

SPECIAL PERMIT APPLICATION

TO THE NEWTON CITY COUNCIL

The undersigned hereby makes application for permit to erect and use, to alter and use, or to make such uses as may be hereinafter specified of a building or buildings at the location and for the purpose hereinafter specified under the provisions of Chapter 30 of the Revised Ordinances, 2015, as amended, or any other sections

PLEASE REFERENCE SECTIONS OF THE ORDINANCES FROM WHICH RELIEF IS REQUESTED:

§3.2.3, §3.2.11, §7.8.2.C.2, §7.6 and §7.3.3

- PETITION FOR:** Special Permit/Site Plan Approval
 Extension of Non-conforming Use and/or Structure
 Site Plan Approval

STREET 13 Prospect Street WARD 3

SECTION(S) 33 BLOCK(S) 03 LOT(S) 09

APPROXIMATE SQUARE FOOTAGE (of property) 6,611 ZONED MR2

TO BE USED FOR: Day care play area

CONSTRUCTION: Wood frame

EXPLANATORY REMARKS: Petitioner seeks a Special Permit to conform to requirement set forth in Variance #06-19

The undersigned agree to comply with the requirements of the Zoning Ordinance and rules of the Land Use Committee of the City Council in connection with this application.

PETITIONER (PRINT) Katherine R. Jordan-Quern

SIGNATURE *Katherine R. Jordan-Quern*

ADDRESS 13 Prospect Street, West Newton, MA 02465

TELEPHONE _____ Email _____

ATTORNEY Peter F. Harrington, Harrington & Martins

ADDRESS 505 Waltham Street, West Newton, MA 02465

TELEPHONE 617-558-7722 Email pfh@harringtonandmartins.com

PROPERTY OWNER Katherine R. Jordan-Quern and

Albert F. Quern
ADDRESS 13 Prospect St., West Newton, MA 02465

TELEPHONE _____ Email _____

SIGNATURE OF OWNER _____

Planning & Development
Department Endorsement

TO THE NEWTON SPECIAL PERMIT GRANTING AUTHORITY

The undersigned hereby makes application for permit to erect and use, to alter and use, or to make such uses as may be hereinafter specified of building or buildings, at the location and for the purpose hereinafter specified under the provisions of Chapter 30 of the Revised Ordinances, as amended

Please Reference Sections: §§ 3.2.3, 3.2.11, 7.8.2.C.2, 7.6 and 7.3.3

Petition for: SPECIAL PERMIT/SITE PLAN APPROVAL Request to exceed FAR
EXTENSION OF NON-CONFORMING USE
SITE PLAN APPROVAL ONLY

Located as follows:

Street and Ward 13 Prospect Street, Ward 3, Precinct 2

Section(s) 33 Block(s) 03 Lot(s) 09

Approximate square footage square feet 6,611 square feet as per deed

To be used for: to enclose patio space below an existing overhang and deck at the rear of the dwelling and convert it into play space in a family day care operated by the petitioner, who lives on the property. See attached narrative.

Construction: wood frame, one story, now a patio with deck above, to be enclosed

Explanatory remarks: The conversion of this space requires both a variance and a Special Permit. The Petitioner has obtained the required variance.

Land referred to here is located in a Multi Use 2 Zoning District

The undersigned agrees to comply with the requirements of the Zoning Ordinance and rules of the Land Use Committee of the Board of Aldermen in connection with this application.

Petitioner Katherine R. Jordan Quern & Albert F. Quern, as Tenants by the Entirety

Signature Katherine R. Jordan Quern Albert F. Quern

Address and Telephone 13 Prospect Street, West Newton, MA 02465

Attorney of Record Peter F. Harrington
Address and Telephone 505 Waltham St., West Newton, MA 02465
617-558-7722

Name, Address and Katherine R. Jordan Quern & Albert F. Quern
13 Prospect Street, West Newton, MA 02465

Signature of Katherine R. Jordan Quern Albert F. Quern

Owner of Property Katherine R. Jordan Quern Albert F. Quern

PLANNING AND DEVELOPMENT DEPARTMENT'S ENDORSEMENT

NARRATIVE TO ACCOMPANY APPLICATION FOR SPECIAL PERMIT

PROPERTY LOCATION 13 Prospect Street, West Newton; Section 33, Block 3, Lot 9

PROPOSAL DESCRIPTION:

1. The Petitioner, Kathy Jordan Quern, conducts a small family day care business at the rear of the first floor of her home at 13 Prospect Street, West Newton. The house contains 4,189 square feet (3,748 square feet of habitable space - assessor's records). The area, at the rear of the house, to be enclosed, is 386 square feet± (less than 1% of habitable space). The area to be enclosed has been used as an outdoor play area. The outdoor play area (patio) has been replaced. The Petitioner would like to expand the indoor play area by enclosing the patio.
2. A portion of the patio, approximately 265 square feet, is defined by the rear wall and a portion of the south side wall of the house. The remainder is enclosed with a translucent, temporary, hanging. The ceiling is the floor of a bump out portion of the bedroom above. This addition will increase the FAR from .63 to .68.
3. The remaining portion of the patio, approximately 100 square feet±, is an open area that is covered by a deck above.
4. The petitioners seek to permanently enclose both portions of the patio. This will enclose the area under the overhanging room and deck and it will be used as an indoor play area for the children.
5. This enclosed area can be used all year and is not subject to weather conditions. Also, it will provide additional indoor space for spacing between the children. The maximum number of children allowed at this site, under her license, is 10. At present, she has 6 children. Their ages range from nine months to three years.

