I. ELEMENTS OF THE PETITION

The petitioner is proposing to convert and rehabilitate an existing five unit apartment house into a three-family dwelling. Section 30-9(c) allows the Board of Aldermen to grant a Special Permit in accordance with Section 30-24 for the conversion of a structure in existence on May 7, 1979, to occupancy by more than two families.

II. BACKGROUND

In 1986, the petitioner requested a Special Permit (Petition #544-86(3)) to allow for the conversion of an illegal 5 family dwelling into a four family dwelling. A change of Zone was also requested from a Multi-Residence 1 District to a Multi-Residence 2 District. The petitions were denied.

In October, 1987, the petitioner requested a use variance from the Zoning Board of Appeals to convert the structure to a 4 family dwelling. The use variance was denied.

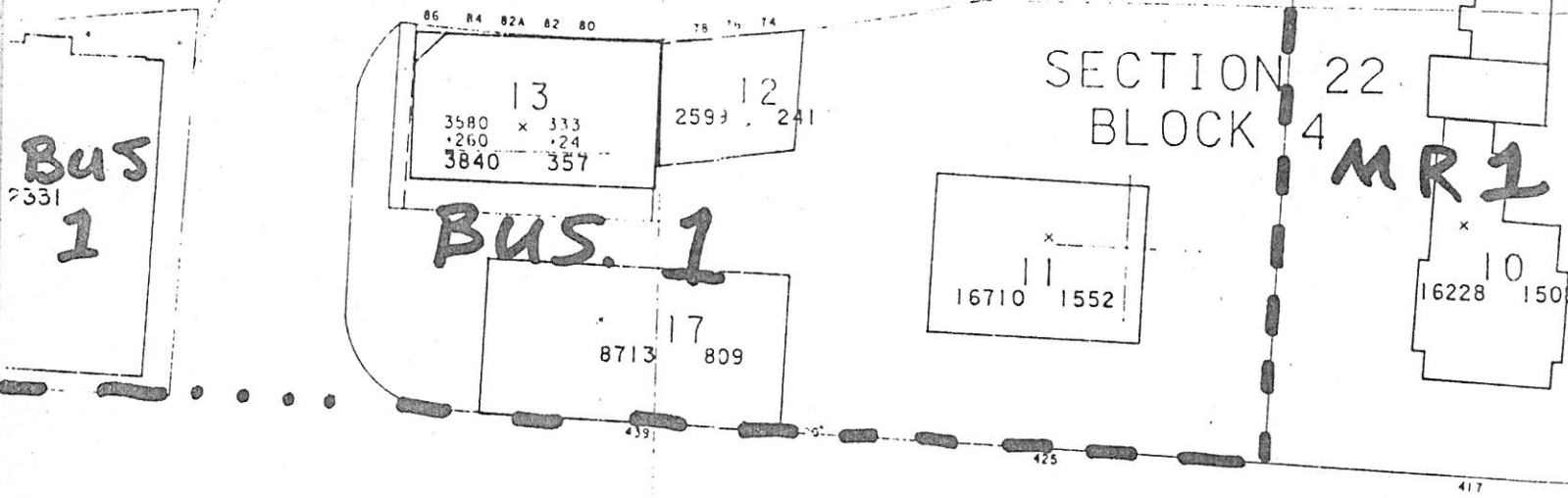
BOWERS

SECTION 22
BLOCK 4

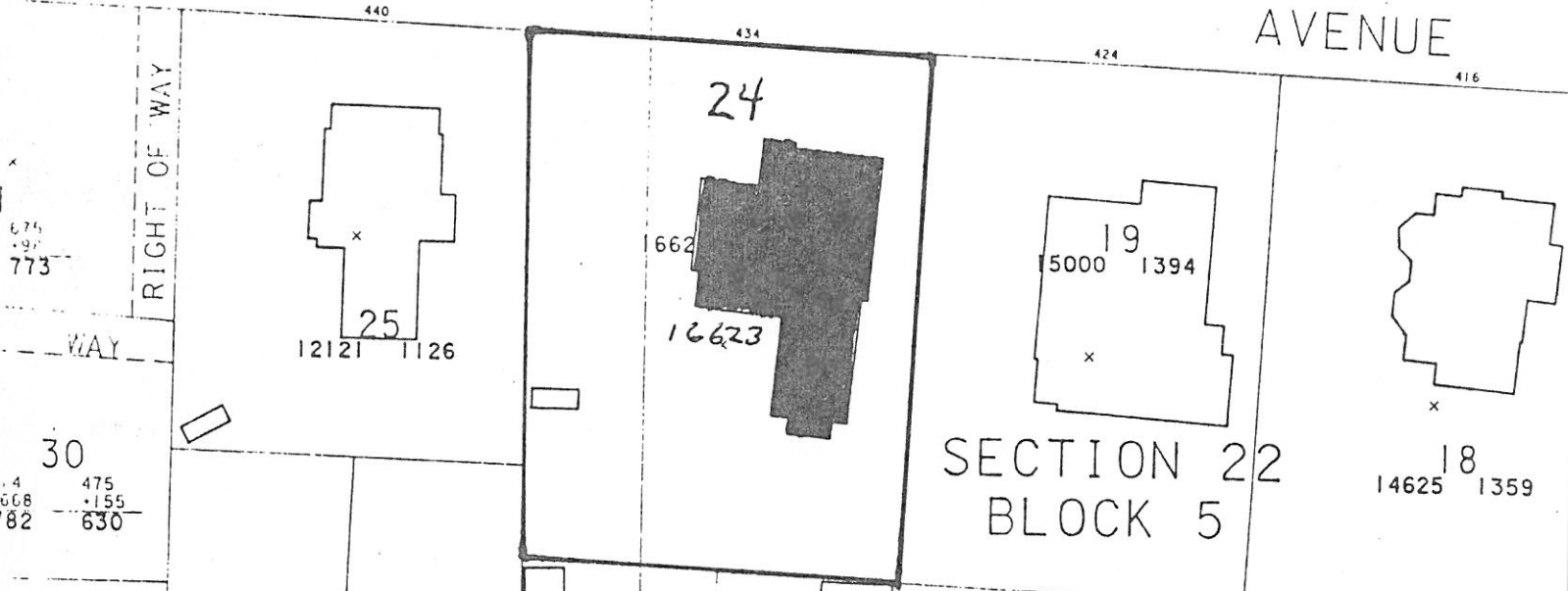
MR 1

BUS
1

BUS. 1

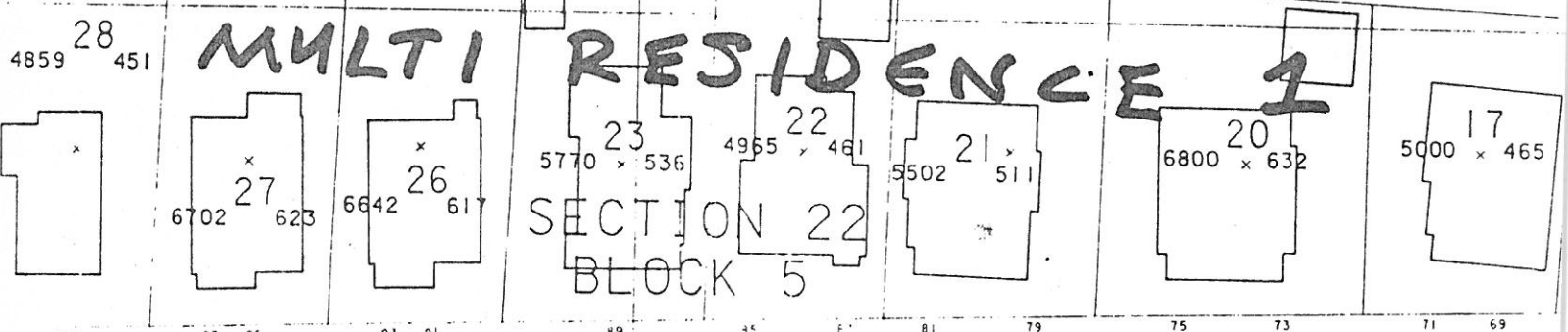


AVENUE



SECTION 22
BLOCK 5

MULTI RESIDENCE 1



SECTION 22
BLOCK 5

MADISON AVE.