6. There is a significant need in Newton, for the Day Care services the Petitioner, Kathy Jordan Quern, provides. The weather patterns in Newton have changed, with a result that there is 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.

ADDITIONAL CONSIDERATIONS:

1. The proposed Special Permit request a minimum change. The Petitioners' request is to enclose the patio. 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.
2. The Petitioners' application for a Special Permit borders on being a de minimis request.
3. If the Special Permit is granted, the property will continue to be in harmony with the Zoning Ordinance and will not be detrimental to the neighborhood or the public welfare.
4. 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.
5. The granting of the Special Permit 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.
6. 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 limited size or another feature that particularly suits their child.

ATTACHMENTS TO ACCOMPANY APPLICATION FOR SPECIAL PERMIT

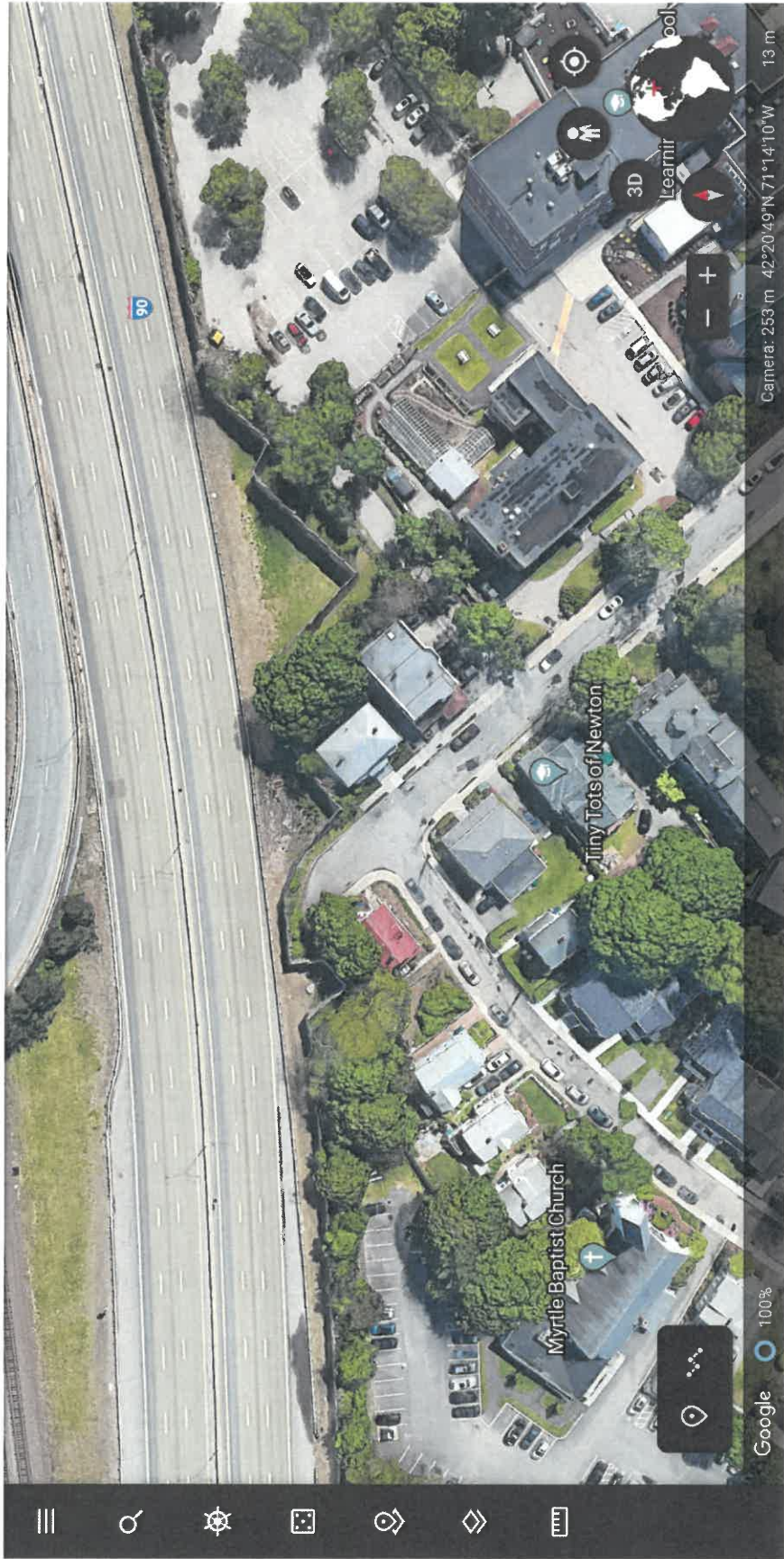
- Exhibit 1A Assessors Plan of Neighborhood
- Exhibit 1B Aerial View
- Exhibit 1C Photograph of Immediate Neighbors and Driveway Entrance
- Exhibit 1D Photograph of Area to be Enclosed
- Exhibit 1E Photograph of New Outdoor Play Area
- Exhibit 2 Zoning Review Memorandum dated November 19, 2020 (3 pages)
- Exhibit 3 Floor Area Ratio Worksheet
- Exhibit 4 Decision of Newton Zoning Board of Appeals, filed with the City Clerk November 19, 2019, Docket #06-19 (4 pages)
- Exhibit 5 Decision of Newton Zoning Board of Appeals, filed with the City Clerk May 2, 2013, Docket #04-13 (5 pages) – Dimensional Waivers for Two Family Use
- Exhibit 6 Historic Commission 2 Family Project Approval, September 27, 2012
- Exhibit 7 Accessory Apartment Certificate, March 9, 2018
- Exhibit 8 Petitioners' Deed (2 pages)
- Exhibit 9 PLANS: (3 pages)
6-A Site Plan
6-B Floor Plans
6-C Elevations



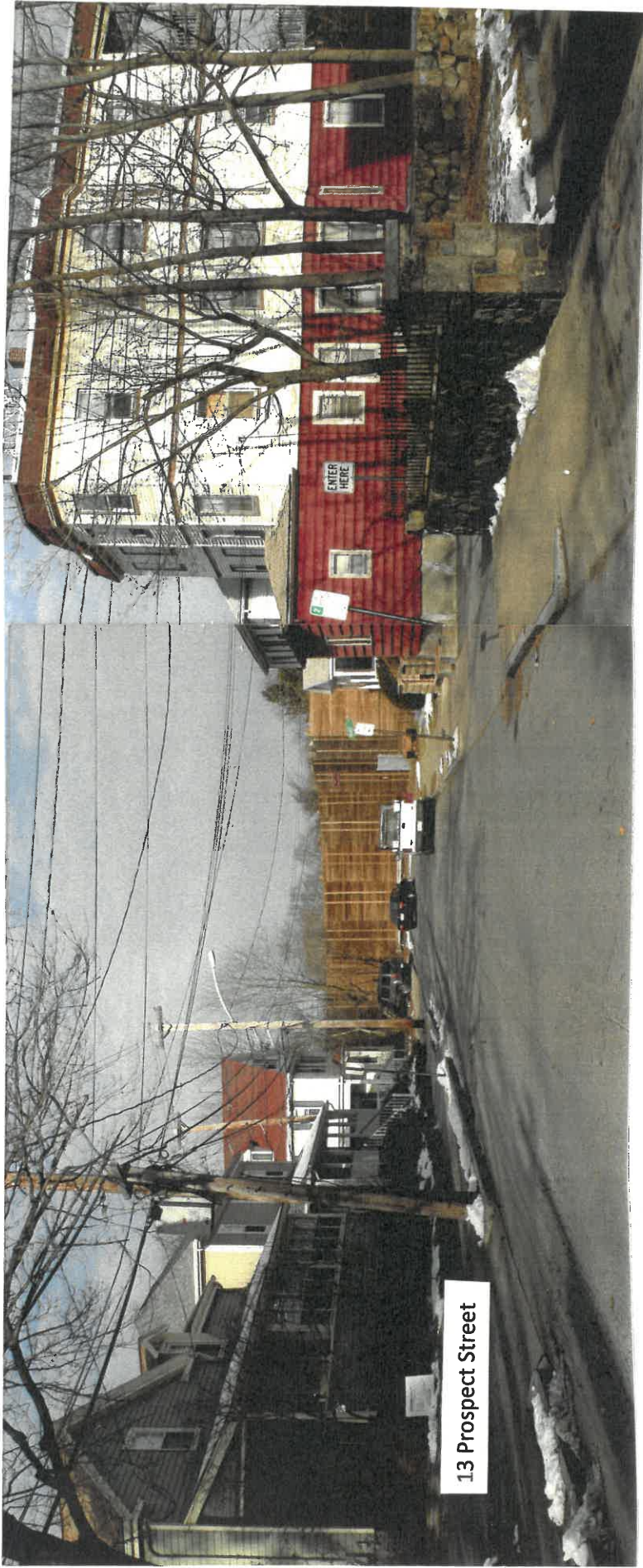
**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