CITY OF NEWTON, MASSACHUSETTS
DEPARTMENT OF PLANNING AND DEVELOPMENT

PETITION: # 609-87
PETITIONER: CHAUNCY PERRY

- ZONING DISTRICTS
- Single Residence 1
 - Single Residence 2
 - Single Residence 3
 - Multi- Residence 1 X
 - Multi- Residence 2
 - Multi- Residence 3
 - Multi- Residence 4
 - Business 1



The existing structure contains 5,000 square feet of living space and has been assessed by the City of Newton as a five family residential dwelling since 1963. A review of municipal records shows that at least four families have resided on the premises since 1941. From 1925 to 1941 the premises appeared to be used as a boarding house for 7 or more people.

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Site

The site consists of 16,623 sq. ft. and is located on the south side of Newtonville Avenue. The lot is long and narrow (115' wide and 151' in length). The site is occupied by a 3-story Victorian structure in poor condition that was built around 1875. The single family dwelling was converted to a five unit dwelling prior to 1963. The existing structure contains approximately 5,000 sq. ft. of floor area. The house is located at the northern corner of the lot and a paved parking area is located along the west side yard and rear of the building.

B. Neighborhood

The site is located within an area between a Business 1 District (Newtonville Business District) to the west and north and a Multi-Residence 1 District to the south and east. The Multi-Residence 1 District in this area is characterized by one and two-family dwellings interspersed with multi-family dwellings. The site is abutted to the north by office and commercial business uses; and to the west, south and east by one and two family dwellings.

IV. ANALYSIS

A. Land Use Considerations

1. Potential Development

The site is 16,623 sq. ft. in area and has 115 feet of frontage on Newtonville Avenue. The parcel is not large enough to subdivide the lot into two 10,000 sq. ft. single family house lots. Special Permits in the Multi Residence 1 District could allow for the demolition of the existing house and construction of four attached dwelling units, or, as proposed, the conversion of existing residential structure into 3 Multi-family units could occur.

2. Density

The site's proposed density of approximately 5,541 s.f./d.u. is somewhat less than the existing residential density in the neighborhood which is approximately 4,400 s.f./d.u. The proposed conversion would represent a density significantly less than the existing five unit structure.

B. Technical Considerations

1. Zoning Requirements

The proposed development compares with the technical requirements applicable to a Multi-Residence 1 District as follows.

	<u>Ordinance</u>	<u>Proposed Development</u>
Min. lot area	7,000 s.f.	16,623 s.f.
Min. lot area per d.u.	5,000 s.f./d.u.	5,541 s.f./d.u.
Frontage	80 ft.	115 ft.
Front Setback	25 ft.	28 ft.
Side Setback	7.5 ft.	11 ft.
Rear Setback	15 ft.	42 ft.
Max. Bldg. lot coverage	30%	15%
Max. Bldg. height	3 stories/36 ft.	Pre-existing Height
# of parking spaces	6	8
# of handicapped		
Parking stalls	1	1
Parking Setback Side	7.5 ft.	10 ft.

As indicated above, the development complies with the requirements for the conversion of an existing residential structure into a three unit structure.

2. Access, Internal Circulation and Parking

Access to the site is provided by a 15 foot wide driveway from Newtonville Avenue. Parking has been provided for 6 spaces at the rear of the lot. Grass stone paving is proposed for guest parking.

C. Design Considerations

1. Building - Interior

The building will be divided into three dwelling units ranging in size from 590 to 2,420 s.f. The first floor will have two units. Unit 3 will be on the second floor and will extend up to the third floor. The submitted plans do not indicate the number of bedrooms in each unit. All interior improvements should be made to bring the structure into conformance with state and local health, building and fire codes. The basement plan has not been submitted. The basement should only be used as storage.

2. Building - Exterior

The building exterior is in poor condition. The front porch eave has separated and the building needs repair and painting. The Historical Commission should have an opportunity to review and approve exterior improvements.

3. Landscaping

The submitted plans depict the retention of the existing landscaping. The existing bituminous concrete parking area along the western property line will be removed and replaced by a 22 foot wide grass lawn area. One Norway Maple will be installed along the front on Newtonville Avenue.

The plans show a new stockade fence along the western property line but it is unclear from the plans what the height of the fence will be and whether a fence will be installed on the south and eastern property line. The proposed parking area is required to be screened from the rear abutters by a fence or evergreen landscaping and the petitioner should submit revised landscaping plans showing how this requirement will be met. The revised landscaping plans should also show the location of any dumpster and any proposed site lighting.

D. Ten percent Ordinance

As the proposed development would result in a greater number of units than could be built as a right, a cash payment in accordance with the ten percent ordinance would be required.

IV. CONCLUSION AND RECOMMENDATION

The proposed conversion of a 5 unit structure into a 3 unit structure is an appropriate use of this site and would result in a lower density. The proposed improvements would also significantly improve the appearance of the structure and site.

Therefore, I recommend that the petition be approved subject to the following conditions:

1. That the submitted plans be revised to show the following:
 - a. screening of the parking with evergreen landscaping at least 3 feet in height;
 - b. site lighting, and
 - c. the location of a fenced common trash collection area.
2. That a cash payment in accordance with the Ten Percent Ordinance be made.
3. That granite curbing be provided on the street.
4. That the Historic Commission approve an exterior renovation plan.

SA

25.00

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MSD 06/23/97 09:44:25

Address of property: 432 Newtonville Avenue
Newtonville, MA.

DEED

We, **CHAUNCY S. PERRY** and **NANCY M. PERRY**, husband and wife as tenants by the entirety, both of Waltham, Middlesex County, MA., for consideration of Love and Affection, grant to **CHAUNCY S. PERRY** and **NANCY M. PERRY**, husband and wife as tenants in common, both of 105 Greenwood Lane, Waltham, Middlesex County, MA., with **QUITCLAIM COVENANTS**, a certain parcel of land with the buildings thereon, situated in that part of Newton called Newtonville, Middlesex County, Massachusetts, being now known as and numbered 432 Newtonville Avenue, and shown as the Northwesterly portion of Lot No. 5 on a plan entitled "Plan of seven lots of land situated in Newtonville" dated March 12, 1866, by Marshall S. Rice, Surveyor, recorded with Middlesex South District Registry of Deeds in Book 966, Page 506, bounded and described as follows:

NORTHERLY by Newtonville Avenue, one hundred fourteen and 20/100 (114.20) feet;

EASTERLY by the remaining portion of said Lot No. 5, being land formerly of Hunt, more recently of Cunniff, one hundred fifty (150) feet;

SOUTHERLY by the remaining portion of said Lot No. 5, being land now or formerly of Brooks and land now or formerly of Edmands, one hundred seven and 20/100 (107.20) feet; and

WESTERLY by lot No. 4, as shown on said plan, by land now or formerly of Page, one hundred fifty (150) feet.

Containing 16,625 square feet of land, more or less.

Said premises are conveyed subject to rights, easements and restrictions of record, if any, insofar as the same may now be in force and applicable.

Said premises are conveyed subject to a mortgage and note secured thereby from Kenneth G. Bouchard and Virginia C. Bouchard to Central Co-Operative Bank, dated July 31, 1972, recorded with said deeds in Book 12256, Page 421, which the grantees, by the acceptance hereof, herein assume and agree to pay.