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



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EXHIBIT

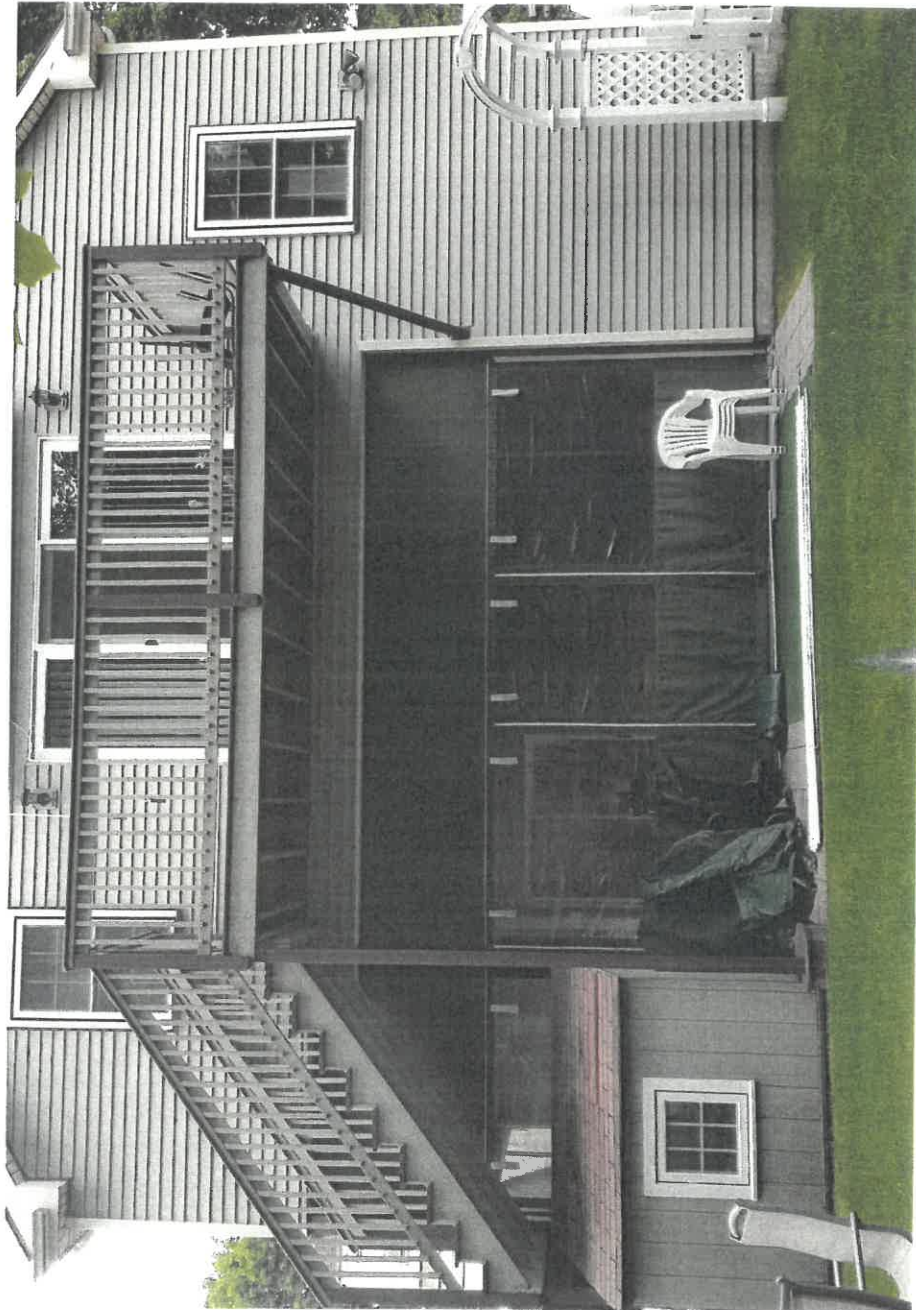


13 Prospect Street

tabbles
EXHIBIT
1C



13 Prospect Driveway



Old Outdoor Play Area to be Enclosed



EXHIBIT
tabbles
1 E

New Outdoor Play Area



Ruthanne Fuller
Mayor

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

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM



Date: November 19, 2020

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Neil Cronin, Chief Planner for Current Planning

Cc: Kathy Jordan Quern, Applicant
Peter Harrington, Attorney
Barney S. Heath, Director of Planning and Development
Jonah Temple, Associate 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, revised 8/13/2020
- Variance #4-13

ADMINISTRATIVE DETERMINATIONS:

1. The petitioner proposes to enclose space below an existing deck at the rear of the dwelling to create additional first level living space used in a family day care operated on the property.
2. The petitioner received a variance in 2013 to allow for an existing single-family dwelling to be converted into a two-family dwelling with an addition. The variance was required for lot area per unit and insufficient open space. The open space allowed by the 2013 variance was 44.7%, where 50% is required per section 3.2.3. The survey on file with the as-built plans in ISD from 2013 indicates that the as-built open space was as permitted at 44.7%. However, the current survey indicates an existing open space of 43.4%, which is below that which was permitted by the variance. The as-built plan appears largely the same as the current plan found in the petitioner's application, so it is unclear where the discrepancy between the two open space figures lies. The proposed addition would further reduce to the open space to 42.9%. A variance amendment is required to allow for a further reduction of open space from the approved 44.7% to the proposed 42.9%.

Should the petitioner not receive the permissions required for the proposed addition, an amendment to legitimize the current conditions shown on the submitted plans of 43.4% open space, where 44.7% had been approved in 2013, should be made.

3. Lot coverage is a measurement of the percentage of the lot covered by structures with roofs. The existing lot coverage is 30%, where the maximum allowed is 30% per section 3.2.3. The proposed addition is under an existing deck. As it is not currently under a roof, the space intended for the addition does not count against lot coverage. However, once constructed the space would be under a roof and would therefore increase the lot coverage figure. To allow an increase of the lot coverage to 32.3%, which exceeds the maximum allowed, requires a variance.
4. The FAR for the addition was likely miscalculated in 2013, with the as-built plans showing a figure of .40, whereas the FAR calculation included in the current submission shows an existing FAR of .66. This discrepancy between the two figures is possibly due to a 2013 miscalculation of the basement level of the dwelling. Due to the average grade of the property, the entire basement counts toward FAR, and it is likely that it was not included in the initial calculation.

The proposed addition adds 398.7 square feet to the first story, creating a total of 4,189 square feet counting toward FAR. The existing FAR is .66, where .54 is the maximum allowed per sections 3.2.3 and 3.2.11. The proposed additions further increase the nonconforming FAR to .72, requiring a special permit per sections 3.2.3, 3.2.11.