Being the same premises conveyed to Chauncy S. Perry and Nancy M. Perry by Deed of Kenneth G. Bouchard and Virginia C. Bouchard dated August 14, 1976 and recorded with Middlesex South District Deeds, Book 13038, Page 235.

WITNESS our hands and seals this 11th day of June 1997.

Chauncy S. Perry
Chauncy S. Perry
Nancy M. Perry
Nancy M. Perry

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

June 11 1997

Then personally appeared the above named Chauncy S. Perry and Nancy M. Perry and acknowledged the foregoing to be their free act and deed, before me,

Richard F. Dacey, III
Richard F. Dacey, III
Notary Public

My commission expires:
July 29, 1999



CITY OF NEWTON
IN BOARD OF ALDERMEN

August 13, 1990

ORDERED:

That the Board finding that the public convenience and welfare will be substantially served by its action and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, the following SPECIAL PERMIT/SITE PLAN APPROVAL is hereby granted in accordance with the recommendation of the Land Use Committee and based upon the following specific findings, facts and conclusions, and the reasons given by the Committee therefor through its Chairman, Susan M. Basham:

Petition number: 609-89
Petitioner: Chauncy Perry
Location: 432 Newtonville Avenue
Owner: Chauncy Perry
Address of Owner: 105 Greenwood Lane
Waltham, MA 02154
To be used for: 3 residential units
Construction: Wood frame
Explanatory note: Section 30-24 allows the Board of Aldermen to grant a SPECIAL PERMIT to convert a structure in existence on May 7, 1979 to occupancy by more than two families.

Land referred to is in: Multi Residence 1 District


Approved, subject to the following conditions:

1. That, except as amended below, the building, parking stalls, driveways, maneuvering aisles, landscaping, and other site features be constructed and located as indicated on plans entitled "P-1 Plan of Proposed landscaping and Parking 432 Newtonville Ave. dated August 4, 1986 revised to March 12, 1990 and as amended in correspondence dated April 26, 1990 from Kenn Eisenbraun; P-2 Plans of Proposed Alterations to

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

existing Perry Apartment Building dated August 4, 1986 and revised to February 16, 1989; P-4 Proposed Alterations, 432 Newtonville Ave., dated March 12, 1990 and revised to March 22, 1990 by Dooling & Company Architect, Inc." submitted by the Petitioner.

2. That the asbestos shingles shall be removed and disposed of at a licensed disposal site.
3. That the cedar clapboards shall be repaired or replaced with materials that are consistent with the historic nature of the house.
4. That all architectural trim including but not limited to the cornice, soffits, sills, shutters, door and window surrounds shall be repaired or replaced with like materials.
5. That the porch shall be restored to a design historically compatible with the building.
6. That exterior improvements, including but not limited to those specified in conditions 3, 4 and 5 above, shall be subject to the review and approval of the Newton Historical Commission.
7. That a preservation restriction which gives the Newton Historical Commission review and approval of substantial exterior changes be executed with the Newton Historical Commission and be recorded at the Registry of Deeds for the Southern District of Middlesex County with appropriate reference to the book and page of the recording of the Petitioner's title deed. The City Solicitor's office shall review and approve the language of the preservation restriction prior to execution.
8. That the building and property shall be maintained in good condition.
9. That no parking be permitted in the required front setback other than as permitted by this special permit.
10. That a shed or fenced common area for trash be constructed with the location, design and landscape screening to be reviewed and approved by the Director of Planning and Development.
11. That the basement not be used for residential purposes except storage.
12. That no building permit shall be issued in pursuance of the SPECIAL PERMIT/SITE PLAN APPROVAL until:

A True Copy
Attest:

City Clerk of Newton, Mass.

- a. The Director of Planning and Development shall have reviewed and approved floor plans, plans for the location of the parking area and driveway and trash enclosure location and materials, and a statement certifying such approval shall have been filed with the City Clerk and Inspectional Services Department.
- b. A final landscape plan including lighting and fixture design, fence and lattice work, and indicating the location, number, size and type of landscaping and landscape materials to be installed, shall have been submitted to and approved by the Director of Planning and Development and a statement certifying such approval shall have been filed with the City Clerk and the Inspectional Services Department.
- c. The Newton Historical Commission (Director of Planning and Development) shall have reviewed and approved architectural plans including but not limited to the facade, architectural trim, porch, and roof materials and colors of the building and a statement certifying such approval shall have been filed with the City Clerk and Inspectional Services Department.
- d. The City Engineer shall have reviewed and approved the plans for site grading and storm and sewer drainage, sidewalks, water service, and a statement by the City Engineer certifying such approval shall have been filed with the City Clerk, the Inspectional Services Department, and the Department of Planning and Development.
- e. The Fire Department shall review and approve the stamped Site Plan as to consistency of emergency access and a statement by the Fire Chief certifying such approval shall have been filed with the City Clerk, the Inspectional Services Department and the Department of Planning and Development.
- f. The Petitioner shall have recorded with the Registry of Deeds for the Southern District of Middlesex County certified copies of this Board Order granting this SPECIAL PERMIT/SITE PLAN APPROVAL with appropriate reference to the book and page of the recording of the Petitioner's title deed.
- g. Certified copies of such recorded notice shall have been filed with the City Clerk, the Inspectional Services Department and the Director of Planning and Development.

A True Copy
Attest:
Edward H. English
City Clerk of Newton, Mass

13. That no building or structure, or portions thereof, subject to this SPECIAL PERMIT/SITE PLAN APPROVAL shall be occupied until:
- a. The Petitioner shall have filed with the City Clerk, the Inspectional Services Department and the Department of Planning and Development a statement by a registered architect or registered engineer certifying that Condition 1 has been complied with.
 - b. Condition 7 has been complied with and a statement by the Newton Historical Commission certifying such compliance shall have been filed with the City Clerk and Inspectional Services Department and the Director of Planning and Development.
 - c. There shall have been filed with the City Clerk, the Inspectional Services Department and the Department of Planning and Development a statement by the City Engineer certifying that the finished grades and final construction details of the driveways, parking areas, drainage systems, sidewalks, and utility installations have been constructed to the standards of the City of Newton Engineering Department.
 - d. There shall have been filed with the City Clerk and the Inspectional Services Department a statement by the Director of Planning and Development approving the final location, number and type of plant materials, final landscape features, fences and latticework, parking areas, and lighting installation, and certifying that conditions 2-7 have been complied with.
 - e. Notwithstanding the provisions of Sections a-c, hereof, the Commissioner of Inspectional Services may issue one or more certificates for temporary occupancy of all or portions of the buildings prior to installation of final landscaping provided that the Petitioner shall have first filed with the Director of Planning and Development a bond, letter of credit, cash or other security in a the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining landscaping to secure installation of such landscaping.
 - f. A statement by the Inspectional Services Department that it intends to issue the Certificate of Occupancy which documents the compliance of the building with the State of Massachusetts Building Code, including any permits issued by said Department, and that the premises are suitable for occupancy shall have been filed with the City Clerk and the Department of Planning and Development.

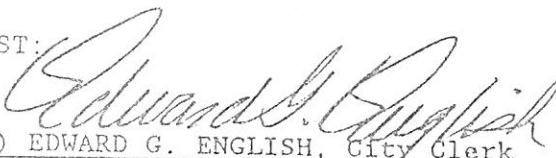
A True Copy
Attest:
[Signature]
City Clerk of Newton, Mass.

- g. A statement shall be filed by the Chairman of the Newton Community Development Authority with the Inspectional Services Department that the Petitioner has conveyed a cash contribution to the Authority's subsidized housing fund (a.k.a. 10% Account) Section 30-24(d)(5)(f) of the Zoning Ordinance. Said cash contribution shall be determined by the following formula: Average sales price of the three (3) units x .15 x .125 (as determined by signed Purchase and Sales agreements).
- h. A statement by the Director of the Newton Housing Authority that there has been full compliance with the low-income requirement of Section 30-24(d)(5) of the Zoning Ordinance shall have been filed with the City Clerk and the Department of Planning and Development.