Should the petitioner not receive the permissions necessary for the proposed addition, a special permit to legitimize the current FAR of .66 is required.

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	.66	.72
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 §3.2.11 §7.8.2.C.2	Request to further extend nonconforming FAR	S.P. per §7.3.3



Ruthanne Fuller
Mayor

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

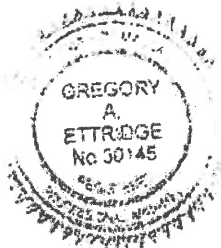
John Lusk
Commissioner

FLOOR AREA RATIO WORKSHEET

For Residential Single and Two Family Structures

Property address: 13 PROSPECT STREET NEWTON MA 02465

FAR Calculations for Regulations Effective As Of October 15, 2011		
Inputs (square feet)		
	EXISTING	PROPOSED
1. First story		
2. Attached garage	1452.06	1850.74
3. Second story	1713	1713
4. Atria, open wells, and other vertical spaces (if not counted in first/second story)	—	—
5. Certain floor area above the second story ¹⁴	—	—
6. Enclosed porches ¹⁶	245	245
7. Mass below first story ¹⁵	945	945
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)	4355.06	4753.74
B Lot size	6611	6611
C FAR = A/B	0.658	0.719
Allowed FAR		
Allowable FAR	.55	.55
Bonus of .02 if eligible ¹⁷		
TOTAL Allowed FAR		



Gregory A. Ettridge



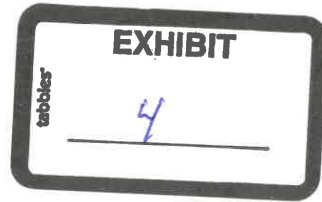
CITY OF NEWTON, MASSACHUSETTS

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Ruthanne Fuller
Mayor

2019 NOV 19 AM 9:30

ZONING BOARD OF APPEALS

Adrianna Henriquez, Board Clerk

#06-19

DETAILED RECORD OF PROCEEDING AND DECISION

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.

Due notice of the public hearing before the Zoning Board of Appeals for the City of Newton (the "Board") was given by mail, postage prepaid, to all "parties in interest" in accordance with M.G.L. c. 40A, § 11 and by publication in the *Newton TAB*, a newspaper of general circulation in Newton, Massachusetts, on September 11, 2019 and September 18, 2019.

The public hearing was opened on September 23, 2019. By written agreement, the parties continued the hearing to Wednesday, October 30, 2019 at 7:00 p.m. in the Council Chambers, Room 207, Newton City Hall, 1000 Commonwealth Avenue, Newton, Massachusetts.

The following members of the Board were present:

Brooke K. Lipsitt (Chairperson)
Barbara Huggins Carboni
William McLaughlin
Michael Quinn¹
Michael Rossi
Stuart Snyder



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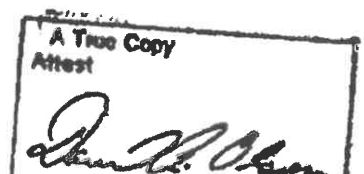
*Return:
Harrington Martini
505 Waltham St.
West Newton, MA 02465*

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

1. Application for Amendment to Variance, with accompanying documents, received August 14, 2019
2. Zoning Review Memorandum, with accompanying documents, dated April 23, 2019

¹ Mr. Quinn participated in discussion but did not participate in the Board's vote.

MR 59561-461



FACTS

Petitioner Kathy Quern is licensed by the Commonwealth of Massachusetts to operate her daycare service at the subject property, which is in a densely populated area surrounded by multifamily dwellings. The daycare is located in a room in the back of the Petitioners' home and extends to the unenclosed patio. The Petitioners seek to enclose the patio to make it usable full-time for the daycare. Petitioner Albert Quern explained that the 313 square feet referenced in the petition relates to enclosing the existing space, and the additional 96 square feet referenced relates to a wall and stair area, which Petitioners also seek to enclose. Petitioners' counsel, Attorney Peter Harrington of 505 Waltham Street in Newton, explained that every abutter contacted had no issue with the project.

The Board considered a petition requesting a variance relative to the subject property in 2013. Attorney Harrington requested that the Board incorporate those findings in its decision on the instant application. Moreover, Attorney Harrington noted that there have been vast changes in the neighborhood. He explained that the area in which the Petitioners live has become incredibly dense. There has been a significant increase in traffic and noise from the nearby Massachusetts Turnpike, which has raised concerns about the safety and well-being of the children attending the daycare at the subject property.

Attorney Harrington also noted that the size and the shape of the lot were contributing factors in the grant of the prior variance. He explained that without a variance, the open space requirement currently imposes a severe limitation such that the Petitioners cannot go forward with this small expansion. The daycare facility will not function at its best level if this enclosed space is not available to the children.

A motion to close the public hearing was made by Mr. Rossi and duly seconded by Ms. Carboni. The motion passed, five in favor and none opposed.

Ms. Carboni noted that the Petitioners seem to be providing the safest and highest quality daycare that they can on their property and, but for the peculiar shape and topography of this lot, they would be able to do this modest expansion as of right. Ms. Carboni noted that in the 2013 variance Decision, this Board found hardship exists with respect to the shape of the petitioners' lot. Also, the land is confined to 6,611 square feet and the 2013 decision concluded that created a hardship for the petitioners. Ms. Carboni emphasized the word "confined" in the 2013 decision. Where the instant petition seeks a variance relative to open space and lot coverage arising from the confined nature of this lot, the hardship exists and Ms. Carboni would be inclined to grant the variance.

Chairperson Lipsitt observed that part of the hardship in these circumstances appeared to be increased pollution, noise, and potential danger to the children attending the daycare. Mr. McLaughlin also remarked on the size and shape of the lot and confirmed that he agreed with the position of Ms. Carboni. In addition, he noted the quality of what exists in the relevant space, which is enclosed merely in plastic, whereas what is being proposed by Petitioners is significantly safer, higher quality, and would give a greater buffer to the children from the dense environment around them and from the Massachusetts Turnpike. Mr. Snyder further stated that he was satisfied that a hardship exists based on the points articulated by the Chairperson, the size and nature of the lot, as well as the noise and other effects on the children using the site. Chairperson Lipsitt

Also
Ames

[Handwritten Signature]

noted a financial hardship given that, if the children cannot be cared for in a healthy environment, the business could close.

FINDINGS, DETERMINATION, AND CONDITIONS

1. *There are special circumstances related to the soil conditions, shape, or topography of the land or structures which affect it but do not generally affect other properties in the zoning district. The site is unique and a hardship is present due to the topography and peculiar shape of the Petitioners' lot, which is confined to 6, 611 square feet.*
2. *Literal enforcement of the provisions of the Newton Zoning Ordinance would result in a substantial hardship to the owner and the variance requested is the minimum change that is necessary to allow reasonable use of the building or land. Literal enforcement of the Newton Zoning Ordinance would result in substantial hardship. The Petitioners state that increases in traffic and noise as well as increases in the density of the surrounding area pose a risk to the safety and well-being of the children attending daycare at the subject property. Furthermore, if the children cannot be cared for in a healthy environment, Petitioners' business could cease to operate. The requested amendment to Variance 04-13 seeks to protect children in the daycare from pollution, noise, and other dangers.*
3. *The variance will be in harmony with the general purpose and intent of the Newton Zoning Ordinance and will not be detrimental to the neighborhood or the public welfare. Granting the amendment to the variance requested would not derogate from the spirit and intent of the Newton Zoning Ordinance in that the departure from the ordinance requirements would not change the character of the surrounding area. In addition, granting the Petitioners' request will not result in a substantial detriment to either the neighborhood or the public welfare, but rather will promote the safety and well-being of the children attending the daycare at the subject property.*

Mr. Snyder moved to grant the petition. This motion was duly seconded by Mr. McLaughlin. The Board voted in favor 5-0. Therefore, the request to amend Variance #04-13 is granted subject to the following condition:

1. If the Petitioners are required to obtain a special permit, then the grant of the amendment to Variance #04-13 is conditioned upon the Petitioners' obtaining a special permit.
2. The addition and all site features associated with this Variance shall be located and constructed consistent with the plans submitted with the Petitioners' application.
3. No building permit shall be issued pursuant to this Variance until Petitioners have:
 - 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.

<p style="text-align: center;">A True Copy Attest:</p> <p style="text-align: center;"><i>[Handwritten Signature]</i></p>
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Brooke K. Lipsitt, Vice Chairman

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

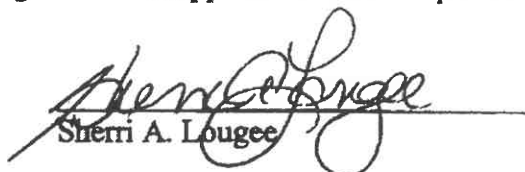
Copies of this decision and all plans referred to in this decision have been filed with the Planning and Development Board and the City Clerk.


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
acting

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

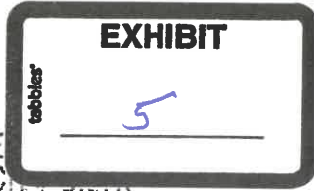
A True Copy
Attest

City Clerk of Newton, Mass.

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CITY OF NEWTON, MASSACHUSETTS

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www.ci.newton.ma.us



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

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.

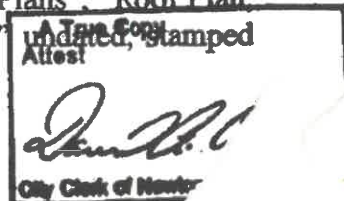
Accompanying the petition and incorporated into the record are the following documents:

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

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 off 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,

Warrant 013
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.

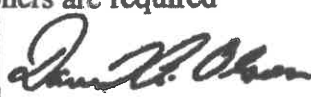
According to the Petitioners, the improvement of the property to conform to municipal stormwater management requirements will be a benefit to the immediate and nearby abutters by reducing existing storm water discharge onto Prospect Street, into the municipal storm water drain system and excess discharge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

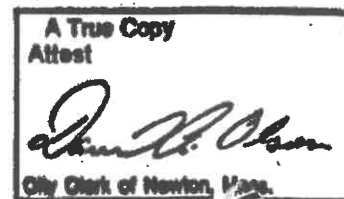
Attest

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

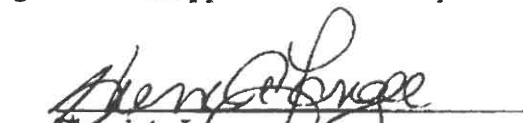
Copies of this decision and all plans referred to in this decision have been filed with the Planning and Development Board and the City Clerk.