Under Suspension of Rules
Readings Waived and Approved
20 yeas 1 nay (Ald. Bryson)
3 absent (Ald. Baker, Robinson
and Vance)

The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen granting a SPECIAL PERMIT and SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the CITY CLERK on August 13, 1990. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT and SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the Planning and Development Board and the City Clerk.

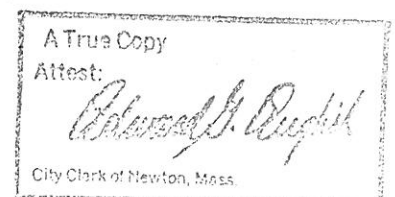
ATTEST:


(SGD) EDWARD G. ENGLISH, City Clerk
Clerk of the Board of Aldermen

I, Edward G. English as the Clerk of the Board of Aldermen and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON hereby certifies that Twenty days have elapsed since the filing of the foregoing decision of the Board of Aldermen in the Office of the City Clerk on August 13, 1990 and that NO APPEAL to said decision pursuant to M.G.Laws Chapter 40, Section 17 has been filed thereto.

ATTEST

EDWARD G. ENGLISH, City Clerk



COMMONWEALTH OF MASSACHUSETTS

Copy

SUFFOLK, SS.

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AUG 21 3 18 PM '58
LAND COURT

LAND COURT
C.A. 150 217

CHAUNCEY PERRY, PLAINTIFF

v.

COMPLAINT

NEWTON BOARD OF ALDERMEN:)
 VERNE W. VANCE, JR., SONDRAL. SHICK)
 BRUCE B. CARMICHAEL, ANTHONY F. LUPO)
 LOUIS IRWIN, HELEN R. ROBINSON)
 LINDA JORDAN KRAUS, RICHARD J. BULLWINKLE)
 LEONARD J. GENTILE, ANTHONY J. SALVUCCI)
 JOHN F. STEWART, JOHN T. UMINA)
 D. PAULINE BRYSON, BRIAN E. YATES)
 PAUL E. COLETTI, MARK A. WHITE,)
 SUSAN M. BASHAM, RODNEY M. BARKER)
 GEORGE E. MANSFIELD, DOMINIC J. TAGLIENTI)
 R. LISLE BAKER, WENDELL R. BAUCKMAN)
 CYNTHIA S. CREEM, RUTH B. BALSER, DEFENDANTS)

1. The parcel of land which is the subject matter of this complaint is located in the City of Newton, County of Middlesex, Massachusetts, and is known and numbered as 432 Newtonville Avenue and is identified on the Newton Assessor's map as Section 22, Block 5, Lot 24, and contains 16,623 sq. ft. of land.

2. The plaintiff is Chauncey Perry of 105 Greenwood Lane, Waltham, MA 02154.

3. The defendants are the Newton Board of Aldermen sitting as the Special Permit Granting Authority:

VERNE W. VANCE, Jr., 101 Old Orchard Road, Newton, MA
 SONDRAL. SHICK, 21 Fairview Street, Newton, MA
 BRUCE B. CARMICHAEL, 178 Linwood Ave, Newton, MA
 ANTHONY F. LUPO, 188 Adamse Street, Newton, MA
 LOUIS IRWIN, 420 Lowell Ave, Newton, MA
 HELEN R. ROBINSON, 54 Rochester Road, Newton, MA
 LINDA JORDAN KRAUS, 480 Walnut Street, Newton, MA
 RICHARD J. BULLWINKLE, 15 Lindberg Ave, Newton, MA
 LEONARD J. GENTILE, 214 Adams Avenue, Newton, MA
 ANTHONY J. SALVUCCI, 24 Eddy Street, Newton, MA
 JOHN F. STEWART, 23 Pierrepont Road, Newton, MA
 JOHN T. UMINA, 54 Woodbine Avenue, Newton, MA
 D. PAULINE BRYSON, 11 Acorn Drive, Newton, MA
 BRIAN E. YATES, 1094 Chestnut Street, Newton, MA
 PAUL E. COLETTI, 34 Columbia Avenue, Newton, MA
 MARK A. WHITE, 53 Allen Avenue, Newton, MA
 SUSAN M. BASHAM, 67 Fisher Avenue, Newton, MA
 RODNEY M. BARKER, 49 Woodcliff Road, Newton, MA
 GEORGE E. MANSFIELD, 312 Lake Avenue, Newton, MA