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.



CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development
Candace Havens, Director

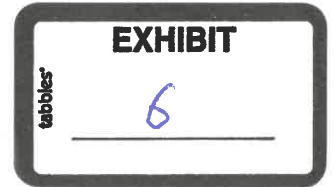
Setti D. Warren
Mayor

Telephone
(617)-796-1120
Telefax
(617) 796-1142

RECORD OF ACTION:

DATE: September 27, 2012

SUBJECT: 13 Prospect Street



At a scheduled meeting and public hearing on September 27, 2012 the Newton Historical Commission, by vote of 3-0-1, with Barker abstaining,

RESOLVED to find the house at 13 Prospect Street Preferably Preserved.

Voting in the Affirmative:
David Morton, Acting Chair
William Roesner, Member
Nancy Grissom, Member

Abstaining from Voting:
Rodney Barker, Member

At a scheduled meeting and public hearing on September 27, 2012 the Newton Historical Commission, by vote of 3-0-1, with Barker abstaining,

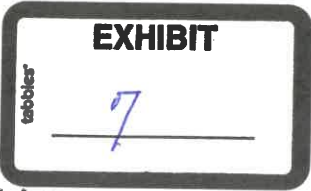
RESOLVED to waive the demolition delay at 13 Prospect Street, based upon proposed plans for the alteration of the building, which were reviewed and approved by the Commission.

Voting in the Affirmative:
David Morton, Acting Chair
William Roesner, Member
Nancy Grissom, Member

Abstaining from Voting:
Rodney Barker, Member

Brian Lever, Commission Staff

M



City of Newton

Inspectional Services Department

Telephone
(617) 796-1060
Fax
(617) 796-1086
Email
ISD@newtonma.gov



John D. Lojek, Commissioner
1000 Commonwealth Avenue
Newton Centre, MA 02459-1449
www.newtonma.gov

Ruthanne Fuller
Mayor

DECISION OF THE COMMISSIONER OF INSPECTIONAL SERVICES

March 9, 2018



2018 00104194
Bk: 71310 Pg: 273 Doc: DECIS
Page: 1 of 1 07/13/2018 11:49 AM

Katherine Jordan & Albert Quern

13 Prospect Street

Newton, MA 02459

Re: Accessory Apartment: 13 Prospect Street

Dear Katherine & Albert

Sufficient evidence has been presented to this office to determine that the proposed accessory apartment at the above address meets the criteria for an accessory apartment under Section 6.7 of the City of Newton Zoning Ordinance.

Pursuant to Section 6.7.1.C.8 of the City of Newton Zoning Ordinance, I hereby grant the proposed accessory apartment (the "Accessory Apartment") for the two family, internal unit at 13 Prospect Street, Newton, Middlesex County, Massachusetts.

BK. 59561 p. 461

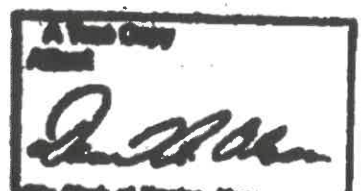
John D. Lojek
Commissioner

On this 9 day of March, 2018, I certify that this document is a true, exact, complete and unaltered copy, of the determination made by me, John Lojek, as Commissioner of Inspectional Services, for the City of Newton, regarding the accessory apartment at 13 Prospect Street, Newton, MA.

Name: [Signature]
John D. Lojek
Commissioner of Inspectional Services

Jordan
13 Prospect St.
New. MA 02459

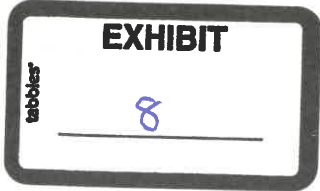
Strict code enforcement makes the city safer
Before buying, renting or leasing check zoning



2



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



13 Prospect Street, Newton

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

I CERTIFY THAT THIS PLAN WAS MADE FROM AN INSTRUMENT SURVEY ON THE GROUND BETWEEN THE DATES OF JANUARY 25, 2012 - OCTOBER 13, 2017 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
 DECISION: BK 61920; PG 388
 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)

	REQUIRED	EXISTING	PROPOSED
LOT COVERAGE:	30.0%	29.9%	32.3%*
OPEN SPACE:	50.0%	41.0%*	39.2%*
GROSS FLOOR AREA (GFA)	4188.75	-	4,501.50
FAR:	0.63	-	0.68

(GFA) CALCULATIONS PROVIDED BY ARCHITECT.

EXISTING LOT COVERAGE AND OPEN SPACE CALCULATIONS INCLUDE THE REAR SHEDS (TO BE REMOVED).

*ZONING VIOLATION

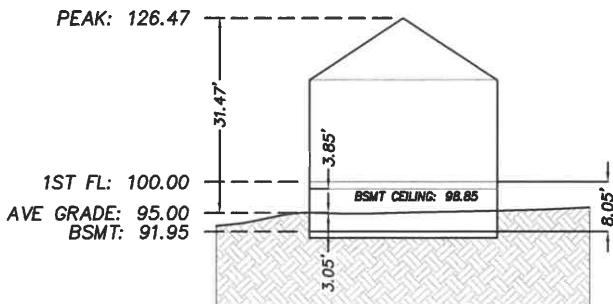
	Elevation 1	Elevation 2	Average	Length	Average x Length
Segment 1	95.3	96.3	95.8	34.8	3332.3
Segment 2	95.4	96.2	95.8	39.6	3791.9
Segment 3	93.6	93.9	93.7	24.9	2329.4
Segment 4	93.9	95.3	94.6	46.9	4429.7
			Sum of all segments =	13883.3	
			Perimeter (total length of all segments) =	146.1	
			Average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

CURVE STREET
 (30.0' WIDE ~ PUBLIC)

56.58'

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

PROFILE
 NOT TO SCALE

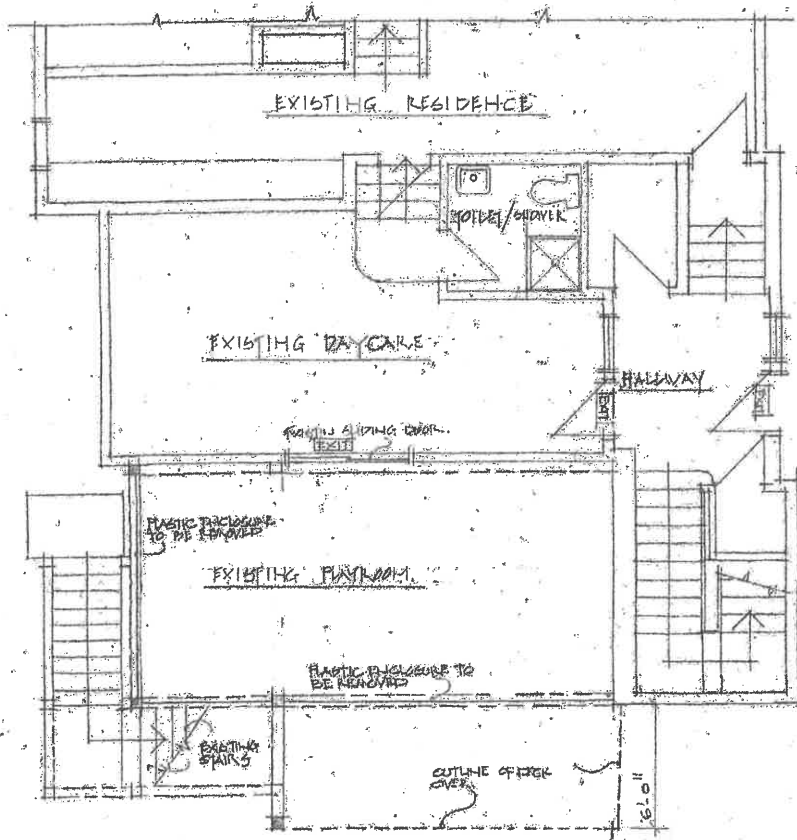


SCALE: 1.0 INCH = 10.0 FEET

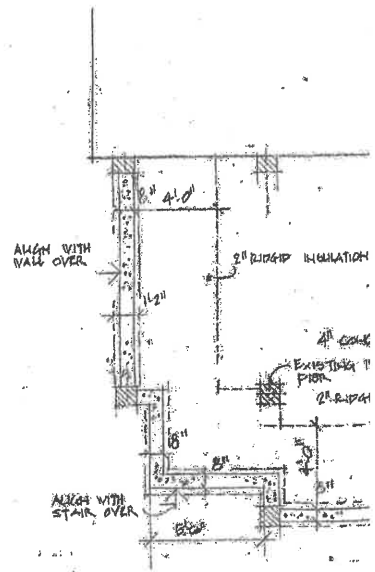


No. 8 CURVE ST
 N/F
 8 CURVE REALTY
 BK 32056; PG

No. 12 CURVE
 N/F
 THE MYRTLE BAPT
 OF WEST NE
 BK 56762; I



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

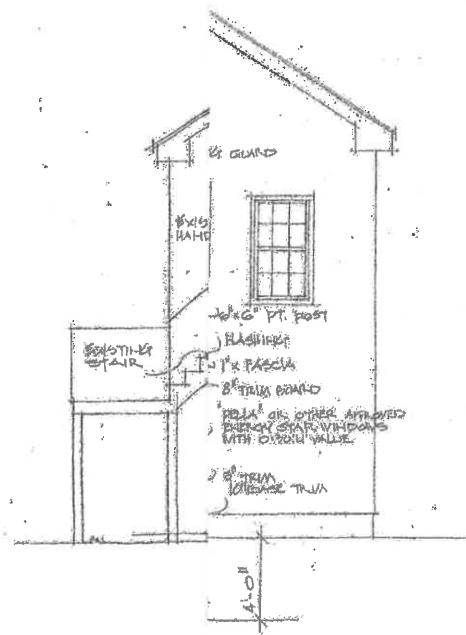


2 Proposed Foundation Plan
1/4" = 1'-0"

PROPOSED ADDITION
13 PROSPECT STREET, NEWTON, MA

FLOOR

3



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

PROPOSED ADDITION
 13 PROSPECT STREET, NEWTON, MA

Date: 10/03/17
 Scale: 1/4" = 1'-0"