DOMINIC J. TAGLIANTI, 350 Langley Road, Newton, MA
R. LISLE BAKER, 137 Suffolk Road, Newton, MA
WENDELL R. BAUCKMAN, 336 Dedham Street, Newton, MA
CYNTHIA S. CREEM, 15 Esty Farm Road, Newton, MA
RUTH B. BALSER 36 Audubon Drive, Newton, MA

4. On August 13, 1990, the defendant, acting as the Special Permit Granting Authority as described in M.G. L. ch 40A, herein after collectively referred to as defendant, granted the plaintiff's petition for a Special Permit, Exhibit A.

5. The plaintiff filed a notice of appeal with the City Clerk of the City of Newton, a copy of which is attached hereto and marked Exhibit B.

6. The plaintiff is aggrieved by the decision of said defendant and says that said decision exceeds the authority of said Board.

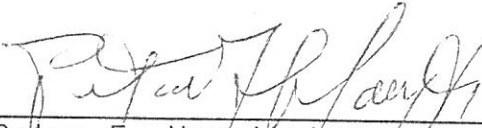
7. The defendant says the M.G.L. ch 40A, section 3, prohibits the defendant from regulating or restricting the use of materials in a building by zoning regulation and the Special Permit which is the subject matter of this complaint does violate said provision.

WHEREFORE THE PLAINTIFFS PRAY THIS HONORABLE COURT:

1. Annul the decision of said Board of Aldermen insofar as it improperly regulates the use of building material and violates the provisions of said ch 40A, section 3.

2. Grant such further relief as this Court deems meet and just.

By his attorney,


Peter F. Harrington
505 Waltham Street
West Newton, Mass. 02165
244-1015
August 31, 1990

Nicolazzo and Harrington

Attorneys At Law

505 Waltham Street

Newton, Massachusetts 02465



A PROFESSIONAL ASSOCIATION

FRANK J. NICOLAZZO

PETER F. HARRINGTON

JEAN A. NICOLAZZO

TELEPHONE
617/244-1015

FAX: 617/527-4763

August 31, 1990

Edward G. English, Clerk
Newton Board of Aldermen
Newton City Hall
Newton Centre, Mass. 02159

RE: Board of Alderman # 609-89

Dear Mr. English,

Notice is hereby given that an appeal has been taken from the decision of the Newton Board of Aldermen, sitting as the Special Permit Granting Authority, #609-89 by the filing of a complaint in the Land Court on August 31, 1990, a copy of which is attached hereto.

Sincerely,

Peter F. Harrington
Attorney for Chauncey Perry

PFH/mb

Enc.

NVILLEAP.005

PETER F. HARRINGTON
ATTORNEY AT LAW
505 WALTHAM STREET
WEST NEWTON, MASSACHUSETTS 02165
TELEPHONE (617) 244-1015
FAX (617) 527-4763

August 4, 1993

Ouida C. M. Young, Esq.
Assistant City Solicitor
Newton City Hall
1000 Commonwealth Avenue
Newton Centre, MA 02159

RE: Perry v. City of Newton
Land Court case no. 150217

Dear Ouida,

I appeared at the Land Court on Thursday, July 29, 1993, at which time the above case was continued generally upon my representation that the items in dispute have been resolved and that the petitioner has agreed to file for an amendment to the special permit which will be supported by the City of Newton.

Sincerely,



Peter F. Harrington

PFH/dh